

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

[Act, No. 51 of 1993]

[27th August, 1993]

PREAMBLE

An Act to provide for the establishment of Tribunals for expeditions
adjudication and recovery

of debts due to banks and financial institutions and for matters
connected therewith or incidental

thereto.

Be it enacted by Parliament in Forty-fourth Year of the Republic of
India as follows:--

Section 1 - Short title, extent, commencement and application

(1) This Act may be called the Recovery of Debts Due to Banks and
Financial Institutions Act,

1993.

(2) It extends to the whole of India except the State of Jammu and
Kashmir.

(3) It shall be deemed to come into force on the 24th day of June,
1993.

(4) The provisions of this Act shall not apply where the amount of
debt due to any bank or

financial institution or to a consortium of banks or financial
institutions is less than ten lakh

rupees or such other amount, being not less than one lakh rupees, as
the Central

Government may, by notification, specify.

Section 2 - Definitions

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In this Act, unless the context otherwise requires,--

(a) "Appellate Tribunal" means an Appellate Tribunal established under subsection (1) of

section 8;

(b) "application" means an application made to a Tribunal under section 19;

(c) "appointed day", in relation to a Tribunal or an Appellate Tribunal, means the date on

which such Tribunal is established under sub-section (1) of section 3 or, as the case may

be, sub-section (1) of section 8;

(d) "bank" means--

(i) a banking company;

(ii) a corresponding new bank;

(iii) State Bank of India;

(iv) a subsidiary bank; or

(v) a Regional Rural Bank;

(c) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of

the Banking Regulation Act, 1949 (10 of 1949);

1[(ea) "Chairperson" means a Chairperson of an Appellate Tribunal appointed under

section 9,]

(f) "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);

2[(g) "debt" means any liability (inclusive of interest) which is claimed as due from any

person by a bank or a financial institution or by a consortium of banks or financial

institutions during the course of any business activity undertaken by the bank or the

financial institution or the consortium under any law for the time being in force, in cash

or otherwise, whether secured or unsecured, or assigned, or whether payable under a

decree or order of any civil court or any arbitration award or otherwise or under a

mortgage and subsisting on, and legally recoverable on, the date of the application;]

(h) "financial institution" means--

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

1956 (1 of 1956);

3[(ia) 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 Act, 2002;".]

(ii) such other institution as the Central Government may, having regard to its business

activity and the area of its operation in India by notification, specify;

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

(j) "prescribed" means prescribed by rules made under this Act;

1[(ja) "Presiding Officer" means the Presiding Officer of the Debts Recovery Tribunal

appointed under sub-section (1) of section 4;]

(k) "Recovery Officer" means a Recovery Officer appointed by the Central Government

for each Tribunal under sub-section (1) of section 7;

(l) "Regional Rural Bank" means a Regional Rural Bank established under section 3 of the

Regional Rural Bank Act, 1976 (21 of 1976);

(m) "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);

(n) "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);

(o) "Tribunal" means the Tribunal established under sub-section (I) of section 3.

1. Inserted by Act 1 of 2000, section 3 (w.r.e.f. 17-1-2000).

2. Substituted by Act 1 of 2000, section 3 for clause (g) w.r.e.f. 17-1-2000).

3. Inserted by Act The Enforcement of Security Interest and Recover of Debts Laws

(Amendment) Act, 2004.

Chapter 2 - ESTABLISHMENT OF TRIBUNAL AND APPELLATE TRIBUNAL

In this Act, unless the context otherwise requires,--

(a) "Appellate Tribunal" means an Appellate Tribunal established under subsection (1) of

section 8;

(b) "application" means an application made to a Tribunal under section 19;

(c) "appointed day", in relation to a Tribunal or an Appellate Tribunal, means the date on

which such Tribunal is established under sub-section (1) of section 3 or, as the case may

be, sub-section (1) of section 8;

(d) "bank" means--

(i) a banking company;

(ii) a corresponding new bank;

(iii) State Bank of India;

(iv) a subsidiary bank; or

(v) a Regional Rural Bank;

(c) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of

the Banking Regulation Act, 1949 (10 of 1949);

1[(ea) "Chairperson" means a Chairperson of an Appellate Tribunal appointed under

section 9,]

(f) "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);

2[(g) "debt" means any liability (inclusive of interest) which is claimed as due from any

person by a bank or a financial institution or by a consortium of banks or financial

institutions during the course of any business activity undertaken by the bank or the

financial institution or the consortium under any law for the time being in force, in cash

or otherwise, whether secured or unsecured, or assigned, or whether payable under a

decree or order of any civil court or any arbitration award or otherwise or under a

mortgage and subsisting on, and legally recoverable on, the date of the application;]

(h) "financial institution" means--

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

1956 (1 of 1956);

3[(ia) 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 Act, 2002;".]

