



Study Notes

The Recovery of Debts and Bankruptcy Act, 1993

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Introduction

- Debt Recovery Tribunals have been established to facilitate the debt recovery process involving banks and financial institutions with their customers
- Since long, the recovery of debts and enforcement of securities from the defaulters has been a tedious work for the Indian banks and financial institutions.
- For this purpose and in order to streamline such processes the Narasimham Committee recommended the setting up of Tribunals such as DRTs (Debt Recovery Tribunals) and DRATs (Debt Recovery Appellate Tribunals)
- Thus, in 1993, the Recovery of Debts due to Banks and Financial Institutions (RDDBFI) Act was passed which led to the establishment of Debt Recovery Tribunals (DRTs)
- The Debt Recovery Tribunal (DRTs) have been vested with the original jurisdiction and Debts Recovery Appellate Tribunals (DRATs) with appellate jurisdiction, with the objective of expeditious adjudication and recovery of debts due to banks and financial institutions

Chapter I Preliminary

- The Recovery of Debts and Bankruptcy Act, 1993 (the "Act") extends to the whole of India
- The Act came into force on 24th June, 1993
- The provisions of this Act shall not apply:
 - If amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions
 - is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify

Some Important Definitions

- **Bank** section 2(d) – means (i) banking company; (ii) a corresponding new bank; (iii) State Bank of India; (iv) a subsidiary bank; or (v) a Regional Rural Bank; (vi) a multi-State co-operative bank
- **Debt** section 2(g)- means any liability (inclusive of interest) which is claimed as due from any person or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the

borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities

- **Debt securities** section 2(ga) -means debt securities listed in accordance with regulations made by the Securities Exchange Board of India under the Securities and Exchange Board of India Act, 1992
- **Financial Institution** section 2(h) -means (i) a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956); (ia) the securitisation company or reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; (ib) a debenture trustee registered with the Board and appointed for secured debt securities; (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
- **Financial Lease** section 2(ha) - means a lease under a lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be
- **Property** section 2(jb) – means (a) immovable property; (b) movable property; (c) any debt or any right to receive payment of money, whether secured or unsecured; (d) receivables, whether existing or future; (e) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature, as may be prescribed by the Central Government in consultation with Reserve Bank
- **Security Interest** section 2(lb) - means mortgage, charge, hypothecation, assignment or any other right, title or interest of any kind whatsoever upon property, created in favour of any bank or financial institution and includes-- (a) such right, title or interest upon tangible asset, retained by the bank or financial institution as owner of the property, given on hire or financial lease or conditional sale which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or any credit provided to enable the borrower to acquire the tangible asset; or (b) such right, title or interest in any intangible asset or licence of any intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit extended to enable the borrower to acquire the intangible asset or licence of intangible asset

Chapter II Establishment of Tribunal and Appellate Tribunal

- **Establishment of the Tribunal Section 3**
 - Central Government shall establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act

- Central Government shall establish such number of Debts Recovery Tribunals and its benches as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under the Insolvency and Bankruptcy Code, 2016
- **Composition of Tribunal Section 4**
 - A Tribunal shall consist of one person only to be known as the Presiding Officer who will be appointed by the Central Government
 - Central Government may authorise --
 - ✓ Presiding Officer or the Judicial Member of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal, in addition to his being the Presiding Officer or the Judicial Member of that Tribunal, as the case maybe
- **Qualifications for appointment as Presiding Officer Section 5**
 - A person shall be qualified for appointment as the Presiding Officer of a Tribunal if:
 - ✓ he is, or has been, or is qualified to be, a District Judge
- **Term of office of Presiding Officer Section 6**
 - Presiding Officer of a Tribunal shall hold office:
 - ✓ for a term of five years from the date on which he enters upon his office and
 - ✓ shall be eligible for reappointment
 - No person shall hold office as the Presiding Officer of a Tribunal after he has attained the age of sixty-five years
- **Establishment of Appellate Tribunal Section 8**
 - Central Government shall establish one or more Appellate Tribunals to be known as the Debts Recovery Appellate Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act
- **Composition of Appellate Tribunal Section 9**
 - An Appellate Tribunal shall consist of one person only referred to as the Chairperson of the Appellate Tribunal to be appointed by the Central Government
- **Qualifications for appointment as Chairperson of the Appellate Tribunal Section 10**
 - A person shall not be qualified for appointment as the Chairperson of an Appellate Tribunal unless he--
 - ✓ is, or has been, or is qualified to be, a Judge of a High Court; or

