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Phone : 0141-2364472  
Mobile : 9829074472, 94140-47472**Forth Coming Programmes**Date : 14th May, 2011 CIRC Conference  
Subject : Direct Taxes  
Speaker : CA. Prakash Parwal & CA. Anil Mathur  
CPE Hours : 4 Hrs. Fees-150/- Time : 3-7 PMDate : 21st May, 2011 Study Circle Meeting  
Subject : Workshop on Tally ERP.9, Auditors Edition  
Speaker : Mr. Pugal T., Associate VP, Tally, Bangalore  
CPE Hours : 3 Hrs. Time : 4-7 PMDate : 28th May, 2011 Study Circle Meeting  
Subject : Professionals & The art of Stock Market  
Speaker : Dr. Saify Arsiwala  
CPE Hours : 2 Hrs. Time : 5-7 PM**FELICITATION**Felicitation of CIRC Office Bearers  
on 14th May, 2011 at  
Branch Auditorium at 3.00 PM**Congratulations****CA. Vijay Garg**  
Chairman  
CCBCAF & SMP Committee, ICAI  
2011-12**CA. Pawan Parashar**  
Chairman  
CICASA, CIRC  
2011-12**CA. Nitin Vyas**  
Secretary  
CIRC  
2011-12**Request**Members are requested to contribute Articles /  
informations of professional interest for Newsletter  
alongwith their email ID & photograph to below  
mentioned email Ids'. All members whose articles will  
be published in newsletter will be recognised in Feb.,  
2012 at Branch. Email Ids' are :

skjalanca@yahoo.co.uk &amp; pkboob@yahoo.com

# From the desk of Secretary.....

The months of February, March and April were full of various activities at Jaipur Branch. This Period has served as a milestone towards attainment of Branch's goal and success. As a Secretary, I would ensure that all the responsibilities entrusted on me will be carried on smoothly with the help of Chairman and other members so as to contribute towards the success of the branch. The branch was felicitated by the presence of various eminent personalities like honorable president of ICAI CA. G Ramaswamy, CA. Vijay Garg, CA. Nilesh S Vikamsey & CA. Sumantra Guha-Central Council Members- ICAI. The Campus Placement Programme was organized at branch in which 10 companies participated. It was a grand success and the most deserving and talented Chartered Accountants were selected with a starting package of Rs.4.25 Lac per annum. So as to relieve members from their busy and hectic schedule, Holi Sneh Milan was organized where members and their families were fascinated by various renowned poets. Also for the first time world cup final match was shown on the big screen to the members with their families so as to entertain and facilitate them with the real stadium experience. The Details of the activities held during these months are as follows:

## **1. Faculties Meeting of Orientation programme at the Branch (15.02.2011)**

The branch has organized a meeting of various faculties of Orientation Programme to discuss various issues related with orientation programme for making best efforts to fulfill its objectives more precisely and to make it more knowledgeable and worthy.

## **2. Orientation Programme for CAs appearing in the Campus Interview (21.02.2011)**

An orientation programme was conducted by the Branch for the budding CAs. It was conducted with the aim of guiding them to appear more efficiently in the campus interview scheduled on 24<sup>th</sup> to 27<sup>th</sup> February 2011 at various places in the country. CA C.L. Yadav, our then branch chairman gave the welcome speech. After that CA Deepika Agarwal then Branch Secretary gave the Vote of Thanks and guided students for appearing in the Campus Interview.

## **3. Campus Placement Programme (24<sup>th</sup> February 2011 to 27<sup>th</sup> February 2011)**

The Jaipur Branch organized a Campus Placement

Programme for newly qualified chartered accountants under the aegis of ICAI, New Delhi from 24.02.11 to 27.02.11. From Jaipur Centre, 341 candidates and 10 companies participated in this Campus Placement programme. The names of the companies which participated in this campus are mentioned below:-



S.No.	Name of the Company	No. of Selects	Package Offered
1	Aditya Birla Group	3	8.00 Lacs
2	Infosys Technologies Ltd.	23	7.25 Lacs
3	Agilent Technologies	4	5.50 Lacs
4	Bharat Heavy Electricals Ltd.	23	7.50 Lacs
5	Punj Lloyd Ltd.	5	5.11 Lacs
6	Vijaya Bank	5	4.25 Lacs
7	Jai Prakash Associates Ltd.	8	6.00 Lacs
8	Cummins India Ltd	7	4.66 Lacs
9	Canara Bank	13	5.48 Lacs
10	First Source Solutions	1	5.50 Lacs

## **4. Study Circle Meeting on Non Resident Taxation, Concept & Issues (26.02.2011)**

The Jaipur Branch also organized a Study Circle Meeting on Non Resident Indian Taxation, Concept & Issues on 26.02.2011 at ICAI Bhawan to enhance the expertise and knowledge of the members. CA Varun Bansal was the eminent speaker.

