



An Evaluation of The Effectiveness of The Remedies Available To Banks And Financial Institutions Under The SARFAESI Act Of 2002 And The Recovery Of Debt And Bankruptcy Act Of 1993

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“Bank is such an institution which creates money by money only.”- W Hock

Abstract

The practice of Lending and borrowing has been done for millennia. A flourishing economy depends on a vibrant banking system. The issue of (NPA), which is harmful to the bank's capacity to sustain its financial position which exists in Indian banking. So, for banks and other financial organizations to expand and become more profitable, it is just as important to collect the past-due debt as it is to reuse that money for broader economic expansion. Due to the bank's inability to advance the case, which resulted in crores of rupees being trapped, the government was forced to create the Recovery of Debt and Bankruptcy Act of 1993 and the SARFAESI Act of 2002. There is no question that Banks are human and can make mistakes as well. The regulated process for collecting debts owed to banks and financial organizations has led to the freezing of a sizeable amount of their cash in underutilized assets, whose worth depreciates over time. The researchers in this research paper will be analyzing the remedies available to banks as well as the borrowers concerning the provisions of the SARFAESI Act and Recovery of Debt and bankruptcy Act 1993 and analyze the functioning of the DRT.

Key Words: Banks, NPA, DRT, Debt, Loan, Advances

Introduction

In the 1990s, the civil courts were overwhelmed with a high volume of ordinary cases, making it nearly impossible for them to give priority to cases involving bank and financial institution (FI) recovery. Due to this, it was extremely difficult for banks and financial institutions to collect debt from borrowers in civil court. The locking up of a huge amount of public money in litigation prevents proper utilization and recycling of funds for the development of the economy. Long, often more than 15-year-long, court cases dragged on. Due to a portion of

the stressed assets becoming entangled in the litigation, this harmed the bank's ability to maintain its financial stability. It was extremely challenging for the bank to finance more advances. This dire condition put the economy on a path of slow growth. It was difficult for a business to obtain loans to finance initiatives. The Tiwari Committee, led by Shri. T. Tiwari recommended the establishment of Special Tribunals to quicken the debt recovery process. This led to the creation of Debt Recovery Tribunals (DRTs). Therefore, it was decided to enact the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (now known as The Recovery of Debts and Bankruptcy Act, 1993 and replaced by Act 31 of 2016). (RDB Act). There are currently five Debt Recovery Appellate Tribunals (DRATs) in India and 39 DRTs spread across 25 cities. Since DRTs are used to implement the RDB Act, this method of recovery is frequently referred to as a DRT.¹

They are unable to take into account claims of losses, inadequate service, breach of contract, or criminal activity on the part of the lenders, nevertheless. The Debt Recovery Tribunal has the power to select Receivers, Commissioners, pass ex-parte orders, ad interim orders, and interim orders in addition to having the power to review its own decisions and hear appeals against orders made by the Debt Recovery Tribunal's Recovery Officers. The Debt Recovery Tribunal's presiding officer is the sole judicial authority to hear and pass any judicial order. In the case of stressed assets i.e., non-performing assets (NPAs) and restructured accounts, banks try to do restructuring if the viability of the borrower's entity is established. If the account becomes NPA, they try to recover their dues through One Time Settlement (OTS)/ Negotiated Settlement (NS) or by acting under (SARFAESI Act) if they have easily marketable security. Banks have the option of filing an Original Application (OA) in DRT under the RDB Act, 1993 for the recovery of their debt, which must be worth at least Rs 20 lakh if the NPA cannot be addressed through the methods proposed. Although initially, DRTs handled cases brought by banks and FIs relatively quickly and assisted banks in the recovery of NPAs, with time their efficacy has decreased.²

A Debt Recovery Tribunal's Definition

It was established in 1993 pursuant to the Act. It is created so that it makes easier to decide cases quickly and to carry out judgments quickly. These tribunals are the quasi-judicial organizations created to handle the legal actions banks file against non-paying borrowers. By March 31, 2003, they had settled claims totaling Rs. 314 billion and had made Rs. 79 billion in profit (Articles base, 2010). As significant amounts of public funds were

