

LAWS APPLICABLE FOR LIMITED
INSOLVENCY EXAMINATION
W.E.F. 1ST JANUARY, 2018

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Key Aspects of Companies Act, 2013

PROSPECTUS & ALLOTMENT OF SECURITIES

Public Company			Private Company	
3 modes for issuance of securities			2 modes for issuance of securities	
Public offer (IPO, FPO or an offer for sale through issue of a prospectus)	Private placement	Rights issue or Bonus issue to existing shareholders	Rights issue or Bonus issue	Private placement

SHARE CAPITAL & DEBENTURES

Kinds of share capital

Equity Share Capital
(with voting rights; or with differential rights as to dividend, voting or otherwise)

Preference Share Capital

Further issue of share capital

Any company can further issue shares to:

Existing members, by sending a letter of offer

Employees through employee's stock option by a special resolution

General public, by a special resolution and after having its shares valued by registered valuers

Issue of Debentures

A company, by a special resolution, may issue debentures with an option to convert into shares, wholly or partly, at the time of redemption but cannot issue debentures with voting rights

ACCEPTANCE OF DEPOSITS BY COMPANIES

Prohibition on
Acceptance of
Deposits from
Public

No company shall invite, accept or renew deposits from public

Repayment of
Deposits
accepted before
commencement
of the Companies
act 2013

Where the company accepted deposits before this Act came into force, such deposit or part thereof or any interest due thereon, shall be repaid within 1 year of the Act

Acceptance of
Deposits from
Public by Certain
Companies

A public company having a net worth of not less than Rs.100 Crs **or** a turnover not less than Rs.500 Crs and authorised by a special resolution filed with the ROC can accept deposits from public

REGISTRATION OF CHARGES

What to be registered

- Hypothecation agreement, Mortgage deed, Loan agreement etc.

When charges to be registered

- Register the said charge with ROC within 30 days

Consequences of registration

- ROC will issue a certificate of registration

MANAGEMENT & ADMINISTRATION

Register of Members

- Register of members, register of debenture-holders and register of any other security holders

Annual Return

- Every company shall prepare a return stating the details of the company at the end of the F.Y. and file with ROC in 60 days from AGM

Annual General Meeting

- Every company shall in each year hold an AGM and not more than 15 months shall elapse between the date of two AGMs

Calling of extraordinary general meeting

- If the Board deems fit it can call an EGM by giving not less than clear 21 days notice
- Shorter notice is allowed if consent is given by not less than 95% of the members

Minutes of meeting

- Every company shall maintain minutes of every GM and every meeting of its BOD prepared, signed and kept within 30 days of the conclusion of every such meeting

ACCOUNTS OF COMPANIES

Books of Accounts to be kept by the company and Internal Audit

- Every company shall prepare and keep at its registered office books of account and such books shall be kept on accrual basis and according to the double entry system of accounting

Financial Statement and its filing with Registrar

- It shall give a true and fair view of the state of affairs of the company and comply with the AS notified u/s 133 and shall be in the form as may be provided in Schedule III and shall be filed with ROC within 30 days of the date of AGM

Voluntary Revision of statements

- If the BOD thinks that the Financials or Report of Board do not comply with section 129 or section 134 they may prepare revised Financials after obtaining approval of the Tribunal

Boards Report, CSR

- Boards report shall be prepared in accordance with Sec 134 which shall be approved by BOD
- A company having Net worth Rs 500 Cr/Turnover Rs 1000 Cr/NP Rs 5 Cr during any FY shall spend 2% of Average NP made during 3 immediately preceding FYs as CSR

COMPROMISES, ARRANGEMENTS & AMALGAMATIONS AND REGISTERED VALUERS

Compromises, Arrangements and Amalgamations

- The procedure for entering into a compromise or arrangement with creditors and members (Sec 230)
- Power of Tribunal to enforce compromise or arrangement (Sec 231)
- Power to acquire shares of dissenting shareholder (Sec 235)
- Registration of schemes and matters incidental thereto (Sec 238)

Duties of a Registered Valuer

- Make an impartial, true and fair valuation of any assets
- Exercise due diligence
- It is in accordance with such rules as may be prescribed
- Not to undertake valuation of any assets in which he has a direct or indirect interest

REMOVAL OF NAMES OF COMPANIES FROM THE ROC

Grounds for removal of name of the Company

- ROC believes that a company has failed to commence its business within 1 year of its incorporation or has no business for 2 years it can order for Striking off

Procedure for restoration of name of the Company

- A copy of the order passed by the Tribunal shall be filed by the company with the ROC within 30 days from the date of the order and ROC shall cause the name of the company to be restored in the Register and shall issue a fresh COI

Procedure for appeal against order of Registrar

- Aggrieved party can file an appeal to the Tribunal within 3 years seeking restoration of name of such company and ROC in view of the absence of any of the grounds on which the order was passed, it may order restoration of the name of the company in the Register

WINDING UP

Winding Up by Tribunal

- If Special Resolution is passed for winding up
- Company has acted against the interests of the sovereignty and integrity of India
- Tribunal thinks that the affairs of the company have been conducted in a fraudulent manner
- Default in Annual filings with ROC
- Tribunal thinks it is just and equitable

Official Liquidator (OL)

- For winding up the Tribunal at the time of the passing the order of winding up shall appoint an OL from IPs registered under the IBC, 2016

Offences and Penalties

- Any person guilty of offence u/s 336 shall be punishable with imprisonment for a term which shall not be less than 3 years which may extend to 5 years and with fine which shall not be less than Rs. 1,00,000/- which may extend to Rs. 3,00,000/-

NCLT & NCLAT

Constitution of NCLT

- CG shall constitute a Tribunal to be known as the National Company Law Tribunal.
- Consisting of a President and such number of Judicial and Technical members, as the CG deems fit.

Constitution of NCLAT

- CG shall constitute an Appellate Tribunal to be known as the National Company Law Appellate Tribunal.
- Consisting of a Chairperson and such number of Judicial and Technical Members not exceeding 11, as the CG may deem fit

NCLT - QUALIFICATION OF MEMBERS

President

- Person who is or has been a Judge of a High Court for five years

Judicial Member

- is, or has been, a judge of a High Court; or
- is, or has been, a District Judge for at least five years; or
- has, for at least ten years been an advocate of a court.

Technical Member

- has, for at least 15 years been a member of the Indian Corporate Law Service or Indian Legal Service; or
- is, or has been, in practice as a CA for at least 15 years; or
- is, or has been, in practice as a CWA for at least 15 years; or
- is, or has been, in practice as a CS for at least 15 years; or
- is a person having special knowledge and experience of 15 years
- is, or has been, for at least 5 years, a presiding officer of a Labour Court, Tribunal or National Tribunal

NCLAT - QUALIFICATION OF MEMBERS

Chairperson

- Person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court

Judicial Member

- Person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for 5 years

Technical Member

- Person of proven ability, integrity and standing having special knowledge and experience, of not less than 25 years in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies

Indian Partnership Act, 1932



Partnership

INTRODUCTION

- ✘ One of the forms in which business can be carried on is 'partnership', where **two or more persons join together** to form the partnership and run the business. In order to govern and guide partnership, the Indian Partnership Act, 1932 was enacted.
- ✘ Since public at large would be dealing with the partnership as customers, suppliers, creditors, lenders, employees or any other capacity, it is also very important for them to know the **legal consequences of their transactions and other actions** in relation with the partnership.

