CRITICAL APPRAISAL OF EFFICACY OF SARFAESI ACT 2002

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Abstract

The Pre-SARFAESI Regime was absolutely Pro-Debtor and NPA had piled upto the stage of being described as a debt bomb. SARFAESI Act 2002 sought to reverse these state ofd affairs by legally empowering the secured creditors to take measures for enforcement ofd security interest without intervention of courts and to a great extent proved itself as a potent weapon for recovering the NPA's. It is therefore appropriate time now to take an appraisal of Efficacy as well as obstacles in implementation of SARFAESI Act 2002.

Keywords- Debt Recovery, Creditors Protection, Security Interest

1. Introduction

A valid debt is set of reciprocal promises obliging the Debtor to repay to the Creditor the principal along with interest before stipulated date, failure in which entitles the creditor to recover debt, Take possession of collateral. The laws relating to "Debt recovery" and "Enforcement of security interest" determine the overall nature of a country's Creditor's Protection Regime. In modern democratic and human rights era, the state is obligated to protect the rights of both Creditor and Debtor for assuring economic justice to both the parties. In the event of default in repayments, the quantum of Non Performing assets pile up, leading to blocking up of bankers funds which would otherwise be available for lending. Private Bank's NPA impact it's investors, whereas a Public Sector Banks NPA affects the economy as a whole. Therefore it is imperative for any country to have an effective "Creditors Protection Regime" in place so that NPA's could be kept to minimal.

Speedy debt recovery is important because in case of Public Sector bank's unrecovered debts - it is the Government's money, and in case of Private Sector bank's unrecovered debts- it is the capital contributed by millions of investors. Therefore in both the cases - public money is blocked which otherwise could be used for developmental projects. For economic development - Resource generation and Resource mobilization are of immense importance and therefore the unrecovered NPA means depletion of valuable national resources.

2.Concepts of Security Interest Law -

2.1 Meaning of Security Interest -

The New Shorter Oxford English Dictionary[1] gives the meaning of security as "Property etc. deposited or pledged by or on behalf of a person as a guarantee of the fulfillment of an obligation (as an appearance in court or the payment of a debt) and liable to be forfeited in the event of default". Security is that which fortifies or makes more secure a person's undertaking, particularly to pay or repay money[2]. The Kerala High Court in *Palai Central Bank v. Jacob P. Cherian*[3] observed that "Security interest is that which makes the money more assured in its payment or more readily recoverable.

2.2. Types of security interests which can be created, perfected and enforced in India

Classification	Type	Sub-type	Arises by	Basis
Nonpossessory	Mortgage	Legal Mortgage	By agreement	Law
Nonpossessory	Mortgage	Equitable Mortgage	By agreement	Law
Nonpossessory	Charge	Fixed charge	By agreement	Equity
Nonpossessory	Charge	Floating charge	By agreement	Equity
Nonpossessory	Charge	Pledge	By agreement	Equity
Possessory	Charge	Contractual lien	By Operation of Law	Law
Possessory	Hypothecation	Hypothecation	By agreement	Equity

2.3 Meaning of Security Interest Law :

Security Interest law is known by various names i.e. Security Interest Law, Collateral Law, Secured Lending Law etc. Law of Security interests has three facets, namely- 'Creation', 'Perfection' and 'Enforcement' of security interest . The " Creation aspect "

[1] 4th Edition, 1993, Oxford, Vol. 2 p.2754
[2] The Oxford Companion To Law by David M. Walker 1980, p.1126
[3] AIR 1963 Kerala 128, 134

DOI : 10.21904/weken/2018/v3/i2/170811

deals with creation of charge in the asset, **"Perfection aspect"** deals with putting public to notice about the security interest such that those dealing with the secured asset are kept aware of security interest and **"Enforcement aspect"** deals with taking action in pursuance of the security interest. The laws dealing with these 3 aspects are collectively called as "Security interest law". In most of the countries "Security Interest Law" is scattered in different legislations. In India too, the security interest law is scattered in different legislations and most of the common law countries have similar security interest laws. UNCITRAL legislative guide on "Security interest law" is an attempt to persuade all member countries to have effective and swift "Security interest laws " in place.

