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# Role and Function of Debt Recovery Tribunal

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## ABSTRACT

*The debt recovery tribunals were set up in the early 90s it was attempt to create a more creditor friendly environment. aim of this Article paper is firstly, to study the functioning of the Debt Recovery Tribunals and secondly, to analyse the laws of the Debt Recovery Tribunals in India.*

## I. INTRODUCTION

Indian banks and financial institutions have long suffered from debt collection and collateral enforcement by defaulters. Because the process of such recovery was volatile and extremely cumbersome, the 1991 Narasimham Committee recommended the establishment of special courts such as DRT (Debt Recovery Courts) and DRAT (Debt Recovery Courts of Appeal) to simplify such procedures.

India's Debt Collection Act is derived from two laws, the Debt and Bankruptcy Collection Act of 1992 and the Securitization and Restoration of Financial Assets and Securities Act of 2002 (SARFAESI Act).

The committee's recommendation led to the passage of the 1993 Act for the Collection of Claims Against Banks and Financial Institutions ("RDDBFI"), from which the DRTs and DRATs derive their authority to make decisions on claims collection matters. 39 DRT and 5 DRAT

have been active in the country since its foundation. The DRT are located throughout the country. Some cities have more than one debt collection court with seat<sup>2</sup>. Each of the DRTs was located in Ahmadabad, Allahabad, Aurangabad, Bangalore, Chandigarh, Coimbatore, Cuttack, Ernakulum, Guwahati, Hyderabad, Jabalpur, Jaipur, Lucknow, Nagpur. established, Patna, Pune, Ranchi and Vishakhapatnam. Depending on the number of cases, a debt collection court was established.

There are several states that do not have a debt collection court. Banks and financial institutions and other parties in these states should go to the Debt Collection Court in other states that are responsible for their territory. Therefore, the territorial jurisdiction of some debt collection courts are very broad. For example, Guwahati Debt Collection Court has jurisdiction over the seven north-eastern states Similarly, the territorial jurisdiction of the Debt Recovery Tribunal located at Chandigarh too has a very

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<sup>2</sup> Section 3 of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993.

wide jurisdiction over the States of Punjab, Harayana and Chandigarh.

## II. ESTABLISHMENT OF TRIBUNAL

The establishment of a Debt Recovery Tribunal is contingent on the amount of cases. More Debt Recovery Tribunals would be established if the number of cases within a geographical region increased. A Presiding Officer is a judge with the status of Dist. & Sessions Judge who preside over such Debt Recovery Tribunal. The Debt Recovery Tribunal is aided by a number of additional officials of various grades, although none of them are required to have a judicial background.

As a result, the Presiding Officer of a Debt Recovery Court is the single judicial authority with the authority to hear and issue any court order<sup>3</sup>. There are two Recovery Officers assigned to each Debt Recovery Tribunal. The Presiding Officer divides the task among the Recovery Officers. Though a Recovery Officer is not required to be a judicial Officer, but the orders issued by a Recovery Officer are of a judicial nature and are binding. It is possible to appeal to the Tribunal's Presiding Officer<sup>4</sup>. The Debt Recovery Tribunals are governed by the provisions of the Recovery of Debt Due to The Banks and Financial Institutions Act of 1993 (hereafter referred to as the "RDDBFI Act of 1993"), also known colloquially as the RDB Act Under the, rules have been drafted and made public .

The Recovery of Debts Due to Banks and Financial Institutions Act of 1993 governs the collection of debts owed to banks and financial institutions. After the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act (hereinafter referred to as 'SRFAESI Act', for short)

Borrowers might be the Debt Recovery Tribunal's first applicants. Previously, only lenders were eligible to apply. Debt Recovery Tribunals, like Civil Courts, have complete authority to issue any sort of orders for example in civil. Courts. The Tribunal has the authority to consider cross-claims, counterclaims, and set-offs. They do, however, cannot hear claims for damages, lack of services, violation of contract, or criminal charges. The lenders' failure to act responsibly.

The Debt Recovery Tribunal has the authority to appoint Receivers, Commissioners, issue ex-parte orders, ad interim orders, and interim orders, as well as review and hear appeals of its own decisions. Defying the instructions of the Tribunal's Recovery Officers.

The collection of evidence by the Debt Collection Court is unique. All evidence is in affidavit form. Cross-examination is only permitted at the request of the Defense, even if the court finds that such cross-examination is in the interest of justice. cross-examination may be rejected. The debt collection court process has a

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<sup>3</sup> Section 4 (1) of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993

<sup>4</sup> Ibid.

number of other unique features, all of which are intended to speed up the process<sup>5</sup>.