## **5. Election of Office Bearers for the term 2011-2012 (01.03.2011).**

The Election of Office Bearer were held for the term 2011-12. The Office Bearer elected by the executive members were CA. Rakesh Jhalani as Chairman, CA. Deepika Agarwal as Vice-Chairperson and as CICASA Chairperson, CA Ashok Kumar Jain (Harkawat) as Secretary, CA. C.L. Yadav as Treasurer. Election was efficiently conducted by CA. C.L. Yadav.

## **6. Valediction Of GMCS course B No. 70 For CA Students (05.03.2011)**

There were 58 participants in the batch who had participated in the Programme. Sh. H.M. Singhvi, Senior Chartered Accountant was the Chief Guest. He addressed the participants and explained in detail about the importance of this course in their professional career. He distributed the mementoes and certificates to the participants and expressed his best wishes for their bright future. CA Rakesh Jhalani, Chairman, CA Ashok Kumar Jain (Harkawat), Secretary were also present. CA S.K. Jalan convened the programme.

**7. Half Day Seminar on Union Budget (05.03.2011)**

The Jaipur Branch organized a Half Day Seminar on Union Budget on 05.03.2011 at ICAI Bhawan . CA Rajeev Sogani who dealt with Direct Taxes, CA Virendra Parwal who dealt with Service Tax, , Sh. O P Dadhich , Customs and Excise who dealt with Indirect Taxes were the eminent speakers. CA Yash Dhadda was the convenor of this Programme .

**8. Half Day Seminar on State Budget (11.03.2011)**

The Jaipur Branch organized a Half Day Seminar on State Budget on 11.03.2011 at ICAI Bhawan. Sh Pankaj Ghiya, Advocate dealt with the subject was the eminent speaker . CA Dinesh Vijay was the Convenor of this programme.

**9. Half Day seminar on Bank Audit (18.03.2011)**

The Jaipur Branch organized a Half Day Seminar on Bank Audit on 18.03.2011 at ICAI Bhawan . CA K L Jhanwar, CA P P Pareek and CA Thailendra Sharma were the eminent speakers. CA Pawan Kanungo was the convenor of this programme.

**10. CPE Teleconferencing Programme on Service Tax (22.03.2011)**

The Jaipur Branch organized a CPE Teleconferencing Programme on Service Tax on 22.03.2011 at ICAI Bhawan .

**11. Holi Sneh Milan (26.3.2010)**

The Jaipur Branch organized a Cultural and Hasya Kavi Samelan for its members & their families on 26.3.2010 In this Kavi Samelan poets viz. Sh. Surendra Yadvendra-Baran, laughter Show-III Runner Sh. Ras Bihari God-Ajmer, Ms. Prerna Thakre-Neemuch & Sh. Kishoreji Kishore-Jaipur presented their poems. The members were delighted with folk dance and the prize was given to the Best Traditionally Dressed Couple. Approx. 600 members alongwith their family members enjoyed the programme. The programme was full of joy and masti. CA. Sushil Jalan was the convenor of Holi Sneh Milan.

**12.CPE Teleconferencing Programme on Bank Audit (29.03.2011)**

The Jaipur Branch organized a CPE Teleconferencing Programme on Bank Audit on 29.3.2011 ICAI Bhawan.

**13. LIVE TELECAST OF CRICKET WORLD CUP FINAL ON BIG SCREEN ( 2.4.2011)**

It was for the first time that The Jaipur Branch arranged Live Telecast of Cricket World Cup Final on Big Screen at ICAI Bhawan on 2.4.2011 for CA members. CA members alongwith their family members enjoyed the world cup final as if they are watching live in the stadium. CA. Manoj Agrawal, Convenor was the convenor and CA. Ram Manohar Gupta was the Coordinator of this programme. The members witnessed the glorious historical moment of victory in history of Indian Cricket in real senses.

It was all fun.

**14. Report on visit of Hon'ble President ICAI at Jaipur (14.4.2011)****A. Students Seminar**

A student seminar was organized by Jaipur Branch in the branch premises from 9.00 AM to 11.00 AM wherein Dr. Girish Ahuja was the eminent speaker. On this occasion various other renowned personalities were also present namely CA. G Ramaswamy, President ICAI, CA. Vijay Garg, CA. Nilesh S Vikamsey & CA. Sumantra Guha-Central Council Members- ICAI & CA. Pawan Parashar-CICASA Chairman CIRC. Firstly, CA. Rakesh Jhalani, Chairman Jaipur Branch welcomed all the dignitaries present. Then Dr. Ahuja guided the students on the various aspects of Direct Tax Laws and he also solved various anxieties of the students and gave them valuable tips to achieve success in CA examinations. The programme was convened by CA. Deepika Agarwal, Vice- Chairperson CICASA.

