



COLLECTION POLICY

STAR HFL

VERSION 1.0

APPROVAL NOTE-

VERSION 1- The policy was drafted by Mr. Shakir Sheikh (legal consultant) and was reviewed by Mr. Sudhir Menon (head credit), Mr. B.S.Kachhawaha, Mr. Ashish Kothari and approved by board in the year 2019. The same was presented to the board for approval on ----- . The Board of Directors and management Committee approved the policy on the same date.

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STAR HFL being a housing finance company, one of its main assets is the housing loans disbursed. The Housing loans are spread over a period of 36 to 240 months generally and therefore eventualities, unforeseen or otherwise could affect the borrower's repayments.

An effective credit appraisal always helps to make the assets performing. Further an effective collection process and recovery method should be followed during the lending operations.

STAR HFL PRINCIPLES - the Company has the following principles as the guide for organizational action:

- a. Collecting EMI's is as important as disbursements.
- b. Quality portfolio is the strength of the company.
- c. Good relationship with the customers always helps to keep the assets performing.
- d. STAR believes in transpiring and compliance of fair trade practices.
- e. Collections and recoveries are responsibilities of the branch as a unit.
- f. Every staff member has to take responsibility for collections and recoveries.
- g. Sales force is mainly responsible for sourcing of loans but equally accountable for collections of EMIs.
- h. Efficient collections and recoveries are a result of being in close touch with the borrowers (regular follow-up) and is not a specialized function.

And therefore STAR believes in lending to the segments those are intended to repay their instalments regular and timely.

STAR not intended to possess the property and not willing to use the legal remedy to resale the repossessed assets. The objective is to provide homes to the homeless people and to make them enjoy their properties without any hardship and interruptions.

And therefore STAR HFL is focusing on the better quality assets and approaching to the customers who can repay the instalments timely.

TERMINOLOGIES OF BANKING AND FINANCE -

- A. **DEBT**: It refers to a sum of money owed by one person or entity (debtor) to another person or entity (creditor). Thus there are two parties to a debt- debtor who receives money by way of a debt; and creditor who lends money to the debtor.
- B. **DEFAULT**: Means non-payment of an EMI or any other amount payable by a Borrower to any secured creditor.
- C. **OVERDUE**: Means an amount, which remains unpaid beyond the due date.
- D. **RECOVERY** - It means collection of over dues EMIs. Recovery is a team effort in its true sense. It needs support from other functions like Accounts/Operations/back office/Legal. Regular follow-up results in recovery.
- E. **NPA (Non-performing assets)** - It is a loan or an advance where;
 - Interest and/ or instalment of principal remain overdue for a period of more than 90 days in respect of a term loan,

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- The account remains “out of order” in respect of an overdraft/ cash credit
- The bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted
- The instalment or interest remains overdue for two crop seasons in case of short duration crops and for one crop season in case of long duration crops

CLASSIFICATIONS OF NPAS -

- **Substandard Assets** – Which has remained NPA for a period less than or equal to 12 months.
- **Doubtful Assets** – Which has remained in the sub-standard category for a period of 12 months
- **Loss Assets** – where loss has been identified by the bank or internal or external auditors or the RBI inspection but the amount has not been written off wholly.

PROVISIONING NORMS -

- **Standard Assets** – general provision of a minimum of 0.25%
- **Substandard Assets** – 10% on total outstanding balance, 10 % on unsecured exposures identified as sub-standard & 100% for unsecured “doubtful” assets.
- **Doubtful Assets** – 100% to the extent advance not covered by realizable value of security. In case of secured portion, provision may be made in the range of 20% to 100% depending on the period of asset remaining sub-standard
- **Loss Assets** – 100% of the outstanding

PREPARATION FOR COLLECTIONS – BRANCH NEEDS TO HAVE FOLLOWINGS ON REGULAR BASIS -

- List of existing PEMI and EMI cases.
- List of next month receivables- PEMI and EMI both.
- Data of existing customers (phone numbers, addresses, kycs).
- List of customers – (EMIs payable by ECS and PDCs).
- List of customers- (EMIs payable by cash).
- List of customers – PDCs are going to exhaust in next month.
- Allocation of customers to the sales executives.
- Identification of cases of defaults and analyze such cases for the purpose of classification of defaulters.

DEFAULTERS CAN BE BROADLY CLASSIFIED AS FOLLOWING;

- Able and Willing
 - Unable but willing
 - Able but unwilling
 - Unable and unwilling
-
- Defaulters can also be classified based on the number of EMIs overdue such as 1 month, 2 months, 3 months, more than 6 months, more than 12 months etc.

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MODE OF PAYMENTS -

- Direct payment by the borrower to staff/at branch/s / Head Office.
- Through Post Dated Cheques (PDCs)
- 3 Through Salary Deduction.
- Through personal visits by our Recovery Staff.
- Through ECS

ACTION PLAN – Action plan is based on the list of the regular customers, fresh EMI/PEMI receivables and the classification of defaulters as stated above.

