CONSTITUTIONALITY OF RECOVERY OF DEBT DUE TO BANKS AND PUBLIC FINANCIAL INSTITUTIONS ACT,1993

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ABSTRACT

This research paper extensively deals with the law on Recovery of Debt Due to Banks and Public Financial Institutions Act,1993. There was a need for such an act due to the dynamic change in the economics and less liquidity in the markets, hence the masses rely on banks for loans in return the bank charge interests. With high volumes of such transaction huge defaults started to occur which hamper the liquidity and the market conditions therefore the parliament came up with enacting the act by the authority of which the banks and various financial institutions have a way to be repaid. The major focus is on the act and its constitutionality so challenged in the case of Union of India V. Delhi High Court Bar Assn. The act provides for establishment of tribunals which are to adjudicate on banking related matters only. The act is a procedural law and is a special act meaning formed for a specific nature of litigation. The paper deals analytically with the constitutionality of the act keeping in mind its objective, the very important two amendment acts that is of 1995 and the year 2000, which brings about changes in the act that removes the various lacunas present. The judgment is extensively dealt issue by issue while analyzing the reasoning behind why its constitutionality was challenged as violating to Article 14 of the constitution of India.

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INTRODUCTION

Accepting deposits and granting loans are important functions of any commercial bank which is duly registered with the Reserve Bank of India. Such a facility is available for individuals as well as entities (borrower). Banks and Financial Institutions are having difficulties in recovering such loans and enforcing securities charged against such loans. The banks, thus, can approach judicial forums for recovering of its loan and any unpaid interest due on such loan which, of course, is a lengthy process resulting in the blockage of funds. Keeping in view, the Government of India constituted a committee in 1981 headed by Mr. T. Tiwari to review the procedure of recovery. The committee suggested for constitution of a quasi-judicial body exclusively for banks and financial institutions. Again in 1991, another committee was setup under the chairmanship of M Narasimham which endorsed the view of 1981 committee and recommended constitution of a body for speedy disposal of cases relating to banks and financial institutions.

On the basis of suggestions provided by this committee, the Recovery of Debts due to Bank and Financial Institutions Bill, 1993 was introduced in the Parliament. The said bill was passed by the parliament and subsequently Debts Recovery Tribunals (DRT) and Debts Recovery Appellate Tribunals (DRAT) have been formed to quickly dispose-off the recovery cases & for expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for matters connected therewith.

However, the provisions of the act were challenged on the ground of being constitutionally invalid. The Supreme Court held it to be constitutionally valid considering the various amendments made in the act.

OVERVIEW OF THE DRT ACT

The Debt Recovery Tribunal act, also known as the recovery of debts due to banks and financial institutions act, was passed by the parliament with the object of constituting Debt Recovery Tribunal (DRT) & Debt Recovery Appellate Tribunal (DRAT) for expeditious adjudication

and recovery of debts due to Banks and Financial Institutions and for matters connected therewith. The act shall be deemed to come into force on the 24th day of June, 1993.

Preliminary

The act extends to whole of India except state of Jammu and Kashmir for an amount of debt which is not less than ten lakh rupees. However, the central government may by notification specify other debts which are more than one lakh but not less than it. [i]

Establishment of DRT and DRAT

As per Section 3, the central government shall by notification, establish one or more tribunals, and specify the area of their jurisdiction.[ii] The DRT to consist of one single member, appointed by the central government, who is the presiding officer of the tribunal. The central government can also empower the presiding officer of one tribunal to discharge the functions of presiding officer of another tribunal.[iii] The presiding officer, however, should be qualified to be a judge of district court[iv] and shall hold the office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty two years of age.[v] The review of courts and tribunals by the superior court *via* appeal is the basic principle of an effective judicial system. Debt Recovery Appellate tribunal is the appellate body to be formed by central government to hear the appeal arising from an order of debt recovery tribunal. The appellate tribunal shall consist of one single member as a chairman, who is or has been, or is qualified to be, a Judge of a High Court or has been a member of the Indian Legal Service and has held a post in Grade I of that service for at least three years; or has held office as the Presiding Officer of a Tribunal for at least three years.[vi]

