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Rajput Jain & Associates
Chartered Accountants

**RECOVERY OF DEBTS DUE TO BANKS
AND FINANCIAL INSTITUTIONS
ACT, 1993' (RDDDBFI ACT)**

About Us

- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.
- Rajput Jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

APPLICABILITY OF DEBT RECOVERY ACT

- Banking companies, SBI, subsidiaries of SBI, Regional Rural Banks and multi state cooperation banks can make application to Debt Recovery Tribunal (DRT) - section 2(d) of RDDBFI Act.
- Financial Institutions can also make application to DRT for recovery of debt.
- Financial Institutions mean –
- (i) Public Financial Institutions within the meaning of section 4A of Companies Act
- (ia) Asset Reconstruction Companies registered under SARFAESI Act
- (ib) debenture trustees registered with SEBI and
- (ii) Other institutions as may be notified by Central Government - section 2(h) of RDDBFI Act.

MEANING OF PFI

- ‘Public Financial Institution’ [PFI] means IDBI, ICICI, IFCI, LIC, UTIIRBI, GICI, SCICI, SIDBI, State Financial Corporations, NABARD, NCDC etc.

MONETARY LIMIT-RS.20 LAKHS

Monetary limit for applicability of the Act - Save as otherwise provided, the provisions are applicable where amount of debt due to bank or FI or consortium of banks/FIs is Rs. 20 lakhs or more. Central Government can reduce this ceiling to Rs one lakh by issuing a notification, [section 1(4) of RDDBFI Act as amended vide 2016 Amendment Act. The words in italics have been inserted vide 2016 Amendment Act, as the Act will deal with adjudications relating to bankruptcy also after those provisions are notified and made effective],

[The limit was Rs 10 lakhs, which has been increased to Rs 20 lakhs vide Notification No. SO 4312(E) F No. 3/4/2018-DRT dated 6-9-2018].

OVERRIDING PROVISIONS OF ACT

- Provisions of the Act have overriding effect [section 34(1) of RDDBFI Act].
- However, the provisions are in addition to and not in derogation of provisions of IFCI Act, State Financial Corporation Act, UTI Act, IRBI Act and SICA. In other matters, provisions of this Act will have effect notwithstanding anything inconsistent in any other law. [section 34(2) of RDDBFI Act].
- 'Any person' can make application under section 17(1) SARFAESI Act against action taken by Bank under section 13(4) of the SARFAESI Act to DRT.

DEBT SECURITIES AND SECURITY INTEREST

Debt securities - "Debt securities" means debt securities listed in accordance with regulations made by SEBI under SEBI Act - section 2(ga) of RDDBFI Act inserted w.e.f. 1-9-2016.

Security interest - "Security interest" means mortgage, charge, hypothecation, assignment or any other right, title or interest of any kind whatsoever upon property, created in favour of any bank or financial institution and includes - (a) such right, title or interest upon tangible asset, retained by the bank or financial institution as owner of the property, given on hire or financial lease or conditional sale which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or any credit provided to enable the borrower to acquire the tangible asset; or (b) such right, title or interest in any intangible asset or licence of any intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit extended to enable the borrower to acquire the intangible asset or licence of intangible asset - section 2(ga) of RDDBFI Act inserted w.e.f. 1-9-2016.

FINANCIAL LEASE

- Financial lease - "Financial lease" means a lease under a lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be - section 2(ha) of RDDBFI Act inserted w.e f. 1-9-2016.
- Secured creditor - "Secured creditor" shall have the meaning as assigned to it in section 2(l)(zd) of SARFAESI Act - section 2(la) of RDDBFI Act inserted w.e f. 1-9-2016.
- Property - "Property" means –
 - (a) immovable property
 - (b) movable property
 - © any debt or any right to receive payment of money, whether secured or unsecured
 - (d) receivables, whether existing or future
 - (e) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature, as may be prescribed by the Central Government in consultation with RBI - - section 2(jb) of RDDBFI Act inserted w.e.f. 1-9-2016.

