



# UTILIZATION OF RECOVERY ECOSYSTEM BY THE BANKS AND FINANCIAL INSTITUTION IN RESOLVING THEIR BAD LOANS/NPA

By

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## ABSTRACT:

The Indian Banks are burdened by the bad loans and the entire Banking system was looking at the Insolvency and Bankruptcy Code,2016 as a game changer and a ray of hope in resolving their bad loans. However it is now clear by every forum in the ecosystem that the code is not meant for recovery of bad loan but it's a mechanism for resolution of Corporate Insolvency and therefore the Banks are again seems to be returning back to the existing recovery provisions under Recovery of Debt and Bankruptcy Act ,1993 and SARFAESI Act,2002 in managing their recovery. The existing infrastructure available in the Country is not seems compatible to meet the expectation of the Banks and Financial institution in resolving their Recovery issues, looking at the increasing pendency of the cases before the Debt Recovery Tribunals and simultaneously Banks and FI are not seems proactive in pursuing and utilizing the recovery ecosystem available in effective manner.

## Introduction :

### Recovery of Debt and bankruptcy Act,1993 :

The Reserve Bank of India (RBI) says that the policy of income recognition should be objective and based on record of recovery rather than on any subjective considerations. The M. Narasimham Committee was established in 1991 by then Finance Minister Shri. Manmohan Singh to examine the functioning of banks and on recommendation of the committee "Income Recognition and Asset Classification" (IRAC) norms were introduced in the Indian banking system.

The Recovery of debt and Bankruptcy Act,1993 ( RDB Act,1993) was enacted to provide a speedy mechanism to the Banks and FI in resolving their recovery of Non Performing Assets (NPA) and Bad loans through the Debt Recovery Tribunal (DRT), a Tribunal for conducting speedy trail on the principle of natural justice, which shall be free from rigour of CPC.

Before establishing the DRT's, Recovery of money from a debtor by filing a suit before Civil Court and High Court was taking painfully long time and providing speedy recovery mechanism to such institutions was an important aspect to ensure the efficiency of such institutions and the financial health of the country.

The Recovery of Debt and Bankruptcy Act,1993, had casted an obligation on the Banks and FI in expeditious recovery. **The principles of public accountability applies to Bank officers also in good governance.** Sanctioning huge loan amount without proper scrutiny and verification about the capacity of the borrower to repay and delay in taking steps to recover the amount advanced constitutes negligence on the part the Bank and its Officers.

Legislative measures have often bee too-little-too-late, and have grappled with the implementation of bottlenecks. For instance, the Recovery of Debt and Bankruptcy Act,1993 was enacted for establishing a special Tribunal for expeditious adjudication and recovery of debt due to the Banks and financial institutions. However even after three decades of operation and statutory time frame of 6 months, average time taken by DRT to decide the matter is close to 3 to 4 years and thus imposing significant cost on the industry and consumers. The situation does not seems to be improved even after the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), which recognized non adjudicatory measures for debt recovery. This is evident from the fact that around 100000 cases in terms of O.A. and S.A. are pending before DRT's all over India.

The over all situation in all the public & private sector Banks on account of NPA is a cause of concern and great threats to the Indian Economy. The present study is to analyze various issues and lacunas related to the efficiency of Debt Recovery Tribunals , reason and measures thereof.

### **Pendency of cases before Debt Recovery Tribunals :**

As per the answer in parliament on 05.02.2024 to unstarred question No.440, the Minister of State in the Ministry of Finance, Dr. Bhagwat Karad , it is answered that on 24.01.2024, total number of cases pending before Debts Recovery Tribunals (DRTs) is 2,15,431 out of which the Original Applications (OAs) filed under Section 19 of the Recovery of Debts and Bankruptcy Act (RDB Act), 1993 is 1,62,317 and Securitization Applications (SAs) filed under Section 17 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 is 53,114 <sup>1</sup>. Where as the figure of pendency as per the Ministry of finance as on 05.02.2022 was about 161000<sup>2</sup> thus there is considerable increase in the

<sup>1</sup> Available at

<https://sansad.in/getFile/loksabhaquestions/annex/1715/AU440.pdf?source=pqals#:~:text=2024%2C%20the%20total%20number%20of,Section%2017%20of%20Securitization%20and> last visited on 28.03.2024

<sup>2</sup> Available at <https://www.livemint.com/news/india/over-161-000-cases-pending-in-drts-finance-ministry-11649071798562.html> last visited on 28.03.2024.

pendency of the cases and evident increase in bad loans of the Banks and FI. At the end of financial year 2016-2017 pendency of cases in the form of O.A. under DRT Act is 74594 with suit amount of Rs.396746.74 Crores and S.A.'s of 24139 with amount of Rs.190388.50 Crores under SARFAESI Act, thus the total number of cases pending before DRT's are 98733 involving amount of Rs.587135.24 Crores this raise a question on the efficiency of the DRT's in speedy disposal of the cases<sup>3</sup>.