(ii) such other institution as the Central Government may, having regard to its business

activity and the area of its operation in India by notification, specify;

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

(j) "prescribed" means prescribed by rules made under this Act;

1[(ja) "Presiding Officer" means the Presiding Officer of the Debts Recovery Tribunal

appointed under sub-section (1) of section 4;]

(k) "Recovery Officer" means a Recovery Officer appointed by the Central Government

for each Tribunal under sub-section (1) of section 7;

(l) "Regional Rural Bank" means a Regional Rural Bank established under section 3 of the

Regional Rural Bank Act, 1976 (21 of 1976);

(m) "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);

(n) "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);

(o) "Tribunal" means the Tribunal established under sub-section (I) of section 3.

1. Inserted by Act 1 of 2000, section 3 (w.r.e.f. 17-1-2000).

2. Substituted by Act 1 of 2000, section 3 for clause (g) w.r.e.f. 17-1-2000).

3. Inserted by Act The Enforcement of Security Interest and Recover of Debts Laws

(Amendment) Act, 2004.

Section 3 - Establishment of Tribunal

(1) The Central Government shall, by notification, establish one or more Tribunals, to be

known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority

conferred on such Tribunal by or under this Act.

(2) The Central Government shall also specify, in the notification referred to in sub-section

(1), the areas within which the Tribunal may exercise jurisdiction for entertaining and

deciding the applications filed before it.

Section 4 - Composition of Tribunal

(1) A Tribunal shall consist of one person only (hereinafter referred to as the Presiding

Officer) to be appointed by notification, by the Central Government.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may

authorise the Presiding Officer of one Tribunal to discharge also the functions of the Presiding

Officer of another Tribunal.

Section 5 - Qualifications for appointment as Presiding Officer

A person shall not be qualified for appointment as the Presiding Officer of a Tribunal unless

he is, or has been, or is qualified to be, a District Judge.

Section 6 - Term of Office

The Presiding Officer of a Tribunal shall hold office for a term of five years from the date on

which he enters upon his office or until he attains the age of 1[sixty-two years], whichever is

earlier.

1. Substituted by Act 28 of 1995, section 2, for "sixty years" (w.e.f. 9-8-1995).

Section 7 - Staff of Tribunal

(1) The Central Government shall provide the Tribunal 1 [with one or more Recovery Officers]

and such other officers and employees as that Government may think fit.

(2) 2 [The Recovery Officers] and other officers and employees of a Tribunal shall discharge

their functions under the general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of the 3 [Recovery Officers]

and other officers and employees of a Tribunal shall be such as may be prescribed.

1. Substituted by Act 1 of 2000, section 4, for "with a Recovery Officer" (w.r.e.f. 17-1-2000).

2. Substituted by Act 1 of 2000, section 4, for "The Recovery Officer" (w.r.e.f. 17-1-2000).

3. Substituted by Act 1 of 2000, section 4, for "Recovery Officer" (w.r.e.f. 17-1-2000).

Section 8 - Establishment of Appellate Tribunal

(1) The Central Government shall, by notification, establish one or more Appellate Tribunals,

to be known as the Debts Recovery Appellate Tribunal, to exercise the jurisdiction, powers

and authority conferred on such Tribunal by or under this Act.

(2) The Central Government shall also specify in the notification, referred to in sub-section

(1) the Tribunals in relation to which the Appellate Tribunal may exercise jurisdiction.

1[(3) Notwithstanding anything contained in sub-sections (1) and (2), the Central

Government may authorise the Chairperson of an Appellate Tribunal to discharge also the

functions of the Chairperson of other Appellate Tribunal.]

1. Inserted by Act 1 of 2000, section 5 (w.r.e.f. 17-1-2000).

Section 9 - Composition of Appellate Tribunal

An Appellate Tribunal shall consist of one person only (hereinafter referred to as¹[the

Chairperson of the Appellate Tribunal]) to be appointed, by notification, by the Central

Government.

1. Substituted by Act 1 of 2000, section 2, for "the Presiding Officer of the Appellate

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Tribunal" (w.r.e.f. 17-1-2000).

Section 10 - Qualifications for appointment as Chairperson of the Appellate Tribunal

10. Qualifications for appointment as¹[Chairperson of the Appellate Tribunal]

A person shall not be qualified for appointment as²[the Chairperson of an Appellate Tribunal]

unless he--

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that

service for at least three years; or

(c) has held office as the Presiding Officer of a Tribunal for at least three years.

1. Substituted by Act 1 of 2000, section 2, for "Presiding Officer of the Appellate Tribunal"

(w.r.e.f. 17-1-2000).

2. Substituted by Act 1 of 2000, section 2, for "The Presiding Officer of an Appellate

Tribunal" (w.r.e.f. 17-1-2000).

Section 11 - Term of Office

1 [The Chairperson of an Appellate Tribunal] shall hold office for a term of five years from the

date on which he enters upon his office or until he attains the age of 2 [sixty-five years],

whichever is earlier.

