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## THE GREAT INDIAN CONSUMER - MORE POWERFUL THAN EVER?

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# Registration of Charges by the Creditors - Role of CERSAI

■ Sachin Gupta & Swati Sharma

**O**ne 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<sup>1</sup>. CERSAI was established on 31.03.2011. CERSAI is a Government of India Company licensed under Section 8 of the Companies Act, 2013 with 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<sup>2</sup>. CERSAI has its head office in New Delhi.<sup>3</sup>

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<sup>4</sup>.



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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<sup>5</sup>. 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.<sup>6</sup> 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.<sup>7</sup> 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<sup>8</sup>. Accordingly, a memorandum of satisfaction will be entered in the Central Register.<sup>9</sup> 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<sup>10</sup> 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<sup>11</sup>. 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<sup>12</sup>.

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.<sup>13</sup>

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.<sup>14</sup> 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<sup>15</sup>. Further, the provisions of Chapter IV A are prospective in nature<sup>16</sup>. 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<sup>17</sup>.

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<sup>18</sup>. In short, the debt of



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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<sup>19</sup>.

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. [iv](#)



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<sup>1</sup>Section 20 of the SARFAESI Act, <sup>2</sup><https://www.cersai.org.in/CERSAI/JSP/index.jsp>, <sup>3</sup>Head Office of CERSAI is located at: Tower 1, Office Block, 4th Floor, Plate-A, Adjacent to Ring Road, NBCC, Kidwai Nagar(East), New Delhi - 110023, <sup>4</sup><https://cersai.org.in/CERSAI/JSP/index.jsp>, <sup>5</sup>Section 21 of the SARFAESI Act, <sup>6</sup>Section 22 of the SARFAESI Act, <sup>7</sup>Section 24 of the SARFAESI Act, <sup>8</sup>Section 25 of the SARFAESI Act, <sup>9</sup>Supra Note 8, <sup>10</sup>Act 44 of 2016, S.18, <sup>11</sup>On 24.01.2020, the Ministry of Finance has notified the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) (Amendment) Rules, 2020., <sup>12</sup>Section 26-B(5) of the SARFAESI Act., <sup>13</sup>Section 26-B(2) of the SARFAESI Act, <sup>14</sup>Section 26-B(3) of the SARFAESI Act., <sup>15</sup>Section 26-D of the SARFAESI Act, <sup>16</sup>Section 26-D of the SARFAESI Act, <sup>17</sup>Rule 6 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Rules, 2011., <sup>18</sup>Section 26-E of the SARFAESI Act, <sup>19</sup>Rule 4 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Rules, 2011