2.3 Evolution of Security Interest Law in India :

It is evident that money lending existed in the ancient Vedic period, i.e., 2000 to 1400 BC. Chapter II of Yadnyavalkya Smriti contains detailed code on execution of Pledge and execution of Mortgages. Existence of professional banking in India could be traced to 500 BC. Kautilya's Arthashastra, which dates back to 400 BC contained references to Creditors, Lenders and interest rates. During the ancient period - repayment of debt was considered legal as well as the pious obligation of the debtor. Manusmriti Discourse VIII –Section XII verse 49 even conferred sweeping powers of recovery of debts on the creditors and recovery through moral suasion, by filing suit of law, by artful management, by customary proceeding, by force was justified. The modern law relating to Creditor-Borrower relationship was institutionalized during the British Rule and rationalized by India's commitments at international level like UDHR, ICCPR, and WTO etc. The post 1990s mandate of new economic policy necessitated the reforms as the then prevailing legal regime was not swift, expeditious and effective for early recovery of the debts. There was no level playing field and therefore the foreign investors were scared to invest their funds in India. The adjudication process of claims before civil courts consumed valuable time and resources, advances were defaulted and Non Performing Assets (NPAs) had piled up. Therefore In year 1990-91, Narasimham Committee pointed out that high NPAs and Judicial delays were the major obstacles speedy recovery. Based on the Committee's recommendations, Recovery of Debts Due to Banks and Financial Institutions Act 1993 was passed which envisaged a summary procedure for swift debt recovery and reduced the time span for adjudication of dues. However despite the passing of RDDBFI Act 1993, there was no substantial recovery of NPA figures. Therefore Andhyarujina Committee in year 2000, suggested changes in the then prevailing legal regime by enacting laws for speedy recovery of the debts on the lines with State Finance Corporations Act 1951. Andhyarujina Committee recommended for enacting law conferring powers to banks and financial institutions similar to that of statutory financial corporation's for taking possession and sale of secured assets of without the intervention of court. By this time –

1. The law relating to enforcement of security interest was scattered in different legislations
2. Barring few Acts like State Financial Corporation Act, there was no law which legally empowered the Secured Creditors to take possession of secured assets without decree of foreclosure.
3. The then prevailing legal system was not effective for swift recovery of the debts and enforcement of security interests.
4. Recourse to legal procedures for recovery of debts and enforcement of security interest was not only time - consuming but was also expensive.
5. Figures of accumulated NPA had reached a high water mark that scholars had described the state as a "Debt-bomb."
6. Foreign investors were apprehensive of investing their funds in India and there was no level playing field for foreign entrants in case of banking business.

Therefore, due to all these compelling reasons the SARFAESI Act 2002 was passed.

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3. Salient features of SARFAESI Act 2002

3.1 Preconditions for invoking the provisions of SARFAESI Act 2002-

1. There shall be a default committed by the borrower, in excess of Rs.100000/- & outstanding principal amount is in excess of 20 %
2. As a result of default, his account is classified as NPA by the secured creditor-
3. The debt must be a secured debt,
4. "Security interest" is a recognized security interest within the meaning of Section 2 (zf) and is not excepted under Section 31,
5. Creditors are "secured creditor" within the meaning of Section 2 (zd)

Only then the secured creditors to whom the SARFAESI Act 2002 applies can enforce the security interests as per the manner prescribed under the Act.

