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Judicial and Statutory Remedies in Debt Recovery an Analysis of the DRT and SARFAESI Framework

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Abstract

Recovery of bank loans is important for maintaining the stability and effective functioning of the Indian financial system. When borrowers fail to discharge their financial obligations, banks and financial institutions require legal mechanisms to recover outstanding amounts. Two principal statutory mechanisms are the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The RDB Act provides a specialised adjudicatory system through Debts Recovery Tribunals (DRTs) and Debts Recovery Appellate Tribunals (DRATs). SARFAESI, in contrast, permits secured creditors to enforce security interests through a statutory procedure without initially approaching a civil court. Borrowers are nevertheless given statutory remedies to challenge unlawful recovery measures. In Transcore v. Union of India, the Supreme Court recognised that remedies under the RDB Act and SARFAESI Act can operate alongside each other in appropriate circumstances.

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1. INTRODUCTION

Banks and financial institutions provide credit to individuals, businesses and other economic sectors and therefore play an important role in India's economic development. However, failure by borrowers to repay loans may result in the accumulation of Non-Performing Assets (NPAs). Difficulties in recovering bank dues led to examination of the existing legal system by several committees. The Tiwari Committee examined the problems faced by banks and financial institutions in recovering outstanding amounts and recommended specialised institutional arrangements for faster recovery. The Narasimham Committee subsequently stressed the need for specialised institutions to deal with recovery matters. These developments ultimately contributed to the enactment of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Act created specialised tribunals for adjudicating claims relating to debts owed to banks and financial institutions. It was subsequently renamed the Recovery of Debts and Bankruptcy Act, 1993.[1] The introduction of SARFAESI in 2002 further transformed secured-debt recovery by allowing secured creditors to enforce security interests without following the ordinary civil-court process, while also providing a statutory remedy to borrowers affected by such measures. In Union of India v. Delhi High Court Bar Association,[2] the Supreme Court upheld the constitutional validity of the RDDBFI Act and recognised the specialised tribunal mechanism as a valid method for speedy recovery of bank debts.

[1] *Banking and Negotiable Instruments Avatar Singh 4th Edn.*

[2] *(2002) 4 SCC 275*

2. RESEARCH METHODOLOGY

This paper adopts a doctrinal and analytical method of legal research. The study is primarily based on the examination of existing statutory provisions, judicial decisions, legal textbooks, commentaries, and relevant secondary legal materials relating to recovery of debts by banks and financial institutions. The principal statutory sources examined are the Recovery of Debts and Bankruptcy Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), along with the rules made under these enactments. The paper analyses relevant judgments of the Supreme Court and High Courts to understand the interpretation and practical application of the statutory provisions. Important decisions relating to the jurisdiction and functioning of Debt Recovery Tribunals, enforcement of security interests, borrowers' remedies, procedural safeguards, and the simultaneous availability of recovery mechanisms have been examined. Secondary sources, including standard banking law textbooks, legal commentaries, online legal databases, government sources, and legal articles, have also been consulted. The study further adopts a comparative approach by examining the differences between the DRT mechanism under the RDB Act and the enforcement mechanism under the SARFAESI Act. Thus, the methodology is primarily library-based, doctrinal, descriptive, analytical, and comparative, and no empirical survey, interview, or field study has been undertaken.

MODES OF RECOVERY OF DEBTS

The principal statutory mechanisms for recovery are:

- Recovery of Debts and Bankruptcy Act, 1993 (RDB Act);
- SARFAESI Act, 2002.

RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993

The legislation was originally called the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act). Amendments associated with the Insolvency and Bankruptcy Code, 2016, changed its title to the Recovery of Debts and Bankruptcy Act, 1993. The threshold mentioned in the material was ₹10 lakhs, or another amount prescribed by the Central Government, provided that such amount was not below ₹1 lakh. Application in Jammu and Kashmir In Sunshine Hydro Power Ltd. v. Union of India,[3]the question concerned enforcement of the RDDB Act in Jammu and Kashmir. Since the concerned property was situated there and the Act was not applicable in the relevant period, the bank could not initiate recovery proceedings under it.

