

DRTs: GAIN OR PAIN FOR BANKS?

RAJANI PRABHA GUPTA

Research Scholar, University of Kota, Kota, Rajasthan, India

Abstract: In India, banks have been the hub of financial system and have also played a crucial role in economic development of the nation. Therefore, it was very necessary for the banks to get their loans back so that their functioning keeps going on. However, regular civil courts failed to help banks in this regard. As a result, DRTs were brought into picture to exclusively deal with banks' debt recovery cases. However, as this paper argues, even the DRTs have failed to recover the loans of banks, in efficient and speedy manner. A huge backlog of cases and mounting NPAs is the proof that DRTs have not been able to fulfil the statutory task they were conferred upon. Infrastructural constraints and too many adjournments are the reasons why DRTs have not been doing speedy recovery of cases. Therefore, what is needed to improve the situation is a fair implementation of the RDB Act u/which the DRTs were set up as well as a greater attention of the government towards DRTs.

Keywords: DRTs, RDB Act, Banks.

I. Introduction

A dynamic banking system is essential for a thriving economy for without the presence of a well- established credit-system, we cannot expect the economy to roll on. Banking in India, however, experienced considerable difficulties in recovering loans and enforcement of securities charged with them. The main reason for the said problem was a delayed disposal of debt recovery cases of banks by the regular civil courts, forcing the government to set up to establish Debt Recovery Tribunals (DRTs) in India on the functioning of which the present paper is based. In the next part (Part II) of this paper, the author would deal with "Evolution of DRTs in India". The said part would throw light on the reasons why civil courts were not able to deal with debt recovery cases quickly, and the committees the recommendations of which led to setting up of DRTs. Further, Part III of the paper would deal with various special statutory "Powers and Functions" of the DRTs that enable them adjudicate debt recovery cases expeditiously. Part IV is about "Findings", highlighting the problem with the DRTs that in spite of various special powers conferred upon it, it takes long time to adjudicate cases like ordinary courts. Part V is on "Analysis of the Efficiency of DRTs", giving a statistical report on the efficiency of DRTs and suggesting that the DRTs have failed to fulfil their statutory duty, i.e., a speedy disposal of cases. In Part , the paper would talk upon the "Reasons and Suggestions w.r.t. Inefficiency of DRTs". Under this part, various problems as to why DRTs have not been able to dispose of cases quickly and also various suggestions w.r.t. that very problem. Part concludes the paper.

II. Evolution of DRTs in India

The DRTs were introduced due to a pressing need and lacunae in the banking system which resulted into economic loss to the banking sector as a whole.¹ Post liberalisation of the economy, the government encouraged the banks and other financial institutions (FIs) to act liberal in terms of granting loans for industrial purposes. Consequently, people took the advantage of easy financing by the banks by not repaying the loans. On banks filing recovery suits in civil courts, the regular courts, being already overburdened with other types of cases also couldn't adjudicate recovery suits in a timely manner. As a result, a large amount of public money got blocked. Hence, in order to solve this problem, a committee called Tiwari Committee was set up by the Central Government to look into the matter. It found that the existing procedure for debt recovery is very cumbersome and therefore, recommended that a summary procedure be adopted. For this purpose, setting up of special tribunal was recommended exclusively to deal with cases related to recovery of debts

¹ DRT- The Supreme Court Removes Ambiguities.

due to banks and FIs. These recommendations were endorsed by the Narsimhan Committee as well. Thus, on the basis of these recommendations of the said two Committees, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short, “RDB Act”) was enacted by the Parliament, under which specialized forums i.e. the DRTs (Debt Recovery Tribunals) and the DRATs (Debts Recovery Appellate Tribunals) were set up.²

