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THE UNDERSTANDING OF LENDING AS A PROCESS

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Abstract

Bank being a financial institution the primary function is to give out money or in banking terms lend money under the blanket name and function of "LOAN". The said loan can be delivered to the consumers of a corporate/firm/bank under different product titles and there are various regulations on the lending and borrowing of money from such financial institutions and such loan facilities can be both Funded or/and Non funded facilities depending upon the necessities and position of the borrower and the risk analysis of the Bank along with the RBI regulations on the amount of money which can be given out in the market as credit or loan facilities to maintain the market and fluidity in it. The types of fund loans and non fund loans, term loans, working capital loans, the role of consortium the play of pari passu charges and sharing of the same along with multiple banking arrangements, title verification and the search reports, the significance of R.O.C(Registrar of Companies), the process pre and post lending procedures that the bank undergo like the scrutiny and in depth analysis of the borrowers financial statements from CIBIL scores to D.S.C.R to Director background, due diligence etc and the end purpose of loan and most importantly the procedure and process of lending understood through agreements(ex- Multiple Facility Agreement, Term Loan Agreement etc.) and cross referring the same with the statutes governing like the Banking Regulation Act 1949, Transfer of Property Act 1882, Companies Act 2013, Insolvency and Bankruptcy Code and other important statutes.

Keywords-*bank lending, credit facilities, funded, non-funded, securities, borrowing, agreements, lending, debt recovery, enforcement, loans,, verification, reports, charges, due diligence, parties, contract, performance, default, repayment, finance, regulation, compliance, funds*

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Introduction

The banking regime and its related tools are spanning from a single party, a biparty and a tri party agreements and facilities which consists of various loan procedures that are executed on various conditions from the lender and towards the borrower. The lending procedure here is concentrated more on the corporate borrowing on a wider angle and is meant to showcase a basic and good understanding of how the facilities are made, who makes it? Why is it made? And at what conditions? The various statutes regulating the overall national and international loan procedures. The paper focuses mainly on the nature of the parties and the types of funds imbursed and its repayment through various banking forms and the contingencies arising upon the event of default or non- repayment of the loan which leads to the execution of securities and legal claim powers conferred on the lenders as a leverage against the borrowers. Banking and finance tool help shape the monetary policies, liquidity and the economy along with the catering of growing consumer/customer needs, where each borrower having different nature of needs and different facilities arranged for each of their needs as a single or multi-faceted arrangements accordance to the main 7 C's and 5 C's of banking in lending procedures.

Varieties of Bankers and Borrowers

Banks are of different nature and roles like the Commercial Banks which can be public, private and foreign or regional rural banks, cooperative or niche nature banks which can be banks based on credit basis and different digital levels[2]. Or specialized banks focusing priority sectors etc there are these umbrella of banks where the consumer base and their needs is different and the framework and target of each banks are different from each other. When it comes to borrowers the nature of each borrower are different and are recognized individually different and treated respectively under the eyes of law. A sole proprietor, partnership firm, L.L.P, Limited Companies, One person company, private trusts, societies etc are the various types of borrowers and more where intentions differ and the analysis of the bank on each other will be different based on the facilities advanced towards them. There are certain restrictions on the borrowing of these entities for ex- Section 180 where consent of shareholders needed, Section 185 where the director of a company is regulated from misusing of company asset and borrowing capacity in case of personal benefit, Section 2(77) defining

[2] H.R. Machiraju, Modern Commercial Banking (2d ed. 2008)

relative in company exempted upto a limit in private company but not when it comes to shareholding and membership or partner of the same relative in other company where investment is shifted and the borrowing limit of the company is set to be less that twice of its paid up share capital or 50 crore whichever is less this shows the regulations on such borrowers.[3]

Tools of Security and Creation in Banking Institutions

Securities are created by the bank through various banking tools which make the loan or determine the loan to be secured or unsecured which depends on the needs of the customer, the reputation of the customer and the report on the risk analysis based on his portfolio etc where the bank shall be flexible on the amount of loan advanced and the securities in exchange.

