

LOK SABHA

**REPORT OF
THE JOINT COMMITTEE ON
THE ENFORCEMENT OF SECURITY INTEREST AND
RECOVERY OF DEBTS LAWS AND MISCELLANEOUS
PROVISIONS (AMENDMENT) BILL, 2016**

SIXTEENTH LOK SABHA



Lok Sabha Secretariat

New Delhi

July, 2016/Ashadha 1938(Saka)

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Presented to Lok Sabha on 22nd July, 2016

Laid in Rajya Sabha on 22nd July, 2016



सत्यमेव जयते

Lok Sabha Secretariat

**New Delhi
July, 2016/Ashadha 1938(Saka)**

CONTENTS

1. COMPOSITION OF THE JOINT COMMITTEE
2. REPORT OF THE JOINT COMMITTEE
3. BILL AS REPORTED BY THE JOINT COMMITTEE

APPENDICES

- Appendix I : Motion in Lok Sabha for reference of the Bill to the Joint Committee
- Appendix II : Motion in Rajya Sabha
- Appendix III : List of Stakeholders with whom the Joint Committee held informal discussion at Mumbai from 30th June 2016 to 2nd July, 2016
- Appendix IV : List of stakeholders/public at large from whom memoranda were received by the Joint Committee in response to the Press communiqué issued on 07.06.2016
- Appendix V : List of Stakeholders who submitted Memoranda and tendered evidence before the Joint Committee
- Appendix VI : Minutes of the sittings of the Joint Committee*

*Not appended with cyclostyled copy.

**JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND
RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS
(AMENDMENT) BILL, 2016**

Shri Bhupender Yadav

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CHAIRPERSON

LOK SABHA

2. Shri Gopal Chinayya Shetty
3. Shri Subhash Baheria
4. Shri Nishikant Dubey
5. Shri Shivkumar C. Udasi
6. Shri Anil Shirole
7. Shri Abhishek Singh
8. Shri Gajendra Singh Shekhawat
9. Dr. Sanjay Jaiswal
10. Shri Jagdambika Pal
11. Shri Jayadev Galla
12. Shri Chandrakant Khaire
13. Shri Chirag Paswan
14. Shri K. C. Venugopal
15. Ms. Sushmita Dev
16. Dr. P. Venugopal
17. Shri Kalyan Banerjee
18. Shri Bhartruhari Mahtab
19. Shri B. Vinod Kumar
20. Shri Jitendra Chaudhury
21. Dr. Kirit Somaiya[@]

RAJYA SABHA

22. Shri Ajay Sancheti
23. Shri Naresh Gujral
24. Shri Anand Sharma
25. Shri Bhubaneswar Kalita
26. Shri Ravi Prakash Verma
27. Shri Sukhendu Sekhar Roy
28. Shri Praful Patel[#]
29. Shri Satish Chandra Misra[#]
30. Shri Ramchandra Prasad Singh^{*}

[@] Vice Dr. Kirit Somaiya, MP (Lok Sabha) nominated from Lok Sabha (Bulletin Part I, No. 158) w.e.f. 19th July, 2016.

[#] Shri Praful Patel, MP (Rajya Sabha), Shri Satish Chandra Misra, MP (Rajya Sabha) retired from Rajya Sabha w.e.f. 04.07.2016 and re-nominated from Rajya Sabha (Bulletin Part I, No. 5267) w.e.f. 19th July, 2016.

^{*} Vice Shri Ramchandra Prasad Singh, MP (Rajya Sabha) nominated from Rajya Sabha (Bulletin Part I, No. 5267) w.e.f. 19th July, 2016.

SECRETARIAT

- | | | | |
|----|----------------------|---|---------------------|
| 1. | Smt. Sudesh Luthra | - | Joint Secretary |
| 2. | Shri J. V. G. Reddy | - | Director |
| 3. | Shri Jagriti Tewatia | - | Deputy Secretary |
| 4. | Shri Prem Ranjan | - | Committee Officer |
| 5. | Shri Sunny Goel | - | Executive Assistant |

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF FINANCIAL SERVICES)

- | | | | |
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| 1. | Smt. Anjuly Chib Duggal | - | Secretary |
| 2. | Shri Anandrao V Patil | - | Joint Secretary |

REPRESENTATIVES OF MINISTRY OF LAW & JUSTICE

A. (LEGISLATIVE DEPARTMENT)

- | | | | |
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| 1. | Dr. G. Narayanan Raju | - | Secretary |
| 2. | Dr. Mukulita Vijayawargiya | - | Addl. Secretary |
| 3. | Dr. Sanjeev Kumar Srivastava | - | Assistant Legislative Counsel |

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- | | | | |
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| 1. | Shri Inder Kumar | - | Additional Secretary |
| 2. | Shri S.R. Mishra | - | JS&LA |

REPORT OF THE JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016

I, the Chairperson of the Joint Committee to which 'The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016'* was referred, having been authorised to submit the Report on their behalf, present this Report with the Bill as amended by the Committee annexed thereto.

2. The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 was introduced in Lok Sabha on 11 May, 2016. The motion for reference of the Bill to a Joint Committee of both the Houses of Parliament was moved in Lok Sabha on the same day by Shri Arun Jaitley, Minister of Finance (Appendix-I). The Rajya Sabha concurred in the said motion on the same date (Appendix-II). The time given to the Committee for making the report as per the aforesaid motion was the last day of the first week of the Monsoon Session, 2016.

***Published in the Gazette of India, Extraordinary Part-II, Section 2 dated 11.05.2016.**

3. The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 is an important legislation which seeks to amend the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and make consequential amendments in the Indian Stamp Act, 1899 and the Depositories Act, 1996. The object of the amendments proposed in the Bill is to improve the ease of doing business and facilitate investment leading to higher economic growth and development.

4. The Committee held 7 sittings in all. The Committee also undertook a Study visit to Mumbai from 30th June to 2nd July, 2016 where it held informal discussions with 43 stakeholders/organisations on the various provisions of the Bill (Appendix III).

5. At their first sitting held on 2nd June, 2016, the Committee held general discussion on the provisions of the Bill and deliberated on the methodology for completion of the task assigned and decided that memoranda from Public Sector Banks, Debt Recovery Tribunal (DRT) Bar Associations, Asset Reconstruction Companies (ARCs), regulatory bodies, Financial Institutions, experts, professional bodies etc. and inputs from Ministries on the aforesaid Bill may be obtained and their views heard by the Committee for a comprehensive and in-depth examination of the legislation.

6. Keeping in view the wide ranging importance of the provisions of the Bill, the Committee at their first sitting also decided to invite the views/suggestions from stakeholders and public at large. A press communiqué inviting memoranda was issued accordingly by giving advertisement through DAVP, in response to

which 17 memoranda were received out of which 11 memoranda related to the Bill were circulated to the members of the Committee (Appendix-IV). The Committee also held a briefing by the representatives of the Department of Financial Services (DFS), Department of Economic Affairs (DEA) and Department of Revenue (DOR).

7. At their second and third sittings held on 15th and 16th June, 2016, the Committee heard the views of some policy research organisations, representatives of Small & Medium Enterprises, Chambers of Industry, Public Sector Banks, ARCs and DRT Bar Associations on the proposed amendments to the Bill (Appendix V).

8. The Committee at their fourth sitting held on 12th July, 2016 took evidence of the nodal Department i.e. Department of Financial Services as well as Legislative Department, Department of Economic Affairs and Department of Legal Affairs.

9. The fifth and sixth sittings of the Committee were held on 18th and 19th July, 2016, to take up clause-by-clause consideration of the Bill.

10. At their seventh sitting held on 20th July, 2016, the Committee considered and adopted the draft report and authorized the Chairperson to present the report on their behalf. The Committee also decided that (i) the evidence tendered before the Committee might be laid on the Table of both the Houses of Parliament; (ii) two copies each of the memoranda received by the Committee from various quarters might be placed in the Parliament Library after the Report has been presented to Parliament, for reference by the Members of Parliament.

11. The observations/recommendations of the Committee with regard to principal changes made in the Bill, as decided by the Committee are detailed in the succeeding paragraphs:

Part - I

Amendments to SARFAESI Act 2002

12. Definition of Asset Reconstruction Company- Clause 4-new proposed sub-section2(1)(ba) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

A. The Committee note that Clause 4 of the Bill proposes to insert a new sub-section 2(1)(ba) after section 2(1)(b), whereby definition of Asset Reconstruction Company has been inserted under SARFAESI Act. The proposed new sub-section, provide as under:

'(ba) "asset reconstruction company" means a company incorporated under the Companies Act, 2013 and registered with Reserve Bank under section 3 of this Act for the purpose of carrying on the business of asset reconstruction and securitisation;'

RBI and some of the stakeholders were of the view that wording of the aforesaid definition of ARCs is creating confusion with regard to the status of existing Securitisation / Asset Reconstruction Companies which were incorporated under the Companies Act, 1956 and registered with RBI under SARFAESI Act, and thus would exclude a large number of existing ARCs registered under the Companies Act, 1956.

In this regard the Committee find that Section 2(20) of the Companies Act, 2013 defines company as under:

“company means a company incorporated under this Act or under any previous company law;”

Proposed new sub-section 2(1)(ba) read with Section 2(20) of the Companies Act, 2013 indicates that ARCs incorporated under the Companies Act, 1956 seems to be covered under the proposed definition. However to avoid any ambiguity, the Committee decide that the following clause (4)(iii) may be inserted in the Bill:

“(iii) after clause (g) the following clause may be inserted, namely:

'(ga) "company" means a company as defined in clause (20) of section 2 of the Companies Act, 2013;'

B. The Committee further note that there may be ARCs which may be registered to carry on the business of Asset Reconstruction or Securitisation or both the Asset Reconstruction and Securitisation. The use of words 'asset reconstruction and securitisation' as appearing in the aforesaid proposed section cover a company registered for carrying on the business of both Asset Reconstruction and Securitisation thus not including an ARC in the business of only Asset Reconstruction / Securitisation. The Committee, therefore, decide that the words 'Asset Reconstruction and Securitisation' as appearing at the end of the proposed sub-section may be substituted by words 'Asset Reconstruction or Securitisation or both'. Besides words 'incorporated under the Companies Act 2013' as appearing in proposed section 2(1)(ba) may be omitted.

13. Insertion of new Clause 4(xii) in the Bill – amending section 2(1)(t)(v) under SARFAESI Act

Section 2(1)(t) of SARFAESI Act defines property. Sub-clause (v) in this regard provides as under:

'intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature.'

The Committee further note that clause 25(v) of the Bill proposes to insert a new sub-section 2(jb) so as to include the definition of property under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB&FI Act). Sub-clause of new proposed section provides as under:

'(e) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature, which are declared by the Reserve Bank, by notification, to be property rights over which security interest can be created in favour of banks and financial institutions;'

The Committee in this regard are of the view that lending against security of intangible assets is evolving and with a view to empower Central Government to specify the type of intangible assets from time to time, the Committee decide to substitute the aforesaid sub-clause with the following:

'(e) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature as may be prescribed by the Central Government in consultation with Reserve Bank.'

Further, with a view to harmonize the definition of property under SARFAESI Act with the proposed definition under RDDB&FI Act, the Committee decide to add the following sub-clause under clause 4:

'(xii) in clause (t), in sub-clause (v), after the words "rights of similar nature", the following words shall be inserted, namely:-

"as may be prescribed by the Central Government in consultation with Reserve Bank."

14. Substitution of clause 4(xiv) of the Bill (insertion of sub-clause (ia) after sub-clause (i) under SARFAESI Act

The Committee for the purpose of drafting clarity as well as a consequential amendment for including debenture trustee as secured creditors as per the amendments brought to SARFAESI Act in the existing Bill, decide to substitute clause 4(xiv) of the Bill by the following:

(zd) "secured creditor means-

(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in sub-clause (va) or (vb) of clause (l);

(ii) debenture trustee appointed by any bank or financial institution; or

(iii) an asset reconstruction company, whether acting as such or managing a trust set up by such asset reconstruction company for securitisation or reconstruction, as the case may be; or

(iv) debenture trustee registered with the Board and appointed by any company for secured debt securities; or

(v) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created by any borrower for due repayment of any financial assistance.

