

## **PROCESS OF RECOVERY OF MONEY UNDER RECOVERY OF DEBTS AND BANKRUPTCY ACT (RDB ACT), 1993**

### **★ Importance of DRT**

The RDB Act, 1993 provides for establishment of Debts Recovery Tribunals (DRTs) with original jurisdiction and Debts Recovery Appellate Tribunals (DRATs) with appellate jurisdiction, for expeditious adjudication and recovery of debts due to banks and financial institutions, insolvency resolution and bankruptcy of individuals and partnership firms and connected matters therewith. The Act aims to safeguard the interest of banks and financial institutions as lenders, while not discouraging borrowers. The Tribunals have not yet commenced taking up insolvency resolution and bankruptcy matters as the related provisions are not yet in force. The Act is applicable to cases where the amount of debt due to any bank or financial institution defined under the Act or a consortium of banks or financial institutions is Rs.20 lakh or more.

### **★ Applicability of the Act**

The Debt Recovery Tribunals Act applies to the following entities.

- It applies to all over India except for State of Jammu and Kashmir.
- It applies where the amount of debt due is not less than Rs. 20,00,000/-.
- It applies when the original application for recovery of Debts is filed only by Banks and Financial Institutions.

### **★ Documents required**

Every application to be furnished by a paper book containing such as

- A statement is showing details of the debt due from a Respondent and the circumstances under which such debt has become due.
- Any documents relied upon by the applicant and those mentioned in the application.
- Details including crossed Bank Draft or Indian Postal Order representing the application fee.
- Index of the documents to be produced.

### **★ Application Fees**

Every application should be accompanied with fee provided in sub-rule (2).

- The fee can be payable either in the form of crossed demand draft drawn in respect of the Registrar or at the Registrar's office is situated.

- The fee can be paid through a crossed Indian Postal Order drawn in favour of the Registrar and also payable in Central Post Office of the station where a Tribunal is situated.

★ **Procedure for filling of application**

The applicant should apply with the Registrar within whose jurisdiction the applicant is functioning as a bank or financial institution in the present.

The application should be presented in two sets. An empty file size envelopes bearing full address of the respondent. The applicant should furnish full bearing address of each of the respondents.

**Presentation and verification of application**

The registrar or any other concerned officer authorised by him will approve every application on the date in which it is presented or deemed to have been filed under that rule and should sign the endorsement.

If on verification the application is found to be in order, it should be duly registered and give a serial number.

★ **Issuance of original application number**

The Registrar of DRT is responsible for the Overall Administration of the tribunal. The Registrar will issue the Original Application (OA) number and summon after verifying the application. Also serves a copy of the application and paper book on each of the respondents. The respondent may file four complete sets indicating the reply to the application along with documents within one month (or extended time allowed by the tribunal) of its receipt.

★ **Procedure Before Filing a Case in DRT**

The following procedures are to be followed before filing the case in debt recovery tribunal.

- Sell pledged goods after addressing particular notice to the lender.
- In the case of hypothecated goods, get possession of the assets, and sell them after addressing the due in the form of notice.
- In the case of LIC policies, handover such policies and designate the surrender value towards the loan account.
- Set off the credit balance in any current or savings, account and TDRs in the names of the Borrowers or Guarantors, before filing a suit.

- Proof of ownership or debt such as shares, debentures, NSC, Mutual Fund Securities should be realised and be adjusted against the outstanding.
- Secure the documents or securities are enforceable against borrowers/guarantors while handling files for requesting Recovery Application before the tribunal.
- Providing a detailed narrative or write-up and by examining in detail the conduct of the account, documents received up to the date, securities created and other relevant information relating to the account.
- Analysis of the draft application to verify the correctness of every fact and relevant details stated in the draft application
- After verifying the accuracy of the draft application, the branch has to forward the draft application to the concerned authority for approval along with the copy of the memorandum for legal action in the account and the copy of the narrative or write-up provided earlier along with the list of documents.
- After obtaining permission from the Authority, the Branch should discuss with the advocate about the changes or observations made by the appropriate authority while according approval and finalise the Application for recovery of updated dues of the Bank or financial institution.