Lein- It is a legal claim or a holder a lender has over a borrowers asset in exchange for a said amount of money as loan in the lending process where the lein can be consensual backed by a lein agreement executed by both the parties[4], or non consensual and can be enforced by the court of law through filing of suits etc

Mortgage-Regulated and defined under the Transfer of Property Act, 1882 under Section 58 it is a transfer of an interest in specific immovable property for securing the payment of the money or to be advanced by way of loan and existing or future debt or aperformance agreement which gives rise to a pecuniary liability. Through a mortgage deed a mortgager receives money as soon as the interest is transferred through this same deed for a specific amount money.[5]

Assignment- Certain assets or interests are pledged as security for loan , mostly applicable in cases of lenders rights where the rights on the loan is transferred to another party through assignment agreements where the rights related to the loan such as the receival of the principal amount and related interest payments are transferred.

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[3]Rudresh Mandal & Siddharth Aiyanna, Leveraged Buy-Outs: Developing a Conducive Framework for Domestic Leveraged Buy-Outs in India: Lessons from the UK and South Africa, 41 Bus. L. Rev. 63, [Page 4] (2020).

[4]Mugasha, A. (2007) 'Loan participations: Legal relationships between the lead bank and participants, participants and borrower, and among participants', The Law of Multi-Bank Financing, pp. 271–340.

[5]Brasington, D.M. and Sarama, R.F. (2006) Deed types, house prices, and mortgage interest rates

Pledge-When the possession of a property is given to the lender as security and there is absolute possession over it, in exchange of advance of loan towards the borrower until the repayment of loan. In default the ownership stays with the lender

Hypothecation- The lender receives a legal claim over a movable property where the possession stays with the borrower in exchange for a sum of money but the movable property is pledged and only the possession is retained, default immediately affects the ownership.[6]

Non-Involvement of Security

Gaurantee- A 3 party contract a 3rd person surety promises to pay the lender if the borrower fails to pay it in the specified time period[7]

Indemnity- A 2 party contract where it is an agreement between one party to another party a promise to save in case of a financial loss it can be for a specific event or for multiple recurring events at which point the promisor can revoke the promise at any stage.

*(*A promise is a executory consideration where it acts as a legal value or a price for supporting the agreement*)*

These are some of the primary security tools created and used by the banks in case of lending process and accompanied by a step by step process where initially it starts with a proper execution of loan and security documents, not complete inset or partially blank, copies of loan agreements, amendments from the side of the borrower, all parties are included and joint in the agreement, nonproper authority, capacity determined to enter into such contract etc. Format, Date, Signature and stamp duty, Place of execution and attestation, mode of execution where it is depending on the type of borrower joint or single borrowers or different entity.

Fund Based and Non-Fund Based Facilities

Fund based loans are such loans where it offers financial resulting in situations where the physical transfer of funds from their accounts. [8]Encompasses capital funding where short term credit, cash credit, overdrafts, payment against documents, consortium loans, MBA's,

[6]Ann M. Burkhart, Lenders and Land, 64 Monthly labor review 1 (1999)
[7]Arthur L. Corbin, Third Parties as Beneficiaries of Contractors' Surety Bonds, 38 The Yale Law Journal 1 (1928); , https://doi.org/10.2307/790002
[8]Z. Jakab & Michael Kumhof, Banks are not intermediaries of loanable funds — facts, theory and evidence, Research Papers in Economics (2018)

demand loans, packing credit, bill discounting where this enables the cash flow and actual capital for business operations and additional facilities like Advances Repayable on Demand where limitation period set to 3 years and repayment done on demand of the lender towards the borrower are some of the facilities and backed by promissory notes and bill of exchanges[9].

Term Loans- Is a type of credit agreement where a borrower receives a set amount of miney and repaid over a established timeframe which is typically done on periodic repayments, Lump sum of cash paid upfront in exchange of specefic borrowing terms where the borrower agrees to a specific repayment schedule with a fixed or floating interest rates.

Short Term Loans- Generally less than one year or sometimes upto 18 months

Intermediate Term Loans- A period of 1-3 years and are paid in monthly installments

Long Term Loans- 3-25 years, the collateral or security are the assets of a company and require monthly or quarterly payments from profits or cash flow(Project Financing or Corporate Financing)

Baloon payments are done for short and intermediate term loans where a large lump sum amount is paid at the end of the loans term and the payments made an monthly or quarterly basis where the payment made for intrests[10](Intrests can be even capitalized and added at the end of the cooling period in construction projects and added on to the total loan payable, mostly during the period where the project is not producing any revenue or profits or cash flow)

{A general regulation law in banking is 15-25% of the bank which is a cap put considering the nature of the banking secured/unsecured or if it is a single borrower or a group borrower and also restricting a company from exceeding 60% of its total paid up capital and parallely maintaining the RBI regulations like the C.R.R and S.L.R of the bank}

