

# THE HORIZON

April - June 2020

## Registration of Charges by The Creditors - Role of CERSAI

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**06** the firm in headlines

**08** the podium



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# Registration of Charges by The Creditors - Role of CERSAI

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One of the objectives with which the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act') was brought into effect, was to provide for a Central Database of security interests created on property rights and for matters connected therewith. In short, one of the purpose of the SARFAESI Act is to ensure complete transparency about the status of encumbrances on an asset in order to enable the creditor to properly and effectively enforce the security created in its favour.

The SARFAESI Act was promulgated in the year 2002. However, there have been various issues which are being faced by the Creditors. One of the most relevant impediment in enforcement of a security interest was that the information with regard to the encumbrance on a property could not be determined properly. A lot of defrauding borrowers would avail credit facilities from various lenders by mortgaging the same property/ asset without consent of the existing lenders. As no Central/ nodal registry was in place, the lenders at large had no mechanism to ascertain the correct status of charge either at the stage of grant of the loan or at the stage of invocation of security.

In view the same, Central Registry of Securitization Asset Reconstruction and Security Interest of India ('CERSAI') was set up. CERSAI was established on 31.03.2011. CERSAI is a Government of India Company licensed under Section 8 of the Companies Act, 2013 with the Government of India



having a shareholding of 51% by the Central Government and select Public Sector Banks and the National Housing Bank also being shareholders of the Company. CERSAI has its head office in New Delhi.

Firstly, let us understand the purpose of CERSAI. The question that needs to be addressed at first is what exactly is the purpose of CERSAI. CERSAI has been established with an objective to maintain and operate registration of transactions for Securitization and Asset Reconstruction of Financial Assets and creation of security interest over a property. A mere perusal of the provisions under the SARFAESI Act, one will realize that CERSAI is a body established for mitigating risks for creditors. It provides for a mechanism to the public at large to search and inspect the records maintained by CERSAI.

We will now deal with the relevant provisions of Chapter IV. For the purpose of registration



of transactions relating to Securitization, Reconstruction of financial assets and security interest created over the properties, Central Registrar is appointed by the Central Government. The particulars that are to be registered with CERSAI include (a) Securitization of financial assets, (b) reconstruction of financial assets; (c) creation of security interest. The Central Registrar is empowered by law to maintain the records of registration in electronic form and the same are kept in the control and management of the Central Registrar. Such record is also open for inspection by any person on payment of such fee under Section 26 of the SARFAESI Act. Section 20-A further provides that for the purpose of providing Central Database, there shall be integration of registration record maintained by any authority with the Central Registry. Once this done, registration under any registration system shall be deemed to be registered with the Central Registry.

Section 23 of the SARFAESI Act initially provided that every transaction shall be filed with the Central Registrar within a period of 30 days. However, this requirement to follow a particular time frame of 30 days was omitted by Act 44 of 2016.

After registration of a charge, there may arise a situation that the charge needs to be modified. The SARFAESI Act also provides that whenever the terms or conditions, or the

extent or operation of any security interest is modified, it is the duty of the concerned creditor to send the details of modification of charge to the Central Registrar and will have the charge modified. Similarly, when a security interest is satisfied, it is the duty of the concerned creditor to give intimation to the Central Registrar about the satisfaction of the charge within a period of 30 days. Accordingly, a memorandum of satisfaction will be entered in the Central Register. Effectively, the entire purpose of setting up CERSAI is to create public database about encumbrances on properties to secure loans given by the lenders and also to integrate data maintained by any authority.

It is essential to point out that despite Chapter IV being in place and CERSAI being set up in 2011, a lot many secured creditors did not register their charges with the Central Registry, which defeated the whole purpose. As a result, a Chapter on Registration by Secured Creditors and other Creditors was inserted in the SARFAESI Act in the year 2016. Though this Chapter was inserted in the Act in 2016; however, the same has been notified on 26.12.2019 with effect from 24.01.2020. It is imperative to point out that the said Chapter is in conjunction and in support of Chapter IV of the SARFAESI Act which was already in place when the SARFAESI Act was enacted.

