

## SET OF LAWS FOR WARE HOUSE RECEIPTS FINANCING (IMPLEMENTATION OF NEGOTIABLE WAREHOUSE RECEIPT)

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### ABSTRACT

*Ware house receipt financing is witnessing transition of developmental phases. Initially it was started with godowns deposit receipts / bills and physical ware house receipts authenticated by collateral managers. Subsequently it was converted in electronic form of ware house receipts. It is financing against the inventory deposit at godowns by way of pledge of ware house receipts. Banking institutions are lending with margin ranges from 25 to 40 % against ware house receipts. When any of borrower i.e. manufacturer / processor, trader or farmers needs to sale the commodity, loan amount has to be paid to bank for the release of pledged commodities. Government of India established Warehouse development regulation Authority (WDRA) by passing Warehousing (Development and regulation) act 2007 act in parliament. Ware house development regulatory authority (WDRA) introduced negotiable warehouse receipts. That can be transferred from one owner to second owner like banking cheque. Two companies are nominated for implementation of NWR (negotiable ware house receipts) through WDRA i.e. national e-repository limited (NERL) and Central depository services (India) limited (CDSL). It is in nascent stage of implementation across India.*

**KEYWORDS:** *Negotiable Ware House Receipts (NWR), WDRA, NERL, CDSL.*

### Introduction

WHR loans are being mainly availed by three kind of borrowers i.e. manufacturers, traders and farmers. At loan maturity borrowers itself used to pay entire due amount or buyers may pay off the dues for release of pledged commodities. Commodities are being stocked usually three kind of ware houses i.e. Govt owned (Central or state), private ware houses and WDRA accredited godowns. Collateral managers are the mediators for hand holding of all kind formalities at warehouses reading stocking, fumigation, record maintains, lock and key possession other than govt. owned warehouses. If borrower fails to repay bank loans in that case banks can take possession of commodities through collateral managers and sell the commodities to set off the dues.

Some of emerging agricultural economies i.e. Ukrain, Indonesia and Brazil have implemented WHR financing system in advance stage since year 2000. WHR financing is not new for India; however it took momentum post endorsement WDRA act 2007. Earlier mainly farm credit was focus area, post harvest credit needs were not addressed by policy makers and lending institutions. It is having enormous possibilities for lending institutions to meet out their RBI prescribed priority sector advances.

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### Set of Laws for WHR Financing

- **Before Passing of the WDRA Act, 2007**

The warehousing business was regulated with laws of contract and contracting may decide the all term and conditions of contract agreement, that lead to lack of trust among the depositors and banks. Subsequently "warehouse receipts" domain under "title deeds documents" the sales Goods act, 1930 section ii (iv). But sanctity was given to receipts by law as negotiable instrument and no rights, obligations to holder of receipt and warehouse man. There were trepidation of default of loan amount, frauds and wrong doings of warehouse managers. All possible legal ways are time consuming and inadequate. Uniformity is not there in format of negotiable warehouse receipt. So there were obstructions in negotiability of Warehouse receipts that generating problems for all depositors and buyers of commodities.

- **Suggestions of Different Commission / Working Group**

- Reserve Bank of India set up AIRCSC (All India Rural Credit Survey Committee) in 1954 had suggested for:
  - ~ Scientific storage facility should be created near to harvest filed of farmers in order stop post harvest losses.
  - ~ Institutional credit facility to be provided to all farmers through negotiable receipts.
- In year 2000 the working group of World Bank in a study on "A Strategy for the Development of Warehouse Receipt System for Agriculture in India" had suggested bank can make low cost based warehouse receipts for lending to the agriculture sector.
- Subsequently, RBI Working Group on commodity futures and warehouse receipts in 2005 had also suggested introducing negotiable warehouse receipts like in other countries.

- **Passing of Warehousing (Development and Regulation) Act, 2007:** Although the basic transactions underlying warehouse receipt finance are simple and straightforward, a proper legal and institutional framework is quintessential to allow them to function smoothly and to attract a wide spectrum of participants and financial institutions. Such a framework contributes to reducing transaction costs and the risks of fraud, thereby instilling trust among stakeholders.