### **Various Parameters Contributing Pendency of the Cases:**

On analysing the pendency and a time taken by the DRT in the Judgment / disposing a cases, issuing Recovery Certificate as well as time taken by the Banks & Financial institution in compliance of the order of the Tribunal e.g. service of summons / Demand Notice on the defaulter / Defendant / Certificate Debtors. There are various type of Notices pertains to the Recovery Proceeding that of Demand Notice, Order of attachment, Show Cause for arrest, Notice for settling the terms of sale proclamation. The present research paper will deals with one parameter that is a time taken by the Certificate Holder Banks in a service of Demand Notice which has paramount importance in the Recovery Proceeding. **The Act cast a responsibility and accountability on the Banks and FI as far as service of Summons / Demand Notice is concern.**

It is observed that the DRT has taken on an average 1054 days in disposing each case against a stipulated time norms of 180 Days , **i.e. 5.85 times of stipulated time**, The Registry has taken on an average 222 days in preparation of Recovery Certificate till the issuance of Demand Notice by the Recovery Officer (**7.4 times of stipulated time of 30 days**). The Banks and Financial institution are taking more than **605 days** for completing the Service of Demand Notice against a stipulated time of 15 to 30 days **i.e. 20.16 times of stipulated / expected time**, a service summon / Demand Notice which form a foundation of the OA & Recovery Proceeding. A study undertaken shows that the attendance by the Banks and FI's before the DRT and Recovery Officer is less than 35% and many cases on the regular board are remain un attended on a part of Bank and FI, which is resulting in to an unnecessary delay and increasing pendency of the cases.

A Service of **Demand Notice** which form a foundation of the Recovery Proceeding and it relate back to the attachment as per Rule 51 & make transfer of assets by CD void as per Rule-16 of the Second Schedule of the Income Tax Act. The Demand Notice is a 15 Days notice to the Certificate debtors (CD) / (Defaulter) to satisfy the Banks dues failing repaying the amount demanded, the Recovery Officer initiate the recovery actions U/s Section 25 and 28 includes attachment of the assets, sale or arrest of the CD.

It is observed that against a notice of 15 days, which can be complied as per Rule 2 of the Second Schedule of the Income Tax act or As per the procedure laid down under Order-V, rule -9 to 26 of the CPC and can be complied within 30 days the Banks are taking more than 605 days, which is more than 20 times of the stipulated / expected period.

The SARFAESI Act come to the rescue of the Banks only to the extent of secured assets and in the modern Banking security coverage of the Banks is less than 25% and rest of the 75% of loans are clean / without security for the recovery of this 75% unsecured advance no other option than DRT is available in the Indian Law and that is an importance of DRT. The Banks and FI are approaching DRT's to file a suit to save limitation period and as soon as they get the suit registered they seems to be losing their interest in prosecuting the cases

<sup>3</sup> Dr. Sanjay Jadhav and Umesh Sonkar, LL.M. thesis title " DEBT RECOVERY TRIBUNALS, RDDB & FI ACT,1993 AND SARFAESI ACT,2002 – ROLE IN RESOLUTION AND RECOVERY OF NPA AND NEW CHALLENGES" submitted to University of Mumbai, 2017-2018.

in effective way and is resulting in a poor performance by the Banks in recovery and increasing pendency before DRT.

It can be concluded that the Banks and FI who are dealing with the public money are not really serious for making recovery through DRT or they are more relying on SARFAESI Act and whose ultimate fate lies with DRT in terms of appeal against the order / action of Authorise Officer and having parallel pendency in terms of Securitization Application ( SA), a measures against sarfaesi action by the bank and FI U/s 17 of the SARFAESI Act, 2002.

Because of mismanagement in Bank there is a positive relation between Total advances, Net Profits and NPA of Bank which is not good sign and it indicates that the Banks are taking more risk in generating more profit in terms of selection of Borrowers, the Banks are also diluting a security norms in terms of primary and collateral security which is adversely effecting a Liquidity of Bank, has an impact that the Bank is unable to give loans to the new customers due to lack of funds which arises due to NPA as per the government, the main reasons for rise in NPAs are sluggishness in the domestic growth in the recent past, slow recovery in the global economy and continuing uncertainty global markets leading to lower exports of various products.

