

## Remedies & Rights for a Borrower under the Securitisation Act – An analysis

G.S. Dubey†

*Under SRES Act the enormous power has been bestowed upon the Secured Creditor. Placing in juxtaposition the rights of borrower appear limited and bleak. As practicing Chartered Accountant or being the guide to the borrower we must know what are the rights available to the borrower while countering an action under SRES Act initiated on behalf of the Secured Creditor. The author has tried to consolidate the various rights of borrower vis-à-vis SRES Act.*

### Right to Redeem the Property:

Right of redemption is basic right of a mortgagor/borrower. This right to redeem is recognized by law since long. Securitisation is an additional remedy for a Bank/Secured Creditor, the rights provided under the Transfer of Property Act cannot be said to have been recorded. Right to redeem of property is the foremost right available to a borrower

Section 60 of Transfer of Property Act, 1882 recognizes the right of mortgagor/borrower for redemption of his property which runs as follows:

**“60. Right of mortgagor to redeem.** At any time after the principal money has become due, the mortgage-money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage –money, to required the mortgagee (a) to deliver to the mortgagor the mortgagor-deed and all document relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (whether the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished :

Provided that the right conferred by this section has not been extinguished by the Act of the parties or by decree of a Court

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or to tender of such money.

**Redemption of portion of mortgaged property.**—Nothing in this section shall entitled a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only mortgagees has or have acquired, in whole or in part, in the share of a mortgagor”.

Further, a look at Section 91 of the Transfer of Property Act also points the same conclusion.

**“91. Person who may sue for redemption.** – Beside the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely :-

- (a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;
- (b) any surety for the payment of the mortgage-debt or any part thereof ; or

---

\* Legal Consultant (Honorary). The author can be contacted at [gslawhelp@gmail.com](mailto:gslawhelp@gmail.com)

- (c) any creditor or the mortgage who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.”

Thus as per Section 91 of the Transfer of Property Act, certain others persons though not borrower but having interest in secured assets are also entitled for redemption. Even the property of guarantor under mortgage will be liable to be released if the borrower pays the entire amount before confirmation of sale under SRES Act, 2005 the above said rights are recognized and reaffirmed in a different manner when Section 13(8)<sup>1</sup> of the SRES Act declares in no uncertain terms that the action under the SRES Act for disposal of security cannot be taken up when the dues of Bank are tendered. This is another form of right of redemption.

This right of redemption is available up to the date before sale or transfer finally. The words ‘sale or Transfer’ in Section 13(8) of the SRES Act connotes execution of the conveyance/registered sale deed. Borrower, being owner of the property, has right to stop the sale: either if he has tendered all his dues to Bank or D.R.T. thus exercising his right of redemption or if the power of sale is being exercised in fraudulent manner contrary to the terms of contract or the Act.

Equity of redemption is available to borrower till the purchaser does not perfect his title by some legal instrument. In *Mardia Chemicals*, it was held that the borrower had the right to redemption of mortgage and that right is preserved by the Act.

### **Compromise and Part Payment:**

While an action under SRES Act is in progress, the another right of borrower is to make part payment. Apart from natural amicable settlement with Banks, borrower has also right to enforce a compromise by making payment of only 80 % of the total amount outstanding in the books of Banks or of demand made in statutory Demand Notice and consequently the Bank/Secured Creditor cannot proceed further to recover the dues through sale of properties under SRES Act. Apart from this right of part payment the borrower has also right to settle the matter amicably. In this connection we should notice that Banks are commercial institutions. To sell the properties is not their profession.

Tooth and nails, given to the Banks in the form of the SRES Act are to be used judiciously and prudently. Therefore, when circumstances change borrower starts responding and wants to settle the matter on reasonable terms, the Bank also wants to co-operate. But complicated questions arise as to what is the extent and manner in which a compromise/settlement should be arrived at with the borrower. The compromise with borrower in a Securitisation matter will be a technical affair. Where proceedings under the Act are withdrawn and a new schedule for repayment of loan is fixed or a cash credit limit is continued on new terms or nature of loan is changed, documentation of legal technical skill will be required. Here the Bank has already exercised its powers given under the Act. The original loan documents already stand exhausted.

