

**GOVERNMENT OF INDIA
FINANCE
LOK SABHA**

UNSTARRED QUESTION NO:3639
ANSWERED ON:16.04.2010
IMPLEMENTATION OF SARFAESI ACT
Kaswan Shri Ram Singh

Will the Minister of FINANCE be pleased to state:

- (a) the details of provision of sub-section 3A of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- (b) the details of cases where representation of the borrower has not been found acceptable and borrower informed accordingly;
- (c) whether such information/ intimation to the borrowers is made within the stipulated 7 days time and if not, the details thereof and reasons therefor;
- (d) whether such cases wherein banks, instead of issuing such intimations/ information have issued a second notice to the borrowers have been attended to;
- (e) if so, the details thereof and present status of each such case;
- (f) if not the reasons therefor;
- (g) whether there are provisions in the Act authorising the banks to issue a second notice to borrowers without waiting for the response of borrowers on the first notice;
- (h) if so, the details thereof; and
- (i) the steps taken or proposed to be taken in this regard?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE(SHRI NAMO NARAIN MEENA)

(a) to (f) : Under the provisions of Sub-Section (3A) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), any Bank or Financial Institution is required to consider any objection that may be raised or representation made by the borrower in response to a notice served on him by the bank under Section 13(2) of the SARFAESI Act. After considering such objection or representation the bank is required to send a reply to the borrower within 7 days. There may be instances where the Bank has not complied with the requirement of Sub-Section (3A) and proceeded to take action under Sub-Section (4) by way of taking possession of the securities.

The Courts may set aside the action of the Banks in taking possession in cases where the provisions of Sub-Section (3A) are not complied with. In cases, where the banks do not comply with the requirements of Sub-Section (3A) the borrower can approach DRT or the High Court by filing a writ petition. If the High Court in a writ petition has set aside the action of taking possession by the Banks as illegal for non-compliance of Sub-Section (3A) of Section 13, such an order does not bar the bank from recovery of the defaulted loan thereafter. It is permissible for the bank to recover the defaulted loan by following the procedure prescribed under Section 13. If on account of non-compliance with Sub-Section (3A), action of the bank is declared to be illegal, such declaration by the courts does not in any way absolve the borrower from repaying the defaulted loan, nor does it take away the right of the Bank to recover the loan by taking action as provided under Section 13 of the SARFAESI Act.

(g) to (i) : The SARFAESI Act empowers the banks to issue notice under Section 13(2) and there is no provision which stipulates that once such notice is issued, the notice cannot be issued second time. If the first notice is defective for any reason the bank can always issue a notice second time to cure such defect. By such action, the borrower is in no way prejudiced because he gets a notice of 60 days before the bank can take action of taking possession.