RECOVERY THROUGH DRT UNDER SECTION 2(g)

When a borrower fails to discharge the liability owed to a bank or financial institution, the amount may become an NPA according to applicable banking norms.Under Section 19, a bank or financial institution may approach the DRT for recovery of debt and enforcement of security interests, including mortgage-related security.[4]

Application to the Tribunal – Section 19

The bank or financial institution may file an application before the DRT having jurisdiction. Jurisdiction may arise where the cause of action wholly or partly arises within the Tribunal's territorial jurisdiction.

- The first proviso to Section 19 permits a bank or financial institution, with DRT permission, to withdraw an application already filed before the Tribunal to take action under SARFAESI, where SARFAESI action had not already been taken. Such withdrawal applications should ordinarily be decided within 30 days, and reasons must be recorded if permission is refused.
- The existence of DRT proceedings does not necessarily prevent SARFAESI proceedings. The withdrawal provision is enabling rather than a mandatory condition. Thus, the doctrine of election does not prevent a secured creditor from using both statutory remedies. Section13(10) of SARFAESI reinforces the position that SARFAESI is an additional remedy.[5]
- Applications under Section 19 must comply with prescribed forms, be supported by relevant documents and be accompanied by the prescribed fee. The Tribunal should endeavour to dispose of applications within 180 days.

Disclosure of Assets

Under Section 19(3-A), the applicant must provide details of secured properties or assets. Where secured assets are insufficient to satisfy the debt, known additional assets of the defendant should also be disclosed. A fee refund may be available where proceedings are settled before commencement of hearing.

SUMMONS TO THE DEFENDANT UNDER SECTION 19(4)

After receiving an application, the DRT issues summons to the defendant. The defendant is ordinarily required to show cause within 30 days. The defendant must ordinarily file a written statement within 30 days. The Presiding Officer may grant an extension, but the extension cannot exceed 15 days, and reasons must be recorded.[6]

Set-off – Section 19(6)

A defendant may claim a set-off where an ascertained sum of money is legally recoverable from the applicant. It should normally be raised at the first hearing; later claims require permission of the Tribunal.

Counter-claim – Section 19(8)

The defendant may also make a counter-claim against the applicant before DRT. The claim for damages effectively qualified as a set-off or counter claim under this section.[7] Applications, written statements, set-offs, counter-claims and replies must be supported by affidavits in the prescribed manner. Documentary evidence should accompany the pleadings, and witness affidavits should ordinarily be filed with the relevant pleadings. Unverified statements cannot subsequently be relied upon as evidence.

INTERIM AND PROTECTIVE POWERS OF DRT

- Under Section 19(12), the DRT can grant Interim orders, including:
- Preventing the borrower from transferring, selling, leasing, gifting or otherwise disposing of secured or personal property;
  Maintaining status quo concerning disputed property;

[3] *AIR 2017 J&K 77*
[4] *GSL (India) Ltd v Asset Reconstruction Company Ltd, 2015 SCC Online Bom 6073*
[5] *UN Automobiles (p) Ltd v Bank of Baroda, AIR 2016 Raj 41*
[6] *Section 65-A of Transfer of Property Act, 1882.*
[7] *SBI v Ranjan Chemicals Ltd, (2007) 1 SCC 97*

temporarily restraining auction or possession where unlawful SARFAESI measures are alleged;
- Requiring alternative security or monetary deposits where property may be disposed of or devalued.

Conditional Attachment – Section 19(13)

The Tribunal may order conditional attachment of property. Attachment not made according to statutory requirements may be void. Disobedience of Tribunal orders may result in civil imprisonment for up to three months, unless earlier release is ordered.

Appointment of Receiver

Where considered just and convenient, the Tribunal may appoint a receiver before or after issuance of the recovery certificate to manage, protect or take custody of property.

