

**POLICY GUIDELINES ON FAIR PRACTICES CODE**

**1. Introduction**

- 1.1 Alchemist Asset Reconstruction Company Limited (AARC) is incorporated as a company under the provisions of the Companies Act, 1956 and also registered with Reserve Bank of India (“RBI”) under section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The principal object of the Company is to carry on the business of Securitization and Asset Reconstruction as defined in section 2 of the SARFAESI Act. The Company acts as an Investment Manager / Trustee for various trusts set up for acquisition of financial assets from Banks and Financial Institutions (FIs) under the provisions of the SARFAESI Act.
- 1.2 RBI has issued Master Circular on Fair Practices Code for All Non-Banking Financial Companies (NBFCs) and Residuary Non-Banking Companies (RNBFCs) thereby setting standards for fair business and corporate practices vide Master Circular No. DNBR (PD) CC No. 054/03.10.119/2015-16) dated 1<sup>st</sup> July, 2015 and vide Master Circular No. DOR. NBFC(ARC) CC. NO. 9/26.03.001/2020-21 dated 16<sup>th</sup> July, 2020. The Company endeavors to have policy guidelines on ‘Fair Practices Code’ (FPC) so as to ensure transparency and fairness in their operations. The Company shall adopt all the best practices prescribed by RBI from time to time for NBFCs as well as Asset Reconstruction Companies (ARCs) and shall make appropriate modifications, if any, necessary to this Code to confirm to the standards so prescribed.
- 1.3 It is, and shall be, the policy of the Company to make available its services to all eligible qualified applicants, whether body corporate or individual, without discrimination on the basis of race, caste, colour, religion, sex, marital status, age or handicap.
- 1.4 The Company’s policy is to treat all the clients consistently and fairly. The employees of the Company will help, encouragement and service in a fair, equitable and consistent manner.

- 1.5 The Company will not resort to harassment of the Debtor in the matter of recovery of Loans. AARC would ensure that the staff is adequately trained to deal with customers in an appropriate manner.
- 1.6 The Company will ensure that the implementation of the FPC is the responsibility of the entire organisation. The Company's fair practices shall apply across all aspects of its operations including financial asset acquisition from banks and financial institutions wherein it shall maintain arm's length distance in the pursuit of transparency, resolution of financial assets so acquired, servicing and collection activities. Its commitment to FPC will be demonstrated in terms of employee accountability, training, counseling, monitoring, auditing programs, internal controls, and optimal use of technology.
- 1.7 The Company's Board of Directors and the management team shall be responsible for implementing the fair practices hereinafter detailed, and also to ensure that its operations reflect its strong commitment to all the stakeholders for offering in a fair and equitable manner and that all employees are aware of this commitment.

## **2. Fair Practice Code For The Company**

- 2.1 A fair practice code is detailed herein, which sets the principles for fair practice standards while dealing with various stake holders, including the shareholders, investors/ SR holders as also the borrowers.
- 2.2 Acquisition of Financial Assets and Resolution thereof by the Company shall be governed by policy in this respect approved by the Board. The Company shall also comply with all the applicable laws, rules and regulations viz. SARFAESI Act, Security Interest (Enforcement) Rules, 2002 and various other statutory laws and strictly adhere to the Securitization Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003, as amended from time to time.  
Please note that Bank/ FI implies ARC to as it steps in to the shoes of the secured creditors on acquisition of the financial assets.

## **3. Acquisition Of Financial Assets**

- 3.1 Acquisition of financial assets by the Company shall be in conformity with all the provisions of the SARFASI Act and RBI Guidelines as amended from time to time.
- 3.2 The Company shall acquire financial assets where potential for recovery exists and/or where the Company has the potential to add value.

- 3.3 Valuation of financial assets shall be done by the Company in transparent manner with the objective of setting a sound basis for the Company and the selling banks/FIs to finalise the acquisition/ sale of assets in a transparent manner.
- 3.4 The Company will carry out proper financial & legal due diligence of the financial assets drawing upon expertise of qualified professional employed and/or legal firms empanelled by the Company before submitting bid for acquisition of the same.
- 3.5 The Company will collect the information/documents about the customers from the selling banks/ institutions at the time of acquisition itself.
- 3.6 The Company will follow transparent and non-discriminatory practices while acquiring the assets.
- 3.7 The Company while acquiring the assets/ companies; would keep the information confidential and will disclose the same to anyone including any other group companies except when the same is required by the law, there is a duty to reveal the information to the public or there is a permission from the borrower's end.

