

DEBT RECOVERY TRIBUNAL AND ITS AMENDMENTS

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ABSTRACT

The article carries basic gist about the Debt recovery tribunal and what are the functions conceded on throughout the working of the DRT's. It specifies the topical amendments made to the DRT act in the year 2016 and what major ups and downs it brought in to the working of recovery of cases. The role of banks in the economy and what play a bank has in generating a soothing working in day-to-day business to minimize the NPA's and to also provide for the betterment of the business and carry out its basic function to and fro. What all procedures are provided in the DRT act and the problems faced by the banks in their debt restructuring. The DRT act and its constitutional validity and the banks do have the right of repayment from the fraudsters those who do not perform their functions and turn the loan into NPA's.

The article also talks about the jurisdiction of the DRT from angles required by a person to make a case through DRT act. It also talks about the shortcomings of the act and where the DRT act could have seen improvement and what all loopholes could have been covered by the act. Further it discusses some basic functions and powers of the DRT to explain a better picture of DRT's.

INTRODUCTION

“The Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) provides speedy redressal to lenders and borrowers through filing of Original Applications (OAs) in Debts Recovery Tribunals (DRTs) and appeals in Debts Recovery Appellate Tribunals (DRATs).”

“The Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) provides access to banks and financial institutions covered under the Act for recovery of secured debts from the borrowers without the intervention of the Courts at the first stage. Securitisation Appeals (SAs) can be filed with the DRTs by those aggrieved against action taken by secured creditors under the SARFAESI Act.”¹

Banking institutions were facing a new dilemma of loan recovery which they had issued towards the debtor. This reason was preventing banks to provide loans to the customers, the whole and sole transaction of business for a bank. If a bank does not indulge in this transaction then the sole purpose of bank and operation of the bank is hampered. Therefore, there has to be an effective system to recover this money from the borrowers. Further, this gave rise to the Recovery of debts and bankruptcy act 1993. Under the act debt recovery tribunals are set up which deal with the recovery of debts from the borrowers, apart from this if at all the borrower is not happy with the decision of Debt recovery tribunal then they can challenge the order of DRT to the Debt recovery appellate tribunal.

The powers of the tribunal are limited to recovery of money only, with subject to bank assertion. DRT should always follow Reserve bank of India guidelines to recover the money from the borrower. The Debt Recovery Tribunals are completely enabled to pass thorough requests like in Civil Courts.

Section 4 of the Debt recovery tribunal act specifies the composition of the DEBT RECOVERY TRIBUNAL. It consists of one presiding officer appointed by the central government. The idea behind creating and Debt recovery tribunal was to recover money as quickly as possible from the borrowers since the time taken by the banks to recover the money through the process of courts were prolonging due to the legal procedure adopted by the legal system. Therefore, to move out of this formation of these tribunals was done.

Non-performing assets may be defined as a type of loan or advance, where the principal sum and interest will be repaid by default within 90 days. The principal sum and interest will be restored by following recovery tribunals as non-performing assets turn into questionable or loss assets.

“LOK ADALAT: The Lok Adalat is a recovery tribunal which was introduced in the year 1987 under the legal service authority Act organized by Civil Court under the consultation with RBI all the monetary ceiling cases will come under Lok Adalat. All the cases with 500,000 to 20,00,000 will come under Lok Adalat, once the NPA is turned into doubtful or loss asset then the cases could be filed. DRT’s: The Debt Recovery Tribunal Act was passed on 1993 under the recovery of debt and financial institution Act. All the cases with above 10,00,000 can be filed under this Act. SARFAESI Act: Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act 2002. The Act was passed under section 10 of SARFAESI Act, 2002.”ⁱⁱ

AMENDMENTS TO THE DRT (DEBT RECOVERY TRIBUNAL)

The 2016 Bill proposes to build the retirement time of Presiding Officers of DRTs, and takes into account their reappointment. This will permit the current DRT officials to serve for longer timeframes.

The Central government has raised as far as possible from Rs 10 lakh to Rs 20 lakh for documenting application for recuperation of obligations in the Debts Recovery Tribunals by such banks and budgetary establishments.

Accordingly, any bank or monetary establishment or a consortium of banks or money related foundations can't move toward DRTs if the sum due is not as much as Rs 20 lakh. According to RBI information on worldwide tasks (with temporary information as on March 2018), total measure of Rs 3,98,671 crore was discounted by banks in the course of the last four monetary years. Over a similar period, their NPAs diminished by Rs 2,57,980 crore because of recuperations.

RBI will get more powers to review and assess any Asset remaking organization (ARC) just as the opportunity to eliminate the administrator or any chief and designate national bank authorities to its board. RBI will be enabled to force punishments for rebelliousness with its orders, and direct the expenses charged by these organizations to banks at the hour of gaining such resources. RBI as of now directs these elements, yet the bill grows the controller's forces. It likewise builds the punishment sum that can be collected by RBI to ₹ 1 crore from ₹ 5 lakh.

