

VOLUME-4

DEBT RECOVERY TRIBUNAL: POWERS AND PROCEDURES AND MODE OF RECOVERY OF DEBTS

BY : SHANTANU SAHARAN*

Abstract

In this research paper I will be discussing about the various legal bodies that have jurisdiction in the matters of debt recovery. I have been working for almost two years in a Public Sector Bank as a legal Manager and have been dealing with recovery cases in DRT which has helped me get considerable insight in the issue, which I am sharing through this research about the procedure to be followed to get the order from these authorities and various powers of them. The main focus is on various judicial bodies (courts, tribunals), their establishment, the procedures followed and their powers and various modes of recovery of the debt.

Objective : The target of the present paper is to know the methodology included in the recuperation of obligations. The paper will likewise anticipate elaborate the forces of the Debt Recovery Tribunal furthermore the method of recouping the obligation under the working of the tribunal.

Keywords : Debt recovery, obligations, Tribunal

Author : Shantanu Saharan*¹

¹ The Author is currently Manager (Law) of Punjab and Sind Bank (PSU),
Contact no. – 8141377857, Email - Saharan.shantanu8@gmail.com

INTRODUCTION

Since the dawn of Indian sovereignty in 1947, the administration felt the need of enhancing the regulations for growth of the economy. As such, formative arrangements were made and it was taken up by the legislature from time to time. In this interest, Banks and Financial Institutions plays a vital part for the development of trade and industry. The Government of India, with a specific end goal to streamline the framework for fast and efficient recovery of loans, formed advisory boards like 'The Tiwari Committee' and 'The Narasimham Committee'. These boards prescribed for building up of exceptional tribunals for speedier resolution of recovery cases of Banks and Financial Institutions. Subsequently the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was enacted on 24th June, 1993. It is a unique regulation for guaranteeing speedy resolution of cases of Banks and Financial Institutions and expedient revival of their money. The tribunal is not bound by the Code of Civil Procedure but rather is guided by the standards of equity and their procedural tenets. Recovery of Debts Due to Banks and Financial Institutions Act was enacted in the year 1993 as a step to recover the dues locked up with the defaulters of Banks and Financial Institutions. Debt Recovery Tribunals were established for expeditious adjudication of claims of banks and financial institutions and speedy recovery of their dues. To achieve the objective, the procedures have been simplified and powers are given to the tribunals to decide the matters after being guided by principles of natural justice to ensure fair play.

The validity of the act was first challenged in Delhi High Court in Delhi Bar Association & others v. UOI & Another in the Delhi High court.² The constitutional validity of the act was again challenged in the Supreme Court on the ground that the act was unreasonable and violative of Art. 14 of the Constitution of India and also beyond the legislative competence of the parliament in Union of India & Another v. Delhi Bar Ass. & Others³. The Supreme Court in the judgment held that Recovery of Debts to Banks and Financial Institutions Act, 1993 is a valid piece of legislation.

POWERS AND PROCEDURE OF THE TRIBUNAL

The lenders are allowed to apply with their claims where the measure of obligation due to Banks and Financial Institutions is rupees ten lakhs or more. It was allowed in the regulation that each pending suit, where the measure of obligation is the aforementioned sum, in any court should be transferred to the tribunal for settlement. The Bank or Financial Institution trying to settle the obligation from the borrower can make an application to the tribunal concerned, whereupon summons is sent by it to the borrower. In the wake of giving

² AIR 1995 Del 323

³ (2002) 4 SCC 275

a chance of representation, the tribunal initiates action in the case by passing an order.

Sec. 3 of the Recovery of Debts to Banks and Financial Institutions Act, 1993 provides for the establishment of Debt Recovery Tribunals. The Central Government can establish the tribunals by notifying their location, date and territorial jurisdiction. After notification, the tribunals started functioning by assuming jurisdiction, powers and authority conferred on them under the act. The Debts Recovery Tribunal is presided over by one member i.e. the presiding officer. The officer assumes the power and authority as the head of the tribunal and accepts applications from banks and financial institutions within the territorial jurisdiction of the tribunal concerned to decide claims of Rs. 10 lakhs and above. The presiding officer is appointed by a notification of the central government. He may also have to discharge the functions of a presiding officer of another tribunal on orders of the central government when the post falls vacant for any reason.⁴

The central government so far has constituted five appellate tribunals, which are functioning at Mumbai, Chennai, Kolkata, Delhi and Allahabad. They have jurisdiction over the Debt Recovery Tribunals functioning within their jurisdiction, which have been prescribed by central government in their notification. In the event that the case is adjudicated, the tribunal can issue a recovery certificate.

Any party who may feel that they have been wronged and who might like to appeal to the investigative tribunal can do so inside of a time of 45 days from the date of receipt of tribunal's request under Sec. 20(4). The Debt Recovery Appellate Tribunal is the last appellate authority.⁵

Section 23 of the act provides that not only for engaging legal practitioners but also the officers of the banks and the defendant; personally or through their officers to present their respective cases before the Debt Recovery Tribunals and Appellate Tribunals. This is a revolutionary provision and first of its kind in Indian legislature, which essentially ensured speedy resolution.

Sec. 22 of the demonstration manages the powers and methods of the tribunal and the appellate tribunal. Both the DRTs and the DRATs are vested with authority to outline their regulations and methodology inside of the structure of the procedure and Debt Recovery Tribunal (Procedural) Rules, 1993 and Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 which are guided by the standards of common equity.

