

IMPACT OF INSOLVENCY AND BANKRUPTCY CODE ON FUNCTIONING OF DEBT RECOVERY TRIBUNALS

By

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Banks and Non-Performing Assets

In India, at present 12 Public Sector Banks, 22 Private Sector Banks and 45 Foreign Banks are functioning in banking service. “State Bank of India is the largest public sector bank in India with a 23% market share in assets, besides a share of one-fourth of the total loan and deposits market”.¹ Therefore, the banking sector plays an important role in the growth of Indian economy. Banks are facing problems in recovery of loans given to various industries/firms and such non-recovery is casting a shadow on their operations and their risk assessing capabilities.

Banks in India are facing the difficulty with the mounting Non-Performing Assets (NPA). At present 11% Non-Performing Assets are there in India out of total assets kept as security for banks and other financial institutions. Bad Debts have been clogging up the Indian Banking system. Non-Performing Asset is defined as a credit facility in respect of which the interest and/or installment of principal is past due for a specified period. Generally, if the loan payments have not been made for a period of 90 days, the asset is classified as non-performing asset. “But how severe is the Indian bad loan problem? A look at the ratio of bad loans or non-performing assets (NPA) across the world shows that India’s NPA levels place it among the worst-performing major economies of the

world”.² “The poor asset for the banks is a problem because as per the guidelines, given by the RBI, banks are required to keep some amount as provision depending on their asset quality thereby leading to declining profitability of the banks. Hence, it impacts not only the profitability level of these banks but also affects the shareholders’ wealth”.³

The existing legal provisions have failed to give satisfactory solution to the banks and other financial institutions in recovery of debts and hence there was a need for setting up of Special Tribunals with special powers for speedy recovery of debts and adjudication of such matters. The Central Government has enacted the “Recovery of Debts due to Banks and Financial Institutions Act” (RDDBFI) in the year 1993 and Debt Recovery Tribunals were established under this Act to facilitate the debt recovery involving banks and other financial institutions. Then, the Central Government has enacted “Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act” (SARFAESI) in the year 2002. Now the Debts Recovery Tribunals can enforce the provisions of the both the Acts.

Debt Recovery Tribunals

The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides

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1. See <https://sbi.co.in/web/about-us>

2. Tadit Kundu, *India's big bad loan problem*, available at <<https://www.livemint.com/Opinion/osD4kDT3vNx Dg Gu5a4E5yJ/Indias-big-bad-loan-problem.html>

3. Varuna Agarwala, Nidhi Agarwala, *A critical review of non-performing assets in the Indian banking industry*, available at <https://www.emerald.com/insight/content/doi/10.1108/RAMJ-08-2019-0010/full/html>

speedy redressal to lenders and borrowers through filing of applications in Debts Recovery Tribunals (DRTs). At present there are 39 DRTs and 5 DRATs are functioning. All pending cases before any Court as on date of enforcement of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 were to be transferred before DRTs. The pecuniary limit, at present, for filing applications for recovery of debts in the DRTs is Rs.20 lakhs.

Each Debt Recovery Tribunal is presided over by a Presiding Officer and the Presiding Officer shall be qualified as District Judge.⁴ Each Debt Recovery Tribunal shall have one or two Recovery Officers.⁵ The DRT and DRAT shall have the same powers as are vested in a Civil Court under the C.P.C. and shall not bound by the procedure laid down by the C.P.C but shall follow Principles of Natural Justice.⁶ Therefore, the Debts Recovery Tribunals are fully empowered to pass comprehensive orders and can travel beyond the Civil Procedure Code to render complete justice. A Debts Recovery Tribunal can hear cross suits, counter claims and allow set offs. The Debts Recovery Tribunal can also appoint Receivers, Commissioners, pass *ex-parte* orders, ad-interim orders, interim orders apart from powers to Review its own decisions and hear appeals against orders passed by the Recovery Officers of the Tribunal.

Functioning of DRTs

Where a bank or financial institute has to recover any debt from any person, it may make an application to the DRT and banks or financial institutions may join together at any stage of the proceedings, before the final order is passed, if they have claim against the same person.⁷ In the case

of disobedience of an order made by the Tribunal or breach of any of the terms on which order was made, the Tribunal may order for attachment of properties and also order such person to be detained in civil prison for a term not exceeding three months. Finally, the Presiding Officer issues a Certificate to the Recovery Officer for recovery of the amount of debt specified in the certificate. Such certificate of recovery is a Decree itself and the Recovery Officer need not go for any adjudication on it in any Civil Court. The DRT shall endeavour to dispose of the application within 180 days from the date or receipt of application.⁸

The Recovery Officer on receipt of such certificate proceeds to recover the amount of debt specified in it either by attachment and sale of the property of the defendant or by arrest and detention of the defendant or by appointing a receiver for the management of the properties of the defendant.⁹ 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 jurisdiction, powers and authority of the DRTs.

Under the SARFAESI Act, after a loan has been classified as a non-performing asset (NPA) by the secured creditor, a notice to this effect is to be sent to the borrower mentioning that the amount should be paid within a period of 60 days, failing which the secured creditor is entitled to exercise the rights under the Act.¹⁰ If the borrower is unable to discharge his liabilities, Section 13(4) of the Act authorizes the secured creditor to take recourse to measures of recovery by taking possession of the secured asset including the right to transfer by way

4. Sec. 5 of RDDBFI Act, 1993.

5. Sec. 7 of the Act.

6. Sec. 22 of the Act.

7. Sec. 19 of RDDBFI Act, 1993.

8. Ibid.

9. Sec. 25 of the Act.

10. Section 13 (2) of the SARFAESI, Act.

of lease, assignment, sale, take over management of the business or appoint any person to manage the secured asset. Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the creditors may file an application to the DRT for recovery of the remaining portion of the dues. The borrower can also appeal to the DRT against the creditor's findings.