***Jurisdiction, Powers and Authority of tribunals*.**

Under Section 17, the tribunal shall exercise its power, authority and jurisdiction to entertain and decide applications from the financial institutions and banks for recovery of debts due to such financial institutions and banks. The appellate tribunal shall entertain appeals arising of any orders made or deemed to have been made by DRT. Section 17 A gives power to chairperson of an appellate tribunal to superintendent and control over the Tribunals under his jurisdiction and can transfer any case from one tribunal to another for its disposal.[vii] Further, Section 18 puts a bar on jurisdiction on courts or other bodies, except Supreme Court and High Court, to entertain matters specified in Section 17.[viii]

***Procedure to be followed by tribunals*.**

Under Section 19, any bank or financial institution, which has to recover any debt, may make an application to the tribunal within the local limits of whose jurisdiction:

a. Business or personal related work is done by the resident defendants on a voluntary basis; or
b. When there are more than one defendants, any of the defendants at the time of making an application voluntarily and actually residing carries on business or personal work for; or
c. the cause of action, arises wholly or jointly.[ix]

The aforesaid Section also allows the other banks or financial institutions to join the applicant bank or financial institutions to recover the debts due to it provided the application has been filed under sub-Section and against the same person. The tribunal, on receipt of application under sub- Section (1) and (2), shall issue summons requiring the defendant to show cause within 30 days of the service of summon and state as to why the relief should not be granted. The tribunal shall present the written statement of his defence at or before the first hearing or within such time as tribunal may permit. In case of a claim to set off by the defendant, of any ascertained sum of money legally recoverable by him, he may present a written statement at the first hearing but not afterwards unless permitted by tribunal. Such a written statement will be having the same effect as a plaint in a cross-suit so as to enable the tribunal to pass a final order in respect of both of the original claim and set off. Under sub-Section (6) in cases of counter claims the defendant in addition to right of set-off can file an application in respect of any right or claim or a cause of action arising to the defendant against the applicant before the time limited for the delivery of his defence or expired or before the defendant delivers his defence by virtue of which such counter claim shall have the same effect as a cross-suit. The applicant bank or financial institution is at liberty to file a written statement against the counter-claim of the defendant within a time fixed by the tribunal. The applicant bank can also apply to the tribunal to pass an order that such a counter-claim may be excluded and resolved in an independent action.

The tribunal may also pass an interim order against the defendant to debar him from alienating, transferring or otherwise dealing with, or disposing of any property and assets belonging to him without prior permission of the tribunal. [x] Further, if the tribunal is satisfied that the

defendant is about to dispose or remove or is likely to cause any damage or mischief to the property or any part of property, it may require the defendant to furnish a security in sum, as specified by it. Section 19 (13A) also require the defendant to appear or show cause, if he is not able to furnish security and in case the defendant is unable to show cause as to exempt himself to not to furnish security or even fails to furnish the required security within the stipulated time fixed by the tribunal then the tribunal may by order attach the whole or such portion of the properties of the as claimed by the applicant to be secured in his name or maybe owned by the defendant as the case maybe to satisfy the certificate for the recovery of debt[xi]. Further, if any attachment is made without complying with the provision of sub-Section 13, it shall be void.[xii] If the order made by the tribunal is disregarded or there is a breach of any terms on which the order is made, the tribunal may order for the attachment of property of the person guilty and may also order such person to be detained in the civil prison for a term not exceeding three months unless released by the tribunal. The tribunal may pass an order with regard to the property including appointment of a receiver, remove any person from the possession or custody of the property, confer upon the receiver all such powers, as to bringing and defending suits in the courts, commit the same to the possession, custody or management of the receiver. In order to meet the end of justice, an opportunity of being heard to be given to both the applicant and the defendant before passing an order. Finally, the tribunals shall dispose of the application within one hundred and eighty days from the date of receipt of application so as to expeditiously deal with the matter.