An asset rehabilitation company (ARC)'s ownership and management had to be diversified and no sponsor could retain a controlling stake in an ARC (more than 49 percent) or select a majority of the board of directors. These limitations have been abolished and it is now legal for sponsors to own up to 100% shares in an ARC as well as exert voting control over the board.

It also proposes, under the framework of the Sarfaesi Act, to bring hire acquisitions and financial leases and allow secured creditors to take over a corporation and recover its business by gaining ownership of interest in the borrower company. It proposes the electronic filing of applications for recovery, documents and written declarations. DRTs will be the cornerstone of the bankruptcy code and will work with people participating in all insolvency cases. Until making an appeal on a DRT, the claimant would have to deposit 50 percent of the amount of debt owed.

It aims to keep the phase time-bound as well. A district magistrate must explain an appeal by the borrower within 60 days to take over custody of the collateral. Only qualified purchasers of institutions were allowed to buy security receipts issued by the ARCs. The amendment has expanded the scope of eligible investors to include, from time to time, non-institutional investors as identified by the RBI.

ROLE OF BANKS IN AN ECONOMY

Banking forms a large portion of the Indian financial market, and the sector has acquired humongous scale with scope across the country's length and breadth. The required asset transformation role in an economy is performed by financial intermediaries such as banks. They accept deposits (depositor interface) from depositors and issue loans from those deposits

to borrowers (borrower interface). When banks collect guaranteed and timely returns from such investments in order to repay their liabilities and gain margins in the process, the cycle is complete.ⁱⁱⁱ

Manufacturing companies lend the money required to buy raw products from banks and to satisfy other needs, such as working capital. Holding money in banks is safe. Interest is often gained for doing so. Therefore, it induces the urge to invest and raises the volume of deposits. In order to generate additional capital goods, the savings will be used. The issuance of shares and debentures is organised by banks. Thus, with the help of banks, corporate organizations and manufacturers may get fixed money. There are institutions known as commercial banks that finance the creation of new companies and new industrial ventures and provide producers with long-term loans.

Money could be made by the financial system. More capital is required for currency deals as business grows. Usually, a country's legally enforceable money cannot be easily extended. Bank capital can be easily raised and used as more money is needed. Banks play an essential role as producers of capital in an emerging market (like that of India). Global and foreign commerce is promoted through the financial sector. On credit, a significant part of trading is conducted. Banks have, on behalf of their clients, checks and warranties on the basis on which retailers are able to supply products on credit. When the participants live in various countries and are most much unfamiliar to each other, this is especially essential in foreign trade.

RECOVERY OF DEBTS BY BANK

Some of the specific problems facing banks in their debt restructuring are:

- (a) Classification of Guarantor Funds and Properties
- (b) Loss of information about or compliance with legal formalities.
- (c) Inadequate resources to control vast quantities of decentralized accounts.

The formation and operation of the Debt Relief Tribunals assumes an important part in debt management. It is hoped that the Debt Restructuring Tribunal will accelerate the recovery cycle. The Tribunal shall assist mostly in rehabilitation of "non-performing assets" which shall

accelerate the mechanism of restoration. The Debts Restructuring Act, 1993 (the Act) has been more than 2 centuries old owing to the Banks including Financial Institutions Act. As for every law breaching new ground, with its descriptive existence, the overthrowing of the authority of the Civil Courts, the clauses that allow creditors to sue through the bank or other financial institution, the Law has been contested in different ways. Fortunately, the 1993 Law was already a positive measure taken by the parliament to ensure the timely collection of bank dues. After centuries of studying the case law, the civil courts found that, in nearly all the cases filed by banks and other financial organizations, there was scarcely any defence and that the pause in the resolution of the disputes in court was not owing to the negligence of the banks and monetary institutions.

While banks and other finance institutions will extend capital that even without safety, banks and monetary institutions generally demand that loans be repaid with safety. Securities appropriate to banks and other financial institutions for the enforcing of lending can be fixed assets, accounts receivable, etc. Lending welfare benefits, the loan penalty process, protection issues, etc., are regulated solely by the RBI Guidelines/Norms. Again, the generic laws such as the Rule of Contract, Sale of Property Act, Special Relief Act, Specific Results etc. are similar to all lending contracts based on the type of the transaction. The loan is an arrangement or arrangement between the borrower and the lender. The primary purpose of the bank is to successfully accept deposits and use those funds in order to make profits.