FINAL ORDER, RECOVERY CERTIFICATE AND RECOVERY OFFICER

After hearing both sides, the Tribunal may make an interim or final order regarding the principal claim, set-off, counter-claim and interest. Under Section 19(20), the DRT has discretion concerning interest and is not strictly governed by Section 34 of the CPC.[8]The Tribunal must identify assets over which the bank or financial institution has security rights and may direct the Recovery Officer to sell those assets and distribute the proceeds according to law. Copies of final orders and recovery certificates must be supplied to the parties.

Recovery Certificate Under Section 22

Once the amount payable is determined, a Recovery Certificate is issued. If the relevant property lies within the jurisdiction of more than one Tribunal, copies may be sent to the other Tribunals for execution.

Recovery Officer

The Recovery Officer executes the certificate and undertakes recovery under Section 25. Sale and recovery powers must comply with the applicable statutory requirements. Where a company under liquidation is involved, proper procedure concerning the Official Liquidator or competent Liquidator must be followed. The Tribunal may remove persons from possession and place property under a receiver. A Commissioner may be appointed to prepare an inventory or conduct a sale. In liquidation situations, distribution of secured-asset sale proceeds must follow applicable company-law provisions.[9]

VALIDITY AND MODIFICATION OF RECOVERY CERTIFICATE

Section 26 gives finality to the Recovery Certificate for execution purposes.

- The Recovery Officer primarily executes the certificate and does not ordinarily re-examine the correctness of the debt.
- The Presiding Officer retains authority to correct mathematical or typographical errors and may cancel or modify the certificate.
- Any alteration, withdrawal or revocation must be communicated to the Recovery Officer.[10]

Section 27 – Stay or Modification

The Presiding Officer may grant additional time to the borrower where the borrower deposits at least 25% of the certified debt; and gives an unconditional undertaking to pay the balance according to a schedule approved by the bank. The material states that acceptance of such conditional stay results in waiver of the right to challenge the DRT decision in higher courts. If a pending appeal reduces the debt, recovery may be stopped concerning the reduced portion. Once a final appellate decision is made, the Recovery Certificate must be modified accordingly. The Presiding Officer must also keep the Recovery Officer informed about payments and extensions.[11]

APPEAL UNDER THE RDB ACT

Under Section 20, an appeal to the Appellate Tribunal should ordinarily be filed within 45 days of receipt of the order. Delay may be condoned for sufficient cause.[12] Under Section 21, a person from whom debt is due generally has to deposit 50% of the debt determined by the DRT before the appeal is entertained. The Appellate Tribunal may reduce the requirement, but not below 25%, and reasons must be recorded.

3. POWERS OF DRAT

Judicial Powers

- The DRAT acts as an appellate and reviewing authority over DRT decisions. Its functions include: reviewing, confirming, modifying or overturning DRT orders;
- It deciding appeals relating to enforcement of secured property; and
- Dealing with relevant insolvency appeals and considering applications for reduction or waiver of pre-deposit requirements. It also has procedural powers similar to those of a civil court, including:
- Summoning witnesses;
- Requiring production of documents;
- Receiving evidence by affidavit;
- Correcting obvious errors;
- Dismissing inactive applications;
- Passing ex parte orders when a party fails to appear.

The DRAT also exercises administrative and supervisory control over DRTs within its jurisdiction. It may transfer cases between DRTs to promote fair adjudication. It is headed by a Chairperson possessing High Court-level qualifications.

POWERS OF DRT

- A DRT is not an ordinary civil court. Its procedure is principally governed by the RDB Act and applicable rules, while principles of natural justice must be followed.
- The Tribunal may grant reliefs within its statutory jurisdiction and can consider certain matters connected with recovery.[13]
- It may also examine the appropriate rate of interest. The material gives an example where a contractual rate of 12.25% per annum with monthly rests was reduced by the DRT to 9% for outstanding and future amounts.[14]

SARFAESI ACT, 2002

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, commonly associated with NPA recovery, enables banks and financial institutions to recover secured debts without initially approaching a court. The legislation was influenced by the

