

A Study on the role of the Debt Recovery Tribunal of Non-Performing Assets in India

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Abstract

Earlier banks & lender institutions were supported to file the case against creditor in civil court. Its long time in deciding the case. Therefore, core business of banks suffered a lot. Banks were not able to increase the area of disbursement of loan as they were stuck up in pursuing actions against borrowers whose loan was NPA. In such a time, the foundation and functioning of the Debt Recovery Tribunals play an important role in recovering debts. The Debt Recovery Tribunal is expected to accelerate the recovery process. The tribunal assists in the recovery of “Non- performing Assets”. After the introduction of SARFAESI Act, banks were at liberty to file the case before DRT & SARFAESI simultaneously. This Article highlights the role and composition of DRT and DRAT, it also throws light on why prompt settling of loan amount is important for banks and what difficulties are being faced during this process.

Introduction

All lending institutions were facing great difficulties in realizing the loan amount and selling the mortgaged property of defaulter. Procedure adopted by lender banks was really very tedious and time consuming. So, on the recommendation of Narsimhan Committee, debt recovery tribunal was constituted to speed up the recovery of NPA. Since its establishment, we have got 118 DRT

in our country. These recovery tribunals are authorized to pass judgment on all matters related with recovery of defaulted loan. An individual or company can file an appeal before the Debt Recovery Appellate Tribunal (DRAT) against the order of DRT. Appeal can be presented within 30 days from the date of receipt of order. It won't entertain the appeal unless the person pays 75% of the money owed, as calculated by the DRT. DRAT can reduce this amount to 25%.¹

COMPOSITION OF DRT

It consists one presiding officer. He should have qualification equal to judge of district court and he has to be recruited by the central government. If central government allow, he can work as presiding officer of other tribunals as well. His tenure will be for a period of 5 year or 62 year of age whichever is earlier. He is supported by recovery officer.

JURISDICTION

Lending institution may file application before DRT in following situation-

- If pending loan is more than Rs 10 Lac.
- If NPA is less than above mentioned value, creditor will institute the case to civil court.
- If central government think fit, it may refer the case for amount exceeding 1 Lac to DRT as well.

While deciding the case DRT are supposed to follow the rules of natural justice. They have been given wide authority to govern their own method & procedure. They cannot be forced to follow procedure prescribed in CPC. One more important thing is that one does not need LL.B. degree to argue before DRT.

CASES WHEN APPLICATION IS FILED BEFORE DRT:

- If recovery of outstanding debt whether it is secured or unsecured is of 20 Lac or more, than creditor may approach DRT.
- If banks have resorted to initiate proceedings before SARFAESI & still some unrealized due our left, lender bank may present case before DRT for realization of such shortfall.
- Bank can take up realization proceedings before SARFAESI & DRT at same time.
- DRT can entertain appeals with regard to proceedings started under SARFAESI.

PROCEDURE OF FILING APPLICATION BEFORE DRT

Only creditor may file an application and it will be filed to the DRT which has jurisdiction i.e.

where defaulter either lives or run his business. However, application can be made to DRT if cause of action arises within the limit of its jurisdiction. At the time of filing the application, prescribed fee amount has to be submitted.

MODE OF RECOVERY SELECTED BY RECOVERY OFFICER

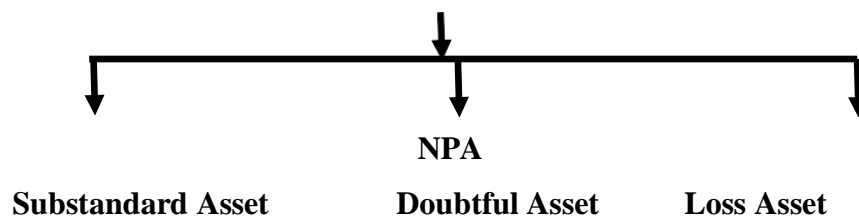
Recovery officer on receipt of copy of judgment of DRT, may proceed to recover the amount in following modes:

- Attachment & sale of property.
- Can take possession of collateral or other property of defaulter.
- He may initiate arrest of borrower.
- He may appoint a receiver to take care of business & property of defaulters.

