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EXTRAORDINARY

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PART II—Section 3—Sub-section (ii)

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(वित्तीय सेवाएं विभाग)

अधिसूचना

नई दिल्ली, 15 जनवरी, 2013

का.आ. 171(अ).—प्रतिभूति हित का प्रवर्तन और ऋण वसूली विधि (संशोधन) अधिनियम, 2012 (2013 की सं. 1) की धारा 1 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, एतद्द्वारा, जनवरी 2013 के 15वें दिन को उस दिन के रूप में नियत करती है जब उक्त अधिनियम की धारा 8 और 15(ख) के अलावा अन्य उपबंध लागू होंगे ।

[फा. सं. 3/1/2011-डीआरटी (रिकवरी)]

अनुराग जैन, संयुक्त सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

NOTIFICATION

New Delhi, the 15th January, 2013

S.O. 171(E).—In exercise of powers conferred by sub-section (2) of Section 1 of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 (No. 1 of 2013), the Central Government hereby appoints the 15th day of January, 2013, as the date on which the provisions of the said Act, except Sections 8 and 15(b), shall come into force.

[F. No. 3/1/2011-DRT (Recovery)]

ANURAG JAIN, Jt. Secy.

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 4th January, 2013/*Pausa* 14, 1934 *(Saka)*

The following Act of Parliament received the assent of the President on the 3rd January, 2013, and is hereby published for general information.

THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS (AMENDMENT) ACT, 2012

(No. 1 OF 2013)

[3*rd January,* 2013.]

An Act further to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

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

CHAPTER I
PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

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

Amendment of section 2.

2. In section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter in this Chapter referred to as the principal Act), in clause (*c*), after sub-clause (*iv*), the following sub-clause shall be inserted, namely:— 54 of 2002.

"(*iva*) a multi-State co-operative bank; or".

Amendment of section 5.

3. In section 5 of the principal Act, after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*5*) On acquisition of financial assets under sub-section (*1*), the securitisation company or reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the securitisation company or reconstruction company in such pending suit, appeal or other proceedings.".

Amendment of section 9.

4. In section 9 of the principal Act, after clause (*f*), the following clause shall be inserted, namely:—

"(*g*) to convert any portion of debt into shares of a borrower company:

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.".

Amendment of section 13.

5. In section 13 of the principal Act,—

(*a*) in sub-section (*3A*), for the words "within one week", the words "within fifteen days" shall be substituted;

(*b*) after sub-section (*5*), the following sub-sections shall be inserted, namely:—

"(*5A*) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

(*5B*) Where the secured creditor, referred to in sub-section (*5A*), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (*4*) of section 13.

(*5C*) The provisions of section 9 of the Banking Regulation Act, 1949 shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (*5A*).". 10 of 1949.

(*c*) in the opening portion of sub-section (*9*), and in the *Explanation* thereto, for the word "three-fourth", occurring at both the places, the words "sixty per cent." shall be substituted.

Amendment of section 14.

6. In section 14 of the principal Act,—

(*a*) in sub-section (*1*), the following provisos shall be inserted, namely:—

"Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the

secured creditor, declaring that—

(*i*) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(*ii*) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(*iii*) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (*ii*) above;

(*iv*) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(*v*) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(*vi*) affirming that the period of sixty days notice as required by the provisions of sub-section (*2*) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(*vii*) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(*viii*) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (*4*) of section 13 read with section 14 of the principal Act;

(*ix*) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.";

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

(*i*) to take possession of such assets and documents relating thereto; and

(*ii*) to forward such assets and documents to the secured creditor.";

(*c*) in sub-section (*3*), after the words "the District Magistrate", the words "any officer authorised by the Chief Metropolitan Magistrate or District Magistrate" shall be inserted.

Insertion of new section 18C.

7. After section 18B of the principal Act, the following section shall be inserted, namely:—

Right to lodge a caveat.

"18C. (*1*) Where an application or an appeal is expected to be made or has been made under sub-section (*1*) of section 17 or section 17A or sub-section (*1*) of section 18

or section 18B, the secured creditor or any person claiming a right to appear before the Tribunal or the Court of District Judge or the Appellate Tribunal or the High Court, as the case may be, on the hearing of such application or appeal, may lodge a caveat in respect thereof.

(*2*) Where a caveat has been lodged under sub-section (*1*),—

(*a*) the secured creditor by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (*1*);

(*b*) any person by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (*1*).

(*3*) Where after a caveat has been lodged under sub-section (*1*), any application or appeal is filed before the Tribunal or the court of District Judge or the Appellate Tribunal or the High Court, as the case may be, the Tribunal or the District Judge or the Appellate Tribunal or the High Court, as the case may be, shall serve a notice of application or appeal filed by the applicant or the appellant on the caveator.

(*4*) Where a notice of any caveat has been served on the applicant or the Appellant, he shall periodically furnish the caveator with a copy of the application or the appeal made by him and also with copies of any paper or document which has been or may be filed by him in support of the application or the appeal.

(*5*) Where a caveat has been lodged under sub-section (*1*), such caveat shall not remain in force after the expiry of the period of ninety days from the date on which it was lodged unless the application or appeal referred to in sub-section (*1*) has been made before the expiry of the said period.".

Amendment of section 23.

8. In section 23 of the principal Act, after the proviso, the following proviso shall be inserted, namely:—

"Provided further that the Central Government may, by notification, require registration of all transactions of securitisation, or asset reconstruction or creation of security interest which are subsisting on or before the date of establishment of the Central Registry under sub-section (*1*) of section 20 within such period and on payment of such fees as may be prescribed.".

Insertion of new section 26A.

