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## **DEBT RECOVERY TRIBUNAL – AN ANALYSIS**

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### **Introduction**

Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993 banks approach the Debts Recovery Tribunal (DRT) whereas, under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002 borrowers, guarantors, and other any other person aggrieved by any action of the bank can approach the Debts Recovery Tribunal (DRT).

Appeals against Debts Recovery Tribunal (DRT) orders are heard by the Debts Recovery Appellate Tribunal (DRAT). A Presiding Officer rules over each Debts Recovery Tribunal (DRT). The sole legal authority to hear and make any court order for the Recovery of Debts is the Presiding Officer of a Debts Recovery Tribunal. Banks approach the Debts Recovery Tribunal (DRT) under the Banks and Financial Institutions (RDDBFI) Act of 1993, whereas borrowers, guarantors, and any other person aggrieved by any action of the bank can approach the Debts Recovery Tribunal (DRT) under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act of 2002. (DRT). Appeals against Debts Recovery Tribunal (DRT) orders are heard by the Debts Recovery Appellate Tribunal (DRAT). A Presiding Officer rules over each Debts Recovery Tribunal (DRT). The sole judicial authority to hear and pass any court order is the Presiding Officer of a Debts Recovery Tribunal.

### **Extent and scope of DRTs**

DRTs might be approached for the recovery of 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). However, the Act provides that for amounts more than Rs. 1 lakh, the Central Government may mandate that specific matters be adjudicated by DRTs. Furthermore, the SARFAESI Act stipulates certain sums for various situations that can be taken up by the DRTs.

Now, 22(1) requires DRTs and DRATs to be guided by natural justice principles. In accordance with such principles, they have the authority to control their own method and are not bound by the one outlined in the CPC. Furthermore, a legal degree is not necessary to argue arguments in DRTs.

## **Jurisdiction**

"Section 17 - Tribunal Jurisdiction, Powers, and Authority. -

(1) On and from the appointed day, a Tribunal will have jurisdiction, powers, and authority to hear and consider petitions from banks and financial institutions for the recovery of debts owed to such banks and financial institutions."

Section 18 prohibits all courts from having jurisdiction over the subjects described in Section 17. (except for the Supreme Court and of a High Court under Articles 226 and 227 of the Constitution). The most pertinent section is 34, which is copied below: Act in order to create a dominating effect. — (1) Except as stated in subsection (2), the provisions of this Act shall have effect despite anything conflicting therewith contained in any other legislation in force at the time or in any instrument having effect under any law other than this Act.

## **Is the DRT deemed to be a court?**

DRTs can only assist in the recovery of financial amounts, i.e., dispute settlement between clients and banks. It does not have jurisdiction to entertain any other cases.

The primary goal and duty of DRT are to recover payments owed to banks and financial institutions from debtors. The Tribunal's authority is confined to resolving matters involving the restoration of outstanding amounts from NPAs declared by banks in accordance with RBI criteria. The Tribunal possesses all of the District Court's authority. The Tribunal also employs a Recovery Officer who assists in the execution of the Presiding Officers' recovery certificates. DRT follows the legal procedure by prioritizing the expeditious disposition of cases and the prompt execution of final orders.

***In State Bank or India V. Maanumita Construction (Pvt.) Ltd. and others, [AIR 2003 Cal 7], the Calcutta High Court has held:*** - The Tribunal constituted under the DRT Act is not a Court. It is a Tribunal having the trappings of a Court. A Tribunal with trappings of a Court cannot be equated with a Court as is understood from the expression "Court". A Court is a body established by law for the administration of justice by Judges or Magistrates. This definition

may include a Tribunal as well. Since it is also a body constituted or established by law for the administration of justice. But, when it comes to the distinction between Court and Tribunal, then the Court as it is understood is different from a Tribunal. The word "Court", however, has not been defined anywhere in any law."

***Delhi High Court in Cofex Exports Ltd. vs. Canara Bank*** opined that the Debt Recovery Tribunal is not a court but is a Tribunal having been created by a statute vested with special jurisdiction to try only applications by banks or financial institutions to recover any debt. Although having regard to the provisions contained in clauses (a) to (b) of sub-section (2) of Section 22 of the Act it had all the trappings of a court but it was held not to be a court as such.

Supreme Court has adjudged that DRT and DRAT cannot decide upon cases like succession rights of property, issuance of receipts, etc. Its jurisdiction is strictly confined only to cases mentioned in 17 of the Act. This provision is in line with L Chandra Kumar's judgment which states that Tribunals are only supplementary to High Courts and not a substitute for them.

***Leave of the Company Court for Case Transfer:*** A bank or FI is not required to obtain leave of the business court (the tribunal, i.e., NCLT) to proceed with its claim before the DRT or in relation to the execution procedures before the Recovery Officer against a company in liquidation. The procedures cannot also be moved to the Company court.

***Assets in Liquidator's custody:*** DRT may take inventory. When a business is under liquidation and a Provisional Liquidator has been appointed, the DRT uses its powers under Sections 19(18)(e) of the RDB Act and appoints an Advocate Commissioner to prepare an inventory of the firm's assets and properties. Under the requirements of the Companies Act, prior leave of the company judges, i.e., the Winding up Court or the Company Court [the Tribunal (NCLT)], is not required. The DRT clearly has the authority to require the liquidator to cooperate with the Advocate Commissioner designated by it under Section 19(18)(e) of the 1993 Act in taking the inventory. The liquidator must follow the instructions.

***Sale of Assets after Winding-Up-Sick Company:*** Jurisdiction The BIFR or AAIFR has no jurisdiction over the disposal or sale of assets or properties of the Sick Industrial Company once the company court has issued a winding-up order (NCLT). After the start of liquidation proceedings, no authority, such as the BIFR or DRT, has any power to continue against the company's assets without the permission of the company court and associations of the official liquidator attached to the H.C.

**Recovery certificate:** It is issued by DRT Once a Recovery Certificate is issued by the DRT in respect of the Secured Assets in favor of the banks and FI and which is the subject matter of the Recovery Certificate, the Recovery officer and particularly DRT have exclusive jurisdiction and the Company Court (NCLT) cannot through the official liquidator in winding up of the company dispose of the immovable properties of the company secured in favor of the Banks and FI and distribute sale proceeds thereto.

**Conclusion:**

DRTs must perform better in order for banks to recover existing loans and issue new advances at lower interest rates. There is no mechanism in place under the existing arrangement to guarantee that the tribunal resolves the matter as soon as possible. There is an urgent need to increase accountability for the DRT. Finally, the statute should be tightened to require required time-bound case disposition. In addition, the performance metrics of the adjudicating officer might be utilized to increase system efficiency. Furthermore, stay applications should be reviewed before being approved, since there have been occasions where advocates exploited Act gaps and pleaded for delays, resulting in a backlog of cases. . Simultaneous proceedings before the civil court, the DRT, and the NCLT for recovery of the same debt are contributing to an inefficient insolvency regime.