Any party aggrieved from the order passed by the tribunal may file an appeal in Debt Recovery Appellate Tribunal provided it is filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made unless there appears to be a sufficient cause for not filing it within that period. However, no such appeal shall lie against an order made by the tribunal with the consent of the parties. The appellate tribunal, after giving an opportunity of being heard, may pass such order as it thinks fit confirming, modifying, or setting aside the earlier order along with sending a copy of every order made by it to the parties to the appeal and to the concerned Tribunal. The appellate tribunal has to deal with the matter as expeditiously as possible and pass an order not later than the six months from the date of receipt of appeal.

Though the tribunal and appellate tribunal are not bound to follow the procedure laid down by code of civil procedure, 1908, it has to follow the principle of natural justice. Further, in entertaining matters filed before the tribunal and appellate tribunal, it shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the matters enlisted there.[xiii] With regard to the limitation, Limitation Act, 1963 shall apply to an application made to a Tribunal.[xiv]

Recovery of debt determined by tribunal

Section 25 provides that the recovery officer shall, on receipt of copy of the certificate under sub-Section (7) of Section 19, proceed to recover the debt amount by one or more of modes including attachment and sale of the property, arrest of defendant or appointing a receiver for the management of the properties (movable and immovable) of defendant.[xv] Section 28 deals with the other modes of recovery including deductions.

Section 31 deals with the transfer of pending cases as per which every suit or proceeding pending before any court, immediately before the date of establishment of a Tribunal, shall stand transferred on that date to such Tribunal provided it shall not apply to any appeal pending before any court. Section 34 gives an overriding effect to this act over other acts however the provision of this act or rules shall be in addition to, not in derogation of, Industrial Finance Corporation Act, 1948, the Unit Trust of India Act, 1963, the State Financial Corporations Act, 1951, the Sick Industrial Companies (Special Provisions) Act, 1985, the Industrial Reconstruction Bank of India Act, 1984, and the Small Industries Development Bank of India Act, 1989.[xvi]

OBJECT AND PURPOSE OF DRT

In 1981, a committee was formed to examine the legal hardships faced by banks and financial institutions. The committee gave various suggestions including establishment of special tribunals with special power for recovery of dues to the banks and financial institutions by following a summary procedure. The committee also suggested adjudication of matters and speedy recovery as important to the successful implementation of the reforms.

In September, 1990 more than about 304 cases filed by the financial institutions and fifteen lakhs of cases filed by the public sector banks were pending in various courts, recovery of debts about Rs.391 crores of dues of the financial institutions and involved more than Rs.5622 crores in dues of Public Sector Banks.[xvii] The blocking up of such huge amount of public money in litigation prevents proper utilization and channelization of the funds for the development of the country. Therefore, the act is passed to provide 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 thereto.

WHY ITS CONSTITUTIONALITY WAS CHALLENGED

Union of India v. Delhi High Court Bar Ass. (2002) 4 Scc 275

This is a landmark judgment given by a 3-judge bench of the apex court of India. The case deals with the issue of constitutionality of the Recovery of Debt Due Banks and Financial Institutions Act,1993 (here in after referred as the act). The act provides for the establishment of tribunals that will have the power to adjudicate the matter relating to the debt due to banks and financial institutions. The constitutionality was challenged on the grounds that it violates Article 14 of the Constitution of India,1950 which enshrines the fundamental right to equality, also the act was said to be unreasonable as the parliament did not have legislative competency to come up with an act on the said subject matter which includes the establishment of tribunals.

The constitutionality was successfully challenged before the Hon'ble High Court of Delhi, where in it was held that the establishment of tribunal is valid as entry 11-A list III of the constitution of India provides for administration of justice, though the court held the act to be unconstitutional as it violated Article 14 and was irrational, discriminatory, arbitrary. While this case was being dealt by the Delhi High Court, the similar issue was raised before the Guwahati High Court which held that the parliament has legislative competence to enact the law further it held that some provisions of the act need to be struck down like Section 17 which gives jurisdiction and power to tribunal to try the matters and held it to be unconstitutional as it is hit by Article 14.