CA. G Ramaswamy, President ICAI also interacted with the students and also welcomed their valuable suggestions for further improvements in the norms, procedures, and examination pattern of ICAI. This served as an immediate bridge between students and ICAI.

**B. Press Conference of President ICAI**

On the visit of CA. G Ramaswamy to Jaipur Branch also arranged a press conference in which Hon'ble President Sir addressed the representatives of the print & electronic media. President, ICAI updated the media on the various initiatives taken by the Institute for members, students and in other areas. He also informed the media about the Action Plan 2011-12 of the Institute.

### **C. Interaction of President ICAI with CA coaching faculties**

To discuss the various issues related with examination pattern and CA course, Jaipur Branch arranged an interaction programme of various CA coaching faculties with the Honorable President ICAI. In this meeting various suggestions in relation to further improvements came from the faculties.

### **D. Seminar on Search & Seizure**

Jaipur Branch organized a Seminar on Income Tax - Search and Seizure so as to spread awareness about the same. Dr. Girish Ahuja was the eminent speaker. Dr. Girish Ahuja dealt with the various aspects related to Search & Seizure under Income Tax Act in detail. In the opening remarks CA. Rakesh Jhalani – Chairman Jaipur Branch welcomed all the delegates and dignitaries and requested the CA members, to aware their clients about the different provisions of Search and Seizure under Income Tax Act from time to time so as to ensure the compliance of same and also to remove the unnecessary doubts and fear amongst their clients. At the end of the programme CA. Ashok Kr. Jain –Secretary Jaipur Branch gave vote of thanks. CA. Pramod Kr. Boob was the convener of this programme.

### **E. Felicitation of President ICAI**

Jaipur Branch organized a Interaction programme of newly elected President of ICAI CA. G Ramaswamy. In this programme CA. Vijay Garg-Central Council Member-ICAI, CA. Sumantra Guha-Central Council Member-ICAI, CA. Pawan Parashar-CICASA Chairman CIRC and CA Nitin Vyas Secretary CIRC were also present. On this occasion the members of Managing Committee Jaipur Branch felicitated the president in a traditional Rajasthani way and presented 31 Kgs garland to Hon'ble President ICAI and CA. Vijay Garg, Central Council Member – ICAI felicitated him by presenting Rajasthani Chunri Safa. In this programme Central Council Member & Chairman CPE Committee ICAI CA. Sumantra Guha requested the CA members to utilize the CPE programme to increase their knowledge and not to take these programme merely to earn CPE hours Credit. President, ICAI CA. G Ramaswamy asked the CA members to discharge their duties with full honesty towards the society and their profession. Expressing his concern about the increasing financial irregularities in the country, he asked the CA members to take the Auditing Standards seriously while doing the attest function. He also highlighted the role of CA members in GST and Direct Tax Code. At the end of the programme

CA. Ashok Kr. Jain –Secretary Jaipur Branch gave vote of thanks. The whole programme was successfully convened by CA. Pramod Kumar Boob.

### **15.CPE Teleconferencing Programme on XBRL (15.04.2011)**

The Jaipur Branch organized a CPE Teleconferencing Programme on XBRL on 15.4.2011 at ICAI Bhawan.

### **16.Study Circle Meeting on Restructuring of Business (23.4.2011)**

The Jaipur Branch organized a Study Circle Meeting on Restructuring of Business on 23.4.2011 at ICAI Bhawan. CA. Nivedita R Sarda was the eminent speaker.

### **17.CPE Teleconferencing Programme on Ethical Standards (29.04.2011)**

The Jaipur Branch organized a CPE Teleconferencing Programme on Ethical Standards on 29.4.2011 at ICAI Bhawan.

### **18.Study Circle Meeting on Taxation Rules Under Service Tax (30.4.2011)**

The Jaipur Branch organized a Study Circle Meeting on Taxation Rules Under Service Tax on 30.4.2011 at ICAI Bhawan. CA. Virendra Parwal was the eminent speaker.

The Months of February, March and April were full of Knowledge ,enjoyment as well as with opportunity of interaction with various prominent personalities. The Branch will look forward to organize more Study Circle Meeting, workshops and seminars so that knowledge of the members can be enhanced. I heartily welcome your valuable suggestions for making the functioning of Jaipur Branch more efficient and useful for all of us.