- ✓ has been a member of the Indian Legal Service and has held a post in Grade I of that service for at least three years; or
 - ✓ has held office as the Presiding Officer of a Tribunal for at least three years
- **Term of office of Chairperson of Appellate Tribunal Section 11**
 - Chairperson of an Appellate Tribunal shall hold office:
 - ✓ for a term of five years from the date on which he enters upon his office and
 - ✓ shall be eligible for reappointment
 - No person shall hold office as the Chairperson of an Appellate Tribunal after he has attained the age of seventy years
- **Resignation and removal Section 15**
 - The Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal:
 - ✓ may by notice in writing under his hand addressed to the Central Government, resign his office
 - ✓ shall, unless he is permitted by the Central Government to relinquish his office sooner:
 - continue to hold office until the expiry of three months from the date of receipt of such notice or
 - until a person duly appointed as his successor enters upon his office or
 - until the expiry of his term of office
 - whichever is the earliest
 - ✓ shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after inquiry:
 - in the case of the Presiding Officer of a Tribunal, by a Judge of a High Court;
 - in the case of the Chairperson of an Appellate Tribunal, by a Judge of the Supreme Court
 - in which the Presiding Officer or the Chairperson has been informed of the charges against him and
 - given a reasonable opportunity of being heard in respect of these charges
- **Qualifications, terms and conditions of service of Chairperson Section 15A**
 - The qualifications, appointment, term of office, salaries and allowances, resignation, removal and the terms and conditions of service of the Chairperson of the Appellate Tribunal appointed
 - ✓ after the commencement of the Tribunals Reforms Act, 2021 shall be governed by the provisions of Chapter II of the said Act
 - ✓ before the commencement of Part XIV of Chapter VI of the Finance Act, 2017 shall continue to be governed by the provisions of this Act

Chapter III Jurisdiction, Powers and Authority of Tribunals

- **Jurisdiction of the Tribunal & Appellate Tribunal Section 17**
 - 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
 - ✓ under Part III of Insolvency and Bankruptcy Code, 2016
 - ✓ shall have circuit sittings in all district headquarters
 - An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against:
 - ✓ any order made, or deemed to have been made, by a Tribunal under this Act
 - ✓ order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016
- **Power of Chairperson of Appellate Tribunal Section 17A**
 - The Chairperson of an Appellate Tribunal shall:
 - ✓ exercise general power of superintendence and control over the Tribunals under his jurisdiction
 - ✓ including the power of appraising the work and recording the annual confidential reports of Presiding Officers
 - The Chairperson may:
 - ✓ direct the Tribunals to furnish, in such form, at such intervals and within such time, information relating to pending cases both under:
 - this Act and
 - the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, or
 - under any other law for the time being in forcenumber of cases disposed of, number of new cases filed and such other information as may be considered necessary by the Chairperson
 - ✓ convene meetings of the Presiding Officers of Tribunals periodically to review their performance
 - On assessment of the performance of any Presiding Officer of the Tribunal or otherwise, the Chairperson is of the opinion that an inquiry is required to be initiated against such Presiding Officer for misbehaviour or incapacity, he shall:
 - ✓ submit a report to the Central Government recommending action against such Presiding Officer, if any, under section 15, and
 - ✓ for reasons to be recorded in writing for the same
 - The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal
- **Bar of jurisdiction Section 18**

- On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution in relation to the matters specified in section 17
- Any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002 shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings

Chapter IV Procedure of the Tribunal

- **Application to the Tribunal Section 19**

- Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction:
 - ✓ the branch or any other office of the bank or financial institution is maintaining an account in which debt claimed is outstanding, for the time being; or
 - ✓ the defendant, or any of the defendants or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or
 - ✓ the cause of action, wholly or in part, arises
- Bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, if no such action had been taken earlier under that Act
 - ✓ The application made shall be dealt with as expeditiously as possible and disposed of within thirty days from the date of such application
- Every applicant in the application filed for recovery of debt, shall:
 - ✓ state particulars of the debt secured by security interest over properties or assets belonging to any of the defendants and the estimated value of such securities;
 - ✓ if the estimated value of:
 - securities is not sufficient to satisfy the debt claimed, state particulars of any other properties or assets owned by any of the defendants, if any; and
 - such other assets is not sufficient to recover the debt, seek an order directing the defendant to disclose to the Tribunal particulars of other properties or assets owned by the defendants