3.2 Critical appraisal of SARFAESI Act 2002 :

"Creditors' Protection Regime" implies that Creditors are legally empowered both in terms of "Substantive Legal Right" and "Swift Adjudicatory Process". SARFAESI Act 2002 for the first time defined security interest and made provision for registration and enforcement of security interest. Section 13, 14, 15, 26 E of SARFAESI Act 2002 confers substantive rights on the secured creditors whereas Section 17 & 18 provide for Adjudicatory Mechanism. Civil Courts jurisdiction is ousted by virtue of Section 34 whereas the Act has been given overriding effect over other laws by virtue of Section 35. Thus these sections have direct relation with the object of SARFAESI Act i.e. to strengthen " Creditors Protection Regime ."

I. Substantive rights conferred on the secured creditors :

Section 13 is the core provision of SARFAESI Act 2002 which legally empowers the secured creditors ,without having to obtain a foreclosure decree to take measures for enforcement of security interest as per clause 4 i.e.-

1. Take possession of the secured asset,
2. Sell the secured asset, for realizing secured asset,
3. Assign the secured asset, for realizing the secured asset,
4. Lease the secured asset , for realizing the secured asset,
5. Take over the management of the business of the borrower,
6. Appoint any person as manager to manage the secured asset.

Section 14, Section 15 and Section 26E are complementary to Section 13. Section 14 enables the secured creditors to make an application to District magistrate / Chief Metropolitan Magistrate to assist in taking possession of secured asset or the documents relating to the secured asset. Section 15 lays down the manner in which to take over the management of the business of the borrower and Section 26 E lays down that subject to the provisions of Insolvency and Bankruptcy Code 2016 - the claim of secured creditors under SARFAESI Act 2002 will prevail over all other claims.

II. Adjudication and Appellate Mechanism :

In case of dispute between the borrower and the secured creditor arising out of enforcement of security interest, the adjudication machinery is provided under section 17 where the Debt Recovery Tribunal is obligated to dispose of the Application within 60 to 120 days. An appeal from the determination of Debt Recovery Tribunal lies to Debt Recovery Appellate Tribunal under section 18 and it is also obligated to dispose of the appeal within a period of 180 days.

III. Other provisions :

Chapter II of the Act, from section 3 to 12 – contains regulatory provisions relating to asset reconstruction companies who are assignee of debts. Chapter IV i.e. Section 20 to 26D deal with provisions of Central Registry. Civil Courts jurisdiction is ousted by virtue of Section 34, whereas the Act has been given overriding effect over other laws by virtue of Section 35. Section 37 provides that the provisions of SARFAESI Act shall be in addition and not in derogation of Companies Act 2013, SEBI Act 1992 , RDDBFI Act 1993 and any other law for the time in force.

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3.3 Legislative Scheme of SARFAESI Act 2002 :

Although the Act has limited in application, yet contains significant provisions which confer substantive rights on the secured creditors which were not available earlier. For comprehensive understanding of the legislative scheme of the Act, important provisions of the Act are recapitulated as follows-