1. Substituted by Act 1 of 2000, section 2, for "The Presiding Officer of an Appellate Tribunal" (w.r.e.f. 17-1-2000).

2. Substituted by Act 28 of 1995, section 3, for "sixty-two years" (w.e.f. 9-8-1995).

Section 12 - Staff of the Appellate Tribunal

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The provisions of section 7 (except those relating to Recovery Officer) shall, so far as may be,

apply to an Appellate Tribunal as they apply to a Tribunal and accordingly references in that

section to "Tribunal" shall be construed as references to "Appellate Tribunal" and references

to "Recovery Officer" shall be deemed to have been omitted.

Section 13 - Salary and allowances and other terms and conditions of service of Presiding

Officers

The salary and allowances payable to and the other terms and conditions of service

(including pension, gratuity and other retirement benefits) of,1[the Presiding Officer of a

Tribunal or the Chairperson of an Appellate Tribunal] shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of

service of 2[the Presiding officer of a Tribunal or the Chairperson of an Appellate Tribunal

shall be varied to his] disadvantage after appointment.

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1. Substituted by Act 1 of 2000, section 2, for "the Presiding Officer of a Tribunal or an

Appellate Tribunal" (w.r.e.f. 17-1-2000).

2. Substituted by Act 1 of 2000, section 6, for "the said Presiding Officers shall be varied to

their" (w.r.e.f. 17-1-2000).

Section 14 - Filling up of vacancies

If, for any reason other than temporary absence, any vacancy occurs in the office of the

Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal], then the Central

Government shall appoint another person in accordance with the provisions of this Act to fill

the vacancy and the proceedings may be continued before the Tribunal or the Appellate

Tribunal from the stage at which the vacancy is filled.

1. Substituted by Act 1 of 2000, section 2, for "the Presiding Officer of a Tribunal or an

Appellate Tribunal" (w.r.e.f. 17-1-2000).

Section 15 - Resignation and removal

(1) 1 [The Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal] may, by

notice in writing under his hand addressed to the Central Government, resign his office:

Provided that 2 [the Presiding Officer of a Tribunal or the Chairperson of an Appellate

Tribunal] shall, unless he is permitted by the Central Government to relinquish his office

sooner, continue to hold office until the expiry of three months from the date of receipt of

such notice or until a person duly appointed as his successor enters upon his office or until

the expiry of his term of office, whichever is the earliest.

(2) 1 [The Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal] shall not

be removed from his office except by an order made by the Central Government on the

ground of proved misbehavior or incapacity after inquiry,--

(a) in the case of the Presiding Officer of a Tribunal, made by a Judge of a High Court;

(b) in the case of 3 [the Chairperson of an Appellate Tribunal], made by a Judge of the

Supreme Court,

in which 4 [the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal] has

been informed of the charges against him and given a reasonable opportunity of being heard in

respect of these charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of

misbehavior or incapacity of 5 [the Presiding Officer of a Tribunal or the Chairperson of an

Appellate Tribunal].

1. Substituted by Act 1 of 2000, section 2, for "the Presiding Officer of a Tribunal or an Appellate Tribunal" (w.r.e.f.

17-1-2000).

2. Substituted by Act 1 of 2000, section 7, for "the said Presiding Officer" (w.r.e.f. 17-1-2000).

3. Substituted by Act 1 of 2000, section 2, for "the Presiding Officer of an Appellate Tribunal" (w.r.e.f. 17-1-2000).

4. Substituted by Act 1 of 2000, section 7, for "the Presiding Officer concerned" (w.r.e.f. 17-1-2000).

5. Substituted by Act 1 of 2000, section 7, for "the aforesaid Presiding Officer" (w.r.e.f. 17-1-2000).

Section 16 - Orders constituting Tribunal or an Appellate Tribunal to be final and not to

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invalidate its proceedings

No order of the Central Government appointing any person as¹[the Presiding Officer of a

Tribunal or Chairperson of an Appellate Tribunal] shall be called in question in any manner,

and no act or proceeding before a Tribunal or an Appellate Tribunal shall be called in

question in any manner on the ground merely of any defect in the constitution of a Tribunal

or an Appellate Tribunal.

1. Substituted by Act 1 of 2000, section 2, for "the Presiding Officer of a Tribunal or an

Appellate Tribunal" (w.r.e.f. 17-1-2000).

Chapter 3 - JURISDICTION, POWERS AND AUTHORITY OF TRIBUNALS

No order of the Central Government appointing any person as¹[the Presiding Officer of a

Tribunal or Chairperson of an Appellate Tribunal] shall be called in question in any manner,

and no act or proceeding before a Tribunal or an Appellate Tribunal shall be called in

question in any manner on the ground merely of any defect in the constitution of a Tribunal

or an Appellate Tribunal.

