SARFAESI Act 2002

Section	Provisions
2(b)	AR
2(l)	FA
2(o)	NPA
3	Registration of SC/RC (NOF > 2 Cr or SUCH higher amt as RBI notify)
4	Cancellation of Cert. of Reg. by RBI (5 Circumstances)
5	Acq. of Right/Interest in FA
13	ESI - Enforcement of Security Interest
13(4)	Measures to Recover Debt
15	Take over of Mgt
16	No Compensation for Loss of Office
31	Act not applicable - CASES

Financial Assets :	FA
Securitisation Co. :	SC
Reconstruction Co. :	RC
Banks & Public Fin. Inst. :	B/FI
Asset Reconstruction :	AR
Right ,Title ,Interest	RTI

Preamble :	To Regulate -	SARFAESI &
		for matters connected therewith.
Legal Framework :		Setting up of AR/SC - who will Take over NPA of B/FI.
Act > Special Powers :		To lenders & S/ARC to Take over - WITHOUT going to Court.

- **Concept of "Securitisation" :** 2(z) M-13

Securitisation :

Means :	Acq. of FA by :	SC/RC
	From :	Any Originator,
	Manner :	By - Raising of fund by SC/RC
		From - QIB
		Issue of - Security receipts repr. Undivided Interest in such FA

B/FI > Loan to Original borrowers :	Such "Loan" = FA
Acq. of FA - By SC/RC :	These SC/RC = SPV
SPV - Issue SR to investors :	These Investors = QIB
From Proceeds of sale of SR :	**SPV > B/FI : Consideration for FA purchased**

In Short ,

"Securitisation" : METHOD adopted by B/FI for raising funds by way of selling RECEIVABLE for Money.
These Receivable are ILLIQUID bcoz these are NPA.

- **Concept of "AR" :** 2(b) **M-14**

AR :

Means :	**Acq. by :**	SC/RC
	Of :	Any Right/Interest of B/FI
		In any Financial assistance
	For Purpose :	Realization of such Financial assistance.

- **Meaning of "FA" :** 2(l) **RTP : M-17**

"FA" means Debt(D) or Receivable(R) &

	INCLUDES :	
(i)	**Claim**	a claim to any D/R or part thereof, whether secured or unsecured; or
(ii)	**Immovable**	any D/R secured by, mortgage of, or charge on, IMMOVABLE property; or
(iii)	**Movable**	a mortgage, charge, hypothecation or pledge of MOVABLE property; or
(iv)	**Security**	any R/I in the SECURITY, whether full or part underlying such D/R; or
(v)	**BI - Property**	any beneficial interest in PROPERTY, whether movable or immovable, or in such D,R, whether such interest is existing, "future", accruing, conditional or contingent; or
(va)	**BI - Tangible**	any beneficial RTI in any TANGIBLE ASSET given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or
(vb)	**BI - Intangible**	any RTI on any INTANGIBLE ASSET or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or;
(vi)	**Any**	Financial Assistance

• Meaning of "NPA" : 2(o) M-14

NPA :

Means :	An Asset or A/c :	of Borrower
	Classified :	By B/FI - As Sub-standard , Doubtful , Loss Asset ,
	In accordance :	With Direction/Guidelines issued by RBI.

• PROCEDURE relating to Enforcement of SECURITY INTEREST : Sec 13 N-11

Key :	1 Borrower	1 Secured Creditor	& Security interest in favour of Creditor

ToPA :	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.
Circumstances :	
Default by Borrower : **NPA classification :** **60 days Notice :**	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 NON-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 U/S 13(4).
Details of Notice :	**This Notice shall give details of :** • AMOUNT payable by borrower& • Security Assests intended to be ENFORED by Sec. creditor when amount not paid.
"Provided That -	
No NPA classification :	the requirement of classification of secured debt as NPA under this sub-section shall NOT APPLY to a borrower who has raised funds through issue of DEBT SECURITIES; and
Same Manner :	in the event of DEFAULT, the debenture trustee shall be Entitled to ENFORCE security interest in the SAME manner as provided under this section with such modifications as may be necessary and in accordance with the T&C of security documents executed in favour of the debenture trustee;"
Sec 13 : Measures :	Sec 13(4) : 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:-
Take : Possession	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;
Take over : Mgt.	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;

Appoint : Manager	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;
Notice to pay Money	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.

• EFFECT of Take over on Rights of Shhldr : Sec 15 M-16

Where the management of the business of a borrower, being a company as defined in the Companies Act is TAKEN OVER BY THE SECURED CREDITOR, then, notwithstanding anything contained, such borrower- in the said Act or in MOA/AOA of such company -

No appointment of Dir :	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;
No Resolution, unless :	NO resolution passed at any meeting of the shareholders of such company shall be given effect to UNLESS APPROVED by the secured creditor;
No Winding Up , except	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.

Obligation to Restore Mgt :	
After Realization of Debt :	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 takeover of the management of the business of a borrower by such secured creditor.
Not Liable to Restore - When : Debt > Shares	
"Provided that -	if any secured creditor jointly with other secured creditors or any ARC or FI or any other assignee has CONVERTED part of its DEBT INTO SHARES of a borrower company and thereby ACQUIRED controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the business to such borrower."

