



## THE CRITICAL ANALYSIS OF DEBT RECOVERY TRIBUNALS

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### INTRODUCTION-

Banks and money related organizations had been encountering extensive troubles in recuperating credits, and implementation of securities accuse of them. The system for the recuperation of obligations because of the banks and money related establishments was moderate and brought about a huge part of the assets being seized.

The Committee on Financial Systems, headed by Shri M Narasimhan, had considered the setting up of the "Special tribunals" with specialized forces for arbitration and rapid recuperation of such issues as fundamental usage of the monetary division changes. A critical need was, in this manner, learned about to work a reasonable component through which the duty to the banks and money related establishments could be acknowledged immediately.

In 1981, Shri T Tiwari headed a committee which had analyzed the legitimate and different challenges looked by banks and budgetary foundations and proposed healing measures incorporating changes in law. The Tiwari Committee had additionally recommended setting up of specialized courts for recuperation of duty of the banks and money related organizations by following an outline methodology. So, the Recovery of Debts Due to Banks and Financial Institutions Act 1993 in short DRT Act was passed. Keeping in consideration

with the worldwide patterns on helping budgetary foundations recoup their awful obligations rapidly and productively, the Government of India has constituted thirty-three Debts Recovery Tribunals and five Debts Recovery Appellate Tribunals the nation over.

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

**Motive:** The central motivation behind the 1993 Act was to evacuate cases of banks and money related foundations from the common frame to specific courts. The admitted motivation behind the statute was to guarantee the expedient transfer of cases of banks and money related foundations planned to be administered by it.<sup>1</sup> The basic motive behind the Act is contained in the Tiwari Committee Report, which expressed: "The Civil courts are troubled with assorted sorts of cases. Recuperation of duty because of Banks and Financial Institutions isn't given any need by the common courts. The Banks and Financial Institutions like some other prosecutors need to experience a procedure of seeking after the cases for recuperation through common courts for unduly long stretches." The introduction of the Act accommodates the foundation of Tribunals for speedy trials and recuperation of obligations because of banks and budgetary establishments and for issues associated therewith or accidental thereto.<sup>1</sup>



Under the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993 banks are eligible to approach the Debts Recovery Tribunal (DRT) while, under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002 borrowers, underwriters, and other some other individual distressed by any activity of the bank can approach the Debts Recovery Tribunal (DRT).

Offers against orders go by Debts Recovery Tribunal (DRT) lie before Debts Recovery Appellate Tribunal (DRAT). Each obligation of Recovery Tribunal (DRT) is guided by a Presiding Officer. The Presiding Officer of a Debts Recovery Tribunal is the sole legal specialist to hear and pass any legal request.

Every obligation Recovery Tribunal has two Recovery Officers. The work among the Recovery Officers of a Debts Recovery Tribunal (DRT) is assigned by the Presiding Officer of the Tribunal. The Debts Recovery Tribunal (DRT) is completely enabled to pass extensive requests and can go past the Civil methodology Code to render finish equity. A Debts Recovery Tribunal (DRT) can hear cross suits, counter claims and permit set offs. Be that as it may, a Debts Recovery Tribunal (DRT) can't hear cases of harms or inadequacy of administrations or break of agreement or criminal carelessness with respect to the loan specialists. Also, a Debts Recovery Tribunal (DRT) can't express a supposition past its area, or the rundown pending before it. The Debts Recovery Tribunal can choose Receivers, Commissioners, pass ex-parte orders, transitory requests, interval arranges

separated from forces to Review its own particular choices and hear bids against orders go by the Recovery Officers of the Tribunal.<sup>1</sup>

### DEBT RECOVERY TRIBUNAL

Section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, constitutes the Debts Recovery Tribunal. The basic motive of the Debts Recovery Tribunal was to get assert applications from Banks and Financial Institutions against their defaulting borrowers. For this the Debts Recovery Tribunal (Procedure) Rules 1993 were also framed.