In case of compromise the renegotiated terms are to be incorporated through proper documentation in cases where the borrower has sought only a gasping period like one or two quarter, a letter may be given by all the Demand Notice recipients, confirming their knowledge about the proceedings under the Act. Where borrower is not able to make repayment in terms of compromise within stipulated time and settlement stands rejected, Bank will be having right to proceed under the Act for recovery of its dues. However the SRES Act has not prescribed for withdrawal/abandonment of proceedings without disposal of security or recovery. The Act is executory in nature.

In the case of symbolic possession, or where only a notice under Section 13(2) is issued, the borrower will not suffer any loss but when possession is actually with the Bank, and the Bank decides to drop the action under the Act and takes action to move D.R.T./Civil Court for recovery, the Bank has always to consider whether any loss has been caused to the secured debtor by such action. However, the Bank will be well within rights to make a decision for abandoning the proceedings under the Act. Where the Bank decides to go for D.R.T. and where symbolic possession is with the Bank, abandonment of the proceedings under the Act is hardly of any consequences.

Where the Bank took possession, but redelivered to the borrower on receipt of certain amounts and converting the account ‘Performing Asset’ , it can be assumed that the theory of waiver and

abandonment of rights applies. But the question is whether it will deprive the Bank from taking action under the Act for all the times. Replying the question<sup>2</sup> Debt Recovery Tribunal held waiver and abandonment is of the right available under particular notice but not of the statutory right given under the Act.

Bank is not prevented from resorting to the Act; if after redelivery of possession, the account again becomes 'Non Performing Asset'. It is open for Bank to issue fresh notice on fresh cause of action. However if the Bank redeliver possession but right of borrower for receiving compensation and cost under the Act will survive unless a particular kind of contract is entered between the Bank and the borrower.

Further, on redelivery of possession the Bank has to inform all concerned. By amendment of Rule 8(2) the legislature has provided that publication of possession notice should not be delayed for more than seven days from the date of taking possession. The intention of legislature appears that the Act should not be used as a tool for extracting money but its use should be confined for recovery by disposal of security. The proceeding of Securitization Act can be compared with execution proceedings of Income Tax/Civil Court.

Another aspect of waiver/abandonment will be when Demand Notice was issued but no proceedings under the Act were initiated. The point is for how many days a notice of demand can be kept pending.

The SRES Act has not provided for any time limit within which period the measures /steps under the Act should be accomplished. Parliament in its wisdom did not contemplate fixation of any time table for achieving any or all of the steps. The question of viability of a unit/industrial concern is to be decided by the creditor and there it is for the creditor to decide about completion of the measures under Section 13(4). Accordingly, Andhra Pradesh High Court <sup>3</sup>clarified that measures under Section 13(4) need not to be followed in each and every case where notice under Section 13(2) has been issued. The delay in ultimately invoking the various measures and steps under Section 13(4) cannot be construed as resulting in or causing a disproportionate mischief to the borrower.

Merely because Bank has not taken the notice under Section 13(2) to its logical conclusion will not wipe out the right of Bank to issue another notice. There is no bar or prohibition in the Act for issuing a second Demand Notice. If a notice is withdrawn, the second notice will be treated as first notice under Section 13(2) of the Act.<sup>4</sup>

As regard completing the steps for sale or disposal of security is concerned, the requirement on the part of the Bank is to follow up measures taken under Section 13(4).

However an unnecessary delay in disposal of security may erode the value of security and therefore unwanted delay will be a ground for borrower to be challenged in appeal under Section 17 of the SRES Act.

### **Right to Receive Compensation**

This is another important right of the borrower has been provided under Section 19<sup>1</sup> of the SRES Act which runs as follows:

*"Section 19 – Right of borrower to receive compensation & costs in certain cases.* If the Debts Recovery Tribunal or the Court of District Judge, on an application made under Section 17 or Section 17 A or the Appellate Tribunal or the High Court or on an appeal preferred under Section 18 or Section 18 A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of the Act & Rules there under and directs the secured creditor to return such secured assets to the concerned borrowers, such borrower shall be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court Referred to in Section 18B."

