

CHAPTER V

THE NATURE AND NEED

OF SARFAESI ACT



CHAPTER V

The Nature and Need of SARFAESI Act

Contents

Introduction

5.1 Need of SARFAESI Act

5.2 Historical background of new legislation

5.3 Importance of SARFAESI Act

5.4 Enforcement of security interest



CHAPTER - V

The Nature and Need of SARFAESI Act

INTRODUCTION

All banks & financial institutions in India are facing a major problem of bad debts. Not only the co-op banks but other banks also facing the problem of bad debts. Debt recovery through Civil Court consumes lot of time for the recovery of debts.

Co-op banks have separate forum for recovery under co-op society's act 1960. But here also notices, summons, appearance, written statements, Affidavits, Chief & cross-examinations of bank officers, pleading, argument etc. consume lot of time. Thus recovery of debts through co-op court & Registrar, Assistance & Deputy Registrar is also time consuming.

There was no specific provision in these laws in respect of Hypothecation, though it was one of the major securities offered by borrowers. Procedures of settlement of disputes between creditor & debtor , recovery of money on certificate signed by official Assignee or the Registrar for co-op court, attachment & sale of property, executions of awards all these were taking lengthy time for recovery of money.

Thus, the present recovery machinery is not sufficient for speedy recovery. There was no provision in existing laws to acquire the mortgaged and hypothecated properties without intervention of court. But this Act gives wide powers to banks and FI's to enforce its security interest only by serving demand notice u/s 13 (2).

5.1 Need of Securitisation Act: -

Govt. of India & RBI introduced new measures to build up a strong & efficient financial system. Specific measures such as setting up a Debt Recovery Tribunal, Introduction of Corporate Debt, Restructuring schemes & one time settlement schemes have been undertaken to tackle the problems of high levels of non-operating assets.

In the words of M. R. Umarji, “*Unfortunately commercial laws in India is more than a century old well settled & uniformly applicable all over the country. The banks plying field in securitisation assets reconstruction & enforcement of security interest.*

E.g. Rights of mortgagee under T.P. act under sec 69 of. The transfer of property act 1882, the power of sale of mortgaged property in case of default can be exercised subject to compliance with following requirements: -

- a) Where the mortgage is an English mortgage & neither the mortgagor nor the mortgagee is Hindu, Mohammedan, Buddhist or a member of any other crace, sect, tribe or class. From time to time specified in this behalf by the state court in the official Gazette.*
- b) Where the power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage deed & the mortgagee is the Govt.*
- c) Where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage deed & the mortgage property situated within the towns of Calcutta, Madras, Bombay or in any other town or area which the state Govt. may by notification specify in this behalf.”¹⁵*

From the above we can understood that the power of sale of mortgage property can be exercised by only Christian but Hindu, Buddhist & Mohammedan can not. Constitution gives that equal rights

to the subjects but the above condition are the violation of the article 15 of the constitution. Article 15, which prohibits discrimination against any citizen on grounds only of religion & cast . Thus section 69 of T.P. Act is inconsistent with article 15 of the constitution & is void.

5.2 Historical background of new legislation: -

According to the recommendation of the CFS Govt. has established special debt Recovery Tribunals & Debt Recovery Appellate Tribunals for speedy recovery by passing DRT Act 1993. But actually in practice the entire process of recovery of overdue loans through DRT's is also taking time. All the pending cases were transferred to the respective DRT's. Even decreed accounts are being referred to DRT's for the purpose of execution & recovery. Thus the burden on DRT also increased. There was a need to strengthen the recovery efforts of banks & financial institutions .

Narsimham Committee II

In December 1997 Govt. decided that it was necessary to review the implementation of financial system reforms. As recommended by the Narsimham Committee I (CFS). Govt. of India thought that there is a necessity of reforms in India's banking system, which could become stronger & better equipped to compete effectively in a fast changing international economic environment.

The ministries of finance setup an expert committee under the chairmanship of Shri. T.R.Andhyarjina to review the implementation of recommendations made by Narsimham Committee. The expert committee recommended enactment of the new law for –

- 1) Enforcement of securities for loans created over both movable & immovable properties by banks & financial institutions.
- 2) Securitisation of financial assets.

