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NOTIFICATION

No. H-12017/55/2001-LJD/11/4(A) the 22nd August, 2002. The following Central Acts are hereby published for general information.

Chawngtinthanga
Deputy Secretary to the Govt. of Mizoram
Law and Judicial Department.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002

AN

ACT

further to amend the Code of Civil Procedure, 1908
and to provide for matters connected therewith or
incidental thereto.

Be it enacted by Parliament in the Fifty-third
Year of the Republic of India as follows :—

1. (1) This Act may be called the Code of Civil
Procedure (Amendment) Act, 2002.

Short title
and com-
mence-
ment.

(2) It shall come into force on such date as
the Central Government may, by notification in the
Official Gazette, appoint, and different dates may be
appointed for different provision of this Act and for
different States or for different parts thereof.

5 of 1908. 2. In section 39 of the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), after sub-section (3), the following sub-section shall be inserted namely :— Amendment of section 39.

“(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.”.

Amendment of section 64. 3. Section 64 of the principal Act shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely :—

“(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.”.

Substitution of new section for section 100A. 4. For section 100A of the principal Act [as substituted by section 10 of the Code of Civil Procedure (Amendment) Act, 1991], the following section shall be substituted, namely :— 46 of 1999.

No further appeal in certain cases. “100A. Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.”.

Substitution of new section for section 102. 5. For section 102 of the principal Act [as substituted by section 11 of the Code of Civil Procedure (Amendment) Act, 1999], the following section shall be substituted, namely :— 46 of 1999.

No second appeal in certain cases. “102. No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.”.

Amendment of Order V. 6. In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order V,—

(i) in rule 1, for sub-rule (1) [as substituted by clause (i) of section 15 of the Code of Civil Procedure (Amendment) Act, 1999], the following sub-rule shall be substituted, namely :— 46 of 1999

“(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”;

(ii) for rule 9 [as substituted by clause (v) of section 15 of the Code of Civil Procedure (Amendment) Act, 1999], the following rules shall be substituted, namely:- 46 of 1999.

Delivery of summons by Court. “9. (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court :

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted,

and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due, the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

9A. (1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

Summons
given to
the plaintiff
for service.

(2) The service of such summons shall be affected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.”.

46 of 1999

7. In the First Schedule, in Order VI, for rules 17 and 18[as they stood immediately before their omission by clause (iii) of section 16 of the Code of Civil Procedure (Amendment) Act, 1999] the following rules shall be substituted, namely:—

Amendment of order VI

“17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Amendment of pleadings

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.”.

Failure to amend after Order.

Amendment of Order VII

8. In the First Schedule, in Order VII, —

(i) for rule 9 [as substituted by clause (i) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:—

46 of 1999.

× Procedure on admitting plaint

“9. Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.”;

(ii) in rule 11, for sub-clauses (f) and (g) [as inserted by clause (ii) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], the following sub-clause shall be substituted, namely:— 46 of 1999.

“(f) where the plaintiff fails to comply with the provisions of rule 9.”;

(iii) in rule 14 [as substituted by clause (iii) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], for sub-rule (3), the following sub-rule shall be substituted, namely:— 46 of 1999.

“(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented or to be entered in the list be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”;

(iv) rule 18 [as amended by clause (v) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999] shall be omitted. 46 of 1999.

Amendment 9. In the First Schedule, in Order VIII,—
of Order VIII.

(i) for rule 1 [as substituted by clause (i) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:— 46 of 1999.

Written statement.

“1. The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other days, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”;

(ii) in rule 1A [as inserted by clause (ii) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], for sub-rule (3), the following sub-rule shall be substituted, namely:— 46 of 1999.

“(3) A document which ought to be produced in Court by the defendant under this rule, but,

is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”;

(iii) for rules 9 and 10 [as they stood immediately before their omission by clause (iii) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], the following rules shall be substituted, namely:— 46 of 1999.