III. DRTs: Powers & Functions

The functions of the DRTs are governed by the RDB Act. The DRTs are quasi- judicial institutions set up as a special machinery for speedy adjudication of the legal suits filed by banks against their defaulting borrowers. The DRTs exercise their jurisdiction, power and authority as per §17 of the RDB Act which prescribes that the DRTs would entertain and decide applications only from the banks and FIs for recovery of debts due to such banks and FIs. The DRTs can, however, take up only those matters where the amount of debt is not less than Rs. 10 lakhs [§1(4)]. Further, w.r.t. the power and authority of the DRTs as prescribed u/§17, no other court or authority except the Supreme Court or a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution of India (§18). Thus, the effect is that jurisdiction of civil courts has been completely barred w.r.t the matters related to the recovery of debts of Rs. 10 lakhs or more. Besides, u/§22, the DRTs as well as the DRATs are also not bound by the Code of Civil Procedure, 1908 (CPC), so that a summary adjudication could be made by these Tribunals. Additionally, the DRTs as well as DRATs deal with matters filed u/the SARFAESI Act, 2002³ (*hereinafter*, “SARFAESI”) also which authorizes a secured creditor to enforce a debt-security, without the interventions of the regular courts, once the borrower fails to repay the loan [§13(1)&(2), SARFAESI] or his loan account has been declared as a Non Performing Assets (NPA). Hence, it may be said that DRTs were set up as one of the tools to achieve better availability of capital liquidity by the banks, which in turn help in growth of the economy of the country.

IV. Findings

1. Long period of time by Tribunals to dispose of cases

For few years, the new dispensation system in form of DRTs worked well for the officers recruited to operate the DRTs worked well in harmony with the DRTs’ object as to speedy disposal of debt recovery cases and control of overgrowing number of NPAs. However, gradually, even the DRTs started operating like regular courts by taking unnecessarily long time to adjudicate cases⁴ even when there is a specific statutory period within which DRTs as well as DRATs have to dispose of a case before it. Such statutory periods are as follows:

	Statutory Time Limit	Relevant Provision
For disposal of an application before DRT	180 days	§19(24), RDB Act
For disposal of an appeal before DRAT	Six months	§20(6), RDB Act
For issuance of show cause notice to the defendant	30 days	§19(4), RDB Act
For filing of an appeal to DRAT	45 days from the date of receiving copy of the order of the DRT	§20(3), RDB Act

In the case of *Standard Chartered Bank vs. Dharminder Bhoji*⁵ in 2013, the Supreme Court (*hereinafter* “SC”) has even criticized the concerned DRAT for unnecessarily adjourning the concerned matter. The Court held that DRTs and DRATs have been set up for expeditious recovery of dues to the banks. In this backdrop, therefore, the grant of an adjournment by

² United Bank of India vs. Satyawati Tondon, MANU/SC/0541/2010, at ¶2.

³ “Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act”.

⁴ Satyawati Tondon, *supra* note , at ¶2.

⁵ MANU/SC/1004/2013.

the DRAT should be a matter of an exception rather than of routine.⁶ In this case, the DRAT took almost four and half years to dispose of an appeal filed before it⁷ when the only question the DRAT had to determine was as to which of the two DRTs in question had the jurisdiction to decide the dispute.⁸ Thus, on such indifference of the DRAT towards its obligation cast upon it by the RDB Act and the SARFAESI, the SC directed the Presiding Officer of the DRAT to take curative steps towards procrastinated delineation by the Tribunals.⁹

2. Rising NPAs

In addition to a huge number of cases pending in DRTs, rising NPAs also shows how DRTs have failed to give desired result with having been established for more than a decade for now. The gross NPAs of scheduled commercial banks increased to 2,511 billion in March, 2014 from 1,839 billion in March, 2013. In comparative terms, from March, 2013 to March, 2014, the gross NPAs to gross advances increased from 3.4% to 4.1%. Further, the total stressed assets, i.e., the loans which are not being paid back in spite of having become due, amounted to 6,090 billion as on March 31, 2014, in comparison to the total gross advances of 61,018 billion as on the same date. These data should be, however, seen in the light of the total capital and profit of the banks which amounted to Rs. 7,278 billion and Rs. 722 billion as on March 31, 2014. Thus, it may be said that despite of the establishment of DRTs to deal exclusively with banks' debt recovery cases, NPAs in India is shooting up, which in turn have a serious impact on the profitability, liquidity and solvency of banks.¹⁰

