

OVERVIEW OF BANKING REGULATION ACT, 1949, THE INSURANCE ACT, 1938, THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999, THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST Act, 2002

THE BANKING REGULATION ACT, 1949

Question 1

In what way does the Reserve Bank of India regulate the determination of loans and advances which can be made by Banking Company under the Banking Regulation Act, 1949? Explain. CA Final New Course. (November, 2008)

Answer

POWERS OF RBI TO REGULATE DETERMINATION OF LOANS AND ADVANCES BY BANKING COMPANIES:

By virtue of provisions of Banking Regulations Act, 1949, as contained in Section 21 the RBI is empowered to issue directives to a banking company to determine the policy in relation to loans and advances. Such directions may relate to:

- (1) Purpose for which loan may or may not be made.
- (2) Margin stipulation.
- (3) Maximum amount of advances to any company, firm individual or association of persons (at present 15% for individual borrower without infrastructure project, if infrastructure project go by additional 10%, 40% for group borrower and for infrastructure project of group borrower it

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may be up to 50% of bank's capital and reserve (presently tier-I and tier-II capital from capital adequacy point of view).

- (4) Maximum amount of guarantee liability on behalf of any individual firm /company.
- (5) The rate of interest and other terms and conditions on which such advances are made or guarantee given.

It may further be mentioned that in accordance with the provisions of Section 21A, rate of interest charged by banking company on the basis of loan contract between the bank and debtor is not to be subject to scrutiny by the court.

Question 2

Enumerate the obligations of banking companies under the Prevention of Money Laundering Act, 2002. **(6 Marks)**

Answer

Section 12 of Prevention of Money Laundering Act, 2002 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries of securities market. Every banking company, financial institution and intermediary shall:

- (a) Maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month. Such records shall be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company or financial institution or intermediary, as the case may be;
- (b) Furnish information of the above transactions to the Director appointed for the purpose of this Act within the prescribed time;
- (c) Verify and maintain the records of the identity of all its clients, in the prescribed manner.

If the principal officer of a banking company or financial institution or intermediary has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

Question 3

*XLR Bank Limited is not managing its affairs properly. Employees as well as depositors of the bank have complained to the Central Government from time to time about such mismanagement and requested the Central Government to acquire the undertaking of the Banking Company. Explain the powers of the Central Government in this regard under the **Banking Regulation Act, 1949.***

(November, 2009)

Answer

Under Section 36AE of the Banking Regulation Act, 1949, if the Central Government is of the opinion that a Banking company has failed to comply with the direction given by RBI relating to policy matters under section 21 and 35A and or the affairs of the Bank are being managed in a manner detrimental to the interest of depositors or that of the banking policy or for better provision of credit generally or of credit to any particular section of the community or in any particular area; it is necessary to the Government may after consultation with RBI, by notified order, acquire the undertaking of a Banking Company. In such a case, on the date specified in the notification, the undertaking of the Banking Company and its assets and liabilities shall stand transferred to and vest in Central Government. Before acquiring the undertaking, the Central Government shall give a reasonable opportunity of hearing to the Banking Company.

Question 4

*The promoters of a company to be registered under the Companies Act, 1956 having its main object of carrying on the business as manufacturers and stockists of Iron and Steel proposes that the name of the company is to be "ABC Steel Bank Limited". You are required to state with reference to the provisions of the **Banking Regulation Act, 1949** whether the said company with the proposed name can be registered.* (June 2009)

Answer

As per provisions of Section 7 of the Banking Regulation Act, 1949 no company other than a banking company can use, as part of its name, the word "Bank" unless it is a banking company as defined in Section 5(c) of the said Act. In view of such a legal provision, the promoters of the company having the main object of carrying on the business as manufacturers and stockists of iron & steel can not keep the name of the company as "ABC Steel Bank Limited".

Question 5

*Union Bank of India, a National Bank acquired on 1st January, 2002 a building, fully occupied by various tenants, from Mr. Rahul, the owner of the building, in discharge of a term loan advanced to Mr. Rahul, who had mortgaged the said building as security with the said Bank and failed to repay the loan. The said bank wants to keep the building permanently with it and earn the rent from tenants. You are required to state with reference to the provisions of the **Banking Regulation Act, 1949** whether the said bank can do so.* (June 09)

Answer

Union Bank of India being a nationalized bank is a banking company within the meaning of the Banking Regulation Act, 1949. As per provisions of Section 9 thereof, no banking company shall hold any immovable property, howsoever acquired, for a period exceeding seven years except:

- (i) If such property is required for banking company's own use.