Government of India setup two separate working groups for implementing Expert Committee's recommendations to enact special laws for securitisation & enforcement of securities by banks without intervention of court.

Both the houses of parliament passed the ordinance of SARFAESI Act in 2002 & enacted Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act).

5.3. Importance of SARFAESI ACT 2002

Before enacting SARFAESI Act 2002 banks could not enjoy its right of lien, without judicial intervention .It means banks could take legal possession of secured property only through court receiver appointed by Hon. court. But SARFAESI Act 2002 has given wide powers to banks & FI's to take possession of secured asset of defaulter directly after due notices u/s 13(2) of SARFAESI Act 2002. In short , bank itself is a court receiver to take possession of defaulter's asset. SARFAESI Act is really a weapon in the hands of banks & FI's to enforce its security interest without intervention of court. Banks & FI's can directly acquire secured property only after serving demand & possession notice under this act. The legal machinery for recovery is not proved speedy recovery due to lengthy procedure of CPC, co-op court, DRT. SARFAESI Act also provides for setting up securitisation & reconstruction companies, which can help the banks & FI's to enforce its security interest. SARFAESI Act is really a way to reduce NPA & maintain healthy financial condition of Banks &FI's.

Scheduled commercial banks after 2002 introduced SARFAESI Act & sent notices u/s 13(2) & recovered huge amount & succeeded in reducing NPA's. Following table shows that recovery of NPA's by scheduled commercial banks through various channels.

Table no 8

**Recovery of NPA's of commercial Banks through various channels in
2002-2003** (Amt. in crores)

Particulars	No. of cases referred	Amt. involved	Amt. Recovered	% of recovery
1. Onetime settlement	139562	1510	617	40 %
2. Lok Adalats	186100	1063	149	14 %
3. DRT's	7544	12305	2117	17 %
4. SARFAESI Act	2661**	7847	1156	14 %
Total	335817	22725	4039	85 %

In 2004-2005

(Amt. in crores)

Particulars	No. of cases referred	Amt. involved	Amt. Recovered	% of recovery
1. One time settlement	1,32,781	1,332	880	66 %
2. Lok Adalat	1,85,395	801	113	14 %
DRT's	4,744	14,317	2688	18 %
4. SARFAESI Act	39,288**	13,224	2391	20 %
Total	3,62,208	29,674	6072	118 %

** Indicates numbers of notices issued u/s 13₍₂₎ SARFAESI Act

2002.

(Source: - RBI report on trend & progress of banking in India
2003-04, 2004-05 RBI Mumbai Pg. 89.)

The above table shows that commercial banks recovered their due amount through various channels. In the year 2003 & 2004 commercial banks referred lot of cases to settle their dues through OTS Scheme, Lok Adalats, DRT's & SARFAESI Act. The first three channels

are old & settled methods of recovery of loans. SARFAESI Act was very new i.e. just enacted in 2002, and then also commercial banks have taken advantage of SARFAESI Act for its recovery.

In the 2002-2003 scheduled commercial banks referred 2661 cases under SARFAESI Act out of total 3, 35,817 cases i.e. only 0.79 %. These banks are succeeded in recovery of 1156 crores i.e. 28.62 % of total NPA's under SARFAESI Act alone.

In the year 2004-05 commercial banks have referred 39,288 cases i.e. 10% of 3,62,208 total cases of NPA's under SARFAESI Act & these bank recovered 2391 lakhs of i.e. 39.37 % of total 6072 lakhs of NPA's under SARFAESI Act . Within two years the percentage of recovery shows reduced NPA's. Within future years this proportion of recovery under SARFAESI Act will definitely increase. Thus with the help of SARFAESI Act, banks & FI's can succeed in reducing the piles of NPA's.

