

L E X

# WITNESS

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# India's 1st Ever Take Over of Management of Borrower Company by REC Ltd. Under The SARFAESI Act

In an environment where the Indian economy is going through a sea of changes in terms of insolvency and bankruptcy, here is yet another debut that is worth a read through. Lex Witness brings to you a quickie.



**A**midst all the hype and popularity of taking over of the management of the affairs of a Corporate Debtor under the Insolvency and Bankruptcy Code, 2016 (IBC), the Rural Electrification Corporation Ltd. (REC), a NAVRATNA Central Public Sector Enterprise established under the Ministry of Power of Government of India, has become the first company in India to initiate action under the provisions of Section 13(4)(b) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). It has taken over an absolute control of the management of the business of 'Facor Power Limited' (the borrower company) that has been in a default of repayment of public money to the tune of approx. ₹ 780 Crores.

Facor Power Limited, a company having its registered office in New Delhi and its plant at Bhadrak, Odisha had availed credit facilities from REC to the tune of ₹ 517.90 Crores from 2009 – 2014 to develop, own, design, finance, construct, commission, operate and maintain a 2x50 MW Coal Based Captive Thermal Power Project located at Randia in Bhadrak District of Odisha. On account of failure on the part of the borrower to repay, the account was classified as a Non-Performing Asset (NPA) by REC w.e.f 30.09.2015. Thereafter, REC issued a notice under section 13(2) SARFAESI calling the borrower to pay an amount of ₹ 5,722,003,874.56/- due as on 01.11.2015. On account of further non-payment, REC issued a notice under section 13(4) of the SARFAESI Act taking over the possession of the secured assets of the Borrower.

Now with a view of recovering its huge outstanding dues, REC under the provisions of Section 13(4)(b) of the SARFAESI Act has taken over the management of the business of the borrower w.e.f 07.11.2017. The erstwhile board of directors of the borrower company stands suspended and REC has appointed three new directors to run and manage the affairs of the said borrower company. The company hereafter will be managed and run by REC until its dues stand cleared.

Being the first ever attempt by any lender to take over the management of the business of the borrower company under section 13(4)(b) of SARFAESI Act, REC was advised and assisted by Dhir & Dhir Associates, Advocates & Solicitors, who were entrusted with the responsibility of legal advisory and execution to monitor the entire action under the SARFAESI Act. [W](#)