[8] *Syndicate Bank v Mohan Bros, (2004) 10 SCC 549*
[9] *Section 290 to 352 of Company Act, 2013 states that "company liquidator"*
[10] *https://lawgist.in Section 26 of RDB Act, 1993.*
[11] *https://lawato.com Sec 27 of RDB Act,1993*
[12] *Supreme Court of India https://api.sci.gov.in*
[13] *Standard Chartered Bank v Dharminder Bhohi, (2013) 15 SCC 341*
[14] *Barunei Rollar Flour Mills (p) Ltd v SBI, 2016 SCC Online ori 202*

recommendations of the Narasimham Committees I and II and the Andhyarujina Committee. It was first introduced as an Ordinance on 21 June 2002 and subsequently enacted by Parliament. The purpose was to regulate securitisation reconstruction of financial assets, enforcement of security interests; and connected or incidental matters. The Act also enables Asset Reconstruction Companies to raise funds by issuing security receipts to qualified buyers. Persons obtaining financial facilities remain contractually bound to repay them. The courts have recognised this obligation.[15]The Act broadly defines "security interest" and covers forms such as mortgages and charges over immovable property created for repayment of financial assistance. The Act provides a remedy before the DRT against measures taken by secured creditors, with further appeal to the DRAT. Certain security interests are excluded, Agricultural loan including specified interests in agricultural land and certain small loans Quarterly or half yearly interest is not permissible. The material refers to loans not exceeding ₹1 lakh where 80% has been repaid.[16]

4. OBJECT AND LIMITS OF SARFAESI

Although SARFAESI grants extensive powers to secured creditors, enforcement must strictly follow the Act and the relevant Rules. The powers cannot be exercised arbitrarily or unfairly against borrowers. The Supreme Court has criticised the use of private persons, including forceful recovery agents, for recovering loans or credit-card dues. In ICICI Bank v. Prakash Kaur,[17] the Supreme Court addressed improper recovery practices. The importance of lawful recovery practices was also considered. RBI guidelines discourage unfair repossession methods.[18]

ASSET RECONSTRUCTION COMPANY

An Asset Reconstruction Company (ARC) may acquire rights and interests in financial assets belonging to banks or financial institutions. It may also seek assistance Magistrate under Section 14 for taking possession of secured assets.[19] In Kotak Mahindra Bank Ltd. v. Trupti Sanjay Mehta,[20]an assigned debt originating from an NBFC was held not to fall within the relevant statutory definition of "borrower", preventing invocation of Section 13 SARFAESI in respect of that debt. A property mortgaged for one particular loan could not be retained against an independent second loan merely by treating it as security for that later liability.[21] Meetu Jain v. Bank of Baroda,[22]Acquisition of rights in financial assets by a reconstruction company does not necessarily require prior notice to the borrower.

ENFORCEMENT OF SECURITY INTEREST

The main objective of SARFAESI is to facilitate recovery of secured debts from defaulting borrowers without unnecessary court or tribunal intervention.

NPA Classification

Under the RBI norms described in the material, a loan becomes an NPA when principal or interest remains overdue for more than 90 days. Agricultural loans follow crop-season criteria short-duration crops overdue for two crop seasons; long-duration crops overdue for one crop season.

Section 13(2) Demand Notice

Once the account becomes an NPA, the secured creditor issues a 60-day demand notice, specifying the dues and secured assets. Section 13(3-A) Borrower's Objection The borrower may submit a written objection or representation during the 60-day period. The secured creditor must consider it and, where rejected, communicate reasons within 15 days.

J. Rajiv Subramaniyan v. Pandiyas,[23] concerning the borrower's rights to submits a written objection or representing after receiving Notice. Section 13(4) If the borrower fails to discharge the liability, the secured creditor may take possession of secured assets, lease or sell them; take over management Appoint a manager and seek assistance under Section 14.[24] The aggrieved borrower can challenge such measures before the DRT under Section 17.

In Central Bank of India v. State of Kerala, the material notes the priority of the State Government's legal charge concerning outstanding sales tax over the secured creditor's recovery rights in the circumstances considered.[25]

5. MANAGER AND MAGISTRATE ASSISTANCE

Under Section 13(4)(c), a secured creditor may appoint a manager to oversee secured assets after physical possession. Under Section 14, a Chief Metropolitan Magistrate or District Magistrate must assist a secured creditor in taking physical possession where the statutory requirements are fulfilled. The secured creditor submits a written request concerning the secured asset, and the Magistrate assists in obtaining possession and relevant documents.

