(3) Fixation of Student – teacher ratio – The fixation of student – teacher ratio and the prescription of faculty cadre ratio are all matters of policy determined by experts in the field of education.

(4) Determination of norms and standards – The determination of such norms and standards by an expert body cannot be interfered with by this Court, merely on the ground that such strict norms will lead to the financial bankruptcy of some institutions.....

A Division Bench of High Court of Hyderabad in *Federation of Social Responsibility Professional Institutions, Hyderabad represented by its National Chairman, Dr. Rev. K.V.K. Rao and others v. UOI, Ministry of Human Resource Development, New Delhi rep. by its Secretary and others*, 2017 (3) ALT 224, reported that-

(1) Statutory Regulations – No statutory Regulations can be challenged merely on the ground that there is possibility of misuse.

(2) Greater responsibility, accountability and obligation – if, by a statutory Regulation, a Regulatory Body imposes a greater responsibility, accountability and obligation upon an institution, the same cannot be faulted by suspecting the credentials of all the educational institutions.

In conclusion, we can say from the above judgments and case law that in both the academic administrative matters of education, non-interference is almost the rule. Thus, even if there is second view possible or the decisions of Government are not agreeable by Court, Court should be reluctant to interfere. A Court should not substitute its decision of an executive policy decision and disturb the findings of the academic and executive bodies.

AN OVERVIEW OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

By

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Objects and Reasons for passing the Act:

Narasimham Committee I and II and Andhyarjina Committee constituted by the Government of India for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These *inter alia*, have suggested enactment of a new legislation for securitization and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the Court. Acting on these suggestions the Government of India made the Act.

Need of the Act:

The financial sector is one of the key drivers in India's efforts to achieve success in rapidly developing it's economy. While the banking sector in India is progressively complying with the international prudential norms and accounting practices, there are certain areas in which the banking and financial sector do not have a level playing

field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitization of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. The existing legal frame work relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions.

The Act comprises VI Chapters and 42 sections. For the effective implementation of the Act, the Government of India also made the Security Interest (Enforcement) Rules 2002. The Act comprises the substantive law whereas the procedural aspect is described in the Rules. We can say that Chapter III is the heart of the Act, which confers all rights to the bankers and financial institutions. Chapter III contains 10 sections *i.e.*, Sections 13 to 19. Section 13 of the Act confers ample powers on the secured creditor for enforcement of security interest.

According to Section 13- Any security interest created in favour of any secured creditor may be enforced without the intervention of the Court or Tribunal by the secured creditor in accordance with the provisions of the Act.

As per Section 13(2) of the Act- 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 thereof, 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 notice in writing to discharge in full his liabilities to the secured creditor within 60 days from the date of notice, failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Section 13.

Section 13(3) deals with what are the details to be contained in the notice referred in Section 13(2) –

> (a) the notice shall contain the details of the amount payable by the borrower and (b) the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

Sub-section (4) of section of the Act bestows vast powers on the secured creditor *i.e.*, on the Bankers and Financial Institutions. According to Section 13(4) of the Act, in case the borrower fails to discharge his liability in full within the period of 60 days as specified in Section 13(2), the secured creditor may take recourse to one or more of the measures to recover their secured debt *viz.*, @ 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 business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset, (c) subject to certain exceptions appoint any person (Manager) to manage the secured assets, the possession of which has been taken over by the secured creditor, (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt and so many powers are conferred on the secured creditor.

Section 14 of the Act confers right on the secured creditor to approach Chief Metropolitan Magistrate or District Magistrate in taking possession of the secured asset. This provision does not confer any right on

the Chief Metropolitan Magistrate or District Magistrate to adjudicate the dispute, their duty is mere to assist the secured creditor in taking possession of the secured asset or other documents relating thereto.

Section 17 of the Act deals with the right to appeal-Any aggrieved person (Including the borrower) by the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorized officer may make an appeal with proper Court fee as may be prescribed to the Debts Recovery Tribunal (DRT) having jurisdiction in the matter within 45 days from the date on which such measures had been taken. The Debts Recovery Tribunal has power only to consider whether any of the measures referred in Section 13(4), taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made there under *i.e.*, to consider the procedural irregularities in obtaining the possession.