Hence the appeal was before the apex court where in the lordships took into consideration the following issues;

1. The apex court came across a judgment[xviii] passed by the Karnataka High Court which took a different view from the decision passed by the Delhi High court and held that he parliament did not have legislative competency to enact the act under entry 11 A of list III as it could not include "tribunals" and further more parliament cannot exercise power to establish tribunal under Article 323A and 323B. For the said contention the court observed that the interpretation of the items in the list are not be done in a strict manner, widest construction shall happen with the rider that the cardinal rule of interpretation of statue is to read the statute in its true ordinary sense however the constitution levying legislative power should be read in a liberal manner.[xix] The object is to give positive power and not to debar parliament from legislating on a matter.[xx] Article 323-A and 323-B are enabling provision which provide for the setting up of tribunal and hence expressly disapproved the interpretation of Karnataka High Court. In the landmark judgment the court took into consideration entry 45 of list I which provides banking as a subject matter, hence the parliament has enough legislative competency to enact the act and set up a machinery i.e. tribunals. The act will set up mechanism for the recovery of monies due to banks and financial institutions as the main and fundamental business of banks and financial houses to lend money and then recover with interest the same or else huge amounts of monies are stuck as a result affects the liquidation in the economy. Hence entry 45 of list I should not be interpreted in the narrow sense and would mean that parliament to legislate in banking matters or subsidiary matters related to banking.
2. In furtherance Delhi High Court held that Section 17 is violative of Article 14 and does not have counter claim qua to the code of civil procedure. The court also struck down Section 34(1) which provides for an overriding effect to the act. Section 28 which talks about modes of recovery which are not mentioned in Section 25 was also struck down. The court had t consider the amendments passed which set aside all the lacunas and loopholes present in the act till the extent possible. Rules have been framed that give more clarity and crispier understanding of the procedure laid down in the act. therefore, a tribunal can lay down its own procedure and mechanism but it should be not against the principles of natural justice. It is not a mandate to be bound by the code of civil procedure, the important is to have the

essence of the principles of natural justice. Article 31 gives power to transfer cases, well it is quiet rational since the tribunals have been established the pending or running cases should be transferred to the tribunal for their adjudication.[xxi]

3. The far most important contention raise that the establishment of tribunals does harm the independent judicial powers exercised by the High Court. The Delhi court was of the view that the act took away the jurisdiction of civil courts and vested the same in the tribunals. The Supreme Court took into consideration Article 323-A and 323-B that give power for formation of tribunal.[xxii] Moreover, the parties cannot demand to be adjudicated by the civil courts, when there is a special tribunal formed for adjudication on special subject matters. The civil courts are replaced by banking tribunals which are quasi-judicial bodies and do not specifically fall under the concept of judicial body as envisaged under Article 50.[xxiii] Tribunals are effective part in administration of justice likewise the courts of law. Procedural laws lay down the steps to be followed or the method/manner in which the disputes are to be resolved or adjudicated upon, from time to time to procedural laws are formed keeping in mind the need and dynamism of the environment they work and when such special procedural law comes into force which constitutes tribunals to adjudicates cases on a special subject matter then such law cannot be challenged by raising the contention that it erodes the independence of judiciary. The tribunals require high qualification standards for anyone to be presiding member, for the appellate tribunal one should be qualified to be a High Court judge or be a member of the Indian legal service at the post of grade I. A selection committee is constituted for the selection of competent personals. It is very important to note that the decision of the appellate tribunal is not final and are subject to judicial review under Article 226 and Article 227 of the Constitution of India.[xxiv]
4. Another major issue before the apex court in this landmark judgment was that the act laid down the pecuniary jurisdiction of the tribunals to try suits where the amount in question is 10,00,000 and above. The Delhi High Court held that this led to decrease in the authority of the High Courts as their pecuniary jurisdiction was to entertain suits where the money in question ranged between 5,00,000 to 10,00,000 and for less than 5 lakhs to the subordinate courts. Also the presiding officer in the tribunals are not of the stature of High Court judges and would be judging cases which has a higher pecuniary jurisdiction vis-à-vis the High Courts. This contention was carefully dealt by the Supreme Court and it said that in this country many High Courts do not have original jurisdiction, moreover, the act as applicable