Financial institutions can also, on account of their clients, provide some basic services. The RBI provides recommendations and requirements that also take the government's policies into account. The Reserve Bank of India encourages sustainable development by maintaining influence over the movement of cash from banks and other financial institutions. The RBI is able to control inflation by such steps because, as everyone knows, it is a mechanism of the monetary to control inflation.

Except in ongoing proceedings, the Civil Court refuses to have authority, because the liability as specified in sub-section 2(g) contains the debt alleged to be retrieved in the ongoing proceedings, which is technically retrievable and thus beyond the purpose and purpose of

Section 17. Both sections 17 and 18 have overwhelming effect, even though they are conflicting with some other statute, by way of section 34. A debt obtained in a ongoing suit to be repaid is definitely a technically reclaimable debt and is owed to the bank. Accordingly, Sections 17, 18 and 34 can indeed be read differently, but to suggest that now the Civil Court refuses to have authority from the specified date to proceed with ongoing litigation concerning the repayment of loans owing to banks for as much as they are technically retrievable. Thus, an individual suit brought before the Civil Court by the debtor, inseparably related to the bank lawsuit brought before the Debt Recovery Tribunal, cannot be moved to the Tribunal since the incorporation of sub-sections 6 to 11 of Section 19 of the Act would not abolish the jurisdiction of the Civil Court. That being said, throughout the proceedings of Restitution Request before the Tribunal, a suit well through Civil Court by creditor for ordinance would not be sustainable long term because it cannot usually be allowed to issue an injunction preventing the execution of orders passed by the Tribunal having authority to impose such orders although it is a case of cheating or the presence of any such free consent element is known or prima facie made out.

CONSTITUTIONAL VALIDITY OF THE ACT

In “Delhi Bar Association & Ors v. Union of India & Anr”, the legality of the Act was questioned then until the Delhi High Court. The Delhi High Court ruled that, while it was never inside the meaning of Articles 323A and 323B of the Constitution of India and as such the term administration of justice 'appeared in List IIA of the Seventh Schedule to the Constitution, the DRT may be established by the Legislature The challenged Act was illegal because it weakens the integrity of the court and was immoral, oppressive, unfair, coercive and influenced by Article 14 of the Constitution. It concerns courts as well as 'administration of justice' It even dismissed the nomination of the Tribunal's presiding officer.

The Supreme Court has held which "although Articles 323A and 323B explicitly allow the legislature to introduce legislation for the formation of tribunals, the functions of Parliament to pass legislation comprising a tribunal such as a financial tribunal are not removed in reference to the subjects specified therein." It was later stated that it is an integral feature of every banking

entity to reclaim dues. In the execution of its banking-related regulatory functions, Parliament will establish a framework from which to reclaim money owing to banks and other financial institutions.

JURISDICTION OF DRTs

Section 17 of the RDDBFI Act grants DRT the right to venture into debt recovery demands from banks and other financial institutions that are attributable to certain banks and other financial institutions. Section 18 of the Act forbids all other judges, with the exception of the Supreme Court and the High Court, from having jurisdiction under Articles 226 and 227 of the Constitution from adjudicating issues pertaining to debt recovery. In other terms, only the High Court or the Supreme Court may seek recourse towards both the order issued by the DRAT.

SHORTCOMINGS OF THE ACT

Although the Debts Resolution Tribunals eventually worked well and enabled the banks and financial institutions retrieve considerably significant portions of their non-performing assets or theirs bad debts as they are generally called, their success was staggered as it related to large and heavy creditors. These creditors were willing to postpone the advancement of the Debts Recovery Tribunals on different reasons, mostly because their cases against the banks were outstanding in the civil courts, and if the Debts Recovery Tribunal were to arbitrate and sell off their estate, irreparable loss would happen to them. Except for the large lacunas mentioned, there were also a variety of wrong doings. Workers' payments against a corporation, state debts, and other unsecured creditors' dues were all brought to a dead stop before the Debt Recovery Tribunals.

There was a question of authority amongst the Statutory Liquidators named by the High Courts and the Collection Officers of the Debts Recovery Tribunals, if both were not satisfactory. The Legal Trustee, named by a higher authority, assumed control of all the assets currently held by financial debt before the debt restructuring tribunal.

POWERS AND FUNCTIONS OF DEBT RECOVERY TRIBUNAL

DRT's key aim and function is to reclaim funds from creditors, which is attributable to banks and other financial institutions. As specified by the banks there under RBI guidance, the authority of the Tribunals is limited to seeking to resolve instances of recovery of loans from NPAs. The Tribunal holds all the authority that the District Court possesses. The Tribunal already has a Recovery Officer that aids with the implementation of the Presiding Officers' Recovery Certificates. The qualified legal practise was adopted by DRT, stressing the swift dismissal of proceedings and the quick enforcement of the winding up.