➤ **Securitisation Act**

The SARFAESI Act contains VI chapter with 42 sections in all. But researcher has elaborated the section 13 to 19, which are about enforcement of security interest by banks and FI's. The present research study is based on Urban Co-op Banks, their NPA's, how they take asylum of this newly enacted law. So researcher has given more stress on section 13 to 19 under which Urban Co-op Banks also can enforce its security interest without intervention of court. Other sections of SARFAESI Act are related to registration of Securitisation Company, setting up of central registry, penalty for non-compliance of the provision, right of borrower to receive compensation and cost.

The title of the SARFAESI Act is “**The Securitisation and Reconstruction of Financial Assets & Enforcement Of Security Interest Act 2002.**” This Act came into force from 21.06.2002.

➤ **Important definitions** ¹⁶

◆ **Securitisation: -**

“It means acquisition of financial assets by any securitisation company or reconstruction company from any originator, whether by raising of funds by such S.C. & R.C. from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise.”

◆ **Reconstruction Company & securitisation company: -**

These means a company formed under the company's act 1956 for the purpose of asset reconstruction.

◆ **Bank means: -**

- 1) A banking company or
- 2) Corresponding new bank or SBI or
- 3) Such other banks, which central Govt. may by notification, specify for the purpose of the Act. This act was made applicable to co-op banks from 28.01.2003.

◆ **Non Performing Asset: -**

“It means an asset or account of a borrower, which has been classified by a bank or financial institutions as sub-standard, doubtful or loss assets, in accordance with the directions or under guidelines relating to asset classifications issued by the Reserve Bank.”

◆ **Secured assets: -**

It means the property on which security interest is created.

◆ **Secured creditor: -**

It means any bank or financial institutions or any consortium or group of banks or FI's & includes

- I) Debenture trustee appointed by any bank or financial institutional.
- II) S.C. or R.C.
- III) Any other trustee holding securities on behalf of a bank or financial institutions.

◆ **Secured debt: -**

It means a debt, which is secured by any security interest.

5.4 Enforcement of security interest

The third aspect of SARFAESI Act has dealt with enforcement of security interest. Security interest means rights, title or interest of any kind upon the property created in favor of banks by the borrowers. It includes any charge, hypothecation & assignment. Enforcement of security interest means establishment of right upon property created in favor of banks as a security for loans. The action for the enforcement can be taken by the bank without intervention of the court of law or tribunal under SARFAESI Act. This act provides that the enforcement action can be taken against the borrower who makes any default in repayment of debt or any installment there of then this account is classified as NPA.

➤ **Section 13 (1) Right of enforcement of security interest**

This is the most important section in this act which confers powers of enforcement of securities on the secured creditors / banks without intervention of the court or tribunal. It is the major step taken by the Govt. in the direction of keeping the levels of non-performing assets of banks & FI's at manageable levels.

Section 13(1) empowers bank and FI's to enforce security interest in accordance with the provisions of this act. According to this section the concept of security interest incorporating a provision that any security created for due amount of loan over any property is treated as security interest.

Banks and financial institution can exercise the power to extend all securities. Security interest can be enforced against movable and immovable property u/s 13(1) of the SARFAESI Act. But this Act

restricts the banks and FI's to exercise enforcement of security interest in some cases. Section 31 gives the following list of cases in which provisions of SARFAESI Act are not applicable.

- a) A lien or any goods, money or security given by or under the Indian Contract Act 1872 or the sale of Goods Act 1930 or any other law for the time being in force.
- b) A pledge of movables within the meaning of section 172 of the Indian Contract 1872.
- c) Creation of any security in any aircraft as defined in clause of section 2 of the Aircraft Act 1934.
- d) Creation of security interest in any vessel as defined in clause of section 3 of the Merchant Shipping Act 1958.
- e) Any conditional sale, hire purchase or lease or any other contract in which no security interest has been created.
- f) Any rights of unpaid seller under section 47 of the sale of Goods Act 1930.
- g) Any properties not liable to attachment or sale under the first proviso to sub section (1) of the section 60 of the Code of Civil Procedure 1908.
- h) Any security interest for securing repayment of any financial asset not exceeding one lakh.
- i) Any security interest created in agricultural land.
- j) Any case in which the amount due is less than 20 % of the principal amount & interest thereon.