Section No.	Provision
Section 13(1)	Notwithstanding anything contained in Section 69 / 69 A of Transfer of Property Act 1882, any security interest created in favour of secured creditor may be enforced without the intervention of the court or tribunal,
Section 13(2)	On default in repayment of debt by the Borrower - classification of debt as NPA by Secured Creditors in accordance with NPA Guidelines of RBI .
Section 13(3)	Notice by Secured Creditor requiring the Borrower to discharge liability in full within 60 days. Notice to give details of the amount payable.
Section 13(3)A	Acceptance or rejection of borrowers objections by Secured Creditor within 15 days .
Proviso to Section 13(3)A	Reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17 or District Judge under Section 17A.
Section 13(4)	Measures for enforcement of security interest by the Secured Creditor on borrowers failure to pay after notice**. i.e.** To take possession of Secured Asset, Takeover the management of business of the Borrower, Appoint any person to manage the business of the Borrower, Require the acquirer of secured asset from the borrower to pay the amount of debt.
Section 13(5)	Valid discharge to any person owing money to borrower making payment to Creditor .
Section 13(5)A	It is lawful for authorized officer to bid on behalf of secured creditor if there is no bid of amount more than Reserve Price .
Section 13(5)B	Adjustment of amount of claim against purchase money if secured creditor purchase in in Auction
Section 13(6)	Transferee of secured asset to gets valid title.
Section 13(7)	Costs and expenses incurred by secured creditor have first charge in payment.
Section 13(8)	No Sale or Lease of secured asset if amount due and costs are paid by the borrower b efore date of publication of notice for public auction.
Section 13(10)	Application to DRT if dues of secured Creditor are not fully satisfied by sale proceeds of secured assets.
Section 13(11)	Secured Creditors may proceed against guarantors or sale pledged goods without first taking any measures under 13(4)
Section 13(12)	Authorized Officers may act on behalf of Secured Creditors and exercise powers under 13(4)
Section 13(13)	Borrower is prohibited to transfer secured assets after notice under section 13(2) without prior written consent of the secured creditor.
Section 14(1)	Application for assistance to DM / CMM in taking possession of Secured Asset.
Section 14(2)	Magistrate's suitable orders within 30 days and necessary steps and use of forc e by DM/CMM for securing compliance.
Section 15(1)	Appointment of Directors by secured Creditor after take over of Management.
Section 17(1)	Application by aggrieved by measures under section 13(4) to DRT within 45 days.
Section 17(3)	DRT on finding that 13 (4) measures are not according to Section 13(4) may declare recourse to 13(4) measures invalid, restore the possession of secured asset to borrower , restore the Management of the Borrower and pass other direction as it may consider appropriate.
Section 17(4)	Secured Creditor may take 13(4) measures if DRT declares them to be in accordance.
Section 17(4Ai)	DRT may determine whether lease or tenancy has expired or is contrary to Section 65A of TP Act 1882, or is contrary to terms of mortgage or is created after issuance of notice of default.
Section 17(4Aii)	If DRT is satisfied that lease or tenancy has expired or is contrary to Section 65A of TP Act 1882,or is contrary to terms of mortgage or is created after issuance of notice of default- it may pass an order as it deems fit in accordance with provisions of the Act.
17(5)	Application to be disposed of by DRT within 60 to 120 days.
Section 18(1)	Aggrieved by order under section 17, appeal to DRAT within 30 days.
Section 34	Civil Courts not to have jurisdiction in respect of any matter which DRT / DRAT is empowered by or under this Act.
Section 35	SARFAESI Act 2002 to override other Laws.
Section 37	Provisions of SARFAESI Act are in addition to and not in derogation of other Acts, therefore application of other laws not barred.

3.4 Procedural Mechanism for Enforcement of Security Interest : Section 12 of SARFAESI Act 2002 empowers the Reserve Bank of India to determine policy and issue directions. The delegated legislation in the form of the Security Interest Enforcement Rules 2002 complements the provisions of SARFAESI Act 2002. These rules framed under SARFAESI Act 2002 along with SARFAESI Act 2002 govern in totality the procedural mechanism for enforcement of security interest.