• Compensation for Loss of Office : Sec 16 M-16

PERSONS :	M/MD/OD/PIC	• Manager • Managing Director • Other Director • Any Person-in-charge of Mgt of Business

No Compensation :	Irrespective of anything contained in any contract or in any other law for the time being in force, NO M/MD/OD/PIC of management of the business of the borrower shall be entitled to any COMPENSATION for the loss of office or for the premature termination under this Act.
However , RIGHT to Recover :	However, such M/MD/OD/PIC has the right to recover from the business of the borrower, MONEYS RECOVERABLE OTHERWISE than by way of such compensation.

• Cancellation of Certificate of Registration : Sec 4 RTP : M-16

Circumstances :	
No business :	CEASES to carry on the business of S/AR ; or
No Invst. from QIB :	CEASES to receive or hold any investment from a QIB; or
Fails - Comply Conditions	has failed to comply with any CONDITIONS subject to which the certificate of registration has been granted to it; or
FAILS - Fulfil Conditions	at any time fails to fulfil any of the CONDITIONS referred to in clauses (a) to (g) u/s 3(3) ; or
FAILS To :	
• RBI directions	comply with any direction issued by the Reserve Bank under the provisions of this Act; or
• Maintain BOA	maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
• Submit BOA	submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
• Obtain PA of RBI	obtain prior approval of the Reserve Bank required u/s 3(6).

By : RBI Reasons - u/s 4	The Reserve Bank of India may cancel a certificate of registration granted to a S & RC for the reasons stated in Section 4 .

Appeal to CG - 30 days :	Co. can prefer an appeal to the Central Government (Secretary, Ministry of Finance, GOI) within a period of 30 days from the date on which order of cancellation was communicated to it.
ROOBH :	The Central Government MUST also give such company a reasonable opportunity of being heard BEFORE rejecting the appeal.
Deemed S/RC :	However , IF Company is holding INVESTMENTS of QIB at the time of cancellation of certificate of registration, it shall be DEEMED to be a securitisation and reconstruction company UNTIL it REPAYS the entire investments held by it, together with interest if any, within such period as may be specified by the Reserve Bank.

• Acquisition of Rights or Interest in FA : Sec 5 PM 23

(1) Notwith. anything contained in any Agreement/Law , any SC/RC may Acquire FA of any B/FI -

(a) By issuing Debenture/Bond, for consideration agreed upon ; or

(b) By entering into an AGREEMENT with B/FI for TRANSFER of such FA to such Co. on such T&C as agreed.

(1A) Any doc. by B/FI u/s 5(1) above : Exempted from Stamp Duty
(No Exemption : For purpose other than AR/S)

(2)	Deemed Lender :	In case B/FI is a lender of FA - Acquired by SC/RC , then such SC/RC , deemed to be lender & Rights of B/FI passed on to SC/RC.
(2A)	Transfer of RTI :	If the B/FI is holding any RTI upon any Tangible/Intangible asset , such RTI shall vest in ARC on Acquisition of such asset under Sub-section (1).

(3)	Doc. to be in Full force :	All Contracts/Agreements which relate to FA in favour of B/FI , shall , AFTER Acquisition of FA , be of as FULL FORCE & EFFECT in favour of SC/RC.
(4)	Transfer of Pending Suit:	Any Suit/Appeal/Proceeding in relation to FA, pending by/against B/FI , Shall NOT Abate. But it may be Continued, Prosecuted & Enforced by/against SC/RC.

• SITUATIONS : Act NOT applicable Sec 31 N-15

Under Section 31 of the SARFAESI Act, 2002, the situations in which the provisions of this Act do not apply are as follows:

Any SECURITY INTEREST :	
• Agri. Land :	any security interest created in AGRICULTURAL land;
• < Rs 1 Lakh :	any security interest for securing repayment of any FA NOT EXCEEDING 1 LAKH Rs;
• Vessel :	Creation of security interest in any VESSEL as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958;
• Aircraft :	Creation of any security in any AIRCRAFT as defined in clause (1) of section 2 of the Aircraft Act, 1934;
Pledge of MOVABLE :	a PLEDGE of movable (under ICA,1872)
LIEN :	a LIEN - on any Goods/Money/Security (under ICA/SOGA/any other law)
Rights of Unpaid Seller :	Any RIGHTS of Unpaid seller (under SOGA, 1930)

Last Day Helpers –

Negative List Summary :	Negative List Summary 8 marks http://www.caclubindia.com/share_files/details.asp?mod_id=72361
Declared Service Quicker :	Declared Service CA Final 8 Marks http://www.caclubindia.com/share_files/details.asp?mod_id=72350
MEGA Exemption	Mega Exemption Summary http://www.caclubindia.com/share_files/details.asp?mod_id=72407
PoPoSR	Place of Provisions of Service Rules 2012 Summary http://www.caclubindia.com/share_files/details.asp?mod_id=72377

ISCA : The Conclusion

Ch 1 : Quicker	ISCA The Conclusion http://www.caclubindia.com/share_files/details.asp?mod_id=72439
Ch 6 - Mnemonics	ISCA made Easy Audit of IS Ch 6 http://www.caclubindia.com/share_files/details.asp?mod_id=72264

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