The process of a term loan starts from the analysing of the requirments of the borrower- then application of the same for loan, credit appraisal process(The 5 C'S Character, capacity, collateral, capital and a deep risk review is undergone by the bank on the borrower so as to

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[9]Sankalp Jain, Legal Aspects of Banker-Customer Relationship: Loans and Advances, SSRN Electronic Journal (2012)

[10]Lindon J. Robison et al., An Analysis of Interest and Principal Payments, Interest Rates and Time in Common and Uncommon Loans Using Present Value Tools, AgEcon Search (University of Minnesota, USA) (1984)

ensure the lending out of the said loan facility is well secured and the borrower is able to pay back of the principal amount and the interests payable to the back as per the schedule of the bank)- due diligence- sanction and sanction letter- security creation- disbursement-monitoring- repayment-default and leading to enforcement/recovery

Project Term Loan(Project Financing)

This term loan is a specific long term debt financing method used by businesses to fund capital expenditures for setting up new venture or expansion of a new venture which mostly have a parent company and the existing form will not have credit history but a good project that promises good cash flow in future. It is primarily a multi party contract where there is a S.P.V(Special Purpose Vehicle) invested by government bodies, contractors, off takers where the lenders are given the special rights to step into take over the project if the SPV fails as the contract is directly made between the SPV within contractors and the lenders. The returns or the repayment starts once the project start to make money and profits and initiate the cash flow. The S.P.V is made so as to isolate the project risks and keep debt and liabilities offcharts of the parent company by keeping the balance sheets as the cash flow is the only way to repay the debt. This term loan is meant for a single project loan and funded by a lender. The assets of the project is kept as a security in case of default of payments, the credit worthiness of the project is more important than the project proponent, as well as the cash flow of the project which is a direct repayment of loan[11]. The company shall have a minimum of 30% equity in the S.P.V account and will only be liable to that.

- Construction Phase- No generation of revenue present; heavy spending cycle on gthe project and supervision of the budget is carried on to see if the budget is going over the projected amount
- Ramp-up-Phase- The operations start to begin and initial revenue starts to trickle in and the assessment of how quickly the project can scale in
- Operational Phase- Predicted revenue outflows

The D.S.C.R(Debt Service Covcerage Ratio)20-40% more cash than a loan payment should be made by the project as well as the D.S.R.A(Debt Service Reserve Amount)

[11]Willie Tan, Project Finance in Construction: A Structured Guide to Assessment, 29 Construction Management and Economics 1074–1075 (2011)

where is a locked amount where 6-12 months of debt payments are consolidated and kept as a safety in case of any contingencies.

Asset Acquistion Loan

Specialized funding used by the businesses to purchase specific physical or intangible assets like real estate, machinery, intellectual property or parts of another company with compliance to Companies Act, 2013 and decision of BOD and share holders agreement.

Corporate Term Loan (Corporate Finance)

A multi unit expansion and a lump sum financial facility provided by banks or financial institutions to business for a fixed term ranging from 1-7 or more years to fund large capital investments in case of long term projects or asset acquistions. It has more security and an entire corporate balance sheet connected as the parent company would be primarily indulged in the activity and directly housed in the said main operating company with no SPV present.

Working Capital Loans

Finance a company's day to day operations, like short time needs like payroll and rent and help manage periods of lower business activity and a good role in helping with business continuity, some firms does not need any submission of collateral if they have high credit ratings.

Cash Credit- Where the company may ask for wa revolving bank loan that lets businesses withdraw money upto a set limit to pay for daily operations, and the money you used shall only be accounted and only have to pay interest for the same/ or interest charged only on funds actively used.

Overdrafts(O.D)- A financial service where a bank lets you withdraw or spend more moni than you can actually spend, more than the minimum amount of money you have in the account, its either backed by a collateral or issues based on your credit score, the minimum balance can go below zero to negative and you have to pay a particular fees for the service given by the bank after the agreement between the borrower and the bank. Collateral submission changes in different types of O.D – Standard O.D where a charge is done against the borrower for each transaction excess of the account balance, Secured O.D where there is a specific collateral given for the vailing of O.D services, and Clean O.D where the services are availed based on pure personal connections of the borrower with the bank citing years of experience with each other and the also if the borrower have huge deposits lying the lender bank.

