

Information Utilities to Improve the Efficiency of Insolvency Resolution



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CERSAI

What is CERSAI

- CERSAI is a Govt. of India Company formed to establish, maintain and operate the Central Registry, set up by the Govt. of India on 31st March, 2011 with a purpose to help mitigate the risk of multiple financing against the same property.
- CERSAI provides a 24 x 7 electronic platform on the web to the financial institutions to register their encumbrances on mortgages created over immovable property by way of deposit of title deed.
- It also provides a facility of registration of the transactions of Assignment of Debt to the factoring companies and banks.
- CERSAI portal also provides a facility of inspection of its records to general public 24 x 7 in order to help them in taking a well informed decision while purchasing a property.

Registration on CERSAI

- All lending institutions which are notified under SARFAESI Act, this includes PSBs, Private Sector Banks, Foreign Banks, RRBs, Local Area Banks and a large number of HFCs, Security Trustees, Co-operative Banks and all ARCs. The factoring companies are also mandatorily required to file their factoring transactions on CERSAI. Besides the NBFCs are also required to register their mortgage transactions on CERSAI in accordance with RBI instructions.

How Does it Help the Lenders

- Before lending against mortgage of a property, the lender can make a search on CERSAI portal to ascertain whether a prior encumbrance exists against the property. CERSAI, therefore, is helping the Banks in averting frauds by way of multiple financing against mortgage of same property.
- In the same way the factoring companies are getting benefitted by preventing double financing against the same bill.

Role of CERSAI in Insolvency Resolution

- Availability of information, accuracy and speed of availability are the key parameters of any decision making; especially so for the bankruptcy proceedings.
- Alongwith the promoters, the workers, bankers and other debtors are key stakeholders in any bankruptcy proceeding.
- CERSAI presently provides information on the immovable properties mortgaged by the borrowers in favour of lender (s) alongwith its valuation at the time of mortgage and the details of charge holder institutions.

- In order to strengthen and support the credit structure in the country and help the banks in risk mitigation, CERSAI with the help of World Bank had set up a Legal Working Group which has submitted a detailed report to the Govt. of India on enlarging the scope of CERSAI based on International Best Practices to cover:
 1. More asset classes
 2. All types of lender
 3. Lay down rules for Priority of Charge

Recommendations of Legal Working Group

- Major Recommendations of Legal Working Group relate to
 - 1). Registration of security interest on Movable Securities:
 - a). Non- possessory securities including hypothecated plant and machinery, movable assets, book debt etc.
 - b). Intangible properties including know-how, patent, copyright, trademark, license, franchise or any other business or commercial right of similar nature;
- All these assets constitute the bulk of the assets which are taken into account in any bankruptcy proceeding. Availability of this information at the click of a mouse will greatly help in information transparency and efficiency.

2). Registration of security interest on immovable assets:-

a). All types of mortgages

b). Security interest in building under construction where title deed is not yet available.

3). Registration of other types of security interests

a). Hire purchase and lease transactions.

b). Statutory charges/ attachment orders by Govt. Departments (e.g. Sales Tax, Income Tax)

c). Order of attachment passed by DRTs and other courts.

4). All Lenders to be Covered:

Benefits of secured transaction regime should be available to any person whether natural or legal engaged in the business of extending credit.

5). Priority of Charge:

International best practices require security interest to be effective from the date and time of filing notice of security interest on the registry. Laws should be amended to provide for implementation of “first to register rule”. The dues of secured creditors should rank higher in priority. This will make the work of a Bankruptcy courts simple and decisions faster.

6). The statutory charges should also rank in order of priority on the ‘First to Register’ principle.

Integration of other Registries with the Central Registry

- In order to make all information available at one central portal and to avoid duplicity on work it is proposed to create electronic linkages between CERSAI and
 - 1). Registrar of Companies
 - 2). State Land Record Registries
 - 3). Motor Vehicle Registries (RTO Offices)
 - 4). Patent and Design Registry etc.

Thank You