

Article

The Term 'DEBT'; Its Definition, Scope Before Debts Recovery Tribunal – An analysis

G.S. Dubey*

What kind of debts can be taken cognizance of, before Debts Recovery Tribunal. The present Article deals with the term and defines the same in relation to R.D.D.B. Act. Section 1(4) of RDDB Act, 1993 deals with pecuniary jurisdiction¹ of the Tribunal providing that the Tribunal shall be lacking jurisdiction to deal with the case of a Bank or a Financial Institution if the crystallized liability is below one lac rupees. Thus following conditions will be necessary for ousting a claim from jurisdiction of the Tribunal.²

- (a) when the amount of debt has been less than "Rs. 10 lakhs"; or such other amount has not been less than one lakh rupees;
- (b) for both the purposes the specification by the Central Government through notification is necessary; as a condition precedent.

Rule 12 sub-rule 5 of Procedure Rules³ if it is read conjunctively alongwith sub-section 4 of Section 1 also support above. The quantum of debt which is material for the purpose of determination of jurisdiction or absence of jurisdiction of the regular Civil Court is that which was due as when the cause of action for recovery there of arose and for which the suit or proceeding was instituted by a Bank of Financial Institution or a consortium of Banks. Sub-clause (g) of Section 2 makes it further manifest that the cut of date for this cause of action is the date on which the plaint or the application (for execution of decree) is filed.

Therefore, the current interest accrued on the creditor Institution's claim during pendency of its suit or proceeding (initiated by an application) has no role to play and is immaterial concerning the jurisdiction of the Civil Court or of the Tribunal to proceed with the trial of the proceeding pending before it. It is the date of the application made for recovery of the debts mentioned therein on which the jurisdiction of the Court of the Tribunal assumes importance.

Section 31 confirms this legal position by stating that only such of the suits or proceedings pending before any Civil Court instituted by the Creditor Institution for recovery of the 'debt' is required to be transferred to the concerned Tribunal established under the Act wherein the cause of action on which the claim was based is such that it would have been, if it had arisen after such establishment of the Tribunal, within the jurisdiction of that Tribunal. The accrual of current interest during pendency of

* Former Manager Law, Central Bank of India. The author can be contacted at gslawhel@gmail.com

the execution proceeding before the Court below will be immaterial; therefore, the order to the contrary of the executing Court was held an erroneous order and not sustainable in law.⁴

But it is never necessary that Tribunal should decree only an amount over and above ten lacs or entire claim. It is always within the jurisdiction of the Tribunal to order for a lesser sum than Rs. 10 lacs.⁵

Where claim against guarantor is less than 10 lacs but if it is more than 10 lacs against borrower, the Tribunal will have jurisdiction against guarantor also.⁶

Now we proceed to discuss the different aspect of 'debt' and what constitutes 'debt'.

The term 'DEBT' has been defined in Section 2(g)⁷ of the R.D.D.B. Act. According to the definition, 'debt' means any liability (inclusive of interest) which is alleged as due from any person by a Bank or Financial Institution or by a consortium of Banks. But, it should be subsisting one and recoverable also.

Since the Act is a fiscal law, the delegated authority i.e. the Tribunal has to act strictly within the parameters of the authority delegated to it under the Act. Jurisdiction conferred in relation to debt is a very special kind of jurisdiction conferred upon the Tribunal and is strictly limited in extent though, without doubt the ambit of the powers exercisable within those limits is wide

Debt is an essential ingredient of a mortgage. There may be a debt without mortgage but there can be no mortgage without debt. Properties are offered as security only for securing recovery of debt. If debt is paid, the mortgage ceases to be a mortgage. Even if the term 'debt' would not have been defined in the Act, the mortgage would have been included within the meaning of debt. The essence of the definition in Section 2(g) is the existence of any liability founded on an allegation as due from any person. The only rider being that the liability must be legally recoverable.

The definition covers all such cases where liability is secured by mortgage, charge, and hypothecation or in any other manner known to law.

The use of words 'any person' in the definition is not without significance and covers third parties and also the persons with whom they have deposited the moneys. The word 'liability' obviously means obligation. The term 'liability' in terms of its etymological significance means and connotes responsibility to the limited extent. The term 'liable' in terms of Webster's Seventh New Collageate Dictionary suggests pecuniary obligation. The word 'obligation' though widely used in common parlance but it has a definite connotation in law as it has got certain legal significance. Under Section 2(a) of Specific Relief Act 'obligation' includes every duty enforceable by law. 'Liability' in its widest import means an obligation or duty to do something or to be refrained from doing something. There appears no reason to provide any restricted meaning to word 'liability': Actually the word 'liability' in its sweep tends to bring within its ambit other than that also which is payable in terms of cash as is apparent by inclusion of the form 'interest' in the definition. The definition of debt further includes the expression 'due' which means 'due' to the Bank from any person.