1. Substituted by Act 1 of 2000, section 2, for "the Presiding Officer of a Tribunal or an

Appellate Tribunal" (w.r.e.f. 17-1-2000).

Section 17 - Jurisdiction, powers and authority of Tribunals

(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and

authority to entertain and decide applications from the banks and financial institutions for

recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction,

powers and authority to entertain appeals against any order made, or deemed to have been

made, by a Tribunal under this Act.

Section 17A - Power of Chairperson of Appellate Tribunal

1 [17A.Power of Chairperson of Appellate Tribunal

(1) The Chairperson of an Appellate Tribunal shall exercise general power of superintendence

and control over the Tribunals under his jurisdiction including the power of appraising the

work and recording the annual confidential reports of Presiding Officers.

(2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on

the application of any of the parties or on his own motion after notice to the parties and after

hearing them, transfer any case from one Tribunal for disposal to any other Tribunal.]

1. Inserted by Act 1 of 2000, section 8 (w.r.e.f. 17-1-2000).

Section 18 - Bar of Jurisdiction

On and from the appointed day, no court or other authority shall have, or be entitled to

exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court

exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the

matters specified in section 17.

Chapter 4 - PROCEDURE OF TRIBUNALS

On and from the appointed day, no court or other authority shall have, or be entitled to

exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court

exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the

matters specified in section 17.

Section 19 - Application to the Tribunal

1[19. Application to the Tribunal

(1) Where a bank or a financial institution has to recover any debt from any person, it may

make an application to the Tribunal within the local limits of whose jurisdiction--

(a) the defendant, or each of the defendants where there are more than one, at the time

of making the application, actually and voluntarily resides or carries on business or

personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the

application, actually and voluntarily resides or carries on business or personally works for

gain; or

(c) the cause of action, wholly or in part, arise.

2[Provided that the bank or financial institution may, with the permission of the Debts

Recovery Tribunal, on an application made by it, withdraw the application, whether

made before or after the Enforcement of Security Interest and Recovery of Debts

Laws(Amendment) Act, 2004 for the purpose of taking action under the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002, if no such action had been taken earlier under the Act:

Provided further that any application made under the first proviso for seeking

permission from the Debts Recovery Tribunal to withdraw the application made under

sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of

within thirty days from the date of such application:

Provided also that in case the Debts Recovery 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.".]

(2) Where a bank or a financial institution, which has to recover its debt from any person,

has filed an application to the Tribunal under sub-section (I) and against the same person

another bank or financial institution also has claim to recover its debt, then, the later bank

or financial institution may join the applicant bank or financial institution at any stage of the

proceedings, before the final order is passed, by making an application to that Tribunal.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and

accompanied by such documents or other evidence and by such fee as may be prescribed:

Provided that the fee may be prescribed having regard to the amount of debt to be

recovered:

Provided further that nothing contained in this sub-section relating to fee shall apply to

cases transferred to the Tribunal under sub-section (1) of section 31-

(4) On receipt of the application under sub-section (1) or sub-section (2), the Tribunal shall

issue summons requiring the defendant to show cause within thirty days of the service of

summons as to why the relief prayed for should not be granted.

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(5) The defendant shall, at or before the first hearing or within such time as the Tribunal

may permit, present a written statement of his defence.

(6) Where the defendant claims to set-off against the applicant's demand and ascertained

sum of money legally recoverable by him from such applicant, the defendant may, at the first

hearing of the application, but not afterwards unless permitted by the Tribunal, present a

written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a plaint in a cross-suit so as to

enable the Tribunal to pass a final order in respect both of the original claim and of the

set-off.

(8) A defendant in an application may, in addition to his right of pleading a set-off under

sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right

or claim in respect of a cause of action accruing to the defendant against the applicant either

before or after the filing of the application but before the defendant has delivered his defence

or before the time limited for delivering his defence has expired, whether such counter-claim

is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to

enable the Tribunal to pass a final order on the same application, both on the original claim

and on the counter-claim.

(10) The applicant shall be at liberty to file a written statement in answer to the

counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim

thereby raised ought not to be disposed of by way of counter-claim but in an independent

action, the applicant may, at any time before issues are settled in relation to the counterclaim,

apply to the Tribunal for an order that such counterclaim may be excluded, and the

Tribunal may, on the hearing of such application, make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or

attachment) against the defendant to debar him from transferring, alienating or otherwise

dealing with, or disposing of, any property and assets belonging to him without the prior

permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or

otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of

any order for the recovery of debt that may be passed against him,--

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of

the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by

misuse or creating third party interest,

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish

security, in such sum as may be specified in the order, to produce and place at the

disposal of the Tribunal, when required, the said property or the value of the same, or

such portion thereof as may be sufficient to satisfy the certificate for the recovery of

debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails

to furnish the security required, within the time fixed by the Tribunal, the Tribunal may

order the attachment of the whole or such portion of the properties claimed by the

applicant as the properties secured in his favour or otherwise owned by the defendant as

appears sufficient to satisfy any certificate for the recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required

to be attached and the estimated value thereof.