V. Analysis of the Efficiency of DRTs

Even though there are statutory periods prescribe within which DRTs and DRATs have to dispose of cases, according to a report of the RBI¹¹, in present, only about ¼th of the cases filed pending at the beginning of the year are disposed of within that year- suggesting, on average, a four year wait is taken to dispose of even if no new case is filed. In 2013-2014, however, the number of new cases filed was about one and a half times the number of cases disposed of in that year, thus, the backlog of cases in growing only and not coming down. Even the following statistics, reported in the RBI report referred above, puts a question mark on the efficiency of the DRTs.

Total no. of cases filed in DRTs up to March, 2014	Amount involved in these cases	Total amount recovered up to March, 2014	Total % of the amount covered of the total amount involved
1,50,503	Rs. 2.3 lakh crore	30.5 thousand crore	13%

VI. Reasons and Suggestions w.r.t. Inefficiency of DRTs

Although DRTs have been functioning for a while now, their method of functioning has always been in question for the following reasons:

1. Less number of DRAT

While there are 33 of DRTs, there are only five of DRATs each covering multiple DRTs of a particular geographical zone. As a result, all the five DRATs are overburdened and not able to fulfil the objective of fast recovery of dues for which they were set up.¹² Therefore, it is submitted that the number of both DRTs as well as DRATs should be increased in the country to combat the increasing workload of the existing Tribunals.¹³

⁶ *Id.*, at ¶20.

⁷ *Supra* note , at ¶12.

⁸ *Supra* note , at ¶3.

⁹ *Supra* note , at ¶¶20-21. .

¹⁰ "Banks, Debt Recovery and Regulations: A Synergy", Talk by R. Gandhi, Deputy Governor on December 29, 2014 at the "Workshop for Judges of DRAT and Presiding Officers of DRTs", available at International Journal of Management and Commerce Innovations ISSN 2348-7585 (Online)

Vol. 4, Issue 1, pp: (829-838), Month: April 2016 - September 2016, Available at: www.researchpublish.com (last visited on 25th April, 2015), at ¶12.

¹¹ "Saving Credit", Talk by Dr. Raghuram G. Rajan, Governor, RBI at the Third Dr. Verghese Kurien Memorial Lecture at IRMA, Anand on November 25, 2014, available at https://www.rbi.org.in/Scripts/BS_SpeechesView.aspx?Id=929# (last visited on 25th April, 2015).

¹² *UoI vs. DRT Bar Association*, para 7.

¹³ *UoI vs. DRT Bar Association*, para 9.

2. Infrastructural Constraints

Infrastructural shortcoming is other problem which DRTs is facing w.r.t. its smooth functioning.¹⁴ It was observed in *UoI vs. DRT Bar Association*¹⁵ that most of the DRTs are running on rented premises and face acute shortage of space due to exorbitant rents and limitations on renewal or extension of leases, etc.¹⁶

In the said case, it was brought to notice of the Court that two benches of DRT were set up in Chandigarh, both of which were functioning from the same premises, when they were supposed to function from separate premises. As a result, the present case was filed to, inter alia, provide adequate accommodation for the functioning of both the DRTs.¹⁷

Given the poor state of affairs of the DRT as highlighted by the respondent, the Court appointed an amicus curiae to assist the Court to address it the core issues and respective suggestions to improve the working of the DRTs. Amongst various problems of the DRTs, it was informed to the Court that the DRTs are facing an acute shortage of modern and technological systems also in the of administration of justice in as much as many DRTs and DRATs don't even have websites and computerised systems.