One may ask as to what was the need

to introduce a separate chapter while registration of charges were being done with the Central Registry under Chapter IV of the SARFAESI Act, read with the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Rules, 2011. Chapter IV covers in its ambit only secured creditors as defined under the SARFAESI Act. However, Chapter IVA also covers creditors other than the secured creditors as defined under Section 2(zd) of the SARFAESI Act. This may include a creditor, which is not a secured creditor as defined under the SARFAESI Act; but, has security interest created in its favour and/ or a claim against the borrower and has some attachment order in its favour.

This Chapter also covers in its ambit authorities which have to recover tax/ government dues and have attachment orders in their favour. Such authorities are also now required to register their charges with the Central Registry. Hence, would this imply that merely by registering their charges, the creditors (other than the Secured Creditors) become entitled to enforce security interest under the provisions of Chapter III of the SARFAESI Act. The answer to this question is in negative. The creditors, other than a secured creditor as defined under the SARFAESI Act is not

entitled to enforce provisions of Chapter III of the SARFAESI Act. However, a careful reading of the entire chapter IV A would illustrate that the filing of particulars by the Creditors with the Central Registry is imperative.

In this regard, we may also point out that a creditor who does not file particulars of registration with the Central Registry will not be entitled to exercise right of enforcement of securities under the SARFAESI Act. Further, the provisions of Chapter IV A are prospective in nature. Thus, all creditors including a Secured Creditor are required to register their charges with the Central Registrar. Therefore, Chapter IV-A has been notified, which makes it compulsory for a Secured Creditor to register the details of security interest with the Central Registry whether the security interest was created before or after the notification of Chapter IV-A. Unless the same is done, the Secured Creditor will not be entitled to exercise the rights of enforcement of securities under the SARFAESI Act.

A question may arise as to why such registration should be made obligatory on the Creditors. As mentioned above, certain borrowers would avail credit facilities from various creditors by creating security





interest on one property. Many a times, such creditors were not even aware that the security interest is in favour of any other lender. Therefore, now with registration in the Central Registry, a database is available for the due diligence of the creditors. Any person interested in search of the records of the Registry shall be entitled to do so by payment of fees prescribed by the Rules through any bank or financial institution or any other intermediaries authorized by the Central Registry.

Further, the debt of the Creditor who registers the charge with the Central Registry will be given priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government. In short, the debt of the Secured Creditor (whose charge is registered and filed in the Central Registry) will be given priority over all Government charges.

Having provided a brief background of the provisions of Chapter IV and Chapter

IV A, it is also essential to understand the Rules which govern the said Chapters. As mentioned in the preceding paragraphs, filing of registration of charge is now necessary. There may be a situation where more than one creditor holds charge over an asset. In such a situation, it is essential that while filing details with the Central Registry, the details of inter-se priority amongst the creditors are to be provided.

To conclude, we may say that the establishment of Central Registry and notification of Chapter IV A will be beneficial to the creditors at large and not only to the secured creditors alone. It may be pointed out that the effect of the said Chapters will be to ensure that the rights and interests of lenders are protected. The provisions will protect lenders' interest from such borrowers who take loans from various banks by creating security on same property without consent of the lenders involved, which results in multiplicity of legal proceedings and leads to delay in the recovery of public money.

# THE FIRM IN HEADLINES

## THE ECONOMIC TIMES

### India not keen to take legal recourse to fix data gaps

**13th June, 2020** - “The steps taken by the CoC appears to be a workable solution in the absence of any provisions on cross border insolvency to get the charge on aircraft released from US Bank,” said Ashish Pyasi Associate Partner Dhir & Dhir Associates. “The proposed auction of one of the immovable properties of Jet Airways is unparalleled because the proceeds of this auction will be used for clearing the dues of HDFC Bank the charge on immovable property and Export-Import Bank of US so that the charge of US bank on the aircraft will be released.” [Read more at The Economic Times](#)

## THE BUSINESS JOURNALS

### Jet Airways lenders put the defunct airline’s BKC office on the block-Business Journal

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## THE ECONOMIC TIMES

### NCLT allows changes in payment schedule to the successful bidder on account of COVID-19

**11th June, 2020** - “This is unprecedented but a good step in the right direction wherein the resolution applicant is also given some relaxation both by the committee of creditors and the NCLT so that the company doesn’t go into liquidation and maximisation of value happens through the resolution process,” said Ashish Pyasi Associate, Partner, Dhir & Dhir Associates. [Read more at The Economic Times](#)