¹ Department of Financial Services: Ministry of Finance: Government of India Department of Financial Services | Ministry of Finance | Government of India. Available at: <https://financialservices.gov.in/about-debt-recovery-tribunal>

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² SARFAESI act most effective tool to recover bad loans: Report (2017) BusinessLine. Available at: <https://www.thehindubusinessline.com/money-and-banking/sarfaesi-act-most-effective-tool-to-recover-report/article64248778.ece> bad-loans-

blocked due to defaulting debtors, recovery of bank debts had grown to be a critical issue. Such tribunals are expected to exercise the jurisdiction, authority, and powers granted to them under Chapter III of the Act.³

Research Objective

- 1) To analyze the effectiveness of remedies under SARFEASI Act, 2002, and Recovery of Debts and Bankruptcy Act, 1993.
- 2) To examine remedies to the banks in case of bankruptcy of the borrower.
- 3) To analyze the effectiveness of Debt Recovery Tribunal (DRT).

Research Questions

- 1) what is the effectiveness of remedies under SARFEASI Act, 2002, and Recovery of Debts and Bankruptcy Act, 1993?
- 2) What occurs if the borrower is declared bankrupt and the market value of the assets tends to decrease?
- 3) How DRT is efficient compared to civil courts?

Research Methodology

This research work is mostly analytical and doctrinal. The researcher has read numerous books, journals, Web references, electronic journals, papers, etc. The pertinent information is gathered from secondary sources.

Research Hypothesis

Ineffectiveness of Debt Recovery Tribunal (DRT) and SARFAESI Act, 2002 in providing remedies in accordance with enhancement of the banking regulations/institutions in India.

Analysis

1. What are the effectiveness of remedies under SARFEASI Act, 2002, and Recovery of Debts and Bankruptcy Act, 1993?

1.1 Effectiveness of SARFAESI Act, 2002

Act of 2002 Concerning the Securitization, Reconstruction, and Enforcement of Security Interest

Following the Narasimham Committee's recommendations, this Act was created in December 2002. The financial institutions were given additional authority to collect their debts under this statute rather than relying on tribunals and courts. As an alternative, the Act offered three procedures for recovering non-performing assets. It contains:

³ Department of Financial Services: Ministry of Finance: Government of India Department of Financial Services / Ministry of Finance / Government of India. Available at: <https://financialservices.gov.in/about-debt-recovery-tribunal>

1. Securitization
2. Reconstruction of Assets
3. Security interest enforcement.

Securitization is the process by which the Securitization Company purchases bank NPA from the financial institution. By providing security receipts to qualified and institutional buyers, the Securitization or Reconstruction Company raises funds. The security receipt is an unequal share of the financial asset's interest. The Asset Reconstruction Company, on the other hand, assumes bank loans to reclaim that money. After purchasing the asset, the asset reconstruction firm assumes ownership of the property and acts as the bank. The Enforcement of Security Interest, however, is distinct from the first two tactics. According to this, the bank must send the debtor a 60-day notice before declaring the account a non-performing asset (NPA). Following this, the financial institution may take ownership of the secured asset without the intervention of the court if the debt is not paid within these 60 days.

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (Sarfaesi Act), which was passed in response to the rising number of non-performing loans, was the bankers' most effective instrument for collecting defaulted loans.

Due to the Sarfaesi Act, banks and financial companies can now reclaim their non-performing assets. The Act provides three options for recovering non-performing assets outside of the legal system: securitization, asset reconstruction, and security enforcement. The SARFAESI route has helped banks recover a total of Rs 18,500 crore, according to the RBI's Report on Trend and Progress of Banking in India, 2012–13. The Act has also shown to be more effective than debt recovery tribunals or Lok Adalat mediation (DRTs).⁴

In an interview with Business Line, former SBI Chairman Pratip Chaudhuri claimed that DRT stay orders caused recoveries to be delayed. "Under the Sarfaesi Act, notice is issued and the borrower is allowed two months to pay off his debts, but Debt Recovery Tribunals continue to issue stay orders despite the Supreme Court's explicit instructions that they cannot do so. And not one (order) has been supported by evidence. According to him, "the stay order is eventually lifted, but during the process, one to one and a half years are lost, to nobody's benefit." The fact that there was a massive increase of 66 % in the number of cases under all three mechanisms, to 10.45 lakh cases, also indicates that the banking system is under increasing amounts of stress.