1. **FOR THE REGULAR CUSTOMERS** - Generally the customers those are paying their regular instalments need not to follow for their payments. The branch requires having the list of PDCs details so that in case of exhausting the PDCs in next 1-3 months such regular customers could be informed well in advance.
2. **EMI/PEMI PAYABLE IN NEXT MONTH** - Fresh customers- Branch needs to take the list of customers whom first/second/final disbursement made in the current month and from next month PEMI/ EMI is payable. In these cases branch staff should follow the customers in the current month it self so that customers can keep PEMI payments regular and the customers whom to pay first EMI, can pay it timely (by cash/PDCs/ECS).
3. **REMINDERS FOR ECS/PDCS** - Branch needs to make the reminders to the customers for their ECS/PDCs payable dates so that customers can manage the funds well in advance for clearance of PDCs/ECS.
4. **DEFAULTERS** - Staff needs to take the list of customers those have defaults their payments. These customers will be dealt according to their categories-
 - **UNABLE BUT WILLING** - These are circumstantial customers, their income affected after disbursement of our loans. These customers need to carefully handle since they are willing to pay instalments.
 - **ABLE BUT UNWILLING** - The customers those are falling under the category of 'able but unwilling' should be dealt with on priority- These are the customers those are capable to pay but usually delayed the payments and requires constant follow ups. These customers go within range of 30- 90 DPDs. These customers can be dropped in regular categories
 - **ABLE AND WILLING** - The customers those are falling under 'Able and willing' category can be handled without any difficulty. These customers require follow ups and we need to contact them regularly to collect the EMIs on or before due dates. Timely and regular follow up will keep these customers regular in payments.
 - **UNABLE AND UNWILLING** - Defaulters falling under 'Unable and unwilling' category (90 plus) may be considered for hard follow-ups and finally usage of legal recourse.

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CARE TO BE TAKEN –

- Regular and timely follow up results in recovery. Lack of regular follow up can make regular borrowers defaulters and defaulters, chronic defaulters leading to NPAs.
- Effective counselling the borrowers will also reduce defaults.
- Effective communication and relationship will also turned the mind of defaulters to make the payments.
- Proper credit appraisal in the initial stage can avoid overdue accounts.
- Proper accounting procedures and policies can also reduce over dues. E.g. Crediting PDCs on time and reversing the same in case of dishonour of cheques. All branches should uniformly implement the procedures prescribed by the company for accounting purposes.
- To educate the borrowers for paying their EMIs through Post Dated Cheques, (PDCs).
- Reminding borrowers in advance to send fresh PDCs.
- Depositing PDCs on due dates.
- In case of dishonour of cheques, timely reversal of credit.
- Collection of charges for cheques dishonoured.
- Emphasize on salary deductions in case of salaried borrowers
- To inform the branch manager the details of loan accounts where, payments are not received under salary deductions.
- Keep the regular borrowers informed about the new products of the Company, facilities.
- To keep close watch on the collections of EMI/PEMI, identifying the default right from the day one of default.
- Generating a list of unpaid EMIs on 15th of every month, for EMIs due for 0 to 3 months and list of defaulters for the EMIs /PEMIs due for more than 3 months.
- Follow up through letters/phone calls to borrowers who have defaulted their payments for 1 to 3 months, intimating them that if they default, legal action will be initiated.
- Making phone calls to all 1-3 months defaulters, and report the response of respective borrowers to the Branch Manager and Recovery staff.
- To generate statement (willing to pay/unwilling to pay) each month after discussing the matter with BM/Recovery staff.
- If any borrower is expired, then the date of death, names & addresses of the legal heirs of the deceased are to be ascertained and noted.
- If the borrower is absconded or suspended from the services, etc. then approx. month and year of the incidence taken place is to be ascertained and noted.
- Keep up dated- borrower/s present financial and employment status.
- If any borrower/co-borrower makes promises to repay the loan, then obtain a letter of undertaking written by him/her. The letter should contain briefly about how and when he/she is going to repay the amount. This will create an awareness to repay the loan. This may also safeguard interest of the Company in case the Company is unable to obtain acknowledgement of debt from the borrower at a later date. Further follow up with reference to letter may help getting the loan closed.
- If the borrower is not in a position to pay the entire overdue amount in one lump sum, he/she may be allowed to pay in small or part payments, convenient instalments by obtaining permission from the Head office.
- To obtain Acknowledgement of debts, if the overdue is above 12 months.

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STEPS TO BE INITIATED FOR COLLECTIONS FOLLOW UPS AND TO RECOVER THE OVERDUE:

- **FOR REGULAR CUSTOMERS** – as stated above for regular customers we need to take following steps-
 1. **CASH PAYMENTS** - make phone calls to these customers well in advance so that we can get the PEMIs/EMIs on or before due dates.
 2. **PDCS/ECS** - Make calls to remind the customers for the due date of PDCs/ECS.
- **CURRENT MONTH DEFAULTS OF INSTALMENTS** -
 - Make phone calls to the customers informing that the due date of payment is over and amounts gets due.
 - If customers have not responded till 10th of the current month visit personally and recovered the due amount. Make aware the customers that personal visit would lead to extra cost to the customers.
- **ONE MONTH DEFAULT ACCOUNTS** - If customer has not paid the EMI in current month and even after regular follow ups not paid in the same month, in next month two EMIs will be dues. This is alarming and we need to control such customers at this stage itself.
 - Make constant follow ups (by personal visits) to such customers and collect both the EMIs in first week of the month itself. In case if customer gives one EMI, take it and take PTP for next 3-4 days. Make constant follow up to get the balance amount before 20th of the month.
 - Intimate once to the guarantor regarding delay behaviour of the customer so that guarantor can also follow up to the customer.
- **TWO MONTH DEFAULT ACCOUNTS** - If customer crossed two months un- paid, it's now time to tackle such customers differently because it will go now in 90 DPD.
 - Personal visit to customers at residence and employment both.
 - Personal visit to guarantor at residence and employment both.
 - Aware customer about the legal consequences.
 - In case of legitimate difficulty - Collect at least one month EMI without fail – Don't allow the account to go in to the NPA category.
 - Contact guarantor and pressure him to pay balance amount.
 - Take PTP from customer to pay balance amount and make regular follow and visit on the date of PTP.
- **ABOVE THREE MONTH DEFAULT ACCOUNTS** - If customer crossed 3 months un- paid, it will become NPA.