## THE ECONOMIC TIMES

### Insolvency halt gives a rude jolt to boutique IRPs

**3rd June, 2020** - According to Ashish Pyasi, an associate partner at law firm Dhir & Dhir Associates, the proposed suspension will affect the practice of resolution professionals, who are generally chartered accountants or company secretaries. [Read more at The Economic](#)



## IBC ordinance: Lenders may start taking pre-Covid unresolved cases to NCLT

9th June, 2020 - Ashish Pyasi, associate partner, Dhir and Dhir Associates, said, "The lenders may also prefer to resolve the cases outside the insolvency code, as not many bidders may come forward due to present economic conditions." If resolution plan is not approved then they can be dragged to NCLT by the lenders due to higher provisioning norms, he further added. [Read more at The Financial Express](#)

## IBC tweak Challenges Flagged

2nd June, 2020 - The road towards changing the Insolvency & Bankruptcy Code (IBC) is less simple than it seemed a fortnight ago when the finance minister announced a suspension of fresh IBC proceedings in the wake of Covid-19 pandemic.....According to Ashish Pyasi, Associate Partner at Dhir and Dhir Associates, if the amendment is intended only to exclude default to operational creditors then consultation with RBI may not be required. "However," said Piyasi, "suspension of all

provisions is not the best solution. If financially stressed companies are stopped from approaching the NCLT then they are forced to carry the dead wood. It would worsen their stress as debts will rise and the value of assets will be depleted." [Read more at: The Economic Times](#)

## Dhir Dhir Associates establishes a Dedicated COVID-19 Advisory Desk

24th May, 2020-With the world's most massive lockdown to date in its fourth stage, the legal fraternity both in law firms and corporates are gearing up to meet the crisis with utmost brevity and force. Mitigating legal risk and business objectives have now become the critical anthems for all. It is in this backdrop that Dhir & Dhir Associates, one of the leading law firms, has set up a dedicated COVID-19 Advisory Desk with a Task Force to lead from the front to advice and support the clients in these uncharted waters. [Read more at Hindustan Times, The Week, Yahoo News, businesswireindia.com, Livemint, www.msn.com, Outlook India, ANI News, IANS, The CEO](#)



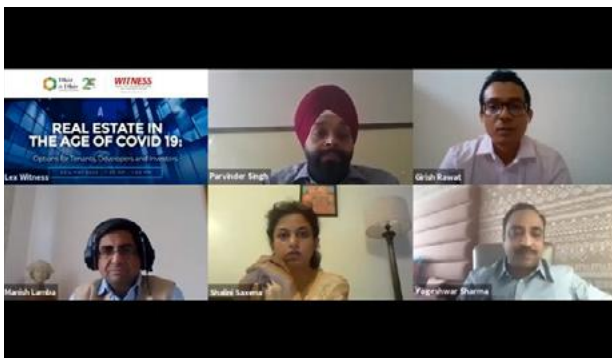
# THE PODIUM



Webinar on Demystifying Critical Provisions of IBC 2016 on 6th June, 2020



Alok Dhir addressed the webinar on 'Insolvency and Bankruptcy Code-The journey so far & impact of COVID-19' organised by Amity Institute of Advanced Legal Studies on 25th May, 2020



Girish Rawat, Partner addressed the Webinar on Real Estate in the Age of COVID 19: Options for Tenants, Developers and Investors, 23rd May 2020



Speaking at the webinar 'Asset Reconstruction Companies' (ARCs) Role & Contribution in Rebuilding Economy Under COVID-19 impact by ASSOCHAM on 6th May, 2020



Addressing Webinar with Special Focus on Insolvency & Bankruptcy Code & COVID-19 by Lex Witness on 30th April 2020



Speaking at the Webinar on The Art of Cross Examination in Criminal Trials by Women in Law and Litigation (WILL) on 16th April, 2020



Dhir & Dhir Associates is a leading full-service law firm in India serving as a single-window legal and regulatory advisor globally. It has offices in New Delhi, Mumbai, Hyderabad and a representative office in Japan. The firm's areas of practice include Restructuring and Insolvency, Corporate/Commercial Advisory and M&A, Real Estate, Banking and Finance, Dispute Resolution, Capital Markets, Infrastructure & Energy, IPR, TMT and Employment Law.

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