While debt recoveries decline in fiscal 2021, SARFAESI outperforms IBC.

In contrast to the IBC, 2016 which recovered Rs 27,311 crore for banks during fiscal 2021, but according to (SARFAESI) Act Rs 27,686 crore was recovered. Pursuant to SARFAESI, the recovery rate was 41% of the

⁴ SARFAESI act most effective tool to recover bad loans: Report (2017) BusinessLine. Available at: <https://www.thehindubusinessline.com/money-and-banking/sarfaesi-act-most-effective-tool-to-recover-bad-loans-report/article64248778.ece>

entire sum involved, however, it was just 20.2% in the case of IBC. Only 4% of the whole sum of Rs 28,084 crore was recovered through Lok Adalat's, while only Rs 8,113 or 3.6% of the total value of Rs 2.25 lakh crore was recovered through Debt Recovery Tribunals. Only roughly 64,228 crores, or 14%, of the total debt involved in all four mechanisms—Rs 4/56 lakh crore—was collected in the most recent fiscal year.

IBC improved in FY20. The IBC, however, outperformed the other three recovery methods in FY20, retrieving 46.3% of the total sum. With 17.4% of the total sum involved being recovered, the Sarfaesi Act came in a distant second. Recovery rates improved overall, reaching 22%.

There are a few things that need to be worked out if we wish to properly execute the SARFAESI Act. Firstly, A form or an industrial crediting insurance should have been implemented, and the business owner should be required to pay policy's premiums. However, banks may seek recovery from the insurance companies if suppose the defaulter do not make payment within a specified or reasonable amount of time. The government must be approached by the banks to obtain the necessary legislative support. Secondly, to encourage timely repayment, it is suggested that incentives for prompt payers be reinstated and the punitive interest rates are increased. This will compel defaulters to make timely repayments. Further, Establishment of Special Courts- When other efforts to collect the debt are unsuccessful, bankers must turn to legal means of doing so. By passing the SARFAESI Act, the government has given the banks the authority to immediately collect loans. This allows the banks to take the possession of assets which are of failing units without having to go through a legal process. The defaulting units may approach the special courts, and the courts are expected to resolve the cases in specific amount of time. Specified deadline should be noted in consumer court cases.⁵

What is ARC and how does it work?

Securitization, reconstruction, and the establishment of security interests are all transactions that must have been registered with Central Registry run by the central Government. Within thirty days, Details of securities must always be registered with the union registration prior to securitizing the asset by paying the necessary fees.

The RBI published rules in 2003 about the structure of the offer and the information that must be included. The Agreement and Secutrity Receipt (SR) with the originator to keep servicing securitized assets constitute most typical form. Another option is a debenture with a minimum 1.5% premium over the bank rate. For every financial asset that is purchased or if intended to have been acquired, ARC must notify a different scheme. The account must be maintained in terms of the scheme. Even if investment institutions can trade security receipts, there is yet no proof of this. As promised while issuing the security receipt, the asset's realisation is kept and used to redeem

⁵ www.ETBFSI.com (2021) SARFAESI beats IBC as debt recoveries drop in fiscal 2021 - ET BFSI, ETBFSI.com. Available at: <https://bfsi.economictimes.indiatimes.com/news/banking/sarfaesi-beats-ibc-as-debt-recoveries-drop-in-fiscal-2021/88588315>

the investments. It manages the assets in a trustee-like capacity; it does not acquire ownership of the assets. For the purpose of realising the value of the assets, Assets may be leased or sold by ARC. The discounted value of the recovered portion of the asset price will be split 85:15 among the Bank and ARC, the Bank will receive Rs 42 crore.