6. RULE 8 – POSSESSION OF IMMOVABLE PROPERTY

Where the secured asset is immovable property, the authorised officer may take physical or constructive possession. A possession notice must be delivered to the borrower and affixed at a conspicuous place on the property. The notice must also be published in two leading newspapers, one of which should be in the local vernacular language, within the prescribed period. Publication of Borrower's Photograph the material treats publication of a defaulting borrower's photograph as a sensitive measure. It should not be used merely as coercion against a genuine debtor.[26] The material connects arbitrary publication with the borrower's dignity and privacy interests and states that banks should distinguish between ordinary defaulters and wilful defaulters.

7. CARE AND CUSTODY OF SECURED PROPERTY

After taking physical possession, the Authorised officer must protect and maintain the property with the care expected of an ordinarily prudent owner. The property should be preserved and, where necessary, insured until sale or disposal. Valuation and Sale – Rule 8(5) Before sale, the Authorised officer must

[15] *Dipankar Chakraborty v Allahabad Bank, 2017 SCC Online Cal 8742; AIR 2017 Cal 289*
[16] *Canara Bank v B.E.Nanjundaiah, (2002) 1 BC 644(Kar)*
[17] *(2007) 2 SCC 711*
[18] *ICICI Bank v Shanthi Devi Sharma, (2008) 7 SCC 532*
[19] *Asset Reconstruction Co (India) Ltd v State of UP, AIR 2016 All 200*
[20] *2015 SCC Online Bom 6130*
[21] *D.Desinguraja v SBI, AIR 2016 Mad 78*
[22] *2016 SCC Online Utt 698; AIR 2016 Utt 60*
[23] *(2014) 5 SCC 651*
[24] *Kanaiyalal Lalchand Sachdev v State of MH, (2011) 2 SCC 782*
[25] *(2010) 4 SCC 94*
[26] *Prakash Granite Industries v PNB, 2016*

obtain valuation from an approved value and, in consultation with the secured creditor, fix a reserve price.
The property may be sold through:

- Quotations;
- Public tender;
- Public auction, including e-auction; or
- Private treaty.

The material separately notes requirements concerning property situated in Jammu and Kashmir. Thirty-Day Sale Notice must be given to the borrower before sale. For public tender or auction, public notice must also be published in two leading newspapers, including a widely circulated vernacular newspaper. The sale notice should contain:

- Description of the property;
- Encumbrances;
- Secured debt;
- Reserve price;
- Date, time and place of auction or applicable sale schedule and earnest money deposit; other material information.

The notice must be displayed conspicuously on the property and may also be placed on the creditor's website. For private treaty, the terms must be mutually agreed and recorded in writing.
In Canara Bank v. M. Amarender Reddy,[27] the Supreme Court emphasized the importance of the statutory 30-day notice. If an intended sale is postponed for more than one calendar month, a fresh 30-day notice is required. The individual notice and newspaper advertisement may be issued simultaneously.
In Transcore v. Union of India,[28] the Court recognised that the SARFAESI framework permits secured creditors to take actual physical possession; there is no legal contradiction between symbolic and physical possession.

8. SALE CERTIFICATE AND DRT REVIEW

A sale certificate issued by a bank's Recovery Officer serves as documentary evidence of the statutory sale and does not by itself constitute the property transfer in the manner described in the material. It states that stamp duty was required at 5% under Article 18 of the Stamp Act, rather than 2%. Under Section 17(3), where enforcement is unlawful, the DRT can set aside the measure and restore possession or rooted pre-existing ownership disputes or independently cancelling title, sale or mortgage deeds. Such disputes may fall within the jurisdiction of a civil court under Section 9 CPC.

