

DEBT RECOVERY TRIBUNAL: AN ANALYSIS

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Banks and financial institutions had been experiencing considerable difficulties in recovering loans and enforcement of securities charge with them. The procedure for recovery of debts due to the banks and financial institutions was slow and resulted in a significant portion of the funds being blocked.

The Committee on Financial Systems, headed by *Shri M Narasimhan*, had considered the setting up of the “special tribunals” with special powers for adjudication and speedy recovery of such matters as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay.

In 1981, a committee under the Chairmanship of *Shri T Tiwari* had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of special tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. Consequently, the Recovery of Debts Due to Banks and Financial Institutions Act 1993 in short DRT Act was passed. Keeping in line with the international trends on helping financial institutions recover their bad debts quickly and efficiently, the Government of India has constituted thirty three Debts Recovery Tribunals and five Debts Recovery Appellate Tribunals across the country.

The Debts Recovery Tribunal (DRT) enforces provisions of the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993 and also Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002.

Purpose: The fundamental purpose of the 1993 Act was to remove claims of banks and financial institutions from the ordinary form to specialised tribunals. The avowed purpose of the statute was to ensure the speedy disposal of claims of banks and financial institutions intended to be governed by

it¹. The rationale behind the Act is contained in the Tiwari Committee Report, which stated: “The civil courts are burdened with diverse types of cases. Recovery of dues due to Banks and Financial Institutions is not given any priority by the civil courts. The Banks and Financial Institutions like any other litigants have to go through a process of pursuing the cases for recovery through civil courts for unduly long periods.” The preamble of the Act provides for the establishment of tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto².

Under the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993 banks approach the Debts Recovery Tribunal (DRT) whereas, under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002 borrowers, guarantors, and other any other person aggrieved by any action of the bank can approach the Debts Recovery Tribunal (DRT).

Appeals against orders passed by Debts Recovery Tribunal (DRT) lie before Debts Recovery Appellate Tribunal (DRAT). Each Debts Recovery Tribunal (DRT) is presided over by a Presiding Officer. The Presiding Officer of a Debts Recovery Tribunal is the sole judicial authority to hear and pass any judicial order.

Each Debts Recovery Tribunal has two Recovery Officers. The work amongst the Recovery Officers of a Debts Recovery Tribunal (DRT) is allocated by the Presiding Officer of the Tribunal. The Debts Recovery Tribunal (DRT) is fully empowered to pass comprehensive orders and can travel beyond the Civil procedure Code to render complete justice. A Debts Recovery Tribunal (DRT) can hear cross suits, counter claims and allow set offs. However, a Debts Recovery Tribunal (DRT) cannot hear claims of damages or deficiency of services or breach of contract or criminal negligence on the part of the lenders. In addition, a Debts Recovery Tribunal (DRT) cannot express an opinion beyond its domain, or the list pending before it. The Debts Recovery Tribunal can appoint Receivers, Commissioners, pass ex-parte orders, ad-interim orders, interim orders apart from powers to Review its own decisions and hear appeals against orders passed by the Recovery Officers of the Tribunal³.

¹ Shivnath Tripathi, *Debt Recovery Tribunal Vis a Vis Civil Court*, Social Science Research Network, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2281384 Accessed on 25th April, 2016, 01:50 PM

² Neelanjan Maitra, *Debt Recovery*, <http://www.claonline.in/UserAdmin/DisplayArticle.aspx?ID=NDE5> Accessed on 28/04/2016, 12:22 AM

³ *Debt Recovery Tribunal*, <http://bankdrt.net/> Accessed on 26/04/2016, 10: 22 AM

DEBT RECOVERY TRIBUNAL

With the enactment of the DRT Act, the banking sector expected that most of the NPAs would be easy to recover, as against the conventional system of recovery of loan through civil courts, where considerable time, money and efforts were required to recover debt. However, in spite of DRT Act, on account of non-realisation of the NPAs, the Banks and Financial Institutions were facing problems relating to liquidity and asset liability mismatch, since their assets were blocked for considerable time in unproductive asset⁴. There was no legal provision for facilitating securitisation of financial assets, and banks had no power to take possession of securities created in their favour in order to secure the facilities. This led to further reforms in the process and curtailing the delay in adjudication.

In furtherance of financial reforms and extending the object of RDDBFI Act, 1993, the Government has enacted The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is the SARFAESI Act that brought a greater change in the debt recovery scenario in the country. One of the important changes that SARFAESI has brought is that it allowed the banks (according to Sec.13 SARFAESI) to take over possession from the defaulter, without going through the stringent court procedure, once the loan account has been categorised as a NonPerforming Asset⁵.

