

Overview of Debt Recovery Tribunal
&
SARFAESI Act, 2002

Mukul Taly
Advocate
Bombay High Court

Delhi High Court Bar Association & Ors

vs.

Union of India & Anr

AIR 1995 Del 323

- ▶ It was observed as follows:
 - ▶ *“Examination of provisions of the Act would show that while a bank can file an application for recovery of the debt due to it, if the respondent has any claim against the bank he must necessarily go to the civil court. There is no provision under the Act or the Rules for a person to raise any counter claim. It cannot be said that counter-claim can be raised as a part of natural justice. Perhaps not. Mr. Chandrasekharan, learned Additional Solicitor General, said that counterclaim or any other defense raised will bar the claim of the bank. Admittedly, Therefore, counter-claim, if valid, cannot be decreed by the Tribunal and the claimant per force has to go to the civil court, and by that time he may be faced with the law of limitation. Tribunal cannot invent a new procedure to adjudicate upon the counter-claim merely for the purpose of defense on the ground that such a procedure is contemplated by the principles of natural justice.”*
 - ▶ This judgment is overruled by the Supreme Court. However, the relevant paragraphs of the judgment are cited to bring into perspective the amendments to the RDDB Act that followed due to this judgment.
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Section 15(3) of SARFAESI Act, 2002

- ▶ Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained in the said Act or in the memorandum of articles of association of such borrower, -
 - a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
 - b) no resolution passed at any meeting of the shareholders of such company shall be given to unless approved by the secured creditor;
 - c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any Court, except with the consent of the secured creditor.
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Mardia Chemicals Ltd.

Vs.

Union of India & Ors

AIR 2004 SC 2371

- ▶ It was held as follows:
 - ▶ Section 13 - Enforcement of security interest--Secured creditor may enforce any security interest without intervention of the Court or Tribunal irrespective of Section 69 or Section 69A of the Transfer of Property Act--Before taking any steps in direction of realizing the dues, the secured creditor must serve a notice in writing to the borrower requiring him to discharge the liabilities within a period of 60 days.
 - ▶ Section 17--Right to appeal--Filing of an appeal to the Debt Recovery Tribunal within 45 days of any action taken against the borrower--Requirement of deposit 75% of demand is a heavy amount on basis of one sided claim alone, cannot be said to be a reasonable condition at first instance--Unreasonable, arbitrary and violative of Article 14 of the Constitution.
 - ▶ Section 34--Jurisdiction of Civil Court is barred in respect of matters which a DRT or Appellate Tribunal is empowered to determine--The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debt Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.
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Mathew Varghese

v.

M. Amritha Kumar,

2014 5 SCC 610

- ▶ It was held as follows:
- ▶ The owner/borrower should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made.
- ▶ When a secured asset of an immovable property is brought for sale, the intending purchasers should know the nature of the property, extent of liability, encumbrances, minimum bid price and total liability of the borrower to the secured creditor
- ▶ The paramount objective is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership either by tendering his dues to the creditor before the sale or to ensure that the secured asset derives the maximum price.



Blue Coast Hotels Ltd

vs.

IFCI Ltd

W.P. 222 of 2015

Judgment dated 23.03.2016

- ▶ It was held as follows:
- ▶ Auction/sale of property based upon symbolic possession was contrary to scheme of Act, 2002 and Rules - Sale of immovable property and land on "As is where is" and "whatever there is" basis, without obtaining prior physical possession was illegal and contrary to law –
- ▶ District Magistrate (DM) acted without jurisdiction by overlooking amended provisions of Section 14, its Clauses and not providing sufficient reasons for its satisfaction on all these clauses - DM relied upon unamended provisions and judgments based upon it - Respondent cannot be said to be secured creditor after sale of property, as full debt amount was recovered at time of invocation of Section 14 of Act - Petition allowed.
- ▶ This judgment has been appealed in the Supreme Court and the matter is scheduled to be heard on July 25, 2017



Nahar Industrial Enterprises Ltd

VS.

HSBC

2009 8 SCC 646

- ▶ It was held as follows:
 - ▶ If the DRT was to be treated to a civil court, the debtor must have an independent right to approach it before having to wait for the banking institution to approach it first. No declaratory relief can be sought for by the debtor.
 - ▶ The DRT cannot pass a decree, it can only issue recovery certificates. In a proceeding before the DRT detailed examination, cross-examination and other provisions of the Evidence Act/CPC need not be gone into. The entire focus of the proceedings centres round the legally recoverable dues of the bank. The Tribunal therefore is not a civil court.
 - ▶ In respect of set-off or counter claim it is evident that if the bank withdraws its claim the counter claim would not survive, the banks thus have a primacy in respect of the proceedings before the DRT, an order of injunction, attachment or appointment of a receiver can be initiated only at the instance of the bank.
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Recovery of Non-Performing Assets