MEANING & DEFINITIONS

- × **Section 4** of the Partnership Act, 1932 defines the term ‘Partnership’ as under:
- × **“Partnership is the relation between two or more persons who have agreed to share the profits of a business carried on by all or any of them acting for all”**.
- × Thus, Partnership is the name of legal relationship between/among persons who have entered in to the contract.

CONTD

- ✘ Section 4 of Indian Partnership Act, 1932 provides that:
- ✘ Persons who have agreed into partnership with one another are called individually **'PARTNERS'** and collectively **'FIRM'** and the name under which their business is carried on is called the **'FIRM NAME'**
- ✘ **"Partnership is thus Invisibility which binds the partners together and firm is the visible form of those partners who are thus bound together"**.

CHARACTERISTICS OF PARTNERSHIP

A partnership firm has following characteristics:

1. Two or more members
2. Unlimited liability
3. Voluntary registration
4. No separate legal existence
5. Restriction on transfer of interest:
6. Based on agreement
7. Partners are competent to contract
8. Partnership may be only for lawful business.

MAXIMUM LIMIT ON NUMBER OF PARTNERS

- ✘ Section 11 provides that the maximum no. of persons, a firm can have is as follows:

In case of partnership firm carrying on a banking business	10
In case of partnership firm carrying on any other business	20

- ✘ **If the number of partners exceeds the aforesaid limit, the partnership firm becomes an illegal association.**
- ✘ If an association of persons or firm having members or partners exceeding the Above limit will not be an illegal association if that firm's objective is not to earn profit.

Essential elements of Partnership

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graph TD; A[Essential elements of Partnership] --> B[Two or more persons]; A --> C[An agreement]; A --> D[Sharing of profit]; A --> E[Business]; A --> F[Mutual agency]
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Two or more
persons

An agreement

Sharing of profit

Business

Mutual agency

For forming a partnership the above elements should be present. Though each element is important, 'Mutual Agency is the conclusive proof

For explanation go through the next slides:

REAL TEST OF PARTNERSHIP [SEC. 6]

- ✘ The true test of partnership is the existence of **‘Mutual Agency’** relationship, i.e. the capacity of a partner to bind other partners by his acts done in firm’s name and be bound by the acts of other partners.
- ✘ **Sharing of profit is an essential element** of partnership but it is not a conclusive proof of partnership.
- ✘ Thus partnership can be presumed when
 - a. There is an agreement to **share the profits** of business **and**
 - b. The business is carried on **by all or by any of them** acting for all.
- ✘ Sharing of profit is *Prima facie* evidence.

MEANING OF MUTUAL AGENCY

Mutual agency refers to the relationship of principal and agent Among partners

Example in case of firm of A,B and C

**When A acts
A- Agent
B and C- Principal**

**When B acts
B- Agent
A and C- Principal**

**When C acts
C- Agent
A and B- Principal**

TYPES OF PARTNERSHIP

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graph TD; A[TYPES OF PARTNERSHIP] --> B[On the Basis of Duration]; B --> C[Partnership at Will (Sec.7)]; B --> D[Particular Partnership (Sec.8)];
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On the Basis of Duration

Partnership at Will
(Sec.7)

Particular Partnership
(Sec.8)

PARTNERSHIP AT WILL [SEC 7 READ WITH SEC 43]

- ✘ When there is no provision in partnership agreement (known as partnership Deed, if in writing) for:
 - + The duration of their partnership, or
 - + The determination of their partnership,then the partnership is called 'Partnership at Will'.
- ✘ Special feature of 'Partnership at will' is that such firm may be **dissolved by any partner** by giving a **notice in writing to all** other partners of his intention to dissolve the firm
- ✘ The firm will be dissolved from that **date which is mentioned in the notice** as the date of dissolution and if no date is mentioned then from the date of communication of notice.

PARTICULAR PARTNERSHIP [SEC. 8]

- ✘ When a partnership is formed for a
 - ✘ Specific venture or undertaking, or
 - ✘ Particular period (fixed term)then such partnership is called a ‘particular partnership’.
- ✘ Such partnership comes to an end on the **completion of the venture** or the expiry of time period.
- ✘ If such partnership is continued after the expiry of term or completion of venture, **it is deemed to be a partnership at will.**
- ✘ A particular partnership may be dissolved before the expiry of the term or completion of the venture **only by the mutual consent of all the partners.**

CONTD.

- × **Sec. 17 (b)** of the Act provides that if a firm, constituted for a fixed term, continues to carry on business after the expiry of that term, **then** the partnership will become **partnership at will** and mutual rights and duties of partners will remain same as they were before the expiry.

ADVANTAGES & DISADVANTAGES OF PARTNERSHIP

Advantages	Disadvantages
Easy to form	Unlimited liability
Availability of large resources	Uncertain life
Better decisions	No transferability of share
Flexibility in operations	Lack of harmony
Sharing risks	Limited capital
Benefits of specialization	
Protection of interest of each partner	

PARTNERSHIP DEED

- ✘ A partnership is formed by an agreement. This agreement may be in **writing or oral**. Though the law does not expressly require that the partnership agreement should be in writing, it is desirable to have it in writing in order to avoid any dispute with regard to the terms of the partnership. **The document which contains the term of a partnership as agreed among the partners is called “partnership deed”.**
- ✘ The Partnership Deed is to be duly stamped as per the Indian Stamp Act, and duly signed by all the partners.

CONTENTS OF PARTNERSHIP DEED

A Partnership Deed should contain following clause:

- ✗ Nature of business
- ✗ Duration of partnership
- ✗ Name of the firm
- ✗ Capital
- ✗ Share of partners in profits and losses
- ✗ Bank Account firm
- ✗ Books of account
- ✗ Powers of partners
- ✗ Retirement and expulsion of partners
- ✗ Death of partner
- ✗ Dissolution of firm
- ✗ Settlement of disputes

LIMITED LIABILITY PARTNERSHIP ACT, 2008

Nature of
Limited Liability
Partnership

Partners and
their
Relationships

Objective

Extent and
Limitations of
Limited Liability
Partnership

Financial
Disclosures

ABOUT LLP

- Either Indian LLP or Foreign LLP (FLLP)
- Status of Body Corporate
- Perpetual succession
- Advantages of Company & Partnership
- Separate legal entity
- Both natural & artificial persons can form LLP
- Minimum two partners are required to carry on the business

DESIGNATED PARTNERS

- Every LLP shall have at least two designated partners
- One DP should be a resident in India
- A person has to comply with Rule 9 of the LLP Rules, 2009 for being appointed as DP
- DPs are liable for all the compliances & penalties under the Act imposed on the LLP
- In case of Vacancy, time frame for appointment of a DP is within 30 days

INCORPORATION OF LLP

- Two or more persons
- Lawful business
- Filed with ROC
- Certified by CS/CA/CWA
- Certificate of Registration - conclusive evidence

REGISTERED OFFICE & NAME

- Every LLP to have a Registered office
- Name of every LLP shall either end with the words "limited liability partnership" or the acronym "LLP" in the last
- For change of name, filings can be done with the concerned ROC
- LLPs shall ensure that all its correspondences bear the name, registered office address and LLPIN

PARTNERS

- Persons who are subscribed to the incorporation document
- Persons whose names are provided in the LLP agreement
- LLP agreement will provide the relationship of partners, mutual rights and duties
- File a notice with the ROC within 30 days of change of name or change in partners (cessation / appointment)