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- In addition to personal follow-ups to the customer and guarantor, we need to initiate legal steps (notice to customer and guarantor). This to be done in first week of forth month.
- In case of legitimate difficulty and customer is ready to pay part amount, Collect at least part of the overdue without fail and dropped the account in to 1-2 months cases.
- Take a letter from customer for PTP.
- If customer has not paid the part amount also, in last week of the month, present security cheque in bank and initiate process for filing criminal complaint under section 138 of NI act.

In cases where in even after issuing notice for cheque bouncing and filing criminal complaint u/s 138 of NI Act. Branch needs to inform such cases to HO for further legal action.

SKILL DEVELOPMENT- Collection of EMI regularly is a challenging task and Branch staff / recovery staff has to develop various strategies and approaches in tune with situations and behavioural patterns of the defaulting borrowers and in the process it provides learning and rich experiences.

Collection is a group effort in its true sense. A continuous demand is required on borrower from initial stage. The real meaning of collection of monthly instalment is regular follow-up.

Once a loan account turn into overdue (1st month default) the reasons for default should be ascertained and decision regarding the future course of action to be taken immediately.

One of the important factors is to handle default account at the right time, to evaluate the reasons for default and try for a fruitful solution at the initial stage to save the account from NPA.

Please bear in mind that legal action is the last resort as it is costly and time consuming. All possible steps of recovery should be used before initiation of legal action.

BRANCH NEEDS TO TAKE CARE PRIOR TO LOGGED IN CASES -

- Property vacant / incomplete construction or only plot/ property rented out

Area to focus is: Technical verification& BM PD.

- Loan availed earlier from other Institution against the same property

Area to focus is: Search/Verification of title of the property

- No property - Property not found

Area to focus is: Technical verification/BM PD

- Less value of property-

Area to focus is: Technical verification& BM PD

- No Documents as required toward security of the loan

Area to focus is: Documentation

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- No identification of property site

Area to focus is: Technical/Legal verification

- Salary delay of salaried employees

Area to focus is: Proper BM PD and credit evaluation.

- Family problem –combined income considered.

Area to focus is: BM PD & Proper credit evaluation

- Financial weakness - Low income/salary

Area to focus is: proper Appraisal

- Intentional defaulter- existing default

Area to focus is: Effective CPV/BM PD and CIBIL

- Property under dispute

Area to focus is: BM PD (verifying possession and title). Proper Legal verification

- Weak employment-

Area to focus is: BM to understand the income flow and stability/ proper credit appraisal.

- Property rented out to third party or Property is already sold out

Area to focus is: Legal verification and BM PD

- Identification of customers -

Area to focus is: KYC norms to be followed and BM PD.

POST DISBURSAL CARE TO BE TAKEN -

- Information to customers if PDCs to be presented.
- Information of Cheque returns
- Re –depositing the bounced cheques(under information).
- Salary Deduction cases: Not reporting timely to the employer/ Guarantor through BM.
- Timely ECS (proper information to customers).
- Acknowledgement of Debt

Branch Responsibility/ duty on Collection and Recovery: Branch Manager is the person with the overall responsibility to ensure that collection and Recovery activities are in proper shape and within the time and in the manner to increase collection efficiency and to protect the interest of the company. Branch Manager has to personally supervise the NPA's, (Above 3 month overdue) on case to case basis and suggest/decide/recommend the course of action on collection of over dues. Over and above, Branch has to follow the instructions from time to time, as circulated by the HO to handle and improve the collection efficiency.

SUGGESTIONS FOR PREVENTIVE CURES

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- Verification of salary slips with employer
- Salary amount should be compared with Bank Statement
- Cross verification of balance sheet
- Personal interview of the borrower plays very important role.
- Tracking and sharing of all information among the Banks & Housing Finance Companies about names of blacklisted builders & developers.
- Agreements for sale / document of title (in case of large value loans) approach the Sub-Registrar's Office to verify the genuineness of the stamp paper / documents / registration receipts, etc.
- Proper valuation of property. Knowledge of cost of the properties.
- General Guidelines for Effective Recovery Process:
 - Maintained record up dated.
 - Maintained control at all times
 - Do not lose your temper
 - Do not contradict
 - Avoid being sarcastic or comment ironically

IMPORTANT:

- a) Try to collect maximum possible information about the borrower, his habits, friends circle, family background etc. and the same should be updated in the file/records. It will be a great help in making an assessment about the borrower at a later stage and will be very helpful in planning an effective strategy for a particular case. As a results, it helps faster recovery in overdue.
- b) It is very important that our case should not become time bar under Limitations Act for initiating legal course of action. It is, therefore, necessary that all cases in default are monitored very closely and a control is kept on the number of months of default. If we do not file a case for recovery of overdue within three years from the date of last payment, it is likely to become time barred on expiry of thirty-six months from the date of last payment received. Such situations/cases should be brought on record/knowledge of the senior management well within time so that appropriate steps may be taken in order to recover the company's money.