“9. No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same. Subsequent pleadings.

10. Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court; as the case may be the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.”. Procedure when party fails to present written statement called for by Court.

46 of 1999 10. In the First Schedule, in Order IX, for rule 2 [as substituted by clause (i) of section 19 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:— Amend-ment of Order IX.

“2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 of Order VII, the Court may make an order that the suit be dismissed: Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

Provided that no such order shall be made, if notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer.”.

46 of 1999 11. In the First Schedule, in Order XIV, for rule 5 [as it stood immediately before its omission by clause Amend-ment of

(ii) of section 24 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely :—

Order XIV

“5. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

Power to amend, and strike out, issues.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”.

12. In the First Schedule, in Order XVIII,—

Amendment of Order XVIII.

(a) in rule 2, after sub-rule (3), the following sub-rules shall be inserted, namely :

“(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.”;

(b) for rule 4 [as substituted by clause (ii) of section 27 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:—

46 of 1999.

Recording of evidence.

“4. (1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court, or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule."

Amendment of Order XX. 13. In the First Schedule, in Order XX, in rule 1, for sub-rule (1), the following sub-rule shall be substituted, namely:—

"(1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders."

14. In the first Schedule, in Order XXI,—

Amendment
of Order
XXI

(a) in rule 32, in sub-rule (5), the following Explanation shall be inserted, namely:

"Explanation. For the removal of doubts it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandatory injunctions."

(b) in rule 92, in sub-rule (2),—

(i) for the words "thirty days", the words "sixty days" shall be substituted;

(ii) after the first proviso, the following proviso shall be inserted, namely:—

"Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit

had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.”.

- 46 of 1999. 15. In the Code of Civil Procedure (Amendment) Act, 1999, Amendment of the Code of Civil Procedure (Amendment) Act, 1999.
- (a) section 30 shall be omitted;
 - (b) in section 32, in sub-section (2),
 - (i) clauses (g) and (h) shall be omitted;
 - (ii) for clause (j); the following clause shall be substituted, namely :—

“(j) the provisions of rules 1, 2, 6, 7, 9, 9A, 19A, 21, 24 and 25 of Order V of the First Schedule as amended or, as the case may be, substituted or omitted by section 15 of this Act, and by section 6 of the Code of Civil Procedure (Amendment) Act, 2002, shall not apply to in respect of any proceedings pending before the commencement of section 15 of this Act and section 6 of the Code of Civil Procedure (Amendment) Act, 2002;”;
 - (iii) for clause (k), the following clause shall be substituted, namely: —

“(k) the provisions of rules 9, 11, 14, 15 and 18 of Order VII of the First Schedule as amended or, as the case may be, substituted or omitted by section 17 of this Act and by section 8 of the Code of Civil Procedure (Amendment) Act, 2002, shall not apply to in respect of any proceedings pending before the commencement of section 17 of this Act and section 8 of the Code of Civil Procedure (Amendment) Act, 2002;”;
 - (iv) for clause (l), the following clause shall be substituted, namely :—

“(l) the provisions of rules 1, 1A, 8A, 9 and 10 of Order VIII of the First Schedule as substituted or, as the case may be, inserted or omitted by section 18 of this Act and by section 9 of the Code of Civil Procedure (Amendment) Act, 2002, shall not apply to a written statement filed and presented before the commencement of section 18 of this Act and section 9 of the Code of Civil Procedure (Amendment) Act, 2002;”;

(v) for clause (q), the following clause shall be substituted, namely:—

“(q) the provisions of rules 4 and 5 of Order XIV of the First Schedule as amended or, as the case may be, substituted by section 24 of this Act and section 11 of the Code of Civil Procedure (Amendment) Act, 2002, shall not affect any order made by the Court adjourning the framing of the issues and amending and striking out issues before the commencement of section 24 of this Act and section 11 of the Code of Civil Procedure (Amendment) Act, 2002;”;

(vi) in clause (s) for the figures “25” at both the places, the figures “26” shall be substituted;

(vii) clause (u) shall be omitted.