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Relevant Section and Rules	Procedural mechanism for enforcement of security Interest as per SARFAESI Act 2002 and SARFAESI Rules 2002
Sec 13 (12) read with Rule 2(a)	Bank or Financial Institution to give a Power of Attorney / Letter authorizing its concerned official to take steps under the Act.
Sec 13(2) read with Rule 2(b) & 3	Sending of Demand Notice for enforcement of Security Interest.
Rule 3(1)	Notice can be sent by Registered Post or Speed Post or Courier or Fax or E-mail
Proviso to Rule 3 (1)	If Borrower avoids notice, service shall be made by affixing the notice in some conspicuous place of his residence/ business and by publishing the notice in two leading newspapers, one in a vernacular language having sufficient circulation.
Rule 3(4)	If there are more than one Borrower (including guarantor), then individual notice to be served on each of them.
Section 13(3A)	In case any reply/representations are received, the Bank to suitably adjudicate upon and decide.
Section 13 (4)	Issue Notice for taking possession of Secured Asset and take symbolic possession of the Secured Assets.
Section 14(1)	File an application before the Chief Metropolitan Magistrate or District Magistrate for taking actual possession of the property
Section 14 (2)	Comply with the order of the Chief Metropolitan Magistrate / District Magistrate and liaisoning with the Court Receiver, Police authorities, etc.
Rule 8(1)	After taking the possession a notice in terms of Appendix IV will be sent to the Borrower, which shall also be affixed on the Property.
Rule 8(2)	The said notice shall also be published in two leading newspapers one in vernacular language within 7 days.
Rule 8 (1)	Name of Bank/FI to be displayed on the Property.
Rule 8(4)	Insurance cover to be arranged
Rule 8(4)	Security Guards to be deployed at the site of the Property.
Rule 8(5)	Valuation of property by an approved valuer before effecting the sale
Rule 8 (6)	Serve on the Borrower a notice of 30 days for sale.
Rule 8(5)	Obtaining Quotations / Inviting tenders / Holding Public Auctions / Signing Private Agreement for sale of the property.
Rule 8(6)	If sale is by way of inviting tenders from public or holding of public auction, a public notice to be published in two leading news papers one in vernacular language, having sufficient circulation, setting out the terms of the sale.
Rule 8 (7)	Notice and Publications to be affixed on conspicuous part of the property and put on the website of the Bank / Financial Institution.
Rule 8 (8)	Sale other than public auction/tender to be on terms settled between the parties in writing,
Rule 9(2)	Sale to be confirmed in favour of highest bidder
Rule 9(2)	No sale to be confirmed on less than reserve process. However sale at less than Reserve price can be made with the consent of Borrower
Rule 9(5)	25% of the sale price to be deposited forthwith and balance within 15 days) otherwise the deposit would be forfeited and the property may be resold.
Rule 9(6)	Sale of Property to be made effective from execution of Sale Deed and If the terms of payment have been complied with , the Bank / Financial Institution shall issue a certificate of sale in favour of the purchaser. The certificate of sale to specify whether the property is free from encumbrances known to the Bank
Rule 9(6)	Acknowledgement is to be taken from the buyer of having taken over the physical possession of property.

4. Changes brought about by SARFAESI Act 2002 :

The Pre-SARFAESI Regime for Debt Recovery and enforcement of security interest was not swift and effective and was largely a pro-debtor. SARFAESI Act 2002 with provisions for enforcement of security interest as explained in detail earlier brought about a sea change in secured creditors protection and strengthened the Creditor's Protection Regime. Following changes are brought about by SARFAESI Act 2002 –

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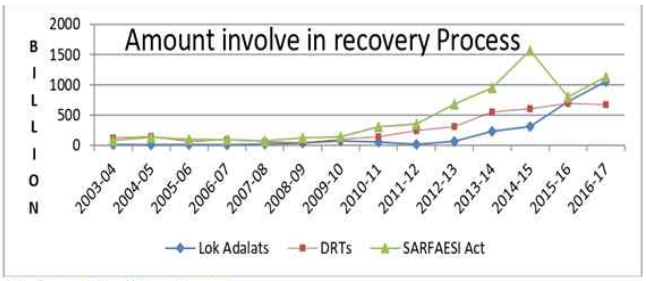
1. In the Pre-SARFAESI stage, provisions relating to enforcement of security interest were scattered in different laws- there was no single consolidated law which defined security interest and provided for its enforcement without having to file suit for foreclosure in courts of law. SARFAESI Act 2002 for the first time comprehensively defined security interest and provided for swift measures of enforcement of security interest without the requirement to file a suit for foreclosure.