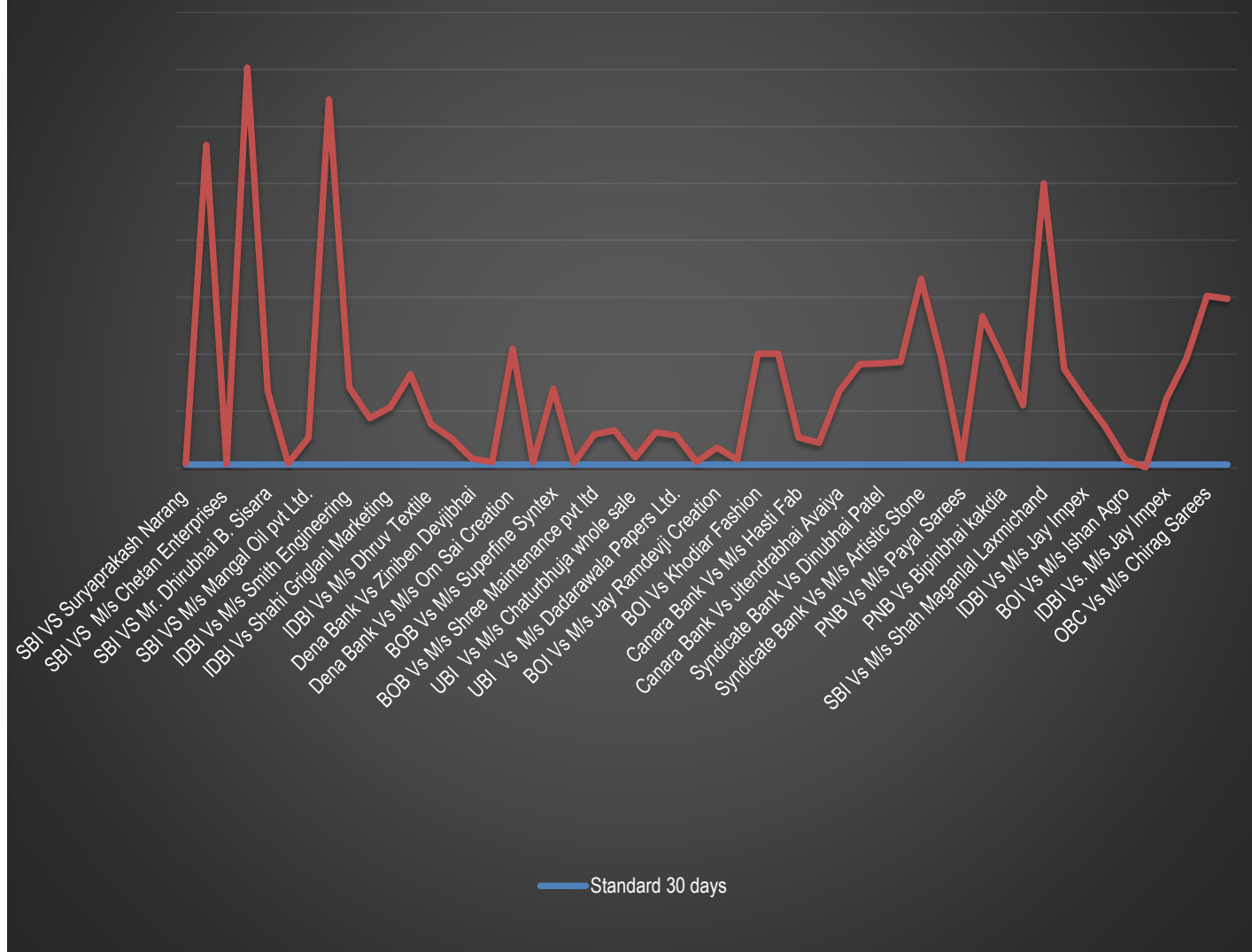
It is observed from a discussion with the Recovery Officer (RO) of the DRTs that most of the Recovery Certificates remained unsatisfied and it's increasing the pendency of cases before the RO's. Whatever recovery comes is out of the compromise settlement by the Banks. This indicate that the DRT's are making very small recovery in actual sense. However has great role in creating a pressure on the defaulters to come forward for settlement as the DRT's got powers to attach and sale a personal assets and arrest of the defaulters.