- (ii) If the Reserve Bank of India extends the said period of seven years by up to another five years on the ground that such extension would be in the interest of the depositors of the banking company.

Accordingly, Union Bank of India in this case would normally be required to dispose off the building acquired from Mr. Rahul before 1st January, 2009. However, if the Reserve Bank of India on above stated ground grants the extension, then also the said Bank will have to dispose off the same before 1st January, 2014. But in no case, Union Bank of India can hold it permanently because the building is not for bank's own use.

Question 6

*In what way does the Reserve Bank of India regulate the determination of loans and advances which can be made by a Banking Company under the **Banking Regulation Act, 1949**? Explain.*
(November, 2008)

Answer

Powers of RBI to regulate determination of loans and advances by banking companies:

By virtue of provisions of Banking Regulations Act, 1949, as contained in Section 21 the RBI is empowered to issue directives to a banking company to determine the policy in relation to loans and advances. Such directions may relate to:

- (1) Purpose for which loan may or may not be made.
- (2) Margin stipulation.
- (3) Maximum amount of advances to any company, firm individual or association of persons (at present 15% for individual borrower without infrastructure project, if infrastructure project go by additional 10%, 40% for group borrower and for infrastructure project of group borrower it may be up to 50% of bank's capital and reserve (presently tier-I and tier-II capital from capital adequacy point of view).
- (4) Maximum amount of guarantee liability on behalf of any individual firm /company.
- (5) The rate of interest and other terms and conditions on which such advances are made or guarantee given.

It may further be mentioned that in accordance with the provisions of Section 21A, rate of interest charged by banking company on the basis of loan contract between the bank and debtor is not to be subject to scrutiny by the court.

Question 7

Explain the provision relation to Reserve Fund under the Banking Regulation Act, 1949.

Answer

(Section 17) – Every Banking Company incorporated in India must create a Reserve Fund and transfer a sum equal to not less than 20 % of its net profits. However, Central Govt. is empowered to exempt from this requirement on the recommendation of the RBI. Such exemption will be allowed only:-

- when the amounts in the reserve fund and the share premium account are equal to the paid-up capital of the banking company
- when the Central Govt. feel that its paid-up capital and reserves are adequate to safe guard the interest of the depositors

If a banking company appropriates any sum from the Reserve fund or the share premium account, it must be reported to RBI within 21 days explaining the circumstances leading to such appropriation

Question 8

What are the powers of RBI's to control loans & advances granted by banking company?

Answer

RBI is empowered to issue directives to a banking company to determine the policy in relation to loans and advances. Such direction may relate to:

- (i) Purpose for which loan may or may not be made
- (ii) Margin stipulation
- (iii) Maximum amount of advances to any company, firm, individual or association of persons(popularly known as exposure norms which is at present 15 % for individual borrower without infrastructure project, if infrastructure project it may go by additional 10%, 40% for group borrower and for infrastructure project of group borrower it may be upto 50 % of bank's capital and reserve (presently tier-I & Tier-II capital from capital adequacy point of view)
- (iv) Maximum amount of guarantee liability on behalf of any individual/ firm/ company (above exposure norm includes non-fund facilities like bank guarantee/ letter of credit etc)
- (v) The rate of interest and other terms and condition on which such advances are made or guarantee given

(It may be noted that at present, in this deregulated interest rate regime RBI gives directives on for loans and advances with sanctioned limit upto Rs. 2.00 lakhs where rate of interest should not exceed individual bank's Benchmark Prime Lending Rate(BPLR), BPLR is fixed by Bank's Board, Rate of interest for advances with sanctioned limit above Rs. 2 lakhs is determined according to credit rating exercise done by bank,

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{RBI's stipulation on this score is rate of interest should not exceed BPLR+4) RBI exercise its power through its selective credit control though under selective credit control list, at present no item except sugar for buffer stock is kept. More}

[Moreover, with credit policy measures of RBI Cash Reserve Ratio, Bank Rate and Repo & Reverse Rate is announced on which Bank's BPLR is somehow depended]

Section 21A:- Rate of interest charged by banking company on the basis of loan contract between the bank and debtor is not to be subject to scrutiny by the court

Question 9

Explain the provision relating to audit of banking companies under the Banking Regulation Act, 1949.