15. Modification to definition of Security Interest – Clause 4(xv), New proposed clause 2(1)(zf)

Clause 4(xv) proposes to substitute section 2(1)(zf) of SARFAESI Act, whereby the definition of security interest has been modified. Explanation to clause 4(xv) of the Bill exclude security interest in respect of cases enumerated under section 31 of SARFAESI Act. For the purposes of drafting clarity the Committee decide to omit Explanation to the proposed substituted sub-section 2(1)(zf). Besides, following modifications may be made under Clause (xv):

(i) words 'other than those specified in Section 31' may be substituted for word 'whatsoever'

(ii) the word 'property' wherever appearing may be changed with the word 'asset'

(iii) in the substituted Clause zf(ii) words 'assignment or' may be added after the words 'intangible asset or'

16. Net owned fund required for ARC to commence or carry on the business – Clause 5(i) (substitution of section 3 (1)(b))

Section 3(1)(b) of SARFAESI Act provides for the owned fund of not less than two crore rupees or such other amount not exceeding fifteen percent of total financial assets acquired or to be acquired by the securitisation company or reconstruction company, as the Reserve Bank may, by notification specify for a securitisation company or reconstruction company to commence or carry on the business of securitisation or asset reconstruction.

Clause 5(i) of the Bill proposes to amend the aforesaid provision by substituting the following clause:

“(b) having net owned fund of not less than two crore rupees or such other amount as the Reserve Bank, may, by notification, specify:”

The Committee note that as per the proposed amendment the maximum limit of net owned fund for a securitisation or reconstruction company, as the Reserve Bank may, by notification, specify to commence or carry on business has been proposed to be removed, to enable RBI to stipulate higher owned fund requirement. Hence for drafting clarity, the Committee decide to insert word 'higher' after the words 'such other' in proposed modified clause.

17. Criteria for a sponsor of an ARC - Clause 5(ii)(f) (section 3(3)(f))

Clause 5(ii) of the Bill proposes to substitute section 3(3)(f) of the principal Act. The Committee note that the Finance Minister in the budget speech for the year 2016-17 has proposed to make necessary amendments in the SARFAESI Act 2002 to enable the sponsor of an ARC to hold up to 100% stake in the ARC and permit non-institutional investors to invest in Securitization Receipts. In this regard, the Committee decide that Section 3(3)(f) of SARFAESI Act is substituted by the following :

‘(f) that a sponsor of an asset reconstruction company is a fit and proper person in accordance with criteria as may be specified in the guidelines issued by the Reserve Bank for such persons’

The Committee further in view of relaxation of restrictions on holding controlling interest in the capital of Asset Reconstruction Companies, as a consequential amendment decide to omit section 3(3)(d) of SARFAESI Act, so as to have no restrictions on the composition of board of directors of ARCs.

18. Exemption from Stamp Duty under Section 5 (1A)

Clause 6(i) of the Bill proposes to insert new sub-section (1A) to section 5 which provides as under:

"(1A) Any document executed by any bank or financial institution in favour of the asset reconstruction company under sub-section (1) for the purpose of acquiring financial assets shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899."

After extensive deliberations, the Committee are of the view that the exemption from stamp duty sought to be provided in clause 6 is only for acquisition of financial asset for asset reconstruction or securitisation with a view to avoid misuse of such exemption in cases where such acquisition by ARC is for its own use or investors use, the Committee feel that the exact purpose of asset reconstruction or securitisation should be specified in the Act.

The Committee, therefore, decide to insert the following proviso to Section 5(1A) of the principal Act:

‘Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation’.

19. Acquisition of financial asset by an ARC for the purpose of asset reconstruction -Omission of new proposed section 5 (1B) and 5(3A)

Clause 6(i) of the Bill proposes to insert new sub-section (1B) and 3A to section 5 which provides as under:

“(1B) An asset reconstruction company may acquire the financial asset of any bank or financial institution for the purpose of asset reconstruction where a borrower has failed to pay the secured debt or any instalment thereof on due date, whether or not the account of such borrower is classified as non-performing asset.”

"(3A) Notwithstanding anything contained in any other law for the time being in force, on the basis of the document executed under sub-section (1), the name of the asset reconstruction company shall be substituted in all the registration records or public records or such other records and in all legal proceedings filed by or against the bank or financial institution before any court, tribunal or any other authority and such asset reconstruction company shall be entitled to exercise all the rights of such bank or financial institution."

In this regard, the Committee note that the provisions of the SARFAESI Act provide for securitization of financial assets as well as asset reconstruction of non-performing assets. The power to acquire assets under sub-section 1 of section 5 includes power to acquire healthy assets which are not classified as non-performing assets. As such the Committee are of the view that the proposed amendment is not necessary. The Committee, therefore, decide to omit the new sub-sections 1B and 3A of section 5 of the principal Act as proposed to be inserted by clause 6(i) of the Bill. As section 5(3) and section 5(5) of SARFAESI Act already covered the provision of proposed section (3A), the Committee decide to omit the proposed section 3A.

20. Investment by non-institutional investors in security receipts – Clause 7 (section7(l) of SARFAESI Act.

Clause 7 of the Bill seeks to amend section 7 of the principal act to enable the non-institutional buyer besides qualified institutional buyer for investment in security receipts. The Finance Minister in Budget Speech 2016-17 proposed to permit non-institutional investors to invest in Security receipts so as to tackle the problem of stressed assets in the banking section. In this regard, the Committee decide to add non-institutional investors under section 7(l) of the principal Act. Clause 7 of the Bill is accordingly modified as under:

'In the principal Act, in section 7, in sub-section (1), for the brackets and words "(other than by offer to public)", the words "or such other category of investors including non-institutional investors as may be specified by the Reserve Bank in consultation with the Board, from time to time," shall be substituted'.

For carrying on consequential amendments in the principal Act, the following general clause may be inserted as per clause 3(iii) and 3(iv) of the Bill:

'3(iii) for the words "qualified institutional buyer" wherever they occur, the words "qualified buyer" shall be substituted'.

'3(iv) for the words "qualified institutional buyers" wherever they occur, the words "qualified buyers" shall be substituted'

21. To carry out audit and inspection of ARCs by the Reserve Bank –Clause 10 (Proposed Section 12B(I))

Clause 10 of the Bill proposes to insert the new proposed section 12B(I) whereby the Reserve Bank has been empowered to carry out audit and conduct inspection of an asset reconstruction company from time to time. In this regard, the Committee are of the view that carry on special forensic audit, Reserve Bank need to be empowered to entrust audit to any other specialized agency. In view of this, the Committee decide to insert words 'or caused to be carried out audit and inspection' in place of the word 'audit and conduct' in proposed section 12B(I).

22. To insert proviso to proposed section 12B(3)(b) to the principal Act (Clause 10 of the Bill)

The Committee decide to insert the following proviso after proposed section 12B (3) (b) in line with the principles of natural justice:

"Provided that no order for removal of Chairman or director under clause (a) shall be made except after giving him an opportunity of being heard."

23. Inconsistency in proposed new sections 12C & 12D with other proposed sections 30A to 30D

The Reserve Bank and some of the stakeholders in their written memoranda have pointed out to inconsistency between proposed new sections 12C & 12D and the other proposed new sections 30A to 30D and hence suggested to omit sections 12C & 12D and make consequential modifications to sections 30A to 30D.

The Committee find that new proposed sections 12C (Clause 10) and section 30A (Clause 20) propose to provide for penalty for non-compliance of the directions of the Reserve Bank by any ARC/any person. Whereas the authority to impose penalty under proposed section 12C is Reserve Bank, under proposed section 30A, it is Adjudicating Authority, which is an authority composed of an officer or a committee of officers of the Reserve Bank designated from time to time as per Explanation provided in this regard. The Committee also note that as per the aforesaid Explanation `person in `default` includes ARC or `any person` which has committed any failure or contravention or default. After exhaustive examination, the Committee feel that new proposed sections 30A to 30D are exhaustive and contain all the provisions relating to power to impose penalty, appeal against penalties, appellate authorities or recovery of penalties. Since the provisions contained in proposed sections 12C & 12D are dealt with in Sections 30A to 30D exhaustively and at one place, proposed sections 12C & 12D seems redundant. In this regard, the Committee tend to agree with the views of RBI and other stakeholders and decide to omit sections 12C & 12D.

Further to exhaustively cover the spirit of section 12C and 12D which states about penalties for non-compliance of directions of RBI under section 9 or section 12 or section 12A, as well as section 30A, the Committee decide to substitute words `in those sections` as appearing in proposed section 30A(1) by the words `fails to comply with any directions issued by the Reserve Bank under this Act`. The Committee also decide that in view of omission of proposed sections 12C & 12D consequential amendments may be made in proposed sections 30A to 30D as well as in other relevant clauses of the Bill.

24. Provisions to stop secured creditor to lease or assignment or sale in the prescribed conditions – Amendment to section 13(8) of SARFAESI Act (Clause 11(ii) of the Bill)

Clause 11(ii) of the Bill proposes to amend section 13(8) of the SARFAESI Act. The existing section 13(8) provides as under:-

“If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.”

The proposed modified section 13(8) provides as under:-

"(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for lease, assignment or sale of the secured assets,—

(i) the secured assets shall not be leased, assigned or sold by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for lease or assignment or sale of such secured assets."

In this regard, Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 provides that the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

- (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or
- (b) by inviting tenders from the public;
- (c) by holding public auction; or
- (d) by private treaty.

The Committee after examining the proposed amendment and the existing Rules in this regard decide to modify proposed Clause 11(ii) [section 13(8) of the principal Act] as under:

“(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets, -

- (i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and
- (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.”.

25. Recording of reasons by CMM or DM – Clause 12 (Insertion of proviso after second proviso to section 14(1) of the principal Act)

The Committee decide to insert the following proviso after second proviso to section 14(1) of principal Act with a view to provide further extension of time to meet certain exigencies to CMM/DM to pass an order under section 14 of the principal Act:

“ Provided further that where the Chief Metropolitan Magistrate or District Magistrate is of the opinion that an order under this sub-section can not be passed within thirty days, he may after recording reasons for the same pass the order within such further period not exceeding in aggregate sixty days.”

26. Omission of proposed section 14(2A)- Clause 12(ii)

Clause 12(ii) propose to insert the following new sections (2A):

"Any application under sub-section (1) may be made by— (a) two or more banks as secured creditors with or without any financial institution where they have converted part of their respective debts into shares of a borrower company in compliance with the provisions of sub-section (2) of section 19 of the Banking Regulation Act, 1949 or obtained transfer of shares of the promoter shareholders held in pledge as security for any financial assistance in the name of such banks, thereby jointly holding more than fifty per cent share capital of the borrower company; or

(b) any asset reconstruction company or financial institution or any other assignee holding more than fifty-one per cent share capital of the borrower company.

Explanation.—For removal of doubts, it is hereby clarified that the conversion of debt into shares of any borrower company by the secured creditors shall not in any way affect the rights of the secured creditors to enforce securities and recover the balance amount of debt under this Act or any other law for the time being in force."

The Committee find that under the existing section 14(1) of SARFAESI, any secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate. Taking possession of assets of a company or conversion of debt into equity will require compliance with Companies Act, 2013, SEBI Act, 1992 and other applicable laws. The Committee, therefore, decide to omit sub-section (2A).

27. Insertion of proviso to section 15(4) of SARFAESI Act – Clause 13 of the Bill

Clause 13 of the Bill proposes to insert the following proviso in section 15 (4) of SARFAESI Act.

"Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, it shall not be necessary for the secured creditor to restore the business to such borrower."

The Committee feel that by stating that it shall not be necessary for the secured creditor to restore the business to such borrower, the intention seems to be not to restore the management of the business to such borrower. The Committee, therefore, decide to substitute words 'it shall not be necessary for the secured creditor to restore the business to such borrower' by words 'such secured creditors shall not be liable to restore the management of the business to such borrowers'.