Repeal
and
savings.

16. (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions are consistent with the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897,—

(a) the provisions of section 102 of the principal Act as substituted by section 5 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 5; and every such appeal shall be disposed of as if section 5 had not come into force;

(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and section 7 of this Act;

(c) the provisions of rule 1 of Order XX of the First Schedule as amended by section 13 of this Act shall not apply to a case where the hearing of the case had concluded before the commencement of section 13 of this Act.

10 of 1897.

46 of 1999

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 21st June, 2002/Jyaistha 31, 1924 (Saka)

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

No. 2 OF 2002

Promulgated by the President in the Fifty-third Year
of the Republic of India.

An Ordinance to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force at once.

Definitions. 2. (1) In this Ordinance, unless the context otherwise requires,—

(a) "Appellate Tribunal" means a Debts Recovery Appellate Tribunal established under sub-section (1) of section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; 51 of 1993.

(b) "asset reconstruction" means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance;

(c) "bank" means—

(i) a banking company; or

(ii) a corresponding new bank; or

(iii) the State Bank of India; or

(iv) a subsidiary bank; or

(v) such other bank which the Central Government may, by notification, specify for the purposes of this Ordinance;

(b) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.

(e) "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992; 15 of 1992.

(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

(g) "Central Registry" means the registry set up or cause to be set up under sub-section (1) of section 20;

(h) "corresponding new bank" shall have the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.

(i) "Debts Recovery Tribunal" means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; 51 of 1993.

(j) "default" means non payment of any principal debt or interest thereon or any other amount payable by a 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 in accordance with the directions or guidelines issued by the Reserve Bank;

(k) "financial assistance" means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by bank or financial institution;

(l) "financial asset" means debt or receivables and includes—

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(iii) a mortgage, charge, hypothecation or pledge of movable property; or

(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(vi) any financial assistance;

(m) "financial institution" means —

1 of 1956.

(i) a public financial institution within the meaning of section 4A of the Companies Act, 1956;

51 of 1993.

(ii) any institution specified by the Central Government under sub clause (ii) of clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

42 of 1958.

(iii) International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958;

2 of 1934.

(iv) any other institution or non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934, which the Central Government may, by notification, specify as financial institution for the purposes of this Ordinance;

(n) "hypothecation" means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge on movable property;

(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or guidelines relating to asset classifications issued by the Reserve Bank;

(p) "notification" means a notification published in the Official Gazette;

(q) "obligor" means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower;

(r) "originator" means the owner of a financial asset which is acquired by a securitisation company or reconstruction company for the purpose of securitisation or asset reconstruction;

(s) "prescribed" means the prescribed by rules made under this Ordinance;

(t) "property" means—

(i) immovable property;

(ii) movable property;

(iii) any debt or any right to receive payment of money, whether secured or unsecured;

(iv) receivables, whether existing or future;

(v) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature;

(u) "qualified institutional buyer" means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or any asset management company making investment on behalf of mutual fund or provident fund or gratuity fund or pension fund or foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder, or any other body corporate as may be specified by the Board;

15 of 1992

(v) "reconstruction company" means a company formed and registered under the Companies Act, 1956 for the purpose of asset reconstruction;

1 of 1956.

(w) "Registrar of Companies" means the Registrar defined in clause (40) of section 2 of the Companies Act, 1956;

1 of 1956.

(x) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

2 of 1934

(y) "scheme" means a scheme inviting subscription to security receipts proposed to be issued by a securitisation company or reconstruction company under that scheme;

(z) "securitisation" means acquisition of financial assets by any securitisation company or reconstruction company from any originator, whether by raising of funds by such securitisation company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise;

(za) "securitisation company" means any company formed and registered under the Companies Act, 1956 for the purpose of securitisation;

1 of 1956

(zb) "security agreement" means an agreement, instrument or any other document or arrangement under which security interest is created in favour of

the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditors.