The Section recognizes a borrower's right to receive compensation & cost, if Debt Recovery Tribunal/Debt Recovery Appellate Tribunal finds that possession of secured assets/sell of secured assets/ transfer of secured assets is not in accordance with the provisions of the Act and the Rules made thereunder. The Section does not cover an Appellant under Section 17 who is not a borrower but only a person 'aggrieved'. It appears that such an Appellant/person aggrieved who is not a borrower

is left to pursue a claim of his damages in Civil Court. From reading of the Section the right of borrower appears to arise once Debt Recovery Tribunal comes to the conclusion that possession is not in accordance with the provisions of the Act. However it does not appear necessary that in each and every case Debt Recovery Tribunal should pass an order quantifying the compensation. The Section declares only entitlement and therefore once an appeal under Section 17 has been disposed off in favour of borrower, he may apply before DRT under Section 19 for quantifying/determining the compensation for the losses caused due to breaches committed by secured creditor in carrying out the provisions of the Act. Therefore whenever action of Bank/Secured Creditor is held illegal, the losses; if any, may be recovered and even notionally a borrower may get compensation.

### **Right to Object Demand Notice:**

Demand Notice is the first step by which proceedings under SRES Act are initiated. Borrower has been given an unequivocal right to bring on record all his objections in reply to such Demand Notice.

The right to object a Demand Notice under Section 13(2) is valuable right of borrower. The borrower is entitled to raise or to take any objection which may ultimately result in termination of proceedings. The borrower if he desires to challenge the action of Bank this is the opportunity given by the SRES Act under Section 13(3-A) which runs as follows:

“Section 13(3A) - If, on receipt of the notice under Sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower: Provided that the reasons so communicated or the likely action of the secured Creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17 or the Court of District Judge under Section 17A.”

In objection any intricate question of facts can be raised by the borrower. By submitting the representation an obligation is cast upon the Bank to communicate within one week the non acceptance of the representation or objection of the borrower. Though the reason communicated does not confer any right upon the borrower to prefer an application/appeal before DRT under Section 17 or 17(A) yet it will compel the Bank to reconsider the steps which are being intended by the Bank.

The proviso to Sub-section (3-A) of the SRES Act precludes a borrower from immediately assailing the rejection by the secured creditor of the objection /representation. The wordings of the proviso are such that the challenge to rejection can be carried at a later stage. The right to challenge the rejection made by secured creditor is merely suspended till such time that the secured creditor resorts to any of the measures under Section 13(4) of the SRES Act.

The reason appears that merely rejection of objection in response to Demand Notice is not going to cause any material prejudice to the borrower. Therefore the right to challenge the rejection accrues only upon the material prejudice is caused following Section 13(4) being invoked by secured creditor/Bank.

It is a valuable right of notice recipient to object before Bank as to why action under the Act should not be taken. This right is very important in the sense it is a face to face dialogue with the lender. The objection of borrower will put a question to the lender as to genuineness, purpose, legality of the exercise under the Act. Further, these objections of borrower will form a foundation for appeal under Section 17 or for compensation. If genuine objections are not considered, it will not lie in the mouth of Bank to oppose the claim for compensation at some later stage of proceedings.

The provision contained in Section 13(3A) of the Act are mandatory in nature and the secured creditor Bank has no right to proceed in violation of the provisions contained in Sub-section (3A).

Merely, rejection of objections of borrower will not give right to the borrower to approach Court, but the remedy for borrower will be to prefer appeal under Section 17 in the event of any measure is taken under Section 13(4).

Section 13(3-A) puts an obligation on the Bank to convey the reasons for non-acceptance within fifteen days from the date of receipt of such objections/representation. Undoubtedly the liability to be discharged is subject to the decision of Bank taken on pursuance of Section 13(3A) of the SRES Act.