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(15) The Tribunal may also in the order direct the conditional attachment of the whole or any

portion of the property specified under sub-section (14).

(16) If an order of attachment is made without complying with the provisions of sub-section

(13), such attachment shall be void.

(17) In the case of disobedience of an order made by the Tribunal under subsections (12),

(13) and (18) or breach of any of the terms on which the order was made, the Tribunal may

order the properties of the person guilty of such disobedience or breach to be attached and

may also order such person to be detained in the civil prison for a term not exceeding three

months, unless in the meantime the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by

order--

(a) appoint a receiver of any property, whether before or after grant of certificate for

recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the

courts of filing and defending application before the Tribunal and for the realization,

management, protection, preservation and improvement of the property, the collection of

the rents and profits thereof, the application and disposal of such rents and profits, and

the execution of documents as the owner himself has, or such of (hose powers as the

Tribunal thinks fit; and

(e) appoint a Commissioner for, preparation of an inventory of the properties of the

defendant or for the thereof.

(19) Where a certificate of recovery is issued against a company registered under the

Companies Act, 1956 (1 of 1956) the Tribunal may order the sale proceeds of such company

to be distributed among its secured creditors in accordance with the provisions of section

529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being

heard, pass such interim or final order, including the order for payment of interest from the

date on or before which payment of the amount is found due upto the date of realisation or

actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the

defendant.

(22) the Presiding Officer shall issue a certificate under his signature on the basis of the

order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in

the certificate.

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the

property is situated within the local limits of the jurisdiction of two or more Tribunals, it may

send the copies of the certificate of recovery for execution to such other Tribunal where the

property is situated:

Provided that in a case where the Tribunal to which the certificate of recovery is sent for

execution funds that it has no jurisdiction to comply with the certificate of recovery, it

shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be

dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of

the application finally within one hundred and eighty days from the date of receipt of the

application.

(25) The Tribunal may make such orders and give such directions as may be necessary or

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expedient to give effect to its orders or to prevent abuse of its process or to secure the ends

of justice.]

1. Substituted by Act 1 of 2000, sec. 9, for section 19 (w.r.e.f. 17-1-2000).

2. Inserted by The Enforcement of Security Interest and Recovery of Debts Laws

(Amendment) Act, 2004

Section 20 - Appeal to the Appellate Tribunal

(1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed

to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate

Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the

consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from

the date on which a copy of the order made, or deemed to have been made, by the Tribunal

is received by him and it shall be in such form and be accompanied by such fee as may be

prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said

period of forty-five days if it is satisfied that there was sufficient cause for not filing it

with in that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving

the parties to the appeal, an opportunity of being heard, pass such orders thereon as it

thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the

appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by

it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal

finally within six months from the date of receipt of the appeal.

Section 21 - Deposit of amount of debt due, on filing appeal

Where an appeal is preferred by any person from whom the amount of debt is due to a bank

or a financial institution or a consortium of banks or financial institutions, such appeal shall

not be entertained by the Appellate Tribunal unless such person has deposited with the

Appellate Tribunal seventy-five per cent, of the amount of debt so due from him as

determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or

reduce the amount to be deposited under this section.

Section 22 - Procedure and Powers of the Tribunal and the Appellate Tribunal

(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by

the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural

justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the

Appellate Tribunal shall have powers to regulate their own procedure including the places at

which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their

functions under this Act, the same powers as are vested in a civil court under the Code of

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Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters,

namely:--

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed.

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a

judicial proceeding within the meaning of sections 193 and 228, and for the purposes of

section 196, of the Indian Penal Code (45 of 1860) and the Tribunal or the Appellate Tribunal

shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of

the Code of Criminal Procedure, 1973 (2 of 1974).

Section 23 - Right to legal representation and Presenting Officers

(1) A bank or a financial institution making an application to a Tribunal or an appeal to an

Appellate Tribunal may authorise one or more legal practitioners or any of its officers to act

as Presenting Officers and every person so authorised by it may present its case before the

Tribunal or the Appellate Tribunal.

(2) The defendant may either appear in person or authorise one or more legal practitioners or

any of his or its officers to present his or its case before the Tribunal or the Appellate

Tribunal.

Section 24 - Limitation

The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an

application made to a Tribunal.

Chapter 5 - RECOVERY OF DEBT DETERMINED BY TRIBUNAL

The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an

application made to a Tribunal.

Section 25 - Modes of recovery of debts

The Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of

section 19, proceed to recover the amount of debt specified in the certificate by one or more

of the following modes, namely:--

(a) attachment and sale of the movable or immovable property of the defendant;

(b) arrest of the defendant and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of

the defendant.