It is a need of hour that each Bank to gear up its effort for recovery and attend the matter regularly with full proactiveness in the compliance of the order of the DRT, simultaneously DRT be empowered with adequate infrastructure which has been not done in last two decades.

The DRT is functioning since last Three Decayed and still under going trail and errors. No uniform Rules for recruitments and no uniform procedure for all DRT's

The Presiding Officers and Staff of the DRT are not inefficient, however the DRT is appointing Presiding Officers who are generally retired District Judges paid fixed amount of salary net of pension drawn and age of retirement increased to the age of 70 years which was previously 62 years, it is necessary to understand can the intellectuals can work up to 70 years of age in effective manner where there is huge litigation, work pressure and lacking in infrastructure in terms of staff strength, permanent staff and regular appointment etc. The closure of Advocate and Bankers channel for recruiting Presiding Officers as well a constrain for recruiting presiding Officers in time and these Presiding Officers are intrusted with the additional charge of other DRT's is one of the important reason for the pendency of the cases.

## Time Taken by the CH Bank in compliance of Demand Notice



### Conclusions :

- The Banks are concern with filing of O.A. within the limitation period and after admission / registration of the O.A. , they least bothers for the development as they are aware with that the 99.99% of O.A. will be decided in their favour. The Banks are not promptly appearing in the Recovery Proceeding ( RP) before Recovery Officers . The Banks are not promptly complying with service of various Notices under the Act , like Demand Notice , Attachment orders , show cause notices etc. Banks are realizing secured/ mortgaged properties under SARFAESI Act , the Authorized Officers who act as quasi judicial authority are committing so many mistakes & as a result appeal u/s 17 of SARFAESI Act filed before DRT and such appeals are creating parallel pendency and a work load of DRT. The Banks are assigning the NPA account to Asset Reconstruction Companies ( ARC's ) , the ARC's are purchasing the NPA A/c looking at availability of the properties and after assignment remain reluctant in attending DRT cases is also resulting in to pendency before DRT. The Security available/left with DRT is either personal properties , properties with multiple litigations / objections or agriculture properties which are difficult to sale. As a result about > 90% of auctions by DRT are failing .Lack of infrastructure / man power , Staff strength sanctioned is as of 1993 , where as the work load of the DRT increased many fold in last 30 years. There is no proper work study . The Recruitment Rules the MOF has framed /prepared after so many years have left so many ambiguity. In the Banking Industry



NPA is an inherent risk and cannot be separated from the business risk of the Banks , where there is Banking there would happens to be a NPA and shall be the ongoing and never ending process . When the NPA is never ending process , the mechanism ( DRT) to resolve the NPA cannot be a temporary arrangement . The DRT is having status of temporary institution since 30 years i.e. from the inception of the Act and remained neglected institution , though it has great importance in managing & recovery of NPA and is one of the reason that the DRT's could not perform to the extent of expectation of the Act and the Bank's .

### Suggestions :

- The Banks need to be proactive in the DRT proceedings and need to attend the proceeding regularly , should comply the orders of DRT in time , comply with the service of Demand Notices / summons etc for ensuring expeditious proceeding in OA and RC.
- The Authorized Officer of the Bank who function as quasi judicial authority under SARFAESI Act,2002 be trained properly to proceed under the Act so that the error in SARFAESI Action can be minimize and pendency of SA before DRT can be bring down.
- The CMD's , General Manager ( Recovery ) of the Banks should be advised at Ministry level in sensitization on DRT cases and Recovery.
- Lok Adalat at DRT are generally not attended by the competent authority , who can sanction the matter on the spot at Lok Adalat.
- There should be DRT on multiple location so that it should be in the reach of Bank / Borrower/ litigants e.g. In the state of Maharashtra there are DRT in various location i.e. 1. Mumbai 2. Vashi.3) Pune 4) Aurangabad 5) Nagpur . However in the state of Gujarat with same geographical area the DRT is at only at One location i.e. Ahmedabad . Now observe boundaries of the state of Gujarat say from Vapi, distance 370 Km , Dwarka (Okha) 450 Km. , Junagadh 350 Km. , Div about 360 Km from Ahmedabad. It is practically not possible to the litigant to attend the cases from distant places.
- The Recruitment Rules and DRT procedure to be harmonise and made uniform for all DRT's.
- Timely , Adequate and efficient Presiding Officers, staff and infrastructure be provided to the DRT's.
- Periodic work study on DRT to be conducted by Ministry of Finance and RBI.

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