DEBT RECOVERY TRIBUNAL

Central Government will establish 'Debt Recovery Tribunals' (DRT) to exercise jurisdiction under the Act - section 3(1) of RDDBFI Act. Central Government will also establish DRT to exercise jurisdiction, powers and authority of Adjudicating Authority conferred on such Tribunal under Insolvency and Bankruptcy Code, 2016 - section 3(1 A) of RDDBFI Act inserted vide 2016 Amendment Act. This section will be made effective after the Insolvency and Bankruptcy Code, 2016 is notified and made effective.

DRT is a one person tribunal who is designated as 'Presiding Officer' [section 4(1) of RDDBFI Act],

QUALIFICATIONS OF PRESIDING OFFICER

- The presiding officer should be qualified to be a District Judge. He will be appointed for five years or till he attains age of 65 years, whichever is earlier [the age limit has been increased from 62 to 65 years w.e.f. 1-9-2016].
- He can be reappointed but not beyond age of 65 years.
- He will be assisted by Recovery Officers and other officers and staff, [section 7 of RDDBFI Act].
- DRT shall exercise jurisdiction, powers and authority to entertain and decide applications from Banks and Financial Institutions for recovery of debts due to them, [section 17(1) of RDDBFI Act].
- DRT is not a civil Court - Nahar Industrial Enterprises v. Hong Kong and Shanghai Banking Corpn (2009) 8 SCC 646 = 95 SCL 21(MAG) (SC).

PROCEDURE FOR APPLICATION BEFORE DRT

Procedure for application before DRT - Procedure to be followed for application before DRT is specified in DRT (Procedure) Rules, 1993. Application should be filed in form I as per rule 4 of DRT (Procedure) Rules, 1993. Fees as specified in rule 7 are payable.

DRAT

- Publication of name of defaulter - DRT can order publication of names of defaulters in newspaper or otherwise, after final order/recovery certificate has been passed. [Rule 15A of DRT Rules].
- Central Government will establish 'Debt Recovery Appellate Tribunal' (DRAT), [section 8 of RDDBFI Act],
- DRAT will hear appeal against orders of (a) Presiding Officer of DRT - section 17(2) of RDDBFI Act (b) Orders of Adjudicating Authority under Part HI of Insolvency and Bankruptcy Code, 2016 - sections 8(1 A) and 17(2A) of RDDBFI Act. These sections will be made effective after the Insolvency and Bankruptcy Code, 2016 is notified and made effective.

GENERAL PROVISIONS RELATING TO DRT AND DRAT

- Staff for DRT and DRAT will be provided by Central Government [sections 7 and 12 of RDDBFI Act].
- Salary and allowances and Presiding Officer of DRT and Chairperson of DRAT shall be prescribed by rules - section 13 of RDDBFI Act.
- Vacancies in posts of Presiding Officer of DRT and Chairperson of DRAT shall be filled by Central Government. Proceedings can continue from stage at which vacancy was filled. Thus, entire proceedings need not be conducted afresh - section 14 of RDDBFI Act.
- Presiding Officer of DRT and Chairperson of DRAT can resign after giving three month notice. They can be removed for proved misbehavior after conducting enquiry - section 15 of RDDBFI Act.

PROCEDURE AT DEBT RECOVERY TRIBUNAL

Bank/FI has to file application in prescribed form along with necessary appeal fees for recovery of any debt from any person. Application should be accompanied with true copies of all documents relied upon in support of the claim - section 19(3) of RDDBFI Act.

Application shall be supported by affidavit sworn in verifying all the facts and pleadings - section 19(10A) of RDDBFI Act.

Part of fees will be refunded if claim is settled before final orders - section 19(3B) of RDDBFI Act.

'Document' includes statement of account or any entry in banker's book duly certified under Bankers' Books Evidence Act - Explanation to section 19(3) of RDDBFI Act.

Application should be accompanied by details as specified in section 19(3 A) of RDDBFI Act as inserted vide 2016 Amendment Act.