28. Filing of application in DRTs – jurisdiction thereto – insertion of section 17(1A) (Clause 14 of the Bill)

Clause 14(ii) seeks to provide for filing of securitization applications in DRTs within the local limits of whose jurisdiction cause of action, wholly or in part, arises; or where the secured asset is located. With the purpose of clearly demarcating the jurisdictions of filing of application in DRTs, the Committee recommend to add the following sub-clause (c) after sub-clause (b) under proposed section 17(1A)

'(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being'

29. To omit proposed section 17(1B) of the principal Act (Clause 14 of the Bill)

Section 17 of the SARFAESI Act provides for an application by the borrower or any aggrieved person against the action of the bank under section 13(4) of the Act. If the DRT come to the conclusion that the action of the bank is invalid, section 17(3) provides for restoration of possession of secured asset to the borrower. However, there is no provision for restoration of such possession to any other person aggrieved by the action of the bank. The Supreme Court (Harshad Govardhan Vs. IARC) has held that DRTs have no power to decide tenancy or other rights claimed by third party in an application under section 17. The Supreme Court further directed that such application may be decided by District Magistrate or Chief Metropolitan Magistrate under section 14 of the Act. The amendments proposed provide for powers of DRT to restore possession of secured asset to any aggrieved party if the action of the bank is invalid and also empower the DRTs to decide the third party rights including tenancy and lease hold right in secured assets. The Committee observe that the proposed amendment needs to be considered in the light of decisions of the Supreme Court as well as tenancy protection laws applicable in various States, as under:

(i) In the case of Vishal N. Kalsaria vs. Bank of India, the Supreme Court held that DRT have no power to decide tenancy right claimed by third party in respect of property mortgaged to banks.

(ii) Tenancy rights and relationship between landlord and tenant is a state subject under the Constitution and a DRT established under a central law cannot be empowered to decide tenancy rights in respect of tenants enjoying protected tenancies under the State Rent Control Laws.

(iii) In the said judgment of of the Supreme Court viz. Harsh Govardhan Sondagar vs. International Assets Reconstruction Company Ltd. (2014), it has been held that banks can vacate

'(a) those tenants whose leases/tenancies have expired or stood determined; or

(b) those tenants whose leases/tenancies are :

(i) contrary to section 65A of the Transfer of Property Act, 1882; or

(ii) contrary to terms of mortgage or

(iii) created after the issuance of notice of default and demand by the Bank under section 13(2) of the SARFAESI Act'.

In view of the above position, the Committee decide that provision of section 17 need to be modified clearly specifying the cases in which the DRT can pass orders permitting the banks to

take action for enforcement of securities under section 17. Hence the proposed section 1B in section 17 (clause 14) is omitted. Besides, the modified Section 17(3) is as under:

(iii) for sub-section (3), the following sub-section shall be substituted, namely:-

“(3) if, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration or possession, of the secured assets to the borrower or other aggrieved person, it may, by order,--

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured assets as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has filed the application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.”

(iv) after sub-section (4), the following sub-section shall be inserted, namely:-

“(4A) (i) Where any person, in an application under sub-section (1), claims any tenancy or lease hold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties in relation to such claims may, for the purpose of enforcement of security interest, examine whether lease or tenancy,-

(a) has expired or stood determined; or

(b) is contrary to sections 65A of the Transfer of Property Act, 1882, or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act.

(ii) Where the Debt Recovery Tribunal is satisfied that tenancy right or lease hold right claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other

law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.”

30. Harmonizing SARFAESI Act with IBC Code – insertion of provisos after the proposed section 26(E) of SARFAESI Act (Clause 17, new proposed section IVA)

The Committee note that section 14(1)(c) of the IBC Code 2016 provides for moratorium during resolution process which prohibit from taking action to recover or enforce any security interest under the SARFAESI Act. If resolution is not approved, section 52 of IBC provides for enforcement of security interest under the SARFAESI Act. On the aforesaid provisions, it seems that IBC intend to harmonize IBC with SARFAESI so far as recovery or enforcement of security interest is concerned. The Committee, however, for the sake of clarity as well as to re-emphasise harmonization of provisions of IBC with SARFAESI Act and RDDB & FI Act, decide that the following explanation may be inserted after proposed section 20(AB) (Clause 29 (xix), 26E of SARFAESI Act and section 31B of RDDB & FI Act (clause 38 of the Bill).

“Explanation - For the purposes of this section, it is hereby clarified that on and after the commencement of the Insolvency and Bankruptcy Code 2016, in cases where insolvency and bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.”

PART-II

Amendments proposed to RDDB & FI Act 1993

31. Mechanism suggested to fill up vacancies in DRTs/DRATs – Modification of sections 4(2), section 6, section 8 and section 11 [Clause 25(A), 26, 26(A) and 27]

On the issue of pendency of cases in various DRTs, the Committee have been apprised by the Department of Financial Services that approximately 70,000 court cases pending in DRTs involving more than Rs. 5 lakh crore. One of the reasons mentioned in the memoranda submitted by various stakeholders for the pendency of cases is vacancies in various DRTs/DRATs. A number of suggestions in this regard have been made by the stakeholders. After detailed deliberations on the issue, the Committee decide to insert the following new provision/substitute some of the provisions under RDDB & FI Act:

(A) Section 4(2) of the principal Act (Clause 25A)

25A. In the principal Act, in section 4, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Notwithstanding anything contained in sub-section (1), Central Government may-

(a) authorise the Presiding Officer of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal under this Act in addition to his being the Presiding Officer of that Tribunal; or

(b) authorise the judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, to discharge the functions of the Presiding Officer of Debts Recovery Tribunal under this Act, in addition to his being the judicial Member of that Tribunal.”.

B. Section 6 of the principal Act (Clause 26)

For section 6, the following section is substituted:

“The Presiding Officer of a Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that no person shall hold office as the Presiding Officer of a Tribunal after he has attained the age of sixty-five years.”.

C. Section 8 of the principal Act (Clause 26A)

In the principal Act, in section 8, in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that the Central Government may authorise the Chairperson of any other Appellate Tribunal, established under any other law for the time being in force, to discharge the functions of the Chairperson of the Debts Recovery Appellate Tribunal under this Act in addition to his being the Chairperson of that Appellate Tribunal.”

D. Section 11 of the principal Act (Clause 27)

The Committee note that as per the existing section 11 of RDDB & FI Act, the Chairperson of an Appellate Tribunal shall hold office for a term of five years from the date of which he enters upon his office or until he attains the age of sixty five years whichever is earlier.

Clause 27(i) of the Bill proposes to change the maximum age in this regard from sixty-five years to sixty-seven years. Considering the vacancy position of Chairpersons of DRATs, the Committee decide to substitute Section 11 as under:

“11. The Chairperson of an Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that no person shall hold office as the Chairperson of a Appellate Tribunal after he has attained the age of seventy years”.

32. Ex-parte order- Section 19(4)(iii) [Clause 29]

For sub-section 4 of Section 19, the Bill proposes to substitute –

"(4) On receipt of application under sub-section (1) or sub-section (2), the Tribunal shall issue summons with following directions to the defendant—

(i) to show cause within thirty days of the service of summons as to why relief prayed for should not be granted;

(ii) direct the defendant to disclose particulars of properties or assets other than properties and assets specified by the applicant under clauses

(a) and (b) of sub-section (3A); and

(iii) pass an interim *ex-parte* order restraining the defendant from dealing with or disposing of such assets and properties disclosed under clause (c) of sub-section (3A) pending the hearing and disposal of the application for attachment of properties.";

The Committee feel that passing of an *ex-parte* order after the show cause notice of thirty days of the service of summons may be a violation of the principles of natural justice. The Committee are of the view that adequate opportunity should be provided to a borrower before an adverse adjudicatory stance is taken against him. As such the Committee decide that the above sub-clause should be suitably modified with the deletion of the words "pass an interim *ex-parte* order restraining". The sub-clause (iii) of sub-section 4 now read as follows :

"(iii) to restrain the defendant from dealing with or disposing of such assets and properties disclosed under clause (c) of sub-section 3A pending the hearing and disposal of the application for attachment of properties".

33. Modes of recovery of debts - Modification of section 25 (Clause 35)

Keeping in view that lending against security of intangible assets is evolving, the Committee decide that after Clause (c) of section 25, the following Clause shall be inserted:

"(d) any other mode of recovery as may be prescribed by the Central Government."

34. Drafting corrections/improvement

The Committee during the course of deliberations noted certain drafting errors in the Bill. Legislative Department also brought in the notice of the Committee a number of the Clauses in which drafting correction/language improvement was required for the purpose of clarity. The Committee decide that the following modifications with the purpose of drafting improvement may be made in the Bill.

Sl. No.	Clause No.	Drafting Corrections/Improvement
1.	Clause 4(i) Marginal Heading	Omit '18 of 2013'

2.	Clause 4(iii)	<p>Page No. 2, Line 27 (i) For '(iii)' Substitute '(iv)'</p> <p>Page No. 2, line 34 (ii) Add 'such' After 'assignment of'</p>
3.	Clause 4(iv)	<p>Page No. 2, Line No. 38 For '(iv)' substitute '(v)'</p>
4.	Clause 4(v)	<p>Page No. 2, Line No. 42 For '(v)' substitute '(vi)'</p>
5.	Clause 4(vi)	<p>Page No. 3, Line No. 6 For '(vi)' substitute '(vii)'</p>
6.	Clause 4(vii)	<p>Page No. 3, line No. 12 (i) For '(vii)' substitute '(viii)'</p> <p>Page No. 3, line No. 14 (ii) For 'Property' Substitute 'asset'</p> <p>(iii) Page No.3 line 17 Add 'enable the borrower' After 'provided to'</p> <p>(iv) Page No. 3 line No. 8 For 'property' Substitute 'asset'</p>
7.	Clause 4(viii)	<p>Page No. 3, line no. 24 (i) For '(viii)' substitute '(ix)'</p> <p>Page No. 3 line No. 26 (ii) Add 'secured' After 'appointed for'</p>
8.	Clause 4(ix)	<p>Page No. 3 line no. 32 (i) For '(ix)' substitute '(x)' Page No. 3, line 32-37 (ii) For '(ma) "financial lease" means a lessor's right in a tangible asset, other than a negotiable instrument or negotiable document,</p>

		<p>under the lease agreement where lessee, at the expiry of the term of the lease or on payment of agreed residual value of the asset, becomes the owner of the asset;'</p> <p>Substitute '(ma) "financial lease" means a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where the lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be;'</p>
9.	Clause 4(x)	<p>Page No. 3, line no. 37 For '(x)' substitute '(xi)'</p>
10.	Clause 4(xi)	<p>Page No. 3. line no. 42 (i) For '(xi)' substitute '(xiii)'</p> <p>Page No. 3, line no. 44-46 (ii) For "or any other category of non-institutional investors specified by the Reserve Bank under sub-section (1) of section 7 in consultation with the Board from time to time;"</p> <p>Substitute "any category of non-institutional investors as may be specified by the Reserve Bank under sub-section (1) of section 7";</p>
11.	Clause 4(xii)	<p>Page No. 3, line no. 47 (i) For '(xii)' substitute '(xiv)'</p>
12.	Clause 4(xiii)	<p>Page no. 3, line no. 48 For '(xiii)' substitute '(xv)'</p>
13.	Clause 4(xiv)	<p>Page No. 4, line no. 19 For '(xv)' substitute '(xvii)'</p>
14.	Clause 6 (ii)	<p>Page No. 5, line no. 17 (i) For 'Property' Substitute 'asset'</p> <p>Page No. 5, line no. 18 (ii) For 'the asset' Substitute 'such asset'</p>

		<p>Page No. 5, line no. 19 (iii) For 'Property' Substitute 'asset'</p> <p>Page No. 5, line no. 21 (iv) For 'such financial assets' Substitute 'such assets under sub-section (1)';</p>
15.	Clause 7	<p>Page No. 5, line no. 30-31 (i) For 'the words "other than by offer to public", Substitute 'the brackets and words "(other than by offer to public)",</p> <p>Page No. 5, line no. 31 (ii) Add 'including non-institutional investors ' After 'investors'</p>
16.	Clause 10	<p>Page No. 6, line no. 18-19 (i) For 'carry out audit and conduct inspection' Substitute 'carry out or caused to be carried out audit and inspection'</p> <p>Page No. 6, line no. 27 (ii) Add 'by an order' After 'asset reconstruction company'</p>
17.	Clause 10	<p>Page No. 6, line no. 35 Add 'or power' After 'custody'</p>
18.	Clause 13 Proviso	<p>Page No. 8, line no. 13 For 'borrower company, it shall not be necessary for the secured creditor to restore the business' Substitute 'borrower company, such secured creditors shall not be liable to restore the management of the business'</p>

19.	Clause 25(iii)	Page No. 13, line 41 Add 'secured' After 'appointed for'
20.	Clause 25 (iv)	Page No. 13, line 44 For '(ha) "financial lease" means a lessor's right in a tangible asset, other than a negotiable instrument or negotiable document, under the lease agreement where lessee, at the expiry of the term of the lease or on payment of agreed residual value of the asset, becomes the owner of the asset;' Substitute 'financial lease" means a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where the lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be;'
21.	Clause 25 (vi)	Page No. 14, line 22 (i) For 'Property' Substitute 'asset' Page No. 14, line no. 27 (ii) For 'Property' Substitute 'asset'

The Joint Committee recommend that the Bill as amended be passed.