2. The legal right to take Extra-judicial possession of secured asset is conferred on the creditors by SARFAESI Act 2002 and therefore is a significant milestone in enhancing creditor's protection. Earlier only under few legislations like State Financial Corporations Acts- this right was available only to statutory financial corporations, but SAEFARESI Act 2002 has empowered all the notified Banks and Financial institutions to take possession of the secured asset without the requirement of filing suit for foreclosure.

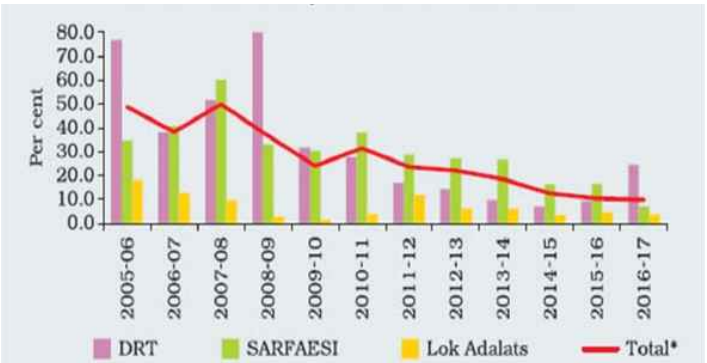
3. SARFAESI Act 2002 has ushered a new era of creditor rights and for facilitating taking possession of secured asset swiftly has for the first time empowered the secured creditors to seek assistance of the Chief Metropolitan Magistrate or the District Magistrate for taking possession of the secured asset.

4. SARFAESI Act 2002 also empowers the secured Creditors to take over the management of business. When the management of business of a borrower is taken over by a secured creditor it can appoint as many persons as it thinks fit to be the directors, and after such take over shareholders of such company cannot nominate or appoint any person to be director of the company; Resolutions passed shall be operative only after approval by the secured creditor.

5. As an economic legislation, SARFAESI Act 2002 has proved itself effective as compared to other means of recovery like Lok-adalat DRT under RDDBFI Act 1993 and proved itself a potent weapon to reduce the menace of NPA. Despite it's limited application, following recovery statistics clearly demonstrate the immense contribution of SARFAESI Act 2002 in recovering NPAs.



Data Source: https://dbie.rbi.org.in



*: Recovered amount as percentage of outstanding amount under various recovery channels.

Source: Statistical Tables Relating to Banks in India and Report on Trend and Progress of Banking in India.

NPAs of Scheduled Commercial Banks Recovered through Various Channels

(Amount in ₹ Billion)

Year	Sr No.	Recovery Channel	Lok Adalats	DRTs	SARFAESI Act	Total
2012-13	1	No. of cases referred	840691	13408	190537	1044636
	2	Amount involved	66	310	681	1057
	3	Amount recovered*	4	44	185	233
	4	3 as per cent of 2	6	14	27	22
2013-14	1	No. of cases referred	1636957	28258	194,707#	1859922
	2	Amount involved	232	553	953	1738
	3	Amount recovered*	14	53	253	320
	4	3 as per cent of 2	6	10	27	18
2014-15	1	No. of cases referred	2958313	22004	175355	3155672
	2	Amount involved	310	604	1568	2482
	3	Amount recovered*	10	42	256	308
	4	3 as per cent of 2	3	7	16	12
2015-16	1	No. of cases referred	4456634	24537	173582	4654753
	2	Amount involved	720	693	801	2214
	3	Amount recovered*	32	64	132	228
	4	3 as per cent of 2	4	9	17	10
2016-17	1	No. of cases referred	2152895	28902	80076	2261873
	2	Amount involved	1058	671	1131	2860
	3	Amount recovered*	38	164	78	280
	4	3 as per cent of 2	4	24	7	10

* Source : RBI- Report on trends and progress of Banking in India.

