

BHARAT SCHOOL OF BANKING

SARFAESI Act, 2002

Before reading this article, go through the article on - **Non-performing Assets (NPA)**

SARFAESI Act, 2002

The **Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002** was enacted to empower the banks and financial institutions (**lenders**) to recover their **bad loans / NPAs** from the **borrowers**, **without the intervention** of the **court**.

Applicability of the Act

- **Secured Loans** - SARFAESI Act is applicable only for the **secured loans** (meaning loans backed by **underlying securities**). In this case, banks or financial institutions can **seize** and/or **sell** the **underlying securities**, like **hypothecation, pledge, mortgage**, etc and recover the **loan amount**.
- **Unsecured Loans / Agricultural lands** - For unsecured loans (not backed by **underlying securities**) or agricultural loans (where **agricultural land** is the underlying security), banks **cannot** **seize** or **sell** by itself. In these case, banks need to move to **court** and file **Civil case** against the **defaulters**.

Why SARFAESI Act?

Earlier to recover the **bad loans / NPAs**, banks needed to move to the **courts** - **Debt Recovery Tribunal (DRT)** and **Debt Recovery Appellate Tribunals (DRAT)**, which made the recovery a **long-term** process, and there were several **loopholes** which could be misused by the **borrowers**.

Then **Andhyarujina committee** recommended to enact a **new legislation** for the **establishment** of **Securitization and Reconstruction companies** and **empower** the **banks** and **financial institutions** to take **possession / seize** the **securities** without moving to the **courts**.

Provisions of the Act

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If any **borrower** fails to discharge his **liability** in **repayment** of any **secured debt** within **60 days(2 months)** of **Notice**, the **secured creditor** is conferred with **powers** under the **SARFAESI Act** to -

- Take **possession** of / **seize** / **auction** /**sell** the **secured assets** of the **borrower**
- **Takeover** of the **management** of the **business** of the **borrower**
- **Appoint** any person to **manage** the **secured assets**, etc.

Note that **agricultural property** is **exempted** from the provisions of the Act.

Some Securitization Companies and Reconstruction Companies in India

- Asset Reconstruction Company (India) Ltd. (**ARCIL**)
- Assets care & Reconstruction Enterprise Ltd. (**ACRE**)
- **ASREC** (India) Ltd.
- Pegasus Assets Reconstruction Pvt. Ltd.
- Phoenix ARC Pvt. Ltd.