➤ **Section 13(2) Demand Notice to defaulters**

Where any borrower who is under a liability to a bank, makes any default in repayment of due amount or any installment & whose account is classified as NPA, then bank sends a notice in writing to discharge his full liabilities to the secured creditor within 60 days from the date of notice. If the borrower failed to repay, bank and FI's are entitled to

exercise all the power u/s 13(4) of SARFAESI Act. Section 13(2) provides for issue of notice of default to the borrower. The account of such borrower must be classified as non-performing asset in the books of accounts of the bank in accordance with the directions or guidelines issued by the Reserve Bank of India.

Thus any notice u/s 13(2) of the act can be issued only in respect of defaulted accounts which are classified as NPA. The bank should not give notice u/s 13(2) to those accounts, which are performing assets. They need to bear in mind that the right of enforcement of securities given under this act is very valuable right.

➤ **Section 13(3) Particulars of Demand Notice**

This section requires that the notice referred to in sub section 2(13) shall give following particulars about the defaulted loan. Even though the act has provided to mention the details of amount and security only in the notice, it is safe for the bank to give further details of borrower's account.

- Details of the amount payable by the borrower.
- Details of the securities for the loan, which is liable to be, enforced by the secured creditor.
- Details of default, overdue period & the date from which account is classified as NPA.
- Facility wise securities provided for the loans with full description & location of securities as per information available with the secured creditor.
- Particulars of security document executed by the borrower

➤ **Form of the notice**

The form of the notice under 13(2) has not been provided by the act or the rules framed there under. Mr. M.R. Umarji, the former executive director of RBI suggested draft of demand notice (which is given in appendix I)¹⁷

In daily Loksatta dated 10.10.2005 Mr. B.M. Rahalkar asked a question to Vidyadhar Anaskar in article 'all about banks'. In this he asked that, 'he received a demand notice u/s 13(2) by the bank. But his compliant was that, the demand notice is incomplete by which he can not got full information. So he sent a letter to the bank to give details of the notice. But bank not answered satisfactorily to the letter of borrower. Thus if bank is denied to give details then whether he can apply in the DRT?' Originally there was no provision for answering the objection of the borrower.

Reply to his question in the article was: -

According to amendment in section 13 a new sub section (3a) is included on 11.11.2004. On receipt of the notice under 13(2), if the borrower makes any representation or raises any objection, the secured creditor must consider such objection. Banks should communicate within 1 weak i.e. 7 days of receipt of such representation or objection. Borrower can only apply when banks take over management & possession of secured property u/s 13(4) but not because of non-acceptance of objection by the bank. But in the good interest bank should communicate to the objection of borrowers.

➤ **Case law on reply to the borrower's objection to notice**

Supreme Court directed in Mardia Chemicals Ltd. v/s Union of India (2004) that it is necessary to send reply to the borrower about any objections received from him in response to notice u/s 13(2). The SARFAESI Act has been amended by the amendment ordinance to give

effect to the Hon. SC's directions in provision of section 13 of the act. a new subsection 3(a) has been added from 11.11.2004, requiring bank to communicate to the borrower reasons for non acceptance of the objection raised by the borrower. This lays down the time limit of 7 days for communicating reasons for non- acceptance of objection of the borrower. ¹⁸

➤ **Section 13(4) Debt recovery without intervention of court**

In case if the borrower fails to discharge his liability in full within the period of 60 days demand notice, the bank may take the following measures to recover his secured debts: -

- a) Take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale.
- b) Take over the management of the secured assets of the borrower including the above right for realising the secured assets.
- c) Appoint any person as a manager to manage the secured assets.
- d) Require any time by notice in writing to any person to pay the bank so much of the money as is sufficient to pay the secured debt. (person who has to pay money to the borrower)

➤ **Procedure for taking possession of movables**

Rule 4 of the Security Interest (Enforcement) Rules 2002 prescribe the procedure for taking possession of movable properties, making inventory of such properties.