So far as word 'otherwise' is concerned following as an appendage to the expression 'cash' it is an adverb which is preceded by interjection of the word 'or'. The term 'or' being before the word 'otherwise' is to be treated as adverb.

'Otherwise' means in a different way. Therefore, such liability may be by way of cash or in a different way. The word 'means' has been used by legislature consciously defining the expression 'debt'.

It contemplates while limited ouster of jurisdiction and thus the word 'means' indicate an exhaustive explanation of the meaning which for the purposes of the Act must invariably attached to these words or expression.⁸ The use of the word 'means' indicates that definition is a hard and fast definition and no other meaning can be assigned. Supreme Court⁹ also discussed the jurisdiction of Tribunal in relation to 'debt' when borrower raised an objection regarding debt 'being undetermined a sum'. The contention of the borrower was upheld by the High Court Calcutta holding the view that the suit as framed is one for damages and compensation which is required to be quantified before a decree to be passed and such a suit will not be within the purview of the provisions of the Act. Reversing the findings Supreme Court held, "there can not be any dispute that the expression 'debt' has to be given the widest amplitude to mean any liability which is alleged as due from any person by a Bank during the course of any business activity undertaken by the Bank either in cash or otherwise, whether secured or unsecured, whether payable under a decree or order of any court or otherwise and legally recoverable on the date of the application. In ascertaining the question whether any particular claim of any Bank or Financial Institution would come within the purview of the Tribunal created under the Act, it is imperative that the entire averments made by the Plaintiff in the plaint be looked into and then find out whether notwithstanding the specially created Tribunal having been constituted, the averments are such that it is possible to hold that the jurisdiction of such a Tribunal is ousted." Section 2(g) was substituted by amending Act No. 1 of 2000 with effect from 17th January, 2000 to provide the definition of debt to mean among other things, "liability payable under a decree or order of any Civil Court" by virtue of Section 31-A even decree debts on the basis of decrees which have become final before the date of said amendment would also fall within the net of the proceedings under the Act. It does not mean to exclude decrees passed after 17th January, 2000 from being decrees within the meaning of Section 2(g) of the R.D.B. Act.¹⁰ The position was same even before the amendment of the Act of 1993 though the scope has been made wider since the amendment was made by introducing some other dues which did not attract the definition earlier. Though there may be no privity of contract between Bank and some of the respondents still the claim of Bank will be treated as claim for debt if the same passes the test provided in the definition which can be analysed as below.—

1. There must be liability
2. It must have arisen during the course of Bank's business activity
3. It must be subsisting and legally recoverable
4. It is alleged as due from any person.

When a liability is claimed as due by Bank the same includes loss and compensation claimed by Bank¹¹ because the defendant is otherwise liable to pay.

In ascertaining the question whether any particular claim of any Bank or Financial Institution would come within the purview of the Tribunal created under the Act, the entire averments made by the Plaintiff in the plaint have to be looked into and then it has to be found out whether notwithstanding the specially created Tribunal having been

constituted, the averments are such that it is possible to hold that the jurisdiction of such a Tribunal is ousted.¹² Interestingly a claim by one of the member of consortium against consortium leader for sharing the proceeds; generated from borrower company was not considered debt firstly, there was no concluded contract but only exchange of letters between member Bank and consortium leader, secondly; holding Bank cannot claim against the other Bank before Debt Recovery Tribunal instead the proper forum for deciding the dispute will be high power committee of Central Government of India.¹³

Debt covers all 'actionable claims' therefore even assigned debt will also be covered in the definition. Assignment of debt may not be business activity but what is required is that the liability as claimed should be during the course of business activity undertaken by Bank.¹⁴ Availability of insurance cover from ECGC insuring Bank against any loss on amount of non-realisation of amount of bills from foreign buyers will not wipe out the liability of the borrower and the liability will be called as 'debt' as contemplated by the Act.¹⁵ Even when Bank; on the basis of its right under Section 131 of Negotiable Instrument Act, claimed from collecting Bank, the amount of forged stolen draft, the claim was found triable by the Tribunal.¹⁶ Issuance of Bank draft is also a business activity. Where a tripartite agreement was executed and it was agreed by one of the party of the tripartite agreement (a co-operative society) that the dues of the Bank will be paid directly to the Bank instead of making the payment of the same to the borrower firm. The liability was considered within the definition of "debt" but no interest can be charged by Bank in absence of any stipulation in the tripartite agreement for payment of interest.¹⁷