(zc) "secured asset" means the property on which security interest is created;

(zd) "secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions and includes—

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

(ii) securitisation company or reconstruction company; or

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

(ze) "secured debt" means a debt which is secured by any security interests;

(zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;

(zg) "security receipt" means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved securitisation;

(zh) "sponsor" means any person holding not less than ten per cent. of the paidup equity capital of a securitisation company or reconstruction company;

(zi) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955; 23 of 1955

(zj) "subsidiary bank" shall have the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959. 38 of 1959

9 of 1872.
4 of 1882.
1 of 1956.
15 of 1992.

(2) Words and expressions used and not defined in this Ordinance but defined in the Indian Contract Act, 1872 or the Transfer of Property Act, 1882 or the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 shall have the same meanings respectively assigned to them in those Acts.

CHAPTER II

REGULATION OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS OF BANKS AND FINANCIAL INSTITUTIONS

3. (1) No securitisation company or reconstruction company shall commence or carry on the business of securitisation or asset reconstruction without —

Registration of securitisation companies or reconstruction companies.

(a) obtaining a certificate of registration granted under this section, and

(b) having the owned fund of not less than two crore rupees or such other amount not exceeding fifteen per cent. of total financial assets acquired or to be acquired by the securitisation company or reconstruction company, as the Reserve Bank may, by notification, specify:

Provided that the Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of securitisation companies or reconstruction companies:

Provided further that a securitisation company or reconstruction company, existing on the commencement of this Ordinance, shall make an application for registration to the Reserve Bank before the expiry of six months from such commencement and notwithstanding anything contained in this sub-section may continue to carry on the business of securitisation or asset reconstruction until a certificate of registration is granted to it or, as the case may be, rejection of application for registration is communicated to it.

(2) Every securitisation company or reconstruction company shall make an application for registration to the Reserve Bank in such form and manner as it may specify.

(3) The Reserve Bank may, for the purpose of considering the application for registration of a securitisation company or reconstruction company to carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such securitisation company or reconstruction company, or otherwise, that the following conditions are fulfilled, namely:—

(a) that the securitisation company or reconstruction company has not incurred losses in any of the three preceding financial years;

(b) that such securitisation company or reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons;

(c) that the directors of securitisation company or reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction;

(d) that the board of directors of such securitisation company or reconstruction company does not consist of more than half of its total number of directors who are either nominees of any sponsor or associated in any manner with the sponsor or any of its subsidiaries;

(e) that any of its directors has not been convicted of any offence involving moral turpitude;

(f) that a sponsor, is not a holding company of the securitisation company or reconstruction company, as the case may be, or does not otherwise hold any controlling interest in such securitisation company or reconstruction company;

(g) that securitisation company or reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.

(4) The Reserve Bank may, after being satisfied that the conditions specified in sub-section (3) are fulfilled, grant a certificate of registration to the securitisation company or the reconstruction company to carry on or commence business of securitisation or asset reconstruction, subject to such conditions, which it may consider, fit to impose.

(5) The Reserve Bank may reject the application made under sub-section (2) if it is satisfied that the conditions specified in sub-section (3) are not fulfilled

Provided that before rejecting the application the applicant shall be given a reasonable opportunity of being heard.

(6) Every securitisation company or reconstruction company shall obtain prior approval of the Reserve Bank for any substantial change in its management or change location of its registered office or change in its name;

Provided that the decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final.

EXPLANATION. For the purposes of this section the expression "substantial change in management" means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company.

Cancellation of certificate of registration.