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Bill Discounting- A short terem working capital finance where a bank pays cash immediately for a unpaid invoice after a small fee deduction[12]

- Sales Bill Discounting- where on occasion of a seller selling his product to a buyer in advance and invoice given, the copy of the invoice is given to the financing bank to receive the funds immediately before the buyer pays the unpaid bill, once the buyer earns money, the same with ragards to the invoice is paid to the bank or the to the seller whichever convenient and holds back a percentage as discounting commission.
- Purchase Bill Discounting- Where a bank advanvces immediate payment to the supplier and the company pays the bank later along with the accrued interest. This helps the company to preserve cash run its operations and later pay the bank when the sales are finalised[13].
- Letter of Credit Bill Discounting- Bank advanced immediate cash to seller against a bill of exchange backed by a LC(Letter of Credit) issued by the buyers bank.

NON-FUND BASED LOANS

[12]Maija Vuorikari, Optimizing Working Capital Management from Processes Perspective, (2012)
[13]Astrid A. Dick, Demand estimation and consumer welfare in the banking industry, 32 Journal of Banking & Finance 1661–1676 (2008)

Non fund based loan facilities focuses on providing assurances and guarantees rather than immediate funding which has more of a future prospective where the promise comes into action once a contingency arises or a damage is inflicted on the borrower or it can be viewed as the leveraging of the banks own reputation to guarantee the borrowers payment or related financial obligations to a 3rd party ath this moment the facility is converted into cash

Section 126 of the Indian Contract Act, 1872 define guarantee- " A contract to perform the promise or discharge the liability of a third person in case of his default"

The bank is the guarantor, the one who is the creditor is the beneficiary and the applicant is the one who receives the loan. A contract of guarantee where it is a consequential in nature, main contract is a tri-partiate contract consisting the principal debtor, the surety and the guarantor where the money is taken for a performance of obligation, the party who advanced the money towards the Principal debtor and the bank being the financial institution who steps in when there is a default of performance on the debtors side.[14]

Non funded bank loan facilities are extended by banks what do not involve outgo of funds from the bank but on a later stage at a point of time on default the financial liability on arisal the bank facilities are crystallized on account of the payment of money to the beneficiary and bank being the guarantor[15]. The guarantee can be Inland and foreign in nature or financial and performative in nature which is for a definite period, a definite amount and a definite purpose. The N.F.B ensures trust between buyers and sellers through its different tools mainly- Letter of Credit and Bank Gaurantee.

Letter of Credit-In this the bank promises to directly pay the seller once specific trade documents are submitted and verified where the payment is assured directly to the seller; it's a payment guarantee. The Letter of credit also has a 'red clause' where in global transactions a specialized trade that allows an exporter to receive a cash payment from th buyers bank before the consignemnts are shipped acting as a unsecured pre shipment loan. Role of bankruptcy code and SARFAESI Act is crucial too[16]. UCP-600 is a uniform custom and practice for documentary credits where there are 39 international rules in place that regulate Letter of Credit regulations, it is used to standardize the rules governing L.C to standardize

[14]James O'Donovan & John Phillips, The Modern Contract of Guarantee (2003)
[15]Viral V. Acharya & S. Viswanathan, Leverage, Moral Hazard, and Liquidity, 66 J. Fin. 99 (2011)
[16]**Ivan Mihail Vincentiu, *Special Letter of Credit Arrangements*, 17 Annals U. Oradea Econ. Sci. Ser. 791 (2008).**

the transactions and benefit all parties and under a 5-Day rule examination the compliance is determined where commercial invoices where put in the name of the applicant and currency matching[17]

Bank Guarantee- A Bank Guarantee (BG) is a advanced non-fund credit based facility where a financial institution acts as a structural guarantor for a corporate borrower. Under a B.G, the bank offers a commitment towards paying a specific financial sum to a third-party beneficiary if the borrower fails to meet their contractual or payment terms causing a default or non performance. It can be a financial guarantee, performance guarantee, and deffered payment guarantee and the application of a onerous clause where the extension or auto renewal of the facility and the jurisdiction flexibility applicable. It can be executed only when the obligations are not met and claimed the bank intervenes. URDG 758 regulates the bank guarantees, enforced by a default document undertaking the default and them enforcing the performance or financial bank guarantees.