- **Profess of the Act**

The main purposes of the law were to launch of WDRA, warehouse receipt negotiability and prerequisites for regulation and development of warehouses. Govt. of India on 26/10/2010 established the WDRA with the following purposes and authorities:

- Warehousing business to be promoted by professional organizations.
- Various functions to be addressed i.e. registration of warehouse, renewal, modify, withdraw, cancel or suspend the registration and full fill the demands of warehouseman.
- To register, regulation and overall function of accreditation agency, cancel, suspend, renew such registration, and official's code of conduct of accreditation agencies regarding warehouse accreditation.
- Conduct of warehouse business to be promoted with efficiency.
- Regulation of the creation of charges, the process of pledge and enforcement thereof in value of commodities deposited in godowns.
- To conduct trainings for persons engaged in warehouse business and specify the qualifications with code of conduct.
- To decide the responsibilities and duties for the warehouseman. (Section 35)

WDRA is shouldering the responsibilities for issuance of negotiable warehouse receipts (NWRs) from WDRA accredited godowns with uniformity in order creates the trust among depositors and banks. Registration of warehouse should be there before issuance of NWRs In order to start issuing NWRs. It was expected that number of stakeholders such as insurance companies, banks, trade, financial institutions, commodities exchanges as well as consumers would be benefited by WDRA regulated NWRs.

- **Negotiability of warehouse receipts:** The law defined two kinds of warehouse receipts that may be provided, i.e. NWR and non- NWR. NWR, described in Section 2(m), indicates a warehouse

receipt under which the goods symbolized therein are deliverable to the order or depositor, the backing of which has the effect of reassign of goods represented thereby and the endorsee for which takes a good title and a non- NWR is described as a warehouse receipt other than a negotiable warehouse receipt. Therefore, warehouse receipts may be reassigning by simple signature. NWRs are transferred by endorsement and delivery i.e., the original owner /depositor or the holder in due course (transferee) can claim the commodities from the warehouse. NWRs can be sold, traded, swapped and used as collateral to support borrowing.

- **Registered warehouses:** The WDRA act specify that warehouse deals in NWR issuance, must be registered and accredited with WDRA.
- **Notified commodities:** 123 agricultural commodities has been notified by WDRA including oil seeds, cereals, spices, pulses, tea, dry fruits, coffee and rubber etc. as per other approved grading agency and the standards prescribed by the Agmark for issuing NWRs. Besides, 26 horticultural commodities have also been notified for issuance of NWRs by cold storages.
- **Negotiable Warehouse Receipts Regulations, 2011 by WDRA:** Prof. K. V. Thomas, former Minister of State (Independent Charge), for Consumer Affairs, Food and Public Distribution had introduced the NWR system in the country formally launched by on 26.04.2011 at New Delhi. The set of law for NWR are as follows:
  - Uniform standard format has been provided by the WDRA for issuance of NWR. Standard format be utilized by all WDRA registered ware houses.
  - The Sole repository of NWR books is WDRA in accordance of prescribed regulation in act. Control and maintain the records of such books to be done by WDRA; registered warehouseman can get issued the NWR books from WDRA or their authorized representative. Further NWR can be issued by registered warehouseman on behalf of WDRA. (Regulation 4)
- **NWRs: Interest to be charged on Warehouse based Financing:** Rate interest should not be less than MCLR (marginal cost of funds based lending rate), though, interest subvention benefit can be transferred as per Central Government extant guidelines on agriculture interest subvention scheme, to avoid distress sale.
- **Transaction in NWRs:** Electronic warehouse receipts have been supporting trading the Intercontinental Exchange and the London Financial Futures and Options Exchange via operation processing of electronic commodity and guardian systems for all exchange deliverable warrants for about a decade. Major source of revenue in India from electronic warehouse receipts is by way of pledge, though, national level commodity exchanges like NMCE (National Multi Commodity Exchange), NCDEX (National Commodity and Derivatives Exchange Limited), MCX (Multi Commodity Exchange), ICE (Indian Commodity Exchange) are linked with central warehousing that deal with commodities future including agricultural commodity future. WDRA granted license to Bombay Stock Exchange- promoted depository, Central Depository Services (India) and the National Stock Exchange anchored- NCDEX to set up repositories. Electronic trading of NWRs can be possible with this infrastructure and with the repositories in place, In charge electronic NWRs will be WDRA- regulated warehouses, delivering them and the quality of commodities. Worldwide, various models are espouse for warehouse receipts and its record keeping. Australia has a de-centralised warrant system, warehouse companies are maintaining the ownership information and receipts issued by them are tradeable. The other model is central system having ownership information maintained for all exchange deliverable warrants. In all the cases, electronic trade be done by the owners of the commodity or use the warrants to secure repossession through financing arrangements.
- **Advantages of NWRs**
  - Refinancing and trading easily can be done through negotiable receipt.
  - NWR trading is possible on secondary markets, for example commodity exchanges, Big pool of capital may be attracted into commodity financing, other than bank lending.
  - Once the trust will be established on this system, it may replace physical delivery system and will easily to integrate with trading on an electronic exchange.
  - Future contracts basis can be developed for forward delivery of commodities in hedging market.

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