Definition: Section 2(d) “bank” means- (i) banking company; (ii) a corresponding new bank; (iii) State Bank of India; (iv) a subsidiary bank; or (v) a Regional Rural Bank;

Section 2(h) “financial institution” means- (i) a public financial institution within the meaning of Section 4A of the Companies Act, 1956 (1 of 1956); (ii) such other institution as the Central Government may, having regard to its business activity and the area of its operation in India by notification, specify;

Section 2(g)⁶ “debt” means - any liability (inclusive of interest) which is alleged as due from any person by a Bank or Financial Institution or by a consortium of Banks. But, it should be subsisting one and recoverable also. Since the Act is a fiscal law, the delegated authority i.e. the Tribunal has to act strictly within the parameters of the authority delegated to it under the Act. Jurisdiction conferred

⁴ ICSI, *Debt Recovery Tribunal*,

<http://www.icsi.in/Study%20Material%20Professional/NewSyllabus/ElectiveSubjects/BL.pdf> Accessed on 30/04/2016, 11:30 PM

⁵ CPPR, *A Study on the Effectiveness of Remedies Available For Banks in a Debt Recovery Tribunal*

<http://www.cppr.in/wp-content/uploads/2012/10/A-STUDY-ON-THE-EFFECTIVENESS-OF-REMEDIES-AVAILABLE.pdf> Accessed on 26/04/2016, 4:50 PM

⁶ Section 2 of the *Recovery of Debts Due to Banks and Financial Institutions Act, 1993*,

<http://www.dratt.nic.in/Docu/RDDBFI-Act.pdf>

in relation to debt is a very special kind of jurisdiction conferred upon the Tribunal and is strictly limited in extent though; without doubt the ambit of the powers exercisable within those limits is wide⁷.

Jurisdiction of debt recovery tribunals: The term 'jurisdiction' means the authority to enforce laws or pronounce legal judgments. Section 1(4) of RDDB Act, 1993 deals with pecuniary jurisdiction of the Tribunal providing that the Tribunal shall be lacking jurisdiction to deal with the case of a Bank or a Financial Institution if the crystallized liability is below one lac rupees. Thus following conditions will be necessary for ousting a claim from jurisdiction of the Tribunal⁸.

(a) when the amount of debt has been less than "Rs. 10 lakhs"; or such other amount has not been less than one lakh rupees;

(b) for both the purposes the specification by the Central Government through notification is necessary; as a condition precedent.

"Section 17 – Jurisdiction, powers and authority of Tribunals.–(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions."

Section 18 bars the jurisdiction of all courts in relation to the matters specified in Section 17 (except of the Supreme Court and of a High Court under Articles 226 and 227 of the Constitution).

The most relevant section is **section 34** which is reproduced below:

Act to have over-riding effect.--(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Delhi High Court in *Cofex Exports Ltd. vs. Canara Bank*⁹ opined that Debt Recovery Tribunal is not a court but is a Tribunal having been created by a statute vested with a special jurisdiction to try only applications by banks or financial institutions to recover any debt. Although having regard to the provisions contained in clauses (a) to (b) of sub-section (2) of Section 22 of the Act it had all the trappings of a court but it was held not to be a court as such.

⁷ G. S. Dubey, *The Term 'DEBT'; Its Definition, Scope Before Debts Recovery Tribunal – An analysis*, <http://www.manupatra.co.in/newsline/articles/Upload/6FDEB5C4-14EF-48ED-B223-19A4003D8410> Accessed on 30/04/2016 07:30 PM

⁸ *Dena Bank Kolkatta v. High Tech Engineering Systems & Others* 2004 (3) Bank CLR 18 DRT (Kol.)

⁹ AIR 1997 Delhi 355

It was held by the Supreme Court in the judgment of *Ranjan Chemicals Ltd*¹⁰ that a court has the power in an appropriate case to transfer a suit for being tried by the DRT.

Remedy: Withdrawal of the original application pending before the DRT under *RDB Act, 1993* is not a pre-condition for taking recourse to the SARFAESI Act. It is for the banks/FIs to exercise its discretion as to cases in which it may apply for leave to withdraw and cases in which it may not do so.

