

An Introduction to Debt Recovery by Banks and Securitisation

STUDY CIRCLE - V.P. SHINTRE & ASSOCIATES

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Need for establishment of Debts Recovery Tribunal

The main object for formation of Debts Recovery Tribunal is to provide a speedy remedy to Banks & Financial Institutions to recover their dues

Cases tried before the Debts Recovery Tribunal

- Original Application filed by the Banks and Financial Institutions under Section 19 of the Recovery of Debts and Bankruptcy Act 1993
- Securitization Application filed by borrower under Section 17 of the SARFAESI Act
- Recovery Proceeding before Recovery Officer
- Insolvency proceeding for partnership & proprietary firm

**Overview of
Recovery of Debts &
Bankruptcy Act
1993**

Jurisdiction of Debts Recovery Tribunal

- **Pecuniary Jurisdiction :**
All claims above 20 lakhs
- **Territorial Jurisdiction**
 - a. the branch or any other office of the bank or financial institution is maintaining an account
 - b. where Defendant/s, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain
 - c. the Defendant/s, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain
 - d. the cause of action, wholly or in part, arises

Procedure followed by Tribunal

- Original Application shall accompanied by true copies of Documents in support of the claim
- Summons is issued to Defendant
- Filing of written statement by Defendant
- Defendants can also file counter claim
- Pleading can be filed electronically
- Stage of admission and denial of document
- Evidence is led by way of affidavit
- No practice of chief or cross examination.
- Issuance of Recovery Certificate

Distinction between DRT procedure and CPC

- C.P.C is not applicable to DRT Proceeding
- Procedure is governed by DRT Rules & Regulations
- Requirement to disclose assets whether the claim is secured by security interest executed by borrower as per Sec 19 Sub 3 (A)
- Summons contains direction to disclose property and direction not dispose of with the property as per Sec 19 (4)
- Non compliance with sub (4) by defendant is punishable with Civil Prison upto three months
- Remedy of appeal to Debt Recovery Appellate Tribunal with 45 days.
- Deposit of 50% amount for filing of Appeal

Execution of Recovery Certificate

- Independent Mechanism for enforcement of Recovery Certificate
- The execution of Recovery Certificate by Recovery Officer under Schedule II of Income Tax Act 1961

SARFAESI ACT

OBJECT OF SARFAESI ACT 2002

- To enable Bank & Financial Institution to enforcement of security interest without intervention of Court
- Section 3 to 12 deal with Regulation Of Securitisation And Reconstruction Of Financial Assets Of Banks And Financial Institutions
- Section 13 to 19 deal with Enforcement of Security Interest
- Procedure is governed by the Act and ***The Security Interest (Enforcement) Rules, 2002***
- Constitutional Validity of the SARFAESI ACT 2002 was upheld by Hon'ble Supreme Court in *Mardia Chemicals Ltd. v. Union of India 2004 4 SCC 311*

Non Performing Asset (NPA)

- Declaration of account as Non Performing Asset as per the Master Circular issued by RBI
- A non performing asset (NPA) is a loan or an advance where;
 - interest and/ or installment of principal remain overdue for a period of more than 90 days in respect of a term loan,
 - the account remains 'out of order' as indicated at paragraph 2.2 below, in respect of an Overdraft/Cash Credit (OD/CC),
 - the bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted,
 - the installment of principal or interest thereon remains overdue for two crop seasons for short duration crops,
 - the installment of principal or interest thereon remains overdue for one crop season for long duration crops,
 - the amount of liquidity facility remains outstanding for more than 90 days, in respect of a securitisation transaction undertaken in terms of guidelines on securitisation dated February 1, 2006.
 - in respect of derivative transactions, the overdue receivables representing positive mark-to-market value of a derivative contract, if these remain unpaid for a period of 90 days from the specified due date for payment.

Non applicability of SARFAESI Act

The Act is not applicable to following cases :

a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 1872) or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;

(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);

(c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934 (24 of 1934);

(d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);

(f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);

(g) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act)] or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);

(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(i) any security interest created in agricultural land;

(j) any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon.

Issuance of notice by Banks to borrower

- Bank issues notice u/s 13(2) demanding to the borrower to discharge liability with 60 days of receipt of Notice
- Demand notice u/s 13(2) must include NPA date, Breakup of Principal + Interest Outstanding and Description of Mortgaged Properties to The Bank
- Borrower has right to make representation to the Bank and raise their grievance against the notice under 13 (3) A
- Bank has rejected the representation made by the borrower then borrower then bank has to communicate to borrower within 15 days of receipt of notice

Reply to Bank's notice

- Giving reply to representation borrower of under 13(3) A is mandatory not directory:
ITC Limited v. Blue Coast Hotels Limited (2018) 15 SCC 99
- Rejection of representation given u/s 13 (3) (A) by the secured creditor does not give right to borrower to approach the Court

Measures by Bank for recovery of dues

- If the borrower does not pay within 60 days of receipt of notice 13 (2), the secured creditor may take measures under Section 13 (4) of Act
- In case the borrower fails to discharge his liability in full within the period specified
 - a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset
 - b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset

Modes of Taking Possession

The Secured creditor may take possession of following manner as per law laid down in **Standard Chartered Bank v. V. Noble Kumar, (2013) 9 SCC 620**:

- (1) by giving notice under R. 8(1) of 2002 Rules if no resistance from borrower is met;
- (2) by making application to Magistrate, when it meets with resistance from borrower after notice; or
- (3) by directly approaching Magistrate under S. 14

Proceeding before District Magistrate

- In the event that the borrower does not peacefully hand over possession of secured asset then the Secured creditor can make application to District Magistrate for handing over physical possession property
- Bank officer has to file affidavit stating that he has complied requirement of 14 of Act
- Borrower has no right of representation in proceeding u/s Section 14

Sale of property

Procedure to be followed before sale

- (a) Clear cut 30 days notice has to be given to the borrower of before publication of auction sale notice
- (b) If auction sale fails then 15 days notice has to be given
- (c) Sale Certificate is issued & registered by Authorized officer on completion of sale

Modes of Sale of immovable property

- (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets or
- (b) by inviting tenders from the public
- (c) by holding public auction including through e-auction mode; or
- (d) by private treaty

Remedy for Borrower

- The borrower or any person aggrieved by the measures taken by secured creditor can approach the Debts Recovery Tribunal u/s 17 Act
- The limitation for approaching DRT is 45 days from taking measure
- Each measure taken by the bank is a separate cause of action. ***Authorised Officer, Indian Overseas Bank & Anr. Vs. Ashok Saw Mi II (2009) 8 SCC 366***

List of Citations

- M/s Mardia Chemical Ltd. Vs Union of India and others, (2004) 4 SCC 311
- Authorised Officer, Indian Overseas Bank and Another Vs. Ashok Saw Mill (2009)8 SCC 366,
- United Bank Of India vs Satyawati Tondon &Ors (2010) 8 SCC 110, ,
- Kanaiyalal Lalchand Sachdev&Ors vs State Of Maharashtra (2011) 2 SCC 782,
- M/s Hindon Forge Pvt. Ltd. & Anr. v State of Uttar Pradesh [(Civil Appeal No 10873 of 2018
- M/s Transcore Vs Union of India & Anr {(2008) 1 SCC 125
- Central Bank of India vs. Ravindra and Ors AIR 2001 SC3095
- [Vishal Kansaria vs. Bank of India](#) reported in AIR 2016 SC

THANK YOU

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