While at first the Debts Recovery Tribunals performed well and helped the Banks and Financial Institutions recoup considerably huge parts of their non performing resources, or their awful obligations as they are usually known, yet their advance was hindered when it came to expansive and capable borrowers. These borrowers could slow down the advance in the Debts Recovery Tribunals on different grounds, especially on the ground that their cases against the loan recovery were pending in the civil courts, and if the Debts Recovery Tribunal will settle the issue, it will result in unsalvageable harm to their properties.

Aside from the above enormous lacunae, there were various weaknesses as well. The duty of work men against an organization, the State levy, and the contribution of other non secured loan bosses all got enmeshed before the Debt Recovery Tribunals. As though these were not sufficient, there was conflict of powers between the Official Liquidators delegated by the High Courts and the Recovery Officers of the Debts Recovery Tribunals. The Official



Liquidator, a nominee of a predominant expert, took into his ownership every one of the properties, which had a place with secured leasers before the Debts Recovery Tribunal. The High Courts likewise disliked on the exercises of the Recovery Officers who unlike the whole sums and paid off to the banks leaving nothing for alternate inquirers, including the work men. All these and different issues prompt extraordinary alterations to the Recovery of Debts Due to Banks and Financial Institutions Act by methods for a changing warning in the year 2000.

This new Act, the SRFAESI Act, engaged the loan specialists to take into their ownership the secured resources of their borrowers just by giving them sees, and without the need to experience the rigors of a Court method. At first this got part of consistence from borrowers, and numerous a prepared defaulters hacked up the Bank contribution. However the harder ones punched entire in the new Act as well. This drove Supreme court striking down specific arrangements and permitting the borrowers an adjudicatory discussion before their properties could be assumed control by the loan specialists.

The Debts Recovery Tribunal need to manage remarkable complex business laws inside the restricted ambit of the two laws. Throughout the years the Debts Recovery Tribunals have advanced into fine bodies with parcel of ability. There are many judgments of the Supreme Court and in addition the different High Courts which have prepared of the Debts Recovery Tribunals to outline their scope and

procedure. The Debts Recovery Tribunal of India have turned out to be show foundations for some, a nation to take after.

With the sanctioning of the DRT Act, the managing an account area expected that the majority of the NPAs would be anything but difficult to recuperate, as against the traditional arrangement of recuperation of advance via civil courts, where extensive time, cash and endeavors were required to recoup obligation. Nonetheless, disregarding DRT Act, by virtue of non-acknowledgment of the NPAs, the Banks and Financial Institutions were confronting issues identifying with liquidity and resource obligation befuddle, since their benefits were obstructed for impressive time in useless resource . There was no lawful arrangement for encouraging securitisation of money related resources, and banks had no influence to claim securities made to support them with a specific end goal to secure the offices. This prompted many changes all the while and reducing the deferral in settling.

In advancement of money related changes and broadening the question of RDDBFI Act, 1993, the Government has brought The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is the SARFAESI Act that got a more noteworthy change the obligation recuperation situation in the nation. One of the critical changes that SARFAESI has brought is that it permitted the banks (as per Sec.13 SARFAESI) to assume control ownership from the defaulter, without experiencing the stringent court technique, once the credit account has been arranged as a NonPerforming Asset<sup>1</sup> .



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)<sup>1</sup> “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 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 wide<sup>1</sup>.

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 Tribunal<sup>1</sup>.

(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 restricts 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 provided 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.

In *Cofex Exports Ltd. vs. Canara Bank*<sup>1</sup> Delhi High court ruled that Debt Recovery Tribunal is not a court but a Tribunal formulated by a statute, provided with a special jurisdiction to hear only applications by banks or financial institutions for recovery of any debt. Although keeping in view the provisions given in clauses (a) to (b) of sub-section (2) of Section 22 of the



Act it had every one of the trappings of a court yet it was held not to be a court thusly. It was held by the Supreme Court in the judgment of Ranjan Chemicals Ltd<sup>1</sup> that a court has the power in a proper case to exchange a suit for being attempted by the DRT.

**Remedy:** Withdrawal of the first application pending before the DRT under RDB Act, 1993 isn't a pre-condition for taking plan of action to the SARFAESI Act. It is for the banks/FIs to practice its caution as to cases in which it might apply for leave to pull back and cases in which it may not do as such.

