

WELCOME TO PRESENTATION ON
RECOVERY PROCESS & ENFORCEMENT OF
SECURITY INTEREST IN INDIA

PRESENTED BY :-



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OVERVIEW OF THE PRESENTATION

- RECOVERY OF DEBTS – LEGAL FRAMEWORK IN INDIA
- DEBT RECOVERY TRIBUNALS & PROCESS OF RECOVERY
- RECOVERY OF DEBTS (DUE TO BANKS AND FINANCIAL INSTITUTIONS) ACT 1993 (“**DRT ACT**”)
- SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 2003 (“**SECURITISATION ACT**”)

DEBT RECOVERY – LEGAL FRAMEWORK IN INDIA

Indian Legal system encompasses varied legal provisions for recovery of debts by the Banks and Financial Institutions as follows :-

- Summary suits under Order XXXVII of the Code of Civil Procedure, 1908.
- Ordinary suits for recovery, under Civil Law.
- Original Applications to be filed by Banks and Financial Institutions before Debt Recovery Tribunal for debt not less than Rs. 10 lakhs, under Recovery of Bank Due to Banks & Financial Institutions Act, 1993 (DRT Act).
- Action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (Securitisisation Act).
- Arbitration proceedings under Arbitration & Conciliation Act 1996, for recovery of outstanding amount as under Arbitration Agreement / clause in the loan documents, in cases where the Recovery of Debts due to Banks and Financial Institutions Act, 1993 is not applicable.
- Initiation of criminal action in addition to civil proceedings for prosecution and punishment as per the Indian Penal Code and other laws where debt is also tainted with fraud, cheating, misfeasance etc.
- Filing of criminal complaint under Section 138 of Negotiable Instruments Act, 1881 for dishonor of any cheque issued by borrower to the bank in discharge of legally enforceable liability.

BROAD CLASSIFICATION OF THE DEBT WORK OUT PROCESS IN INDIA

Amount to be recovered	Procedure
Does not exceed Rs. 10,00,000/-	<ul style="list-style-type: none">i) Filing simple suit for recovery before Civil Court.ii) Filing of summary suit under Order XXXVII of CPC, 1908.iii) Filing suit for foreclosure of mortgage.iv) Arbitration proceedings if arbitration agreement exists.
Exceeds Rs. 1,00,000/-	In case the "Security Interest" has been created in specific movable / immovable property provisions of the Securitization Act may be invoked to repossess the mortgaged property, without intervention of the court, and sell the same, provided the account has been classified as NPA.
Exceeds Rs. 10,00,000/-	Original application is to be filed before the DRT for recovery of dues. Bank can simultaneously initiate proceedings under Securitization Act as well. Civil court / Arbitrator will not have jurisdiction to entertain such claim.

DEBT RECOVERY TRIBUNALS & PROCESS OF RECOVERY

Debts Recovery Tribunals (DRT) and Debts Recovery Appellate Tribunals (DRAT) have been constituted under the provisions of the DRT Act for establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for matters connected therewith.

DRT has also been given the power to adjudicate the applications filed by the Borrower/Mortgagor against the action of the Secured Creditor initiated under the Securitization Act



ESTABLISHMENT OF DRTs

The Central Government by notification has established Tribunals known as Debts Recovery Tribunals (DRT) to exercise the jurisdiction, power and authority confers under the Act at:

Mumbai,	Delhi,	Kolkata,	Chennai,
Bangalore,	Allahabad,	Ahmedabad,	Aurangabad,
Chandigarh,	Madurai,	Coimbatore,	Cuttack,
Orissa,	Patna,	Bihar,	Ernakulam,
Guwahati,	Hyderabad,	Vishakhapatnam,	Jabalpur,
Jaipur,	Lucknow,	Nagpur,	
Ranchi			
Pune.			



Establishment of DRATs

In exercise of powers, the Central Government has established DRAT at places :-

- Allahabad – Jurisdiction over DRTs functioning at Allahabad, Lucknow and Jabalpur.
- Chennai – Jurisdiction over DRTs functioning at Bangalore, Chennai, Coimbatore, Hyderabad, Vishakhapatnam and Ernakulam.
- Delhi – Jurisdiction over DRTs functioning at Delhi, Chandigarh, Jaipur.
- Kolkata – Jurisdiction over DRTs functioning at Cuttack, Guwahati, Patna, Kolkata and Ranchi.
- Mumbai – Jurisdiction over DRTs functioning at Ahmedabad, Aurangabad, Mumbai, Nagpur and Pune.