A measure under Section 13(4) cannot be taken against the decision taken in pursuance of Section 13(3A). It is obligatory on the part of the authority first to consider and dispose of the objection by speaking and reasoned order and communicate the order to the borrower.

It is condition precedent for issuance of notice under Section 13(4) of the Act. The authority cannot ignore the statutory provisions treating them merely to be a decoration piece in the statute rather they need a strict adherence. Bank cannot get rid of the obligation of disposal of objections merely on the ground that objections of borrower were submitted through his advocate because the Act does not lay down any limitation or boundaries within which the objections should be framed. The borrower can take any objection *viz.* legal, factual, moral, humanitarian, procedural etc. and yet in any form the scope of objection is unlimited and it will always depend on case to case basis but some examples of objection are given in order to point out the area and boundaries for objection.

1. Objection as to date, manner of N.P.A.
2. Objection pertaining to the very existence of security interest.
3. Objection as to authority of the various officers of Bank/ Board Government etc.
4. Objection as to accounting like wrong calculation of interest, penal interest, various charges, capitalization etc.
5. Objection as to form and information contained in Demand Notice like incompleteness of the Notice, wrong facts in the Notice etc.
6. Objection as to availability of security for disposal like another charge, inability of borrower under different laws.
7. Objection as to parties to Notice like passing away of some parties to loan contract or changing of partners or change of directors etc.
8. Objection of legal and technical nature by putting different interpretations to the various provisions of the Act.
9. Seeking time for repayment of loan.
10. Rescheduling of loan as per the needs.
11. Deferring of payment of installments due to unforeseen events like loss, damage in business.
12. Objection that the borrower is operating loan account without break.

The objections must necessarily give reference of Demand Notice. A borrower understands well that if nothing serious is contended in the objection, the same will be liable to rejection. The borrower has to show in Court that non-disposal has resulted in some kind of injury to his rights which could be avoided if the objections were considered by the Bank. Therefore where defaulter borrower raised an objection that the loan was taken under Credit Guarantee scheme for small industries and the Bank may move the Central Government for recovery of the amount, and the Bank failed to dispose the objection but Jharkhand High Court refused to provide benefit of M/s Mardia Chemicals to borrower by treating the objection worthless and frivolous.<sup>5</sup> Debt Recovery Appellate Tribunal, Chennai has also taken the same view. <sup>6</sup>Seeking of extension of time will also be an objection under the Act and Bank has to reply the same on reasonable basis either by giving the desired time or by giving the time which Bank thinks fit. Where Bank issued a Demand Notice but failed to reply/dispose the objection of borrower and filed its claim before Debt Recovery Tribunal but during pendency of proceedings issued another Demand Notice, it was held that <sup>7</sup> since objections were not disposed off within the stipulated time, the Bank can not revive the action. However once objection stand disposed off, the Notice under Section 13(2) of SRES Act cannot be interfered between the stage unless measure under Section 13(4) is taken. If the objections are sent through registered post, a presumption under Section 27 of General Clauses Act, 1897 can be raised being validly served. A bald denial is not a valid rebuttal of a presumption in law. In a matter where objections were sent through courier *viz.* 'First Flight



Couriers Ltd.’ but Bank denied having received the objections, the contention of borrower was not relied upon being a word against word.<sup>8</sup>

### **Right to File Appeal**

In order to prevent misuse of wide powers given to a Secured Creditor Bank/ Financial Institution and prevent prejudice being caused to a borrower on account of an error on the part of the Banks and Financial Institutions certain checks and balances have been introduced in the Act.