ENFORCEMENT OF SECURITIES ASPECTS

LEGAL ACTION:

1. CIVIL PROCEDURE CODE (Civil court/LokAdalat)

- (A) Money suit
- (B) Mortgage suit

2. CRIMINAL PROCEDURE CODE (Criminal court)

- (A) Case u/s 138 of Negotiable Instruments Act
- (B) Case under criminal procedure code and as per the IPC(if any fraud happened or Property sold out after mortgage).

3. SECURITISATION ACT

- A. Issuing notice under section 13 of the said Act
- B. Taking possession of the property
- C. Sale of the property as per procedure/rule of the Act

Legal Recovery Processes- Intervention of the court is required to possess mortgaged immovable property (in case of mortgage suit under provisions of Civil suit) and to sale it out through court.

- Mortgage suit under order 34 of CPC has to move through civil court.
- Over dues amount of more than Rs. 10 lacs to be moved through DRT. DRTs were set up under the Recovery of Debts due to Banks and Financial Institutions Act, 1993. Under the Act, two types of tribunals were set up i.e. Debt Recovery Tribunal (DRT) and Debt Recovery Appellate Tribunal (DRAT). The DRTs are vested with competence to entertain cases referred to them, by the banks and FIs for recovery of debts due to the same. The order passed by a DRT is appealable to the Appellate Tribunal but no appeal shall be entertained by the DRAT unless the applicant deposits 75% of the amount due from him as determined by it.
- **Lokadalats** - The institution of Lok adalat constituted under the Legal Services Authorities Act, 1987 helps in resolving disputes between the parties by conciliation, mediation, compromise or amicable settlement. It is known for effecting mediation and counselling between the parties and to reduce burden on the court, especially for small loans. Cases involving suit claims up to Rs. 1 million can be brought before the Lok adalat and every award of the Lok adalat shall be deemed to be a decree of a Civil Court and no appeal can lie to any court against the award made by the Lok adalat. Several people of particular localities/ various social organizations are approaching Lok adalats which are generally presided over by two or three senior persons including retired senior civil servants, defense personnel and judicial officers. They take up cases which are suitable for settlement of debt for certain consideration. Parties are heard and they explain their legal position. They are advised to reach to some settlement due to social pressure of senior bureaucrats or judicial officers or social workers. If the compromise is arrived at, the

parties to the litigation sign a statement in presence of Lok adalats which is expected to be filed in court to obtain a consent decree. Normally, if such settlement contains a clause that if the compromise is not adhered to by the parties, the suits pending in the court will proceed in accordance with the law and parties will have a right to get the decree from the court. In general, it is observed that banks do not get the full advantage of the Lok adalats.

- **Enactment of SRFAESI Act** - The “The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act” (SRFAESI) provides the formal legal basis and regulatory framework for setting up Asset Reconstruction Companies (ARCs) in India. In addition to asset reconstruction and ARCs, the Act deals with the following largely aspects,
- Securitization and Securitization Companies
- Enforcement of Security Interest
- Creation of a central registry in which all securitization and asset reconstruction transactions as well as any creation of security interests has to be filed.

The Act permits the secured creditors to take any of the following measures:

- Take over possession of the secured assets of the borrower including right to transfer by way of lease, assignment or sale;
- Take over the management of the secured assets including the right to transfer by way of lease, assignment or sale;
- Appoint any person as a manager of the secured asset (such person could be the ARC if they do not accept any pecuniary liability); and
- Recover receivables of the borrower in respect of any secured asset which has been transferred.

After taking over possession of the secured assets, the secured creditors are required to obtain valuation of the assets. These secured assets may be sold by using any of the following routes to obtain maximum value.

- By obtaining quotations from persons dealing in such assets or otherwise interested in buying the assets;
- By inviting tenders from the public;
- By holding public auctions; or
- By private treaty.

NOTES ON SECURITIZATION ACT

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest act extends to the whole of India. Under section 69 of Transfer of Property Act, mortgagee can take possession of mortgaged property and sale the same without intervention of Court only in case of English mortgage. (English Mortgage is where mortgagor binds himself to repay the mortgaged money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer the property to the mortgagor upon payment of the mortgage money as agreed).

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In addition mortgagee can take possession of mortgaged property where there is a specific provision in mortgage deed and the mortgaged property is situated in towns of Kolkata, Chennai or Mumbai. In other cases possession can be taken only with the intervention of court.

Therefore till now Banks/Financial Institutions had to enforce their security through court. This was a very slow and time-consuming process. There was also no provision in any of the present law in respect of hypothecation, though hypothecation is one of the major security interest taken by the Bank/Financial Institution.

Keeping in mind the above factors among many other the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act was enacted with effect from 21.6. 2002.

The Act deals with three aspects.