If the amount mentioned in the demand notice is not paid within the specified time i.e. (60 days), the authorised officer of the bank can take possession of movable property.

- Authorised officer should take possession of such movable property in presence of two witnesses after a Panchanama drawn & signed by the witnesses.

- He should make an inventory of the movable property as nearly as possible & deliver a copy of such inventory to the borrower or his representatives.
- He should take care of the property under his possession as an owner of ordinary prudence, preserve them.
- Protect the secured asset and continue insurance till they are actually sold.

The act provides that, if the property is subject to natural decay the authorised officer can sell it at once. On payment of sale price the authorised officer shall issue a certificate of sale in prescribed form to the purchaser of the property.

Rule 8 provides the procedure for taking possession & sale of immovable property. Secured creditor is required to serve a possession notice as nearly as possible to the borrower. This notice should be served by affixing on the outer door of the borrower or at conspicuous place at the property.

Possession notice is also required to be published in two leading newspapers one of which shall be in vernacular language, by the authorised officer of the creditor. The language of notice must be understood by the borrower.

The authorised officer is required to take step to preserve & protect the property & insure them if necessary. He has to obtain valuation of the immovable property before sale. He can fix the upset price after consulting bank & sell it by any methods permitted under clauses to sub rule (5) of rule 8. Authorised officer should give notice of 30 days before sale of immovable property. The following are the methods of selling: -

1. Sale by obtaining quotations.
2. Sale by inviting tenders from the public.
3. Sale by holding public auction.
4. Sale by adopting private treaty.

If secured creditor is adopting the selling of immovable property by public auction or inviting tenders from public, then notice should be published in two leading newspaper. One of them must be in vernacular language. This notice should include the following details: -

- 1) The description of the immovable property to be sold & all details of encumbrances known to the secured creditor.
- 2) The amount of secured debt for recovery of which the property is to be sold.
- 3) Upset price, below which the property may not be sold.
- 4) Time & place of public auction.
- 5) Amount of earnest money to be deposited must be stipulated.

The immovable property can be sold to that purchaser who has offered the highest sale price in his bid or tender or quotation. But the authorised officers can sale it for the lower price with the consent of the borrower & secured creditor. After sale of immovable property, the purchaser should pay a deposit of 25 % of amount of the sale price to the authorised officer. Remaining balance amount of purchase price should be paid on or before the 15th day of sale of immovable property, other wise the sale may be canceled.

➤ **Section 13(4) Taking over management.**

U/s 13(4)(b) Secured banks and FI's may take over the management of business of borrower including the right to transfer by way of lease, assignment or sale & realise the secured assets.

U/s 13(4) (c) The secured banks have powers to appoint any person to manage the secured assets whose possession is taken over by the secured creditor. The Board of Directors may appoint any person as manager in consultation with the borrower.

Section (4) (d) empowers a Banks to ask money by sending notice to any person who owes money to the borrower for any secured asset

acquired from the borrower. Thus it is clear that section 13(4)(d) is very important weapon provided to the bank or FI's for recovery.

➤ **Section 13(7) Cost, charges and expenses.**

When Bank takes action against the borrower who fails to discharge his liability in full then it may recover the cost, charges & expenses incurred by the bank or FI's. They can be recoverable from the borrower by debiting to his account.

➤ **Section 13(8) Redemption of Mortgage.**

Under this section a borrower can redeem the mortgage deed kept with the bank & financial institutions. It means if borrower paid the due amount to the creditor, he can take back his property, which was secured with the secured creditor. This right of redemption is available to any borrower who has created secured interest on movable or immovable property.

➤ **Section 13 (10) Application for amount not settled**

In cases where bank and FI's not satisfied or settle the account by the sale of mortgaged property, they can claim the balance amount by filing an application before DRT or a civil court for claiming the balance amount from the borrower.

➤ **Section 13(11) Action against guarantor and sale of pledge goods.**

The banks and FI's may have security by way of pledge of movables or guaranties of any person for the due amount of the loan. Such secured creditor can sale the pledged goods & proceed against the guarantor to recover the loan amount.