**Contrast:** The principle distinction between RDDBFI Act, 1993 and SARFAESI Act, 2002 is as per the following: The RDDBFI Act, 1993 empowers the Bank to approach the Tribunals when the obligation surpasses as far as possible i.e. Rupees Ten Lakhs. Under RDDBFI Act, 1993, the Debt Recovery Tribunal will settle the sum due and passes the last honor. While the SARFAESI Act, 2002 gives a strategy wherein the bank or monetary establishment itself will arbitrate the obligation. Simply after settling by the bank or money related establishment, the borrower is offered appropriate to favor an interest to the Tribunal under SARFAESI Act, 2002. The Banks or Financial Institutions can summon the arrangements of SAFAESI Act, 2002 just in regard of secured resources and it should goes under the meaning of NPA and the measure of due must surpass Rupees One Lakhs NPA advance record is more than twenty level of the main and premium and not all advance<sup>1</sup>.

### RECOVERY OF DEBT OF COMPANY DURING WINDING UP

#### **Leave of the Company Court for transfer of cases**

Any bank or FI is not required to take leave of company court (the tribunal i.e. NCLT) to initiate with its claim before the DRT or, for the execution proceedings against the company before the Recovery Officer in liquidation. Neither the proceedings can be transferred to the Company court<sup>1</sup>. One of the pioneer cases where the ambit of the overriding effect of the Act was roughly mentioned was in Industrial Credit and Investment Corp. of India Ltd v. Srinivas Agencio<sup>1</sup> where the issue was whether leave should be granted by the Company Court to carry on proceedings in other civil courts and whether all proceedings should be transferred to the Company Court. The court was of the opinion that the approach to be followed by the Company court does not required to be framed in a straightjacket formula. The watchfulness to be practiced needs to rely upon the certainties and conditions of each case. While practicing this power, the Company Court ought to likewise shoulder as a top priority the method of reasoning behind the sanctioning of the RDDBFI Act<sup>1</sup>.

#### **The non-obstante clause**

In the case of Industrial Credit and Investment Corporation of India Ltd v. Vanjinad Leathers<sup>1</sup> the non obstante clause in given in the RDDBFI Act and the non obstante clause as in the Companies Act were considered, where the court is of opinion that Section 18 of the Act puts a bar on jurisdiction of other authorities and courts with the exception to the Supreme Court and High Courts provided under



Articles 226 and 227 of the Indian Constitution. The court additionally expressed that the RDBFI Act and the Companies Act is exceptional enactment.<sup>1</sup>

#### Assets in custody of Liquidator- DRT may take inventory

During liquidation of a company when a Provisional Liquidator has been appointed, the DRT can use its powers provided under Sections 19(18)(e) of RDB Act and can appoint an Advocate Commissioner for framing of an inventory of the properties and assets of the company in liquidation. Earlier leave of the organization judge i.e. the Winding up Court or the Company Court [the Tribunal (NCLT)] under the arrangements of the Companies Act isn't important. The DRT without a doubt forces energy to give constrained bearings to the liquidator to co-work with the Advocate Commissioner delegated by it under Section 19(18)(e) of the 1993 Act to take the stock. The liquidator ought to follow the bearings.<sup>1</sup>

#### Right of Official Liquidator- Pari passu distribution

The company court has the privilege to guarantee that the conveyance of the Assets regarding Section 326 of the Companies Act. The Official liquidator speaks to the whole assortment of banks and furthermore holds rights in the interest of the employees to have a dispersion pari passu with the secured loan bosses and the obligation to promote circulation of the returns based on inclination contained the Companies Act under the bearing of the company Court. At the end of the day, the dispersion of the deal continues under the headings of the company court is the obligation of the official liquidator. To guarantee the correct

working out of the plan of appropriation, it is important to connect the Official Liquidator with the procedure of offer so the Official Liquidator can guarantee, in the light of the headings of the company court that a legitimate cost is brought for the advantages of the company in liquidation.