Suggestion: Hence, w.r.t. the said issue, the amicus curiae suggested that the premises of all DRTs and DRATs should be housed in suitable buildings. In case the construction of these buildings is pending, the Tribunals should be run in rented premises having an area of at least 8000 sq. ft. comprising adequate space for records, etc. Besides, it should be ensured that amenities for the officers of the court, staff, litigants and lawyers are being provided. The said suggestions were approved by the Court.¹⁸

Further, the Centre was directed to provide every DRT and DRAT with their own websites with special focus on publishing of notices and auctions on the website itself, keeping in mind the necessary safeguards. For the said purpose, the National Informatics Centre was requested to prepare appropriate software in order to computerise various processes of DRTs, from filing of suits to the disposal of the same for speedy adjudication of cases.¹⁹

UoI- On the basis of the aforesaid suggestions, the Central Govt. in *DRT Bar Association* case²⁰ agreed to provide adequate space to DRTs in the Government building on a permanent basis. In case, the said option is not available, arrangements would be made in PSUs' buildings on a permanent lease/rental basis. If neither of the said options is available, then suitable land may be purchase for construction of a building, to be completed in a phased manner. Further, in light of the study on the requirements of additional facilities, the space authorisation for DRTs and DRATs was increased from 5000 sq. ft. to 7200 sq. ft. and from 3600 sq. ft. to 4500 sq. ft. respectively.²¹

The Central Govt. agreed to an "e-DRT Project" in order to improve the services of DRTs by building IT systems as expeditiously as possible.²²

3. Bar of Jurisdiction

Despite the availability of statutory remedies under the RDB Act and the SARFAESI Act, the High Courts continue to exercise their jurisdiction under Article 226 of the Constitution of India for passing orders which have serious adverse impact on the rights of banks and other financial institutions to recover their dues.

Suggestion: The RDB Act and SARFAESI Act are specific statutes on the suits related to recovery of debts due to banks and FIs. While the former Act empowers the DRTs to entertain debt recovery suits, the latter lays down the comprehensive procedure, including the hierarchy of appeal, to be followed in such suits. Any person dealing with debt recovery suits is, therefore, not allowed to circumvent the said hierarchy by taking course of either Articles 226 or 227 of the Constitution. It is a settled law, as held by the Supreme Court in *United Bank of India vs. Satyawati Tondon*²³ that

¹⁴ UoI vs. DRT Bar Association, para 9.

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¹⁶ UoI vs. DRT Bar Association, para 9.

¹⁷ UoI vs. DRT Bar Association, ¶¶3-4.

¹⁸ UoI vs. DRT Bar Association, ¶9.

¹⁹ Suggestion no. 5.

²⁰ *Supra* note

²¹ ¶10(i).

²² ¶10(v).

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High Courts should exercise their powers u/Article 226 only if alternate remedies have been exhausted by the petitioner.²⁴ The Court further said that where statutory remedies are available under a fiscal statute, exercise of Article 226 power by the High Court is not warranted as it may have an adverse impact on the rights of banks and FIs w.r.t to recovering their dues.

In this case, the appellant Bank had taken the recourse of §13(4) of the SARFEASI Act, on the failure of the respondent guarantor to repay the loan. Consequently, the appellant successfully requested the District Magistrate u/§14 to allow it to take the possession of the properties the respondent had mortgaged to the Bank. The respondent, however, filed a successful writ petition to the High Court u/Article 226 of the Constitution pleading to restrain the action taken by the appellant should be quashed on certain grounds. On an appeal to the Supreme Court, the Court held that not only the ground on which the High Court restrained the Bank from proceeding u/§13(4) was untenable in law but also the fact that the HC failed to notice that the respondent should have first proceeded against the bank's action only u/§17.²⁵ The SC said that normally it doesn't interfere with the HC's discretion to hear a writ petition u/Art. 226. However, the present case is an exception as the HC's order here has an effect of defeating the very purpose of the SARFAESI Act, i.e. that there should not be any unwarranted impediment in the recovery of debts due to Banks and FIs.²⁶