1. Enforcement of Security Interest by secured creditor (Banks/Financial Institutions)
2. Transfer of non- performing assets to asset Reconstruction Company, which will then dispose of those assets and realize the proceeds.
3. To provide a legal framework for securitisation of assets

Questions are raised as to whether the bank is bound to accept only overdue account in the account so that the notice under sec. 13 (2) gets discharged. This is to clarify at the cost of repetition that, once the amount has been declared NPA, there is no question of payment of overdue instalments and the entire amount becomes payable and the bank advances are always repayable on demand.

More so, when under securitisation Act, the account has been marked as NPA and notice under Sec. 13(2) of the Securitisation Act has been reserved on the borrower and guarantor, the entire amount outstanding becomes payable.

On receipt of the overdue instalments and interest etc. the bank is not bound to stop further action. On the contrary, the bank should insist for the clearance of the entire amount rather than allowing him to regularize the account, as no such provision is made in the Securitisation Act.

However, if bank authorized officer feels that the account maybe allowed to continue, on its regularization, nothing stops the bank from the continuing with the account. If anytime in future, there is a default, bank can gain resort to Securitisation Act. However, a request must be obtained from the borrower and guarantor to that effect.

Once such a notice is issued by giving 60 days' time, the borrower and the guarantor/s should pay the entire amount due in the account with the further interest and charges. The borrower is bound to pay the amount within specified time of 60 days after getting the notice. Under the amendment made in 2004, the borrower and the guarantor are entitled to make an application of objection by making a representation to the bank/authorized officer before the time of 60 days after getting the notice. Once such a representation is received, the Authorized officer is bound to study the objections seriously and communicate the rejection/acceptance within 7 days of getting such representation. However, if the authorized officer rejected the

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objection raised by the borrower and guarantor, will not entitle them to challenge such rejection by approaching any Civil Court under article 226 & 227 cannot be ruled out, as it is the “Fundamental rights” guaranteed to a citizen.

Therefore, the authorized officer must give cogent reasons while demolishing the objections raised by the borrower and guarantor, so that it can be seen from the communication made by the authorized officer that he has applied his mind to the objections raised and the order must show that there has been application of mind by the authorized officer so that Writ Court will not interfere, and on reading of the reply, the court should be satisfied that the authorized officer has applied his mind and, apparently, the rejection is proper. Then the Writ may be dismissed at the stage of first hearing itself by the High Court.

Under the Sec. 13(4) what is required that, within 60 days’ notice period given by the authorized officer, the borrower must discharge his liability in full, and in the event of his failure, the bank may take recourse to one or more of the following measures to recover the secured debt.

- The authorized officer may take possession of the secured asset:

The right to take physical possession includes the right to transfer by way of lease, assign or sale of all those properties which are secured to the bank by following the procedure prescribed by the Act and the Rules.

- The right to take over the management of business.

If the borrowers business is lucrative, in such cases, the bank may run the show as the bank get full authority to deal with all the assets including the right to lease, assign or sell all such assets subject to the fact that the business which the bank wants to take over, in that case, substantial part of the assets of the business must have been held as security for the debt..

- The bank may appoint any person as manager to manage the secured asset.
- If any secured asset has changed hands, the bank can recover the possession or money from the 3rd party and he can recover so much money as is sufficient to adjust his secured debt. That means the authorized officer of the bank has the right to take monies from the 3rd parties with whom the borrowers / guarantors money may be lying and any discharge given by the authorized officer to the 3rd party will be a valid discharge as if the 3rd party has made the payment to the original bank borrower / guarantor.
- The authorized officer also can take the management of the company and whatever the amount recovered from such process. The amount will held in trust by the authorized officer and to be applied firstly in payment of such cost, charges, expenses, second in discharge of the dues of the secured creditor and balance amount so remaining in the hands of authorized officer shall be paid to the person entitled to in accordance with the rights and interest.

However at any stage, before the sale of the property if the borrower and/or the guarantor pays off the entire dues of bank, there will be immediate termination of further proceedings under the Securitisation Act.

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Wherever there is a joint facility and there are more than 1 secured creditor for such joint facilities, right to take action under the Securitisation Act may be initiated only when agreed upon by the secured creditors representing not less than 3/4th in value of the amount outstanding as on the record date. Such action shall be binding on all the secured creditors in the consortium.

That is, if there is a consortium advance as on the date of determining the Account, if Banks/Financial Institutions representing 3/4th of the advance outstanding agreed to take the secured right, the bank can proceed even in spite of the objection of 1/4th of Consortium Members.

In the event, the borrower is a company and the company is under liquidation and the bank can come out of the liquidation proceedings and identify its secured asset and deal with the same, subject to payment of claim of workmen's dues and if the workmen's dues are not determined, the liquidator may indicate some figure, such figure must be kept aside out of the sale proceeds of the assets charged to the bank.

There is no legal requirement of the secured creditor to wait in line along with other creditors before the liquidator. The bank can straight away identify its securities and dispose it of after the workmen's payments are provided for.

If the company is under liquidation and the bank chooses to take its security separate from the liquidator and dispose of these securities, he should not pay the workmen's dues in accordance with the provision of Sec. 529-A of the Companies Act, 1956 but also furnish an undertaking to the liquidator to pay the balance workmen's dues, if any, in future as per the requirement under section 529-A of the said Act.