47.50 lakh for completely erasing the account from its records If a debt worth 100 lakh rupees is sold to the ARC for 60 lakh rupees, and the ARC simply generates Rs. 50 lakh through sales, or it can command the full inventory. After the asset has been sold, it is no longer a NPA in the records.

It might make sense to look into OTS as the first alternative within the RBI parameters if the Bank wanted to get the most money back from the stressed asset. We have seen that this option is only exercised in little more than 5% of cases since the OTS transaction's bona fides are questionable. It would be wise for the RBI to wait till the OTS option has run its course before securitizing and selling the asset.

Distribution of NPAs Recovered by Banks, Various Channels ⁶														
Year	Lok Adalat			DRTs			ARCs			IBC			Total	
	Percent- age of total amt involved	Percent- age of total amt recovered	Amt recovered as per cent of amt involved	Percent- age of total amt involved	Percent- age of total amt recovered	Amt recovered as per cent of amt involved	Percent- age of total amt involved	Percent- age of total amt recovered	Amt recovered as per cent of amt involved	Percent- age of total amt involved	Percent- age of total amt recovered	Amt recovered as per cent of amt involved	Total amount involved (₹ crore)	Total amount recovered (₹ crore)
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
2003-04	5.1	3.3	13.5	53.3	79.1	30.9	41.5	17.6	8.9	-	-	-	47535	9921
2004-05	2.8	2.2	14.1	50.5	51.8	18.8	46.7	46.1	18.1	-	-	-	28342	5192
2005-06	6.5	2.7	20.3	35.9	56.4	76.9	57.6	41.0	34.8	-	-	-	17055	8356
2006-07	4.0	1.4	14.0	48.3	47.3	37.8	47.7	51.2	41.4	-	-	-	18972	7318
2007-08	14.1	2.3	8.2	38.2	39.6	51.9	47.7	58.1	61.0	-	-	-	15224	7625
2008-09	19.9	1.3	2.4	20.4	45.1	81.1	59.7	53.6	33.0	-	-	-	20220	7426
2009-10	23.1	1.5	1.5	31.3	41.7	32.0	45.6	56.8	30.0	-	-	-	31281	7514
2010-11	10.5	1.0	2.9	28.2	25.1	27.9	61.3	73.9	37.8	-	-	-	49950	15642

⁶ Reserve Bank of India - RBI Bulletin. Available at: https://www.rbi.org.in/Scripts/BS_ViewBulletin.aspx

2011-12	2.8	1.4	11.8	39.4	28.5	17.0	57.8	70.1	28.6	-	-	-	61100	14400
2012-13	6.2	1.7	6.1	29.3	18.9	14.2	64.4	79.4	27.2	-	-	-	105700	23300
2013-14	13.3	4.4	6.0	31.8	16.6	9.6	54.8	79.1	26.5	-	-	-	173800	32000
2014-15	12.5	3.2	3.2	24.3	13.6	7.0	63.2	83.1	16.3	-	-	-	248200	30800
2015-16	32.5	14.0	4.4	31.3	28.1	9.2	36.2	57.9	16.5	-	-	-	221400	22800
2016-17	13.0	6.0	6.4	36.2	26.8	10.2	50.8	67.3	18.3	-	-	-	278300	38500
2017-18	16.9	4.5	4.0	49.2	17.9	5.4	30.3	65.4	32.2	3.7	12.2	49.6	270631	40352
2018-19	7.4	2.3	5.1	37.0	8.9	3.9	35.6	32.8	15.0	20.4	56.2	45.7	725996	118647
2019-20	9.1	2.4	6.2	33.1	5.8	4.1	26.5	30.5	26.7	31.3	61.3	45.5	742431	172565

Amount recovered refers to amount recovered during a given year, which could be with reference to cases referred during the given year as well as earlier years.

Source: Report on Trend and Progress of Banking in India.