Consortium of Banks and Multiple Banking Arrangements

It is a design or an agreement in which one ore more banks jointly finance a borrower under a common agrrement mostly in cases of a large project or a credit arrangement. Banks beinga member of the consortium would share a common security in agreed patterns proportional to the lending participation. The entire security remain charged to each of the participating banks as an undivided interest but on a parri passu bases. A common loan documentation is done and the claims consists of value, limited to the extent of the loan participation. The role of Pari Passu Letter is essential where there are multiple bank lenders sharing a borrower; collateral exchange documents to show they hold equal rights and proportional claims on those assets, the pari passu principle manage the security rights of all the lender banks[18]. Which is coordinated by the Lead Bank in the consortium who forwards with the procedure and monitors and analyses the financial health of the borrower, conduction of joint appraisals etc. A common loan agreement or a Inter se agreement enables the consortium to work through a joint contract between the banks; collateral exchange documents to showkey they hold equal rights and proportional claims on those assets[19]. Once a default from the borrower is initiated the pro rata element in the agreement works where no single bank has an upper

[17]Janet Ulph, The UCP 600: Documentary Credits in the 21st Century, 2007 J. Bus. L. 355.
[18]Lee C. Buchheit & Jeremiah S. Pam, The Hunt for Pari Passu (Part II), Int'l Fin. L. Rev., Feb. 2004, at 47.
[19]Bernhard Ganglmair & Malcolm Wardlaw, Complexity, Standardization, and the Design of Loan Agreements (SSRN Electronic Journal, Working Paper No. 3205599, 2018

hand but will be renumerated with the help of the securities as per the loan participation/amount of loan disbursed against the borrower company, where they receive the pro rata cash.

Multiple Banking Arrangement where each banks deals independently there are no joint operations or agreements, a common structure or financial link between banks where interest rate and fees are competitively negotiated by the borrower individually. But regular information sharing from bank to bank regarding securities shall be done so as to counter and prevent over borrowing and asset stress[20]. Form CHG-1 under the Companies Act, 2013 is a official document that register the creation or modification of a charge on a company's assets or property with the R.O.C's to register new asset charges or update term of existing ones.

Foundation of Documents/Agreements in Loan Facilities

The MFA(Master Facility Agreement)is one of the agreements that acts as a single comprehensive loan agreement to access multiple different types of loan facilities under one framework and a crucial part of the lending cycle where it starts with the specification of parties to defenitions of each term in the agreement, obligations of both the parties, the repayment terms, the security or collateral pledged or kept as a exchange of financial advance towards the borrower with a set schedule, rule or covenants the borrower must follow, credit facilities granted are said to be governed by the terms and consitions specified in this multifaceted agreement, the payment schedule and notices, the relevant documentations required by the bank and its timely delivery by the borrower, all expenses undertook by the bank in the process reimbursed by the borrower, the hedging of foreign currency exchange and exposure, the limitations and regulations put on the borrower during the tenure of the credit facity between the lender bank and the borrowerin case of the availimng of facilities from other banks or facilities, the conditions at the event of default and consequences related, banks right to assign without any consent from borrower(which differs from bank to bank policies), the role of inter bank participation and other confidential information, the process of and classification of SMA(Special Mention Accounts) to NPA(Non Performing Assets)

[20]Agasha Mugasha, The Law of Multi-Bank Financing (1998).

from 30 days to 60 days upto 90 days ending with the schedules, sanction letter and the right of the banks to add addendums etc.[21]

Before the lending agreement is sanctioned the CIBIL/Credit History is tracked, existing borrowings are analysed then-

Debt Equity Ratio- Where the company's total liability and its shareholders equity are compared against each other and whether the company is relieving on borrowed money or owner invested capital and its dependency on the debt. D/E ratio helps the bank analyse the risk factor in advancing the lending facilities towards a particular company/firm, higher D.E Ratio denoted high risk of investment and company that is relying very highly on the financing from the banks facilities.[22]

D.S.C.R (Debt Service Coverage Ratio)- Where the company has the ability to cover the debgt payments with the operating income; whether business or property generates enough income to meet its debt payments and whether a firm can use its available cash flow to pay its current obligations where the net operating income is divided by the total debt service to find the total DSCR of the company. Similarly CADS(Cash available debt service) is used in project finance where the investors this to gauge the financial stability of the firm.