Even after liquidating all the assets, if the outstanding in the account of the borrower is not fully satisfied, the bank may file an application before the DRT having jurisdiction (in the case of Jammu & Kashmir in a Civil Court in place of DRT) for the recovery of the balance amount from the borrower and/or guarantor. However, the balance amount to be recovered should be more than Rs. 10 Lacs, then only the DRT will have jurisdiction and for recovery of its balance dues, which will take years and bank has to prove its claim under CPC and Evidence Act. The bank can even proceed against the guarantor or sell the charged assets to recover its dues.

Authorized officer need not be only one in respect of one case. If required, to meet the exigencies and to cover the different places, different authorized officers can be appointed under the Act even for a single case. Authorized officers may be appointed in each of the offices of the bank.

The Securitisation Act is very clear that once the 60 days notice is received by the borrower and/or the guarantor, then transfer by sale, lease or otherwise (other than in ordinary course of business) any of its secured asset referred to in the notice, without prior consent of the secured creditor, will be an irregularity under Sec. 29 of the said Act.

If the bank can show that there is any violation of the provisions of the Securitisation Act, or of any rules made there under, it will be deemed to be a criminal offence against the transferor

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under the Act, which is punishable with imprisonment for a term which extend to 1 year or fine or both.

Once the charged properties are taken possession by the authorized officer and after following the procedure prescribed under the rules, sale or assign or lease to any third party takes place, the certificate is given by the authorized officer is a valid transfer as if the conveyance of the property has been made by the owner of the charged property.

PASSING OF THE ACT - The main object in passing this act was to provide an effective legislation for speedy recovery of dues of Banks and Financial Institutions. Before passing of this Act the only remedy, which Banks and FIs had against defaulting borrowers, was to approach the Debt Recovery Tribunal (DRT) under the relevant provisions of “Recovery of debts due to Banks and Financial Institutional Act.

There was a perception, however, that working of these tribunals was unsatisfactory. Banks and FIs were facing considerable difficulties in recovery of their dues from the borrowers and enforcement of securities charged to them due to the delay in the legal processes. In addition to this, Banks and FIs also incurred substantial amount of expenditure by way of legal charges, which further added to their overheads.

The blockage of a significant portion of the funds of banks and FIs in unproductive assets was a major concern to policymakers and stakeholders in, India’s financial system. This step was thus taken towards securitisation of the debts and to evolve means for faster recovery of Non-Performing Assets.

The passing of this Act however was accompanied by controversy that it was too harsh and draconian. Provisions of section 13 had armed the Banks and FIs with powers to take punitive action against the defaulters and also attachment and sell of their properties. Section 13 of the Act provides that-“Enforcement of Security Interest-

1. ...any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provision of this Act.
2. Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment there of, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under subsection (4).
3. The notice referred to in sub-section (2) shall given details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.
4. In case borrower fails to discharge his liabilities in full within the period specified in sub-section

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(2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely-(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset (b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale...(c) appoint any person to manage the secured assets the possession of which has been taken over by the secured creditor;..." A reading of Section 13 shows that Banks and FIs were empowered to initiate recovery proceeding without any intervention of court.

Apart from this, provision of section 17(2) which was described as 'tiger tooth' by the borrowers provides that-"17. Right to appeal-

(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer...may prefer an appeal to the Debt Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken.

(2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debt Recovery Tribunal unless the borrower has deposited with the Debt Recovery Tribunal seventy-five percent of the amount claimed in the notice referred to in sub-section (2) of section 13: provided that the Debt Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section..." This pre-condition of deposit of 75% of the outstanding amount under section 17(2) was so harsh that it was felt to have virtually made judicial recourse impossible for borrowers.

SOME IMPORTANT INFORMATIONS & FINDINGS OF COURTS -

- The Supreme Court rules that simultaneous proceedings under Securitisation Act and DRT Act are valid:- This ruling was given by a Bench comprising Justices Arijit Pasayat and S H Kapadia in its 86-page judgment favouring dual remedy for banks and FIs. Sarfaesi Act is treated as an additional remedy, which is not inconsistent with the DRT Act," said Justice Pasayat. "Sarfaesi Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Therefore, we hold that withdrawal of proceedings pending before the DRT is not a pre-condition for taking recourse to Sarfaesi Act."

With such change in law, the Government will again have to amend the DRT Act 1993. The only remedy left is counter-claim or damage suits against the banks and financial institutions. Wherever the damages are more than the claim of the lenders, the executory actions under Securitisation or DRT Act will have to wait till the damages are finally decided.

- DRAT Mumbai stays taking physical possession under Securitisation Act in appeal under sec 17:- The DRAT Mumbai in its order dated 02.08.06 in the matter of Maze Plastics vs Bharat Co-operative Bank Ltd awarded ad interim stay on taking physical possession of the properties including residential flat subject to pre-deposit of Rs. 20 lacs as against alleged dues of more than Rs. 75 lacs. The said pre-deposit shall be invested in FDR in the name of Registrar DRAT, Mumbai until disposal of appeal.