**CA. Ashok Kumar Jain**

Secretary

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## **TAX LIABILITY ON EMPLOYEE STOCK OPTIONS (ESOP)**

Compiled by **CA. S S Dhaked**  
M.Com, LLB, FCA, DISA(ICAI)

Many companies use Employee Stock Options Plan (ESOP) and its different variants like Employees Stock Purchase Plan, Stock Appreciation Rights, Stock awards etc have been used by employers to compensate, retain, motivate and attract employees. These plans give employees the right to buy specific number of shares of the company at a fixed price within a certain period of time. Employees hope to profit by selling the shares at a higher price than the price at which it was granted to them.



ESOPs have been popular primarily in the knowledge based industries like information technology, biotechnology etc. But not they have gained prominence in traditional industries like manufacturing etc.

During falling equity markets between 2008-09 many employees allowed their Stock Options to lapse as they feared that the market price at a later date could fall below the option price. However, in rising equity markets since mid 2009, the ESOP has come back into vogue in a big way.

### **Taxation of ESOPs upto 31.03.2009**

Till March 2009, the benefit arising to the employees under the Employees stock option plan was considered as fringe benefit and was accordingly liable to fringe benefit tax (FBT). An option was available to the employer either to pay the FBT on it own or to recover the same from the employee, subject to the terms and conditions under the stock option agreement.

### **Taxation of ESOPs from 01.04.2009**

Now (from 01.04.2009) ESOP gains are taxable on the gains made by the employee. Virtual gain earned by the employee is subject to tax as part of the salary income and gain over the virtual gain is liable to tax as capital gain.

In general capital gains taxes are calculated based on three factors. Buy & Sell Date, Buy & Sell price and holding period.

### **How the gain on ESOPs taxed in India**

Before calculation the capital gain on the ESOPs we should understand some key terms that are used in capital gains for ESOP, which are as under

S.No.	Term	Explanation
1	Fair market value	Average of the opening and closing price of the share) on the date of redemption of shares from employer.
2	Exercise price	The price on which the share was allocated to the employee
3	Sale Price	The price on which the employee sells the share in the stock exchange
4	Virtual Gain	This is the virtual gain made by the employee. (#1 – #2)

## Example

Let's see how Pawan's (working for ABC Company) earnings from ESOP are taxed.

- Pawan has been granted 1000 Stock options by his employer in July 2009
- Allotted price of Rs.100 per share (exercise price)
- Pawan exercised (redeemed) entire stock options in June 2010
- The share price was Rs.300 on the day of redemption (Fair market value).
- He later sold the entire shares in the stock exchange in February 2011
- @ Sale price of Rs.500 per share.

S.No.	Particulars	Rs.	Comments
1	Stock Option Price (Exercise price)	100	The share was priced at this value by the employer.
2	Share price on the day of redemption (fair market value)	300	
3	Virtual Gains	2,00,000	Actual stock price is 300/- but employer provides the same for 100. So the employee has a gain of 200/- per share. (1000 * 200 = 2,00,000)
4	Tax on Virtual Gains (@ 30.9 % <sup>2</sup> )	61,800	This is paid by the employer and deducted as TDS from employee.
5	Sell Price	500	Pawan sold the shares at this price.
6	Profit made during the sale transaction	2,00,000	Rs. 200/- per share (#5 – #2)
7	Tax on short term capital gains (@ 15.45%) on 1,00,000	30,900 <sup>1</sup>	

- 1 In case if Pawan holds the shares for more than 12 months from the date of exercise, it will be a long term capital asset and the capital gains will be fully exempt from tax. He doesn't have to pay the Rs.30,900 shown in #7 above.
- 2 Assumed for highest tax slab and employer is listed in recognized stock exchange



## **LEADERSHIP-I (THE POWER PLAY)**

Compiled by CA. Sushil Kumar Jalan

In this challenging time, the bigger challenge is to 'ACT'. We need great leadership than to good leadership. There is a difference



### **Good Leader**

- Get people to believe in them
- Watch what I can do
- Catch fish for others so they can eat today
- Talk of potential

### **Great Leader**

- Inspire people to believe in themselves
- Let me show what you can do
- Teach people how to fish so they can eat for a lifetime.
- Transform the potential into Performance.

Great leaders share their belief, vision, purpose and passion with others and in the process they inspire others to believe, act and impact.

What does great leadership mean to YOU

You are not here merely to make a living. You are here in order to enable the world to live more amply with greater vision, with finer spirit of hope and achievement. You are here to enrich the world and you also implore yourself.

The best investment you can make is in yourself. You should be able to discover your talents. Not only you discover these but also should go ahead and use these talents.

Do you have a clear picture of yourself? what are your strengths? what are your limitations? Do you clearly see the opportunities around you? Are you ready to challenge the threats facing you?