Interest Coverage Ratio- This render a company's solvency and ability to pay intrest on its debt dividing the earning before interests and tax (EBIT) by interest expense and to show how easily a company shall pay interest on its outstanding debt.---- EBIT(Earning before Interests and Tax)/Interest expense from Time A to Time B. Which evaluates the ability of the company on how long will it be able to pay the loans and if its earnings are a long run or a short run and how many times can it meet its interest payments and expenses in future[23]

- **EBITDA- Earning before Interest, Tax, Depreciation and Amortization**
- **EBIAT-Earnings before Interests after Tax**

Working Capital- N.W.C(Net Working Capital) where the amount of moni available to operate after deduction of correct liabilities from its current assets. Company having a

[21]Elvyra F. San Juan et al., Master Enabling Agreement(2000).
[22]Long-Term Debt, Debt-Equity Ratio (2012).
[23]Falk Bräuning et al., Interest Expenses, Coverage Ratio, and Firm Distress (Fed. Rsrv. Bank of Bos. Rsch. Paper Series, Current Policy Perspectives Paper No. 96664, 2023).

positive working capital generally has the potential to invest in growth and operation;where current assets<current liabilities then it shows a negative working capital and signals of bankruptcy and bad portfolio which leads to low chances of issuance of loan. The working capital received after that minimising of current liabilities from current assets show how much moni is remaining if it need capital for urgency for a short term or long term which helps the bank know the real financial health of the bank and forward with its risk assessment.[24]

Cash Flow- Movement of money into and out of a company over a certain period of time; if inflows are greater than outflows then net flow is positive. Where net cash flow found by minimising total cash outflow from total cash inflow, which helps the bank analyse the companys total liquidity profile, flexibility and the financial performance, more the cash flow more secured it is as a obligator and more assured return of total debt.

End Purpose of the Loan- The real purpose of the loan for what the borrower need the money for is investigated by the bank upto a limit, there are limits on how the bank can know how the borrower use the borrowed amount like personal loans used for home loan, car loan or any down payment or used for any illegal purposes like gambling are prohibited. The loan will be matched with your personal interest or needs and the products delivered as loan. It can also be used for debt consolidation where a high interest loan is replaced by a low interest loan for payment of principal amount and pending interest, maternity costs and related health expenditires, emergency or contingent situations, vacation expenses, home repairs or improvements etc are availed with the personal loan[25]

Title Verification, Search Reports and Importance of Due Diligence and Related Investigation

Title is the rights arising out of a lawful ownership of property, a thorough title search is how to ensure the clear and markable title and a verification of the same is done and a process to check and verify property documents for ascertaining of legal ownership of property and determination of facts in title of property which is done by a real estate attorney or a title search company mostly external aids or internal too, the same is produced on the basis of

[24]Hrishikes Bhattacharya, Working Capital Management: Strategies and Techniques (3d ed. 2014).
[25]Giancarlo Corsetti et al., Debt Consolidation and Fiscal Stabilization of Deep Recessions, 100 Am. Econ. Rev. 41 (2010).

verification. A full search which can even go upto 30 years and a limited search which is for short run. History, encumbarences, litigation pending, status of property etc is the wider scrutiny done[26]

- Ownership Details
- Chain of Title- Thelink of the documents given as security, the continuity of the transfer of ownership according to its past history is well scrutinized to avoid any future claims from third parties or to avoid litigation claiming ownership or title to property by any third parties.
- Derivation of ownership title- Sale/purchase, gift, inheritance, partition, lease arrangements etc.
- Nature of right of transferor
- Development and construction
- Active encumbrances?
- Litigation(Pending in court and past history too)
- Restrictions and allowances(It can be some social activities or any norms followed in the locality, real covenants on property like bye laws in a society setup, easmentary rights where there might be instances where right to way maybe enabled but the probability of installation of electricity or waterline pathways might be reserved which is checked)
- Public Notice(Any notices in action from public authorities)

Finally the search report where the details and particulars of the location, measurement and area, who is the real owner, records, deeds and related verifications of the authorities, nature of right of transferor and any other charges, liens, or dues on property all scutinized and reported.