Where an airline company executed an indemnity in favour of Bank indemnifying the Bank against all losses and damages arising out of non-acceptance or non-payment of bill of exchange and Bank filed application for recovery of dues on the bill of exchange impleading airline company as carrier of goods, alleging collusion amongst the defendants as goods were alleged to have been delivered fraudulently, depriving Bank of its right to sell; it was held¹⁸ that recovery of the amount of bill by sale of the shipped goods was a part of the banking business and there existed contractual obligation and therefore it is debt.

In another matter, though no loan transaction was entered between the parties but voluntarily hypothecation of securities was done as well as other articles belonging to Defendant No. 1 were transferred to other defendant who was not originally borrower.

It was held "when a person not being a debtor, intermeddled himself by entering into fraudulent and clandestine deal with the debtor to frustrate the claim of bank against its debtor, then the relief which is claimed (in fact) against such non-debtor, is really an incidental and/or ancillary relief to the principal relief claimed against the debtor. The jurisdiction of tribunal is not ousted because certain ancillary and (or) incidental relief is claimed against the non-debtor now inter meddled himself by entering into fraudulent and clandestine dealings with the admitted debtor to frustrate the speedy realization"¹⁹. The view was further reiterated by Kolkata High Court²⁰ by holding that although "damages" can not be construed as debt but it can be included as claim for adjudication. Distinguishing the above position Debt Recovery Appellate Tribunal Kolkata²¹ held that where there was no business activity of Bank was involved or no privity of contract was there the damages in general will not come within the scope and ambit of the definition of the debt thus the purported claim of Bank, was relating for conversion of hypothecated goods by third party landlord of the borrower, which can not be said to be 'debt' under the Act and Tribunal is denuded of the jurisdiction.

Whether proceeding under the Act can be taken against an employee when Bank claims the amount due as the same was misappropriated by the employee? Position was clarified that²² a misappropriation of the amount of the Bank committed by its employee and recovery thereof by way of suit can never be construed a 'debt'.

The above also find support from the observation of Delhi High Court²³ which held that the amount defrauded by a Bank employee in collusion with others neither can be considered as a debt nor liability arising out in course of business activity. Where employee of Bank were arrayed in the list of Defendants on the allegations that they were hands in glove and failed to verify the genuineness of the cheque, which turned out to be fake and bogus they were treated as joint tort feors and it was held that the matter can not be tried and decided by the Tribunal. Because the acts of Defendant were inseparable inter bound and interrelated. Accordingly, the application of Bank was returned for presentation in proper Court²⁴ for adjudging the liability.

But a fraudulent debt will be within jurisdiction of Debt Recovery Tribunal. Debt includes fraudulent debts as well. Even if it is alleged that debt is fraudulent it does not take away jurisdiction of Debt Recovery Tribunal, neither it has created a jurisdiction to a Court, the jurisdiction whereof is otherwise barred by reason of Section 18.²⁵

The liability for an amount due on the fraudulent Bank drafts without consideration due to collusion between the Bank officials and the party, was considered as 'debt'.²⁶

Where Bank parted with money by discounting the bills and the amount of these bills was received by other defendant unknowingly and were appropriated by forming the same as part of their global account, it was held²⁷ that in case of monies it is not necessary to lay hands on specific money. Once the source is unlawful even in absence of any privity of contract Tribunal may order for return of money to Bank which has been deprived of the money fraudulently.

In another matter, challenging rejection of its claim against R-6 i.e. Vyas Bank, the original applicant Bank *viz.* Syndicate Bank preferred an appeal. There was no dispute that Vyas Bank by its letter dt. 12/05/94 informed Syndicate Bank that the amount outstanding in the packing credit loan account will be liquidated from the proceeds of the exports bills to be submitted to them but it was not clear how many exports bills were negotiated. Borrower dispatched many consignments and all those exports bills were processed by Vyas Bank. There was lack of evidence as to number and amount of bills because the same were not within the knowledge of Syndicate Bank. Debt Recovery Appellate Tribunal Mumbai²⁸ remanded back the case to Debt Recovery Tribunal and held: "it is now well settled that 'debt' is a sum of money which is now payable or will become payable in future of a present obligation. A Sum payable upon the contingency is not a 'debt' or does not become 'debt' till contingency happens. Therefore, Vyas Bank can not be a debtor presently".