**In the above table we can see that the recovery rate has been increased since 2014 to 2020 as per the data by RBI. **

1.2. Effectiveness Of DRTS

According to the report, there were not enough cases settled in relation to the number of new cases that were filed and went unresolved. India ranked 130 out of 190 economies for ease of doing business, whereas China and Russia were 78 and 40, respectively. Among economies of a similar size, this was one of the worst. There, it was stated that India took 4.3 years on average, more than twice if China and Russia, to settle insolvency. In India, average recoveries were only 26%, but they were above 35% in China and Russia. Even though subsequent Doing Business rankings show an improvement for India, this is primarily due to Enactment of (IBC) 2016 and other economic reforms. Regi and Roy (2017) examined 22 DRT-III, Delhi instances totaling 474 orders. To determine the causes of hearing failures, the research examined the orders. Gandhi (2017) noted in his speech that even though the RDB Act and SARFAESI Act, 2002 had been around for a while and had helped banks and FI's recover more quickly, much more remained to be done. He said that in 2016, the RDB Act and SARFAESI Act were amended, which resulted in some procedural improvements to the way DRT's function. RDB Act and SARFAESI Act interpretations by DRT POs and High Courts were resulting to delays in the disposition of cases in DRTs, according to Ravi (2015), who examined 15 decisions of DRTs and DRATs. The Indian government (2013) provided advice on how to improve the infrastructure of DRTs to boost their efficacy and efficiency.⁷

⁷ Ravi, A. (2015). The Indian Insolvency Regime in Practice-An Analysis of Insolvency and Debt Recovery

The Standing Committee on Finance's report, Use of Information

Technology for Improving the Efficiency of the Courts (2020), reaffirmed its recommendations, including the creation of e-courts for swifter case disposition and resolution. It was previously suggested that streamlining processes, developing sufficient capacity, and utilizing technology to shorten wait times in Indian courts. It used Singapore as an illustration, where the introduction of such changes in the 1990s greatly improved the effectiveness of the courts. For the court procedure to be automated, electronic records of identity and property title were required. "The Central Registry of Securitization, Asset Reconstruction and Security Interest of India (CERSAI)" established in year 2011, keeps records such as real estate, personal property, intangible assets, and receivables assignments. It gives all creditors access and offers the option of filing court orders and attachment orders to provide comprehensive information about any encumbered or attached property. If CERSAI has been able to assist in the early disposal of OAs in DRTs, separate research may be required. The Special debt recovery tribunals (DRTs) was established and "Debt Recovery Appellate Tribunals (DRATs)" has been requested by banks to the Finance Ministry in order to expedite the adjudication of higher value cases i.e Equal to or more than 100 crore.

The proposal comes amid a substantial backlog of adjudication matter's in the country's Thirty Nine DRTs and Five DRATs, which are now operational. According in response to a Lok Sabha question, there were 1,61,034 open cases at the DRTs as of February 2022, DRT-2 Chandigarh had the most i.e. 10,578, followed by DRT-3 Chandigarh i.e. 8,885, and DRT-3 Kolkata i.e. 7,171. Even after the Central Government quadrupled the financial ceiling for debt collection applications at DRTs to 20 lakhs in 2018, there is still a large backlog.

"Given that the current tribunal benches are nearly packed with cases, they cannot be totally blamed for the backlog. For the purpose of adjudication and debt recovery, a case for 20 lakh rupees and one for 100 crore rupees are handled equally." High-value matters must be handled first and foremost. Therefore, more special benches are needed, according to a senior public sector bank official. Additionally, he emphasized that case adjournments should not be longer than 10 days.

RDB Act of 1993, which introduced the tribunals, stipulates that applications must be handled as quickly as feasible, that every attempt should be made to finish the procedures in two sessions, and that applications must be decided within 180 days of receipt. Recovery from high-value cases will lower the amount of money lenders must raise from the market to support expansion, decrease the amount of non-performing assets (NPAs), and boost bottom lines. According to information provided in the Lok Sabha, DRTs collectively resolved 4,830 cases in the first nine months of FY22 and collected 11,956.98 crore.

Has the effectiveness of DRTs improved with the 2016 revisions to the RDB Act? The RDB Act underwent the following significant changes in 2016.