If you don't take the first step of knowing you, you will never be able to succeed in life with contentment. Well said by some one that 'An average person dies with music still in his heart. Once you have prepared yourself for the grind, the next step is to fix your objectives. Visualize and dream about a fantastic tomorrow. Then put down your goals, write your dream, Follow it up with the goals. Once the vision is clear, the goals will have clarity and propose. You will not lead an insignificant life.

The tragedy of life is not that some of us aim high and do not reach there, but the real tragedy of life is that most of us aim low and achieve it.

Dream, Dream, Dream, Believe in that dream. Accept that you have the power to make that dream a reality and start knitting your actions around that dream.

'Your dream will not die, yours plans will not fail, your destiny will not be aborted only if YOU BELIEVE IN YOURSELF.

It is the belief that powers you and it is this belief that add powers to your play--- The Power play.



## **PROFESSIONAL OPPORTUNITIES UNDER SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI ACT, 2002)**

Compiled by **CA. Vikas Rajvanshi**  
FCA, DISA, CAAT, IFRS (ICAI), LLB, DRA (IIBF)  
and he can be contacted at [vikasrajvanshi.jaipur@gmail.com](mailto:vikasrajvanshi.jaipur@gmail.com)

The importance of financial sector is best known to a Chartered Accountant and Banking Sector is always a favorite for professionals. The significance of Banking & Financial Sector in achieving the progress of the country cannot be denied. Most of the professionals are well conversant in Project Financing, various kind of Bank Audits such as Branch Statutory Audit, Concurrent Audit & Central Audit at H.O. level & funding from banks. Besides nationalized banks many private players in Banking Industries emerge & off load the funds in big way. Thereafter recovery of debt was becoming a problem for Banking industries & they cannot recover money by taking possession of the property like International banks. The thing which makes this act powerful is because of section 35 which states that the Act shall override other Laws which are inconsistent with the Act, besides giving unconditional power to acquire secured assets of the borrower, it also gives protection to secured creditors u/s 32 for all actions taken in good faith.

In general understanding securitization is a financing tool and traditional securitization is a structure where the Cash flow from an underlying pool of exposures is used to service and RBI defines it as a process by which a single performing asset or a pool of performing asset is sold. Whereas in this article we are not dealing with "SARFA" but dealing with "ESI" i.e. enforcement of security interest only. The recovery process involve various legal litigation and management hence, C.A professional are better equipped to do the work in efficient way. Narsimhan committee I and II and Aadhyarujjana committee, constituted by Central Government for the purpose of examining banking sector reforms, have considered the need for changes in the legal system. These committees 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 intervention of court. Accordingly the Act was passed by Parliament and received assent of the President on 17<sup>th</sup> December, 2002.

The validity of the Act was challenged before the Supreme Court in M/s Mardia Chemicals case. The main contention challenging the views of certain provisions of the Act that the Bank and Financial Institutions have been vested with arbitrary powers without guidelines for its exercise and also without providing any appropriate and adequate

mechanism to decide the dispute relating to correctness of demand, its validity and the actual amount of dues. It was also contended that the offending provisions as contained under the Act are such that, it all has been made one sided affair while enforcing drastic measures of sale of the property or taking over the management or possession of the secured assets without affording any opportunity to the borrower. Besides above, it was also submitted before the Supreme Court that there is already a special enactment i.e. ; recovery of Debts due to Banks And Financial Institutions Act, 1993 therefore it was not necessary to enact yet another legislation containing drastic measures. It would not be possible for a borrower to raise funds to make deposit of the huge amount of 75% of the demand once he is deprived of the possession/management of the secured assets. The Hon'ble Supreme Court, analyzed the Act and repelling the contentions raised by stating (a) Upheld the validity of the provisions of the Act except that Section 17(2) was declared ultra virus Article 14 of the Constitution of India. The sub-section provided for deposit of seventy five percent of the amount claimed before entertaining an appeal by Debts Recovery Tribunal under section 17. (b) Observed that in cases where a secured creditor has taken action under 13(4) of the Act it would be open to borrower to file appeals under Section 17 of the Act within the limitation as prescribed, therefore it was observed that if the borrower, after service of notice under sub-section 2 of Section 13 of the Act, raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of the mind and the reasons for not accepting the objections, however brief they may be, must be communicated to the borrower. The reasons so communicated shall only be for the purpose of the information/ knowledge of the borrower without giving rise to any right to approach the Debts Recovery Tribunal under Section 17 of the Act at that stage. In view of the above judgment of Hon'ble Supreme Court and also to Discourage the borrowers to postpone the repayment of their dues and also to enable the secured creditors to speedily recover their debts, if required by enforcement of security or other measures, Act the was amended on 11<sup>th</sup> November, 2004.