NON-PERFORMING ASSET (NPA)²

Loan given by bank are considered assets of bank as interest on such loan are source of income for the banks. But loan is a liability for the borrower as it has to be paid to the banks on its maturity date. If borrower is paying principal & interest on time, then such loan asset is classified as standard asset. If borrowers are not able to repay installment within the period of 90 days from the due date, these assets are called non performing asset. Interest received on loan come under the category of income but if loan asset ceases to generate income, it becomes NPA for banks.

Sometimes bank grant loan under the influence of political party, do not conduct proper verification of creditor do not do creditability check of borrower or they don't take appropriate collateral security from the borrowers, then only problem of NPA arise. NPA has been categories into 3 types:



- **Substandard Asset** – The loan which are NPA for less than or equal to 12 months are known as substandard asset.
- **Doubtful Asset** – The loan which are NPA for more than 12 months are known as doubtful asset. In other words, recovery of doubtful asset is every low.

So, bank should try to minimize their NPA. In case of high loss asset, bank will be facing high financial crisis. NPA also impact the financial health & they will not be able to disburse loan to businessman & in turn income will not be generated in from of interest. Before sale of mortgage property, following condition must be fulfilled by bank:

- Borrower has defaulted in payment of Debt.
- Default loan must come under the classification of NPA.
- Secured creditor has to issue one notice to borrower to repay the loan within 60 days.

IMPORTANCE OF SPEEDY AND PROMPT LOAN RECOVERY

- **Improved Cash Flow** – Speedy debt recovery improves a bank’s cash flow by collecting the money owed to them. This allows the bank to meet its obligations and invest in growth.
- **Improved liquidity** – The speedy recovery helps banks to recover the money. This improves the banks liquidity position and help to ensure that it has the funds to meet its obligations.
- **Reduced Risk** – Speedy recovery of loans reduces the risk of non-payment, default or bad debts. It helps in protecting the bank’s assets and ensure that it is financially stable.
- **Enhanced Customer Satisfaction** – Customers appreciate timely and efficient debt recovery processes. By recovering debts quickly, banks can improve customer satisfaction and loyalty, which can lead to increase of business and profitability.
- **Improve Credit Rating** - A bank’s credit rating is based on its ability to recover debts. Its helps to improve a bank’s credit rating, which in turn can make it easier for the bank to access funding and other resources.
- **Financial Stability** - Speedy recovery ensures the creditor can receive the loan money in a timely manner, which is crucial for maintaining financial stability. The faster the debt is recovered, the quicker the creditor can use that money for other important purposes such as paying bills, purchasing inventory or investing in their business.³
- **Reduced Administrative Costs** – The longer a debt remains unpaid, the bank will need to devote more time and resources to collect it. Speedy recovery can help to reduce administrative costs, as the bank can quickly recover the debt without having to spend significant amounts on its collection efforts.
- **Maintain Customer Relationships** – For maintaining positive relationship with

customers speedy debt recovery is also important. By quickly resolving outstanding debts, banks can maintain trust and goodwill with their customer and builds long term relationship. It generates repeated business.

- **Avoiding Legal Action** – Is debt is not collected promptly creditors may need to resort to legal action to recover their money. This can be time consuming, expensive and stressful. The speedy recovery can help to avoid the need for legal action, saving both time and money.

Overall, speedy debt recover is essential for bank to maintain financial stability, reduce risk, and improve their credit rating. By quickly recovering debts, bank can improve their liquidity, reduce administrative costs and maintain positive relationships with their customers.