### **III. IMPORTANCE OF DEBT RECOVERY TRIBUNAL**

The Indian judicial system is very famous for the time it takes to resolve cases. It was found that the most effective method of dispute resolution in these courts is through court settlements, withdrawals, and compromises. Cases in both District Court and Superior Court are subject to long delays. While legal scholars point to several inefficiencies in the court system, it is generally accepted that loopholes are important factors. The so-called code of civil procedure allows both the plaintiff and the defendant numbers of motions, against motions and special sheets.

Although both the central and state legislatures have attempted to reform the Code by enacting the various amendments, there is a general consensus that these attempts have been unsuccessful. With this in mind, the utility of filing a lawsuit against the delinquent borrower is very small and the cost is very high. Furthermore, the bankruptcy process of the company takes a long time and the banker complains that he creates incentives for borrowers to mismanage the funds.

Thus a Debt Recovery tribunal is importance for the following reasons<sup>6</sup>.

- The money in a bank is referred to as "public money." This is because, in the case of

public sector banks, the money that operates the banks is provided by the government, and the government provides the capital injection. The capital of millions of investors guides the bank in the case of private sector banks. Furthermore, bank funds are supposed to be used by the general public and for business projects that have a significant impact on the people who rely on them. When money is stuck, a bank finds it difficult to fund initiatives that it could previously support.

- NPAs have a negative impact on a bank's profitability, therefore debt recovery is a must to keep it running smoothly.

- If the bank falls victim to a financial crisis, the workers, management, and all stakeholders will be in the dark.

- A significant quantity of nonperforming assets (NPA) would damage the bank's reputation and may deter investors.

- If the NPA is not recovered quickly, the bank's return on investment (ROI) falls, and the bank's cost of capital (interest) becomes stuck. It is the bank's most important source of revenue.

A bank must first get a court order in order to collect a non-performing loan, whether secured or unsecured. Prior to 1994, this entailed filing a civil lawsuit in a court of law. The banks must disclose the facts of the case in this lawsuit and ask the court to order the borrower to pay the money to the banks.

If the loan is unsecured the bank must request that the court liquidate the firm assets and

<sup>5</sup> <http://www.bankdrt.com/>; (Visited on September 09, 2020).

<sup>6</sup> Deolalkar, G. H., *The Indian Banking Sector: On the*

*Road to Progress*; available at: [http://www.adb.org/Documents/Books/Rising\\_to\\_the\\_Challenge/India/india\\_bnk.pdf](http://www.adb.org/Documents/Books/Rising_to_the_Challenge/India/india_bnk.pdf); (Visited on September 29, 2021)

distribute the proceeds from the liquidation among all the creditors according to the priority of their claim. If the loan is secured it must request that the court enforce its security interest that is allow the sale of collateral so that the bank may recover its dues<sup>7</sup>.

#### **IV. EXTENT AND SCOPE OF DRT**

- Pecuniary limit - The DRTs can be used to collect debts worth more than Rs. 10 lakhs. Banks and financial institutions (“creditors”) must seek a civil court under CPC for sums less than the above-mentioned threshold (Civil Procedure Code). The Act, on the other hand, allows the Central government to order that certain matters involving amounts more than Rs. 1 lakh be adjudicated by DRTs. Furthermore, the SARFAESI Act stipulates specified sums applicable to certain situations that can be taken up by DRTs. Now, under 22(1), the DRTs and DRATs must be regulated by natural justice principles. They have the authority to govern their activities in accordance with such standards.

- Jurisdiction - DRT has the power under Section 17 of the RDDBFI Act to consider any application from banks and financial institutions in order to recover debts for such banks and financial institutions. The Appellate Tribunal, the DRAT, shall have jurisdiction to hear appeals from any order made by a DRT under the Act. However, the Supreme Court has ruled that DRT and DRAT cannot rule on matters such as property succession rights, receipt issuing, and so

on. Its authority is solely limited to the circumstances listed in Section 17 of the Act.

Other courts, with the exception of the Supreme Court and the High Court, are now banned from hearing debt cases under Section 18 of the Act. This provision is in line with the L Chandra Kumar’s judgment which states that Tribunals are only supplementary to High Courts and not a substitute for them.

#### **V. ROLE & FUNCTIONS OF TRIBUNAL**

A Presiding Officer, who also serves as the Tribunal's Judge, preside over a Debt Recovery Tribunal. It also includes a handful of employees from the Registry. Accepting applications and filing cases with the DRT are the responsibility of the Registry. A Registrar is in charge of the Registry. It is the Registrar's responsibility to act as a Judicial Officer until the matter is resolved. For the last hearing, the case was moved to the Presiding Officer.