to the whole of India and releases the excess pressure from the shoulders of tribunal by specifying the pecuniary jurisdiction above that of the High Court and to see that the courts and the tribunal is not flooded with applications. Therefore, the tribunal is provided with exclusive jurisdiction to deal with cases for the recovery of above 10 lakh rupees where less than it is to be adjudicated by subordinate civil courts. The very essence and objective for which this act is enacted should be kept in mind to deal with the constitutionality of it. The formation of tribunals does not cause inconvenience as the civil courts have their powers to adjudicate within their jurisdiction, the tribunal is a special mechanism established to deal with specific banking related matter and is provided with explicit jurisdiction. Moreover, on can approach the appellate tribunals if not satisfied by the decision, there is scope for judicial review, new appellate tribunals have been set up to reduce the cost of travelling and inconvenience to the litigants. In a landmark case of *United Bank Of India vs Satyawati Tondon & Ors*[xxv] the Supreme Court observed "This was one of the most radical legislative measures taken by the Parliament for ensuring that the dues of secured creditors are recovered from the defaulting borrowers without any obstruction. Though the tribunal initially functioned with great zeal, "with the passage of time the proceedings before them became synonymous with those of the regular courts and the lawyers representing the borrowers and defaulters used every possible mechanism and dilatory tactics to impede the expeditious adjudication of such cases".

Therefore, in the above contention raised the Supreme Court was of the view that the act is constitutional and does not violate Article 14 of the constitution of India. Hence the tribunals being a quasi-judicial body are to be established as the act provides for the same to adjudicate on banking related matters.

CONCLUSION

Banks and other financial institutions are by far one of the most important part for any economy around the world. The basic commercial function of banks to lend money and charge interest on its repayment. A well-functioning financial and banking system in country makes it developed and sound. With regards to the difficulty faces by such banks and institutions for the recovery of debt owed to them the recovery of debt due to banks and financial institutions acts, 1993 was enacted by the parliament providing procedure for the recovery of debt due to banks

and other financial institutions as the names suggest. The act mandates the establishment of the DRT that is the debt recovery tribunal and the DRAT the debt recovery appellate tribunal for the purpose of speedy trials and justice. The act was challenged where in the Delhi and Guwahati High Court held it to be unconstitutional whereas when the matter went to the Supreme Court, the three judge bench looked into all the issues and held the act to be constitutional in its landmark judgment of union of India v. Delhi High Court bar assn. The establishment of tribunals does not erode the stature or the takes away the jurisdictionary power of the High Courts and civil courts as the tribunals are established through special act in accordance with the constitution of India, though not being a judicial body still the tribunals are a key player in administration of justice. The tribunals are quasi-judicial bodies and nevertheless confine to the principles of natural justice. The pecuniary jurisdiction the above that f the High Courts that is the tribunals can only entertain the matters which include the debt of more than 10,00,000 rupees while the High Court takes in to consideration the recovery of debt between 5 to 10 lakh rupees and other civil courts below 5lakhs. Moreover, the act also consists of an overriding clause as it deals with special matters related to banking only. Adding to this the presiding officer should be well qualified and be of a high stature. The two amendment acts brought about significant changes in the act which rectified its lacunas and loopholes. There is establishment of more appellate tribunals to save the cost and time of the litigating parties. It is very well cleared that the parliament has the right to legislate for banking matters therefore the recovery debts due to banks and financial institutions is constitutional as it follows the principles of natural justice and does not violate Article 14 moreover it also does not take away the stature and power of High Courts and other civil courts.

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