" The primary legislative issue was the expeditious disposal of recovery applications, as these problems had been unresolved for several years as a result of repeated postponements and protracted hearings held in case of Deputy Director, The Directorate of Enforcement, Delhi vs Axis Bank & Ors, 2019.⁸

- Under the RDB Act, the DRAT Chairperson may order the DRTs to provide information.
- The Chairperson of DRAT may hold a meeting of the POs of DRTs on a regular basis to assess their performance.
- The Chairperson may report any misconduct or incapacity of the PO of DRT to the Central Government and urge disciplinary action.
- Electronic filing is required for the application, written statement, and any further pleadings or documents.
- Electronic delivery is an option for any summons, notice, or other communication.
- Standard operating procedure for proceedings (To be laid down by Central Government).
- Only if the defendant pays at least 25% of the sum listed in the Recovery Certificate will the PO issue a payment extension for the amount mentioned in the Recovery Certificate. Previously, the entire payment might be waived.
- Only if the defendant pays 50% of the outstanding debt as calculated by DRT can the appeal against any ruling of the RO be considered.

The changes were meant to make POs more accountable, make DRTs more effective through technological advancement, and decrease the number of borrower appeals.⁹

Can DRTs be made more effective at resolving the NPAs of Indian banks? If that is the case, how?

Respondents to the primary poll made the following recommendations for enhancing the efficacy of DRTs and consequently the RDB Act:

- To prevent unfilled PO, RO, and Registrar positions in DRTs.
- Establish more DRTs to handle the increasing workload.

⁸ *Effectiveness of debt recovery tribunals in resolving npas of banks in India A Critical Analysis* Available at: https://www.researchgate.net/publication/364253722_Effectiveness_of_Debt_Recovery_Tribunals_in_Resolving_NPAs_of_Banks_in_India_A_Critical_Analysis

⁹ Ravi, A. (2015). The Indian Insolvency Regime in Practice-An Analysis of Insolvency and Debt Recovery Proceedings. *Economic and Political Weekly*, Vol. 50, No. 51, pp. 46-53.

- Give DRTs instructions on how to stop making frequent adjournments.
- Have DRATs review pending DRT cases on a fortnightly basis.
- E-proceedings
- Rejecting frivolous SAs
- Improving the infrastructure of DRTs
- Training of POs and DRT employees Some unconventional ideas for improving DRTs included:
- retaining a committed group of judges knowledgeable about recovery laws for appointment as POs
- providing financial incentives to DRTs' employees for high-quality and timely resolution of recovery cases¹⁰

2. What occurs if the borrower is declared bankrupt and the market value of the assets tends to decrease?

What happens to a borrower who fails a payment on a personal loan? Lenders have the right to repossess the asset used as collateral for a secured loan, such as a home or automobile loan. However, In case of the unsecured loan, such as personal loan, what legal action may a lender take to reclaim payments from a borrower?

There is no instant risk to the Debtors that Creditors would ask for the relief on their assets because a loan which is not secured does not provide any kind of security to the Creditor. As a result, property cannot be seized; recovery is dependent on the contract's provision for resolving disputes and is accomplished through the judicial system.

This implies that none of your assets may be possessed by the lender on their own. Only when the proper procedure has been followed and a court order has been issued on the assets the court considers appropriate may a borrower's assets be attached. Assets of the borrower are not beyond the reach of the lender's recovery net and can only be used to satisfy the debt in accordance with the evaluation and order of the appropriate court. The possibilities accessible to a defaulted personal loan borrower, & what are the way for the lender to recover outstanding debt from such a borrower.¹¹

Market value lower-

When the market value gets lower, bank's might require additional collateral from the borrower or the immediate payment of the difference. While forecasts of a probable 10-15% decline in property prices in major metropolises like Mumbai and Delhi are sure to encourage prospective purchasers, they could be terrible news for those who recently took out home loans. Since the value of property for that they have take the loan shall likewise decrease,

¹⁰ Balasubramaniam, C.S. (2013), "non-performing assets and profitability of commercial banks in India: assessment and emerging issues." *Abhinav Journal*, Vol.1, Issue no.7, ISSN 2277-1166