LIABILITY OF LLP & PARTNERS

- Partners are agent of the LLP and not of the other partners
- LLP will be held liable for the wrongful act done by any partner
- No partner will be personally liable for the wrongful act or omission of any other partner of LLP
- In case of fraud, the liability of the LLP and the partner indulged in the same, shall be unlimited

CONTRIBUTIONS

- Contribution by partner can be tangible, movable or immovable or intangible property or other benefit to the LLP
- The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the LLP
- The obligation of a partner to contribute in the LLP shall be as per the LLP agreement

MAINTENANCE & AUDIT OF BOOKS OF ACCOUNTS

- LLP shall maintain proper Books of A/c at its registered office for a period of 8 years
- Audit not mandatory for LLPs having turnover not more than 40 lakhs or contribution not more than 25 lakhs
- LLPs to file a Statement of Account and Solvency in Form 8 with ROC within 6 months of end of the FY
- LLPs to file an Annual Return in Form 11 with ROC within 60 days of end of the FY

FINANCIAL DISCLOSURES

- The documents filed with ROC will be available for public inspection
- ROC has power to destruct any old document in physical or electronic form
- ROC has power to obtain information from present or former partner, employee or DP
- CG can compound offence punishable with fine only by collecting a fine not exceeding the fine prescribed for the offence

CONVERSION TO LLP

- For conversion of a Firm into LLP, Second Schedule to be complied
- For conversion of a Private company into LLP, Third Schedule to be complied
- For conversion of an Unlisted public company into LLP, Fourth Schedule to be complied
- On filing for Conversion, ROC will issue Certificate of Registration
- The firm/company as the case may be, will be deemed to be dissolved on conversion

**Securitisation & Reconstruction of
Financial Assets & Enforcement of
Security Interests .**

(SARFAESI Act,2002)

INTRODUCTION

- Banks/Financial Institutions to recover their Non-Performing Assets (**NPA**) expeditiously without the court intervention.
- NPA are those assets which is classified by Banks/ Financial Institutions as **sub-standard, doubtful or loss asset.**

ENFORCEMENT OF SECURITY INTEREST (SEC.13)

How it works ???????

- Banks can give notice in writing to the defaulting borrower requiring to discharge its liabilities within 60 days from the date of notice.
- If borrower fails to comply with the notice, the Bank may recourse to any of the following measures (Sec 9):
 - **Take possession** of the secured assets of the borrower.
 - **Take over the management** of secured assets by way of lease, assignment or sale.
 - **Appoint any person as manager** to manage the security assets.
 - **Conversion of debt portion into equity shares** of borrower company.
 - **Rescheduling payment of debts** payable by the borrower.

PRE-CONDITIONS FOR SARFAESI (SEC 31)

The provisions of the Act shall **NOT APPLY** to:

- ✘ Lien on goods, money or security under Contracts law or Sale of Goods Act
- ✘ Pledge of movable within meaning of 172 of Indian contract act
- ✘ Creation of security in any aircraft
- ✘ Creation of security in vessels
- ✘ Conditional sale, hire purchase or lease or any other contract in which no security interest has been created
- ✘ Rights of unpaid seller
- ✘ Properties not liable for attachment under CPC
- ✘ Where financial assistance not exceeding Rs. 1 lac
- ✘ Where dues are less than 20% of principal and interest
- ✘ Agricultural land

TAKEOVER OF BORROWER'S MANAGEMENT CONDITIONS (SEC 15):

1. Where amount due from borrower is not less than **25% of the Total Assets owned** as disclosed in its latest balance sheet immediately preceding the date of taking action.
2. Where the borrower is financed by more than one secured creditors holding **not less than 60%** of the outstanding security receipts agree to such action.
3. When the secured creditor or SRC takes over the management of business of a borrower, he may **appoint as many persons as it thinks fit.**
 - a. Directors (In case the Borrower is a Company)
 - b. Administrator (In any other case)

EFFECT OF NOTICE AND TAKING OVER THE MANAGEMENT

- Vacation of office
- Termination of contract
- Custody of asset
- Sole right to manage

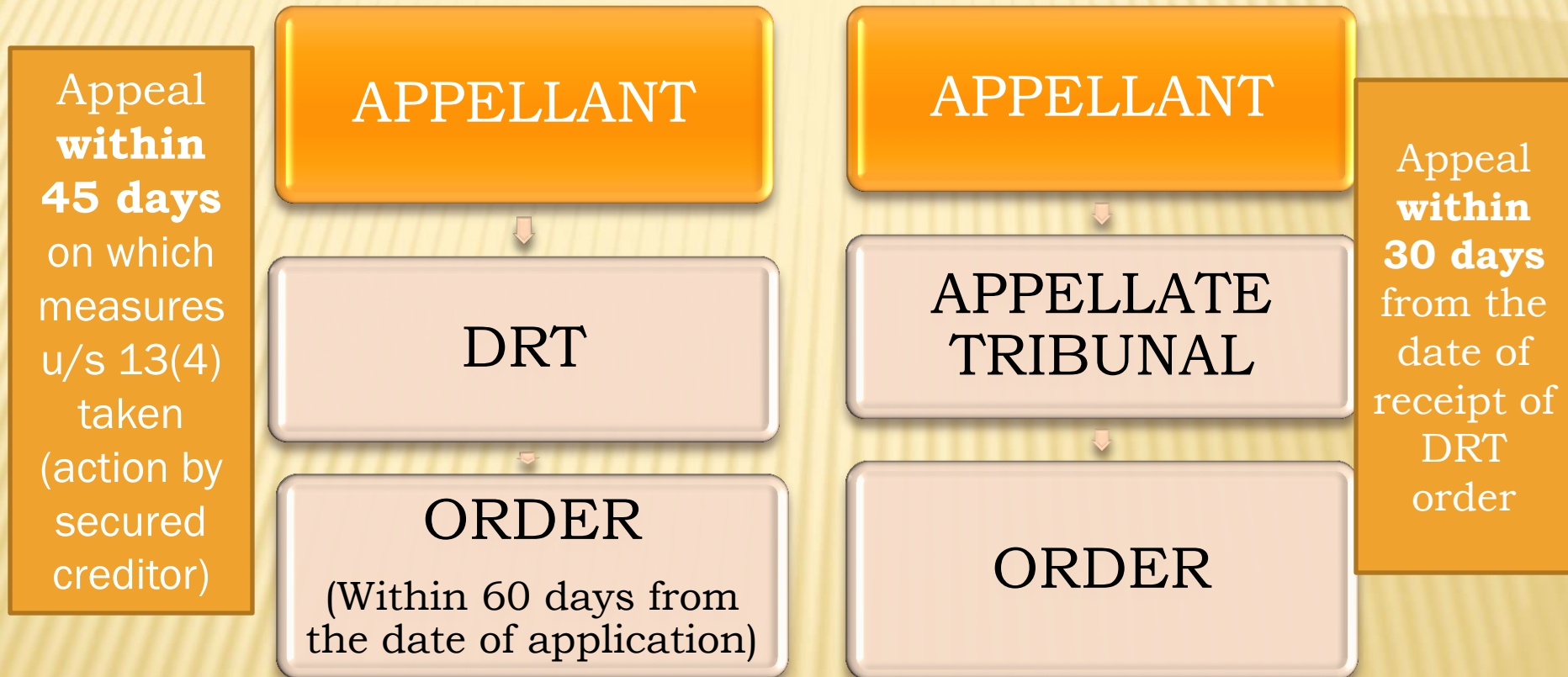
***MANAGEMENT OF BORROWER'S COMPANY
IS RESTORED ON REALIZATION OF DEBT
IN FULL OF SECURED CREDITORS.***

RESTRICTION ON SHAREHOLDERS RIGHT

If the business is taken over by management:-

1. Shareholders or any other person shall **not nominate or appoint** any person to be Director.
2. **No resolution passed** by the shareholders of the company **shall be given effect** to unless approved by the secured creditor.
3. **No proceeding for the winding up** of such company or for the appointment of a receiver for the company shall lie in any court, except with the consent of the secured creditor.

