Page 2233 - 2238

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Debt Recovery Tribunals: Its Procedure & Amendment in 2016 under Banking and Insurance Law

PUSHKARAJ S GHORPADE[1]

ABSTRACT

Money lending as well as borrowing are highly important cogs in the wheel of any economy. However, if such important cogs are unable to function properly due to the presence of Non-Performing Assets, it is worrisome for everyone who is part of the economic ecosystem- which is all of us. These Non-Performing Assets act as unnecessary burden to the lending financial institutions which burden the economy. This is why Debt Recovery Tribunals had to be introduced i.e., in order to put the recovery of the debt process in motion and to undertake the imperative task of speedy disposal of cases. In the present paper, the author seeks to delve into the efficacy of the tribunal, with focus on the amendment introduced by the Insolvency and Bankruptcy Code, 2016.

I. INTRODUCTION

The process of borrowing as well lending has been a part of the economic systems worldwide. The smooth functioning of the process is an integral part of a successful economy. If either of the two components- lending or borrowing comes to a halt or slows down, the butterfly effect is felt all across. In this context, one of the major problems faced by our country is the ever growing pile of NPAs or Non-Performing Assets. These were such assets which were seen as failing to generate money inflow for the lending bank which is seen to have affect the health of the bank from a financial point of view. It causes an impact on its liquidity, ability to compete as well as profitability[2]. The effect of NPAs is not restricted to these banks but the economy in totem.

Earlier these lending banks had to rely on Civil Courts to recover their money from the borrowers- which meant their money was figuratively trapped beneath the mountain of the growing pile of pending cases, not to mention the excessive over the top spending in the form

[1] Author is a Student at NMIMS School of Law, India.
[2] Ajit Kumar, *A Study On Effectiveness Of Recovery Channels For The Recovery Of NPAs: A Case Study On Scheduled Commercial Banks In India*, 1, IJRSR, 1, 1-6 (2017).

 [ISSN 2581-5369]

of fees for litigating these Civil cases. Acknowledging the international practice of aiding such institutions in the business of lending, by heling them recover their debts in an efficient as well as timely manner, the Debt Recovery Tribunals as well as Debt Recovery Appellate Tribunals were established consequent to The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, as given under Section 3. They were aimed at swift proceedings or recovery as well as quick resolution of cases with respect to the recovery of debts owed to the lending banks.

II. UNDERSTANDING THE TRIBUNAL

As mentioned above, the lending process has been facing problems due to the continuing problem of non-performing assets. The biggest sufferer in this play has been the lending institutions which were unable to process the enforcement of the securities from the non-paying entities (also called defaulters) and thus, were unable to recover their money. The cumbersome as well as erratic process with respect to recovery through Civil Courts, the Narasimham Committee in the year 1991[3] put forth the recommendation of establishment of tribunals which would specialize in the recovery procedure and would work towards streamlining the process of recovery of money owed to the lending bank. Thus, the idea of establishinga structure akin to the Debt Recovery Tribunals as well as Debt Recovery Appellate Tribunals came into being. This recommendation by the Committee led to the introduction as well as enforcement of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, wherein the authority with respect to adjudging cases on recovery of dents, which is vested within the Debt Recovery Tribunals as well as Debt Recovery Appellate Tribunals is derived from.

However, it was not a completely smooth sail. The Hon'ble High Courtof Delhi, in the celebrated judgment of **Delhi High Court Bar Association and Another v. Union of India[4],** declared the whole Act in totem to be unconstitutional since the Court was of the opinion that the Act undermined the independence as well as the authority of the judicial arm of the State. On a similar note, the Hon'ble High Courtof Karnataka, in the case of **D.K Abdul Kader & Others v. Union of India[5]**held the Act to be unconstitutional. The reason sited herein was that the parliament overstepped its competency in the legislative arena by enacting a legislation which is beyond the scope of the Entry 11-A of the List 3 which is notinclusive of tribunals within their scope and that such a body could not be established for matter beyond the scope

[3] Uma Jain, *Analysis of Narasimhan Committee 1 Report on Problems of Banks & Financial Institutions in India*, 2 ILJMH, 2, 1-13 (2019).
[4] Delhi High Court Bar Association and Another v. Union of India MANU/DE/0066/1995: 1995 (1) Bank CLR 286: AIR 1995, Delhi 232.
[5] D.K Abdul Kader & Others v. Union of India MANU/KA/0135/2001: 2002 (1) Bank CLR 630 (Kant): AIR 2001 Kant 176

 [ISSN 2581-5369]

of the matters which were listed under Article 323-B as well as Article 323-A of the Constitution of India.

It was only when an appeal reached out to the Apex Court in the case of **Union of India v. Delhi High Court Bar Association**[6]**,** that the constitutional validity of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and consequently of the Debt Recovery Tribunals as well as Debt Recovery Appellate Tribunals was upheld. In order to address the issues raised in the earlier decisions, the Court put forth the recommendation to introduce certain important amendments. The earlier decisions with respect to the constitutionality of the Act were overruled. The Hon'ble Supreme Court reached the decision that the High Courts had erred and the parliament does hold the competency in the legislative arena to be able to introduce such an enactment under the List I Schedule 7 Entry 45 of the Constitution of India. Consequently, amendments in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 to such effect were introduced in 2000 as well as 2002.

