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A Study on the working of the Debt Recovery Tribunals (DRT) in India and its way ahead

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Due to the emerging debt recovery suits and the overburdening of cases in the civil courts, proper and timely justice was not provided to the Banks and the other creditors. The Recovery of Debt due to Bank and other financial institutions (RDDBFI) Act, 1993 was passed that led to the creation of a separate forum, the Debt Recovery Tribunal (DRT) and the Debt Recovery Appellate Tribunal (DRAT), that dealt with only debt recovery cases and aimed to provide complete and swift disposal of cases. These Tribunals were independent and not bound by the procedure under the Code of Civil Procedure (CPC), 1908. Instead, they were guided by the principle of natural justice and also had the capacity to regulate their own procedures and rules as they think fit. However, with time the effectiveness and efficiency of the Tribunal diminished and led to the same situation of overburdening of debt recovery cases on its shoulders. This article aims at studying the background, history, and need to establish such independent Debt Recovery Tribunals. It further analyses the composition, powers, and proceedings of the DRT and the DRAT. In addition to that, it focuses on the current issues and problems faced by the Tribunal along with providing possible remedial measures for the same.

Keywords: *recovery tribunal, debt, loans.*

INTRODUCTION

In the latest ranking of the International Economic Resilience (IER) of the top 10 countries, India has shown a consistent improvement in the previous four years[1]. This ranking is enough to display how India has improvised and strengthened its economy even after going through a distressing pandemic in the last two years. For the country's growth, the banking sector of India has always played a major role. The banks and other financial institutions work by seeking investments from their customers in the form of money deposited by them in their accounts and on the other hand lending money to borrowers in the form of loans. The interest amount made out of the lending amount as a loan is the way how the bank makes its earnings. However, not all loans yield results and at times the bank also finds it extremely difficult to recover the loan amount from the borrowers. Loans are treated as assets for the banks as they are the major source of earnings for them. When such assets and loans stop giving any returns to the banks for a specific period (usually 90 days) then such loans are termed as Non-Performing Assets (NPA). The loan amount which stands irrecoverable is called a bad loan. Both NPA and Bad loans pose a big threat to the banks, financial institutions, and the economy of the country.

Non-Performing Assets and Bad loans have an immense negative impact on the growth of the nation. NPA acts as a burden on the banking sector due to the excess losses suffered by the borrowers. To cover these losses the banks would set higher interest rates on the loan amount for any future borrowings. Apart from this, there are high chances of a financial crisis in banks and other financial institutions which could halt the growing economy of the country. Such irrecoverable losses and NPA also leads to several lawsuits, which is another way also adds pressure on the shoulder of the already overburdened judiciary. Due to the reasons stated above, it was realised that there must be certain steps taken to tackle the expanding impact of these NPA and Bad loans.

[1] 'India best performing among major economies of the world : Report'(*The Print*, 9 July 2022) <https://theprint.in/economy/india-best-performing-among-major-economies-in-the-world-report/1031952/> accessed 24 August 2022

THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (RDDBFI) ACT, 1993

Earlier, before 1993, any cases of debt recovery were filed in civil court by banks and financial institutions. These debt recovery cases under the civil court were dealt with and decided as per the procedure laid down under the Code of Civil Procedure (CPC), 1908. The main problem faced by the banks in the civil court was the delays in judgement and disposal of debt recovery suits. As the Civil courts were also overburdened with various other civil matters, thus, debt recovery suits were often not given priority among other matters. Hence, led to years of struggle and waiting for justice. Realising the issues faced by the banks in the civil courts, the Narsimha Committee recommended a separate and independent tribunal to be specially set up to tackle cases only related to debt recovery. Thus, on such recommendations, an Act was passed called the Recovery of Debt due to Banks and Financial Institutions (RDDBFI) Act of 1993. Under this Act, a special forum, Debt Recovery Tribunal (DRT) and Debt Recovery Appellate Tribunal (DRAT) were formed with the main aim and object of providing speedy recovery and disposal of debt recovery cases involving banks and other financial institutions. Parties can seek recovery by filing the original application in the Debt Recovery Tribunal (DRT) as well as filing appeals in the Debt Recovery Appellate Tribunal (DRAT).

The formation of such tribunals initially led to quicker recovery of money which were stuck and categorized as bad loans and NPA. Such trapped money can then be used to fund other profitable projects that help in yielding more returns in the form of profits as well as giving a boost to the country's economy and GDP. DRT not only helps in the fast disposal of cases but also ensures smooth functioning in related matters. Setting up these tribunals would also assist banks and other financial institutions in coming out of the financial crises thereby allowing them to make a better image of themselves in the market. It would also boost the morale of the investors and encourage them to make better investments. Hence, these tribunals provide a safe way to maintain the stability and profitability of the banking sector in India.