Since evidence was to be tendered, the case was remanded back.

Where Bank came before the Tribunal claiming the interest free deposit made by it for obtaining a premises on lease and license basis as 'debt', the same was held not to be covered under Section 6(g) of the Banking Regulation Act in the definition of banking activity.²⁹ This view also finds support from another judgment wherein it was held that doing a thing within the meaning of clause (n) of Section 6 sub-section 1 of the Banking Regulation Act, 1949 so as to be called an incidental or conducive should in

itself be business activity specific to the Bank having a direct nexus in as much as the thing should promote and/or advance the Bank's business.³⁰

In like manner where the amount is paid, not by way of loan but under the contract for availing software solutions by Bank the amount can not be said to be debt.³¹ Rent that has not become due is not a debt. It follows that rent for the unexpired period of lease is not debt.³²

Any recovery arising out of transaction in clearing house of Banks will be made by Tribunal.³³

A suit instituted by a Bank or Financial Institution for recovery of its claim against vessel in the admiralty jurisdiction of the High Court cannot be termed as debt. Debt Recovery Tribunal will not have jurisdiction to entertain such suit in terms of Section 17 of the Act.³⁴

Where a public limited company, came out with a public issue having non-convertible portion agreeing to Rs. 62,24,37,400/- which was to be redeemable in three installments. There was default in honouring the first installment itself.

Financial assistance by way of subscription to equity shares with contract where Defendant agreeing to buy back the shares in installments with authority Bank/Financial Institution for selling the same in case of default, was considered as debt because admittedly the transaction basically was of finance and not of subscription of shares and the agreement of buy back can not override the real transaction of loan³⁵ and will be recoverable through Debt Recovery Tribunal.

Where issuing Bank under Letter of Credit makes payment, the same is considered as 'debt'.³⁶

An agriculture advance will come within the definition of 'debt' in the Act.³⁷

A claim of consortium member Bank against another member is covered within the definition of debt³⁸ under Section 2(g) of RDDB Act for which the Bank is entitled to maintain O.A. in Debt Recovery Tribunal against another Bank to realize money rightfully belonging to it.

Section 19(2) of the Act is attracted at the time of joining other Banks/Financial Institutions who had also financed the same borrowers. The above distinction goes to while Section 19(1) of the Act provides that when Bank or Financial Institution has to recover any debt from any person it may make an application. The distinction between the two shows that it is not necessary on the part of the Bank or Financial Institution to prove that it had actually advanced. Therefore when Bank is working as Debenture Trustee, will have right to proceed against debenture-holders, further the debtor company can not take plea that Debenture Trustee had not parted with their funds.³⁹ Amount of dividend paid wrongly to any person will be liable to be recovered under the Act for making payment to rightful claimant.⁴⁰

Endnotes

1. Section 1(4) : "The provisions of this Act shall not apply where the amount of debt due to any Bank or Financial Institution or to a Consortium of Banks or Financial Institutions is less than ten lac rupees or such other amount, being not less than one lac rupees, as the Central Government may, by notification, specify" Where a defendant makes an admission of the full or part of the amount of debt due to a Bank or financial institution, the Tribunal shall order

such defendant to pay the amount, to the extent of the admission, by the Applicant within a period of one month from the date of such order failing which the Tribunal may issue a certificate in accordance with Section 19 of the Act to the extent of amount of debt due admitted by the Defendant."