The Registrar is aided by an assistant. Registrar’s Assistant the Act also establishes the position of Recovery Officers Carry out the order.

- Duties and Powers of the Recovery Officer<sup>8</sup>

1. To Execute the final decree.
2. Post the final decree, to realise the debt amount and deposit it back with the bank.
3. Conduct public auction according to Section 25 to 28 of the RDB Act.
4. The merits of the Certificate, or the amounts mentioned in the Certificate cannot be agitated before the Recovery Officer.

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<sup>7</sup> Ibid

<sup>8</sup> Section 18 of the Act.

5. The Recovery Officer does not have the powers to add or remove people whose onus it is to satisfy the certificate. The Recovery Officer can, however, enlarge the area of persons from whom he may attempt to satisfy the Certificate, subject to provisions of the Rules, i.e. the new persons must be holding sums on behalf of the Certificate debtor.

- Duties of the Registrar

1. Registry accepts all the original applications and securitisation applications, and files them.

2. The Registry passes the file to the Registrar, who performs further scrutiny.

3. He performs the initial functions of the Tribunal in the primary stage of the course of action.

4. The Registrar has the duty to issue summons, Show-Cause Notices and make the defendants aware of the suit filed against them.

5. The Registrar also collects the reply to the issued Show-Cause notices.

- Procedures followed by the Debt Recovery Tribunal<sup>9</sup>

1. Section 19 of the RDB Act deals with the procedure for filing a case with the DRT.

2. An application can be filed in the Tribunal on a case, within the jurisdiction of it, on the recovery of debts from a person or an entity.

3. If two or more banks have a case on the same matter, the latter banks can join the former or first bank (on the filing of application).

4. A fee is prescribed by the Act, which shall be paid by the applicant. The minimum fees to file an application is 12,000 and the maximum is 1,50,000.

- DRT Proceedings in a Nutshell

1. An original application along with the documents of evidentiary value and the required fees is filed with the Registry.

2. The Registry reviews the application, checks for any flaws, accepts or rejects it.

3. The file then passes to the Registrar for further scrutiny of the application.

4. If the application is registered, a summons is issued by the Registrar.

5. If the defendant does not appear, the case becomes ex-parte.

6. Else, the defendant is required to file a Written Statement within 90 days of the summons.

7. Proof-Affidavit is filed by the applicant.

8. A Hearing Date is set by the Registrar under the directions of the Presiding Officer.

9. A Stay Petition may be served by the defendant

- Facts Concerning Procedure Followed by the DRT<sup>10</sup>

1. On receipt of an application, the Tribunal shall issue summons, requiring the defendant to show cause within 30 days of the service of summons as to why the relief prayed for should not be granted<sup>11</sup>.

2. A Counter-claim can be filed by the applicant through a written statement against the application and the acts of the applicant, attached

<sup>9</sup> Section 19 of the Act.

<sup>10</sup> Section 19(4) of the Act.

<sup>11</sup> Section 9 of the 1993 Act.

with the necessary documents of evidentiary value.

3. Section 19(12) provides that the Tribunal shall give an interim order in the form of an injunction, stay or attachment.

4. The tribunal can appoint a Receiver. Section 19 of the RDB Act clearly lines up the procedure to be followed, initially by the applicant and then by the Tribunal in the process of dispensing cases.

## **VI. CONCLUSION**

As the availability of more than one open forum is evaluated by law implementation, the current legislation concerning the code still confronts uncertainty. The rate at which DRTs dispose of cases is worrying, as they are unable to lower the number of ongoing cases. The existence of several company-related legislations relating to debt recovery mandates and requests interpretation. Cases that are delayed owing to overlapping processes are concerning. The interaction of the Code's regulations, the SARFAESI Act, and the DRT Act is yet unclear. Simultaneous procedures for the recovery of the same debt before the civil court, the DRT, and the NCLT contribute to an inefficient insolvency process.

Though the Court must dispose of an order application within six months and a stay application within two months from the date of its admission, it is recommended that the time-bound disposition of cases be implemented to improve the country's debt recovery situation. However, in many cases, the Tribunals in India have failed to do so. The government must ensure

that matters are dealt with in a timely manner by including a section in the Act and making it a law. Despite the fact that the SARFAESI Act requires Debt Recovery Tribunals to resolve Original Applications within six months, this is rarely consistently followed. To achieve this, efforts must be made.

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