#### **4. Recovery**

The Company will follow the recourse available under the applicable the laws as per the provisions of SARFAESI Act, IBC Act, RDDB Act and RBI guidelines and any other Acts/ guidelines applicable as amended from time to time. However, the Company will try to realise the loan amount by negotiating with the borrower through the process of Settlement cum Restructuring based on Techno Economic Viability of the unit as well as Value of the security and net worth of the Borrower and Guarantor. The Legal procedures available to the Company for recovery of loans include enforcement of security interest without the intervention of the court under the provisions of SARFAESI Act, 2002 and also filing recovery suit before Debts Recovery Tribunal (DRT) concerned under the provisions of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993, besides provisions of Insolvency and Bankruptcy Code shall be followed. While DRT is a judicial forum which shall adjudicate upon the legality of the claim made by the Lender, and pass a judgment on the claim, the SARFAESI Act gives powers of enforcement of security interest to the Banks and FIs without the intervention of the court. The provisions of the aforesaid Acts provide enough notice and opportunity to the borrowers to challenge the claims/actions of the Company if the same are not in accordance with the laid down legal provisions and procedures.

**(A) Restructuring**

- (i) The Restructuring cum Settlement plan should be arrived at after discussing with the Borrower.
- (ii) Terms and conditions governing Restructuring loans including repayment period, applicable rate of interest, performance stipulations, upfront payment by borrower, personal guarantee, PDCs etc should be documented.
- (iii) A copy of the Loan Agreement/ Term Sheet should be furnished to the Borrower.
- (iv) Events of Default/ Recall of Advances/ Trigger points for withdrawal of any loan/facility should be clearly spelt out in the Term Sheet/Agreement.

AARC shall release the securities on repayment of its entire dues or on realisation of the outstanding amount of loan, subject to any legitimate right or lien for any other claim. In case such right is to be exercised, the borrower would be given the notice with full particulars of the remaining claims and the conditions under which AARC has a right to retain its securities till the time such claim is settled/ or paid.

**(B) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)**

SARFAESI Act was enacted in the year 2002 and, in terms of this Act, powers of enforcement of security interest have been given to the Banks and FIs without the intervention of the court. However, the powers given to the Banks and FIs are not unfettered and are subject to the principles of natural justice and fair play and ensure that there is no misuse of such powers by the Lender. Details of safeguards available to the Borrowers under the SARFAESI Act are as under:-

- i) In terms of section 13(2) of the SARFAESI Act, the Secured Creditor is required to issue a notice to the borrower calling upon him to pay the outstanding dues including principal and interest at contractual rate till the date of issuance of notice, within a period of 60 days from the date of such notice, failing which the secured creditor shall be entitled to take any of the measures mentioned in sub-sec. (4) of section 13 of SARFAESI Act. In cases where service of the notice is not complete for any reason, whatsoever, a copy of the same is pasted on the premises of the borrower where the borrower resides or works for gain and the same is also required to be published in two local newspapers, one in English and the other in a vernacular language having sufficient circulation in that locality.

- ii) Where the Borrower makes any representation in response to the demand notice, a reply to such representation, giving reason for non-acceptance of such objections of the Borrower is required to be sent within 15 days from the date of receipt of such representation, failing which any subsequent action of the Secured Creditor will be null and void;
- iii) Where the Borrower fails to make the payment as per the Demand notice, the Authorized Officer of the Secured Creditor may take possession of the secured asset of the Borrower u/s 13(4) of the SARFAESI Act. However, as procedure stipulated in the Security Interest (Enforcement) Rules, 2002 (Enforcement Rules) the possession notice in respect of immovable properties is required to be pasted on the outer door/conspicuous place of the premises of the secured asset and in respect of movable secured assets the presence of two witnesses is necessary, as well as drawing of Panchnama and inventory is required to be made and copy of the inventory is given to the borrower. The possession notice in respect of immovable properties is also required to be published not later than seven days in two local newspapers, one in English and the other in vernacular language in that locality;
- iv) Before effecting sale of secured asset, the Authorised Officer of the Secured Creditor is required to have the secured asset valued as per Rule 8 (5) of the Enforcement Rules. The valuation is required to be carried out by the reputed valuer preferably those who are registered under section 34AB of the Wealth Tax Act, 1957. Fixation of the reserve price for the secured asset is with due approvals. This procedure ensures that proper valuation of the security interest is done before effecting sale of security interest by the Authorized Officer. Further, as per the provisions of the Enforcement Rules, a 30 days notice to the borrower before effecting sale of the immovable secured asset is required to be given. The sale notice is also required to be published in two local news paper having publication in the locality where the secured asset is situated and is also required to be pasted in the conspicuous part of the secured asset. This procedure ensures that adequate notice is given to the Borrower before effecting sale of secured assets and in order to enhance transparency in the process of sale of secured assets; the following measures to be taken into consideration:
  - a) The invitation for sale of assets to be publicly solicited; the auction process should enable participation of as many prospective buyers as possible;