CHALLENGING BEFORE DRT BANK'S ACTION TO TAKE POSSESSION (APPEAL) SEC.17



Note: No Civil Court shall have jurisdiction to entertain any suit or proceeding in such matters.

CENTRAL REGISTRY (SEC 20)

- ✘ Objective is to set-up a registry for purpose of transaction of securitization and reconstruction of financial assets and creation of security interest under SARFAESI Act, 2002.
- ✘ Provisions pertaining to Central Registry shall be in addition to and not in derogation of any of the provisions contained in other Acts.
- ✘ Central Government may appoint officers known as **Central Registrar or any other such officers** for purpose of transaction of securitization and reconstruction of financial assets and creation of security interest.

- ✓ **Central Register** shall be kept at HO of Central Registry for entering the particulars of transaction relating to securitization and reconstruction of financial assets and creation of security interest .
- ✓ Returns to be filed with Central Registrar by SRC/ Secured Creditors as follows:

SR. NO	TRANSACTION	FORM NO.	DAYS
1	Creation of security or transaction of securitization, reconstruction assets and creation of security interest.	FORM I	Within 30 Days of transaction or creation of security.
2	Satisfaction of security interest.	FORM II	Within 30 Days from the date of payment/ satisfaction.

The Arbitration & Conciliation Act 1996



PART I - ARBITRATION

INTRODUCTION

- ✘ Arbitration is the mechanism to settle disputes between parties to a contract, determined in a **quasi-judicial manner**.
- ✘ The Arbitration and Conciliation Act, 1996 provides legal frame work for settlement of disputes by **mutual settlement out side the court**.
- ✘ Any **written document or a clause in a contract** for referring the dispute to arbitration shall be an arbitration agreement.
- ✘ The **parties** to the contract **will decide** the **constitution of arbitration tribunal** and mode of appointment as laid down in the contract agreement.
- ✘ The arbitration tribunal can be a **panel of arbitrators** or a **sole individual**.

APPOINTMENT OF ARBITRATOR

- ✘ The arbitrator has to be **appointed within 30 days** of such request by any party.
- ✘ In case of failure to comply the above, the Chief Justice of the High Court shall appoint suitable arbitrator as per the request of the party.
- ✘ If the appointed arbitrator **fails to perform**, the court may **replace him** by a suitable arbitrator as per the request of the party.
- ✘ The mandate of an arbitrator ends without proceedings starts or in the course of proceedings when
 - + He is not able to perform
 - + He withdraws
 - + Parties agrees to terminate him
- ✘ Proceedings of the arbitration commences from the date of receipt of communication by the respondents, for reference of the matter to the arbitration.
- ✘ The parties shall be treated equally and shall be given full opportunity to present their case.

PROCEDURE

- ✘ The procedure, place of hearing, time limit for production of documents / evidence etc can be **agreed upon by the parties** or otherwise **decided by the arbitrator**.
- ✘ The arbitration procedure **need not follow the Civil court procedures** or evidence act, but shall ensure the **principles of natural justice**.
- ✘ The tribunal shall **decide its own jurisdiction**.
- ✘ The parties can counter if the tribunal exceeds its authority.
- ✘ The arbitral tribunal may **appoint an expert/institution** to examine and to give expert report.
- ✘ If the **respondent fails** to communicate his defense or fails to appear for oral hearing/fails to produce documents, tribunal shall not treat it as admission by the defaulting party but **proceed with the evidences before it and make award**.

ARBITRATION AWARD

- ✘ It will be **decided as per the substantive law in force** in India taking into account the terms of contract and usage of trade.
- ✘ If the parties arrive at a **settlement agreement** and request the tribunal to give award accordingly and if tribunal has no objection it **may give award accordingly** which will have the same effect of the award.
- ✘ The award is **binding on all the parties**.
- ✘ Award is **enforceable** as if it were a **decree of the Court**.
- ✘ On issuance of award, arbitration proceedings are terminated.

REVIEW BY COURT

The Court may set aside arbitral award on application by the parties in time, if

- + The party was under **incapacity to participate** in the arbitral proceedings.
- + Arbitration agreement is **invalid**.
- + Non-receipt of proper notice of arbitral proceedings, non adoption of proper procedure, partiality shown by the Tribunal or exceeding the Jurisdiction by the Tribunal on examining the case in detail.

PART II - CONCILIATION

INTRODUCTION

- ✘ The act provides a legal frame to **encourage voluntary compromise/conciliation of disputes** arising out of legal relationship connected with commercial disputes.
- ✘ The party initiating conciliation **invites in writing** the other party identifying the subject of the dispute.
- ✘ The conciliation proceedings shall commence when the other party **accepts in writing** the invitation to conciliate.
- ✘ If the other party **rejects or does not reply within 30 days/within time limit stated** in the offer there will be **no conciliation proceedings**.

APPOINTMENT OF CONCILIATORS

- ✘ Conciliators shall be **appointed by the parties** to the dispute.
- ✘ It shall be a **sole conciliator** or a panel of conciliators of **1 to 3**
- ✘ In case of 3, one shall be identified as **presiding person.**
- ✘ **Institutions** may also be appointed as conciliators.

PROCEEDING

- ✘ The conciliator shall request to the parties to give the dispute, points of issues and their plea in writing. Thereafter he may request them to give more details/information as and when required.
- ✘ Conciliator is **not bound by civil procedure** of Court/Evidence Act etc.
- ✘ He is guided by the trade practices, fairness, natural justice, rights and obligations of the parties.
- ✘ Parties shall not resort to arbitral or judicial proceedings when subject matter is under conciliation

SETTLEMENT & COST

- ✘ If the parties **agree on a settlement** they may draw up and sign a **written settlement agreement**.
- ✘ When settlement is signed by the parties it is authenticated by the conciliator and is **binding on the parties**.
- ✘ Fee for conciliation, cost of administration, fee payable to expert opinion etc. are to be **borne by the parties equally** unless parties agree to pay in other ratio.



Indian Contract Act 1872

Nature of Contract

An act meant to ensure that rights agreed between parties in a contract are legally enforced.

VOID, VOIDABLE AND CONTINGENT CONTRACTS

- ✘ An agreement which is enforceable by law at the **option of one or more** of the parties thereto, but not at the option of the other or others, is a **voidable contract**.
- ✘ A contract which **ceases to be enforceable** by law becomes a **void contract**.
- ✘ A **contingent contract** is a contract to do or not to do something, if some **event, collateral** to such contract, **does or does not happen**.