DEBT RECOVERY TRIBUNAL (DRT)

The establishment of the Debt Recovery Tribunals (DRT) is done by the central government itself by issuing a notification for the same. The jurisdiction area of these tribunals is also specified by the central government only. The pecuniary jurisdiction of the DRT allows them to take matters where the amount of debt due is Rs. 10 lakh or more. However, this limit was raised to 20 lakh in 2018[2]. Any case below this debt amount is dealt with by the civil courts only under CPC, 1908. The RDDBFI Act, 1993 bars all the other courts from matters of debt recovery other than the Supreme Court and the High Court under Articles 226 and 227[3] of the Constitution of India.

Composition – The DRT is composed of a single member, known as the Presiding Officer, who is appointed by the Government. The central government also enjoys the liberty of appointing one Presiding officer for one or more tribunals across India. The office tenure of the office is 5 years only. He is also eligible for reappointment up to 65 years of age. The presiding officer must also be qualified to be a District judge to hold such office. The central government also holds the right to appoint one or more Recovery officers as tribunal staff who shall discharge their duties under the order and guidance of the Presiding officer.

DEBT RECOVERY APPELLATE TRIBUNAL (DRAT)

The establishment of the Debt Recovery Appellate Tribunal is also done by the central government in the same manner as the Debt Recovery Tribunal under the RDDBFI Act, 1993. The jurisdiction of the Appellate Tribunal is also specified by the central government. The Debt Recovery Tribunals (DRT) accept original applications whereas the Debt Recovery Appellate Tribunal (DRAT) accepts appeals in cases when the parties are not satisfied with the decisions of the DRT.

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[2] 'Monetary limit for filing cases in DRT doubled to Rs 20 Lakh, Money and Banking' (*The Hindu Business Line*, 6 Sept 2018) <https://www.thehindubusinessline.com/money-and-banking/monetary-limit-for-filing-cases-in-drt-doubled-to-rs-20-lakh/article24884061.ece> accessed 24 August 2022

[3] Constitution of India 1950, art. 226 and art. 227

Composition – The DRAT is composed of a single member, appointed by the government, known as the Chairperson of the Appellate tribunal. The Government may also appoint a single chairperson for one or more appellate tribunals. The tenure of office is 5 years with the opportunity of reappointment up to the age of 70 years. To be appointed as a chairperson of the appellate tribunal the person must be either qualified to be a judge of the High Court or a member of the Legal service with an experience of 3 years as a Grade I office, or an experience of a Presiding officer of a DRT for at least 3 years. Apart from this, the government may also appoint other officers and employees as staff of the appellate tribunal as it thinks fit.

Powers of Chairperson – The chairperson of the appellate tribunal holds the power to control the tribunals that come under his area of jurisdiction as specified by the central government. He also holds the power to regulate, appraise and record the confidential reports of the Presiding officers of the DRTs. He may also direct the Presiding officer to provide him with the information on any cases which are still pending, cases that are already disposed of, any new cases filed, or any other required information by him. The chairperson can also transfer any particular case from one tribunal to the other for disposal. He can also conduct meetings with the Presiding officer and review their work from time to time. Any complaints against the presiding officer may also be reported by him directly to the central government in case of his misbehaviour or incapacity.

HOW ARE PROCEEDINGS DONE IN A TRIBUNAL?

The Debt Recovery Tribunals (DRT) deal with cases dealing with the recovery of debt where the plaintiff is the aggrieved party who has lent money to the borrower like Banks or any other Financial Institution whereas the defendant is that party who has borrowed money from the other party and failed to pay back. The proceeding for the recovery of debt may be either done through the way of application or via the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002.

1. *Application*

The aggrieved party (i.e., Banks and other Financial Institutions) may initiate proceedings for recovery of debt from the borrower by filing an original application along with paying the prescribed fee to the Debt Recovery Tribunal (DRT) having competent jurisdiction to take that particular matter. After the application is received, the tribunal may issue summon to the other party to submit a written statement (within 30 days), to disclose particulars of any property or asset owned by him, and to restrain the transfer or disposal of such property without seeking prior permission from the DRT.

The defendant is required to submit a Written Statement of his defences along with certain original documents before the first hearing of the matter within 30 days of receiving the summon. However, if under any circumstance the defendant fails to do so, the presiding officer of the tribunal has the power to grant an extension of 15 days. The DRT, after hearing both sides, may pass an Interim or a Final Order within 30 days of the hearing. The tribunal may also issue a Recovery Certificate to the Recovery officer stating the amount of debt to be recovered within 15 days of the final hearing.