2. *Dena Bank Kolkatta v. High Tech Engineering Systems & Others* 2004 (3) Bank CLR 18 DRT (Kol.)
3. Rule 12(5) : "Where a defendant makes an admission of the full or part of the amount of debt due to a Bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission, by the applicant within a period of one month from the date of such order failing which the Tribunal may issue a certificate in accordance with Section 19 of the Act to the extent of amount of debt due admitted by the defendant."
4. *Karnataka Bank Limited Holenarasipur v. S.N. Nanjappa and Another* 2001(1) Bank CLR 137 (Kant.)
5. *Central Bank of India M/s Kariwala Enterprises and Others* 2005(1) Bank CLR 20 (DRT Mum)
6. *M/s Basant Lal Aditya Kumar & Others v. Syndicate Bank* 2008(3) Bank CLR 219 (DRAT Del)
7. Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993: ["debt", means any liability (inclusive of interest) which is claimed as due from any person 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]
8. *ICICI Bank Limited v. Coventry Coil-O-Matic (Haryana) Limited and Others*
9. *United Bank of India v. Debts Recovery Tribunal and Others* MANU/SC/0250/1999
10. *United Bank of India v. Debts Recovery Tribunal and Others* MANU/SC/0250/1999
11. *Raj Corporation and Another v. Bank of Baroda and Others* 2005 (1) Bank CLR 622 (Bom)
12. *United Bank of India v. Debts Recovery Tribunal* MANU/SC/0250/1999
13. *Bank of Rajasthan Ltd., Udaipur, Rajasthan v. G.T.C.L. Mobile Com Technology Ltd. Ahmedabad and Others* 2007 (3) Bank CLR 537 (DRT Ahmedabad)
14. *Kotak Mahindra Bank Ltd. v. Orient Ship Agency Pvt. Ltd. and Others* 2007 (3) Bank CLR 437 (DRT Mumbai)
15. *SBBJ v. M/s Ballabh Das and Company and Others* MANU/SC/0571/1991
16. *ABN Amro Bank Limited v. State Bank of India Mumbai* 2007 (3) Bank CLR 46 (DRAT Mumbai)
17. *Calcutta Whole Sale Consumer Co-operative Society Ltd. v. Allahbad Bank* 2001 (1) Bank CLR 486 (DRAT Mumbai)
18. *Gulf Air v. Canara Bank and Others* MANU/MH/1383/2007
19. *Allahabad Bank v. M/s Indo Marking and Others* 2008 (1) Bank CLR 57 (Cal.)
20. *Cosmo Steels Pvt. Ltd. v. Union of India* MANU/WB/0478/2004
21. *Eureka Forbes Ltd. v. Allahabad Bank Others* 2007(1) Bank CLR 673 (DRAT Kol)
22. *Bank of India v. Vijay Ramniklal Kapadiya and Others* MANU/GJ/0108/1997
23. *State Bank of India v. Raman Kapur and Others* 2009(2) Bank CLR 383 (DEL)
24. *Bank of baroda, Ahmedabad v. Rajendre Sinh Mansinh Raolji alias B. Nathalal Patel and four Others* 2007 (2) Bank CLR 30 (DRT Ahmd.)
25. *State Bank of India v. Madhumita Construction (Pvt.) Ltd.* MANU/WB/0298/2002
26. *M/s J.U.Mansukhani and Company and Another v. Presiding Officer and Others* MANU/DE/0298/1999
27. *Kotak Mahindra Bank Ltd. v. Prism Packaging and Others* 2008 (1) Bank CLR 662
28. *Syndicate Bank v. Vysya Bank Ltd. and Others* 1999 (2) Bank CLR 76 (DRAT Mumbai)
29. *Citi Bank N.A. v. Lt. Col. Anil Bhatta* 2008 (1) Bank CLR 281 (DRAT Mumbai)
30. *Indusind Bank v. Vaneet Aggarwal and Others* 2007 (3) Bank CLR 110 (DRT Mumbai)

31. *Punjab National Bank v. Tata Infotech Ltd.*, 2005 II BC 16 (DRAT Mumbai) Bankers' Journal 178
32. *J. Jermons v. Aliammal* MANU/SC/0477/1999
33. *Union Bank of India v. Standard Chartered Bank and Others* 2007 (3) Bank CLR 592 (DRT Mumbai)
34. *ICICI Ltd. V.M.F. v. Shilpa and Others* MANU/MH/0171/2002
35. *SICOM Limited v. Shri Bhaskear Shovakar* 2007 (3) Bank CLR 211 (DRT Mumbai)
36. *Bank of Rajasthan Ltd. v. M/s A.M. Patel Estates Pvt. Ltd., Baroda and another* 2006 (3) Bank CLR 42 (DRT Ahmd.)
37. *Jujhar Singh v. State of U.P. and Others* 2007 (2) Bank CLR 651 (All)
38. *Synicate Bank v. Canara Bank and Others* 2005 (1) Bank CLR 322 (DRAT Chen)
39. *ICICI Bank Ltd. v. Gujarat Steel Tubes Ltd. and Others* 2009 (3) Bank CLR 311 (DRT Ahmd)
40. *G.V Limited v. Unit Trust of India* 1999 (BC) 702 D.B.1999 (1) Bank CLR 639