Answer

Balance sheet & profit & loss account as prepared in terms of sec 29 are subject to audit by a person duly qualified under any law for the time being in force to be an auditor for auditing such balance sheet and profit & loss accounts. (These Auditors are known as Statutory Auditors for the said purpose and appointment /reappointment or removal is subject to prior approval of the RBI. Under these Statutory Auditors there are numbers of External Auditors who conduct audit operation of the branch accounts)

Further Reserve Bank can for special Audit of Banking Company, if it is of the opinion that it is in the public interest or in the interest of the depositors. The auditors shall comply with the directions given by the RBI and shall submit a report of the audit to RBI and also to the bank. The auditor shall have the powers and exercise the functions as specified in section 227 of the Indian Companies Act, 1956.

Apart from the above, the auditor is required to state in his report:

- Whether or not the information and explanation required by him have been found to be satisfactory
- The transactions of the bank which have come to his notice have been within the powers of the bank or not
- The return received from branch offices have been found adequate for the purpose of his audit
- Whether the profit and loss account shows a true balance of profit or loss for the period covered by such account
- Any other matter which he considers should be brought to the notice of the share holders of the company

{In addition to what have been stated here-in-above auditors are also required to audit and certify the statement of advances as prepared in terms of prudential accounting norms, required to certify

some other returns viz. Friday figure of 12 odd dates, utilization of govt. subsidies, payment of premium of deposit insurance & credit guarantee scheme, Long Form Audit Report, 3CB & 3CD Return as applicable and many others}

Section 31:- Submission of Balance Sheet & P&L :- Three copies of such returns along with auditors report shall be published in prescribed manner and submit to RBI within three months from the end of the period which they refer. The RBI may extend the period by a further of not exceeding three months.

Section 32:- Three copies of such accounts and balance sheet along with auditor's report shall be sent by the banking company to the ROC, at the same time while sending the same to RBI.

Section 35:- Power of RBI to inspect banks:- RBI is empowered to conduct inspection of any bank and to give them direction as it deems fit. All banks are bound to comply with such directions. Every directors or other officer of the bank shall produce all such books, documents as required by the inspector. The inspector may examine on oath any director or other officers

RBI shall supply the bank a copy of such inspection. RBI submits report to Central Govt. and the latter, on scrutiny, if is of the opinion that the affairs of the bank are being conducted detrimental to the interest of its depositors, it may, after giving an opportunity of being heard, to the bank, may order in writing prohibiting the bank from receiving fresh deposits, direct the RBI to apply section 38 for winding up of the bank

Apart from inspection under section 35 RBI is empowered to undertake inspection of a bank in terms/ for the purposes of the following sections:-

Section 11	Requirement as to maintaining paid-up capital & reserve
Section 22	Licensing of banks
Section 23	Restrictions on opening new and transfer of existing places of business
Section 37	Suspension of business
Section 38	Winding up by High Court
Section 44	Power of High Court in voluntary winding-up
Section 44A	Procedure for Amalgamation of banking companies
Section 45	Power of RBI to apply to Central Govt. for suspension of business by a bank and prepare scheme of reconstitution or amalgamation

Question 10

Mr. Gopal is a director in a Bank. The Reserve Bank of India terminates him on the ground that his conduct is detrimental to the interest of the depositors. Decide, whether the Reserve Bank of India can do so under the Banking Regulation Act, 1949. Can the Reserve Bank of India appoint additional Director in a Bank under the said Act?
(New, May, 2010)

Answer

Appointment of Additional Director in a Bank by the RBI: Under Section 36AA of the Banking Regulation Act, 1949, RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company. Before such termination concerned person should be given opportunity to be heard of. Such terminated officials can make appeal to the Central Govt. within 30 days from the date of communication of such termination order. The decision of the Central Government cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of not exceeding 5 years as may be specified in the order. Contravention of the above provision shall be punishable with a fine, which may extend to Rs. 250 per day.