PERFORMANCE OF CONTRACT

- ✘ Section 37, Para 1, of the Contract Act lays down that, “The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.”
- ✘ The offer to perform the Contract is called Tender. Offer to perform or tender may be called attempted performance, A tender, to be legally valid, must fulfill the following conditions

DISCHARGE BY AGREEMENT OR CONSENT

- ✘ **NOVATION (Sec 62):** New contract substituted for old contract with the same or different parties
- ✘ **RESCISSION (Sec 62) :** When some or all terms of a contract are cancelled
- ✘ **ALTERATION (Sec 62):** When one or more terms of a contract is/are altered by the mutual consent of the parties to the contract

AGENCY

- ✦ AGENT - Sec 182 defines an agent as a person employed to do any act for another , or to represent another in dealings with third persons the person for whom such act is done is called the principal

ESSENTIALS OF RELATIONSHIP OF AGENCY

- ✘ Agreement between principal & agent
- ✘ Intention of agent to act on behalf of the principal
- ✘ Anyone can be an agent
- ✘ Anyone can employ an agent

CREATION OF AGENCY

- ✘ By Express Agreement
- ✘ By Implied Agreement
 1. Agency By Estoppel
 2. Agency By Holding Out
 3. Agency By Necessity
- ✘ Agency By Ratification
- ✘ Agency By Operation Of Law

DIFFERENCES BETWEEN SUB-AGENT & SUBSTITUTE-AGENT

SUB-AGENT	SUBSTITUTE-AGENT
He works under the agent	He works under the principal
There is no contact between the agent & the principal	There is a contract between him & the principal
Agent is wholly & solely responsible for the acts of the subagent	Agent is in no way responsible for the acts of the substituted agent

TERMINATION OF AGENCY

<u>By act of parties</u>	<u>By operation of law</u>
Agreement	Performance of the contract
Revocation by the principal	Expiry of time
Revocation by the agent	Death of either party
	Insanity of either party
	Insolvency of either party
	Destruction of the subject matter
	Principal becoming an alien enemy
	Dissolution of a company
	Termination of sub-agents authority

INDEMNITY (SEC 124)

- ✘ A contract by which one party promises to another to save him from loss caused to him by the conduct of the promisor himself , or by the conduct of any other person is called a contract of indemnity

ESSENTIAL FEATURES OF INDEMNITY

- ✘ There are two persons , the indemnifier the indemnified or the indemnity holder
- ✘ There must be loss either by the promisor's conduct or by any other person's conduct
- ✘ It is a contingent contract by nature
- ✘ It may be express or implied

Sec 125 deals with the commencement of the indemnifier's liability. His liability commences when the event causing the loss occurs or when the event saving the indemnified from the loss becomes impossible

GUARANTEE (SEC 126)

- ✘ A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default. the person who gives the guarantee is known as the „surety“, the person in respect of whom the guarantee is given is known as the „principal debtor“, and the person to whom the guarantee is given is called the „creditor“. A guarantee may be either oral or written.

ESSENTIAL FEATURES OF GUARANTEE

- ✘ Concurrence of three contracts
- ✘ Primary liability is that of the principal debtor
- ✘ In case the debtor is a minor , the surety's liability becomes primary
- ✘ All the essentials of a valid contract
- ✘ It may be in writing or oral
- ✘ There need not be full disclosure of facts to the surety before he gives the guarantee

TYPES OF GUARANTEE

× SPECIFIC GUARANTEE :

When a guarantee extends to a single transaction or debt it is known as a specific or simple guarantee

× CONTINUING GUARANTEE :

When a guarantee extends to a series of transactions. It is called continuing guarantee

BAILMENT (SEC 148)

- ✘ The word Bailment is derived from the French word “ballier” which means “to deliver” .
- ✘ Bailment means delivery of goods by one person to another for some purpose ,upon a contract ,that they shall ,when the purpose is accomplished ,be returned or otherwise disposed of according to the instructions of the person delivering them.
- ✘ The person delivering the goods is called the “**bailor**” and the person to whom they are delivered is called the “**bailee**”.

ESSENTIALS OF BAILMENT

- ✘ There are two persons namely Bailor and Bailee.
- ✘ Bailor means the person delivering the goods, Bailee means the person to whom the goods are delivered.
- ✘ There must be delivery of goods .
- ✘ The goods must be in deliverable condition.
- ✘ Only the goods are delivered but not the ownership of goods, their must be purpose.
- ✘ Bailee can use the goods.
- ✘ Goods must be returned or disposed off after the purpose is accomplished.

PLEDGE (SEC 172)

- ✘ The bailment of goods as security for payment of a debt or performance of a promise is called “Pledge”.
- ✘ The bailor in this case is called the “pledger” or “pawnor” and the bailee is called the “pledgee” or “pawnee”

Sale Of Goods Act 1930



SALE

- ✘ Where under a contract of sale, the property (ownership) in the goods is transferred from the seller to the buyer, it is called a sale.
- ✘ Thus, sale takes place when there is a **transfer of ownership in goods from the seller to the buyer.**
- ✘ A sale is an **executed contract.**

CONDITIONS & WARRANTIES (SEC. 11-17)

- ✘ In a contract of sale, parties make certain stipulations, i.e. agree to certain terms regarding the quality of the goods, the price, mode of payment, delivery of goods, etc.
- ✘ **All stipulations cannot be treated on the same footing**
- ✘ Some may be intended by the parties to be of a **fundamental nature**, eg. Quality of the goods, the breach of which therefore will be regarded as a breach of the contract.
- ✘ Some may be intended by the parties to be **binding**, but of a subsidiary or inferior character, eg. time of payment, so that a breach of these terms will not put an end to the contract but will make the party committing the breach, **liable to damages**
- ✘ The **former** stipulations are called '**conditions**' and the **latter** stipulations are called '**warranties**'.

STIPULATIONS AS TO TIME

Stipulations as to time in a contract of sale fall under the following two heads:

- ✘ Stipulation relating to time of **delivery of goods**
- ✘ Stipulation relating to time of **payment of the price**

- ✘ As regards the ***time fixed for the delivery of goods***, ‘time is usually held to be the essence of the contract’. Thus if time is fixed for delivery of the goods and the seller makes a delay, the contract is voidable at the option of the buyer.
- ✘ As regards the ***time fixed for the payment of the price***, the general rule is that ‘time is not deemed to be the essence of the contract’, unless a different intention appears from the terms of the contract (sec. 11). Thus even if the price is not paid as agreed, the seller cannot avoid the contract on that account.

CONDITION & WARRANTY DISTINGUISHED

× As to value:

A condition is a stipulation which is **essential to the main purpose** of the contract, whereas a warranty is a stipulation which is **collateral to the main purpose** of the contract.

× As to breach:

The breach of a condition gives the aggrieved party the right to **repudiate the contract** and also to **claim damages** and in case of breach of warranty the aggrieved party is entitled to **reject the goods** or **sue the seller** for damages.

× As to treatment:

A breach of condition may be treated as a breach of warranty. But a **breach of warranty cannot be treated as a breach of condition.**

RIGHTS OF AN UNPAID SELLER

Right against the buyer personally

- ✘ Suit for the price
- ✘ Suit for damages
- ✘ Repudiation of the contract
- ✘ Suit for interest

Right against the goods

- ✘ Right of Lien
- ✘ Right of stoppage in transit
- ✘ Right of Resale
- ✘ Right of withholding delivery

The Transfer Of Property Act 1882



INTRODUCTION

- ✘ What does “property of goods” mean?
- ✘ When does the property in the goods pass from the seller to the buyers?
- ✘ When does the property pass from seller to the buyer?

In a sale of goods, the property in them is transferred to the buyer at such times as the parties to the contract intend to be transferred.

RULES AS REGARDS ASCERTAINING INTENTION

- × Specified goods in deliverable state

Goods are said to be in a deliverable state when they are in such state that the buyers would under the contract be found to take delivery of them.