★ **Procedure at filing the case in DRT**

The following procedures are to be followed at the time filing the case in debt recovery tribunal.

- The Recovery Application, in the prescribed format, should be submitted with the DRT within the specified time from the day of the appropriate authority mentioned for approval against the legal action.
- Recovery Application should contain the description of all relevant documents and securities charged to the Bank or financial institution.
- While filing Recovery Application, Xerox copies of records are to be produced.
- Original Documents should be maintained with the Branch till DRT requires the same.
- Interim reliefs such as the injunction against properties, attachment before judgement, the appointment of Receiver, Recovery Certificate for admitted dues should be appealed as a rule.

- Account Extracts to be provided and certified as per the provisions of Bankers Books Evidence Act and be annexed to the Recovery Application.
- Penal Interest should not be compounded.
- Costs for preserving the securities before filing suit and during the pendency of the lawsuit claimed.

★ **Procedure after filing the case in DRT**

The following procedures are to be followed after filing the case in debt recovery tribunal.

- If the Recovery Application filed is satisfied in all respects, ORT will issue a serial number and summons to borrowers or guarantors called defendants.
- Serving of summons/warrant for quick disposal of the case. If the summons is served on the defendants, proceedings commence with evidence by way of affidavits filed by the bank followed by cross-examination of Bank's witnesses and vice versa followed by arguments ending up in Recovery Certificates in respect of the Bank.
- Evidence by way of affidavits as preceding, clarifications or reports excepted by the DRT should be filed in time, and no adjournment to be asked on this score. Reply to counter-claims made by the borrowers should be submitted without any delay.
- The DRT has the controls to order arrest and detention in civil prison of those defendants who do not follow the specified orders of the DRT. Wherever the defendant disobeys the laws of the DRT, the Branch should notify the Bank's Advocate to appeal for arrest and detention of such defendant.

★ **Execution of Recovery Certificate**

The Presiding Officer finally grants Recovery Certificate and sends it to Recovery Officer (R.O.) for execution. On receipt of the Recovery certificate, the recovery officer can issue the notice to Certificate Debtors, giving 15 days for payment of the amount stated in the Recovery Certificate.

If the defendant neglects to pay the amount, Recovery Officer will proceed to recover the amount by any one or more of the methods, which are listed below:

- Attachment and sale of Movable or Immovable Property of the defendant.
- Arrest and Detention of the defaulter.
- Appointment of Receiver.
- The closing of DRT Application after full recovery of bank dues, the application is closed by Recovery officer.

★ **Appeal Against Recovery Officer**

The appeal against an order of Recovery Officer to DRT can be requested within 30 days from the date of order. The Tribunals have to resolve the claim within six months. The appeal against the judgment of DRT can be made within 45 days only to DRAT (Debt Recovery Appellate Tribunal). For filing lawsuit, as per Section 21 of the tribunal the 50% of the fund to be deposited by the appellant and the Chair Person may reduce it up to 25% of the deposit amount.

★ **Case Laws**

- In the case ***M/s. Tripower Enterprises (Private) Limited Vs. State Bank of India & Ors. SCC 2373 (2020) dated 24.04.2020*** the Hon'ble Supreme court held that the DRT will be free to pass appropriate directions in respect of the stated documents including in respect of the title documents made over to the appellant herein in terms of this order, if necessary.
- In the case ***Kotak Mahindra Bank Pvt. Limited Vs. Ambuj A. Kasliwal & Ors. SCC 538 (2021)*** the Hon'ble Supreme court held that it appropriate that in the peculiar facts and circumstances of this case to permit the predeposit of 20 twenty-five per cent of the amount as taken note by the DRAT.