Section 17<sup>9</sup> permits/allows any person including the borrower/aggrieved by any of the measures referred to in Sub-section (4) of Section 13 taken by secured creditor to make an application in to the Debt Recovery Tribunal concerned for the relief’s in Sub-section (3) thereof. Thus while the Banks/Financial Institutions have been vested with stringent powers for recovery of their dues safe guards have also been provided for rectifying any error or wrongful use of such powers by vesting the Debt Recovery Tribunal with authority after conducting an adjudication in to the matters to declare any such action as invalid and also to restore possession even though possession may have been made over to transferee. The forum constituted under Debt Recovery Tribunal Act has been made available for the adjudication, not of recovery proceedings per se but for determining the validity of the acts/measures of the secured creditor under Section 13 which is without intervention of Court. But right to challenge the rejection by a secured creditor of the representation of the borrower in reply to notice under Section 13(2) is suspended till such time that the secured creditor takes recourse to any of the measures under Section 13(4). The reason being that a mere rejection will not cause any material prejudice to the borrower. Right to challenge accrues only upon the material prejudice being caused following Section 13(4) being invoked by Bank/Financial Institution.

Though proceedings under Section 17 are given nomenclature as an appeal, but being original proceedings, the procedure applicable will be that of a suit. Section 17(1) of the Act enables a person including a borrower to prefer an appeal/application against any of the measures taken by the Bank. While Sub-section (2) of Section 17 prescribed the scope for determination of such application/appeal. Section 17(2) provides that DRT shall examine the facts and circumstances and shall decide whether the measures under Section 13(4) taken by secured creditor are in accordance with the provisions of the Act or Rules. Thus in a challenge under Section 17, the action of the secured creditor under Section 13(4), can be shown to be transgressing the limits and powers available to a secured creditor. Right of appeal is created for judicial security of enforcement of secured creditor’s rights and for creating any wrongs therein against the affected persons.

Supreme Court has recently clarified <sup>10</sup>that an action under Section 14 constitutes an action taken after the stage of Section 13(4) and therefore the same would fall within the ambit of Section 17(1) of the Act and therefore appealable.

It is noticeable that actions taken under Section 13(5) to (8) of the Act are measures taken after the issuance of the Possession Notice under Section 13(4) and therefore remedy will be appeal under Section 17 of the Act.

Questions of facts are more effectively and comprehensively determinable in appeal as in *Mardia chemical*, the Apex court has held, “*the position of the appeal under Section 17, of the Act is like that of a suit in the court of the first instance under Civil Procedure Code*” This is a safeguard available to borrower within the framework of the Act.

Instead of appeal the proceedings are treated as application, In other words the parties are at liberty to tender evidence oral or documentary in support to their respective cases including affidavits. Where action is taken for enforcement of security, the person against whom the action is taken and in addition borrower is also allowed to invoke the provision of Section 17 but no other person. A guarantor will not be entitled to prefer an appeal.<sup>11</sup>

In an appeal the Tribunal is concerned with the validity of the acts of the secured creditor in taking possession of the securities and dealing with the same under Section 13 therefore all such grounds which would render the action of Bank/Financial Institution illegal can be raised before the Tribunal in the proceedings under Section 17. It is for the Tribunal to decide in each case whether the action of

Bank was in accordance with the provisions of the Act and legally sustainable. The purpose of an application under Section 17 is not the determination of quantum of claim per se as the Tribunal is concerned with the issue of validity of the measures under Section 13(4). Still DRT is empowered under Section 17 to assess the quantum of borrower's indebtedness to the secured creditor Bank as well as to determine about any oral contract of Bank with borrower regarding repayment of loan. Under appeal the action of Bank is to be judged through the prism provided by SRES Act.

The Act has not prescribed the procedure for disposal of application/appeal Under Section 17 except for saying that such an application shall as far possible be disposed off. Within sixty days from the date of such application. The last limb of Section 17, Sub-section (3) is of widest amplitude and empowers the Tribunal to pass such orders as it may consider appropriate and necessary in relation to any of the measure and there is no limitation apparent from the relevant words as to the authority of Tribunal to effectively deal with the situation. So far as parties to appeal are concerned the Authorized Officers though may be added as a party in the appeal but mere his absence will not render the appeal invalid/defective. Provided an effective order can be passed. As per Section 17(1) of the Act 'any person aggrieved' by any of the measure Under Section 13(4) taken by the secured creditor or its Authorized Officer may make an application which shows that appeal can be filed by adding secured creditor primarily as a party. But a stranger, who purchases property subsequent to mortgage favoring Bank have no *locus standi* to question legality and validity of Demand Notice and Possession there of.<sup>12</sup>

Thus it can be inferred that it is not just an exercise of judicial review but a regular process of adjudication by DRT. Notwithstanding the fact that objections of the borrower have been disposed off by the Bank, DRT in the event of an appeal shall have to go into the legitimacy of Bank's claim-and necessarily the adjudication of liability of borrower as well as quantum of liability.