- × Specific goods not in a deliverable state

Something has to be done by the seller to put them in a deliverable state, property passes only when such thing is done, and the buyer has notice thereof.

- × Unascertained or future goods

There is a contract for the sale of unascertained goods, property in the goods is not transferred to the buyer unless and until the goods are ascertained.

TRANSFER OF TITLE BY NON-OWNERS

General rules as to transfer of title

The general rule is that only the owner of goods can transfer a good title. No one can give better title than he himself has. This rule is expressed by the maxim “Nemo dat quod non habet,” which mean “**that no one can give what he himself has not.**”

EXCEPTIONS TO THE RULE

- ✘ Sale by mercantile agent
- ✘ Sale by a joint-owner
- ✘ Sale by a person in possession under a voidable contract
- ✘ Sale by a seller in possession of goods after sale
- ✘ Sale by buyer in possession of goods
- ✘ Sale by an unpaid seller



Specific Relief Act , 1963

COVERAGE

PART II - SPECIFIC RELIEF

- ✘ Chapter I : Recovering Possession of Property
- ✘ Chapter II : Specific Performance of Contracts
- ✘ Chapter III : Rectification of Instruments
- ✘ Chapter IV : Rescission of Contracts
- ✘ Chapter V : Cancellation of Instruments
- ✘ Chapter VI : Declaratory Decrees

PART III - PREVENTIVE RELIEF

- ✘ Chapter VII : Injunctions Generally
- ✘ Chapter VIII : Perpetual Injunctions

CHAPTER I

RECOVERING POSSESSION OF PROPERTY

- ✘ Under this chapter the person can **recover movable and immovable property**.
- ✘ The suit for possession of **immovable** property must be filed **within six months from the dispossession**.
- ✘ Such suit **cannot be filed against Government**.
- ✘ The possession is **claimed on basis of previous possession** and Title is immaterial.

CHAPTER II

SPECIFIC PERFORMANCE OF CONTRACTS

This is an important chapter & can be sub-divided as under:

- × Contracts which can be specifically enforced - When **no standard for ascertaining the actual damage caused** exists by the non performance of the act agreed; or When the act agreed to be done is such that **compensation in money** for its non performance would **not afford adequate relief**.
- × Contracts which cannot be specifically enforced - When **compensation by money** can be done or which involves the performance of **continuous duty** which court cannot supervise, etc.

SPECIFIC PERFORMANCE OF CONTRACTS (CONTD)

- ✘ Persons for or against whom contracts may be specifically enforced - Who may obtain specific performance:
 - ▣ either party thereto;
 - ▣ any other person claiming on subsequent contract;
 - ▣ any person claiming on prior contract known to plaintiff and who had displaced defendant;
 - ▣ company;
 - ▣ Promoters

- ✘ Discretion and powers of Courts - The discretion is to be used not arbitrary but sound and reasonable guided by judicial principles.

In following cases no specific performance to be granted:-

- ▣ Gives an unfair advantage;
- ▣ Performance of contract involves some hardship;
- ▣ Makes contract inequitable to enforce specific performance.

CHAPTER III

RECTIFICATION OF INSTRUMENTS

When through fraud or mutual mistake of the parties a contract does not express their real intention then-

- ✘ Either party or his representative in interest may **institute a suit** to have the instrument rectified;
- ✘ In any suit pending, plaintiff may **pray for rectification** of instrument;
- ✘ In any suit pending, defendant may **ask for rectification**;

The court may in its discretion direct rectification of the instrument.

CHAPTER IV

RESCISSION OF CONTRACTS

Any person interested in a contract may sue to rescind contract and court may grant such rescission if:-

- ✘ A contract is **voidable or terminable** by plaintiff; or
- ✘ A contract is **unlawful** for causes not apparent on its face and defendant is more to blame than the plaintiff.

But court may refuse to rescind the contract;-

- ✘ Where the plaintiff has **expressly or impliedly ratified** the contract; or

RESCISSION OF CONTRACTS (CONTD)

- ✘ Where owing to change of circumstances the **parties cannot be substantially restored** to the position in which they stood when the contract was made; or
- ✘ Where **third parties have acquired rights in good faith** without notice and for value.

When court rescinds the contract, it may direct as follows:

- ✘ Restoration of possession;
- ✘ Refund of earnest money and other profits;
- ✘ Restore any benefits received.

CHAPTER V

CANCELLATION OF INSTRUMENTS

- ✘ Any person against whom a written instrument is void or voidable and who has reasonable apprehension that such instrument if left outstanding **may cause him serious injury** may sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and **order it to be delivered up and cancelled.**
- ✘ If the instrument has been **registered**, the court shall also send a **copy of its decree to registration office.**
- ✘ The instrument **can be cancelled partially.**

CHAPTER VI

DECLARATORY DECREES.

- ✘ Any person entitled to any legal character or to any right as to any property may institute a suit against any person denying his title or right.
- ✘ Court in its discretion make such declaration.
- ✘ Such declaration is binding only on parties.

CHAPTER VII

INJUNCTIONS GENERALLY

- ✘ Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.
- ✘ Temporary injunctions are for specific time.
- ✘ Perpetual injunction at the end of suit.

CHAPTER VIII

PERPETUAL INJUNCTIONS

Perpetual injunctions may be granted:

- ✘ To prevent the breach of an obligation existing in his favour; or
- ✘ When defendant invades or threatens to invade the right of plaintiff; or
- ✘ Where there exists no standard for ascertaining the actual damage caused; or
- ✘ Where invasion is such that compensation in money would not afford adequate relief;

A wooden gavel with a brass head resting on a wooden block, with a coiled rope in the background.

Negotiable Instruments Act

INTRODUCTION

- ✘ The word ***negotiable*** means ‘transferable by delivery,’ and the word ***instrument*** means ‘a written document by which a right is created in favour of some person.’
- ✘ Thus, the term “***negotiable instrument***” literally means ‘a **written document** which **creates a right** in favour of somebody and is **freely transferable** by delivery.’
- ✘ A negotiable instrument is a piece of paper which entitles a person to a certain sum of money and which is transferable from one to another person by a delivery or by endorsement and delivery.

CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS

- ✘ Free transferability or easy negotiability
- ✘ Title of holder is free from all defects
- ✘ Transferee can sue in his own name without giving notice to the debtor
- ✘ Presumptions - Certain presumptions apply to all negotiable instruments which are as follows:
 - a) It was entered for consideration
 - b) Pertains to that date

CHARACTERISTICS (CONTD)

- c) Accepted within reasonable time
- d) If transferred, it was before maturity
- e) If endorsements are made, it is in the order of appearance
- f) If the instrument is lost, it was duly stamped
- g) Every holder is a holder in due course

TYPES OF NEGOTIABLE INSTRUMENTS

Negotiable instruments are of two types:

- ✘ Negotiable Instruments **recognized by status**
e.g. Bills of exchange, cheque and promissory notes.
- ✘ Negotiable instruments **recognized by usage** or customs of trade
e.g. Bank notes, exchequer bills, share warrants, bearer debentures, dividend warrants, share certificate

The image features several stacks of coins of varying heights and colors, including silver and copper, set against a dark background. The coins are arranged in a way that creates a sense of depth and abundance. The top and bottom of the image have a yellow background with a subtle, wavy pattern.