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- DRT Mumbai declares possession of factory illegal under Securitisation act:- in the matter of M/s Aarti Cables vs Bharat Co-operative Bank, the PO DRT Mumbai passed an important judgment on 16.09.05 against the bank declaring the possession of the factory under Securitisation Act as illegal.
- Simultaneous NPA Recovery action under DRT Act and Securitisation Act barred:- As per the recent amendment in DRT Act, the banks will have to first withdraw the case before DRT in order to initiate action under the Securitisation Act vide news item titled 'Banks seek amendment to debt Recovery act of 1993' in the Financial Express dated 11th January 2005.
- DRT rules in Borrower's favour, asks Bank to pay Damages-Vide news item at page 8 of the ET dated 17.07.04 with the title "It's a first, DRT rules in borrower's favour, asks bank to pay damages" . In what may be a disappointment to the banking sector, the debts Recovery tribunal (DRT) has ruled in favour of the borrower under the new NPA Recovery law, and has even directed the lender to pay damages for the number of days the property was attached. This is the first time under the securitisation / securitization Act that a bank has lost a case against a borrower. The case gains significance as banks looked to the securitisation / securitization Act as a route to quick NPA Recovery of bad loans.

The bank has been asked by DRT Mumbai to return the secured property back with per day damages as well as cost of the appeal. This is an important judgment upholding our contentions past several years and also propounded in this web site. The award and fear of damages for the wrong doings of the banks and the financial institutions alone can usher in requisite level of responsibility and accountability.

Then only proper financing would be done in time and in adequate amount keeping in view the requirements of business and industry, the same would be nursed promptly during incipient sickness, financial help would be provided during such situations and circumstances beyond the control of the entrepreneurs etc. All such measures will result in definite surplus generation in the business and there will be definite NPA Recovery which is the only and the best NPA Recovery much compared with the litigation route which does not result in virtually any NPA Recovery except legal fights.

- Cooperative Banks and Societies are not covered under Securitisation Act- The Department of Economic Affairs of the Central Govt. has already issued a notification no SO 105(E) dated 28.01.03 extending applicability of the Securitisation Act to the Cooperative Banks. The Bombay High Court also decided accordingly in the case of ShamraoVithal Cooperative Bank Ltd. vs Star Glass Works [2003] Mah LJ 1. The societies are not covered under the Securitisation Act.
- Securitisation / securitization Act - Govt may plug gaps, DRT Act may also be amended:-

Vide news item at page 1 of the Economic Times dated 15.06.04. It is reported that consequent on stay by DRT Ahmedabad in the matter of Mardia Chemicals, the Govt is considering amendment to the securitisation / securitization Act. The Govt is requested to enact the

Lenders' Liability Bill along with such amendments. Further there are certain lacunae such as after submission of objections by the borrowers to the notice under securitisation / securitization act, if the same are rejected by the lenders, the borrowers have no option but to approach the High Court.

It would be better if the borrower is allowed to approach the DRTs In respect of sick companies, the fees at various stages must be reduced. It appears that the intended amendments, if are not based on justice, equity and good conscience, the matter would again be referred to the Supreme Court.

CRIMINAL REMEDY -

Section 138 to 142 of Chapter XVII, of Negotiable Instrument Act, 1881, deals with dishonour of cheque. The main object is to introduce financial discipline in business dealings. Prior to insertion of 138 of NI, a dishonored cheque's left the person aggrieved with the only remedy of filing a claim. The remedy available in civil court is a long drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee. In 1988, Chapter XVII inserted and added Section 138 to 142. Object of the amendment is to held person criminally responsible for his acts in Commercial transactions Trade and Business dealings with people carried out carelessly or without sense of responsibility.

[3]Section 138 - Dishonour of cheque for insufficiency, etc., of funds in the accounts

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both;

Provided that nothing contained in this section shall apply unless-

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation - For the purposes of this section, debt or other liability means a legally enforceable debt or other liability.

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Another very important section is presumptions as to Negotiable Instruments under Section 118 of the Act.

[3]Section 118 - Presumptions as to Negotiable Instruments

Until the contrary is proved, the following presumptions shall be made:

- (a) of consideration. - that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
- (b) as to date. - that every negotiable instrument bearing a date was made or drawn on such date;
- (c) as to time of acceptance. - that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
- (d) as to time of transfer. - that every transfer of a negotiable instrument was made before its maturity;
- (e) as to order of endorsements. - that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- (f) as to stamp. - that a lost promissory note, bill of exchange or cheque was duly stamped;
- (g) that holder is a holder in due course. - that the holder of a negotiable instrument is a holder in due course;

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

PROCESS OF FILING CRIMINAL COMPLAINT -

- A. Under provisions of negotiable instruments act.sec.138 a legal notice on behalf of complainant is issued to the defaulter whose cheque is dis-honoured. it should be issued within 30 days of dishonour of cheque by registered post
- B. The person who has issued cheque is directed to make the payment of amount of dishonoured cheque within 15 days. in case the said payment is made within 15 days of service of notice then the matter ends.
- C. But in case the said payment is not made within 15 days then the complainant has to file a criminal case in the court within 30 days from the expiry of notice period of 15 days.
- D. The court will hear arguments of complainant/ advocate for complainant and issue process under section 138 of INI ACT.
- E. The summons are sent and served through police station where accused is residing.

