

RBI/2004/271  
UBD.PCB.Cir. 54 /13.04.00/2003-04

June 30, 2004

All the Primary (Urban) Cooperative Banks

Dear Sir,

**In the Supreme Court of India-  
Transfer case( Civil) Nos. 92-95 of 2002-  
Mardia Chemicals Ltd. vs Union of India & Others -  
Decision of the Supreme Court dated April 8, 2004  
Regarding validity of provisions of Securitisation and Reconstruction  
of Financial Assets and Enforcement of Security Interest Act, 2002**

We advise that in the above transfer case and writ petitions filed in the Supreme Court by borrowers and banks, the Supreme Court considered the constitutional validity of provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Supreme Court has upheld the validity of the provisions of the Act except the provisions of sub-section (2) of Section 17, which has been held to be ultra vires. The operative portion of the judgment is contained in paras 80, 81 and 82 of the judgment, which is given in the annexure.

2. You are advised to take necessary action in the matter, including defending the cases, if any, filed by borrowers in the High Court against your bank in the light of the Supreme Court Judgment.

Yours faithfully,

(N.S.Vishwanathan)  
Chief General Manager  
*Encls:As above*

## ANNEXURE

**80.** .....we find that before taking action a notice of 60 days is required to be given and after the measures under section 13(4) of the Act have been taken, a mechanism has been provided under section 17 of the Act to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows :

1. Under sub-section (2) of section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under sub-section (4) of section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be consider with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information / knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under section 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub-section (4) of section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under section 17 of the Act before the Debt Recovery Tribunal.

3. That the tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay / interim order subject to the condition that it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court.

**81.** .....we hold the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debt Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of the capital liquidity and resources to help in growth of economy of the country and welfare of the people in general which would subserve the public interest.

**82.** We, therefore, subject to what is provided in paragraph 80 above, uphold the validity of the Act and its provisions except that of sub-section (2) of section 17 of the Act, which is declared ultra vires of Article 14 of the Constitution of India.