- b) Terms and conditions of such sale must be decided in wider consultation with the Security Receipts holders as per SARFAESI Act, 2002 and;
- c) Applicability under Section 29(A) of the IBC 2016 must be followed in dealing with the prospective buyers.
- v) In terms of section 17 of the SARFAESI Act, the Borrower or any person aggrieved by any action taken under section 13(4) of the SARFAESI Act is entitled to approach the DRT concerned within 45 days from the date on which such measures had been taken. DRT concerned shall examine whether the procedure laid down under the SARFAESI Act and Enforcement Rules has been followed and pass order accordingly. Any person aggrieved by the order of the DRT, is entitled to approach the Appellate Tribunal against the order passed by the DRT.

This procedure ensures that the action of the Bank/ FI is subject to judicial scrutiny and hence nullifies the chances of misuse of powers given to the Bank/ FI.

**(C) Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act)**

DRT Act was enacted in the year 1993 for speedy recovery of the Debts due to the Banks and Financial Institutions. Various Debts Recovery Tribunals (DRT) and Debts Recovery Appellate Tribunals (DRATs) have been established across the country. DRT is a judicial forum which adjudicates upon the claims of the Banks and Financial Institutions and if found in order, passes order for recovery of debts due to such Bank or FI. Once the order for recovery is passed, Recovery Officer attached to the concerned DRT proceeds to realize the dues owing to such Bank and FI. Under the provisions of the DRT Act, a Bank or a Financial Institution to whom a Borrower owes a debt of Rs.10.00 lacs or more, may file application before the concerned DRT. DRT being a judicial Forum, no judgment/order detrimental to the interest of the Borrower/Guarantors shall be passed by the DRT without giving an opportunity of being heard to the Defendants. Relevant provisions of the DRT Act safeguarding the interest of the Borrowers are as under:-

- (i) DRT shall be presided over by a Presiding Officer who shall be or qualified to be a District Judge. DRAT shall be presided over by the Chairperson, who shall be or qualified to be a High Court Judge;
- (ii) In terms of the provisions contained in section 19(3) of the DRT Act, the Bank/FI concerned shall submit all the documents relied upon in support of the

claim made by the said Bank / FI in the application filed with DRT under section 19(1) of DRT Act ;

- (iii) As per section 19(4) of the DRT Act, on receipt of the application from the Bank / FI concerned, summons is issued to the Defendants concerned to appear before the DRT.
- (iv) Borrowers/Defendants are also given an opportunity to file written statement in reply to the application filed by the Bank / FI for recovery of debts.
- (v) Borrowers/Defendants may also make, counter claim, if any, against the Bank / FI while filing written statement to the application filed by the Bank/ FI concerned.
- (vi) Borrowers/Defendants are also entitled to submit evidence in support of their claim before the DRT and may also have examination of Bank/ FI's witness with the permission of the DRT ;
- (vii) After examination of the claims of the Bank / FI concerned as well as the Borrower / Defendants, if the DRT comes to the conclusion that claim made by the Bank / FI is valid, DRT shall pass judgment / Final Order in favour of the said Bank / FI. Thereafter, Recovery Officer attached to the DRT shall proceed to recover the dues of the Defendants by attachment and sale of the movable and immovable properties of the Defendants.
- (viii) If Borrower / Defendants are aggrieved by any order of the Presiding Officer, the Borrower / defendants concerned may approach the Appellate authority viz; the Debts Recovery Appellate Tribunal (DRAT) for remedy, within forty five days from the date on which a copy of the order is made or deemed to have been made.
- (ix) If any person is aggrieved by an order of the Recovery Officer under the DRT Act, an appeal may be filed before the Presiding Officer, DRT within thirty days from the date on which order is issued to him.
- (x) If the borrower is a company registered under the Companies Act, 1956 against which the certificate of recovery has been issued, the DRT may order the sale proceeds of such company to be distributed amongst the secured creditors in accordance with the provisions of the section 529A of the Companies Act.
- (xi) In terms of section 19(24) of DRT Act, DRT shall dispose off the application made to it under section 19(1) or (2) of DRT Act as expeditiously as possible