¹¹ Ravi, A. (2015). *The Indian Insolvency Regime in Practice-An Analysis of Insolvency and Debt Recovery Proceedings. Economic and Political Weekly*, Vol. 50, No. 51, pp. 46-53.

possibly dropping below the balance owed on the loan. The bank will ask the borrower to make up the shortfall because it is unlikely that it will risk taking on more debt than the house is worth. A bank will make a loan up to a particular percentage of the property's worth. If the loan amount is less than Rs 10 lakh, banks can give up to Rs 8.5 lakh (85% of the property value), which includes stamp duty and registration fees. If the market value is lower, the bank will want more security from the borrower or the immediate payment of the difference. The borrower will be labelled a defaulter if he is unable to do so, at which point the bank will seize and, if necessary, sell the property.

A bank may request more collateral in the nature of stocks, bonds, gold, real estate, or other investment. Use mutual funds or equities sparingly, particularly while the markets are unstable. This is because if shares or bonds prices drop significantly, bank may request borrower to submit additional investments to make up the shortfall in the portfolio's worth that was originally pledged and the portfolio's current worth.

How banks respond when the value of the asset declines-

- 1) You must pay the bank the difference as a one-time margin sum or offer extra security if the mortgaged property's value declines underneath the current debt balance.
- 2) If borrowers are unable to comply with either of the choices, you will be deemed in default and the bank may take possession of or even sell the property.
- 3) A borrower with a track record of timely payments often receives a lot of wiggle room from banks. As a result, borrowers has been paying EMIs on time, so he can ask the bank for more time for payment of margin amount.¹²

3. How DRT is efficient in compared to civil courts?

It is crucial to contrast how a DRT operates with a regular Civil Court. Prior to the creation of DRTs, civil courts were required to hear all asset recovery matters.

Differences

1. Simple Process A DRT makes application filing simple.

It is simple for the parties to file a case in DRT because there are no delays in filing an application. Civil courts that have jurisdiction over a wide range of situations besides those involving the recovery of debts are relatively challenging. Because of this, filing applications requires a lot of time.

¹² Ravi, A. (2015). The Indian Insolvency Regime in Practice-An Analysis of Insolvency and Debt Recovery Proceedings. *Economic and Political Weekly*, Vol. 50, No. 51, pp. 46-53.

2. Low-cost court costs

The Tribunal may demand fees in an amount as high as Rs 1,50,000 and as Minimum as Rs 12,000. After ten lakhs, each lakh will increase the fees by Rs 1000. Whereas Civil Courts have different fees. The charges are calculated as a portion of the overall claim as Depending on the size of the claim. The maximum fees set by the DRT would not be met by the fees for claims exceeding 50 lakhs.

3. Time

Lower Time the Tribunal's primary goal is to provide quick recovery processes and quick resolution of asset-recovery cases. It takes a long time. Due to the overwhelming backlog of cases, the Civil Court took a very long time to provide justice in the debt collection proceedings.

4. Refund

Refund of the Court Fee is not possible in a DRT.

The Civil Court permits court fee refunds in some circumstances.

5. DRT's authority is not as broad as Civil Court.

Hardly banks and various financial entities may file a complaint with the Debt Recovery Tribunal or the DRAT, and only to collect debts owing them, RDB Act of 1993, Section 17 (DRT Act) states that Civil courts are not allowed to hear cases involving Sec. 17 and nothing else, according to Sec. 18. It should be noted that these rules are procedural in nature and govern how rights under the SARFAESI Act may be exercised.

Further, in *Indian Bank vs Abs Marine Product*¹³, The SC noted that Sec. 17 and Sec. 18 of the DRT Act restrict civil courts' ability to hear cases exclusively when banks or other financial entities file requests for the repayment of their loans. Furthermore, the DRT has not been granted jurisdiction to hear independent legal actions brought by borrowers or anybody else against banks or financial organisation. As a result, there is no restriction on the civil courts about any person's individual and autonomous claims.