Recovery of Debts Due to Banks and Financial Institution Act, 1993

DEFINITION

- ✘ “Appellate Tribunal” means an Appellate Tribunal established under sub-section (1) of Section 8.
- ✘ “application” means an application made to a Tribunal under Section 19.
- ✘ “debt” means any liability (inclusive of interest) which is claimed as due from any person by a bank of a financial institution or by a consortium of banks or financial institutions during the course of any business activity.

ESTABLISHMENT OF TRIBUNAL AND APPELLATE TRIBUNAL

- ✘ 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.
- ✘ 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.

COMPOSITION OF TRIBUNAL & QUALIFICATION OF PRESIDING OFFICER

- ✘ A Tribunal shall consist of **one person only** (hereinafter referred to as the **Presiding Officer**) to be appointed by notification, by the Central Government.
- ✘ 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**.
- ✘ 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**.

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:

- ✘ attachment and sale of the movable or immovable property of the defendant;
- ✘ arrest of the defendant and his detention in prison;
- ✘ appointing a receiver for the management of the movable or immovable properties of the defendant

CORPORATE DEBT RESTRUCTURING



Debt

CORPORATE RESTRUCTURING

“The process involved in changing the organisation of a business.”

- ✘ Redesigning one or more aspects
- ✘ Implemented due to certain factors:
- ✘ To be more profitable, survive economic conditions, address challenges & increase shareholders value.

NEED & OBJECTIVES

- ✘ To improve competitive position
- ✘ To rearrange the activities to be more profitable
- ✘ Cost reduction
- ✘ Utilisation of strategic assets
- ✘ Eliminate competitors
- ✘ To have an access to R & D
- ✘ Focus on core strengths
- ✘ Revive and rehabilitate a sick unit
- ✘ Constant supply of resources
- ✘ Tax benefits
- ✘ Improve corporate performance

BROAD AREAS

FINANCIAL RESTRUCTURING	OPERATIONAL RESTRUCTURING	MANAGERIAL RESTRUCTURING	ASSET RESTRUCTURING
Reduction of capital, reorganising the equity and debt base, buy back of shares	Product restructuring Market restructuring	Improving the manpower	New investments technological changes, asset reduction, sale and lease back transactions

TECHNIQUES

EXPANSION / GROWTH TECHNIQUES	CONTRACTION / DIVESTMENT TECHNIQUES	OTHER TECHNIQUES
<ul style="list-style-type: none">▪ Mergers▪ Takeover/ Acquisition▪ Strategic Alliance▪ Joint Venture▪ Franchising▪ Licensing▪ Wholly owned Subsidiaries	<ul style="list-style-type: none">▪ Demerger / Spin off▪ Disinvestment▪ Slump Sale▪ Buy out▪ Leveraged Buy out▪ Sell off	<ul style="list-style-type: none">▪ Reverse Merger▪ Debt Equity Swaps▪ Buyback of Shares▪ Asset Securitisation



FINANCIAL RESTRUCTURING



FINANCIAL RESTRUCTURING

Restructuring is a combination of two words 're' and 'structure' where '**re**' means **again** and '**structure**' means **construct or arrange**. Thus when the organization have to rearrange or rebuild its internal structure to bring more efficiency and competitiveness, it is called restructuring of the organization.

MEANING OF FINANCIAL RESTRUCTURING

Every company has **two main sources** of finance i.e. **debt and equity** and a successful organization always creates a perfect balance of debt and equity in its capital structure. Sometimes the capital structure may get off balance due to certain changes which are beyond the control. This balance is thus restored by financial restructuring.

CAUSES OF FINANCIAL RESTRUCTURING

- ✘ Misappropriation Of Funds
- ✘ Obsolete
- ✘ Lack Of Optimum Utilisation Of Resources
- ✘ Shift In Consumer Preferences
- ✘ Inefficient Management
- ✘ External Factors
- ✘ Dissatisfied Workers, Strikes,lock Outs Etc

NEED OF FINANCIAL RESTRUCTURING

- ✘ At the time of promotion and **incorporation** of the company.
- ✘ At the time of **expansion** of an existing company.
- ✘ At the time of **amalgamation** and absorption of two or more companies.
- ✘ At the time of **re-organization of capital** of the company.

WAYS TO RESTRUCTURE

There are 2 kinds of companies i.e. over-capitalization company and under –capitalization company

The over capitalized company can be restructured by:

- ✘ Buy back of shares
- ✘ Redemption of preference shares
- ✘ Reduction of funded debts
- ✘ Re-organisation of equity capital

An under capitalization can be corrected by:

- ✘ Fresh issue of shares
- ✘ Issue of bonus shares
- ✘ Increasing par value of shares

Strategic Debt Restructuring



Debt

NON PERFORMING ASSETS, STANDARD RESTRUCTURED ADVANCES AND DEBT RESTRUCTURING

× **Non Performing Assets (NPA)**

Non Performing Assets or NPA means a loan 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 guidelines relating to asset classification issued by the RBI.

× **Standard Restructured Advances**

A standard restructured account is one where the bank, **grants to the borrower concessions** that the bank would not otherwise consider. A restructured advance would normally involve modification of terms of the advances/securities, which would generally include, among others, alteration of repayment period/repayable amount/ the amount of instalments and rate of interest. **It is a mechanism to nurture an otherwise viable unit, which has been adversely impacted, back to health.'**

× **Debt Restructuring**

Debt restructuring is a method used by companies **to avoid default on existing debt by altering terms & conditions** of the existing debt issue or to take advantage of a lower interest rate by taking a new debt after settling the previous one.

CORPORATE DEBT RESTRUCTURING (CDR)

A method used by the companies with outstanding debt obligations to alter the terms of the debt agreements in order to achieve some advantage.

The system got evolved and detailed guidelines were issued by RBI on August 23, 2001 and were revised on February 5, 2003.

Objective is to support continuing economic recovery, enabling viable debtors to continue business operations and promoting fair and equitable debt repayments to creditors.

The CDR mechanism will cover only multiple banking accounts/syndication/consortium accounts with outstanding exposure of Rs. 20 Crore and above by Banks and Institutions.

It has a three tier structure including the CDR Cell which is the third tier that makes the initial scrutiny of the proposals, the Empowered Group (EG) which decides whether to take up the restructuring or not and afterwards approves the restructuring plan prepared by the CDR Cell. The top tier is the Standing Forum which lays down the policies and guidelines to be followed by the EG & CDR Cell for Debt Restructuring.

STRATEGIC DEBT RESTRUCTURING SCHEME

■ Introduction

- i. The concept of Strategic Debt Restructuring ("SDR") has been introduced by the Reserve Bank of India (the "RBI") in the SDR Scheme (the "Scheme") **to help banks recover their loans by taking control of the distressed listed companies.**
- ii. The Scheme has been enacted with a view to **revive stressed companies** and provide lending institutions with a way to initiate change of management in companies which fail to achieve the milestones under Corporate Debt Restructuring ("CDR").
- iii. The Scheme is subsequent to CDR or any other restructuring exercise undertaken by the companies.



CONTD...

- **Eligibility**

- i. Conversion of outstanding debts can be done by a consortium of lending institutions. Such a consortium is known as the Joint Lenders Forum ("JLF").
- ii. The JLF may include banks and other financial institutions such as NBFCs.
- iii. The Scheme will not be applicable to a single lender.