Any such order shall be valid for a period not exceeding three years or such further periods of not exceeding three years at a time as RBI may specify. Under section 36AB: RBI is empowered to appoint additional Directors for the banking company with effect from the date to be specified in the order, in the interest of the bank or that of depositors. Such additional directors shall hold office for a period not exceeding three years or such further periods not exceeding three years at a time.

THE INSURANCE ACT, 1938

Question 1

With reference the provisions of Insurance Act, 1938, what do you mean by "Life Insurance Business"?
(June 2009)

Answer

As per Section 2(11) of the Insurance Act, 1938, Life Insurance Business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include:

- (a) The granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance.
- (b) The granting of annuities upon human life; and

- (c) The granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons.

Question 2

*What are the provisions in the **Insurance Act, 1938** regarding nomination by of Life Insurance Policy holder? Whether a minor can be a nominee in a Life Insurance Policy? (June 09)*

Answer

As per Section 39 of the Insurance Act, 1938, the holder of a policy of life insurance on his own life may nominate a person or persons to whom the money secured by the life insurance policy shall be paid in the event of his death. Such nomination can be made either at the time of taking the policy or at any time before the maturity of the policy. Such nomination is either incorporated in the text of the policy or is stated as an endorsement on the policy document. The nomination can be cancelled or altered by the policyholder at anytime before the maturity of the policy. The insurer is required to communicate to the policyholder that it has recorded the nomination, its cancellation or alteration as the case may be. In case the policyholder survives the full term of policy, the insurer shall pay the maturity amount to him only and the nomination becomes redundant. In a case where the nominee dies before the maturity of the policy and if no new nomination is made, the maturity proceeds of the policy shall be paid to the policy holder and if dies before the maturity, to the legal heirs of the policy holders.

Minor as a nominee:

A minor can be nominated as a nominee in life insurance policy by its holder. The only other requirement as per proviso to Section 39(1) of the said Act is that the policyholder is to appoint, in the prescribed manner, an adult person to receive the money secured by the policy on behalf of the minor in the event of death of the policyholder during the minority of the nominee.

THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999

Insurance Regulatory and Development AUTHORITY: (Sections 3-12)

The Central Government by notification appoint such 'Authority' in the nature of body corporate enjoying all the characteristics of such entity along with contractual powers.

The Head Office of such 'Authority' is to be decided by the Central Government.

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The members of such 'Authority' appointed by the Central Government depending upon their expertise and experience in the field of Insurance, Law, Economic Accountancy, etc.

The member consists of:

- (a) Chairman.
- (b) Five Whole Time members (maximum)
- (c) Four Part – Time members (maximum)

One of these members should have knowledge in Life Insurance, General Insurance and Actuarial Science.

The Chairperson shall hold office for a term of five years until he reaches sixty five years. And he is eligible for re – appointment. A whole time member however can hold office for up to sixty-two years.

Moreover a member can relinquish his membership by giving three month prior notice to the Central Government or he can be removed from office under provision of Sec – 6. A member may be removed from office if he became insolvent or insane or convicted for offence involving moral turpitude or illegally established financial interest in the 'Authority' or acting contrary to public interest.

The remuneration for each member shall be as per prescribed Law.

The chairperson and the Whole – time member shall within two years from the date of appointment, cannot hold office under Central Government or State Government or any Insurance Sector.

All decisions regarding administrative matters are taken by the Chairperson.

The procedural aspect of the meetings of the 'Authority' may be determined by regulations, Resolutions are passed by simple majority and chairperson may use casting vote in case of a tie. In case, chairperson unable to attend any meeting then members attending may appoint chairperson among themselves. Any act of the 'Authority' cannot be invalidated simply because of any defect in appointing a member or procedural irregularity.

From time to time, authority may appoint employees and officers for efficiency in their work.

Transfer of Assets, liabilities, etc. of Indian Insurance Regulatory Authority (IIRA) to Insurance Regulatory Development Authority (IRDA) (Section 13)

On any appointed day, all assets and liabilities shall stand transferred from IIRA to IRDA. Here, the assets may be movable or immovable. Along with it also includes attached

rights and powers. Before this, books of accounts, documents and other papers are also included.

