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FINANCIAL CONSULTANTS



Workshop on  
**Bankruptcy Code & SARFAESI Act for NBFCs**

**Organised by:**  
**Vinod Kothari Consultants Pvt. Ltd.**  
**The Lalit, Mumbai | 19th January 2016**

# Why this workshop?

The enactment of the Bankruptcy Code means a complete change in the scenario of resolution of financial distress in the country. Bankruptcy law has been introduced in India to play an important role in limiting the risks of credit. In every loan, lenders face a risk of non-repayment. Bankruptcy limits the risks for lenders by establishing the rights of each type of lender and the obligations of the debtor in the event of default. This permits lenders to calculate the risk and price their credit more accurately. It also sets methods for working with defaulting borrowers in order to better enable the borrower to better meet financial obligations. For the borrower, bankruptcy is an institutionalized form of rendering a chance of relief (whether in whole or in part) from their obligations if a business venture fails.

Extension of SARFAESI Act to 196 NBFCs vide notification of 5th August 2016 marks a very important milestone in the journey of the non-banking financial sector. The amendment brings NBFCs a tad closer to banks in terms of a level playing field.

At the same time, SARFAESI Act is only a mode of enforcement. In the past, NBFCs did not have access to the Act, and their recoveries were generally better than that of banks. NBFCs used a combination of judicial, arbitral and self-help remedies to ensure efficient recoveries. Can SARFAESI proceedings co-exist with arbitral remedies? Can NBFCs simply “choose” to apply SARFAESI, or opt out of the same, and rely on the existing common law remedies? Does the extension of SARFAESI for certain NBFCs imply that the self-help powers under hypothecation agreements do not remain valid anymore?

SARFAESI is not an easy law. Over 14 years of its enactment, there have been hundreds of court rulings; and some dozen Supreme Court rulings. SARFAESI implies intervention of the DRTs. In the current state of things, where the inadequacy of infrastructure at DRTs has been a subject matter of a Supreme Court ruling, whether coming under the adjudicatory ambit of DRTs is a positive, or a negative, is arguable.

Also, while NBFCs gain access to SARFAESI when it comes to enforcement of security interests, they do not have access to RDB Act for recovery of monetary dues.

This workshop discusses the spate of issues surrounding the new recovery regimes for NBFCs.

# Course Outline

## 1. Session 1: Bankruptcy for corporates

- a. Insolvency resolution process
- b. Initiation of corporate insolvency resolution process
- c. Introduction of moratorium
- d. Preparation of information memorandum and resolution plan
- e. Priority of claims and the bankruptcy code; rights of secured creditors

## 2. Session 2: Liquidation process

- a. Claims- Verification, Consolidation, Admission and Rejection
- b. Appeal against liquidator's decision
- c. Fast track insolvency resolution process
- d. Voluntary liquidation
- e. Practical aspects of recovery
  - a. Calculating – liquidation value
  - b. Secured creditor – in liquidation proceeding

## 3. Session 3: Bankruptcy for non-corporates and individuals

- a. Going for a fresh start order
- b. General duties of debtor
- c. Insolvency resolution process
- d. Proof of debt
- e. Bankruptcy order- Application, Effect, Administration and distribution of estate

# Course Outline

## 1. Session 4: Insolvency professionals

- a. Insolvency professionals – Roles and obligations
- b. Bankruptcy trustee – Roles and functions
- c. Liquidator – Roles and functions

## 2. Session 5: Applicability of the SARFAESI notification:

- a. Understanding the applicability of the notification – is it applicable to loans before or after the date of the notification
- b. Threshold limit of Rs 1 crore – meaning – what does the limit refer to? Facility amount, loan amount, value of assets, etc.
- c. Applicability to cases already under litigation
- d. Applicability in case of joint exposures – with several other lenders, etc.

## 3. Session 5: SARFAESI law and Bankruptcy code

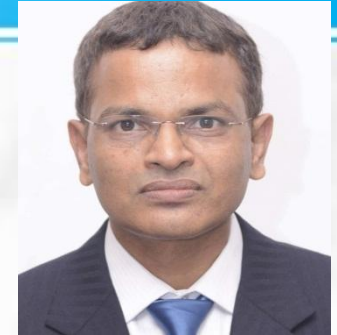
- a. Impact of moratorium during insolvency resolution
- b. Post resolution orders and the impact of creditors' mandate
- c. Impact of SARFAESI during bankruptcy and liquidation proceedings
- d. Impact of the Code on insolvency of non-corporate persons

## 4. Session 6: Applicability of SICA law

- a. Applicability of SICA Repeals Act
- b. Applications to stand abated – date on which the provisions of the Code was notified or SICA law was notified?
- c. Applicability of order passed by BIFR under section 22A of the SICA Act

## Mr. Vinod Kothari

### Chartered Accountant, Company Secretary



Mr. Vinod Kothari, has recently authored a 2000 pager book on the Bankruptcy Code titled “Law Relating to Insolvency & Bankruptcy Code 2016”. He is also a recognised Insolvency Professional under the Insolvency and Bankruptcy Code.

Mr. Kothari is internationally recognized as an author, trainer and consultant on specialized financial subjects, viz., bankruptcy code, securitisation, credit derivatives, accounting for financial instruments, structured finance, banking regulations, housing finance, secured lending etc.. As such, he lectures all over the world. The locations where he has lectured on these subjects include New York, Washington, London, Milan, Frankfurt, Singapore, Hong Kong, Sydney, Colombia (South America), South Africa, Malaysia, Jordan, Dubai, Kuwait, Egypt, Sri Lanka, Bangladesh, etc.

Mr. Kothari with his efficient team has handled very diverse groups - from rating agency professionals in Malaysia, to group of investors in Sydney, to tax officers in South Africa, to group of lawyers in India, to executives of the World's largest securitisation agency in Washington, to a group of quants in New York.

Vinod Kothari through his firm Vinod Kothari and Company is also engaged in practice of corporate laws for over 25 years.

Detailed profile can be viewed at: [www.vinodkothari.com/profile](http://www.vinodkothari.com/profile)

# About Vinod Kothari Consultants Pvt. Ltd.

VKCPL is a company focused on providing consultancy and training services in the field of Bankruptcy law, SARFAESI Act, housing finance, affordable housing finance, housing microfinance, leasing, asset backed lending, securitisation, mortgage lending and venture capital funds. We have an established track record of conducting quality training programs for more than 25 years.

With more than 500 workshops, we have addressed scores of industry events and conferences. We would have trained at least 10000 executives at all levels in some 20 countries world-over. In terms of variety of audience, we have handled both public and private groups.

- **Our websites can be viewed at:**
  - <http://vinodkothari.com/> and <https://www.india-financing.com/>

## **For registration and related queries -**

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***\*\*Please note: Cancellation charge of 75% applicable if registrations cancelled before 2 days of the workshop.***