Lastly, it is noticed that though sufficient rights are available to borrower in order to counter the proceedings under the Act still, being under pressure for immediate repayment a borrower is not able to avail the remedies and to exercise its rights. As a practicing Chartered Accountant one should have thorough knowledge of the subject so that in appropriate cases, action under SRES Act may be countered with effectiveness.

---

#### Endnotes

1. Section 13(8) – If the dues of the secured creditor together with all Costs , charges & expenses incurred by him are tendered to the secured Creditor at any time before the date fixed for sale or transfer, the Secured asset shall not be sold or transferred by the secured creditor, And no further step shall be taken by him for transfer or sale of that Secured asset.
2. *Rajesh Arvind Gokhale & Another v. Chief Manager, State Bank of India Pune & Others* 2006 (2) Bank CLR 699
3. *Omeshwar Baldwa v. Vasavi Co-operative Urban Bank Ltd.* MANU/AP/0445/2009: 2010 (1) Bank CLR 680 (A.P.)
4. *M/s Dauji Farms Limited and Others v. Dena Bank and Another* MANU/CG/0148/2008: 2009 (2) Bank CLR 158 (Chhatisgarh)
5. *Bharati Enterprises (through its proprietor) v. United Commercial Bank (through C.M.D.)* 2008 (2) DRTC 314 Jhar.
6. *Authorised Officer & Chief Executive Officer VYSYA Co-operative Bank Ltd. Jumkur v. B.V. Govindraj & Another* 2008(1) DRTC 264 DRAT Chennai
7. *M/s Stan Commodities Pvt. Ltd. v. Punjab and Sindh Bank* MANU/JH/0602/2008: 2009 (2) Bank CLR 548 (Jhar)
8. *Prestige Lights Ltd. v. State Bank of India* MANU/SC/3355/2007: (2007) 8 SCC 449, (2007) 139 Comp. Cases 169 (2007) 5 AU,LJ 578,2007 (2) DRTC 401 (SC)
9. Section 17: *Right to appeal.* – (1) Any person (including borrower), aggrieved by any of the measures referred to in Sub-section (4) of Section 13 taken by the secured creditor or his authorized officer under this Chapter, may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:  
*Explanation* – For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the state of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under Sub-section (1) of Section 17.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in Sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in Sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made there under, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in Sub-section (4) of Section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under Sub-section (4) of Section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under Sub-section (4) of Section 13, is in accordance with the provisions of the Act and the rules made thereunder, then, notwithstanding, anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under Sub-section (4) of Section 13 to recover his secured debt.

(5) Any application made under Sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under Sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in Sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunals and the.

Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunals shall, as far as may be, dispose of application in accordance with the provision of the Recovery of Debts Due to Banks and financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.

17A. *Making of application to Court of District Judge in certain cases.* – In the case of a borrower residing in the State of Jammu and Kashmir, the application under Section 17 shall be made to the Court of District Judge in that State having jurisdiction over the borrower which shall pass an order on such application.

*Explanation* – For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication or reason shall not entitle the person (including borrower) to make an application to the Court of District Judge under this section.

10. *Kanhaiyalal Lalchand v. State of Maharashtra* (2011) 2 SCC 782

11. *Anushree Sah v. Bombay Mercantil Bank Ltd.*, 2007(3) Bank CLR, 3, (DRAT) Mumbai 96 (DRAT Kolkatta)

12. *J.S. Arora & Others v. State Bank of Hyderabad & Others* 2010 (2) Bank CLR 380 (DRAT DEL)