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PRACTICE NOTE — BANKING & DEBT RECOVERY LAW

The SARFAESI Act, 2002 — Key Points

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act — enforcement without court intervention, DRT/DRAT remedies, and asset reconstruction

STRUCTURE	6 Chapters, 42 Sections
PURPOSE	Enables banks/FIs/notified NBFCs to enforce security interest over NPA accounts without approaching a civil court
APPLICABILITY THRESHOLD	Secured debt must exceed ₹1 lakh (S.31(j)); notified NBFCs (asset size ≥ ₹100 crore) may invoke S.13 for dues of ≥ ₹20 lakh (2020 notification)
NOT APPLICABLE TO	Security interest in agricultural land (S.31(i)) — fact-specific, not automatic; pledge of movables; liens; unpaid seller's lien; time-barred debts
2026 CASE LAW	SC has held Rule 9(3)/9(4) auction payment timelines under the Security Interest (Enforcement) Rules, 2002 are mandatory (2026 rulings)

NPA CLASSIFICATION & SECTION 13 — ENFORCEMENT WITHOUT COURT INTERVENTION

NPA CLASSIFICATION (PRECONDITION)

- Account must first be classified a **Non-Performing Asset (NPA)** by the secured creditor per RBI prudential norms — generally, interest/principal overdue for more than **90 days**. Mere default without formal NPA classification does not attract SARFAESI.

SECTION 13(2) — 60-DAY DEMAND NOTICE

- Secured creditor issues a written demand notice calling on the borrower to discharge liabilities in full within **60 days**, specifying the amount due and the secured assets over which enforcement is proposed.
- Borrower may raise objections/representation within the 60 days; secured creditor must communicate reasons for non-acceptance **in writing within 15 days** (S.13(3-A)) — non-communication does not by itself invalidate the notice, but is a recognised ground of challenge.

SECTION 13(4) — MEASURES ON DEFAULT

AVAILABLE ENFORCEMENT MEASURES

- If dues remain unpaid after the 60-day notice, the secured creditor may: (a) take possession (symbolic or physical) of the secured asset; (b) take over management of the borrower's business (where the security is by way of pledge/hypothecation of the business); (c) appoint a manager/receiver to manage the secured asset; (d) require any person who has acquired the secured asset from the borrower, or owes money to the borrower, to pay the secured creditor.

SECTION 14 — ASSISTANCE OF DISTRICT MAGISTRATE / CMM

PURELY MINISTERIAL, NOT JUDICIAL, FUNCTION

- Where physical possession cannot be taken peacefully, the secured creditor may apply to the District Magistrate (DM) or Chief Metropolitan Magistrate (CMM) for assistance. Courts have repeatedly held this role is **ministerial/administrative**, not adjudicatory — the DM/CMM verifies the secured creditor's affidavit of compliance and extends police/administrative assistance, without independently adjudicating the borrower's defences.
- Post the 2016 Amendment, the DM/CMM must pass the order within **30 days**, extendable to **60 days** for reasons recorded in writing.

BORROWER'S REMEDIES — SECTION 17 (DRT) & SECTION 18 (DRAT)

SECTION 17 — APPLICATION TO DRT

- A borrower/any aggrieved person may apply to the **Debts Recovery Tribunal (DRT)** challenging measures taken under S.13(4), generally within **45 days** of the measure being taken. DRT examines compliance with the Act and may direct restoration of possession if measures are found non-compliant. **This is the exclusive statutory remedy** — civil courts have no jurisdiction (S.34), and writ petitions are generally discouraged where the S.17 remedy is available.

SECTION 18 — APPEAL TO DRAT

- Appeal against a DRT order lies to the **Debts Recovery Appellate Tribunal (DRAT)** within **30 days**. No appeal by the borrower is entertained unless **50% of the amount due** (as determined by DRT) is deposited — DRAT may, for reasons recorded, reduce this to not less than **25%**.