By this amending Act, the precondition of depositing seventy five percent of the demand was removed and Section 13 (3A) was added by which Bank was put under obligation to reply the objections raised by borrower.

Then again the action of bank was challenged on the ground that the bank could not have invoked the Act the proviso to Section 19(1) of R.D.D.B. Act, 1993 without prior permission of Debts Recovery Tribunal before Supreme Court in landmark case of M/S Transcore. The Apex Court declared the law and states (a)Withdrawal of the original recovery application pending before the debts Recovery Tribunal under R.D.D.B Act, 1993, is not a precondition for taking recourse under the Act. It is for the bank/ Financial Institution to exercise its discretion as to case in which it may apply for leave and in cases where they may not apply for leave to withdraw(b)The drawing of dichotomy between symbolic and actual possession does not find place in the scheme of the Act or read with Rules .Then on 26<sup>th</sup> October 2007, the Rules framed under the Act were amended. By the amendment major changes introduced were relating to mandatory publication of Possession Notice within seven days from the date of taking possession and definition of approved valuer was added.

#### **MAIN ASPECTS OF THE ACT**

The Act is enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. The Act enables the Banks and Financial Institutions to realize long term assets, manage problems of liquidity, assets-liability mismatch and to improve recovery of debts by exercising powers to take possession of security, sell them and thereby reduce nonperforming assets by adopting measures for recovery and reconstruction. The Act Further provide for setting up of assets reconstruction companies which are empowered to take possession of secured assets of the borrower including the right to transfer by way of lease, assignment or sale. The said Act also empowers the said assets reconstruction companies to take over the management of the business of the borrower. The Act, 2002 was primarily enacted to reduce the non- performing assets by adopting measures not only for recovery but also for reconstruction. Therefore, the Act provides for stepping up assets reconstruction companies, special purpose vehicles, and assets management Companies etc. Which are empowered to take possession of secured assets of the borrower including the right to transfer by way of lease, assignment or sale. It also provides for realization of the secured assets .

#### **Brief Terminology of Act:**

The Act has been enacted to regulate securitization and to provide for reconstruction of financial assets as well as for enforcement of security interest and for matters connected therewith.

Section (1) defines “**FINANCIAL ASSET**” to means any debt or receivables. It includes a claim to any debt or receivables with may be secured or unsecured. It includes a mortgage, charge, hypothecation or pledge. It includes any right or interest in the security underlying such debt or receivables. It includes any beneficial interest in the property. It also includes any financial assistance. Section 2(b) defines “**ASSET RECONSTRUCTION**” to mean acquisition by any securitization company of reconstruction company of any right or interest of any Bank or Financial Institution in any financial assistance for the purpose of realization of such financial assistance. Section 2(f) defines the word “**BORROWER**” to mean the principal borrower who is granted financial assistance by any Bank of Financial Institution and includes a guarantor, a mortgagor as well as a pledge. It also includes a person who becomes a borrower of an asset reconstruction company consequent upon acquisition by it of the rights or interest of any Bank of Financial Institution in relation to financial assistance. The Word “**DEBT**” is also defined under Section 2(ha) to mean the debt as defined under the R.D.D.B. Act, 1993. Section 2(k) defines “**FINANCIAL ASSISTANCE**” to mean any loan or advance or any debentures or bonds subscribed of any guarantees given or letters of credit established or any other credit facility extended by any Bank or Financial Institution. Therefore, assets Reconstruction means acquisition by asset Reconstruction Company or asset Management Company of any right or interest created in favour of any Bank or financial Institution in any loan or advance granted or created in any debentures or Bonds subscribed or guarantee given to the Bank or Financial Institution under letters of credit. This shows that the Act basically deals with a crystallized liability. The Act proceeds on the basis that the asset is created in favor of the Bank/ financial Institution which could be assigned to the asset Management Company or asset Reconstruction Company which, in turn, steps into the shoes of the secured creditor, namely the Bank/ Financial Institution. Section 2(n) defines “**HYPOTHECATION**” to mean a charge created by a borrower in favour of a secured creditor as a security for financial assistance. Section 2(O) defines **NON PERFORMING** asset to mean an asset or account of a