New Delhi
July, 2016

Bhupender Yadav,
Chairperson,
Joint Committee on the Enforcement of
Security Interest and Recovery of Debts Laws and
Miscellaneous Provisions (Amendment) Bill, 2016

THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS
AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016

AS REPORTED BY THE JOINT COMMITTEE

THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS
AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016

[Words underlined indicate the amendments suggested by the Joint Committee and asterisks
indicate omissions]

	THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016	
	A BILL	
	<p>further to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Indian Stamp Act, 1899, and the Depositories Act, 1996, and for matters connected therewith or incidental thereto.</p> <p>BE it enacted by Parliament in the Sixty-seventh Year of Republic of India as follows:--</p>	
	CHAPTER I PRELIMINARY	
Short title and commencement.	1. (1) This Act may be called the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.	
	(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:	
	Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a	

	reference to the coming into force of that provision.	
	CHAPTER II AMENDMENTS TO THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002	
Amendment of long title.	2. In the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to in this Chapter as the principal Act), for the long title, the following shall be substituted, namely:—	54 of 2002
	“An Act to regulate securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interests created on property rights, and for matters connected therewith or incidental thereto.”.	
Substitution of references to certain expressions * by other expression	3. * <u>Throughout</u> the principal Act,—	
	(i) for the words “securitisation company”, “reconstruction company”, “securitisation or reconstruction company”, “securitisation company or the reconstruction company” or “securitisation company or a reconstruction company”, wherever they occur, the words “asset reconstruction company” shall be substituted;	
	(ii) for the words “securitisation companies or reconstruction companies”, wherever they occur, the words “asset reconstruction companies” shall be substituted;	
	<u>(iii) for the words “qualified institutional buyer”, wherever they occur, the words “qualified buyer” shall be substituted;</u>	
	<u>(iv) for the words “qualified institutional buyers”, wherever they occur, the words “qualified buyers” shall be substituted.</u>	
Amendment of section 2.	4. In the principal Act, in section 2, in sub-section (1),—	
	(i) after clause (b), the following clause shall be inserted, namely:—	

	‘(ba) “asset reconstruction company” means a company * registered with Reserve Bank under section 3 * for the purposes of carrying on the business of asset reconstruction * <u>or securitisation, or both;</u> ’;	*
	(ii) in clause (f), after the words “financial institution in relation to such financial assistance”, the words “or who has raised funds through issue of debt securities” shall be inserted;	
	<u>(iii) after clause (g), the following clause shall be inserted namely:–</u>	
	<u>‘(ga) “company” means a company as defined in clause (20) of section 2 of the Companies Act, 2013;</u>	18 of 2013
	<u>(iv) for clause (ha), the following clause shall be substituted, namely:—</u>	
	‘(ha) “debt” shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and includes –	<u>51 of 1993.</u>
	(i) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;	
	(ii) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset;’;	51 of 1993
	<u>(v) after clause (i), the following clause shall be inserted, namely:-</u>	
	‘(ia) “debt securities” means debt securities listed in accordance with the regulations made by the Board under the Securities and Exchange Board of India Act, 1992 ;’;	15 of 1992
	<u>(vi) for clause (j), the following clause shall be substituted, namely:—</u>	
	‘(j) “default” means– (i) non-payment of any debt or any other amount	

	payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor; or	
	(ii) non-payment of any debt <u>or any other amount payable</u> by the borrower with respect to debt securities after notice of ninety days demanding payment of dues served upon such borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of such debt securities;’;	
	(vii) in clause (k), after the words “any bank or financial institution”, the words shall be inserted, namely:— “including funds provided for the purpose of acquisition of any tangible asset on hire or financial lease or conditional sale or under any other contract or obtaining assignment or licence of any intangible asset or purchase of debt securities;”;	
	(viii) in clause (l), after sub-clause (v), the following sub-clauses shall be inserted, namely:—	
	“(va) any beneficial right, title or interest in any tangible * asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided <u>to enable the borrower</u> to acquire such tangible * <u>asset</u> ; or	
	(vb) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or”;	
	(ix) in clause (m), after sub-clause (iii), the following sub-clauses shall be inserted, namely:—	
	“(iiia) a debenture trustee registered with the Board and appointed for <u>secured</u> debt securities;	
	(iiib) asset reconstruction company, whether acting as such or managing a trust created for the purpose of securitisation or	

	asset reconstruction, as the case may be;”;	
	(ix) after clause (m), the following clause shall be inserted, namely:—	
	‘(ma) * <u>“financial lease” means a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor’s right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where the lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be;’;</u>	
	(x) after clause (n), the following clause shall be inserted, namely:- ‘(na) <u>“negotiable document” means a document, which embodies a right to delivery of tangible assets and satisfies the requirements for negotiability under any law for the time being in force including warehouse receipt and bill of lading;’;</u>	
	(xi) <u>in clause (t), in sub-clause (v), after the words “right of similar nature”, the words “as may be prescribed by the Central Government in consultation with Reserve Bank” shall be inserted;’;</u>	
	(xii) in clause (u), after the words “regulations made thereunder”, the * words, figures and brackets “* any * category of non-institutional investors <u>as may be specified by the Reserve Bank under sub-section (1) of section 7</u> ” * shall be inserted;”;	
	(xiii) clause (v) shall be omitted;	
	(xiv) clause (za) shall be omitted;	
	*** *** *** *** ***	
	(xv) * for clause (zd), <u>the following clause shall be substituted, namely:-</u> <u>‘(zd) “secured creditor means-</u> <u>(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in sub-clause (va) or (vb)</u>	

	<p><u>of clause (l);</u></p> <p><u>(ii) debenture trustee appointed by any bank or financial institution; or</u></p> <p><u>(iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or</u></p> <p><u>(iv) debenture trustee registered with the Board appointed by any company for secured debt securities; or</u></p> <p><u>(v) any other trustee holding securities on behalf of a bank or financial institution,</u></p> <p><u>in whose favour security interest is created by any borrower for due repayment of any financial assistance.’.</u></p>	
	<p>(xvi) for clause (zf), the following clause shall be substituted, namely:—</p>	
	<p>‘(zf) “security interest” means right, title or interest of any kind, * <u>other than those specified in section 31</u>, upon property created in favour of any secured creditor and includes—</p> <p>(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible * <u>asset</u>, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible * <u>asset</u>; or</p> <p>(ii) such right, title or interest in any intangible asset or <u>assignment or</u> licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset’.</p> <p>***</p>	

Amendment of section 3.	<p>5. In the principal Act, in section 3, -</p> <p>(i) in sub-section (1), for clause (b), the following clause shall be substituted, namely:—</p>	
	<p>“(b) having net owned fund of not less than two crore rupees or such other <u>higher</u> amount as the Reserve Bank, may, by notification, specify.”;</p>	
	<p>(ii) in sub-section (3),—</p> <p>(a) for clause (f), the following clause shall be substituted, namely:—</p>	
	<p>“(f) that a sponsor of an asset reconstruction company is a fit and proper person in accordance with the criteria <u>as may be specified in the guidelines issued</u> by the Reserve Bank for such persons;”;</p> <p><u>(b) clause (d) shall be omitted.</u></p>	
	<p>(iii) in sub-section (6), –</p> <p>(a) after the words “any substantial change in its management”, the words “including appointment of any director on the board of directors of the asset reconstruction company or managing director or chief executive officer thereof ” shall be inserted;</p>	
	<p>(b) in the Explanation, after the words "by way of transfer of shares or", the words “change affecting the sponsorship in the company by way of transfer of shares or” shall be inserted.</p>	
Amendment of section 5.	<p>6. In the principal Act, in section 5,—</p>	
	<p>(i) after sub-section (1), the following sub-sections shall be inserted, namely:—</p>	
	<p>“(1A) Any document executed by any bank or financial institution <u>under sub-section (1)</u> in favour of the asset reconstruction company * acquiring financial assets <u>for the purposes of asset reconstruction or securitisation</u> shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899:</p>	2 of 1899.
	<p><u>Provided that the provisions of this sub-section shall not</u></p>	

	<u>apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.”;</u>	
	*** *** *** *** ***	
	(ii) after sub-section (2), the following sub-section shall be inserted, namely:—	
	“(2A) If the bank or financial institution is holding any right, title or interest upon any tangible <u>asset</u> * or intangible asset to secure payment of any unpaid portion of the purchase price of * <u>such</u> asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible <u>asset</u> * or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets <u>under sub-section (1).</u> ”;	
	*** *** *** *** ***	
	*** *** *** *** ***	
Amendment of section 7.	7. In the principal Act, in section 7, in sub-section (1), for the <u>brackets and words “(other than by offer to public)”</u> , the words “or such other category of investors <u>including non-institutional investors</u> as may be specified by the Reserve Bank in consultation with the Board, from time to time,” shall be substituted.	
Substitution of new Section for section 9.	8. In the principal Act, for section 9, the following section shall be substituted, namely:-	
Measures for assets reconstruction.	<p>“9.(1) Without prejudice to the provisions contained in any other law for the time being in force, an asset reconstruction company may, for the purposes of asset reconstruction, provide for any one or more of the following measures, namely:—</p> <p>(a) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;</p> <p>(b) the sale or lease of a part or whole of the business of the borrower;</p> <p>(c) rescheduling of payment of debts payable by the</p>	

	<p>borrower;</p> <p>(d) enforcement of security interest in accordance with the provisions of this Act;</p> <p>(e) settlement of dues payable by the borrower;</p> <p>(f) taking possession of secured assets in accordance with the provisions of this Act;</p> <p>(g) conversion of any portion of debt into shares of a borrower company:</p> <p>Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.</p>	
	(2) The Reserve Bank shall, for the purposes of sub-section (1), determine the policy and issue necessary directions including the direction for regulation of management of the business of the borrower and fees to be charged.	
	(3) The asset reconstruction company shall take measures under sub-section (1) in accordance with policies and directions of the Reserve Bank determined under sub-section (2).”.	
Amendment of section 12.	<p>9. In the principal Act, in section 12, in sub-section (2), after clause (b), the following clauses shall be inserted, namely:—</p> <p>“(c) the fee and other charges which may be charged or incurred for management of financial assets acquired by any asset reconstruction company;</p> <p>(d) * transfer of security receipts issued to qualified * buyers.”.</p>	
Insertion of new section* 12B*.	10. In the principal Act, after section 12A, the following section* shall be inserted, namely:—	
Power of Reserve Bank to carry out audit and inspection.	"12B. (1) The Reserve Bank may, for the purposes of this Act, carry out <u>or caused to be carried out</u> audit and * inspection of an asset reconstruction company from time to time.	
	(2) It shall be the duty of an asset reconstruction company and its officers to provide assistance and cooperation to the Reserve Bank to carry out audit or inspection under sub-section (1).	
	(3) Where on audit or inspection or otherwise, the Reserve	