4. (1) The Reserve Bank may cancel a certificate of registration granted to a securitisation company or a reconstruction company, if such company—

(a) ceases to carry on the business of securitisation or asset reconstruction; or

(b) ceases to receive or hold any investment from a qualified institutional buyer; or

(c) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or

(d) at any time fails to fulfil any of the condition referred to in clauses (a) to (g) of sub-section (3) of section 3; or

(e) fails to—

(i) comply with any direction issued by the Reserve Bank under the provisions of this Ordinance; or

(ii) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Ordinance; or

(iii) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or

(iv) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:

Provided that before cancelling a certificate of registration on the ground that the securitisation company or reconstruction company has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the securitisation company or the reconstruction company, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such conditions.

(2) A securitisation company or reconstruction company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government:

Provided that before rejecting an appeal such company shall be given a reasonable opportunity of being heard.

(3) A securitisation company or reconstruction company, which is holding investments of qualified

institutional buyers and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation of certificate of registration, be deemed to be a securitisation company or reconstruction company until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

5. (1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution —

Acquisition of rights or interest in financial assets.

(a) by issuing a debenture or bond or any other security in the nature of the debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(3) Unless otherwise expressly provided by this Ordinance, all contracts, deeds bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour

of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of securitisation company or reconstruction company, as the case may be.

1 of 1986

(4) If, on the date of acquisition of financial asset under sub-section (I), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (I) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.

Notice to obligor and discharge of obligation of such obligor

6. (1) The Bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any securitisation company or reconstruction company, to the concerned obligor and any other concerned person and to the concerned registering authority in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

(2) Where a notice of acquisition of financial assets under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned securitisation company or reconstruction company, as the case may be, and payment made to such company in discharge of any of the obligations in relations to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

(3) Where no notice of acquisition of financial asset under sub-section (1) is given by any Bank or financial institution, any money or other properties subsequently received by the bank or

financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the securitisation company or reconstruction company, as the case may be, and such bank or financial institution shall hold such payment or property which shall forthwith be made over or delivered to such securitisation company or reconstruction company, as the case may be, or its agent duly authorised in this behalf.

Issue of security by raising of receipts or funds by securitisation company or reconstruction company.

7. (1) Without prejudice to the provisions contained in the Companies Act, 1956 Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, any securitisation company or reconstruction company, may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to qualified institutional buyers (other than by offer to public) for subscription in accordance with the provisions of those Acts. 1 of 1956. 42 of 1956. 15 of 1992.

(2) A securitisation company or reconstruction company may raise funds from the qualified institutional buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified institutional buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

(3) In the even of non-realisation under sub-section (2) of financial assets, the qualified institutional buyers of a securitisation company or reconstruction company, holding security receipts of not less than seventy five per cent. of the total value of security receipts issued by such company, shall be entitled to call a meeting of all the qualified institutional buyers and every resolution passed in such meeting shall be binding on the company.

(4) The constitutional buyers shall, at a meeting called under sub-section (3), follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the securitisation company or reconstruction company, as the case may be.

Exemption from registration of security receipt 8. Notwithstanding anything contained in sub-section (1) of section 17 of the Registration Act, 1908.— 16 of 1908.

(a) any security receipt issued by the securitisation company or reconstruction company, as the case may be, under sub-section (1) of section 7, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument; or

(b) any transfer of security receipts, shall not require compulsory registration.

Measures for assets reconstruction 9. Without prejudice to the provisions contained in any other law for the time being in force, a securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the following measures, namely:—

(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;

(b) the sale or lease of a part or whole of the business of the borrower;

(c) rescheduling of payment of debts payable by the borrower;

(d) enforcement of security interest in accordance with the provisions of this Ordinance;

(e) settlement of dues payable by the borrower;

(f) taking possession of secured assets in accordance with the provisions of this Ordinance.

10. (1) Any securitisation company or reconstruction company registered under section 3 may—

(a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties;

(b) act as a manager referred to in clause (c) of sub-section (4) of section 13 on such fee as may be mutually agreed upon between the parties;

Other functions of securitisation company or reconstruction company.