and endeavor shall be made by it to dispose of the application finally within 180 days from the date of receipt of application.

In view of the above, the provisions of the DRT Act are in compliance with the principles of natural justice as adequate opportunity is given to the Borrower/Defendants to contest the claim of the Bank / FI concerned before the DRT.

**(D) Recovery of Debt through Insolvency and Bankruptcy Code, 2016**

For establishing an insolvency regulation related to entities and an individual, the Parliament has enacted Insolvency and Bankruptcy Code (IBC), 2016. The Code offers a uniform, comprehensive insolvency legislation encompassing all Companies, Partnerships and Individuals (other than financial firms).

The Code provides clear, coherent and speedy process for early identification of financial distress and resolution of entities, It suggests two options:

- a. Restructuring, if firm is viable
- b. Liquidation, if it is not financially viable

Resolution should be done quickly and judiciously to ensure that the business is not stuck. The code specifies a time frame of 180 days after the process is initiated, plus 90 days extension for resolving insolvency.

A major feature of the Code is that it creates a four pillars of institutional infrastructure for administering the Bankruptcy procedure. These entities/agencies are:

- i. Insolvency and Bankruptcy Board of India: being is the regulator.
- ii. Insolvency Professional Agencies: will examine and certify the insolvency professional, and
- iii. Insolvency Professionals to conduct the insolvency resolution process, take over the management of a Company, assist creditors in the collection of relevant information, manage the liquidation process, etc. and
- iv. Information Utilities to collect collate and disseminate financial information related to debtors.

**(E) Recovery from Guarantors**

The Company will inform the person and/or Company who stands as a guarantor to a loan;



- a) His/her liability as a guarantor ;
- b) The amount of liability he/she will be committing himself/herself to the Company;
- c) Circumstances in which the Company will call on him/her to pay up his/her liability;
- d) Whether the Company have recourse to his/her other monies if he/she fail to pay up as a guarantor;
- e) Time and circumstances in which his/her liabilities as a guarantor will be discharged as also the manner in which the Company will notify him/her about this.

The Company will also keep him/her informed of any material adverse changes in the financial position of the borrower to whom he/she stands as a guarantor.

## **5. Engagement of Recovery Agents**

The Reserve Bank of India (RBI) has issued Guidelines dated April 24, 2008 for regulating the functioning of Recovery Agents. Salient features of the aforesaid Guidelines issued by RBI to Banks/ FI while engaging Recovery Agents are as under:-

- (i) Banks/FI should have a due diligence process in place for engagement of recovery agents, which should be so structured to cover, among others, individuals involved in the recovery process;
- (ii) To ensure due notice and appropriate authorization, Banks/ FI should inform the borrower the details of recovery agency firms / companies while forwarding default cases to the recovery agency. Further, since, in some of the cases, the borrower might not have received the details about the recovery agency due to refusal / non-availability / avoidance and to ensure identification, it would be appropriate if the agent also carries a copy of the notice and the authorization letter from the bank along with the identity card issued to him by the bank or the agency firm / company. Further, where the recovery agency is changed by the bank during the recovery process, in addition to the bank/ FI notifying the borrower of the change, the new agent should carry the notice and the authorization letter along with his identity card;
- (iii) The notice and the authorization letter should, among other details, also include the telephone numbers of the relevant recovery agency. Banks / FIs should ensure that there is a tape recording of the content / text of the calls made by recovery agents

to the customers, and vice-versa. Banks may take reasonable precaution such as intimating the customer that the conversation is being recorded.