[Addtl Info: Registrar of companies its registration power and functions regulated by the Companies Act, 2013 under Section 77 of the Companies Act, 2013 where the particulars of the charge share be registered with the R.O.C both domestic and foreign along with Section 83 of the Companies Act, 2013 the entries of certification in relation to mortgage and charges either debt paid and charge released wholely or partly, or released or closed

[26] Gunjan Lalitkumar Khatri, An Overview of Title Search Report, 3 Jus Corpus L.J. 595 (2022)

to be a part of the company in case of property, payment lapse all to agreement additionally Section 81 of the C.A, 2013 where the register of charges shall be kept with respect to every company and CHG-1Form, CHG-4 Form where charges requiring registration with ROC and satisfaction off charges said shall be filedand advance has been completely filled]

Due Diligence and Customer Due Deligence

A crucial process where a thorough research and analysis that an organisation has to or needs to perform while preparing for any business transactions ex- corporate merger or purchase of securities etc.It can be financial, legal where examination of contracts, the history of litigations, IP ownership and regulatory compliance which we had discussed before, operation D.D where assessment of the system and process etc, Commercial D.D market evaluation and consumer base etc. But in a broader and important categories of due diligence are the Hard Due Diligence and the Soft Due Diligence

Hard Due Diligence- The review of the objective, verifiable, and information documented which is more of like a facts of a company which is normally used for cross checking and the confirmation of the submitted facts to save a bank from any future financial or legal surprises after the end of transaction especially lending via loan facilities, a clean hard due diligence means more confidence for smoother transactions

Soft Due Diligence- This is a important crucial part where the documents doesn’t express a entities real character, its more of an interior information about the business entity its character and the individuals representing it and the function and culture of the team to analyse whether the design of the team in the firm are a good fit to deal with after the final transaction closes, to check the stability of the composition of the company and their intention more of a behind the veil investigation and a thorough understanding of the behaviour of the people in it.

<u>Customer Due Diligence- Understanding financial behaviour, verify customer identity, assessing risk and monitor ongoing transactions so as to counter anti money laundering and KYC(Know you Customer) to ensure compliance and prevent financial crimes from</u>

simple to standard and finally enhanced due diligence and the process of customer due diligence from identity collection, to verification, risk profiling and ongoing monitoring[27].

Statutes Dealing with the Process of Lending

Lending as a process are governed by a mix of central banking regulations, state specific money lending regulations and contract laws working hand in hand. Even though the banking business and related financial services are governned primarily by Banking Regulation Act, 1949 there are other statutes that mainly supplement and complement the banking activities .

Banking Regulation Act, 1949- Controls the lending limits, statutory reserves and the business forms a bank can undertake all these are primarily governed by the said act which regulates advances, loan facilities, protect depositors, ensure stability, improve governance and the operational rules.

Reserve Bank of India Act, 1934- It is the foundational statutory framework for India's central bank which focuses more on macroeconomic stability, currency management, monetary policies and credit control all around the entire economy of India also to ensure the flow of cash and liquidity in the market so as to keep the market stable through nationalised and private banks, the RBI can regulate the amount of cash in the market by regulating the lending facilities of the banks by increase or decrease of interests are one of the crucial tools.

Negotiable Instruments Act, 1881- The statute governs the legal usage and execution of the chques, bills of exchange and promissory notes in transactions, endorsement and enforcement of instruments that act as a substititution for cash or other performance. The importance of signing the cheques its filing etc[28].

SARFAESI Act(Securitisation and Reconstruction of Financial Assets and Enforcement of Security Intrest Act), 2002- Empowering the banks and financial institutions to seize and auction secured collateral without any judicial scrutiny, this acts as a powerful tool for

[27]Norman Mugarura, Customer Due Diligence (CDD) Mandate and the Propensity of Its Application as a Global AML Paradigm, 17 J. Money Laundering Control 76 (2014).
[28]Sarita Yadav, Legal Analysis of the Negotiable Instruments Act, 1881

lenders to furnish money at a shorter period of time from NPA'S(Non Performing Assets)[Those assets which are defaulted on payments for over 90 days, the possession shall legally be transferred to the bank when repayment not done in 60 days], this ultimately leads to public auction where the bank proceeds to sell/lease/assignment of rights of the property via e-auctions too.{Can be challenged via D.R.T(Debt Recovery Tribunal)}, but right will be fully extinguished as soon as the public auction is officially published[29]

Recovery of Debts and Bankruptcy Act, 1993- Specialized tribunals are set-up for the speedy recovery of debts due to banks, a dedicated legal mechanism that has speedy adjudication and recovery of unsettled loans to by-pass standard civil court processes and time periods

Insolvency and Bankruptcy Code, 2016- Serves as unified legal framework to resolve financial insolvency, where the system is shifted from a debtor in possession to a creditor driven model of resolution more like. Asset value and business continuity is prioritised over simple debt recovery, the insolvency jurisdictions is divided between two entities the NCLT(National Company Law Tribunal) and the DRT(Debt Recovery Tribunal) where one authority oversees the insolvency and restructuring for companies and other LLP's the other handles individuals and partnership firms[30]- freezing of assets, appointment of insolvency professional, committee of creditors where the entirety of company's financial lenders are comprised, the implementation of CIRP(Creditor-Initiated Insolvency Resolution process of upto 180 days are the procedures implemented via the said code and the institutions)

Companies Act, 2013- Where the corporate borrowing, board powers and resolutions, loans, guarantees and securities, investments and charges etc are regulated in the provisions of the act.