(c) act as receiver if appointed by any court or tribunal:

Provided that no securitisation company or reconstruction company shall act as a manager if acting as such gives rise to any pecuniary liability.

(2) Save as otherwise provided in sub-section (1), no securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3, shall commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitisation or asset reconstruction:

Provided that a securitisation company or reconstruction company which is carrying on, on or before the commencement of this Ordinance, any business other than the business of securitisation or asset reconstruction or business referred to in sub-section (1), shall cease to carry on any such business within one year from the date of commencement of this Ordinance.

Explanation— For the purposes of this section, "securitisation company" or "reconstruction company" does not include its subsidiary.

26 of 1996.

11. Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution, a securitisation company or reconstruction company or qualified institutional buyers, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

Resolution of disputes.

12. (1) If the Reserve Bank is satisfied that in the public interest or to regulate financial system of the country to its advantage or to prevent the affairs of any securitisation company or reconstruction company from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such securitisation company or reconstruction company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any securitisation company or reconstruction company in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts,

Power of Reserve Bank to determine policy and issue directions.

capital adequacy based on risk weights for assets and also relating to deployment of funds by the securitisation company or reconstruction company, as the case may be, and such company shall be bound to follow the policy so determined and the directions so issued.

(2) Without prejudice to the generality of the power vested under sub-section (1), the Reserve Bank may give directions to any securitisation company or reconstruction company generally or to a class of securitisation companies or reconstruction companies or to any securitisation company or reconstruction company in particular as to--

(a) the type of financial assets of a bank or financial institution which can be acquired and procedure for acquisition of such assets and valuation thereof;

(b) the aggregate value of financial assets which may be acquired by any securitisation company or reconstruction company.

CHAPTER III

ENFORCEMENT OF SECURITY INTEREST

Enforce-
ment of secu-
rity interest

13. (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Ordinance.

4. of 1882

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditors shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall, be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary,

be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) 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.

(9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditors, shall be entitled to exercise any or all of the rights conferred on him of such right is under or pursuant to sub-section (4) unless exercise agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

1 of 1956.

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956:

1 of 1956.

Provided further that in the case of a company being wound up on or after the commencement of this Ordinance, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

1 of 1956.

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditors the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section

to the secured creditors and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any,

Explanation,—For the purposes of this sub-section,—

(a) "record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Ordinance.

(12) The rights of a secured creditor under this Ordinance may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession.

14. (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Ordinance, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured assets or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him —

(a) take possession of such assets and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

Manner and effect of takeover of management.

15. (1) When the management of business of a borrower is taken over by the secured creditor, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit —

(a) in a case in which the borrower is a company as defined in the Companies Act, 1956, to be the directors of that borrower in accordance with the provisions of that Act; or

(b) in any other case, to be the administrator of the business of the borrower.

(2) On publication of a notice under sub-section (1),-

(a) in any case where the borrower is a company as defined in the Companies Act, 1956, all persons holding office as directors of the company and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;

1 of 1956.

(b) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;

(c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice;

(d) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.

1 of 1956.

(3) Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured

creditor, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower,—

- (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
 - (b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;
 - (c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.
- (4) Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.
16. (1) Notwithstanding anything to the contrary contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Ordinance of any contract of management entered into by him with the borrower.
- No compensation to directors for loss of office.
- (2) Nothing contained in sub-section (1) shall affect the right of any such managing director or any other director or manager of any such person in charge of management to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.
17. (1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section(4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.
- Right to appeal.
- (2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts

Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventyfive per cent. of the amount claimed in the notice referred to in sub-section (2) of section 13:

Provided that the Debts Recovery Tribunal may, for reasons to be recored in writing, waive or reduce the amount to be deposited under this section.

51 of 1993.

(3) Save as otherwise provided in this Ordinance, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

18. (1) Any person aggrieved by any order made by the Debts Recovery Tribunal under section 17 may prefer an appeal to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal. Appeal to Appellate Tribunal.