#### Function and position of official liquidator

The official liquidator has an obligation combined with the ability to found or protect any suit indictment or other lawful procedures both civil and criminal in the name and for the benefit of the company. Such power incorporates the ability to bear on the matter of the company so far as might be fundamental for the advantage of the company in liquidation. The position of authority liquidator is basically that of an operator utilized to wind up a company. As the assurance of the claim of the laborers ought to be likewise done alongside the claim of the secured lenders before DRT it is vital for the official liquidator in light of a legitimate concern for the workers to take an interest in the procedures previously the DRT. The official liquidator has the obligation to speak to successfully in the procedures previously DRT for conveyance of the deal thought to the secured leasers, laborers and investors of the company.<sup>1</sup>

#### Recent efforts to rejuvenate DRTs: the RDBBFI amendment 2016

To revise the circumstance, government has tried a few endeavors. Significant one is the alteration to the RDBBFI Act 1993 out of 2016. So also, the new Insolvency and Bankruptcy Code offer forces to DRTs to think about instances of Bankruptcy from people and boundless risk associations. Following are the primary changes made to



the RDBBFI Act in 2016 however the alterations are yet to be upheld.

The revision gives timetables for different strides in the mediation procedure before the obligation recuperation councils. Time confine for documenting of composed articulations, going of requests, bids, and so on have been lessened. The Act Empowers the Central Government to accommodate uniform procedural guidelines for the procedures in the Debts Recovery Tribunals and Appellate Tribunals.

The amendment has increased the retirement period of Presiding Officers of Debt Recovery Tribunals from 62 years to 65 years and that of the Chairpersons of Appellate Tribunals from 65 years to 67 years. It additionally makes Presiding Officers and Chairpersons qualified for reappointment to their positions.

The alteration enables banks to document cases in DRTs having locale over the region of bank office where the obligation is pending, rather in the DRT which have purview over the respondent's region of living arrangement or business.

Essentially, to decrease delays, the he cost on a borrower to defer recuperation timetables through extended interests and procedures has been expanded.

Borrowers should store no less than 25% of the extraordinary sums with the obligation recuperation re-appraising court (DRAT) under the DRT Act to benefit an interest. Already, this arrangement was required just under the SARFAESI Act.<sup>1</sup>

### CONCLUSION AND SUGGESTIONS

With the goal, along these lines, of furnishing banks and money related foundations with a speedier and more effective method of recuperation of obligations, the council has accommodated the foundation of uncommon courts for the reason, assigning them as Debt Recovery Tribunals.

Absence of legal preparing for recuperation officers as they are officers named by the GOI for helping the managing officers, conflicting systems took after by various DRTs, noteworthy deferral in procedures as the prescribed time is a half year, though procedures in reality keep going for a long time or more, are a portion of the explanations behind sick working of DRTs.

The working of DRTs needs to enhance to guarantee banks can recoup their current credits and offer crisp advances at less expensive rates. In the present plan, there is no system set up to guarantee that the council arranges the case in an opportune way. There is a solid need to get greater responsibility for the DRT.

There are Small number of DRTs and Debt Recovery Appellate Tribunals, where judgments of DRTs can be offered. While there are 33 DRTs, there are just five Debt Recovery Appellate Tribunals in the nation. There is positively a requirement for more number of DRTs. The greatest test, it shows up, is their capacity to manage a subject with speed. The framework that was composed is obviously not working. Most likely, there ought to be a criticism component and individuals required with



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DRTs ought to be urged to bring up the territories of agony.

Our legal framework is both obstructed and lacking in foundation, which backs off any redressal procedure. Recuperation can be speeded up just when there is a settled time span for all transfers, and acknowledgment of benefits could be speeded up by having unique courts to manage such recuperations.

The working of DRTs is additionally keeping the Reserve Bank of India (RBI) stressed. On the off chance that financiers can't recover their cash, they are not going to give credits at modest cost. In this way, ensuring obligation recuperation councils work better, ensuring that we don't have abundance number of stays, overabundance number of requests – this is additionally should have been engaged.

At long last, the law ought to be reinforced to guarantee compulsory time-bound transfer of cases. Likewise, execution pointers of the arbitrating officer could be utilized to enhance the proficiency of the framework. Also, stay petitions ought to be broke down before being acknowledged as there have been occasions where advocates abuse the provisions of the Act and argue for stays, prompting heaping.

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