

Relaxation to NBFCs for taking action under the SARFAESI Act: Bane or Boon?

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Section 2(m)(iv) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) empowers the Central Government to issue a notification, specifying any non-banking financial company (**NBFC**) as a “*financial institution*” for the purpose of the SARFAESI Act. The result of the notification is that once a NBFC is notified as a “*financial institution*”, the said NBFC, subject to fulfilling other conditions, becomes eligible to take action for recovery of debts under the SARFAESI Act.

Acting in furtherance of the abovementioned, on February 24, 2020, the Central government issued a Notification vide S.O. 856(E) thereby relaxing the eligibility criteria for NBFCs for taking action for enforcement of security interest under the SARFAESI Act. By way of the Notification, a NBFC having assets worth INR 100 Crore and above would be entitled for enforcement of security interest under the SARFAESI Act in cases where the secured debt is at least INR 50 Lakh.

Prior to February 24, 2020, in accordance with the previous notifications by the Central Government, if an NBFC had an asset size of INR 500 Crore and more and where the loan size was of INR 1 Crore and more, the NBFC was eligible to recover its debt under the SARFAESI ACT. The present notification relaxes this eligibility criteria.

This move by the Central Government would definitely be welcomed by NBFCs at a time when the financial sector is aggrieved by the increasing number of defaults by borrowers. At the same time, this would lead to an increase in litigation before the Debts Recovery Tribunals, which are already stressed due to the tremendous workload and because of which there is pendency of proceedings. While rights have been conferred to a larger pool of NBFCs to enforce their security interest under the SARFAESI Act, these NBFCs have not been given any powers to file suits for recovery before the Debts Recovery Tribunal under the Recovery of Debts and Bankruptcy Act, 1993. Consequently, there exists a dark cloud around the timely implementation of such recovery action by NBFCs before the Debts Recovery Tribunals.

The timelines for under the SARFAESI Act are similar to the timelines under the Insolvency and Bankruptcy Code, 2016 (**IBC**). Classification of an account as a Non-Performing Asset (90 days), issuing a demand notice and reply and rejoinder thereto (75 days), possession and sale of asset (at least 30 days) and thereafter disposal of a challenge to the action (60 days to 120 days) may almost end up taking as much time as resolution of a corporate debtor under the IBC. Moreover, the timelines under the SARFAESI especially regarding disposal of challenge to the SARFAESI action by the Debts Recovery Tribunal are only directory and not mandatory.

It therefore seems that the relaxation in the eligibility criteria for NBFCs is a double-edged sword and its true effect would only be seen with time.