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5. Obstacles in implementation of SARFAESI Act 2002 :

Despite the empowering provisions of SARFAESI Act, the Act is essentially limited in it's application and cannot be called a comprehensive security interest law dealing with all three aspects of creation, perfection and enforcement. SARFAESI Act 2002 deals with 'perfection' and 'enforcement' aspect of security interest but 'creation' aspect of security interest is still scattered in different legislations. The adjudication and implementation mechanism under SARFAESI Act 2002 has not kept pace with the provisions conferring substantive rights on the secured creditors and have partly failed the Act in implementation process. Despite the empowering provisions of SARFAESI Act, the Act is essentially limited in it's application and cannot be called a comprehensive security interest law dealing with all three aspects of creation, perfection and enforcement. SARFAESI Act 2002 deals with 'perfection' and 'enforcement' aspect of security interest but 'creation' aspect of security interest is still scattered in different legislations. The adjudication and implementation mechanism under SARFAESI Act 2002 has not kept pace with the provisions conferring substantive rights on the secured creditors and have partly failed the Act in implementation process.

Section 14 of the Act was in fact meant to enable the secured creditors to take swift possession of the secured assets, however in reality, either the application to District Magistrate / Chief Metropolitan Magistrate are not disposed of in time or execution of the disposed of applications is not done expeditiously. It has partly frustrated the object of conferring powers on secured creditor to take possession of the secured asset under section 13 (4). Section 17 (5) mandates that the application to the Debt Recovery Tribunal should be disposed of expeditiously within 60- to 120 days and Section 18(2) mandates that the appeal to Debt Recovery Appellate Tribunal should be disposed of within 180 days. However in practice, application and appeal both are not disposed of within stipulated period of time and therefore the SARFAESI Act 2002 is partly failed due to delays in executive, adjudicatory and appellate proceedings.

As on 31-12-2015- total of 69,658 original applications were pending before 33 Debt Recovery Tribunals in the country and total of 2938 appeals were pending before 5 Debt Recovery Tribunals in the country.[4] The number of pending cases shows increase in comparison to 42819 (as on 31-03-2013) 50128 (as on 31-03-2014) and 62250 (as on 31-03-2015). The number of pending appeals shows decrease in comparison to 3405 (as on 31-03-2013) and 3197 (as on 31-03-2014) but shows an increase once again in comparison to 2662 (as on 31-03-2015). With an average disposal rate of 11,000 cases per year, it was estimated that it would take about six to seven years to clear this backlog of cases and therefore six (6) new debt recovery tribunals were established.

Even thereafter, as on 30-06-2017- there were about 1, 09,598 cases pending before Debt Recovery Tribunals with recovery dues of Rs 635,500 crore. This reveals that there is consistent increase in the number of pending cases during the period 2013 to 2017 and the average number of cases disposed of each year has not improved significantly. Due to piling up of undisposed of cases and newly filed ones under all 3 Acts – the number of pending cases is more likely to increase and impact on adjudication and appellate mechanism under SARFAESI Act 2002 which is otherwise intended to be swift and expeditious.

6. Conclusions :

It may be concluded that –

1. SARFAESI Act 2002 has legally empowered the secured creditors by conferring power to take possession of secured asset without the requirement to file civil suit for foreclosure,

[4] Reply by Minister of State (Finance) , Un-Stared Question No. 1570 , Lok Sabha (04-03-2016)

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2. Measures for enforcement of security interest, Enabling provision of seeking assistance of District Magistrate for taking possession of secured asset and, Enabling provision of takeover of management legally empower the secured creditors and strengthen the Creditors Protection Regime in India,

3. The delegated legislation in the form of SARFAESI Rules 2002 , complements SARFAESI Act 2002 and has ensured swift procedural mechanism for enforcement of security interest.

4. NPA Recovery statistics demonstrate the utility of SARFAESI Act 2002 as an economic legislation and has contributed in strengthening the creditor's protection regime in India.

5. The implementation, adjudication and appellate mechanism under SARFAESI Act 2002 has not kept pace with the provisions conferring substantive rights on the secured creditors and have partly failed the Act in the implementation process.