- (iv) Where a grievance/ complaint has been lodged, banks should not forward cases to recovery agencies till they have finally disposed of any grievance / complaint lodged by the concerned borrower. However, where the bank is convinced, with appropriate proof, that the borrower is continuously making frivolous / vexatious complaints, it may continue with the recovery proceedings through the Recovery Agents even if a grievance / complaint is pending with them. In cases where the subject matter of the borrower's dues might be *sub judice*, banks should exercise utmost caution, as appropriate, in referring the matter to the recovery agencies, depending on the circumstances;
- (v) Each bank should have a mechanism whereby the borrowers' grievances with regard to the recovery process can be addressed;
- (vi) In the matter of taking possession of mortgaged properties and repossession of hypothecated vehicles, the Banks shall rely only on legal remedies available under the relevant statutes while enforcing security interest without intervention of the Courts.
- (vii) AARC would ensure that the recovery agent observe strict customer confidentiality.
- (viii) AARC would ensure that Recovery Agents are properly trained to handle their responsibilities with care and sensitivity, particularly in respect of aspects such as hours of calling, privacy of customer information etc.
- (ix) AARC would ensure that Recovery Agents do not induce adoption of uncivilized, unlawful and questionable behaviour or recovery process.

The Company will follow the provisions of the aforesaid RBI guidelines in its retail collection procedure except in cases where the collection of loans are carried out by the Seller Bank itself. Further, in the matter of recovery of loans, the Company will not resort to harassment.

The Company will release all securities on repayment of all dues or on realization of the outstanding amount of loan, subject to any legitimate right or lien for any other claim the Company may have against the customer. Notice to the customer with full particulars about the remaining claims and the conditions under which the Company is entitled to retain the securities till the relevant claim is settled /paid will be given.

## **6. Investment In Security Receipts**

As per Section 7 of the SARFAESI Act, the Company may raise funds from Qualified Buyers (QBs) by formulating schemes in the nature of Trust for acquiring financial assets and the Company shall hold the financial assets so acquired in trust for the benefit of the Security Receipts holders. QBs investing in the trust shall be issued Security Receipts (SR) which represent the undivided right, title or interest of the Security Receipt holder in the financial asset involved.

- a) The Company will ensure absolute transparency in dealing with existing and proposed investors.
- b) Prospective investors will be provided all the requisite details regarding the proposed investments in Non Performing loans on Security Receipt (SR) basis or Cash basis.
- c) The prospective investors will be given all the information in the detailed offer document.
- d) The Company will not misuse the funds provided by investors on the basis of trust. The funds shall not be utilized for any purposes other than acquiring the financial assets, making any payments and charges directly related to said acquisition, reimbursement of expenses incurred in relation to acquisition & resolution of said asset.
- e) The Company will provide quarterly updates as stipulated by Reserve Bank of India from time to time to the SR holders to apprise them of all relevant developments pertaining to the Assets assigned to the Company which, interalia, contain:
  - Defaults, prepayments, losses, if any, during the quarter
  - Change in profile of assets by way of accretion to or realization of Assets from existing pool
  - Collection summary for the current and previous quarter
  - Any other material information which has a bearing on the earning prospects affecting SR Holders
- f) The Company shall make all efforts to effect the resolution of all the cases within the prescribed time frame.
- g) In the event of non-realization of the financial assets, the SR holders representing 75% of the total value of SRs issued by the Company, can call for a meeting of all the SR holders in a particular scheme and every resolution passed in such meeting shall be binding on the Company.

## **7. Confidentiality**

- a. The Company will treat all personal information as private and confidential.
- b. The Company will not reveal transaction details to any other entity including within the group other than the following exceptional cases.
  - i. If the Company has to provide the information by statutory or regulatory laws,
  - ii. If there is a duty to the public to reveal this information.
  - iii. If its interest requires the Company to provide this information (e.g. fraud prevention).
  - iv. There is Borrower's permission.
  - v. Any management fee/ incentives charged towards the Asset Reconstruction or Securitisation Activity shall come only from the recovery effected from the underlying financial assets, w.e.f the acquisitions done post 11<sup>th</sup> October, 2022.
  - vi. AARC shall indicate the quantitative cap/ limit on the management fee/ incentives under various scenarios is mentioned in annexure-1, any deviation from which shall require approval of the Board.