Section 26 - Validity of certificate and amendment thereof

(1) It shall not be open to the defendant to dispute before the Recovery Officer the

correctness of the amount specified in the certificate, and no objection to the certificate on any

other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the Presiding Officer shall

have power to withdraw the certificate or correct any clerical or arithmetical mistake in the

certificate by sending an intimation to the Recovery Officer.

(3) The Presiding Officer shall intimate to the Recovery Officer any order withdrawing or

cancelling a certificate or any correction made by him under subsection (2).

Section 27 - Stay of proceedings under certificate and amendment or withdrawal thereof

(1) Notwithstanding that a certificate has been issued to the Recovery Officer for the

recovery of any amount, the Presiding Officer may grant time for the payment of the

amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of

the time so granted.

(2)-Where a certificate for the recovery of amount has been issued, the Presiding Officer

shall keep the Recovery Officer informed of any amount paid or time granted for payment,

subsequent to the issue of such certificate to the Recovery Officer.

(3) Where the order giving rise to a demand of amount for recovery of debt has been

modified in appeal, and, as a consequence thereof the demand is reduced, the Presiding

Officer shall stay the recovery of such part of the amount of the certificate as pertains to the

said reduction for the period for which the appeal remains pending.

(4) Where a certificate for the recovery of debt has been received by the Recovery Officer

and subsequently the amount of the outstanding demands is reduced¹[or enhanced] as a

result of an appeal, the Presiding Officer shall, when the order which was the subject-matter

of such appeal has become final and conclusive, amend the certificate or withdraw it, as the

case may be.

1. Inserted by Act 1 of 2000, section 10 (w.r.e.f. 17-1-2000).

Section 28 - Other modes of recovery

(1) Where a certificate has been issued to the Recovery Officer under sub-section (7) of

section 19, the Recovery Officer may, without prejudice to the modes of recovery specified in

section 25, recover the amount of debt by any one or more of the modes provided under this

section.

(2) If any amount is due from any person to the defendant, the Recovery Officer may require

such person to deduct from the said amount, the amount of debt due from the defendant

under this Act and such person shall comply with any such requisition and shall pay the sum

so deducted to the credit of the Recovery Officer:

Provided that nothing in this sub-section shall apply to any part of the amount exempt

from attachment in execution of a decree of a civil court under section 60 of the Code of

Civil Procedure, 1908 (5 of 1908).

(3) (i) The Recovery Officer may, at any time or from time to time, by notice in writing,

require any person from whom money is due or may become due to the defendant or to any

person who holds or may subsequently hold money for or on account of the defendant, to

pay to the Recovery Officer either forthwith upon the money becoming due or being held or

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within the time specified in the notice (not being before the money becomes due or is held)

so much of the money as is sufficient to pay the amount of debt due from the defendant or

the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may

subsequently hold any money for or on account of the defendant jointly with any other

person and for the purposes of this sub-section, the shares of the joint holders in such

amount shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the defendant at his last address known to

the Recovery Officer and in the case of a joint account to all the joint holders at their last

addresses known to the Recovery Officer.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is

issued under this sub-section shall be bound to comply with such notice, and, in

particular, where any such notice is issued to a post office, bank, financial institution, or

an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any

other document to be produced for the purpose of any entry, endorsement or the like to

be made before the payment is made notwithstanding any rule, practice or requirement

to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section

has been issued arising after the date of the notice shall be void as against any demand

contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a

statement on oath that the sum demanded or the part thereof is not due to the defendant

or that he does not hold any money for or on account of the defendant, then, nothing

contained in this sub-section shall be deemed to require such person to pay any such sum

or part thereof, as the case may be, but if it is discovered that such statement was false

in any material particular, such person shall be personally liable to the Recovery Officer

to the extent of his own liability to the defendant on the date of the notice, or to the

extent of the defendant's liability for any sum due under this Act, whichever is less.

(vii) The Recovery Officer may, at any time or from time to time, amend or revoke any

notice under this sub-section or extend the time for making any payment in pursuance of

such notice.

(viii) The Recovery Officer shall grant a receipt for any amount paid in compliance with a

notice issued under this sub-section, and the person so paying shall be fully discharged

from his liability to the defendant to the extent of the amount so paid.

(ix) Any person discharging any liability to the defendant after the receipt of a notice

under this sub-section shall be personally liable to the Recovery Officer to the extent of

his own liability to the defendant so discharged or to the extent of the defendant's

liability for any debt due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in

pursuance thereof to the Recovery Officer, he shall be deemed to be a defendant in

default in respect of the amount specified in the notice and further proceedings may be

taken against him for the realisation of the amount as if it were a debt due from him, in

the manner provided in sections 25, 26 and 27 and the notice shall have the same effect

as an attachment of a debt by the Recovery Officer in exercise of his powers under

section 25.