51 of 1993.

(2) Save as otherwise provided in this Ordinance, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

19. If the Debts Recovery Tribunal or the Appellate Tribunal, as the case may be, on an appeal filed under section 17 or section 18, holds the possession of secured assets by the secured creditor as wrongful and directs the secured creditor to return such secured assets to the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or Appellate Tribunal. Right of borrower to receive compensation and cost in certain cases.

CHAPTER IV

CENTRAL REGISTRY

Central Registry.

20. (1) The Central Government may, by notification, set-up or cause to be set-up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this Ordinance.

(2) The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred to in sub-section (1), there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.

(3) The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.

(4) The provisions of this Ordinance pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908, the Companies Act, 1956, 16 of 1908. 1 of 1956. the Merchant Shipping Act, 1958, the Patents Act, 44 of 1958. 1970, the Motor Vehicles Act, 1988 and the Designs Act, 2000 or any other law requiring 39 of 1970. 59 of 1988. registration of charges and shall not affect the 16 of 2000. priority of charges or validity thereof under those Acts or laws

Central
Registrar.

21. (1) The Central Government may, by notification, appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar.

(2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Central Registrar, such functions of the Central Registrar under this Ordinance as he may, from time to time, authorise them to discharge.

Register of 22.
securitisa-
tion recons-
truction and
security
interest,
transactions.

(1) For the purposes of this Ordinance, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to—

- (a) securitisation of financial assets ;
- (b) reconstruction of financial assets; and
- (c) creation of security interest.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Central

Registrar to keep the records wholly or partly in computer floppies, diskettes or in any other electronic form subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly on computer under sub-section (2), any reference in this Ordinance to entry in the Central Register shall be construed as a reference to any entry as maintained on computer or in any other electronic form.

(4) The register shall be kept under the control and management of the Central Registrar.

Filing of transactions of securitisation, reconstruction and creation of security interest

23. The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the Central Registrar in the manner and on payment of such fee as may be prescribed, 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:

Provided that the Central Registrar may allow the filing of the particulars of such transaction or creation of security within thirty days next following the expiry of the said period of thirty days on payment of such additional fees not exceeding ten times the amount of such fee.

24. Whenever the terms or conditions, or the extent or operation of any security interest registered under this Chapter are or is modified, it shall be the duty of the securitisation company or the reconstruction company or the secured creditors, as the case may be, to send to the Central Registrar, the particulars of such modification, and the provisions of this Chapter as to registration of a security interest shall apply to such modification of such security interest.

Modification of security interest registered under this Ordinance.

25. (1) The securitisation company or reconstruction company or the secured creditors as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the securitisation company or the reconstruction company or the secured creditors and requiring registration under this Chapter within thirty days from the date of such payment or satisfaction.

Securitisation company or reconstruction company or secured creditors to report satisfaction

- (2) The Central Registrar shall, on receipt of such intimation, cause a notice to be sent to the securitisation company or reconstruction company or the secured creditors calling upon it to show cause within a time not exceeding fourteen days specified in such notice, as to why payment or satisfaction should not be recorded as intimated to the Central Registrar.
- (3) If no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.
- (4) If cause is shown, the Central Registrar shall record a note to that effect in the Central Register, and shall inform the borrower that he has done so.

of security interest

26. (1) The particulars of securitisation or reconstruction or security interest entered in the Central Register of such transactions kept under section 22 shall be opened during the business hours for inspection by any person on payment of such fees as may be prescribed.
- (2) The Central Register referred to in sub-section (1) maintained in electronic form, shall also be opened during the business hours for the inspection of any person through electronic media on payment of such fees as may be prescribed.

Right to inspect particulars of securitisation, reconstruction and security interest transactions.

CHAPTER V

OFFENCES AND PENALTIES

27. If a default is made—

Penalties.