× **“It will be useful in cases where the borrower has been non-compliant and the bank is confident that a new promoter or buyer can turn things around. In other cases, the existing managements are better equipped to grapple with the situation”**

- Jaideep Iyer, Group President, Financial Management, YES Bank

DIFFERENCE BETWEEN CORPORATE DEBT RESTRUCTURING(CDR) AND STRATEGIC DEBT RESTRUCTURING(SDR)

Sr No.	Corporate Debt Restructuring (CDR)	Strategic Debt Restructuring (SDR)
1	The reorganization of a company's outstanding obligations by reducing the burden of the debts on the company by decreasing the rates paid and increasing the time the company has to pay the obligation back.	SDR scheme allows banks to convert their outstanding loans into equity in a company if even restructuring has not helped.
2	The CDR system got evolved and detailed guidelines were issued by RBI on August 23, 2001 .	SDR was announced on 8th June, 2015 by the RBI.
3	It has a three tier structure which includes CDR Cell, Empowered Group and a Standing Forum . The Standing Forum is the top tier which decides on the restructuring.	A consortium of lending institutions namely Joint Lender's Forum is formed which will decide on the conversion of debt into equity.

ISSUES RELATED TO STRATEGIC DEBT RESTRUCTURING SCHEME

Issues Related to Strategic Debt Restructuring

Legal Issues


Since a major portion of the SDR scheme depends on the discretion of the lenders, banks may be potentially making themselves vulnerable to litigation. Various groups like promoters, rival companies etc. may file multiple cases against the banks, which will be a major concern for the lenders.

Multiple Claimants

In case there are more than one potential new owners with comparable track records and competent management teams, it will be difficult for banks to choose one over the other. Further, as stated earlier, the final selection will leave a lot of room for aggrieved parties to take the lenders to court.

Structural Issues

Many accounts run into problems not because of inefficient managements but due to structural problems like weak demand, cheap imports, overcapacity etc. In such cases, effecting a management change is not likely to substantially improve the troubled company's performance.



Sustainable Structuring of
Stressed Assets (S4A)
Scheme

KEY HIGHLIGHTS

- ✘ Under the S4A, the loan account will essentially be broken down into two parts – **sustainable portion** (Part A) and **unsustainable portion** (Part B).
- ✘ Sustainable portion is the share which can be serviced by the company even if cash flow remains the same as now. But, for this scheme, the **sustainable debt cannot be less than 50 percent of current funded liabilities**.
- ✘ For being eligible under the scheme, the account should meet all the following conditions:
 - (a) The project has commenced commercial operations;
 - (b) The aggregate exposure (including accrued interest) of all institutional lenders in the account is more than Rs.500 crore

- ✘ An independent agency will have to conduct a techno-economic viability (TEV) report to assess the amount of the sustainable debt and **any resolution plan** should be agreed upon by a **minimum of 75 % of lenders by value and 50 % of lenders by number in the consortium**.
- ✘ Once the resolution plan is decided, it will go to the **overseeing committee (OC)**.
- ✘ While there will be no extension of the repayment of Part A, the Part B will be converted into equity/redeemable cumulative optionally convertible preference shares.
- ✘ Equity shares thus acquired should be marked to market on a daily, or at least on a weekly basis for listed firms. In case the company is not listed, banks should take the lowest value after working out a prescribed rule the central bank outlined.
- ✘ RBI also states that resolution may involve the current promoter to continue holding their stake in the company or some new promoter can be brought via the structural debt restricting (SDR) or non-SDR route.
- ✘ However, sustainable structuring is not permissible where promoters' malpractices or wrongdoings have been revealed under audit.

LIMITATION ACT, 1963

OBJECT OF THE ACT

- ✘ That long dormant claims have more of cruelty than justice in them
- ✘ That a defendant might have lost the evidence to dispute the state claim
- ✘ That persons with good causes of actions should pursue them.

DOCTRINE OF LIMITATION

- ✘ That the right not exercised for a long time is non-existence;
- ✘ That the rights in property and rights in general should not be in a state of constant uncertainty, doubt and suspense

SUITS RELATING TO ACCOUNTS

For the balance due on a mutual, open and current account where there have been reciprocal demands between the parties.	Three years	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
Against a factor for an account	Three years	When the account is during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
By a principal against his agent for movable property received by the latter and not accounted for.	Three years	When the account is during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
Other suits by principals against agents for	Three years	When the neglect or misconduct becomes known to the plaintiff.
For an account and a share of the profits of dissolved partnership	Three years	The date of the dissolution.

SUITS RELATING TO CONTRACTS

For the balance of money advance in payment of goods to be delivered.	Three years	When the goods ought to be delivered.
For the price of goods sold and delivered when no fixed period of credit is agreed upon.	Three years	The date of delivery of the goods.
For money payable for money lent.	Three years	When the loan is made.
For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years	When the time specified arrives or the contingency happens.
On a bill of exchange accepted payable at a particular place.	Three years	When the bill is presented at that place.
On a dishonored foreign bill where protest have been made and notice given.	Three years	When the notice is given.
For arrears of rent.	Three years	When the arrears become due.
On a bond subject to a condition	Three years	When the condition is broken.

SUITS RELATING TO DECLARATIONS

<p>To declare the forgery of an instrument issued or registered.</p>	<p>Three years</p>	<p>When the issue or registration becomes known to the plaintiff.</p>
<p>To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.</p>	<p>Three years</p>	<p>When the alleged adoption becomes known to the plaintiff.</p>
<p>To obtain any other declaration.</p>	<p>Three years</p>	<p>When the right to sue first accrues.</p>

SUITS RELATING TO MOVABLE PROPERTY

For specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion.	Three years	When the person having the right to the possession of the property first learns in whose possession it is.
For other specific movable property.	Three years	When the property is wrongfully taken.
To recover movable property deposited or pawned from a depositary or pawnee.	Three years	The date of refusal after demand.
To recover movable property deposited or pawned, and afterwards brought from the depositary or pawnee for a valuable consideration.	Three years	When the sale becomes known to the plaintiff.

SUITS RELATING TO TORTS

For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends.	One Year	When the act or omission takes place.
For compensation for wrongful seizure or movable property under legal process.	One Year	The date of the seizure.
For compensations for false imprisonment.	One Year	When the imprisonment ends.
For compensation for injury caused by an injunction wrongfully obtained.	Three years	When the injunction ceases
For compensation for inducing a person to break a contract with the plaintiff.	One Year	The date of the breach.
For compensation for infringing copyright or any other exclusive privilege.	Three years	The date of the infringement.
For compensation for trespass upon immovable property.	Three years	The date of the trespass.

SUITS RELATING TO TRUSTS & TRUST PROPERTY

<p>To recover possession of immovable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration.</p>	<p>Twelve years</p>	<p>When the transfer becomes known to the plaintiff.</p>
<p>To recover possession of immovable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration.</p>	<p>Three years</p>	<p>When the transfer becomes known to the plaintiff.</p>
<p>To set aside a transfer to immovable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.</p>	<p>Twelve years</p>	<p>When the transfer becomes known to the plaintiff.</p>
<p>To set aside a transfer of movable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.</p>	<p>Three years</p>	<p>When the transfer, becomes known to the plaintiff.</p>
<p>By the manager of a Hindu, Muslim and Buddhist religious or charitable endowment to recover possession of movable or immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.</p>	<p>Twelve years</p>	<p>The date of death, resignation or removal of the transfer or the date of appointment of the plaintiff as manager of the endowment, whichever is later.</p>

SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD

Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues
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OTHER APPLICATIONS

Any other application for which no period of limitation is provided elsewhere in this Division	Three years	When the right to apply accrues
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THANK YOU