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- F. Police is limited to only service of summons and in case accused remains absent on court date after service of summons then only warrant is sent to police station to produce accused in court.
- G. Offence under section 138 of INI ACT is a bail able offence as the punishment provided for said offence is two years.
- H. Accused has to submit surety with all surety documents including ownership documents of house or land owned by surety.
- I. There after the complainant will file the affidavit for his evidence with all original documents in support of his complaint. This is called exam in chief of complainant. Then accused/his advocate will cross examine the complainant.
- J. The complainant can submit additional witnesses in support of complaint.
- K. Once witnesses of complainant are over then statement of accused is recorded under sec. 313 of CRPC .accused will be asked to give reply to the questions and allegations against him.
- L. The witnesses of accused to prove his innocence will be produced and the evidence will be recorded by the court.
- M. Last stage is of arguments of advocate of complainant and argument of advocate of accused and then court will pass the judgment.in case accused is acquitted then matter ends. But in case accused is convicted then immediately accused should submit bail application and give surety and pray for time to appeal to superior court.

The court will direct him to deposit fine as per judgment in the court immediately then he will be released. He should appeal to session's court within one month from the date of judgment of lower court.

PROCEDURE FOR FILING CIVIL SUITS -

1. Branches should forward their recommendations through their state Heads and Recovery Managers.
2. While forwarding recommendations, the branches must give complete background of the loan account. Based on such information/data, decision regarding filing suit will be taken by legal dept.
3. If legal action by way of Civil suit is to be initiated, we must ensure the following:
 - a. All the originals such as the Loan Application, Letter of Offer, Loan agreement, DPN, letter of Guarantee, POA (wherever applicable) and other loan documents duly executed are available.
 - b. All original title deeds mentioned in the LSR are available.
 - c. Once the decision is taken to initiate legal action, the photocopies of all the above loan documents and title deeds should be handed over to the Panel Advocates authorized by head office.
 - d. After perusal of the documents, the Panel Advocate should issue a legal notice to the borrowers and guarantors demanding repayment of the entire loan along with interest at the contractual rate till the date of payment.
 - e. If the borrowers and/or guarantors respond and come forward for payment/compromise, such proposals should immediately be taken up with HO.

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- f. If HO accepts compromise proposals, the branch will be informed accordingly.
 - g. After receipt of intimation about acceptance of compromise proposals by HO, the branches should follow up with the borrowers and/or guarantors and ensure that the compromise amount is received.
 - h. If the borrowers and/or guarantors do not respond or having responded, fail to make payment, the branches should instruct the Panel Advocate to file a suit against the borrowers and/or guarantors
 - i. While filing the suit, the claim amount should be correctly calculated and should include all charges, penal interest, interest, overdue PEMIs /EMIs and the closing loan balance. Also, interest at the contractual rate should be claimed from the date of filing the suit till the date of payment.
 - j. After filing the suit, the loan account will be frozen by HO.
4. After filing the suit, details of suit No., date of filing etc should be informed to legal dept. A copy of the Plaint should also be forwarded to legal dept.
 5. The BM/OIC should attend all the hearings in consultation with the Panel Advocate and inform status of the suit to legal dept.
 6. BM/OIC should obtain certified copies of all the orders passed by the Court from time to time. BMs/OICs should follow up with the Panel Advocate for the certified copies.
 7. Wherever a Court has passed a decree in favour of / against FINANCER, BM/OIC should follow up with the Panel Advocate for a decree copy and forward the same to legal dept for taking necessary action.
 8. Updated report should be sent to Legal dept before the 10th of every month.

PROCEDURE OF DEFENDING CIVIL SUITS FILED AGAINST STAR HFL:

1. A copy of the plaint, summons and all other papers received from the Court or the advocate of the plaintiff must be forwarded to Legal Dept.
2. Complete factual position of the matter must be furnished to Legal Dept.
3. One set of the papers should also be given to one of the panel advocates.
4. After going the papers, Legal Dept will advise about proceeding in the matter.
5. On the date of hearing the BM should attend the Court with the panel advocate and file the written Statement prepared by Legal Dept/panel advocate.
6. Legal Dept should be informed about the developments in the matter.
7. If any order is passed by the Court, the same must be forwarded to Legal Dept immediately.
8. Updated report should be sent to Legal dept before the 10th of every month.

ATTENDING CONSUMER FORUM COMPLAINTS -

1. Whenever the branches receive consumer forum complaints filed by the borrowers, the branches must entrust such complaints to one of the Panel Advocates.
2. The Panel Advocate should be furnished the correct factual position supported by relevant documents/ data.
3. The draft reply along with a copy of the complaint should be sent to legal dept well before the first date of hearing.

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4. After approval of the draft reply, the same must be filed before the forum on the date of the hearing. A copy of the reply must be given to the complainant and the other opposite party if any, against their acknowledgement.
5. Thereafter the matter must be attended by the concerned BM/OIC in consultation with the Panel Advocate.
6. If the order is passed against company, the matter must be taken up immediately with legal dept seeking further instructions.
7. Considering the facts and circumstances of the matter, legal dept will instruct the branch either to prefer an appeal before the State Commission or comply with the order of the District forum.
8. Filing of appeal or complying with the order of the District forum must be made immediately and within the time allowed under the Act. (max 30 days from the date of order)
9. It must be noted that if the orders of the forum are not complied with, within the stipulated time, the BM/OIC may be liable for imprisonment u/s 27 of the Consumer Protection Act, 1986.

Updated report should be sent to Legal dept before the 10th of every month.