The distinction between the DRT and civil courts was noted in *Nahar Industries Enterprises Ltd. v HSBC*.¹⁴ The jurisdictional clauses of the SARFAESI Act make it clear that individuals cannot seek the DRT or DRAT without banks acting first. The DRT is also not permitted to issue decrees, and it must use caution when issuing interim orders. Finally, in accordance with the DRT's goal of a rapid trial, Evidence Act, 1872 and the CPC procedures,

¹³ *Indian Bank vs Abs Marine Product* (2006) 5 SCC 72

¹⁴ *Nahar Industries Enterprises Ltd. v HSBC* (2009) 8 SCC 646

such as cross examination, document discovery, comprehensive examination and so on, these are not necessary followed during proceedings.¹⁵

4. Why are borrowers not granted one-time settlement rights?

When the bank or other financial institution agrees to accept less than the whole amount owing, this is known as a one-time loan settlement. By doing this, they waive the remaining sum and facilitate your repayment. Banks could present you with this choice after six months of late payments.

The bank conducts a thorough investigation into your case before coming to this conclusion. They can use it to support your justification for delaying loan repayment.

How Does It Work?

The bank might grant you a moratorium term if they think your excuse for not repaying the loan is valid. Only individuals who are ready to repay the loan in full upfront may choose this option. To make it simpler for you to repay the loan, the bank will waive off a portion of the balance after receiving your approval.

Keep in mind that the amount written off will depend on how serious your financial situation is and how likely you are to be able to pay the bank back. Additionally, the loan's repayment status will be listed as "Settled" rather than "Closed" because you agreed to pay it off. Your credit score could be impacted by this discrepancy.

A borrower who is unable to generate sufficient resources to service their loan and is in default may be able to use a one-time settlement to cover their debt. According to RBI standards, banks must negotiate and pay existing loans based on the value of the borrower's mortgaged assets in order to resolve non-performing assets. One Time Settlement Funding (OTS) for a loan may be used in whole or in part depending on the borrower's needs, the business's cash flow, and the value of the collateral, among other factors. The settlement strategies for NPAs vary by industry; for example, there will be distinct settlement arrangements for MSME, Agro-industries, and other industries.¹⁶

Conclusion

Securitization is a process by which the Securitization Company purchases bank NPA from the financial institution. By providing security receipts to qualified and institutional buyers, the Securitization or

¹⁵ Gandhi, R. (2017). Improving Investor Interest - Recent Legislative and Regulatory Measures. *Asia Pacific Regional meeting 2017 in Hotel Trident, Mumbai.*

¹⁶ Jain, A.S. and L. (2021) *An unwarranted expansion of jurisdiction of Debt Recovery Tribunals: The allwyn alloys case, NLS BLR.* Available at: <https://www.nlsblr.com/post/an-unwarranted-expansion-of-jurisdiction-of-debt-recovery-tribunals-the-allwyn-alloys-case>

Reconstruction Company raises funds. With respect to the effectiveness of SARFAESI, while debt recoveries decline in fiscal 2021, SARFAESI outperforms IBC. In contrast to the IBC, which recovered Rs 27,311 crore for banks during fiscal 2021, the SARFAESI Act recovered Rs 27,686 crore. However, Procedures to follow when sanctioning the loan in order to rationalize the analysis, Industrial credit insurance introduction and Establishment of Special Courts can be done in order increase the effectiveness of SARFASI Act, 2002. DRTs are a tool that the banks can use to recover money from loan accounts that have turned into NPAs. Their effectiveness is being hampered by the numerous issues they are dealing with. Due to the numerous vacancies, they have, DRTs have been unable to hear cases. The assets in which banks have a security interest lose more and more of their realizable worth over time. The DRT disposal time decrease will probably increase banks' recovery rates. In order to modernize DRTs and boost their effectiveness, the government should employ technology appropriately. DRTs will now handle individual insolvency applications following the implementation of IBC. The already clogged DRT system could collapse if the flaws in the DRTs are not rectified immediately. The results of this study could help banks, ARCs, the Indian government, and the judiciary increase the efficiency of DRTs.

