

**Commentary on
The Securitisation
And
Reconstruction of
Financial Assets
And Enforcement of
Security Interest
Act, 2002**

With Allied Laws

By

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Advocate

&

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Advocate

Foreword by

Hon'ble Justice R. Raghunandan Rao

Judge High Court of Andhra Pradesh

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THE SECURITISATION
AND
RECONSTRUCTION OF
FINANCIAL ASSETS
AND ENFORCEMENT
OF SECURITY
INTEREST ACT, 2002**

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GAYATRI MANTRA

Om Bhur, Bhuvah, Suvah
Tat Savitur Varenyam
Bhargo Devasya Dhimahi
Dhiyo Yo Nah Prachodayat.

Om, Who is dearer than our breath
Is Self Subsistent, All Knowledge and All Blesses.
We meditate upon that adorable effulgence of the
Resplendent Vivifier of the Macrocosm, Savita,
May he illumine our intellects unto the right path

IN MEMORIUM

In memory of my Husband, Sri LACHMAN DAS GOGIA (L.D. GOGIA)
who left for his heavenly abode.

Mrs. SUDERSHAN GOGIA.

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Justice R.
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FOREWORD

The commentary on the Securitization Act, written by Sri V.V.S.N. Raju, is a timely effort which will help practitioners of law as well as the regulators and administrators of this law by giving them a comprehensive view of the Securitization Act and the manner in which the Act can be enforced. I commend him for the painstaking efforts taken by him in writing this book.

A very helpful feature of the commentary has been the focus on the effect and impact of the Recovery of debts due to banks Act, the Sick industrial Companies Act and the Insolvency and Bankruptcy Code on the working of the Securitization Act. The existence of these Acts had a huge impact on the securitization Act and the study of the interaction between these Acts is necessary before the provisions of the securitization Act and their working can be fully understood.

Another feature of this commentary has been the inclusion of the rules made under the Securitization Act. Normally, most commentaries only deal with the parent Act and leave the rules as an appendix to the commentary. In this case, the author has taken pains to set out the rules and their interpretation by the courts.

I am hopeful that this will be the first of many more useful commentaries, from Sri V.V.S.N. Raju.

Raghunandan

R. RAGHUNANDAN RAO, J

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Opp. Iskon Temple, Undavalli, Guntur District-522501.

PREFACE

Bank(s)/ Financial Institution(s) grant credit facilities primarily based on the security provided by the Borrower/Guarantors. Thus, on paper, the lending by Bank(s)/ Financial Institution(s) appears to be very secure, however, when the time came for recovery of the defaults committed by the Borrower, the recovery mechanism through the court process was very slow and time-consuming. The ordinary recovery mechanism contemplated in the Code of Civil Procedure, 1908 was also not considered sufficient for the recovery of loans, hence the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("DRT Act") was introduced as a special and speedier mechanism for the recovery of debts.

Almost a decade of experience proved that the recovery process through the DRT Act was not achieving the intended objectives and the existing laws failed to cater to the ever-changing exigencies of the financial sector. Thus, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI") was enacted to empower the banks and financial institutions in India to take possession of securities on which security interest was created in favor of Banks and Financial Institutions and sell them without pursuing the cumbersome legal remedy provided in the Civil Procedure Code or for that matter the special remedy provided under DRT Act.

The first Narasimham Committee was constituted by the Central Government in the year 1991, the second was constituted in the year 1997, and thereafter Andhyarujina Committee was constituted in the year 1998 to examine the overall reforms required in the banking sector and suggest changes in the prevailing legal system for recovery of dues. The said committees have recommended speedy recovery through the sale of securities by the Lenders without involving courts/ tribunals. The SARFAESI, enacted in the early 21st century, has played a pivotal role in reshaping the financial landscape of India. It has empowered banks and financial institutions to assign the loan(s) along with securities to Asset Reconstruction Companies, realize long-term assets, manage the problem of liquidity, assets liability, take effective measures for recovering non-performing assets by facilitating the enforcement of security interests, and adopt measures for recovering or reconstructing the assets. This legislation has far-reaching implications for the financial sector, borrowers, and the overall economy, making it essential to navigate its provisions with precision and insight.

Whether you are a Banker/ Professional seeking deeper insights into the SARFAESI, a scholar conducting research, or a curious reader simply interested in a richer understanding of the SARFAESI, this commentary aims to be your companion on this literary journey. Through this book, we have tried to elucidate the legal framework governing the SARFAESI, provide detailed analysis of each section of the SARFAESI, deeper and more practical insights into the SARFAESI supported by judicial interpretation.

Through this commentary, I hope to enrich your reading experience and encourage you to explore further, offer clarity, think deeply, and appreciate the timeless relevance of the SARFAESI Act and its interpretational evolution over the years. This commentary covers the interpretation and understanding of all the sections of the SARFAESI Act, how the SARFAESI Act evolved over the years, and the judgements passed by the judiciary over the years. This commentary also provides answers to various questions and will help readers better understand the SARFAESI Act.

Thank you for choosing this commentary as your companion.
Happy reading!

V.V.S.N. RAJU
Author

ABOUT THE AUTHOR



V.V.S.N. RAJU
Advocate

Mr. V.V.S.N. Raju is the Founder and Managing Partner of M/s. Juris Prime Law Services, which was founded in the year 2005. He pursued a Master's in Law from O.P. Jindal Global Law School and a Bachelor's Degree in Law from Osmania University. He is also an Insolvency Resolution Professional registered with the Insolvency and Bankruptcy Board of India.

Over the past 29 years, he has *inter alia* practiced in the areas of Banking, Corporate, Civil, Criminal, Economics, Industrial, Insolvency & Bankruptcy, Intellectual Property, Labour, Secretarial, and Real Estate.

Before joining practice, he worked with two large financial institutions (IDBI & ICICI) as an in-house counsel for around 9 years. During that period, he acquired vast experience in Banking, Corporate Law, Compliance, Project Finance, Securitization, Title-due Diligence, Recovery Litigation, Secretarial matters, Labour Laws, Liquidation proceedings, and Debt restructuring.

He also handles and appears regularly before various Courts including the Hon'ble High Courts, Tribunals such as NCLT/ NCLAT/DRT/DRAT, in respect of Arbitration, Debt Recovery, Commercial Contracts, Writs, Civil Appeals, Insolvency/ Liquidation under IBC, etc.

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