(4) The Recovery Officer may apply to the court in whose custody there is money belonging

to the defendant for payment to him of the entire amount of such money, or if it is more

than the amount of debt due an amount sufficient to discharge the amount of debt so due.

1[(4A) The Recovery Officer may, by order, at any stage of the execution of the certificate of

recovery, require any person, and in case of a company, any of its officers against whom or

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which the certificate of recovery is issued, to declare on affidavit the particulars of his or its

assets.]

(5) The Recovery Officer may recover any amount of debt due from the defendant by

distrain and sale of his movable property in the manner laid down in the Third Schedule to

the Income-Tax Act, 1961 (43 of 1961).

1. Inserted by Act 1 of 2000, section 11 (w.r.e.f. 17-1-2000).

Section 29 - Application of certain provisions of Income-tax Act

The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961)

and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall,

as far as possible, apply with necessary modifications as if the said provisions and the rules

referred to the amount of debt due under this Act instead of to the Income-tax:

Provided that any reference under the said provisions and the rules to the "assessee"

shall be construed as a reference to the defendant under this Act.

Section 30 - Appeal against the order of Recovery Officer

1[30. Appeal against the order of Recovery Officer

(1) Notwithstanding anything contained in section 29, any person aggrieved by an order of

the Recovery Officer made under this Act may, within thirty days from the date on which a

copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an

opportunity to the appellant to be heard, and after making such inquiry as it deems fit,

confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers

under sections 25 to 28 (both inclusive).]

1. Substituted by Act 1 of 2000, section 12, for section 30 (w.r.e.f. 17-1-2000).

Chapter 6 - MISCELLANEOUS

1[30. Appeal against the order of Recovery Officer

(1) Notwithstanding anything contained in section 29, any person aggrieved by an order of

the Recovery Officer made under this Act may, within thirty days from the date on which a

copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an

opportunity to the appellant to be heard, and after making such inquiry as it deems fit,

confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers

under sections 25 to 28 (both inclusive).]

1. Substituted by Act 1 of 2000, section 12, for section 30 (w.r.e.f. 17-1-2000).

Section 31 - Transfer of pending cases

(1) Every suit or other proceeding pending before any court immediately before the date of

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establishment of a Tribunal under this Act, being a suit or proceeding the cause of action

where on it is based is such that it would have been, if it had arisen after such

establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to

such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid

before any court.

(2) Where any suit or other proceeding stands transferred from any court to a Tribunal under

sub-section (1),--

(a) the court shall, as soon as may be after such transfer, forward the records of such suit

or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other

proceeding, so far as may be, in the same manner as in the case of an application made

under section 19 from the stage which was reached before such transfer or from any

earlier stage^{1[***]} as the Tribunal may deem fit.

1. The words "or de novo" omitted by Act 1 of 2000, section 13 (w.r.e.f. 17-1-2000).

Section 31A - Power of Tribunal to issue certificate of recovery in case of decree or order

1[31A. power of Tribunal to issue certificate of recovery in case of decree or order

(1) Where a decree or order was passed by any court before the commencement of the

Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 and has

not yet been executed, then, the decree-holder may apply to the Tribunal to pass an order

for recovery of the amount.

(2) On receipt of an application under sub-section (1), the Tribunal may issue a certificate for

recovery to a Recovery Officer.

(3) On receipt of a certificate under sub-section (2), the Recovery Officer shall proceed to

recover the amount as if it was a certificate in respect of a debt recoverable under this Act.]

1. Inserted by Act 1 of 2000, section 14 (w.r.e.f. 17-1-2000).

Section 32 - Chairperson, Presiding Officer and staff of Appellate Tribunal and Tribunal to

be public servants

1 [32. Chairperson, Presiding Officer and staff of Appellate Tribunal and Tribunal to be

public servants

The Chairperson of an Appellate Tribunal, the Presiding Officer of a Tribunal, the Recovery

Officer and other officers and employees of an Appellate Tribunal and a Tribunal shall be

deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).]

1. Substituted by Act 1 of 2000, section 15, for section 32 (w.r.e.f. 17-1-2000).

Section 33 - Protection of action taken in good faith

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No suit, prosecution or other legal proceeding shall lie against the Central Government or

against¹[the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal] or

against the Recovery Officer for anything which is in good faith done or intended to be done

in pursuance of this Act or any rule or order made thereunder.

1. Substituted by Act 1 of 2000, section 2, for "the Presiding Officer of a Tribunal or an

Appellate Tribunal" (w.r.e.f. 17-1-2000).

Section 34 - Act to have over-riding effect

(1) Save as provided under subsection (2), the provisions of this Act shall have effect

notwithstanding anything inconsistent therewith contained in any other law for the time

being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in

derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial

Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the

Industrial Reconstruction Bank of India Act, 1984 (62 of 1984)¹], the Sick Industrial

Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development

Bank of India Act, 1989 (39 of 1989)].