Section 18 deals with appeal to Appellate Tribunal : any person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 may prefer an appeal alongwith such as may be prescribed, to the Appellate Tribunal within 35 days from the date of the order of the Debts Recovery Tribunal. No appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him as claimed by the secured creditor or determined by the Debts Recovery Tribunal, whichever is less provided also that the Appellate Tribunal may, for reasons to be recorded in writing reduce the amount to not less than 25% of the amount of debt referred above.

Section 31 of the Act says about the exceptions to the Act. Section 34 bars the intervention of the civil Court. No civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Debts Recovery Tribunal or Appellate Tribunal is empowered by or under this Act to determine.

The conjoint reading of Section 13(1) and Section 34 of the Act gives clarity that the secured creditor has right to enforce any security interest created, in it's favour, without the intervention of the Court or Tribunal and Section 34 expressly bars the intervention of the civil Court and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Constitutional validity of the Act:

Vesting judicial powers on the secured creditor *i.e.*, on bankers or financial institutions *i.e.*, one of the litigating parties/disputing parties/rival parties –How far it is justifiable ? The makers of the legislation have conferred vast powers on the secured creditors under Section 13 of the Act, even the civil Courts are not conferred/enjoying that much of powers. Section 13(4) of the Act empowers the secured creditor not only to possess and to sale the secured asset but also to transfer by way of lease and assignment.

Now the point for consideration is without adjudicating the dispute by the competent Court of law, conferring, enforcing/executing powers straight away on the secured creditor *i.e.*, on Bankers and Financial Institutions is not against the principles of natural justice/equity? Which is not arbitrary and against the concept of equality as ensured under Article 14 of the Indian Constitution? Though the Act provides right to appeal under Section 17 the same is confined only to the procedural irregularities in taking possession or sale of the secured asset. Then what about the title dispute with regard to the secured asset? The Act is silent with regard to this.

The Hon'ble Supreme Court in the case of *Mardia Chemicals Ltd. v. Union of India*, 2004 (17) AIC P.35 (SC), has upheld the validity of the Act and it's provisions except sub-section (2) of Section 17 of the Act, which was declared as *ultra vires* of Article 14 of the Indian Constitution.

Necessity to confer at least appellate jurisdiction on the District Courts:

How many litigant public/aggrieved parties are in affordable position to approach the Debts Recovery Tribunals? One side the State is campaigning for the need of justice to the doors of the litigant public and on the other hand justice is like a sore grape to the needy people especially for the poor litigant people.

As per Section 17 of the Act appeal from the measures taken by the secured creditor under Section 13(4) lies to the Debts Recovery Tribunals in all the States except the State of Jammu and Kashmir. Whereas Section 17-A of the Act confers appellate jurisdiction on the District Courts in the State of Jammu and Kashmir, from the measures taken under Section 13(4). Whatever the reason behind this *i.e.*, conferring appellate jurisdiction on District Courts in the State of Jammu and Kashmir by way of Section 17-A, the need for the same in other States is also to be considered so as to render justice to the litigant public/needy people. And it is also the voice of the people, though the Act is passed to strengthen the Indian economy, the Act suffers with lack of effective implementation, more particularly in case of wealthy people (Best example King Fisher Managing Director Mr. *Vijay Malya*).

INDEPENDENCE OF JUDICIARY

By

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If a citizen commits civil wrong or a crime he/she is liable for punishment according to law in our democratic country, if a Judge commits intentional violation of law or convention there is no law to decide this adjudication! Is a Judge above law, does it not lead to Constitutional turmoil?. The expression of four Senior Judges in Top Court addressing to the nation seriously; calls for a debate on this issue, it is not a lenient issue and a law is to be introduced to check errant Judges, failing which it may lead to tyranny which is not the purport of the Constitution of India.

Freedom of Speech is enshrined in Constitution of India under Article 19 of the Constitution, which runs as follows :

Protection of certain rights regarding freedom of speech etc.

(1) All citizens have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms

(c) to inform associations or unions;

(d) to move freely in any part of the territory of India;

(e) to reside and settle in any part of India;

(f) omitted

(g) to practice any profession, or to carry on any occupation, trade or business and so on.