9. APPLICATION UNDER SECTION 17 BEFORE DRT

An aggrieved person affected by Section 13(4) measures may approach the DRT. This may include the borrower, guarantor and in appropriate circumstances, a tenant. A tenant's rights may be protected under Section 17(4A). The application should be made within 45 days from the relevant enforcement measure. The DRT examines whether the secured creditor complied with SARFAESI and its Rules. If the action is unlawful, it can invalidate the measure and restore possession or management. The relevant DRT is determined under SARFAESI, and jurisdiction generally lies with the DRT within whose territorial area the secured property is situated. A Section 17 proceeding is distinct from an application under Section 19 of the RDB Act. A borrower generally cannot challenge merely the stage of consideration of objections before a formal enforcement measure occurs. Once an effective Section 17 remedy is available, direct recourse to Article 226 is ordinarily discouraged, although constitutional exceptions remain.

APPEAL UNDER SECTION 18 SARFAESI

An aggrieved person may appeal against a DRT order to the Appellate Tribunal within 30 days. A borrower must ordinarily deposit 50% of the debt claimed by the secured creditor. The Appellate Tribunal may reduce the requirement for recorded reasons, but the deposit cannot be reduced below 25%.

ARTICLE 226 AND ALTERNATIVE REMEDY

The existence of an effective Section 17 remedy ordinarily weighs against entertaining a writ petition under Article 226. However, alternative remedy does not completely remove the High Court's constitutional jurisdiction. The material identifies exceptions involving:
1. Violation of fundamental rights;
2. Breach of natural justice;
3. Lack of jurisdiction;
4. Challenge to the constitutional validity of legislation.

Mardia Chemicals Ltd. v. Union of India,[29]This case upheld the constitutional validity of SARFAESI while striking down the requirement that borrowers deposit 75% of disputed dues before approaching the appellate forum. **Mathew Varghese v. M. Amritha Kumar,**[30] Its stablished important procedural safeguards concerning sale of mortgaged property under SARFAESI.

10. KEY DIFFERENCES BETWEEN DRT/RDB ACT AND SARFAESI

- Adjudication and recovery of debt through specialised tribunals IN DRT, While SARFAESI Direct enforcement of security without initial court intervention
- Debt coverage Secured and unsecured debts within statutory jurisdiction but SARFAESI Primarily secured debts.
- Nature of process in RDB Litigation/quasi-judicial proceedings, While Possession and enforcement-based mechanism.
- Threshold mentioned in material ₹10 lakh or more; material also refers to expansion over ₹20 lakhs, while Secured debts of ₹1 lakh or more, subject to statutory conditions
- Appeal DRT order →DRAT while, SARFAESI enforcement →DRT DRT order →Appellate Tribunal
- Speed May involve procedural and judicial delays in DRT but in SARFAESI Designed as a faster out-of-court recovery method.
- Institutions covered Banks and scheduled financial institutions within statutory scope, while Banks, financial institutions and NBFCs Assets Can support recovery from secured and other assets Enforcement focuses on secured assets.[31]

[27] *(2017) 4 SCC 735*
[28] *(2008) 1 SCC 125*
[29] *(2004) 4 SCC 125*
[30] *(2014) 5 SCC 610*
[31] *https://www.Kanakupillai.com Article By Sujatha Sanyal*

11. CONCLUSION

The RDB Act and SARFAESI Act together constitute major components of India's statutory framework for dealing with NPAs and recovery of bank dues. Both ultimately seek to facilitate recovery and restore liquidity to financial institutions, but they adopt different mechanisms. The RDB Act primarily provides an adjudicatory system through DRTs and DRATs. It enables a bank or financial institution to establish and recover the debt through specialised proceedings and ultimately obtain a Recovery Certificate. SARFAESI, on the other hand, is principally concerned with Speedy enforcement of security interests without initial judicial intervention. It permits secured creditors to take possession and sell secured assets after complying with statutory requirements and provides borrowers with remedies before the DRT.

Author Contribution
The author conceptualized the research, conducted the literature review and doctrinal analysis, drafted the manuscript, and finalised the article for submission.

Conflict of Interest
Conflict of interest declared none.

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