	<p>Bank is satisfied that business of an asset reconstruction company is being conducted in a manner detrimental to public interest or to the interests of investors in security receipts issued by such asset reconstruction company , the Reserve Bank may, for securing proper management of an asset reconstruction company, <u>by an order</u> –</p> <p>(a) remove the Chairman or any director or appoint additional directors on the board of directors of the asset reconstruction company; or</p> <p>(b) appoint any of its officers as an observer to observe the working of the board of directors of such asset reconstruction company:</p> <p><u>Provided that no order for removal of Chairman or director under clause (a) shall be made except after giving him an opportunity of being heard.</u></p>	
	<p>(4) It shall be the duty of every director or other officer or employee of the asset reconstruction company to produce before the person, conducting an audit or inspection under sub-section (1), all such books, accounts and other documents in his custody <u>or control</u> and to provide him such statements and information relating to the affairs of the asset reconstruction company as may be required by such person within the stipulated time specified by him.”.</p>	
	<p>*** *** *** *** ***</p>	
	<p>*** *** *** *** ***</p>	
<p>Amendment of section 13.</p>	<p>11. In the principal Act, in section 13,—</p> <p>(i) in sub-section (2), the following proviso shall be inserted, namely:—</p>	
	<p>“Provided that-</p> <p>(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities;* and</p> <p>(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and</p>	

	conditions of security documents executed in favour of the debenture trustee.”;	
	(ii) for sub-section (8), the following sub-section shall be substituted, namely:—	
	<p>“(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him <u>is</u> tendered to the secured creditor at any time before the date * <u>of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets, -</u></p> <p>(iii) the secured assets shall not be <u>transferred by way of lease</u> * <u>assignment</u> or * <u>sale</u> by the secured creditor; and</p> <p>(ii) in case, any step has been taken by the secured creditor for <u>transfer by way of lease</u> or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for <u>transfer by way of lease</u> or assignment or sale of such secured assets.”.</p>	
Amendment of section 14.	<p>12. In the principal Act, in section 14, <u>in sub-section (1),—</u></p> <p>(i) in the second proviso, after the words “secured assets”, the words “within a period of thirty days from the date of application” shall be inserted.”.</p> <p>***</p>	
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	<p>(ii) <u>after the second proviso, the following proviso shall be inserted, namely:—</u></p> <p><u>“Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.”</u></p>	
Amendment of section 15.	<p>13. In the principal Act, in section 15, in sub-section (4), the following proviso shall be inserted, namely:—</p> <p>“Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of</p>	

	its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, * <u>such secured * creditors shall not be liable</u> to restore <u>the management of the business to such borrower.</u> ”.	
Amendment of section 17.	14. In the principal Act, in section 17,— (i) for the marginal heading “Right to appeal”, the words “Application against measures to recover secured debts” shall be substituted;	
	(ii) after sub-section (1), the following sub-sections shall be inserted, namely:— “(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction – (a) the cause of action, wholly or in part, arises; or (b) where the secured asset is located. <u>(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.</u> ”;	
	*** *** *** *** ***	
	(iii) * <u>for sub-section (3), the following sub-section shall be substituted, namely:—</u> <u>“(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,--</u> <u>(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and</u> <u>(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1),</u>	

	<p><u>as the case may be; and</u></p> <p><u>(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.”;</u></p>	
	<p><u>(iv) after sub-section (4), the following sub-section shall be inserted, namely:-</u></p> <p><u>“(4A) Where—</u></p> <p><u>(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—</u></p> <p><u>(a) has expired or stood determined; or</u></p> <p><u>(b) is contrary to section 65A of the Transfer of Property Act, 1882; or</u></p> <p><u>(c) is contrary to terms of mortgage; or</u></p> <p><u>(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and</u></p>	4 of 1882.
	<p><u>(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.”.</u></p>	
Amendment of section 19	<p>15. <u>In the principal Act, in section 19, for the words “concerned borrowers, such borrowers”, the words “concerned borrowers or any other aggrieved person, who has filed the application under section 17 or section 17A or appeal under section 18 or section 18A, as the case may be, the borrower or such other person” shall be substituted.</u></p>	
Insertion of new sections 20A and 20B.	<p>16. <u>In the principal Act, after section 20, the following sections shall be inserted, namely:—</u></p>	

<p>Integration of registration systems with Central Registry.</p>	<p>“20A. (1) The Central Government may, for the purpose of providing a Central database, in consultation with State Governments or other authorities operating registration system for recording rights over any property or creation, modification or satisfaction of any security interest on such property, integrate the registration records of such registration systems with the records of Central Registry established under section 20, in such manner as may be prescribed.</p> <p>Explanation. – For the purpose of this sub-section, the registration records includes records of registration under the Companies Act, 2013, the Registration Act, 1908, the Merchant Shipping Act, 1958, the Motor Vehicles Act, 1988, the Patents Act, 1970, the Designs Act, 2000 or other such records under any other law for the time being in force.</p>	<p>18 of 2013 16 of 1908 44 of 1958 59 of 1988 39 of 1970 16 of 2000</p>
	<p>(2) The Central Government shall after integration of records of various registration systems referred to in sub-section (1) with the Central Registry, by notification, declare the date of integration of registration systems and the date from which such integrated records shall be available; and with effect from such date, * security interests over properties which are * registered under any registration system referred to in sub-section (1) <u>shall be deemed to be registered with the Central Registry for the purposes of this Act.”.</u></p>	
	<p>20B. The Central Government may, by notification, delegate its powers and functions under this Chapter, in relation to establishment, operations and regulation of the Central Registry to the Reserve Bank, subject to such terms and conditions as may be prescribed.”.</p>	<p>Delegation of powers.</p>
	<p>17. In the principal Act,-</p> <p>(i) section 23 shall be numbered as sub-section (1), and in sub-section (1) as so re-numbered,-</p> <p>(a) the words “within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be” shall be omitted;</p> <p>(b) the first proviso shall be omitted;</p> <p>(c) in the second proviso”, the word “further” shall be</p>	<p>Amendment of section 23.</p>

	omitted;	
	(ii) in section 23, after sub-section (1) so renumbered, the following sub-sections shall be inserted, namely:—	
	“(2) The Central Government may, by notification, * <u>require</u> the registration of transaction relating to different types of security interest created on different kinds of property with the Central Registry. (3) The Central Government may, by rules, prescribe forms for registration for different types of security interest under this section and fee to be charged for such registration.”.	
	18. In the principal Act, after section 26A, the following chapter shall be inserted, namely:—	Insertion of new Chapter IVA.
	“CHAPTER IV A Registration by Secured Creditors and other creditors	
Registration by secured creditors and other creditors.	26B. (1) The Central Government may by notification, extend the provisions of Chapter IV relating to Central Registry to all creditors other than secured creditors * <u>as defined</u> in clause (zd) of sub-section (1) of section 2, for creation, modification or satisfaction of any security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower.	
	(2) From the date of notification under sub-section (1), any creditor including the secured creditor may file particulars of transactions of creation, modification or satisfaction of any security interest with the Central Registry in such form and manner as may be prescribed.	
	(3) A creditor other than the secured creditor filing particulars of transactions of creation, modification and satisfaction of security interest over properties created in its favour shall not be entitled to exercise any right of enforcement of securities under this Act.	
	(4) Every authority or officer of the Central Government or any State Government or local authority, entrusted with the function of recovery of tax or other Government dues and for issuing any order for attachment of any property of any person liable to pay the tax or Government dues, shall file with the Central	

	Registry such attachment order with particulars of the assessee and details of tax or other Government dues from such date as may be notified by the Central Government, in such form and manner as may be prescribed.	
	(5) If any person, having any claim against any borrower, obtains orders for attachment of property from any court or other authority empowered to issue attachment order, such person may file particulars of such attachment orders with Central Registry in such form and manner on payment of such fee as may be prescribed.	
Effect of the registration of transactions , etc.	26C. (1) Without prejudice to the provisions contained in any other law, for the time being in force, any registration of transactions of creation, modification or satisfaction of security interest by a secured creditor or other creditor or filing of attachment orders under this Chapter shall be deemed to constitute a public notice from the date and time of filing of particulars of such transaction with the Central Registry for creation, modification or satisfaction of such security interest or attachment order, as the case may be.	
	(2) Where security interest or attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration under the provisions of Chapter IV and <u>this Chapter</u> *, the claim of such secured creditor or other creditor holding attachment order shall have priority over any subsequent security interest created upon such property and any <u>transfer by way of sale</u> , * lease or assignment or licence of such property or attachment order subsequent to such registration, shall be subject to such claim: Provided that nothing contained in this sub-section shall apply to transactions carried on by the borrower in the ordinary course of business.	
Right of enforcement of securities.	26D. Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of * <u>this Chapter</u> , no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been * <u>registered</u> with the Central Registry.	
Priority to	26E. Notwithstanding anything contained in any other law for	

secured creditors.	<p>the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.</p> <p><u>Explanation.— For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.”</u></p>	31 of 2016.
Amendment of section 27.	<p>19. In section 27, the following proviso shall be inserted, namely: -</p> <p>“Provided that provisions of this section shall be deemed to have been omitted from the date of coming into force of the provisions of <u>this Chapter</u> * and section 23 as amended by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.”.</p>	
Omission of section 28	<p>20. In the principal Act, section 28, shall be omitted.</p>	
Insertion of new sections 30A, 30B, 30C and 30D.	<p>21. In the principal Act, after section 30, the following sections shall be inserted, namely:—</p>	
Power of adjudicating authority to impose penalty.	<p>“30A. (1) * Where any <u>asset reconstruction company or any person fails to comply with any direction issued by the Reserve Bank under this Act</u> * the adjudicating authority may, by an order, impose on such <u>company or person in default</u>, a penalty not exceeding one crore rupees or twice the amount involved in such failure *where such amount is quantifiable, whichever is more, and where such failure * is a continuing one, a further penalty which may extend to one lakh rupees for every day, after the first, during which such failure *continues.</p>	
	<p>(2) For the purpose of imposing penalty under sub-section (1), the adjudicating authority shall serve a notice on <u>the asset reconstruction company</u> or the person in default requiring * such company or * person to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall be given to such</p>	

	person.	
	<u>(3) Any penalty imposed under this section shall be payable within a period of thirty days from the date of issue of notice under sub-section (2).</u>	
	<u>(4) Where the asset reconstruction company fails to pay the penalty within the specified period under sub-section (3), the adjudicating authority shall, by an order, cancel its registration:</u>	
	<u>Provided that an opportunity of being heard shall be given to such asset reconstruction company before cancellation of registration.</u>	
	(5) No complaint shall be filed against any person in default in any court pertaining to any failure <u>under sub-section (1)</u> * in respect of which any penalty has been imposed and recovered by the Reserve Bank under this section.	
	(6) Where any complaint has been filed against a person in default in * <u>the court having jurisdiction</u> * no proceeding for imposition of penalty against that person shall be taken under this section.	
	<i>Explanation</i> .— For the purposes of this section and sections 30B, 30C and 30D, - (i) “adjudicating authority” means such officer or a committee of officers of the Reserve Bank, designated as such from time to time, by notification, by the Central Board of Reserve Bank;	
	(ii) “person in default” means the asset reconstruction company or any person which has committed any failure, contravention or default <u>under this Act</u> * and any person incharge of such company or such other person, as the case may be, shall be liable to be proceeded against and punished under section 33 for such failure or contravention or default committed by such company or person.	
Appeal against penalties.	30B. A person in default, aggrieved by an order passed under sub-section * (4) of section 30A, may, within a period of thirty days from the date on which such order is passed, prefer an appeal to the Appellate Authority: Provided that the Appellate Authority may entertain an	

	appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within such period.	
Appellate Authority.	30C. (1) The Central Board of Reserve Bank may designate such officer or committee of officers as it deems fit to exercise the power of Appellate Authority.	
	(2) The Appellate Authority shall have power to pass such order as it deems fit after providing a reasonable opportunity of being heard to the person in default.	
	(3) The Appellate Authority may, by an order stay the enforcement of the order passed by the adjudicating authority under section 30A, subject to such terms and conditions, as it deems fit.	
	(4) Where the person in default fails to * <u>comply with</u> the terms and conditions imposed by order under sub-section (3) without reasonable cause, the Appellate Authority may dismiss the appeal.	
Recovery of penalties	30D. (1) Any penalty imposed under section 30A shall be recovered as a “recoverable sum” and shall be payable within a period of thirty days from the date on which notice demanding payment of the recoverable sum is served upon the person in default and, in the case of failure of payment by such person within such period, the Reserve Bank may, for the purpose of recovery,— (a) debit the current account, if any, of the person in default maintained with the Reserve Bank or by liquidating the securities, if any, held to the credit of such person in the books of the Reserve Bank;	
	(b) issue a notice to the person from whom any amount is due to the person in default, requiring such person to deduct from the amount payable by him to the person in default, such amount equivalent to the amount of the recoverable sum, and to make payment of such amount to the Reserve Bank.	
	(2) Save as otherwise provided in sub-section (4), a notice issued under clause (b) of sub-section (1) shall be binding on every person to whom it is issued, and, where such notice is	

	issued to a post office, bank or an insurance company, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry or endorsement thereof before payment is made, notwithstanding any rule, practice or requirement to the contrary.	
	(3) Any claim in respect of any amount, arising after the date of issue of notice under sub-section (1) shall be void as against the demand contained in such notice.	
	(4) Any person, to whom the notice is sent under sub-section (1), objects to such notice by a statement on oath that the sum demanded or any part thereof is not due to the person in default or that he does not hold any money for or on account of the person in default, then nothing contained in this section shall be deemed to require, such person to pay such sum or part thereof, as the case may be.	
	(5) Where it is found that statement made by the person under sub-section (4) is false in material particulars, such person shall be personally liable to the Reserve Bank to the extent of his own liability to the person in default on the date of the notice, or to the extent of the recoverable sum payable by the person in default to the Reserve Bank, whichever is less.	
	(6) The Reserve Bank may, at any time, amend or revoke any notice issued under sub-section (1) or extend the time for making the payment in pursuance of such notice.	
	(7) The Reserve Bank shall grant a receipt for any amount paid to it in compliance with a notice issued under this section and the person so paying shall be fully discharged from his liability to the person in default to the extent of the amount so paid.	
	(8) Any person discharging any liability to the person in default after the receipt of a notice under this section shall be personally liable to the Reserve Bank- (a) to the extent of his own liability to the person in default so discharged; or (b) to the extent of the recoverable sum payable by the person in default to the Reserve Bank, whichever is less.	