In the Vijay Mallya fraud case, the DRT has sold the shares of 'United Breweries' worth Rs. 5,800 crores to recover the amount due Bank[4]. In the case of Nirav Modi, the tribunal has recently ordered the auction of his prime property to recover part of the total due amount of Rs. 2,133 crores[5]. If any of the terms of the order is breached or disobeyed, the Tribunal holds the power to order the detention of the defaulting party in civil prison for up to 3 months. The proceedings in the Debt Recovery Tribunals (DRT) must be disposed of expeditiously within 2 hearings and a maximum of 180 days.

However, in ***Authorized Officer, Overseas Banks v M/s. Ashok Saw Mill*[6]**, it was held that the DRT must dispose of the case within a period of 60 days from the filing of the application. The

[4] 'Debt Recovery Tribunal sells Rs. 5,800 crore of Mallya's United Breweries shares for PSBs' (*The Economic Times*, 24 June 2021) <https://economictimes.indiatimes.com/news/economy/finance/debt-recovery-tribunal-sells-rs-5800-crore-of-mallyas-united-breweries-shares-for-psbs/articleshow/83798156.cms> accessed 24 August 2022

[5] 'HCL House of Fugitive Nirav Modi to be auctioned on September 23rd' (*BW Business World*, 20 August 2022) <https://www.businessworld.in/article/HCL-House-Of-Fugitive-Nirav-Modi-To-Be-Auctioned-On-September-23/20-08-2022-443097/> accessed 24 August 2022

[6] *Authorised Officer, Overseas Banks v Ashok Saw Mill* (2009) S.L.P (C) No. 27399/2008

time for disposal shall not exceed the time of four months. In case of violation of the allotted time, an appeal must be made to the appellate tribunal stating the same.

Appeal to Appellate Tribunal – If any party is unsatisfied with the order of the DRT, they may appeal to the DRAT having competent jurisdiction in the matter within a period of 30 days of passing such an order. The appellate tribunal may also accept appeals after the expiry of 30 days only if sufficient cause is present. However, such an appeal would only be accepted if the aggrieved party pays a deposit of at least 50% of the amount of debt due as was determined and stated by the DRT. The DRAT holds the right to confirm, alter, modify or reject the order passed by the Tribunal. The appellate tribunal has a disposal time limit of 6 months for the pending suits.

2. *SARFAESI Act, 2002*

The RDDBFI Act, of 1993 lacked in many ways leading to the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act of 2002. This particular Act provides an opportunity to the Banks and financial institutions to recover the due debt amount from the borrowers without the complete intervention of the Debt Recovery Tribunals. Once the due amount is declared as NPA, a notice is sent to the borrower informing him that the creditor holds the right to take ownership of all the secured assets and also the right to transfer such assets. Once the full amount is recovered by way of transferring the secured assets, there is no need for DRTs to intervene in the matter. However, in cases when only the partial amount is recovered, the banks must apply to the recovery of the remaining amount due to the DRT. After the application is filed, the matter is preceded by the way of application as stated above.

PROBLEMS AND ISSUES LEADING TO INEFFICIENCY OF DRT

Currently, there are only 39 Debt Recovery Tribunals (DRT) and 5 Debt Recovery Appellate Tribunals (DRAT) that are operating across the country. This independent body was established as the first-ever debt recovery mechanism that aimed at providing speedy redressal to the creditors and also helping them in the recovery of the amount due from the

borrowers. Initially, the rate at which the cases were disposed of by the tribunal was exceptional and praiseworthy. However, over time the effectiveness and the efficiency of the DRT were diminished and worrisome. There are various reasons for the alarming work report of the tribunals.

- **A limited number of Debt Recovery Tribunals (DRT) and Debt Recovery Appellate Tribunals (DRAT)**

As stated above, there are only 39 DRT and 5 DRAT spread across the country to handle all the debt recovery cases. The number of tribunals is very limited as compared to the territorial area and the number of cases arising every day. Some tribunals even have the additional charges of multiple states.

- **Burden of Cases**

Since the tribunals are very few in number as compared to the debt recovery cases coming up every day, the burden on the tribunals to dispose-off such cases is immense.

- **Delay and backlog of cases**

Due to limited tribunals and the enormous burden of cases, some cases are not disposed of within the prescribed time frame causing delay and backlog of such cases. Apart from these reasons, the delay may also be due to the staying application of cases. In ***Tamilnad Mercantile Bank v Moolchand Finance Ltd***.[7], which was filed in 1971 was disposed of by DRT, Chennai after a long time of 23 years.