- Section 179(3)(d)- Power to borrow monies, the authority of the bank required to take a loan from a bank or a financial institution.

[29]Pooja Kumari, SARFAESI Act in Practice: Legal Efficacy, Judicial Trends, and Borrower Safeguards, 2 Advances Consumer Rsch. 965 (2025).
[30]Shivam Goel, The Insolvency and Bankruptcy Code, 2016: Problems & Challenges, Imperial J. Interdisciplinary Rsch., no. 5, 2017.

- Section 179(3)(f)- to grant loans or give guarantee/provide security in respect to loans, extend loans and to provide safety guarantees or collateral for third parties
- Section 179(3)(g)- approve the financial statement and boards report; the mandate of the board required before and cash reserves or properties parked into as securities or collaterals
- Section 180- The requirement of a special resolution from shareholders befor ethe board can act, where section 180(1)(c) the board cannot borrow money if the total proposed debt along with the existing debts will exceed the aggregate paid up share capital and security premium, seasonal loans are exempted and private companies are totally exempted.
- Section 185- Prohibition of loans to directors and related entities to stop insiders from redirection of funds for personal usage, or the advancement of loans to entities, firms in which the director has a personal interest in, where a special resolution is to be passed by the shareholders
- Section 186- Lend and invest of only upto 60 percentage if its paid up capital, free reserves, securities premium, mandate of special resolution, advancing of loans at intrest rates not lower than the prevailing yield of 1 year, 3 year, 5 year, or 10 year government securities, and investments cannot be routed through more than two layers of investment companies.
- Section 187- Investment of a company to be held in its own name, open for member inspection and scheduled bank can be a n exemption when it comes to the placing of securities outside company’s own name for collection of dividend or interest.

Indian Contract Act, 1872- The provisions from section 124 to section 147 of the act defines and outline the indemnity and guarantee procedures which as crucial in the lending process of a financial institution.

- *The contract of indemnity, Section 124*- the indemnification where one party(indemnifier) promises to save the other (indemnity holder) from loss caused to him by the conduct of the promiser himself or by other person is the contract of indemnity, the play of the surety- the person who gives the guarantee(gaurantor), principal debtor(borrower who defaults on the obligation), creditor(the lender to whom the guarantee is given), then the later provisons handle the co extensive liability of the surety with that of principal debtor in the contract on the event of default and the power of bank to sue both or any of the both parties, continuing guarantee like a overdraft facility or a running credit line, the revocation of the same continuing guarantee at any point of time, by death of the surety, discharge of surety, the overall process and parties involved in the guarantee and security and indemnification process, differing fund based and non fund based loans, the tools of security like mortgage, hypothecation deed, pledge, assignment, corporate guarantee, personal guarantee(usage of reputation but contract used too), pari passu charges through contracts are executed through the essentials and directions of the Indian Contract Act, 1872.[31]

The financial institutions or banks in India currently do rely on hybrid frameworks where traditional underwriting methods and extensive documentation is coexisting with rapidly evolving automated platforms from formal applications to rigorous document verification-ensuring systematic due diligence, compliance with financial statutes and legal regulations acting asa crucial safeguard for risk management. In my personal understanding of lending procedures the process of advancement of loan facilities both fund and non funded should have more structural balance and a higher degree of optimisation of internal workflows to reduce the administrative delays and higher efficiency along with the integrity in management of risk and legal frameworks. In case of loan facilities the nomenclature and procedures of the same should be made more easier and convenient to understand for the common laymen to interpret which might enable them to feel more safer and less insecure when it comes to undertaking the loans from banks which might increase the relation of the society as whole with the banks or other financial institutions. This work showcases the basic but crucial understanding of all essential elements that are needed to be understood to perform the lending processes as a student or a professional.

[31]Zlatko Salcic, Claims and Indemnification, in Export Credit Insurance and Guarantees: A Practitioner’s Guide 166 (2014).

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