7. Suggestions-

Objectives for the enactment of SARFAESI Act are partly fulfilled as there are obstacles in implementation of the Act and therefore following steps may prove helpful for making SARFAESI Act 2002 more effective-

1. The present number of debt recovery tribunals is not proportionate to the number of pending cases and therefore for expeditious disposal of applications – the number of Debt Recovery Tribunals should be suitably increased on urgent basis,

2. The scope of SARFAESI Act 2002 should be widened to include agricultural land within the meaning of enforceable security interest under section 2zf of SARFAESI Act 2002,

3. Provisions of SARFAESI Act 2002 should be made applicable to the security interest in agricultural land situated in all urban and metropolitan areas,

4. The law relating to Willful Default needs to be given statutory basis and consolidated in SARFAESI Act 2002 to legally empower the secured creditors and make the enforcement of security interest meaningful and effective,

5. SARFAESI Rules should be suitably amended to ensure that reserve price is fixed in fair and transparent manner. RULE 8 (5) (d) Of Security Interest (Enforcement) Rules 2002 may be modified to insert the words " E Auction " so that best market value can be realized for the secured asset which may eventually enable maximum amount of refund of surplus to the borrower after sale of secured asset,

6. New provision in Section 14 should be inserted to mandate timely disposal of Applications for seeking assistance of Magistrate in taking possession stipulating a period of two months for disposal of the application under Section 14.

References-

1. M.R.Umarji, Law & Practice Relating to Securitisation& Reconstruction of Financial Assets & Enforcement of Security Interest, Taxmann, (2006) 4th Edition.

2. M.R.Umarji, Law & Practice Relating to Securitisation& Reconstruction of Financial Assets & Enforcement of Security Interest, Taxmann, 6th Edition, 2014.

3. Vinod Kothari, Securitisation, Asset Reconstruction & Enforcement of security Interests : Lexis Nexis, 4th Edition, 2013.

4. K. PandurangRao, Law relating to Debt Recovery Tribunals , Asia Law House, 8th Edition, 2017.

5. Justice Srivastava A.B., Securitisation& Debt Recovery Laws along withallied acts& rules: Law Publishers (India) Pvt. Ltd, 6th Edition 2009.

6. S.N. Gupta, The Banking Law in Theory & Practice, Universal Law Publishing Co., 5th Edition in 3 Volumes, 2010.

DOI : 10.21904/weken/2018/v3/i2/170811

7. Manish Gupta and Dr. NareshMalhotra " A Comparative Study of SARFAESI Act 2002 and Other Tools Available For the Recovery of NPAs" , International Journal for Research in Applied Science & Engineering Technology (IJRASET) ISSN: 2321-9653; Volume 5 Issue XI November 2017- available at www.ijraset.com, last seen on 01/02/2018
8. Dr. Vijay Kumar, Mrs. Chanchal Rani " Contributors to success of Securitization Act " IJRFM Volume 4, Issue 6 (June 2014) (ISSN 2231-5985) International Journal of Research in Finance & Marketing , available at http://www.euroasiapub. org , last seen on 15-10-2015.
9. Ajit Singh Cheema" SARFAESI Act : Delaying Tactics Used by the Borrowers" Bank Quest, The Journal of Indian Institute of Banking & Finance Vol. : 83 u No. : 1 January - March 2012 (ISSN 0019 4921)
10. Dr.K.S.Ravichandran, " Remedy against enforcement of security interest-options are limited" COMPANY CASES, Volume 157-2010 (Journal)
11. KanikaAgrawal"Sarfaesi Act, Sica Act, interplay between them and the overriding effect of SARFAESI over SICA"UdgamVigyati" – The Origin of Knowledge, Volume 4, (2016), June "ISSN 2455-2488"

DOI : 10.21904/weken/2018/v3/i2/170811