Composition of DRT and DRAT

DRT is presided over by a Presiding Officer, who is qualified to be a District Judge, and is appointed by notification by Central Government.

DRAT is presided over by a Chairperson, who is qualified for appointment or who has been a Judge of a High Court, or has been member of the Indian Legal Services who has held the post of Grade I of such services for at least three years.

The Recovery Of Debts Due To Banks And Financial Institutions Act, 1993

Applicability (DRT Act)

- The Act applies to whole of India except State of Jammu & Kashmir.
- The provisions of Act applies where the amount of debt due is not less than Rs. 10,00,000/-.
- Original Application for recovery of Debts can be filed only by Banks and Financial Institutions.



Applications to be made to DRT under DRT Act

- Only Banks and Financial Institutions defined under the DRT Act, (which includes Public Financial Institutions within the meaning of Section 4A of the Companies Act, 1956, Securitization company / Reconstruction company under the Securitization Act), can file an application before the DRT. Normal fees, based on amount claimed in O.A., has been fixed as court fee which does not exceed Rs. 1.50 lakhs.
- Summary procedure is adopted by the DRTs for adjudication of dispute. Evidence is taken on affidavit and cross examination is not permitted except in few deserving cases.
- The defendants can file counter claim or claim of set off against the claimed amount.
- The final order is passed by the Tribunal directing the borrowers to pay the amount. In case, the borrower does not pay the ordered amount, recovery certificate is ordered to be issued against the borrower which is then executed by Recovery Officer of the DRT.



Powers of DRT

DRT has power to:

- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of documents;
- receiving evidence on affidavits;
- issuing commissions for the examination of witnesses or documents;
- reviewing its decisions;
- dismissing an application for default or deciding it ex-parte.
- make interim order by way of injunction, stay or attachment against the defendant to debar from transferring, alienating or otherwise dealing with the property or asset without permission of Tribunal.
- direct the defendants to provide security sufficient to satisfy the debt.

Willful disobedience of powers of Tribunal are punishable under Contempt of Court Act.

Appeal against the order of DRT

Any person aggrieved on account of order passed by DRT may file an appeal before DRAT.

However, the DRAT does not entertain the appeal unless the Appellant deposits with the Appellate Authority, 75% of the amount or such other lesser amount as directed by DRAT.



Overriding Effect

Provisions of the DRT Act has overriding effect over any other law for the time being enforced except :

- A. IFCI Act
- B. State Financial Corporation Act,
- C. Unit Trust of India Act,
- D. Financial Reconstruction Bank of India Act,
- E. Sick Industrial Companies (Special Provisions) Act and
- F. Small Industries Development Bank of India Act.
- G. The Industrial Reconstruction Bank of India Act, 1984

Applicability of Securitization Act

- The Act applies to whole of India.
- The provisions of the Act shall apply to Security Interest created in favour of Secured Creditor, except on :–
 - (a) A lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the State of Goods Act, 1932 or any other law for the time being in force;
 - (b) A pledge or movables within a meaning of Section 172 of Indian Contract Act.
 - (c) Creation of any security in any aircraft as defined in clause (1) of Section 2 of Aircraft Act, 1934.
 - (d) Creation of security interest in any vessel as defined in clause (55) of Section 3 of the Merchant Shipping Act, 1958.



- (e) Any conditional sale, hire purchase or lease or any other contract in which no security interest has been created.
- (f) Any rights of unpaid seller under Section 47 of the Sale of Goods Act, 1932.
- (g) Any property 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.
- (h) Any security interest for securing repayment of any financial asset not exceeding one lakh rupees.
- (i) Any security interest in agricultural land.
- (j) Any case in which the amount due is less than twenty per cent of the principal amount and interest thereon.