Difference: The main difference between RDDBFI Act, 1993 and SARFAESI Act, 2002 is as follows: The RDDBFI Act, 1993 enables the Bank to approach the Tribunals when the debt exceeds the prescribed limit i.e. Rupees Ten Lakhs. Under RDDBFI Act, 1993, the Debt Recovery Tribunal will adjudicate the amount due and passes the final award. Whereas, the SARFAESI Act, 2002 provides a procedure wherein the bank or financial institution itself will adjudicate the debt. Only after adjudication by the bank or financial institution, the borrower is given right to prefer an appeal to the Tribunal under SARFAESI Act, 2002. The Banks or Financial Institutions can invoke the provisions of SARFAESI Act, 2002 only in respect of secured assets and it should come under the definition of NPA and the amount of due must exceed Rupees One Lakh NPA loan account is more than twenty percentage of the principal and interest and not all loan¹¹.

RECOVERY OF DEBT OF COMPANY IN WINDING UP

Leave of the Company Court for transfer of cases

There is no need for a bank or FI to seek leave of company court (the tribunal i.e. NCLT) to proceed with its claim before the DRT or in respect of the execution proceedings before the Recovery Officer against a company in liquidation. Nor can the proceedings be transferred to the Company court¹².

One of the earliest cases where the aspect of the overriding effect of the Act was faintly mentioned was in *Industrial Credit and Investment Corporation of India Ltd v. Srinivas Agencies*¹³ where the

¹⁰ *State bank of India v. Ranjan chemicals Ltd. And anr* (2007) 1 SCC 97, cited from Shivnath Tripathi, *Debt Recovery Tribunal Vis a Vis Civil Court*, *Social Science Research Network* (25th April, 2016, 01:50 PM) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2281384

¹¹ Sabjeet Singh Jabbal, *Recovery of dues by banks*, <http://www.legalindia.com/recovery-of-dues-by-banks/> Accessed on 22/04/2016 02:30 PM

¹² C. R. Datta, *C R Datta On Company Law*, 6th Edition 2008 Lexis Nexis, Page No. 6180

¹³ (1996) 86 Comp Cas 255 (SC)

issue of whether leave should be granted by the Company Court to continue proceedings in other civil courts and whether all proceedings should be transferred to the Company Court. The court was of the view that the approach to be adopted by the Company court does not deserve to be put in a straightjacket formula. The discretion to be exercised has to depend on the facts and circumstances of each case. While exercising this power, the Company Court should also bear in mind the rationale behind the enactment of the RDDBFI Act¹⁴.

The non-obstante clause

The non obstante clause in the RDDBFI Act and the non obstante clause in the Companies Act were considered in *Industrial Credit and Investment Corporation of India Ltd v. Vanjinad Leathers*¹⁵ where the court opined that Section 18 of the Act creates a bar on jurisdiction of other authorities and courts except the Supreme Court and High Courts under Articles 226 and 227 of the Constitution. The court also stated that the RDDBFI Act and the Companies Act is special legislation¹⁶.

Assets in custody of Liquidator- DRT may take inventory

Where a company is under liquidation and a Provisional Liquidator has been appointed, the DRT exercises its powers under Sections 19(18)(e) of RDB Act and appoints an Advocate Commissioner for preparation of an inventory of the assets and properties of the company in liquidation. Prior leave of the company judge i.e. the Winding up Court or the Company Court [the Tribunal (NCLT)] under the provisions of the Companies Act is not necessary. The DRT undoubtedly possesses power to give limited directions to the liquidator to co-operate with the Advocate Commissioner appointed by it under Section 19(18)(e) of the 1993 Act to take the inventory. The liquidator should comply with the directions¹⁷.

Right of Official Liquidator- Pari passu distribution

The company court has the right to ensure that the distribution of the Assets in terms of Section 326 of the Companies Act. The official liquidator represents the entire body of creditors and also holds rights on behalf of the workers to have a distribution pari passu with the secured creditors and the

¹⁴ M L Tannan, *Tannan's Banking: Law and Practice in India*, Lexis Nexis Butterworths Wadhwa, Nagpur, 23rd ed., 2010, Page No. 1984

¹⁵ AIR 1997 Kerala 273

¹⁶ M L Tannan, *Tannan's Banking: Law and Practice in India*, Lexis Nexis Butterworths Wadhwa, Nagpur, 23rd ed., 2010, Page No. 1984

¹⁷ M L Tannan, *Tannan's Banking: Law and Practice in India*, Lexis Nexis Butterworths Wadhwa, Nagpur, 23rd ed., 2010, Page No. 1985

duty for further distribution of the proceeds on the basis of preference contained the Companies Act under the direction of the company Court. In other words, the distribution of the sale proceeds under the directions of the company court is the responsibility of the official liquidator. To ensure the proper working out of the scheme of distribution, it is necessary to associate the Official Liquidator with the process of sale so that the Official Liquidator can ensure, in the light of the directions of the company court, that a proper price is fetched for the assets of the company in liquidation.