➤ **Section 13(12) Power to Authorised Officers**

This section provides that secured creditor /banks can give the authority to exercise the powers to its senior officers. The authority to enforce the security should be given by board of directors to banks officers. These officers are the authorised officers of banks under this act.

➤ **Section 13(13) Restriction To Transfer The Asset**

This provision restricts the borrower to transfer by way of sale, lease the secured asset after receipt of demand notice u/s 13(2) by the secured creditor. Before transferring or selling he should take prior written consent of the secured creditor. Therefore only serving the notice u/s 13 (2) is equivalent to the injunction order to restrain the borrower from transferring the asset under this Act. But this Injunction Order is not due to court of law but due to secured bank .

➤ **Section (14) Assistance from CMM and DM**

Some times secured creditor i.e. bank can not get possession of secured property even after serving the legal notice u/s 13(2) & 30 days notice due to pressure of borrower or any other reason.

In such cases bank can apply in writing to Chief Metropolitan Magistrate or District Magistrate to assist in taking possession secured asset u/s 14(1) of the act.

This provision enables secured creditor to take assistance of Chief Metropolitan Magistrate & District Magistrate in taking possession of secured asset. The act of taking possession will be done by a judicial authority. This is also one of the important provisions under SARFAESI Act to enforce security interest, especially in villages where the secured property is situated. Because there political influence & other leadership causes create the hurdles in taking possession to the secured creditor.

➤ **Section 15 and 16 Effect of Takeover of Management.**

It refers to the manner and effect of take over of management of business of borrower by SC or ARC, or by secured creditors. Before taking over the management the secured creditors / bank should publish a notice in English language and any other Indian language and circulated in place where the office of the borrower is situated.

Section 16 provides for effect of take over of management of the business of borrower. The director or any other person is not entitled to any compensation from secured creditors for the loss of his office, salary, any dues by the borrowers.

➤ **Section 17 Right to application to DRT.**

Any borrower aggrieved by any of measures referred to in 13(4) taken by the secured creditor or authorised officer may make an application along with prescribed fee to the DRT having jurisdiction within 45 days from the date of such measures had been taken.

The DRT after accepting the application by aggrieved person, it shall consider whether any of measures u/s13 (4) taken by secured creditor are in accordance with the provision of SARFAESI Act & rules of this act or not? DRT will examine the facts & circumstances of case. If it proved that the measures referred by secured creditor u/s 13(4) are not according to act or rules, DRT may order the secured creditor to restore the possession & restore the management of secured asset to the borrower. So bank should follow the proper procedure in serving the notices and taking possession of movable and immovable property.

DRT should dispose the case within the 60 days from the date of such application. It may extend the said period to maximum four months by recording the reasons in writing, but the reason must be genuine.

If the said application before DRT is not disposed within the extended period of 4 months, any of the party to the application may

make an application in prescribed form to the DRAT for directing the DRT for quick disposal of the application pending before it.

➤ **Section 17(2) Pre-deposition of Amt. Before the application.**

Where a borrower prefers an application, the DRT should not entertain an application if the borrower has not deposited 75 % of the amount claimed in the notice under 13(2) of SARFAESI Act . This section of the act is declared as unconstitutional & amendment is made in this regard. The reason behind this is given below.

➤ **Why SC declares section 17(2) as unconstitutional?**

Condition of depositing 75 % of the claim amount is invalid. The Supreme Court upholds the constitutional validity of this act. It declares sub section 17(2) is invalid in the case of Mardia Chemicals Ltd.V/S Union of India (2004) .It held that the section 17(2) is unreasonable & constitutionally invalid, because it violates the constitutional right.

Hon. SC observed in this case that proceeding u/s 17 of the act in fact is an initial action brought before the forum by the borrower. It is the stage of initial proceedings like filing a suit in civil court & not the appeal.

Already borrower suffers from loosing the possession & management of the secured property. Where the possession & management of the secured asset has already been taken over, it is unreasonable to ask him for deposit of 75 % of the amount claimed before entertaining the grievance of the borrower. So the requirement of deposit of 75 % of the amount of claim before initiating the proceedings violates of article 14 of the constitution.