Compliance under “The Securitization & Reconstruction
of Financial Assets & Enforcement of Security Interest
Act 2002” (“Securitization Act”) & “Security Interest
(Enforcement) Rules, 2002”(“Rules”)



CHECK LIST FOR ENFORCEMENT OF SECURITY INTEREST IN CASE OF IMMOVABLE ASSETS

SR. NO.	COMPLIANCES	RELEVANT PROVISIONS
1	Bank/FI to give a Power of Attorney/ Letter authorising its concerned official to take steps under the Act.	Sec 13 (12) read with Rule 2(a)
2	Sending of Demand Notice for enforcement of Security Interest.	Sec 13(2) read with Rule 2(b) & 3



3	Notice can be sent by Registered Post or Speed Post or Courier or Fax or E-mail	Rule 3(1)
4	If Borrower avoids notice, service shall be made by affixing the notice in some conspicuous place of his residence/ business and by publishing the notice in two leading newspapers, one in a vernacular language having sufficient circulation.	Proviso to Rule 3 (1)
5	If more than one Borrower (which includes guarantor), individual notice to be served on each of them.	Rule 3(4)



5A	In case any reply/representations are received, the Bank to suitably adjudicate upon and decide.	Section 13(3A)
5B	Issue Notice for taking possession of Secured Asset u/s 13(4) of Act .	Sec 13(4)
5C	Take symbolic possession of the Secured Assets	Sec 13(4)
6	File an application before the Chief Metropolitan Magistrate or District Magistrate for taking actual possession of the property	Sec 14(1)
7	Comply with the order of the Chief Metropolitan Magistrate or District Magistrate	Sec 14(2)



8.	Liaisoning with the Court Receiver, Police authorities, etc.	
9.	Deposit of fee with Police authorities, if any, in case the police force is to be made available by police station in Utter Pradesh	
10	After taking the possession a notice in terms of Appendix IV will be sent to the Borrower, which will also be affixed on the Property.	Rule 8(1)
11	The said notice will also be published in two leading newspapers one in vernacular language within 7 days.	Rule 8(2)



12	Name of Bank/FI to be displayed on the Property.	Rule 8(1)
13	Insurance cover to be arranged	Rule 8(4)
14	Take Photographs	Not specified
15	Security Guards to be deployed at the site of the Property.	Rule 8(4)
16	Valuation of property by an approved valuer before effecting the sale	Rule 8(5)
16A	Serve on the Borrower a notice of 30 days for sale.	Rule 8(6)
17	Obtaining Quotations/Inviting tenders/Holding Public Auctions/ Signing Private Agreement for sale of the property.	Rule 8(5)



18	If sale is by way of inviting tenders from public or holding of public auction, a public notice to be published in two leading news papers one in vernacular language, having sufficient circulation, setting out the terms of the sale.	Proviso to Rule 8(6)
19	Notice and Publications to be affixed on conspicuous part of the property and put on the website of the Bank.	Rule 8(7)
20	Sale other than public auction/tender to be on terms settled between the parties in writing.	Rule 8(8)
21	Sale to be confirmed in favour of highest bidder	Rule 9(2)



22	No sale to be confirmed on less than reserve process. However sale at less than Reserve price can be made with the consent of Borrower	Proviso to Rule 9(2)
23	25% of the sale price to be deposited forthwith and balance within 15 days	Rule 9(3) and (4)
24	If balance is not deposited the deposit would be forfeited and the property be resold.	Rule 9(5)
25	Sale of Property to be made effective from execution of Sale Deed	Not specified
26	If the terms of payment have been complied with, the Bank/FI shall issue a certificate of sale in favour of the purchaser	Rule 9(6)



27	The certificate of sale to specify whether the property is free from encumbrances known to the Bank	
28	Acknowledgement from buyer of having taken over the physical possession of property to be obtained by the Bank/FI.	Not specified
29	In case the dues of the Bank/FI are not fully met with the sale proceeds of the property, Bank/FI may file an application before Debt Recovery Tribunal or Court having jurisdiction, for recovering the balance amount.	Sec 13(10) Read with Rule 11



Applications to be made to DRT under said Securitisation Act

- Any person, aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor may make an application under section 17 of the Act to the Debts Recovery Tribunal, within forty-five days from the date on which such measures had been taken.
- Procedure prescribed under the DRT Act is to be adopted by the DRT for disposal of such applications filed under section 17 of the Act.



Appeal against the order of DRT under Securitisation said Act

Any person aggrieved on account of order passed by DRT may file an appeal before DRAT.

The DRAT does not entertain the appeal unless the Appellant deposits with the Appellate Authority, 50% of the amount or such other lesser amount as directed by DRAT.