CHALLENGES FACED BY BANK IN COUSE OF RECOVERY OF DEBT

Bank may face several challenges when it comes to the recovery of debt. These are as under-

- Bank need to follow a legal process to recover their debts, which can be complex and time- consuming. In legal process it may involve multiple stages, such as sending legal notice, obtaining court's orders etc.
- Some borrowers may refuse to repay their debts or take the excuses that they do not have the money to repay the debts.
- If the person who borrowed the money did not provide any collateral, the bank may have trouble recovering the debt.
- If the borrower owes money to multiple lenders, the bank may face competition from the other lenders to get back their money.
- Bank needs to be careful not to use aggressive strategy to recover debts, as this can damage their reputation and lead to bad publicity.⁴

Overall, recovering debts is not always easy for banks, and they need to have an effective process to recover as much money as possible. Relevant leading cases in this context are as follows:

Vijay Malya Case,⁵ Vijay Malya is an Indian businessman who is accused of financial irregularities and defaulting on loans from Indian bank. He owned kingfisher airlines. His airline faced financial difficulties and was unable to pay his debts. Malya was accused of diverting funds from the airline for his personal use. He left India for the U.K in 2016, and the Indian government attempted to extradite him to face charges of money laundering and fraud in India.

In December 2018, a U.K. court ordered Malya's extradition to India, but he has appealed the decision. At present time, Malya's appeal is under proceeding in U.K. Court. This shows that it is really very difficult for bank to realize the outstanding amount from him.

Mehul Choksi Case, Mehul Choksi is an Indian businessman and one of the main accused in the multi- crore Punjab National Bank (PNB) scam. The scam came to light in 2018, when PNB filed a complaint with the Central Bureau of Investigation (CBI) alleging that Nirav Modi and Mehul Choksi had defrauded the bank of over Rs. 14,000 crores by obtaining fraudulent letters of undertaking (LoUs).⁶ In January 2018, Choksi left India and took citizenship of Antigua and Barbuda. India has been trying to extradite him to face trial in India. In 2021, he went missing and was later found in Dominica, where he was arrested for illegal entry. India is seeking his deportation to face trial, but Choksi is fighting against it, claiming that he was abducted and taken to Dominica against his will. In this way bank is facing a great task in getting repayment of loan from it.

SARFAESI ACT

Earlier bank has to take permission from the court to sell the mortgage property to get its borrowings back. It was very complex and time-consuming process, so to remove this obstacle, SARFAESI act come into existence, if they do not recover their debt within the specified period, banks are entitled to sell the security and can realize their debt used by borrower. Before taking above action, bank will issue notice to creditors. However, if creditors have any objection regarding this notice, they are entitled to put up their case before the lender bank. Lenders are having discretion to accept or reject the application filed by them. If objections are rejected, it is the duty of lender bank to reply stating all the reasons for non- acceptance. After this procedure banks can take up following actions:

- Take possession of assets of creditors.
- Take the administration of business of creditor in his hand.⁷

It is well established fact that bank collects the deposit from the public & disburses that to business people. There may be huge risk in case of non-payment of loan. As these creditors may not be regular in repaying their debt. In this backdrop SARFAESI comes forward to tackle this menace. If bank diverts its whole attention & resources to recover the outstanding debt, it will lose its concentration on main business of taking deposit & disbursing the loan. We know banks have many receivables. These receivables are known as financial asset. Now bank will transfer these Assets to a particular company known as Asset Reconstruction Company. These

companies divide this receivable into small portion called as securities. These securities are issued in the market and investors invest in those security. In the whole process bank have the benefit of getting early realization of loan amount and ARC gets the commission. So, there is mutual benefit for this deal.

CONCLUSION

The role of DRT has been effective in regularizing the NPA, due to which bank and financial institution have been facilitated in getting the loan back from the borrower. The DRT has been empowered by the SARFASI Act to harmonies the relationship between bank, financial institution and the borrower by making transparent the procedure used in the recovery of the loan. So, in short, it can be said that after the establishment of DRT the cases of recovery are being settled fast and it has helped in reducing cases related to non-performing assets. Debt recovery done through DRT hassaved time and cost both. Harmonious relationship between bank and creditors has led to create trust in them. This trust resulted in good rapport between both the parties. In present time the Debt Recovery Tribunal's importance has increased because NPAs may be lessened only through tribunals.

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