borrower which has been classified by a Bank or Financial Institution as sub-standard, doubtful or loss asset. Section 2(r) defines the word “**ORIGINATOR**” to mean the owner of a financial asset which is acquired by a reconstruction company or asset management company for the purposes of the Act. Similarly, “**AN OBLIGOR**” is defined under Section 2(q) to mean person who is liable to the originator. A borrower is an obligor where as a secured creditor, namely, a Bank or Financial Institution are the owners of the financial assets. It is only when these assets in the hands of the Bank or Financial Institution becomes sub-standard, doubtful of loss then the account or the asset becomes classifiable as a non-performing asset and it is only then the Act comes into operation. Section 2(z) defines “**SECURITIZATION**” to mean acquisition of financial asset by any asset reconstruction company from any originator (Bank/Financial Institution) Section 2(zc) defines “**SECURED ASSET**” to mean the property on which the security interest is created. Section 2(zd) defines “**SECURED CREDITOR**” to mean any Bank /Financial Institution. Section 2(ze) defines a “**SECURED DEBT**” to mean a debt which is secured by a “**SECURITY INTEREST**”. Section 2(zf) defines “**SECURITY INTEREST**” to mean right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation and assignment. Section 31 of the Act excludes certain items of security interest from the provisions of the Act.

Section 5 of the Act deals with acquisition of rights or interest in financial assets by Securitization Company or Reconstruction Company. Section 6 of the Act states that the Bank or Financial Institutions may, if it considers appropriate, give a notice of acquisition of financial assets by any securitization company or reconstruction company to the borrower or to any concerned person. This is also an enabling provision. In certain cases the Banks /Financial institutions may feel that a third party right may be created by the borrower, in which event, the Banks/Financial institution may not give notice of acquisition. In other cases it may give such notice if it is satisfied that the financial assets are not likely to be disposed of or alienated by the borrower. The scheme of the Act, whose constitutional validity is already upheld, provides for various enabling provisions. It gives discretion to the banks/financial institutions to take step in order to protect its assets from being alienated, transferred to take steps in order to protect its assets from being alienated, transferred or disposed of in any other manner. Section 9

deals with various measures which a reconstruction company is required to take for asset reconstruction. Section 10 deals with the functions of Securitization Company or Reconstruction Company. Section 11 deals with the resolution of disputes relating to securitization, reconstruction or non-payment of any amount due between the bank or Financial Institution or Securitization Company or reconstruction Company. It further states that such disputes shall be resolved by conciliation or arbitration. It is important to note that the dispute contemplates under Section 11 of the act is not with the borrower. Section 12 empowers RBI to give directions from time to time. Classification of any account as non-performing asset has to be done by the bank or financial institution in terms of the guidelines issued by RBI.

The most important section is 13(2) proceeds on the basis that the debts have become due. It proceeds on the basis that the account of the borrower in the books of bank/Financial Institution, which is an asset of the Bank/ Financial Institution, has become non-performing. Therefore, there is no scope of any dispute regarding the liability. There is a difference between the accrual of liability, determination of liability. Section 13(2) deals with the liquidation of liability and it also stops borrower to transfer the property .

Section 13 (3) states the notice under section 13(2) shall give the details of the amount payable by the borrower as also the details of the secured asset intended to be enforced by the Bank/ Financial Institution. In the event of non-payment of secured debts by the borrower, notice under section 13(2) is given as an notice of demand. It is very similar to the notice of demand under section 156 of the Income Tax Act, 1961. After classification of an account as NPA, a last opportunity is given to the borrower of sixty days to repay the debts. Section 13 (3-A) was inserted whereby the borrower is permitted to make representation/objection the secured creditor against classification of his account as NPA. He can object to the amount due if so advised. Under Section 13(13-A) if the bank/Financial Institution comes to the conclusion that such objection is not acceptable, it shall communicate within one week the reasons for non-acceptance of the representation /objection. A proviso is added to the Section 13(13-A) which states that the reasons so communicated shall not confer any rights upon to file an application to the debts Recovery Tribunal under Section 17. The identification of debt and the classification of accounts as NPA is done in accordance with the guidelines issued by the RBI.