All contractual obligations entered by IIRA with third parties till before the appointed day shall automatically transferred to IRDA.

Similarly all debts owed to IIRA also stands transferred to IRDA.

Also, legal proceedings including suits whether instituted by or against IIRA shall stand transferred to IRDA.

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

Question 1

What do you understand by asset reconstruction under the SARFAESI Act, 2002?

Answer

"**asset reconstruction**" means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance. [Section 2(b)]

Question 2

What are financial assets?

Answer

"financial asset" means debt or receivables and includes-

- (i). a claim to any debt or receivables or part thereof, whether secured or unsecured; or
- (ii). any debt or receivables secured by, mortgage of, or charge on, immovable property; or
- (iii). a mortgage, charge, hypothecation or pledge of movable property; or
- (iv). any right or interest in the security, whether full or part underlying such debt or receivables; or
- (v). any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
- (vi). any financial assistance [Section 2(l)]

The use of the word 'future' in clause (v) of Section 2(l) means that the term financial asset includes a future debt also. It must be noted that a future debt does not refer to debt payable in future. In case of a debt repayable in future, the debt exists today but is payable in future, for example a loan given by the lender to the borrower. But in case of a future debt, the debt does not exist today. It seems difficult to imagine as to how one can transfer a future debt (which does not exist today). This becomes easy when we understand the principle used in the case of *Bharat Nidhi Limited v. Takhatmal* (1969) AIR SC 313. In case of a future debt, what exists today is an agreement to transfer and it will be possible to transfer the future debt when it actually arises, for example sales that will occur in future. In case of conditional receivable, the receivable is transformed into a financial asset after the fulfillment of the relevant conditions. Clause (vi) of Section 2(l) mentions 'any financial assistance'. The term financial assistance has already been defined in Section 2(k) supra.

Question 3

What are non-performing asset?

Answer

"non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or under guidelines relating to asset classifications issued by the Reserve Bank [Section 2(o)]

Question 4

How are rights or interest in financial assets acquired under the SARFAESI Act, 2002?

Answer

Section 5 : Notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution-

- (a.) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or
- (b.) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

Debenture is we commonly know, is an acknowledgement of debt. Bond also refers to the same nature of instrument as a debenture. Both of them acknowledge a debt and hence an obligation to pay.

In case the bank or financial institution is a lender in relation to any financial assets acquired by the securitisation company or the reconstruction company, then such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to the subject financial assets.

Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of securitisation company or reconstruction company, as the case may be.

If, on the date of acquisition of financial asset, any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.

Question 5

How disputes are resolved under the SARFAESI Act, 2002?

Answer

Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution, or securitisation company or reconstruction company or qualified institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have

consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

Question 6

Explain briefly the procedure relating to Enforcement of security interest

Answer

(Section 13) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as on-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Section 13. This notice shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower. The procedure for the service of the notice is prescribed in the Security Interests (Enforcement) Rules.

Sub-section (4) of Section 13 provides that if the borrower fails to discharge his liability in full within the above specified period, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:-

- (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- (b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;
- (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

Question 7

Explain Manner and effect of take over of management.

Answer

(Section 15): When the management of business of a borrower is taken over by a secured creditor, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit-

- (a) in a case in which the borrower is a company under the Companies Act, 1956, to be the directors of that borrower in accordance with the provisions of that Act; or
- (b) in any other case, to be the administrator of the business of the borrower.

On publication of the above notice, all persons holding office as directors of the company (if the borrower is a company) and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the above notice, shall be deemed to have vacated their offices. Any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the above notice, shall be deemed to be terminated. The directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the above notice.

All directors appointed in accordance with the above notice shall, for all purposes, be the directors of the company of the borrower and such directors or the administrators (if the borrower is other than a company) appointed under section 15, shall only be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source.

Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained, such borrower in the said Act or in the memorandum or articles of association of such company -

- (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
- (b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

- (c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

The secured creditor is under an obligation to restore the management of the business of the borrower, on realisation of his debt in full, in case of take over of the management of the business of a borrower by such secured creditor.