9. After section 26 of the principal Act, the following section shall be inserted, namely:—

Rectification by Central Government in matters of registration, modification and satisfaction, etc

"26A. (*1*) The Central Government, on being satisfied—

(*a*) that the omission to file with the Registrar the particulars of any transaction of securitisation, asset reconstruction or security interest or modification or satisfaction of such transaction or; the omission or mis-statement of any particular with respect to any such transaction or modification or with respect to any satisfaction or other entry made in pursuance of section 23 or section 24 or section 25 of the principal Act was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors; or

(*b*) that on other grounds, it is just and equitable to grant relief,

may, on the application of a secured creditor or securitisation company or reconstruction company or any other person interested on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for

filing of the particulars of the transaction for registration or modification or satisfaction shall be extended or, as the case may require, the omission or mis-statement shall be rectified.

(*2*) Where the Central Government extends the time for the registration of transaction of security interest or securitisation or asset reconstruction or modification or satisfaction thereof, the order shall not prejudice any rights acquired in respect of the property concerned or financial asset before the transaction is actually registered.".

10. For section 30 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 30.

"30. (*1*) No court shall take cognizance of any offence punishable under section 27 in relation to non-compliance with the provisions of section 23, section 24 or section 25 or under section 28 or section 29 or any other provisions of the Act, except upon a complaint in writing made by an officer of the Central Registry or an officer of the Reserve Bank, generally or specially authorised in writing in this behalf by the Central Registrar or, as the case may be, the Reserve Bank. Cognizance of offences.

(*2*) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.".

11. After section 31 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 31A.

"31A. (*1*) The Central Government may, by notification in the public interest, direct that any of the provisions of this Act,— Power to exempt a class or classes of banks or financial institutions.

(*a*) shall not apply to such class or classes of banks or financial institutions; or

(*b*) shall apply to the class or classes of banks or financial institutions with such exceptions, modifications and adaptations,

as may be specified in the notification.

(*2*) A copy of every notification proposed to be issued under sub-section (*1*), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days 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 disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.".

CHAPTER III

AMENDMENTS TO THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

51 of 1993.

12. In the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (hereafter in this Chapter referred to as the principal Act), in section 2, in clause (*d*), after sub-clause (*v*), the following sub-clause shall be inserted, namely:— Amendment of section 2.

"(*vi*) a multi-State co-operative bank;".

13. In section 15 of the principal Act, in sub-section (*2*), the following proviso shall be inserted, namely:— Amendment of section 15.

"Provided that the Central Government, during the pendency of the inquiry against the Presiding Officer or a Chairperson, as the case may be, may, after consulting the Chairperson of the Selection Committee constituted for selection of Presiding Officer or

Chairperson, pass an order suspending the Presiding Officer or the Chairperson, if it is satisfied that he should cease to discharge his functions as a Presiding Officer or Chairperson, as the case may be.".

Amendment of section 18

14. In section 18 of the principal Act, the following proviso shall be inserted, namely:—

"Provided that any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002 shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.". 39 of 2002

Amendment of section 19.

15. In section 19 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-sections shall be inserted, namely:—

"(*1A*) Every bank being, multi-State co-operative bank referred to in sub-clause (*vi*) of clause (*d*) of section 2, may, at its option, opt to initiate proceedings under the Multi-State Co-operative Societies Act, 2002 to recover debts, whether due before or after the date of commencement of the Enforcement of the Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 from any person instead of making an application under this Chapter. 39 of 2002

(*1B*) In case, a bank being, multi-State co-operative bank referred to in sub-clause (*vi*) of clause (*d*) of section 2 has filed an application under this Chapter and subsequently opts to withdraw the application for the purpose of initiating proceeding under the Multi-State Co-operative Societies Act, 2002 to recover debts, it may do so with the permission of the Tribunal and every such application seeking permission from the Tribunal to withdraw the application made under sub-section (*1A*) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application: 39 of 2002

Provided that in case the Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.";

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*3A*) If any application filed before the Tribunal for recovery of any debt is settled prior to the commencement of the hearing before that Tribunal or at any stage of the proceedings before the final order is passed, the appplicant may be granted refund of the fees paid by him at such rates as may be prescribed.";

(*c*) for sub-section (*5*), the following sub-section shall be substituted, namely:—

"(*5*) The defendant shall, within a period of thirty days from the date of service of summons, present a written statement of this defence:

Provided that where the defendant fails to file the wirtten statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writting, allow not more than two extensions to the defendant to file the written statement.";

(*d*) after sub-section (*5*), the following sub-section shall be inserted, namely:—

"(*5A*) After hearing of the application has commenced, it shall be continued from day-to-day until the hearing is concluded:

Provided that the Tribunal may grant adjournments if sufficient cause is shown, but no such adjournment shall be granted more than three times to a party and where there are three or more parties, the total number of such adjournments shall not exceed six:

Provided further that, the Presiding Officer may grant such adjournments on imposing such costs as may be considered necessary.";

(*e*) after sub-section (*20*), the following sub-section shall be inserted, namely:—

"(*20A*) Where it is proved to the satisfaction of the Tribunal that the claim of the applicant has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant has repaid or agreed to repay the claim of the applicant, the Tribunal shall pass orders recording such agreement, compromise or satisfaction of the claim.".

16. In section 31 of the principal Act, after the proviso, the following proviso shall be inserted, namely:— Amendment of section 31.

"Provided further that any recovery proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002, shall be continued and nothing contained in this section shall apply to such proceedings.". 39 of 2002.

17. In section 36 of the principal Act, in sub-section (*2*), after clause (*c*), the following clause shall be inserted, namely:— Amendment of section 36.

"(*cc*) the rate of fee to be refunded to the applicant under sub-section (*3A*) of section 19 of the Act.".

P.K. MALHOTRA,
Secy. to the Govt. of India.

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