Powers of DRT under Securitisation Act

- In addition to the power of the DRT under DRT Act, a DRT has following additional powers:
 - a. to restore for ordering restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower.
 - b. to order payment of cost/compensation to the borrower if it holds that the possession of the secured assets by the secured creditor is not in accordance with the provisions of the Act.



Disposal of Application /Appeal by DRT/DRAT

- Any application made by the Banks and Financial Institutions is to be dealt with by the Tribunal as expeditiously as possible and endeavor is to be made by Tribunal to dispose off the application finally within a period of 180 days from the date of receipt of application.
- The appeal filed before the Appellate Tribunal is to be disposed off as expeditiously as possible and endeavor is to be made by Tribunal to dispose off the appeal finally within a period of six months from the date of receipt of appeal.
- On practical side the proceedings before may take from 1 (one) year to 3 (three) years depending upon the facts and circumstances of the case.

IMPORTANT PRECEDENTS

- **Mardia Chemicals Ltd. Vs Union Of India (AIR 2004 SC 2371)**

Ratio: The constitutionality of the Securitisation Act was upheld except 17(2) of the Act.

- **Transcore Vs Union Of India (AIR 2007 SC 712)**

Ratio: Withdrawal of suit pending before DRT under DRT Act, 1993 is not a pre-condition for taking recourse to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is an additional remedy, which is not inconsistent with DRT Act, 1993 and, therefore, doctrine of election has no application.



IMPORTANT PRECEDENTS

continued.....■

- **Central Bank of India Vs State of Kerla (JT 2009 (3) SC 216)**

Statutory first charge over property under any law will prevail over rights created in favour of secured creditors such as banks and other financial institutions.

- **United Bank of India Vs Satyawati Tandon and Others (AIR 2010 SC 3413)**

Where statutory remedies are available under a fiscal statute then exercise of jurisdiction under Article 226 by High Court for passing orders, which could have serious adverse impact on the right of banks and other financial institutions to recover their dues, is not warranted



OTHER IMPORTANT JUDGMENTS

- ❖ **Rajshree Sugar and Chemicals Ltd. Vs Axis Bank
AIR 2011 Madras 144**
- ❖ **State Bank of India Vs Sharda Spuntex ;
I(2010) BC 562 Rajasthan**

Transactions in derivatives, fall within the category of "business activity undertaken by the Bank" as they are covered by Section 6(1) of the Regulation Act . If the transaction in question gives rise to a claim by the Bank, of any liability, on the part of the Company, the Bank may certainly be able to invoke the provisions of DRT Act. Further held that what is expressly permitted by law, cannot be held to be opposed to public policy

OTHER IMPORTANT JUDGMENTS

continued...

- ❖ **BOI Finance Ltd. Vs Custodians and Others; AIR 1997 SC 1952**

The non-compliance of the directions issued by the Reserve Bank may result in prosecution/or levy of penalty under Section 46, but it cannot result in invalidation of any contract by the bank with the third party.

- ❖ **ICICI Bank Ltd. Official Liquidator of APS Star Industries Ltd. (2010) 10 SCC 1:**

The Hon'ble Supreme Court held that an outstanding in the account of the borrower is a debt due and payable by the borrower to the bank and the bank is the owner of such debt. The bank can always transfer its assets and such transfer in no manner affects any right or interest of the borrower.

- ❖ **Inderjeet Arya Vs. ICICI Bank Ltd., Writ Petition No. 7253/2011**

The Hon'ble Delhi High Court held that the action against the Borrower in the Debt Recovery Tribunal is not a suit and, therefore, such Guarantor cannot take protection under Section 22 of SICA.

Effect of the Act on the Economy / Banking Sector

- The enactment of the Act has been a major factor in improving the health of Banks and Financial Institutions by enabling the bank to reduce their NPAs to substantially lower level. On account of availability of dual remedy, i.e. remedy under the Securitization Act and DRT Act, the Banks and Financial Institutions have been able to substantially resolve the NPAs.
- We have handled close to 600–650 default cases under Securitization Act for various Banks viz., Standard Chartered Bank, HDFC Bank, China Trust Commercial Bank, HSBC, Axis Bank etc. and have successfully recovered the outstanding dues in more than 80% of the cases.



THANK YOU



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