Such notice of demand therefore, constitutes an action taken under the provisions of the Act and such notice of demand cannot be compared to show cause notice. In fact, because it is a notice of demand which constitutes an action, Section 13(3A) provides for an opportunity to the borrower to make representation to the secured creditor. Section 13(4) of the Act by the Bank/Financial Institution. Once the two conditions under Section 13(2) are fulfilled, the next step which the Bank or financial Institution is entitled to take is either to take possession of the secured asset of the borrower or to take over the management of the business of the borrower or to appoint any manager to manage the secured assets or require any person, who has acquired any of the secured assets from the borrower to pay the secured creditor towards liquidation of secured debt. The Section 13(2) and Section 13(4) clears that the notice under 13(2) is not a mere show cause notice and it constitutes an action taken by the Bank/Financial Institution for the purpose of the Act. Section 13(6) provides that any transfer of secured asset after taking possession or after taking over of management of the business, under section 13(4) by the Bank/ Financial Institution shall vest in the transferee all rights in relation to the security, as if the transfer has been made by the owner of such secured asset. Therefore, section 13(6) provides that once the Bank/ Financial Institution takes possession of the secured asset, then the rights, title and interest in that asset can be dealt with by the Bank/ Financial Institution as if it is the owner of such an asset. In other words, the asset will vest in the Bank/ Financial Institution free of all encumbrances and the secured creditor would be entitled to provide a clear title to the transferee in respect thereof. Section 13(7) refers to recovery of all costs, charges and expenses incurred by the Bank/ Financial Institution for taking action under section 13(4). Section 13(7) provides for priority in the matter of recovery of dues from the borrower. It provides for payment of surplus to the person entitled thereto. Section 13(8) states that if the secured creditor together with costs, charges and expenses incurred are tendered to the secured creditor before the date fixed for sale/ transfer, the secured asset shall not be sold or transferred by the Bank/ Financial Institution to the asset reconstruction company and no further steps shall be taken in that regard. Section 13(9) states that where a financial asset is funded by more than one Bank/ Financial Institution or in case of joint financing by a consortium, no single secured creditor from that consortium shall be entitled to exercise right under section 13(4) unless exercise of such right is agreed upon by all the secured creditors. Section

13(9) provides for one more instance when permission of Debts Recovery Tribunal may be required under the first proviso to Section 19(1) of R.D.D.B. Act, 1993. Section 13(9) also deals with pari pasu charge of the workers under Section 529-A of the Companies Act, 1956, apart from Banks and Financial Institutions, who are secured creditors. Section 13(10) states that where the dues of the Secured Creditor are not fully satisfied by the sale proceeds of the secured assets, the secured creditor may file an application to the Debts Recovery Tribunal under section 17 of the Act for recovery of balance amount from the borrower. Section 13(10), therefore, shows that the Bank/ Financial Institution is not only free to move under the Act with or without leave of Debts Recovery Tribunal but having invoked the provisions of the Act, liberty is given statutorily to the secured creditors (Bank/ financial Institutions) to move the Debts Recovery Tribunal under the R.D.D.B. act, 1993 once again for recovery of the balance in cases where the action taken under Section 13(4) of the Act does not result in full liquidation of the recovery of the debts due to secured creditors. Section 13(10) fortifies the view that the remedies for recovery of debts under the R.D.D.B Act, 1993 and the Act are complementary to each other. Further, Section 13(10) shows that the first proviso to section 19(1) of R.D.D.B Act, 1993 is an enabling provision and that the said provision cannot be read as a condition precedent to taking recourse to the Act. Section 13(11) of the Act states that, without prejudice to the right conferred on the secured creditor under Section 13, the secured creditor shall be entitled to proceed against the guarantor/pledged; that the secured creditor shall be entitled to sell the pledged assets without taking recourse under Section 13(4) against the principal borrower in relation to the secured assets under the Act. Section 13(13) states that no borrower shall, after receipt of notice under Section 13(2), transfer by way of sale, lease or otherwise any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Section 17 of the Act confers right to appeal. It states that any person including borrower, aggrieved by exercise of rights by the secured creditor under Section 13(4), may make an application to the Debts Recovery Tribunal as an Appellate Authority within forty five days from the date on which action under Section 13(4) is taken. That application should be accompanied by payment of fees prescribed by the 2002 Rules made under the Act.



## **HOW A SON / DAUGHTER THINKS OF HIS / HER DADDY AT DIFFERENT AGES !!!!!**

Compiled by CA. **Pramod Kumar Boob**  
B.Com., FCA, ICWA



**At 4 years : My Daddy is great.**

**At 6 years : My Daddy knows everybody**

**At 10 years : My Daddy is good but short tempered.**

**At 12 years : My Daddy was very nice to me when I was young.**

**At 14 years : My Daddy is getting fastidious.**

**At 16 years : My Daddy is not in line with current times.**

**At 18 years : My Daddy is becoming increasingly cranky.**

**At 20 years : Oh! It's becoming difficult to tolerate Daddy. Wonder how mother puts  
Up with him.**

**At 25 years : Daddy is objecting to everything.**

**At 30 years : It's becoming difficult to manage my son. I was so scared of my father  
when I was young.**

**At 40 years : Daddy brought me up with so much discipline. Even I should do the  
same.**

**At 50 years : My Daddy faced so many hardships to bring us up. I am unable to  
manage a single son.**

**At 55 years : My Daddy was so far sighted and planned so many things for us. He is  
one of his kind and unique.**

**At 60 years : My Daddy is GREAT.**

**Thus it took 56 years to complete the cycle and come back to the 1<sup>st</sup> stage.  
REALIZE THE TRUE VALUE OF YOUR PARENTS BEFORE IT IS TOO LATE.**