- On receipt of application the Tribunal shall issue summons with following directions to the defendant:
 - ✓ to show cause within thirty days of the service of summons as to why relief prayed for should not be granted;
 - ✓ direct the defendant to disclose particulars of properties or assets other than properties and assets specified by the applicant; and
 - ✓ to restrain the defendant from dealing with or disposing of such assets and properties disclosed pending the hearing and disposal of the application for attachment of properties
- Defendant, on service of summons, shall:
 - ✓ not transfer by way of sale, lease or otherwise except in the ordinary course of his business any of the assets over which security interest is created and
 - ✓ other properties and assets specified or disclosed without the prior approval of the Tribunal
- The defendant shall within a period of thirty days from the date of service of summons:
 - ✓ present a written statement of his defence including claim for set-off or a counter-claim, if any, and
 - ✓ such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence
 - ✓ on defendant failure to file the written statement within the said period, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days
 - ✓ in case of non-compliance of any of the orders, the Presiding Officer may, by an order, direct that the person or officer who is in default, be detained in civil prison for a term not exceeding three months unless in the meantime the Presiding Officer directs his release
- Where the Tribunal thinks just may by an order:
 - ✓ appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;
 - ✓ remove any person from the possession or custody of the property;
 - ✓ commit the same to the possession, custody or management of the receiver;
 - ✓ confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Tribunal and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

- ✓ appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof
- Where a certificate of recovery is issued against a company as defined under the Companies Act, 2013 and such company is under liquidation, the Tribunal may by an order direct that the sale proceeds of secured assets of such company be distributed in the same manner as provided in section 326 of the Companies Act, 2013 or under any other law for the time being in force
- The Tribunal may, after giving the applicant and the defendant, an opportunity of being heard, in respect of all claims, set-off or counter-claim, if any, and interest on such claims, within thirty days from the date of conclusion of the hearings, pass interim or final order as it deems fit which may include order for payment of interest from the date on which payment of the amount is found due up to the date of realisation or actual payment
- Where it is proved to the satisfaction of the Tribunal that the claim of the applicant has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant has repaid or agreed to repay the claim of the applicant, the Tribunal shall pass orders recording such agreement, compromise or satisfaction of the claim
- The proceeds from sale of secured assets shall be distributed in the following orders of priority:
 - ✓ the costs incurred for preservation and protection of secured assets, the costs of valuation, public notice for possession and auction and other expenses for sale of assets shall be paid in full;
 - ✓ debts owed to the bank or financial institution
- The Tribunal shall send a copy of its final order and the recovery certificate, to the applicant and defendant
- Presiding Officer shall issue a certificate of recovery along with the final order, for payment of debt with interest under his signature to the Recovery Officer for recovery of the amount of debt specified in the certificate
- Any recovery certificate issued by the Presiding Officer shall be deemed to be decree or order of the Court for the purposes of initiation of winding up proceedings against a company registered under the Companies Act, 2013 or Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 or insolvency proceedings against any individual or partnership firm under any law for the time being in force, as the case may be
- The application made to the Tribunal shall be dealt with by it as expeditiously as possible and every effort shall be made by it to complete the proceedings in two hearings, and to dispose of the application finally within one hundred and eighty days from the date of receipt of the application
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- **Appeal to the Appellate Tribunal Section 20**
 - Any person aggrieved by an order made, or deemed to have been made, by a Tribunal may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter

- No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties
 - Every appeal shall be filed within a period of thirty days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed
 - The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal
- **Deposit of amount of debt due, on filing appeal Section 21**
 - Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal fifty per cent of the amount of debt so due from him as determined by the Tribunal under section 19
 - Appellate Tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent of the amount of such debt so due to be deposited

Chapter V Recovery of Debt Determined by Tribunal

- **Modes of recovery of debts Section 25**
 - The Recovery Officer shall, on receipt of the copy of the certificate proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely:
 - ✓ attachment and sale of the movable or immovable property of the defendant;
 - ✓ taking possession of property over which security interest is created or any other property of the defendant and appointing receiver for such property and to sell the same;
 - ✓ arrest of the defendant and his detention in prison;
 - ✓ appointing a receiver for the management of the movable or immovable properties of the defendant;
 - ✓ any other mode of recovery as may be prescribed by the Central Government
- **Appeal against the order of Recovery Officer Section 30**
 - Any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal
 - On receipt of an appeal the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm,

modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive)

- **Deposit of amount of debt due for filing appeal against orders of the Recovery Officer Section 30A**
 - Where an appeal is preferred against any order of the Recovery Officer, under section 30, by any person from whom the amount of debt is due to a bank or financial institution or consortium of banks or financial institutions, such appeal shall not be entertained by the Tribunal unless such person has deposited with the Tribunal fifty per cent of the amount of debt due as determined by the Tribunal