4. Appointment of Recovery Officers

Many serving Recover Officers lack a judicial background or are appointed on deputation basis from those very banks or FIs which are filing recovery cases in DRTs. Therefore, the matter of independence, fairness and impartiality of these Recovery Officers is always questionable.²⁷

Suggestion: Only law graduates should be appointed as Recovery Officers who have degree in law; preferably, a judicial officer of the rank below the designation of Addl. District and Session Judge on deputation. Such Recovery Office should be, further, given the same facilities and perks he/she enjoys in the parent cadre.²⁸

UoI- The Central Govt. agreed to appoint Recover Officers, if not possible from amongst judicial officers, at least from amongst those holding a degree in law or having legal experience. Additionally, with a view to improve the selection procedure of Recovery Officers, Presiding Officers were agreed to be included in the selection committee of Recovery Officers. At the same time, the level of the representation of the RBI in the said committee was raised from rank of Deputy Legal Advisor, RBI to Joint Legal Advisor, RBI to ensure even more transparency in the selection procedure.²⁹

The Govt. also agreed to conduct regular training programs for Recovery Officers to impart them with minimum working knowledge of DRT procedures as followed in compliance with the RDB Act and the SARFAESI Act and the Rules made thereunder.³⁰

5. Vacancies and Status of Senior Officers

The time taken o fill a vacancy of senior official in the DRTs or DRATs is extremely long.³¹

Suggestion: A select list of candidates should be maintained to fill the vacancies so that the selections could be made within a fixed time frame. Further, for posts other than Presiding Officers and Recovery Officers, any ongoing process of sourcing staff on deputation should be discontinued. Presiding Officers, Registrars and Recovery Officers should be selected from the state level- judicial officers through deputations and rotations so that no vacancy remains on these posts. Moreover, such judicial officers must be provided with the same perks and facilities as provided to them in their parent cadre, with residential accommodation be compulsorily earmarked for Presiding Officers.³²

²⁴ ¶18.

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²⁶ ¶13.

²⁷ DRT Bar Association, *supra* note , at ¶9.

²⁸ DRT Bar Association, *supra* note , at ¶9.

²⁹ ¶10(vi).

³⁰ ¶10(vii).

³¹ DRT Bar Association, *supra* note , at ¶9.

³² DRT Bar Association, *supra* note , at ¶9, suggestion no. 4.

UoI- The Govt. agreed to fill all anticipated vacancies for the posts of senior officers as and when they arise in accordance with the stipulated rules.³³

Suggestions in general:

- High Courts may also play a key role in a smooth and efficient working of the DRTs by keeping a close watch on the functioning of DRTs and DRATs through their supervisory power u/Article 227 of the Constitution of India.
- Some limit should be put on the total number of stays a party may ask for.
- Appeals to the DRAT should not be a matter of course. To ensure the same, DRATs should require borrower appellants to deposit a portion of the money ordered to be paid by the DRT in accordance with section 21 of the RDB Act, rather than routinely waiving such deposits.
- Challenging the orders of DRT and DRAT before courts should be made costlier for the appellants. Courts should require them to deposit the undisputed portion of the loan before admitting the case so that routine frivolous appeals diminish.³⁴

VII. Conclusion

Various statistics and court rulings prove that DRTs have failed to fulfil the desired result they were established for. Such a failure on the part of the DRTs has the effect of creating a corrosion in the economic spine of the country.³⁵ Therefore, a timely and fair application of the RDB Act is what is needed to improve the functioning of the DRTs in India. Such improvement is very necessary because when a borrower, especially the large one, faults or doesn't repay to a public sector bank, not only that bank loses but also each of the taxpayers in the country. Therefore, not only DRTs themselves but also the government as well as higher judiciary may contribute to remove and rectify various problems of DRTs as highlighted in this paper, and thus, create an environment where a healthy, vibrant and sound financial system can be built-up and sustained.

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³³ ¶10(iii).

³⁴ "Saving Credit", Talk by Dr. Raghuram G. Rajan, *supra* note .

³⁵ Standard Chartered Bank vs. Dharminder Bhoji, ¶9.