Such Tribunals are indeed the quasi-judicial entities that have to be set up to comply with the legal proceedings taken by banks towards foreclosing creditors. They adopt the broadcast judicial mechanism that stresses the quick arbitration of the proceedings and the implementation of the judgment immediately. Initially, the Tribunal shall have authority to attempt and resolve the case relating to the repayment of debts from banks and other financial institutions. The Tribunal shall have authority all over the world and shall have all rights comparable to those of a district court. There under terms of the Act, all unresolved cases remaining in district courts shall be referred to the Tribunal. The tribunal shall have had the same rights, include the issuing of subpoena, the summons to the petitioner's appearance, the complainant, the witness, the administering of oath, the taking of deposition, the review of facts, proof and required documents or declarations, the delivery of documents, the provision of protection and the imposition of penalty as provided for by the existing law of the court of trial. If the Tribunal finds that its disdain has been expressed, it can sentence the defendant with a fine and imprisonment, or both.

In addition, Section 31 of the Act allows for the relocation of civil cases remaining on the date of formation of the removal of complaints from the Tribunal and specifies the extent of the transition by specifying that all Civil Suits/Proceedings must be centered on a ground of motion which will come under the authority of the Tribunal if it occurs after the passage of the Act.

A concept of the law was thus developed. If it comes undergoing the domain as of the moment of change must be investigated as to the purpose of motion of the claim under transition. Once it is found that the ongoing suit is obviously liable for transfer under order of the court, the

same would be moved. The key purpose of Section 31 is that, after the Court has been established, all the lawsuits and other litigation pertaining to the subject which the tribunal is aware of shall be referred to the Tribunal after its constitution on the basis that it has sole authority to deal with the matter.

The word "suit" encompasses suit in specific, whether it is a standard suit or a description suit or a collateral suit, although not been eligible. Although a summarized action cannot be presented under the word "suit" that appears in Section 31, other cases that exist in that term clearly occur within the phrase. Section 31 left no question that, under Order 34 of the CPC, a demand for recovery of money by the selling of insured land does not appear to be a claim for reimbursement of expenses. In fact, in such a situation, the Court is needed to first enact a provisional decree ordering the offender to pay the money considered to be owed to the defendant to the Court and it is therefore on the defendant's refusal to pay the payment that the complainant would be able to sue for a final judgment disregarding the offender of all rights to restitution of the land.

Through the Statute, the Debt Recovery Tribunal often retains the right to reclaim the debtor's liability by adding and selling the defendant's immovable property and thereby rendering a petition exchangeable under Order 34 of the Code of Civil Procedure.

CONCLUSION

The legislation has arranged for the creation of specialized judges for this function, called Debt Recovery Tribunals, with the goal of supplying financial institutions with a quicker and more competent form of debt recovery. Debt recovery in order to take up the challenge towards the resolution adopted by DRT, appellate tribunals was formed. These courts have tended to reduce the pressure on the federal courts.

As seen above, the lack of a frequent review of the efficacy of the requirements of the DRT Act and the SARFAESI Act has resulting in incomplete compliance and sub-optimal performance, such as the incompetence of the mechanism of securitisation and reconstruction. Therefore, the effect on all shareholders, such as government, financial institutions, the

judiciary, must be analysed. Subsequently, in order to ensure the validity of laws and keep track of shifting realities, frequent ex-post reviews of their laws are required.

Any of the main factors of India's attempts to attain growth in quickly expanding its market have been the financial and banking sectors. Although the Indian banking industry is increasingly compliant with global risk management principles and accounting procedures, there are several places where the banking and financial industries do not have a fair competitive field relative to other players in the global money system. The transformation of the legal structure in the Indian legal system has not kept pace with evolving business trends and changes in the financial sector. The prior debt restructuring process for banks and financial institutions culminated in the blocking of a large amount of the assets. The modern system formed in the context of revolutionary rules, nevertheless, is the explanation why, in today's times, the amounts owed to banks and financial institutions could be realised without unnecessary pause.

CASE LAWS

- Allahabad v. Canara Bank [AIR 2000 SC 1535]^{iv}
- Delhi Bar Association & Ors v. Union of India & Anr. [AIR 1995 Del. 323]^v

ENDNOTES

ⁱ Available at <https://drt.gov.in/>

ⁱⁱ STUDY ON RECOVERY TRIBUNAL OF SCHEDULE COMMERCIAL BANKS IN INDIA by Dr.P.Suganya Dec 2018 Pg-1

ⁱⁱⁱ Evaluation of debt recovery laws in India by Jitin Asudani Pg 1

^{iv} Allahabad Bank vs. Canara Bank and Ors. (04.04.2000 - SC): MANU/SC/0262/2000

^v Delhi High Court Bar Association and Ors. vs. Union of India and Ors. (10.03.1995 - DELHC): MANU/DE/0066/1995