RIGHTS AND DUTIES OF DEFENDANT

- Defendant can claim set off and counter claim - Defendant can claim set off. The DRT can consider claims to set off [section 19(6) of RDDBFI Act] and counter-claims of defendant borrower, [section 19(8) of RDDBFI Act].
- Reply by applicant to counter claim - Applicant can submit reply to counter claim within prescribed period - section 19(10) of RDDBFI Act.
- The reply shall be supported by affidavit sworn in verifying all the facts and pleadings - section 19(10A) of RDDBFI Act.
- Interim orders by DRT to provide security - If defendant is likely to obstruct or delay or frustrate execution of order for recovery of debt, DRT can direct defendant to furnish security, after giving him show cause notice and opportunity of hearing - section 19(13) of RDDBFI Act.
- DRT can order attachment of property, after giving him hearing - DRT can order attachment of property, after giving him hearing - section 19(15) of RDDBFI Act.
- DRT can order civil imprisonment if orders are disobeyed - DRT can order civil imprisonment upto three months if orders are disobeyed - section 19(17) of RDDBFI Act.
- DRT can appoint receiver - DRT can appoint receiver to receive property of defendant and take in possession - section 19(18) of RDDBFI Act.

DISTRIBUTION OF SALE PROCEEDS IN CASE OF WINDING UP OF COMPANY

Distribution of sale proceeds in case of winding up of company - In case of winding up of company, DRT can direct that sale proceeds of secured assets be distributed in manner prescribed in section 326 of Companies Act, 2013 - section 19(19) of RDDBFI Act.

Final order within 30 days from conclusion of hearing - DRT should pass final order within 30 days from conclusion of hearing, deciding claims, counter claims and set off. The order should include payment of interest - section 19(20) of RDDBFI Act.

DRT can make orders and give directions to prevent abuse of process or to secure ends of justice - section 19(25) of RDDBFI Act.

DISTRIBUTION OF ASSETS

- Distribution of assets - The order should direct recovery officer to distribute sale proceeds in following order - (i) costs incurred for preservation and protection of secured assets, cost of valuation, public notice for possession and auction and other expenses (ii) debts recovered to Bank/FI - section 19(20AB) of RDDBFI Act.
- After commencement of Insolvency and Bankruptcy Code, 2016, the distribution of assets shall be as specified in that code - Explanation to section 19(20AB) of RDDBFI Act.
- Copy of final order and recovery certificate shall be send to applicant and defendant - section 19(21) of RDDBFI Act.
- Certificate of recovery - DRT shall issue certificate of recovery to recovery officer, along with final order. It shall be deemed to be a decree or order of Court - section 19(22A) of RDDBFI Act.
- The certificate can be sent to more than one DRT if property is in different jurisdictions.
- Proceedings against guarantor before DRT

LIABILITY OF GUARANTOR (SURETY) IS CO-EXTENSIVE WITH THAT OF PRINCIPAL DEBTOR

Liability of guarantor (surety) is co-extensive with that of Principal debtor. Debt Recovery Tribunal (DRT) can proceed against guarantor. Creditor is not bound to exhaust his remedy against the principal debtor before suing the surety - Industrial Investment Bank of India v. Biswanath Jhunjhunwala (2009) 9 see 478.

Procedure to be followed

Debt Recovery Tribunal (Procedure) Rules, 1993 have been notified for the procedural aspects of DRT (Debt Recovery Tribunal).

Plural remedy permitted - Rule 10 of DRT (Procedure) Rules provided that plural remedies will not be permitted in one single application. This rule has been omitted w.e.f. 21-1 -2003. Thus, now, an applicant can seek relief or reliefs based on more than single cause of action, in one single application.

APPLICATIONS, DOCUMENTS AND STATEMENTS IN ELECTRONIC FORM

- Applications, documents and statements in electronic form
- Presently, all applications, documents and statements have to be filed in physical form.
- However, Central Government can make rules to file these documents in electronic form - section 19A(1) of RDDBFI Act inserted w.e.f. 1-9-2016.
- Publication of interim or final order by DRT or DRAT on its website shall be deemed to be public notice served on that party - section 19A(2) of RDDBFI Act inserted w.e.f. 1-9-2016.

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