- **Unfulfilled vacancies and lack of timely appointments**

The vacancies of the DRT and the DRAT remain unfulfilled along with delays in appointments of the Presiding Officers, the Chairperson, and the remaining staff members. There is a void of

[7] Sanjay Vijayakumar, 'Debt Recovery Tribunal Settles 23-year-old case' (*The Hindu*, 4 May 2020) <https://www.thehindu.com/business/debt-recovery-tribunal-settles-23-year-old-case/article31504296.ece> accessed 24 August 2022

a body that can be allotted the responsibility of keeping a check on the timely appointments of such officers and members.

- **Broad territorial jurisdiction**

Due to a limited number of tribunals across the countries, often a single DRT is given the additional charges of more than one state. Such additional jurisdiction only adds pressure over the tribunal leading to delays in cases. The Supreme Court also disapproved of this act of the government burdening the DRTs with the extraterritorial jurisdiction of multiple states[8]. The central government has recently informed the High Court of giving the additional jurisdiction of J&K to DRT of Chandigarh.[9]

- **Delay by parties**

Certain times there have been instances where the parties of a case are unable to present the original documents before the tribunals on time. Such acts of the parties also form a reason for the delay of the debt recovery cases as no decision can be made without the proper verification of the documentation.

REMEDIAL MEASURES AND SUGGESTIONS

The debt recovery tribunals have been proved as being ineffective and time-consuming due to the multiple reasons stated above. However, there have also been various amendments done to the Act to tackle such problems. Some of these problems have been solved with the Amendment Act of 2016. However, much more can be done to improve the working and operations of the tribunals.

[8] Srishti Ojha, ''Litigants in Distress' : Supreme Court Deprecates Centre's Practice of Giving Additional Charge to DRT of One State over another state over unfulfilled vacancies' (*Live Law*, 15 Sept 2021) <https://www.livelaw.in/top-stories/drt-of-one-state-given-additional-charge-drt-of-another-state-supreme-court-181663?infinitescroll=1> accessed 24 August 2022

[9] 'DRT Chandigarh available for J&K bank loan cases : GOI to HC' (*Daily Excelsior*, 29 March 2022) <https://www.dailyexcelsior.com/drt-chandigarh-available-for-jk-bank-loan-cases-goi-to-hc/> accessed 24 August 2022

1. The establishment of more Debt Recovery Tribunals (DRT) and Debt Recovery Appellate Tribunals (DRAT) would help in smooth functioning and swift disposal of cases.
2. Setting up strict timelines in each step of the proceeding to ensure the timely disposal of cases.
3. Keeping uniform rules and procedures for every DRT and DRAT across the country to ensure clarity and stability in its operations.
4. Increasing the age limits and service duration of the serving members of the tribunals – the Presiding Officer of the DRT and the Chairperson of the DRAT.
5. Increasing the accessibility, transparency, and effectiveness of the tribunals by adopting online means and digitalization of the loan recovery proceedings (i.e. E-DRT) that can allow users quick and easy options of filing applications online, payment of prescribed fees through electronic mediums, and keeping track of the case status and orders, etc.
6. Keeping a supervising body, like the High Court, for tribunals of each state to ensure the proper functioning and disposal of the DRT's duties.
7. Making timely appointments of officers and employees of the Tribunals and ensuring that no vacancy remains unfulfilled.
8. Keeping a thorough check on the stay applications and granting approvals only after proper inspections to avoid any further delay of cases.
9. Further raising the pecuniary limits and jurisdictions for the tribunals, if need be, to reduce the pendency of debt recovery cases and to recover huge debt amounts due from the big corporate defaulters.
10. Using advanced tools and technology to set up online virtual courts for quick disposal of cases.
11. Setting up National Tribunal Commission (NTC) – an independent body to supervise the appointments to tribunals across the country as well as taking care of any of its administrational and infrastructural needs.
12. Creation of a Special Recovery Tribunal (SRT) that takes up cases of high debt valuations.

13. Penalising and imposing fines on the parties who cause any unnecessary delay in the adjudications of the cases in the DRT and the DRAT.

CONCLUSION

The Debt Recovery Tribunals (DRT) and the Debt Recovery Appellate Tribunals set for the debt recovery cases happen to be a great step in creating a separate independent system for handling such types of cases. However, the diminishing effectiveness and functioning of the tribunals create the same situation again for the Banks and other financial institutions. The objective of the Recovery of Debt due to Banks and financial institutions (RDDBFI) Act, 1993 is to ensure and provide speedy redressal of debt recovery cases. But the current condition of the tribunals is troubling as it is defeating the main aim and object for which they were established. To fix this, proper and timely remedial and corrective measures should be implemented. Such steps would act like a cure for worsening disease. No matter how bad the system gets, there always is an opportunity to repair it and restore it.