Thus Supreme Court declared section 17(2) as constitutionally invalid in Mardia Chemicals Ltd. v/s Union of India case. At present the discretionary powers are given to the DRT to fix the amount of deposit

to be filled with an application before DRT. It may fix the amount of predeposition by the applicant.

➤ **Section 18 Appeal to DRAT**

Any person aggrieved by any order made by the DRT u/s 17 may prefer an appeal to an Appellate Tribunal within 30 days from the date of receipt of the order of the DRT.

Section 18(2) provides that such appeal shall be decided in accordance with the provisions of the Recovery of Debts Due to Banks & FI's Act 1993 & rules made there under.

Fees may be prescribed for the borrower in the discretion of Tribunals for the filing an appeal in DRAT. There is no requirement of pre-deposit of 75% in respect of appeals u/s 18 of SARFAESI Act. New amendment is made to section 18 & provided that appeal shall be entertained only after the borrower has deposited with the DRAT 50 % of the amount of debt due from him as claimed by the secured creditor or as determined by DRT. Here also discretion to reduce the amount of pre-deposit is given to DRAT by recording the reasons for it in writing.

➤ **Section 19 Award of Compensation and Cost**

This section deals with that situation where the application or appeal comes before DRT or DRAT & if proved that the possession of the secured asset of the borrower by the Bank is not accordance with the provisions of this act. Then the DRT or DRAT directs the bank and FI's to return such secured asset to the borrower, along with the compensation & cost if borrower suffers. This section protects the interest of borrowers.

➤ **Conclusion**

Thus the secured interest created in favor of any secured creditor may be enforced under the act without intervention of the court or tribunal. When account is classified as NPA, the secured creditor i.e. bank may require the borrower to discharge his full liabilities within 60 days from the notice served u/s 13(2) of this act. If borrower failed, the bank can take possession of secured assets, take over the management & can appoint a manager to manage the secured assets.

This SARFAESI Act is really a bold step taken by Govt. of India in the right direction to reduce the NPA level. The wide powers given to banks and FI's for enforcement of securities and Assets reconstruction Companies will definitely manage the NPA's in future years.

Now Co-op banks are also covered under SARFAESI Act as they are also suffering from recovery problems. Urban Co-op Banks also taking benefit of SARFAESI Act to recover its NPA's by enforcing its security interest against defaulters. If proper procedure under the act is followed and the notices u/s 13(2) are served to all NPA's accounts without hesitating, the bank can maintain standard NPA's level.

REFERANCES

1. Umarji M.R. – “Law & Practice Relating to SARFAESI ACT - Recovery of Dues Due to Banks & FI’s” - 3rd edition 2004 - Published by Taxman Allied services Pvt. Ltd New Delhi . - Pp1 to 9,27, 166 to 220. (Ref. 15,16,17,18)
2. Prof K.Elumalai – (1) “Financial Sector Reforms & its impact on Co-op eratives” (2) “Civil procedure code” – Programme Report – Published by Vaikunthbhai Mehata Institute ,Pune Sept 1997 . - Pp1 to 11and 112 to 117 respectively.
3. RBI Report on Trend & Progress of Banking in India 2003-2004, 2004-2005
4. Prof .K. Elumalai – “Regulation of securitisation & Recovery of Financial assets of bank & FI’s.” - Programme Report on Recovery Management. June 2005 Pp.133to 143.
5. Rarvikar Ashuthosh “Securitisation Act : Boon to banks” – CAB calling April-June 2003 Vol. 26 no 2 Pp—10 to 16.
6. G.S. Hegde “CT Scan report of SARFAESI Act” July – Sept 2004 Vol.28 no 3 - Pp 11 to 14
7. S. Natrajan & R. Parameshwaran. - “Indian Banking” - Published by s. Chand & co Ltd , New Delhi.2002. pp. 285 to 286.
8. “Southern Economist” - Feb-2006. Pp.13 &14.