In the beginning the Debts Recovery Tribunals performed well and helped the Banks and other Financial Institutions in recovering substantially large parts of their Non-Performing Assets (NPAs), and bad debts. But later on, the borrowers used delayed tactics by using the loopholes of the RDDBFI Act which ultimately resulted in delay of debt recovery process.

To improve India's ease of doing business ranking the Central Government has enacted "Insolvency and Bankruptcy Code, 2016" (IBC) by replacing existing insolvency laws to facilitate speedy and time bound resolution and liquidation of business entities in distress. IBC, apart from taking care of interest of one specific bank, also takes care of financial interest of all kinds of creditors who could be stakeholders in proper functioning of debtor company. National Company Law Tribunals (NCLTs) and the National Company Law Appellate Tribunals (NCLATs) have been conferred with the powers under the IBC to decide corporate disputes. They can pass orders to restitute parties, direct insolvency or liquidation proceedings.

The creditors under the new IBC have an opportunity for filing an application before National Company Law Tribunal for liquidation, insolvency and winding up procedures against their corporate debtors. Then National Company Law Tribunal can impose moratorium to prohibit and stay matters that would be instituted or were

pending at any Court of law or Debt Recovery Tribunal.¹¹ These provisions have causing serious impact on functioning of Debt Recovery Tribunals. "While it accomplished reducing the pendency of cases before the former tribunal, it has also duplicated its subject-area jurisdiction, raising the question of whether Debt Recovery Tribunals in this era are on their way to a progressive redundancy and an in-depth examination provides the answer in the affirmative".¹²

Functioning of DRTs vis-à-vis NCLTs

The DRTs provides for recovery mechanism for debts of only banks and other financial institutions. They facilitate recovery of amounts of a financial nature, by resolving disputes between customers and banks or financial institutions only. Except for these matters, DRTs have no jurisdiction to entertain any other cases. Whereas NCLTs can be approached for resolution proceedings concerning liquidation, insolvency or winding up due to bankruptcy. The NCLTs provide remedy for secured corporate creditors in case of default in payment of debts which may be in the nature of operational and financial.

Now the banks and other financial institutions have alternative remedies for recovery of their debts. They can either approach DRT or NCLT. "Therefore, banks and financial institutions are also allowed to approach the NCLT for recovery of loan amount. Since operational debts cover all commercial transactions entered into by businesses, companies choose the convenient forum, the NCLT for initiation of insolvency resolution process instead of filing a suit

11. Section 14 of IBC, 2016.

12. Ashwini Nag, "Debt Recovery Tribunals In An IBC-Era: A Progressive Redundancy", See <https://lexinsight.wordpress.com/2020/04/27/debt-recovery-tribunals-in-an-ibc-era-a-progressive-redundancy/>

for breach of contract in the Civil Court”.¹³ But when there are two proceedings before the DRT and NCLT, they cannot go on concurrently if the liability has not been adjudicated upon and u/s.14(1)(c) of the IBC, NCLT declares moratorium prohibiting the DRT proceedings until the NCLT approves a resolution plan or orders for liquidation. Therefore, the Code takes precedence over DRTs and as well as SARFAESI Act and the IBC has made DRTs and the SARFAESI Act redundant.

Conclusion

Once moratorium u/s.14 of the IBC 2016 commences banks cannot enforce their security interest against debtor under SARFAESI Act. “The interplay of rules of the Code, the SARFAESI Act and the DRT Act remains unresolved. Simultaneous

proceedings before the civil Court, the DRT and the NCLT for recovery of the same debt is contributing to an inefficient insolvency regime. There is craving among experts for a settled position of law. Since almost any case before the DRT can be resolved by the NCLT, the Legislature as well as the judiciary must decide on the chief question—has the Insolvency and Bankruptcy Code made Debt Recovery Tribunals redundant?”¹⁴ “Moreover, as NCLTs are not generally aware of the proceedings pending in DRTs when they accept application under Section 10 of IBC 2016 it unnecessarily deprives Banks from getting their dues back from corporate debtor for a considerable period of time. Thus, this incongruity in the functioning of the two tribunals must be weeded out for want of which whole purpose of bringing about IBC 2016 & SARFAESI Act 2002 would fail”.¹⁵

LABOUR LAW RELAXATIONS DURING COVID-19 AND CHILD RIGHTS CONCERNS WITH SPECIAL REFERENCE TO CHILD LABOUR IN INDIA

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Abstract :

Any country's present and future economic progress is directly proportional to adequate human resource development in the forms of proper education to children and young adults, safety measures, legislative safeguards against exploitation and crimes and a holistic environment for their growth. However, with the onslaught of difficulties that were beyond prediction due to the COVID-19

13. Ibid

14. Ashwini Nag, “Debt Recovery Tribunals In An IBC-Era: A Progressive Redundancy”, See <https://lexinsight.wordpress.com/2020/04/27/debt-recovery-tribunals-in-an-ibc-era-a-progressive-redundancy/>

15. Gazala Parveen, “Effect of Moratorium on the right to enforce Security Interest”, See <https://blog.ipleaders.in/moratorium-on-the-right/>