	(9) Where the person to whom the notice is sent under this section, fails to make payment in pursuance thereof to the Reserve Bank, he shall be deemed to be the person in default in respect of the amount specified in the notice and action or proceedings may be taken or instituted against him for the realisation of the amount * in the manner provided in this section.	
	(10) The Reserve Bank may enforce recovery of recoverable sum through the principal civil court having jurisdiction in the area where the registered office or the head office or the principal place of business of the person in default or the usual place of residence of such person is situated as if the notice issued by the Reserve Bank were a decree of the Court.	
	(11) * <u>No</u> * recovery <u>under sub-section (10)</u> shall be enforced, except on an application made to the principal civil court by an officer of the Reserve Bank authorised in this behalf certifying that the person in default has failed to pay the recoverable sum.”.	
Amendment of section 31.	22. In the principal Act, in section 31, clause (e) shall be omitted.	
Amendment of section 31A.	23. In the principal Act, in section 31A , for sub- section (2), the following sub-sections shall be substituted, namely:—	
	“(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.	
	(3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in sub-section (2) is prorogued or adjourned for more than four consecutive days.	
	(4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.”.	

Amendment of section 32.	<p>24. In the principal Act, in section 32, for the words “any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower”, the words “the Reserve Bank or the Central Registry or any secured creditor or any of its officers” shall be substituted.</p>	
Amendment of section 38.	<p>25. In the principal Act, in section 38, in sub-section (2), -</p> <p><u>(i) clause (a) shall be numbered as clause (aa) and before clause (aa) as so renumbered, the following clause shall be inserted, namely:—</u></p> <p><u>“(a) other business or commercial rights of similar nature under clause (t) of section 2;”;</u></p> <p>(ii) after clause (bc), the following clauses shall be inserted, namely:-</p> <p>“(bca) the manner of integration of records of various registration systems with the records of Central Registry under <u>sub-section (1) of section 20A;</u></p> <p>(bcb) the terms and conditions of delegation of powers by the Central Government to the Reserve Bank under section 20B.”;</p> <p>(iii) after clause (d), the following clauses shall be inserted, namely:-</p> <p>“(da) <u>the</u> form for registration of different types of security interests and fee thereof under sub-section (3) of section 23;”;</p> <p>(iv) after clause (f), the following clauses shall be inserted, namely:-</p> <p>“(fa) <u>the</u> form and the manner for filing particulars of transactions under sub-section (2) of section 26B;</p> <p>(fb) the form and manner of filing attachment orders with the Central Registry <u>and the date</u> under sub-section (4) section 26B;</p> <p><u>(fc) the form and manner of filing particulars of attachment order with the Central Registry and the fee under sub-section (5) of section 26B.”.</u></p>	

	CHAPTER III AMENDMENTS TO THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993	
Amendment of section 2.	26. In the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter in this Chapter referred to as the principal Act), in section 2, —	51 of 1993
	(i) in clause (g), after the words “the date of the application”, the following words shall be inserted, namely:—	
	“and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;”;	
	(ii) after clause (g), the following clause shall be inserted, namely:-	
	“(ga) “debt securities” means debt securities listed in accordance with regulations made by the Securities Exchange Board of India under the Securities and Exchange Board of India Act, 1992;”;	15 of 1992
	(iii) in clause (h), after sub- clause (ia), the following sub-clause shall be inserted, namely:—	
	“(ib) a debenture trustee registered with the Board and appointed for <u>secured</u> debt securities;”;	
	(iv) after clause (h), the following clause shall be inserted, namely:-	
	“(ha) * “financial lease” means <u>a lease under a lease agreement of tangible asset, other than negotiable instrument of or negotiable document, for transfer of lessor’s right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount , as the case may be;’.</u>	
	(v) after clause (ja), the following clause shall be inserted, namely :—	

	<p>‘(jb) “property” means —</p> <p>(a) immovable property;</p> <p>(b) movable property;</p> <p>(c) any debt or any right to receive payment of money, whether secured or unsecured;</p> <p>(d) receivables, whether existing or future;</p> <p>(e) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature, * <u>as may be prescribed by the Central Government in consultation with Reserve Bank;</u>’;</p>	
	<p>(vi) after clause (l),the following clauses shall be inserted, namely:—</p>	
	<p>‘(la) “secured creditor” shall have the meaning as assigned to it in clause (zd) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;</p>	54 of 2002.
	<p>(lb) “security interest” means mortgage, charge, hypothecation, assignment or any other right, title or interest of any kind whatsoever upon property, created in favour of any bank or financial institution and includes –</p> <p>(a) such right, title or interest upon tangible * asset, retained by the bank or financial institution as owner of the property, given on hire or financial lease or conditional sale which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or any credit provided to enable the borrower to acquire the tangible * asset; or</p> <p>(b) such right, title or interest in any intangible asset or licence of any intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit extended to enable the borrower to acquire the intangible asset or license of intangible asset;’.</p>	
Amendment of section 4.	<p><u>27. In the principal Act, in section 4, for sub-section (2), the following sub-section shall be substituted, namely:—</u></p>	

	<p><u>“(2) Notwithstanding anything contained in sub-section (1), Central Government may-</u></p> <p>(b) <u>authorise the Presiding Officer of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal under this Act in addition to his being the Presiding Officer of that Tribunal; or</u></p> <p>(c) <u>authorise the judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, to discharge the functions of the Presiding Officer of Debts Recovery Tribunal under this Act, in addition to his being the judicial Member of that Tribunal.”.</u></p>	
Amendment of section 6.	<p>28. <u>In the principal Act, * for section 6, the following section shall be substituted, namely: —</u></p>	
	<p>*** *** *** *** ***</p>	
	<p><u>“6. The Presiding Officer of a Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:</u></p> <p><u>Provided that no person shall hold office as the Presiding Officer of a Tribunal after he has attained the age of sixty-five years.”.</u></p>	
Amendment of section 8.	<p>29. <u>In the principal Act, in section 8, in sub-section (1), the following proviso shall be inserted, namely:—</u></p> <p><u>“Provided that the Central Government may authorise the Chairperson of any other Appellate Tribunal, established under any other law for the time being in force, to discharge the functions of the Chairperson of the Debts Recovery Appellate Tribunal under this Act in addition to his being the Chairperson of that Appellate Tribunal.”.</u></p>	
Amendment of section 11.	<p>30. <u>In the Principal Act, * for section 11, the following section shall be substituted, namely: —</u></p>	
	<p>*** *** *** *** ***</p>	
	<p><u>“11. The Chairperson of an Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:</u></p>	

	<u>Provided that no person shall hold office as the Chairperson of a Appellate Tribunal after he has attained the age of * seventy years.”.</u>	
Amendment of section 17A.	31. In the principal Act, in section 17A, after sub-section (1), the following sub-sections shall be inserted, namely:—	
	“(1A) For the purpose of exercise of general powers of superintendence and control over Tribunals under sub-section (1), the Chairperson may- (i) direct the Tribunals to furnish, in such form, at such intervals and within such time, information relating to pending cases both under this Act and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, or under any other law for the time being in force, number of cases disposed of, number of new cases filed and such other information as may be considered necessary by the Chairperson; (ii) convene meetings of the Presiding Officers of Tribunals periodically to review their performance.	54 of 2002.
	(1B) Where on assessment of the performance of any Presiding Officer of the Tribunal or otherwise, the Chairperson is of the opinion that an inquiry is required to be initiated against such Presiding Officer for misbehaviour or incapacity, he shall submit a report to the Central Government recommending action against such Presiding Officer, if any, under section 15, and for reasons to be recorded in writing for the same.”.	
Amendment of section 19.	32. In the principal Act, in section 19, -	
	(i) in sub-section (1), clause (a) shall be re-numbered as clause (aa) and before clause (aa) so renumbered, the following clause shall be inserted, namely:—	
	“(a) the branch or any other office of the bank or financial institution is * <u>maintaining</u> an account in which debt claimed is outstanding, for the time being; or”;	
	(ii) for sub-section (3), the following sub-section shall be substituted, namely,;—	
	“(3) Every application under sub-section (1) or sub-section (2) shall be in such form, * and shall be accompanied with true	

	copies of all documents relied on in support of the claim alongwith such fee, as may be prescribed.”;	
	(iii) in sub-section (3), after the second proviso, the following explanation shall be inserted, namely:—	
	“ <i>Explanation.</i> — For the purposes of this section, documents includes statement of account or any entry in bankers book duly certified under the Bankers’ Books Evidence Act, 1891.”;	18 of 1891.
	(iv) after sub-section(3), sub-section (3A) shall be renumbered as sub-section (3B) and before sub-section (3B) so renumbered, the following sub-section shall be inserted, namely :—	
	<p>“(3A) Every applicant in the application filed under sub-section (1) or sub-section (2) for recovery of debt, shall –</p> <p>(a) state particulars of the debt secured by security interest over properties or assets belonging to any of the defendants and the estimated value of such securities;</p> <p>(b) if the estimated value of securities is not sufficient to satisfy the debt claimed, state particulars of any other properties or assets owned by any of the defendants, if any; and</p> <p>(c) if the estimated value of such other assets is not sufficient to recover the debt, seek an order directing the defendant to disclose to the Tribunal particulars of other properties or assets owned by the defendants.”;</p>	
	(v) for sub-section (4), the following sub-section shall be substituted, namely:—	
	<p>“(4) On receipt of application under sub-section (1) or sub-section (2), the Tribunal shall issue summons with following directions to the defendant—</p> <p>(i) to show cause within thirty days of the service of summons as to why relief prayed for should not be granted;</p> <p>(ii) direct the defendant to disclose particulars of properties or assets other than properties and assets specified by the applicant under clauses (a) and (b) of sub-section (3A); and</p>	

	(iii) * <u>to restrain</u> the defendant from dealing with or disposing of such assets and properties disclosed under clause (c) of sub-section 3A pending the hearing and disposal of the application for attachment of properties.”;	
	(vi) after sub-section (4), the following sub-section shall be inserted namely;-	
	<p>“(4A) Notwithstanding anything contained in section 65A of the Transfer of Property Act, 1882, the defendant, on service of summons, shall not transfer by way of sale, lease or otherwise except in the ordinary course of his business any of the assets over which security interest is created and other properties and assets specified or disclosed under sub-section (3A), without the prior approval of the Tribunal:</p> <p>Provided that the Tribunal shall not grant such approval without giving notice to the applicant bank or financial institution to show cause as to why approval prayed for should not be granted:</p> <p>Provided further that defendant shall be liable to account for the sale proceeds realized by sale of secured assets in the ordinary course of business and deposit such sale proceeds in the account maintained with the bank or financial institution holding security interest over such assets.”;</p>	4 of 1882
	(vii) for sub-section (5), the following sub-section shall be substituted, namely:—	
	“(5) (i) the defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence including claim for set-off under sub-section (6) or a counter claim under sub-section (8), if any, and such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence:	
	Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of	

	his defence;	
	(ii) where the defendant makes a disclosure of any property or asset pursuant to orders passed by the Tribunal, the provisions of sub-section (4A) of this section shall apply to such property or asset;	
	(iii) in case of non-compliance of any order made under clause (ii) of sub-section (4), the Presiding Officer may, by an order, direct that the person or officer who is in default, be detained in civil prison for a term not exceeding three months unless in the meantime the Presiding Officer directs his release: Provided that the Presiding Officer shall not pass an order under this clause without giving an opportunity of being heard to such person or officer.	
	<i>Explanation.</i> — For the purpose of this section, the expression ‘officer who is in default’ shall mean such officer as defined in clause (60) of section 2 of the Companies Act, 2013.”;	18 of 2013.
	(viii) for sub-section (5A), the following sub-section shall be substituted namely:-	
	“(5A) On receipt of the written statement of defendant or on expiry of time granted by the Tribunal to file the written statement, the Tribunal shall fix a <u>date of</u> hearing for admission or denial of documents produced by the parties to the proceedings and also for continuation or vacation of the interim order passed under sub-section (4).	
	(5B) Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission within a period of thirty days from the date of such order failing which the Tribunal may issue a certificate in accordance with the provisions of sub-section (22) to the extent of the amount of debt due admitted by the defendant.”;	
	(ix) in sub-section (6), after the words “the debt sought to be set off”, the words “the debt sought to be set-off along with original documents and other evidence relied on in support of claim of set-off in relation to any ascertained sum of money, against the applicant” shall be substituted;	