Sale of Assets after winding up-Sick Company-Jurisdiction

The BIFR or AAIFR has no jurisdiction regarding disposal or sale of assets or properties of the Sick Industrial Company after the winding up order has been passed by company court (NCLT). After the commencement of liquidation proceedings no Authority, e.g., the BIFR or DRT, has any right to proceed against assets of the company without leave of the company court and associations of the official liquidator attached to the H.C.

Function and position of official liquidator

The official liquidator has a duty coupled with the power to institute or defend any suit prosecution or other legal proceedings both civil and criminal in the name and on the behalf of the company. Such power includes the power to carry on the business of the company so far as may be necessary for the benefit of the company in liquidation. The position of official liquidator is essentially that of an agent employed for the purpose of winding up a company. As the determination of the claim of the workmen should be also done along with the claim of the secured creditors before DRT it is necessary for the official liquidator in the interest of the workmen to participate in the proceedings before the DRT. The official liquidator has the duty to represent effectively in the proceedings before DRT for distribution of the sale consideration to the secured creditors, workers and shareholders of the company¹⁸.

Recovery certificate issued by DRT

Once a Recovery Certificate is issued by the DRT in respect of the Secured Assets in favour of the banks and FI and which is the subject matter of the Recovery Certificate, the Recovery officer and particularly DRT have exclusive jurisdiction and the Company Court (NCLT) cannot through the

¹⁸ M L Tannan, *Tannan's Banking: Law and Practice in India*, Lexis Nexis Butterworths Wadhwa, Nagpur, 23rd ed., 2010, Page No. 1985

official liquidator in winding up of the company dispose of the immovable properties of the company secured in favor of the Banks and FI and distribute sale proceeds thereto.

In the **Allahabad Bank case**¹⁹, the Supreme Court was called upon to decide the issue relating to the impact of the provisions of RDB Act on the provisions of the Companies Act, 1956. Sc held that-

1. Adjudication under RDB act is exclusive and jurisdiction of civil court and company court is ousted.
2. DRT proceeding can't be stayed by company court nor can be transferred to the company court.
3. In respect of moneys realised under DRT act out of the assets not charged, distribution between bank/FIs or other creditors, when no winding up order is passed against the company, the priorities have to be decided subject to the principles underlying section 73 of CPC and principles of natural justice.

CONCLUSION AND SUGGESTIONS

With the objective, therefore, of providing banks and financial institutions with a speedier and more efficient mode of recovery of debts, the legislature has provided for the establishment of special courts for the purpose, designating them as Debt Recovery Tribunals.

Lack of judicial training for recovery officers as they are officers appointed by the GOI for assisting the presiding officers, inconsistent procedures followed by different DRTs, significant delay in proceedings as the recommended time is six months, whereas proceedings actually last for two years or more, are some of the reasons for ill working of DRTs.

The functioning of DRTs needs to improve to ensure banks are able to recover their existing loans and offer fresh advances at cheaper rates. In the current scheme, there is no mechanism in place to ensure that the tribunal disposes the case in a timely manner. There is a strong need to bring in more accountability for the DRT.

There are small number of DRTs and Debt Recovery Appellate Tribunals, where judgments of DRTs can be appealed. While there are 33 DRTs, there are only five Debt Recovery Appellate Tribunals in

¹⁹ Allahabad Bank v. Canara Bank, (2000) 101 Comp. Cas. 64 (SC)

the country. There is certainly a need for more number of DRTs. The biggest challenge, it appears, is their ability to deal with a subject with speed. The system that was designed is clearly not working. Probably, there should be a feedback mechanism and people involved with DRTs should be encouraged to point out the areas of pain.

Our judicial system is both clogged and inadequate in infrastructure, which slows down any redressal process. Recovery can be speeded up only when there is a fixed time-frame for all disposals, and realisation of assets could be speeded up by having special courts to deal with such recoveries.

The functioning of DRTs is also keeping the Reserve Bank of India (RBI) worried. If bankers cannot get their money back, they are not going to give loans at cheap price. So, making sure debt recovery tribunals work better, making sure that we don't have excess number of stays, excess number of appeals – this is also needed to be focused.

Finally, the law should be strengthened to ensure mandatory time-bound disposal of cases. Also, performance indicators of the adjudicating officer could be used to improve the efficiency of the system. And, stay petitions should be analysed before being accepted as there have been instances where advocates exploit the loopholes of the Act and plead for stays, leading to piling up of cases.