1. Substituted by Act 1 of 2000, section 16, for "and the Sick Industrial Companies (Special

Provisions) Act, 1985 (1 of 1986)" (w.r.e.f. 17-1-2000).

Section 35 - Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central

Government may, by order published in the Official Gazette make such provisions, not

inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for

removing the difficulty:

Provided that no such order shall be made after the expiry of the period of three years

from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid

before each House of Parliament.

Section 36 - Power to make rules

(1) The Central Government may, by notification, make rules to carry out the provisions of

this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may, provide for

all or any of the following matters, namely:--

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(a) the salaries and allowances and other terms and conditions of service of¹[the

Chairpersons, the Presiding Officers], Recovery Officers and other officers and employees

of the Tribunal and the Appellate Tribunal under sections 7, 12 and 13;

(b) the procedure for the investigation of misbehaviour or incapacity of²[the Chairpersons

of Appellate Tribunals and the Presiding Officers of the Tribunals] under sub-section (3)

of section 15;

(c) the form in which an application may be made under section 19, the documents and

other evidence by which such application shall be accompanied and the fees payable in

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respect of the filing of such application;

(d) the form in which an appeal may be filed before the Appellate Tribunal under section

20 and the fees payable in respect of such appeal;

(e) any other matter which is required to be, or may be, prescribed.

3[(3) Every notification issued under sub-section (4) of section 1, section 3 and section 8

and every rule made by the Central Government under this Act, 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 notification or rule

or both Houses agree that the notification or rule should not be issued or made, the

notification or 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 notification or rule.]

1. Substituted by Act 1 of 2000, section 17, for "the Presiding Officers" (w.r.e.f. 17-1-2000).

2. Substituted by Act 1 of 2000, section 17, for "the Presiding Officer of the Tribunal and

Appellate Tribunals" (w.r.e.f. 17-1-2000).

3. Substituted by Act 1 of 2000, section 17, for sub-section (3) (w.r.e.f. 17-1-2000).

Section 37 - Repeal and saving

(1) The Recovery of Debts Due to Banks and Financial Institutions Ordinance, 1993 is hereby

repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said

Ordinance, shall be deemed to have been done or taken under the corresponding provisions

of this Act.

Amending Act 1 - AMENDMENT ACT

THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS

(AMENDMENT) ACT, 2004*

[Act, No. 30 of 2004]

[29th December, 2004]

[Provisions amending The Recovery of Debts due to Banks and
Financial Institutions Act,

1993]

PREAMBLE

An Act to amend the Securitisation and Reconstruction of Financial
Assets and Enforcement of

Security Interest Act, 2002 and further to amend the Recovery of
Debts Due to Banks and

Financial Institutions Act, 1993 and the Companies Act, 1956.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of
India as follows:--

CHAPTER I

PRELIMINARY

1. Short title and commencement

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(1) This Act may be called the Enforcement of Security Interest and
Recovery of Debts Laws

(Amendment) Act, 2004.

(2) Save as otherwise provided in this Act, the provisions of this Act
shall be deemed to have

come into force on the 11th day of November, 2004.

* * * * *

CHAPTER III

AMENDMENTS TO THERECOVERY OF DEBTS DUE TO BANKS AND
FINANCIAL

INSTITUTIONS ACT, 1993

19. Amendment of section 2

In section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51

of 1993), (hereafter in this Chapter referred to as the principal Act), in clause (h), after

sub-clause (i), the following sub-clause shall be inserted, namely:--

"(ia) 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 Act, 2002 (54 of

2002);".

20. Amendment of section 19.--

In section 19 of the principal Act, after sub-section (1), the following provisos shall be

inserted, namely:--

"Provided that the bank or financial institution may, with the permission of the Debts

Recovery Tribunal, on an application made by it, withdraw the application, whether made

before or after the Enforcement of Security Interest and Recovery of Debts Laws

(Amendment) Act, 2004 for the purpose of taking action under the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of

2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission

from the Debts Recovery Tribunal to withdraw the application made under sub-section (1)

shall be dealt with by it as expeditiously as possible and disposed of within thirty days

from the date of such application:

Provided also that in case the Debts Recovery 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."

* * * * *

CHAPTER V

REPEAL AND SAVING

23. Repeal and saving

(1) The Enforcement of Security Interest and Recovery of Debts Laws (Amendment)

Ordinance (Ord. 5 of 2004) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of

2002), and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of

1993) and the Companies Act, 1956 (1 of 1956), as amended by the said Ordinance, shall be

deemed to have been done or taken under the corresponding provisions of those Acts, as

amended by this Act.

* Passed by Lok Sabha on 7th December, 2004 and by Rajya Sabha on 16th December, 2004.