Bill Summary

Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016

- The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 was introduced by the Minister of Finance, Mr. Arun Jaitley, in Lok Sabha on May 11, 2016. It seeks to amend four laws: (i) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), (ii) Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI), (iii) Indian Stamp Act, 1899 and (iv) Depositories Act, 1996.
- **Amendments to the SARFAESI Act:** The SARFAESI Act allows secured creditors to take possession over a collateral, against which a loan had been provided, upon a default in repayment. This process is undertaken with the assistance of the District Magistrate, and does not require the intervention of courts or tribunals. The Bill provides that this process will have to be completed within 30 days by the District Magistrate.
- In addition, the Bill empowers the District Magistrate to assist banks in taking over the management of a company, in case the company is unable to repay loans. This will be done in case the banks convert their outstanding debt into equity shares, and consequently hold a stake of 51% or more in the company.
- The Act creates a central registry to maintain records of transactions related to secured assets. The Bill creates a central database to integrate records of property registered under various registration systems with this central registry. This includes integration of registrations made under Companies Act, 2013, Registration Act, 1908 and Motor Vehicles Act, 1988.
- The Bill provides that secured creditors will not be able to take possession over the collateral unless it is registered with the central registry. Further, these creditors, after registration of security interest, will have priority over others in repayment of dues.
- The Act empowered the Reserve Bank of India (RBI) to examine the statements and any information of Asset Reconstruction Companies related to their business. The Bill further empowers the RBI to carry out audit and inspection of these companies. The RBI may penalise a company if the company fails to comply with any directions issued by it.
- The Bill provides that stamp duty will not be charged on transactions undertaken for transfer of financial assets in favour of asset reconstruction companies. Financial assets include loans and collaterals.
- **Amendments to the RDDBFI Act:** The RDDBFI Act established Debt Recovery Tribunals and Debt Recovery Appellate Tribunals. The Bill increases the retirement age of Presiding Officers of Debt Recovery Tribunals from 62 years to 65 years. Further, it increases the retirement age of Chairpersons of Appellate Tribunals from 65 years to 67 years. It also makes Presiding Officers and Chairpersons eligible for reappointment to their positions.
- The Act provides that banks and financial institutions will be required to file cases in tribunals having jurisdiction over the defendant's area of residence or business. The Bill allows banks to file cases in tribunals having jurisdiction over the area of bank branch where the debt is pending.
- The Bill provides that certain procedures under the Act will be undertaken in electronic form. These include presentation of claims by parties and summons issued by tribunals under the Act.
- The Bill provides further details of procedures that the tribunals will follow in case of debt recovery proceedings. This includes the requirement of applicants to specify the assets of the borrower, which have been collateralised. The Bill also prescribes time limits for the completion of some of these procedures.

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