The standards of characteristic justice are not epitomized in any statute but rather they are guided by tenets which guarantee reasonable play in rendering equity. Regular equity comprises of two fundamental rules:

- Audi Alteram Partem (No individual might be adjudged against, unheard)

⁴ Debt Recovery Tribunal available on <http://bankdrt.net/>

⁵ Laws and Procedure of Debt Recovery Tribunal in India available on <http://www.bankdrt.org/>

· Nemo debet esse judex in propria causa (Nobody might go about as a judge in his own cause)⁶
It implies that the adjudicating authority ought to be unprejudiced, impartial and reasonable in accepting the matters before it. Preceding Officer declares issue of summon to the parties and gives the respondent, a chance to defend him and the matter is always decided strictly upon listening to both sides. Apex Court in Industrial Credit and Investment Corporation of India Ltd. v. Grapco Industries⁷ held that the tribunal is not bound by the Code of Civil Procedure and it can go even past it and just have to ensure that there is a watch on standards of normal equity. Under its powers, the tribunal can request that the plaintiff amend the imperfections found in the application before acceptance. On the off chance that the tribunal does not follow the standards of common equity, application in this regard can be made to the court.

The tribunals and DRATs are deliberated with the procedures, practiced by the common court in matters specified, in the procurements of the procedures⁸. The procedure is made basic and simple so as to compel the working of common courts under Civil Procedure Code for legitimate deviation as per their discretion by the tribunals and appellate tribunals. The authorities vested upon the DRT are:

Summoning and authorizing the presence of any individual and looking at him on pledge.

- Requiring the disclosure and creation of records
- Receiving proof on sworn statements
- Issuing commissions for the examination of witnesses
- Issuing commissions for examination of reports
- Reviewing its orders/ judgments
- Setting aside any request of release of any application for default or any request went by it ex parte
- Any other matter which might be recommended

Essentially the DRTs and DRATs are not common courts. Along these lines for appropriate and successful

⁶ Law relating to Debt Recovery Tribunals, 5th Edition, Asia Law House

⁷ 1999 (3) SCR 759

⁸ Under Sec. 22 of RDDBFI, it has been clarified that the tribunal and the investigative tribunal are not bound by the Code of Civil Procedure furthermore have the ability to manage their own particular procedures guided by the standards of regular equity.

mediation of cases, certain powers of the common court are vested in the tribunal and appellate tribunals. Therefore the benefits, authorities and security accessible to the common courts are given on the tribunal and investigative tribunal for the reasons counted in it, for powerful working.

Method of RECOVERY OF DEBT

The procurements of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 mulls over three methods of recovery:

- Attachment and auction of moveable or immovable property of respondent
- His capture and detainment in jail
- Appointing a collector for administration of his moveable or immovable properties.⁹

The Recovery officer initiates the recovery process after receipt of duplicate of the Recovery Certificate to redeem the duty indicated in it by any or all the three methods of recuperation expressed previously. This unique tribunal was formed on suggestions of different advisory committees selected by the central government to accelerate the recovery process of loans payable to the banks and FIs by the defaulting parties. Order XXI of Civil Procedure Code contains order execution methodology. Since the regulations of C.P.C are not material to the tribunal and appellate tribunal, comparable attachment have been done in the standards of technique laid out for the tribunals and DRATs. Recovery procedure begins from issuance of notification to the Recovery Officer for procurement of goods to be taken after their attachment and eventually auction of property of the defaulter in the occasion of delinquency of duty i.e. repayment of loan.

The activities and orders of the recovery officer can be addressed before the tribunal so as to review any arbitrary actions by the said officer under sec.30 of the RDDBFI Act.

The authority of the recovery officer to recover the amount mentioned in the recovery certificate is a statutory obligation. Be that as it may, his authority can't be practiced to sell the attached assets which might benefit some third person.

⁹An introduction to The Recovery of Debts due to Banks and Financial Institutions Act, 1993;

OTHER MODES OF RECOVERY

After issuance of the recovery certificate under Sec. 19(22), Sec. 28 can be squeezed into operation without partiality to the alternative recovery modes accessible under Sec. 25. The procurements of Sec. 28 become possibly the most important factor when there is expectation of any sum from any outsider to the litigant.

In such cases, the recovery officer might require the outsider to deduct the measure of obligation due from the respondent and on such demand it is binding on that individual to deduct and transfer such sum to the credit of recovery officer.

CONCLUSION

Recovery of Debts to Banks and Financial Institutions Act was enacted in the year 1993 as a step to recover the dues locked up with the defaulters of Banks and Financial Institutions. Debt Recovery Tribunals were established for expeditious adjudication of claims of banks and financial institutions and speedy recovery of their dues. To achieve the objective, the procedures have been simplified and powers are given to the tribunals to decide the matters guided by principles of natural justice to ensure fair play.

The Debt Recovery Tribunals brought on an upgrade in banking system in the country as banks' started giving financial support for strengthening of the economy by providing finance in an enhanced manner, as banks could now depend on DRT Act to recover the dues. The negative impact was that the interest rates shot up after the tribunals were built and all issues for credit development were determined. DRT helped the Banks and Financial Institutions to recoup major measures of credits, which would have taken years in times before formation of tribunals by virtue of the lengthy common court's system. With the incorporation of the SARFAESI Act, 2002 (The Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest) it has become imaginable to guarantee fast recovery and ingrain certainty to the borrower that they would be heard promptly particularly when the borrower has got a decent reputation/ connection with the Bank in addition to having significant and sufficient security sworn to the Bank.