YEAR 2004 -2005

Recovery Channels	Lok Adalats	DRTs	SARFAESI ACT	TOTAL
No. of cases referred	185395	4744	39288	229427
Amount involved (in crores)	801	14317	13224	28342
Amount recovered (in crores)	113	2688	2391	5192
Percentage of amount recovered	14.11	18.77	18.08	18.32

YEAR 2005 -2006

Recovery Channels	Lok Adalats	DRTs	SARFAESI ACT	TOTAL
No. of cases referred	268090	3534	41180	312804
Amount involved (in crores)	2144	6273	8517	16934
Amount recovered (in crores)	265	4735	3363	8363
Percentage of amount recovered	12.36	75.48	39.48	49.38

Recovery of Non-Performing Assets

YEAR 2006 -2007

Recovery Channels	Lok Adalats	DRTs	SARFAESI ACT	TOTAL
No. of cases referred	160368	4028	60178	224574
Amount involved (in crores)	758	9156	9058	18972
Amount recovered (in crores)	106	3463	3749	7318
Percentage of amount recovered	13.98	37.82	41.38	38.57

YEAR 2007 -2008

Recovery Channels	Lok Adalats	DRTs	SARFAESI ACT	TOTAL
No. of cases referred	186535	3728	83942	274205
Amount involved (in crores)	2142	5819	7263	15224
Amount recovered (in crores)	176	3020	4429	7625
Percentage of amount recovered	8.2	51.90	60.98	50.08

Recovery of Non-Performing Assets

YEAR 2008 -2009

Recovery Channels	Lok Adalats	DRTs	SARFAESI ACT	TOTAL
No. of cases referred	548308	2004	61760	612072
Amount involved (in crores)	4023	4130	12067	20220
Amount recovered (in crores)	96	3348	3982	7426
Percentage of amount recovered	2.38	81.07	33.00	36.72

YEAR 2009 -2010

Recovery Channels	Lok Adalats	DRTs	SARFAESI ACT	TOTAL
No. of cases referred	778833	6019	78366	863218
Amount involved (in crores)	7235	9797	14249	31281
Amount recovered (in crores)	112	3133	4269	7514
Percentage of amount recovered	1.55	32.0	30.00	24.02



Recovery of Non-Performing Assets

YEAR 2010 -2011

Recovery Channels	Lok Adalats	DRTs	SARFAESI ACT	TOTAL
No. of cases referred	616018	12872	118642	747532
Amount involved (in crores)	53	141	306	500
Amount recovered (in crores)	2	39	116	157
Percentage of amount recovered	3.7	27.6	37.9	31.4

YEAR 2011 -2012

Recovery Channels	Lok Adalats	DRTs	SARFAESI ACT	TOTAL
No. of cases referred	476073	13365	140991	630429
Amount involved (in crores)	17	241	353	611
Amount recovered (in crores)	2	41	101	144
Percentage of amount recovered	11.8	17.0	28.6	23.6




Recovery of Non-Performing Assets

YEAR 2012 -2013

Recovery Channels	Lok Adalats	DRTs	SARFAESI ACT	TOTAL
No. of cases referred	840691	13408	190537	1044636
Amount involved (in crores)	66	310	681	1057
Amount recovered (in crores)	4	44	185	233
Percentage of amount recovered	6.1	14.1	27.1	21.9

YEAR 2013 -2014

Recovery Channels	Lok Adalats	DRTs	SARFAESI ACT	TOTAL
No. of cases referred	1636957	28258	194707	1859922
Amount involved (in crores)	232	553	953	1738
Amount recovered (in crores)	14	53	253	320
Percentage of amount recovered	6.2	9.5	26.6	18.4



Recovery of Non-Performing Assets

YEAR 2014 -2015

Recovery Channels	Lok Adalats	DRTs	SARFAESI ACT	TOTAL
No. of cases referred	9131199	17111 3	1241086	10543398
Amount involved (in crores)	887	3789	4705	9381
Amount recovered (in crores)	43	531	1152	1726
Percentage of amount recovered	4.8	14	24.5	18.4



Kirusa Software Pvt Ltd.

Vs.

~~Mobilox Innovations Pvt Ltd.~~

Company Appeal(Insolvency) 6 of 2017

NCLAT Judgment dated 24.05.2017

- ▶ It was held that ‘dispute’ as defined in Section 5(6) cannot be limited to a pending proceedings within the limited ambit of suit/arbitration proceedings, the word ‘includes’ ought to be read as “means and includes” including the proceedings initiated or pending before consumer court/tribunal/labour court/mediation etc.
- ▶ If any action is taken by a corporate debtor under any Act or law including while replying to a Section 80 CPC notice/Section 59 Sales and Goods Act notice/Section 433 Companies Act notice, such action will be within the ambit of ‘dispute raised and pending’ within the meaning of Section 5(6) read with Section 8(2) of I&B Code, 2016.