(a) in filing under section 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a securitisation company or reconstruction company or secured creditors; or

(b) in sending under section 24, the particulars of the modification referred to in that section; or

(c) in giving intimation under section 25,

every company and every officer of the company or the secured creditor and every officer of the secured creditor

who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

28. If any securitisation company or reconstruction company fails to comply with any direction issued by the Reserve Bank under section 12, such company and every officer of the company who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

Penalties for non-compliance of direction of Reserve Bank.

Offences. 29. If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Ordinance or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Cognizance of offence. 30. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence punishable under this Ordinance.

CHAPTER VI

MISCELLANEOUS

Provisions of this Ordinance not to apply in certain cases. 31. The provisions of this Ordinance shall not apply to—

- (a) a lien on 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; 9 of 1872. 3 of 1930.
- (b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 9 of 1872.
- (c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934; 24 of 1934
- (d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958; 44 of 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; 3 of 1930.

(g) any properties not liable to attachment or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure 1908. 5 of 1908.

(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(i) any security interest created in agricultural land;

(j) any case in which the amount due is less than twenty per cent of the principal amount and interest thereon.

Protection of action taken in good faith. 32. No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Ordinance.

Offences by companies. 33. (1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such Director, manager, Secretary or other Officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

EXPLANATION—For the purposes of this section,—

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

34. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or an Appellate Tribunal is empowered by or under this Ordinance to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Ordinance or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Civil court not to have jurisdiction.

51 of 1993.

35. The Provisions of this Ordinance shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

The Provisions of this Ordinance to override other laws.

36. No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

Limitation.

36 of 1963.

1 of 1956
42 of 1956.
15 of 1992.
51 of 1993.

37. The provisions of this Ordinance or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

Application of other laws not barred.

21 of 2000

38. (1) The Central Government may, by notification and in the Electronic Gazette as defined in clause (s) of section 2 of the Information Technology Act, 2000, make rules for carrying out the provisions of this Ordinance.

Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely —

(a) the form and manner in which an application may be filed under sub-section (10) of section 13;

(b) the manner in which the rights of a secured creditor may be exercised by one or more of his officers under sub-section (12) of section 13;

(c) the safeguards subject to which the records may be kept under sub-section (2) of section 22;

(d) the manner in which the particulars of every transaction of securitisation shall be filed under section 23 and fee for filing such transaction;

(e) the fee for inspecting the particulars of transactions kept under section 22 and entered in the Central Register under sub-section (1) of section 26;

(f) the fees for inspecting the Central Register maintained in electronic form under sub-section (2) of section 26;

(g) any other matter which is to be, or may be, prescribed, in respect of which provision is to be, or may be, made by rules.

(3) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Certain provisions

39. The provisions of sub-sections (2), (3) and (4) of section 20 and sections 21, 23, 22, 24, 25, 26 and 27

of this Ordinance to apply after registry is set up or caused to be set up.

shall apply after the Central Registry is set up or caused to be set up under sub-section (1) of section 20.

Power to remove difficulties.

40. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendments of certain enactments.

41. The enactments specified in the Schedule shall be amended in the manner specified therein.

THE SCHEDULE

(See section 41)

Year	Act No.	Short title	Amendment
1956	42	The Securities Contracts (Regulation) Act, 1956.	In section 2, in clause (h), after sub-clause (ib), insert the following: - “(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of financial Assets and enforcement of Security Interest Ordinance, 2002.”.
1986	1	The Sick Industrial Companies (Special Provisions) Act, 1985.	In section 15, in sub-section (1), after the proviso, insert the following:— “Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets

and Enforcement of Security Interest Ordinance, 2002, where financial assets have been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of that Ordinance:

Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section (4) of section 13 of that Ordinance."

1956 1

The Companies Act,
1956.

In section 4A, in sub-section (1), after clause (vi), insert the following:—

"(vii) the securitisation company or reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002".

K R. Narayanan,
President,

Subhash C. Jain,
Secy. to the Govt. of India.