	(x) in sub-section (10), for the words “as may be fixed by the Tribunal”, the words “as may be prescribed” shall be substituted;	
	(xi) after sub-section (10), the following sub-sections shall be inserted, namely:–	
	<p>“(10A) Every application under sub-section (3) or written statement of defendant under sub-section (5) or claim of set-off under sub-section (6) or a counter-claim under sub-section (8) by the defendant, or written statement by the applicant in reply to the counter-claim, under sub-section (10) or any other pleading whatsoever, shall be supported by an affidavit sworn in by the applicant or defendant verifying all the facts and pleadings, the statements pleading documents and other documentary evidence annexed to the application or written statement or reply to set-off or counter-claim, as the case may be:</p> <p>Provided that if there is any evidence of witnesses to be led by any party, the affidavits of such witnesses shall be filed simultaneously by the party with the application or written statement or replies filed under sub-section (10A).</p>	
	(10B) If any of the facts or pleadings in the application or written statement are not verified in the manner provided under sub-section (10A), a party to the proceedings shall not be allowed to rely on such facts or pleadings as evidence or any of the matters set out therein.”;	
	(xii) for sub-section (11), the following sub-section shall be substituted, namely:—	
	“(11)Where a defendant sets up a counter-claim in the written statement and in reply to such claim the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the Tribunal shall decide such issue along with the claim of the applicant for recovery of the debt.”;	
	(xiii) sub-section (12) shall be omitted.	
	(xiv) in sub-section (13)(A), for the words “the Tribunal is satisfied by affidavit or otherwise”, the words “the Tribunal on an application made by the applicant alongwith particulars of	

	property to be attached and estimated value thereof, or otherwise <u>is satisfied</u> ” shall be substituted;”	
	(xv) sub-section (14) shall be omitted.	
	(xvi) in sub-section (15), for the word bracket and figure “sub-section (14)”, the word bracket and figure “sub-section (13)” shall be substituted.	
	(xvii) for sub-section (19), the following sub-section shall be substituted namely: -	
	"(19) Where a certificate of recovery is issued against a company * <u>as defined</u> under the Companies Act, 2013 and such company is under liquidation, the Tribunal may by an order direct that the sale proceeds of secured assets of such company be distributed in the same manner as provided in section 326 of the Companies Act, 2013 or under any other law for the time being in force.";	18 of 2013.
	(xviii) for sub-section (20), the following sub-section shall be substituted, namely:—	
	“(20) The Tribunal may, after giving the applicant and the defendant, an opportunity of being heard, in respect of all claims, set off or counter claim, if any, and interest on such claims, within thirty days from the date of conclusion of the hearings, pass interim or final order as it deems fit which may include <u>order</u> for payment of interest from the date on which payment of the amount is found due up to the date of realization or actual payment.”;	
	(xix) after sub-section (20A), the following sub-sections shall be inserted, namely:—	
	“(20AA) While passing the final order under sub-section(20), the Tribunal shall clearly specify the assets of the borrower over which security interest is created in favour of any bank or financial institution and direct the Recovery Officers to distribute the sale proceeds of such assets as provided in sub-section (20 AB). (20 AB) Notwithstanding anything to the contrary contained in any law for the time being in force, the proceeds from sale of secured assets shall be distributed in the following orders of	

	<p>priority, namely:-</p> <p>(i) the costs incurred for preservation and protection of secured assets, the costs of valuation, public notice for possession and auction and other expenses for sale of assets shall be paid in full;</p> <p>(ii) debts owed to * <u>the</u> bank or financial institution.</p> <p>Explanation.— For the purposes of this sub section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency and bankruptcy proceedings are pending in respect of secured assets of the borrower, the distribution of proceeds from sale of secured assets shall be subject to the order of priority as provided in that Code.” .</p>	
	(xx) for sub-section (21), the following sub-section shall be substituted, namely:—	
	<p>“(21) (i) The Tribunal shall send a copy of its final order and the recovery certificate, to the applicant and defendant.</p> <p>(ii) The applicant and the defendant may obtain copy of any order passed by the Tribunal on payment on such fee as may be prescribed.”;</p>	
	(xxi) for sub-section (22), the following sub-section shall be substituted, namely:—	
	“(22) The Presiding Officer shall issue a certificate of recovery along with the final order, under sub-section (20), for payment of debt with * interest under his signature to the Recovery Officer for recovery of the amount of debt specified in the certificate.”;	
	(xxii) after sub-section (22), the following sub-section shall be inserted, namely:—	
	“(22A) Any recovery certificate issued by the Presiding Officer under sub-section (22) shall be deemed to be decree or order of the Court for the purposes of initiation of winding up proceedings against a company registered under the Companies Act, 2013 or Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 or insolvency proceedings against any individual or partnership firm under *	<p>18 of 2013. 9 of 2008. *.</p>

	any * law for the time being in force, as the case may be.”;	
	(xxiii) in sub-section (24), for the words "endeavour shall be made by it", the following words "every effort shall be made by it to complete the proceedings in two hearings, and” shall be substituted.	
Insertion of new section 19A.	33. After section 19 of the principal Act, the following sections shall be inserted, namely:—	
Filing of recovery applications, documents and written statements in electronic form.	<p>“19A. (1) Notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may by rules provide that from such date and before such Tribunal and Appellate Tribunal, as may be notified, –</p> <p>(a) application or written statement or any other pleadings and the documents to be annexed thereto required to be filed shall be submitted in the electronic form and authenticated with digital signature of the applicant, defendant or any other petitioner in such form and manner as may be prescribed;</p> <p>(b) any summons, notice or communication or intimation as may be required to be served or delivered under this Act, may be served or delivered by transmission of pleadings and documents by electronic form and authenticated in such manner as may be prescribed.</p> <p>(2) Any interim or final order passed by the Tribunal or Appellate Tribunal displayed on the website of such Tribunal or Appellate Tribunal shall be deemed to be a public notice of such order and transmission of such order by electronic mail to the registered address of the parties to the proceeding shall be deemed to be served on such party.</p>	21 of 2000.
	(3) The Central Government may by rules provide that the electronic form for the purpose specified in this section shall be exclusive, or in the alternative or in addition to the physical form, therefor.	
	(4) The Tribunal or the Appellate Tribunal notified under sub-section (1), for the purpose of adopting electronic filing, shall maintain its own website or common website with other	

	<p>Tribunals and Appellate Tribunal or such other universally accessible repositories of electronic information and ensure that all orders or directions issued by the Tribunal or Appellate Tribunal are displayed on the website of the Tribunal or Appellate Tribunal, in such manner as may be prescribed.</p> <p><i>Explanation.</i>— For the purpose of this section,—</p> <p>(a) ‘digital signature’ means the digital signature as defined under clause (p) of section 2 of the Information Technology Act, 2000;</p> <p>(b) ‘electronic form’ with reference to an information or a document means the electronic form as defined under clause (r) of section 2 of the Information Technology Act, 2000.”.</p>	21 of 2000.
Amendment of section 20.	34. In the principal Act, in section 20 in sub-section (3), for the words “forty-five days”, at both the places where they occur, the words “thirty days” shall be substituted.	
Amendment of section 21..	35. In the principal Act, in section 21, -	
	(i) for the words “seventy-five per cent”, the words “fifty per cent.” shall be substituted;	
	(ii) in the proviso, for the words “waive or reduce the amount”, the words “reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due” shall be substituted.	
Amendment of section 22.	36. In the principal Act, in section 22, after sub-section (3), the following sub-section shall be inserted, namely:—	
	“(4) For the purpose of proof of any entry in the ‘bankers books’, the provisions of the Bankers’ Books Evidence Act, 1891 shall apply to all the proceedings before the Tribunal or Appellate Tribunal.”.	18 of 1891
Insertion of new section 22A.	37. In the principal Act, after section 22, the following section shall be inserted, namely:—	
Uniform procedure for conduct of proceedings.	“22A. The Central government may, for the purpose of this Act, by rules, lay down uniform procedure consistent with the provisions of this Act for conducting the proceedings before the Tribunals and Appellate Tribunals”.	
Amendment of section 25.	38. In the principal Act, in section 25, –	

	(i) after clause (a),the following clause shall be inserted, namely:—	
	“(aa) taking possession of property over which security interest is created or any other property of the defendant and appointing receiver for such property and to sell the same;”.	
	<u>(ii) after clause (c), the following clause shall be inserted, namely:—</u>	
	<u>“(d) any other mode of recovery as may be prescribed by the Central Government.”.</u>	
Amendment of section 27.	39. In the principal Act, in section 27, for sub-section (1), the following sub-section shall be substituted, namely:—	
	<p>“(1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the Presiding Officer, may by an order, grant time for payment of the amount, provided the defendant makes a down payment of not less than twenty-five percent of the amount specified in the recovery certificate and gives an unconditional undertaking to pay the balance within a reasonable time, which is acceptable to the applicant bank or financial institution holding recovery certificate.</p> <p><u>(1A)</u> The Recovery Officer shall, after receipt of the order passed under sub-section (1), stay the proceedings until the expiry of the time so granted.</p> <p><u>(1B)</u> Where defendant agrees to pay the amount specified in the Recovery Certificate and proceeding are stayed by the Recovery Officer, the defendant shall forfeit right to file appeal against the orders of the Tribunal.</p> <p><u>(1C)</u> Where the defendant commits any default in payment of the amount under sub-section(1), the stay of recovery proceedings shall stand withdrawn and the Recovery Officer shall take steps for recovery of remaining amount of debt due and payable”.</p>	
Insertion of new section 30A.	40. In the principal Act, after section 30, the following section shall be inserted, namely:—	
Deposit amount of	“30A. Where an appeal is preferred against any order of the Recovery Officer, under section 30, by any person from whom	

debt due, for filing appeal against orders of the Recovery Officer.	the amount of debt is due to a bank or financial institution or consortium of banks or financial institutions, such appeal shall not be entertained by the Tribunal unless such person has deposited with the Tribunal fifty percent of the amount of debt due as determined by the Tribunal.”.	
Insertion of new section 31B.	41. In the principal Act, after section 31A, the following section shall be inserted, namely:—	
Priority to secured creditors	<p>“31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority:</p> <p><u>Explanation.— For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.” .</u></p>	31 of 2016
Amendment of section 36	<p>42. In the principal Act, in section 36, in sub-section (2), -</p> <p><u>(i) clause (a) shall be numbered as clause (aa) and before clause (aa) as so renumbered, the following clause shall be inserted, namely:—</u></p> <p><u>“(a) other business or commercial rights of similar nature under clause (jb) of section 2;”;</u></p> <p><u>(ii)</u> after clause (c), the following clause shall be inserted, namely:-</p> <p>“(ca) <u>the form of application</u> and the fee for filing application under sub-section (3) of section 19;</p> <p><u>(iii)</u> in clause (cc), for the brackets, figure and letter “(3A)”, the brackets, figure and letter “(3B)” shall be substituted;</p> <p><u>(iv)</u> after clause (cc) the following clauses shall be inserted, namely:-</p> <p>“(cca) the period for filing written statement under sub-</p>	