The next thing to understand about the Debt Recovery Tribunals is their composition which is discussed under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 through Section 4. In accordance to the aforementioned section, the tribunal will comprise of just one member who will be given the title of "Presiding Officer". The appointment of this officer will be done by the Central Government, through a notification. When the authorisation by the Central Government is given to the officer of one particular Debt Recovery Tribunal, they might assume the functioning as the Presiding Officer of one more Debt Recovery Tribunal. Such officer's term of appointment will be for 5 years or reaching the age of 62 years- which ever is earlier. They must also hold the qualifications of a District Judge.

III. PROCEDURE OF DEBT RECOVERY

In order to make the understanding of the procedure of debt recovery by Debt Recovery Tribunals as well as Debt Recovery Appellate Tribunals, this section is divided into sub-sections.

- **The Route of Application**

In accordance to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 through Section 19, the situations are mentioned which clears down which Debt Recovery Tribunal one must file their application in. The mentioned application could be filed by an institution of financial nature or by a bank to a Debt Recovery Tribunal which holds the

[6] Union of India v. Delhi High Court Bar Association MANU/SC/0194/2002: 2002(2) S.C.C. 275: 2002(2) Bank CLR 272 (S.C.): AIR 2002 SC 1479

requisite jurisdiction, and wherever the defendant to the case either carries on his business activities or resides in. Such an application could even be filed with the appropriate Debt Recovery Tribunal, in case the cause of action arose party or wholly within the jurisdictional limits allotted to the concerned Debt Recovery Tribunal. Additionally, the prescribed fees has to be paid along with the application.

- **The Route under SARFAESI Act, 2002**

Lending banks also have the option of approaching the Debt Recovery Tribunals as well as Debt Recovery Appellate Tribunals under the Securitisation and Reconstruction for Enforcement of Security Interest Act, 2002. Under this Act, the creditor which is categorized as secured undertakes the possession of the security which were given by the debtors when the debtors fail to pay back the money owed by them to the lending bank. However, there are situations wherein the security which was offered by the debtor was not enough to meet the debt owed by them. Herein, the creditors hold the option of filing up application to the Debt Recovery Tribunals and consequently, the Debt Recovery Appellate Tribunals in order to recover enough money to fulfil their dues. Additionally, in accordance to Section 17 of the Securitisation and Reconstruction for Enforcement of Security Interest Act, 2002, the people borrowing from banks and financial institutions could opt for filing an appeal to the correct forum which are theDebt Recovery Tribunals in case of objections to the findings of the creditor.

- **Post application filing procedure**

In order to ensure swift proceedings or recovery as well as quick resolution of cases with respect to the recovery of debts owed to the lending banks, the cases by Debt Recovery Tribunals as well as Debt Recovery Appellate Tribunals are dealt with in the form of summary proceedings. In accordance to Section 19(12) of the the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Debt Recovery Tribunal holds the power of proclamation of an interlocutory order in the favour of the lending bank in order to restrict the borrower from transferring or disposing off any property which belongs to the borrower without prior intimation as well as permission from the Debt Recovery Tribunal. Further, the Debt Recovery Tribunal has the power of detainingsuch borrower for a time of maximum three months in case of any breach of order or insubordinationof an order which is issued under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 through the Sections 19 (18), 19 (12) as well as/ or 19 (13).

When an application is filed under the first route, the usual time taken to complete the case is

 [ISSN 2581-5369]

180 days. But if such application is filed under the Securitisation and Reconstruction for Enforcement of Security Interest Act, 2002, the Debt Recovery Tribunal must adjudge the case between sixty days and four months. In case the time is exceeded, either of the party is empowered to appeal to the Debt Recovery Appellate Tribunals seeking it to direct the Debt Recovery Tribunal to adjudge the concerned application. This is provided for under Section 16 of the Securitisation and Reconstruction for Enforcement of Security Interest Act, 2002.

It is consequent to the passing of the order by the Debt Recovery Tribunal that the presiding officer will go ahead with the issuance of a certificate with directions to move along the process of recovering of thedebt amount, which will be properly mentioned in the certificate. This certificate is then gone through the process of issuing to the Recovery Officer who may seek the engagement of a receiver- whose purpose is to ensure for the proper management of the security offeredby the defendant, sell it or even attach it.

IV. AMENDMENT IN 2016

A major change came in this constitutional functioning of the Debt Recovery Tribunals through the introduction of the Insolvency and Bankruptcy Code, 2016 which has been brought into effect in order to unite the legal structure with respect to insolvency as well as bankruptcy issues. The IBC, 2016 brought forth changes in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in the following manner, which are delineated under the fifth schedule of the IBC, 2016:

- Amendment in the title to include individual and partnership firm's bankruptcy. This widens the scope of application of the Act
- Central Government was given the power of deciding how many Debt Recovery Tribunals as well as benches are required.
- Debt Recovery Appellate Tribunal made the appellate authority from judgment by authority under Part three of the IBC, 2016.

V. CONCLUSION

The current legal scenario with respect to the code is still very confusing due to presence of number of forums. This poses a problem while implementing a law. It is alarming to see the dismal state of the disposal rates of the Debt Recovery Tribunals since they are not fulfilling the objective of reducing the pendency of cases or the speedy disposal. The overlapping of cases causes the fall in the disposal rates which is a major pothole in the debt recovery regime of the country. The presences of number of dent recovery legislations requires intervention of

 [ISSN 2581-5369]

the government to provide some clarity.

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