SALE OF SECURED ASSETS — RULES 8 & 9 (SECURITY INTEREST (ENFORCEMENT) RULES, 2002)

STEP	REQUIREMENT
Valuation & reserve price	Authorised officer obtains valuation from an approved valuer and fixes reserve price in consultation with the secured creditor before sale (Rule 8).
Sale methods	Public auction (incl. e-auction), inviting tenders, obtaining quotations, or private treaty.
30-day sale notice	30 days' notice to the borrower before first sale of immovable property, plus public notice in 2 newspapers (one vernacular) for auction/tender sales.
Subsequent sale (on failure)	Not less than 15 days' fresh notice if the first sale attempt fails.
Rule 9 payment timelines — mandatory (2026 SC)	Payment deadlines for deposit/balance sale consideration under Rule 9(3)/9(4) held mandatory, not directory — a sale can be set aside for even a short delay (SC cancelled a 16-year-old sale for a 5-day payment delay).

SECTION 31 — EXEMPTIONS (ACT NOT APPLICABLE TO)

KEY STATUTORY EXCLUSIONS

- Security interest in **agricultural land** (S.31(i)); lien on goods, money or property under the Sale of Goods Act/any other law; pledge of movables (S.172, Contract Act); creation of security interest for amounts **less than ₹1 lakh** (S.31(j)); any security interest where the amount due is less than 20% of the principal and interest; conditional sale/hire-purchase/lease not constituting a security interest; and rights of unpaid sellers.

AGRICULTURAL LAND — NOT AN AUTOMATIC EXEMPTION

- The Supreme Court has clarified the exemption applies only where the property was **genuinely being used as agricultural land** at the relevant time — mere classification/entry in revenue records is not sufficient by itself; tangible evidence of actual agricultural use must be shown, and the burden is on the borrower claiming the exemption.

ASSET RECONSTRUCTION COMPANIES — CHAPTER II (S.3–S.12B)

SECTION 5 — ACQUISITION OF FINANCIAL ASSETS

- An Asset Reconstruction Company (ARC), registered with the RBI, may acquire financial assets (NPAs) of banks/FIs by issuing a debenture, bond, or other security, on terms agreed between the ARC and the transferring bank/FI — enabling banks to clean up balance sheets by offloading bad loans.

SECTION 7 — SECURITY RECEIPTS

- After acquiring financial assets, the ARC may raise funds by issuing **security receipts** to Qualified Institutional Buyers (QIBs) and other notified investor categories, representing an undivided interest in the underlying financial asset/realisations.

CENTRAL REGISTRY (CERSAI) — SECTION 20

REGISTRATION & PRIORITY

- Every security interest created by a secured creditor must be registered with the **Central Registry (CERSAI)**, ordinarily within **30 days** of creation (late registration possible with fee). Registration is central to establishing **priority** — a registered security interest ranks ahead of subsequently created interests, and CERSAI search is a standard due-diligence step before accepting any property as security.

PRACTICE NOTES

Route Challenges Through Section 17, Not a Writ

For borrowers challenging S.13(4) measures, the DRT under S.17 is the exclusive and mandatory forum — writ petitions before the High Court are ordinarily not entertained where the statutory remedy exists, except in narrow cases of jurisdictional error or absence of vires challenge.

Agricultural-Land Exemption — Build the Evidentiary Record Early

If invoking the S.31(i) exemption, gather contemporaneous evidence of actual agricultural use (crop records, 7/12 extract with cultivation entries, site inspection) — revenue-record classification alone will not succeed post the Supreme Court's clarification.

Rule 9 Timelines Are Now a Live Ground to Set Aside Sales

Given the 2026 Supreme Court rulings treating Rule 9(3)/9(4) payment deadlines as mandatory, scrutinise auction payment records closely in any sale-challenge matter — even a short delay may be fatal to the purchaser's title.

For internal practice reference only — this note highlights select, frequently used provisions of the SARFAESI Act, 2002 (6 Chapters, 42 Sections) and the Security Interest (Enforcement) Rules, 2002, and does not cover the full Act/Rules. Cross-check exact section/rule text and the latest RBI/MCA notifications and case law before relying in advice or proceedings. Prepared 2 August 2026.

Primary sources: The SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002 (indiacode.nic.in, rbi.org.in); SARFAESI (Central Registry) Rules, 2011; commentary and case-law summaries via iPleaders, IBC Laws, SCC Online, LegalServiceIndia, and Legal Service India (2026 Rule 9 mandatory-timeline analysis).