

# AMENDMENTS TO SARFAESI ACT, 2002

Made on 26<sup>th</sup> December 2019 w.e.f. 24<sup>th</sup> January 2020

**The enforcement of security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016** came in force on 12<sup>th</sup> August 2016 for the purpose of making amendments in Sarfaesi Act, 2002, however, different sections were notified on different dates.

Following sections of the above Act were notified by Ministry of Finance, Department of Financial Services, vide Notification No SO. 4619 (E) dated 26<sup>th</sup> December 2019 and are effective from **24<sup>th</sup> January 2020**

- Section 17 is for amendment in section 23 of Sarfaesi Act, 2002
- Section 18 is for insertion of Chapter IVA to Sarfaesi Act, 2002. Chapter IVA is about the registration process, right of enforcement of securities and priority of secured creditors
- Section 19 is about omission of section 27 of Sarfaesi Act, 2002 regarding penalty for non-filing etc u/s 23 after its notification

## FILING OF TRANSACTIONS OF SECURITISATION, RECONSTRUCTION AND CREATION OF SECURITY INTEREST -SEC 23(1)

1. The particulars of every following type of transactions shall be filed with Central Registry of Securitisation and Asset Reconstruction and Security Interest of India (CERSAI) w.e.f. 24<sup>th</sup> January 2020 :-

- a) Transactions of securitisation,
- b) Transactions of asset reconstruction; or
- c) Transactions of creation of security interest

2. All such transactions subsisting on or before the establishment of CERSAI or after the establishment of CERSAI must be registered up to 24<sup>th</sup> January 2020

3. “securitisation” means acquisition of financial assets by any asset reconstruction company from any originator, whether by raising of funds by such asset reconstruction company from qualified buyers by issue of security receipts representing undivided interest in such financial assets or otherwise - Sec. 2(1)(z)

4. “asset reconstruction” means acquisition by any asset 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 - Sec. 2(1)(b)

5. “security interest” means right, title or interest of any kind, other than those specified in section 31, upon property created in favour of any secured creditor and includes :-

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or



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(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset - Sec. 2(1)(zf)





## **CHAPTER IVA of SARFAESI ACT, 2002 – Notified w.e.f. 24<sup>th</sup> January 2020 FILING OR REGISTRATION BY SECURED CREDITORS AND OTHER CREDITORS**

The Central Government has notified the provisions of Chapter IVA of Sarfaesi Act, 2020 w.e.f. 24<sup>th</sup> January 2020 consisting of sections 26B to 26E and the implication of such notification would be as under :-

1. The filing of transactions can be done now by all creditors for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower. This facility was earlier open only to banks, FIs, Specified NBFCs, ARCs, debenture trustees or any other trustee holding securities on half of banks or FIs – Sec 26B

2. The filing of transactions would not extend any right to the creditor for enforcement of security interest under Sarfaesi Act, 2002 unless the creditor is a bank, FIs, Specified NBFCs, ARCs, Debenture Trustee, etc as per the definition of Secured creditor u/s 2(1)(zd)

3. Every authority or officer of Central Government or State Government or Local Authority, entrusted with the function of recovery tax, revenue or government dues shall also file the transaction of attachment of any property with CERSAI to recover the tax or government dues.

4. If any person obtains orders for attachment of property from any court or authority against any of his claim, such person may file particulars of such attachment orders with CERSAI to fortify his claim on the property.

## **EFFECT OF THE REGISTRATION OF TRANSACTIONS, ETC. – Sec 26C**

1. The effect of such filing or registration by a secured creditor or other creditor or government authority or a person having an attachment order would constitute a public notice.

2. Where a security interest or attachment order is filed/ registered with CERSAI, then the claim of such creditor shall have priority over any subsequent security interest created upon such property. Any sale or transfer or lease of that property would be subject to the security interest registered or filed by the creditor with CERSAI

## **RIGHT OF ENFORCEMENT OF SECURITIES – Sec 26D**

1. From the date of appointment as notified i.e. 24<sup>th</sup> January 2020, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Sarfaesi Act, 2002 unless the security interest is registered with CERSAI.

## **PRIORITY TO SECURED CREDITORS – Sec 26E**

1. After the registration of security interest with CERSAI, the debts of the secured creditor i.e. banks, FIs, NBFCs, ARCs, etc. shall be paid in priority over all other debts and all revenue, taxes, cesses and other rates payable to Central Government or State Government or Local Authority.

2. If IBC proceedings are pending in respect of any secured assets, the priority of the secured creditors would be as per IBC



## CONCLUSION:

The notification dated 26<sup>th</sup> December 2019, effective from 24<sup>th</sup> January 2020 is very significant in terms of effect of registration with CERSAI, rights of enforcement of security interest and priority to secured creditors against government and tax dues.

This notification also provides a platform where the security interest can be registered by any creditor or government authority who have any security interest or attachment order against any credit given or against any tax dues. This will provide a public notice to all before any subsequent charge is created on the property fraudulently by the borrower or the creditor.

The registration of security interest with CERSAI would also assure the payment to secured creditors and tax dues or any other government dues would not have any priority over the dues of creditor who have registered his security interest with CERSAI.