	<p>section (10) of section 19;</p> <p>(ccb) the fee for obtaining copy of the order of the Tribunal under sub-section (21) of section 19;</p> <p><u>(ccc) the form and manner of authenticating digital signature under clause (a), and the manner of authenticating service or delivery of pleadings and documents under clause (b), of sub-section (1) of section 19A;</u></p> <p>(ccd) the form and manner of filing application and other documents in the electronic form under sub-section (1) and manner of display of orders of the Tribunal and Appellate Tribunal under sub-section (4) of section 19A;</p> <p><u>(v) after clause (d), the following clauses shall be inserted, namely:—</u></p> <p><u>(da) the rules of uniform procedure for conducting the proceedings before the Tribunals and Appellate Tribunals under section 22A;</u></p> <p><u>(db) the other mode of recovery under clause (d) of section 25;”.</u></p>	
Amendment of Act 2 of 1899.	43. The Indian Stamp Act, 1899 shall be amended in the manner specified in the First Schedule.	
Amendment of Act 22 of 1996.	44. The Depositories Act, 1996 shall be amended in the manner specified in the Second Schedule.	
54 of 2002	<p style="text-align: center;">THE FIRST SCHEDULE</p> <p style="text-align: center;">(See section 43)</p> <p style="text-align: center;">AMENDMENT TO THE INDIAN STAMP ACT, 1899</p> <p style="text-align: center;">(2 OF 1899)</p> <p>1. After section 8E, the following section shall be inserted, namely :-</p> <p>“8F. Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement or other document for transfer or assignment of rights or interest in financial assets of banks or financial institutions under section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in favour of any asset reconstruction company, as defined in clause (ba) of sub-</p>	

	<p>section (1) of section 2 of that Act, shall not be liable to duty under this Act.”.</p>	
	<p style="text-align: center;">THE SECOND SCHEDULE</p> <p style="text-align: center;">(See section 44)</p> <p style="text-align: center;">AMENDMENT TO THE DEPOSITORIES ACT, 1996</p> <p style="text-align: center;">(22 OF 1996)</p> <p>1. In section 7, after sub-section (1), the following sub-sections shall be inserted, namely:-</p> <p>“(1A) Every depository on receipt of intimation from a participant register any transfer of security in favour of an asset reconstruction company as defined in clause (ba) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 along with or consequent upon transfer or assignment of financial asset of any bank or financial institution under sub-section (1) of section 5 of that Act.</p> <p>(1B) Every depository, on receipt of intimation from a participant, register any issue of new shares in favour of any bank or financial institution or asset reconstruction company or any other assignee of such bank or financial institution or asset reconstruction company, as the case may be, by conversion of part of their debt into shares pursuant to reconstruction of debts of the company agreed between the company and the bank or financial institution or asset reconstruction company.</p> <p><i>Explanation</i> – For the purpose of this section, the expressions “asset reconstruction company”, “bank”, and “financial institution” shall have the meanings assigned to them respectively under clauses (ba), (c) and (m) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.”.</p>	<p>54 of 2002</p>

(vide para 2 of the Report)

Motion in Lok Sabha for reference of the Bill to the Joint Committee.

"That the Bill further to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Indian Stamp Act, 1899 and the Depositories Act, 1996 and for matters connected therewith or incidental thereto, be referred to a Joint Committee of the Houses consisting of the following 20 Members from this House:-

1. Shri P.P. Chaudhary
2. Shri Gopal Chinayya Shetty
3. Shri Subhash Beharia
4. Shri Nishikant Dubey
5. Shri Shivkumar C. Udasi
6. Shri Anil Shirole
7. Shri Abhishek Singh
8. Shri Gajendra Singh Sekhawat
9. Shri Sanjay Jaiswal
10. Shri Jagdambika Pal
11. Shri Jaidev Galla
12. Shri Chandrakant Khaire
13. Shri Chirag Paswan
14. Shri K.C. Venugopal
15. Km. Sushmita Dev
16. Dr. P. Venugopal
17. Shri Kalyan Banerjee
18. Shri Bhartruhari Mahtab
19. Shri B. Vinod Kumar
20. Shri Jitendra Chaudhury

and 10 from the Rajya Sabha;

that in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Joint Committee;

that the committee shall make a report to this House by the last day of the first week of the next Session, 2016;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committee shall apply with such variations and modifications as the Speaker may make; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 10 members to be appointed by Rajya Sabha to the Joint Committee."

(vide para 2 of the Report)

Motion in Rajya Sabha for reference of the Bill to the Joint Committee.

“That this House concurs in the recommendation of the Lok Sabha that this House do join in the Joint Committee of the Houses on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 for expediting adjudication of recovery applications of banks and financial institutions, and to give priority to secured creditor in repayment of debts and then grant exemption for assignment of loan in favour of asset reconstruction company from payment of stamp duty and for matters connected therewith or incidental thereto and resolves that the following Members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

1. Shri Ajay Sancheti
2. Shri Bhupender Yadav
3. Shri Naresh Gujral
4. Shri Anand Sharma
5. Shri Bhubaneswar Kalita
6. Shri Praful Patel
7. Shri Ravi Prakash Verma
8. Shri K.C. Tyagi
9. Shri Sukhendu Sekhar Roy
10. Shri Satish Chandra Misra".

(vide para 4 of the Report)

**List of Stakeholders with whom the Joint Committee held informal discussion at
Mumbai from 30th June 2016 to 2nd July, 2016**

Sl. No.	Name of Stakeholders	Date on which informal discussion was held
1.	<p><u>DRT Bar Associations</u></p> <ul style="list-style-type: none"> (i) DRT Bar Association, Mumbai (ii) Chennai DRT & DRAT Advocate Bar Association (iii) The Gujarat DRT Advocate Association (iv) The DRT Advocates Association, Hyderabad (v) The DRT Bar Association, Aurangabad* (vi) The DRT Bar Association, Kolkata (vii) The DRT Bar Association, Nagpur* (viii) The DRT Bar Association, Pune 	30 th June, 2016
2.	INDSERCH, Pune	30 th June, 2016
3.	Finance Industry Development Council (FIDC), Mumbai	30 th June, 2016
4.	<p><u>Asset Reconstruction Companies</u></p> <ul style="list-style-type: none"> (i) International Asset Reconstruction Company Pvt. Lt. Andheri East, Mumbai (ii) Reliance Asset Reconstruction Company Pvt. Ltd., Mumbai (iii) Invent Assets Securitization & Reconstruction Pvt Ltd., Nariman Point, Mumbai (iv) India SME Asset Reconstruction Company Ltd (ISRAC), Bandra East Mumbai (v) Asset Reconstruction Company (India) Ltd, Dadar West, Mumbai (vi) Edelweiss Asset Reconstruction Company, Mumbai (vii) J M Financial Asset Reconstruction Company, Mumbai (viii) Phoenix Asset Reconstruction Company, Mumbai (ix) Asrec India, Mumbai (x) Pegasus ARC, Mumbai* 	30 th June, 2016
5.	Reserve Bank of India(RBI)	1 st July, 2016
6.	Securities and Exchange Board of India (SEBI)	1 st July, 2016
7.	State Bank of India	1 st July, 2016

Sl. No.	Name of Stakeholders	Date on which informal discussion was held
8.	<p><u>Financial Institutions</u></p> <p>(i) Life Insurance Corporation (LIC) (ii) Industrial Development Bank of India (IDBI) (iii) National Housing Bank (NHB) (iv) UTI AMC Ltd.</p>	1 st July, 2016
9.	<p><u>Apex body of Cooperative Banks</u></p> <p>(i) Maharashtra State Cooperative Bank (ii) National Federation of State Cooperative Banks Ltd., Mumbai (iii) Cosmos Cooperative Bank Ltd. Pune*</p>	1 st July, 2016
10.	<p><u>Public Sector Banks</u></p> <p>(i) Indian Banks' Association (IBA) (ii) Punjab National Bank (iii) Bank of Baroda (iv) Bank of India (v) Bank of Maharashtra (vi) Central Bank of India (vii) Union Bank of India (viii) Indian Bank</p>	2 nd July, 2016
11.	<p><u>Private Sector Banks</u></p> <p>(i) ICICI Bank Ltd. (ii) HDFC Bank Ltd. (iii) Axis Bank Ltd. (iv) IndusInd Bank Ltd. (v) IDFC Bank Ltd.</p>	2 nd July, 2016

***Did not submit written Memorandum**

(vide para 6 of the Report)**List of stakeholders/public at large from whom memoranda were received by the Joint Committee in response to the Press communiqué issued on 07.06.2016**

Sl. No.	Name of Person/Organisation
1	Shri Surendra Prakash Agrawal (Advocate) Chief Manager ICICI Bank (Retd.) Chamber No. S-7, S.F. Meerut lawyers Chamber Civil Courts Meerut- 250003. Residence:- T-113 Pallav Puram Phase-II, Meerut- 250110
2	Shri Shivanand R. Nandedkar Flat No. 253 A, Ranka Colony, Bilakhalli, Bannerghatta Road, Bangalore. Email:- advshiva@gmail.com
3	Shri B. Mohan Kumar Asst. Manager (retd.) , Andhra Bank, Anantapur Email:- mohan5158@yahoo.in
4	Shri Ashok Surana Email: savesmefrombanks@gmail.com
5.	M/s Cyril Amarchand Mangaldas (advocates & solicitors) Shri L. Viswanathan Address:- Vth Floor, Peninsula Chambers, Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400 013, India email: l.viswanathan@cyrilshroff.com
6.	Shri Rajagopalan. M <i>Email:</i> rajagopalanm50@gmail.com
7.	Shri K. V. Kanakambaram President, The Industrial Estate Mfrs. Association R.V. Tower, No.10, GST Road, Guindy, Chennai - 600 032.
8.	P.Krishnan Managing Director & CEO, Parijatha Business Solution P Ltd www.parijatha.co.in
9.	V K Girish Pandian President, Nacosi No. 10, GST Road, Guindy Chennai 600032
10.	Shishir Kumar <i>Email:</i> shishirkumar14@yahoo.com
11.	Shailen Shah, Director - Deal Advisory Restructuring , KPMG India Private Limited Loahd Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai 400011

(vide para 7 of the Report)

**List of Stakeholders who submitted Memoranda and tendered evidence before the
Joint Committee**

Sl. No.	Name of Stakeholders	Date on which evidence was taken
1	2	3
1.	Vidhi Centre for Legal Policy	15th June, 2016
2.	Centre for Law and Policy Research(CLPR)	15th June, 2016
3.	Indira Gandhi Institute of Development Research(IGIDR)	15th June, 2016
4.	National Institute of Public Finance and Policy (NIPFP)	15th June, 2016
5.	Federation of Indian Micro, Small and Medium Enterprises (FISME)	15th June, 2016
6.	Laghu Udyog Bharati	15th June, 2016
7.	Confederation of Indian Industries (CII)	15th June, 2016
8.	Federation of Indian Chambers of Commerce and Industries (FICCI)	15th June, 2016
9.	The Associated Chambers of Commerce and Industry of India (ASSOCHAM)	15th June, 2016
10.	Punjab National Bank	16 th June, 2016
11.	Andhra Bank	16 th June, 2016
12.	UCO Bank	16 th June, 2016
13.	Syndicate Bank	16 th June, 2016
14.	Indian Overseas Bank	16 th June, 2016
15.	Industrial Finance Corporation of India(IFCI)	16 th June, 2016
16.	Small Industrial Development Bank of India (SIDBI)	16 th June, 2016
17.	Assets Care & Reconstruction Enterprises Ltd(ACRE)	16 th June, 2016

Sl. No.	Name of Stakeholders	Date on which evidence was taken
1	2	3
18.	Alchemist Asset Reconstruction Company Ltd	16 th June, 2016
19.	Pridhvi Asset Reconstruction and Securitisation Company Ltd(PARAS)	16 th June, 2016
20.	UV Asset Reconstruction Company Ltd.	16 th June, 2016
21.	Meliora Asset Reconstruction Company Ltd. (MARC)	16 th June, 2016
22.	DRT Bar Association, Delhi	16 th June, 2016
23.	DRT Bar Association, Allahabad*	16 th June, 2016
24.	DRT Bar Association, Chandigarh	16 th June, 2016
25.	DRT Bar Association, Jaipur	16 th June, 2016
26.	Lucknow DRT Bar Association*	16 th June, 2016

*** Submitted written Memorandum but did not appear before the Committee.**