NATIONAL JUDICIAL ACADEMY

[SE-27]

National Seminar for Presiding Officers of Debt Recovery Tribunal (DRT)

21-22 March, 2023

Programme Report

PROGRAMME CO-ORDINATORS

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The National Judicial Academy (NJA) is organized a two day National Seminar for Presiding Officers of the Debt Recovery Tribunal (DRT) on 21st & 22nd March, 2023.

The Seminar discussed and comprehended the legal framework and jurisdictional issues of DRT in terms of the relevant legislative provisions; assisted participants in gaining deeper insights into institutionalization of credit by Banks and Financial Institutions; procedural issues and challenges faced by Debt Recovery Tribunals; role of DRT post the SARFAESI Act; Case Management: Improving Efficiency & Efficacy of DRT and the art, craft and science of drafting Judgments/Orders. The Seminar provided a forum to the Presiding Officers for discussing and deliberating best practices in exercise of jurisdiction and to revisit evolving horizons of the relevant law and jurisprudence.

Session 1- Recovery of Debts and Bankruptcy Act, 1993 (RDB): Genesis & Overview

Speakers: Justice Deepak Gupta & Justice Vineet Kothari

At the introductory, the participants i.e., the Presiding Officers of DRT and DRAT who have already embarked upon a long judicial journey were apprised of the structure and curriculum that the judicial education at National Judicial Academy undertakes. Furthermore, it was emphatically stated that although governed by separation of powers, there is no separation of purpose amongst the three organs of the government. In the juggernaut of judiciary .with all its shortcomings, a judicially trained mind is aware of the ways and means of checking the bottlenecks and culling out solutions.

With massive proliferation of technology, its integration in the judicial system through process re-engineering to decrease pendency and increase disposals is indispensable. But at the same the technology must not become the master and must not replace the human intelligence or rather the humanity.

Through sharing of learning experience from having dealt with the original side cases as a lawyer including cases of recovery to a bank it was asserted that the DRTs have not been as successful as incepted for speedy disposals. The introspection must be done regarding the fundamental issues that arise in the realm of debt recovery because despite the act and its adjudicators not being bound by strictures of the civil procedure code but only principles of natural justice, there is an inordinate pendency and a huge delay in disposal of these case which runs exactly opposite to the intent behind establishing DRTs and the RDB Act, 1993. Bank transactions are simplest as they are backed by a robust framework of paper and documentation, despite this the question arises why the delay? It was highlighted, in the era of liberalization and booming banking business, a quick and robust judiciary is an integral component of the ease of doing business in any country and any lacuna will lead to huge economic losses to the country at large. The problems in the functioning of DRTs as there are less number of DRTs in India and the modus operandi is still as of a civil court were flagged.

The advantages of National Judicial Data Grid and its imperativeness were highlighted. It was advised to develop such a framework for DRT comprising of information such as: status of the case, date of filing, evidence and written statement etc. so as to enable these officers to manage the backlog themselves from the oldest to newest. It was cautioned that although most cases of recovery are open and shut in nature, but exceptions exist such as- a guarantor shares equivalent obligations as of a principal debtor, but whereby a principal debtor has sufficient funds available on record so as to set off the debt, yet an attachment has been made of the guarantor. Such an adjudication although is not illegal, however, is not a sound legality or justice dispensation.

It was noted that the debt recovery regime has evolved tremendously from civil suit to IBC days where banks and financial institutions have power to take over and sell the assets without courts.

The trend of these specific laws is to exclude or minimize courts interference in the process sought to sanctify the intent behind these legislations. It was remarked that the Law of CPC and Evidence has caused procedural hiccup in functioning or implementation of real purpose of DRTs. Delay is on account of procedure and not lack of power.

Additionally, the RDB Act has created toothless tigers whereby the presiding officers have to merely adjudicate a due debt whereas, execution of decree goes through the ROs. It was highlighted that those implementing law should be specifically trained in that law more so due to the multiplicity of laws or parallel adjudication that are available to recover a simple debt. In case of an adverse order, fair opportunity must be given to the parties as at times, even lenders can come with false case including banks. The importance of flow of powers required to be put to use under Section 19 and 19 A by the Presiding Officers was also reiterated.

The session then proceeded with inputs from the participants regarding the challenges faced by them to address the shortcoming in the DRT regime. A participant mentioned difficulty and inability to decide cases in a 6 month time frame as mandated, in the light of delays caused by adducing evidence, recording timely written statement, prioritising urgent listed matters, scanty staff due to unfilled/pending vacancies, absence/lack of stenographers and permanent staff. As suggested, the way forward was for the legislature to look into these issues so as to facilitate the adjudication process for these officers leading to optimisation of recovery of loans. It was also brought to notice of the house that banks affinity to procrastinate is another reason behind surmounting pendency. The session concluded with exchange of ideas on prospects of Alternate Dispute Resolution Mechanism in DRTs, which was rhetorically affirmed by all the participants as a future recourse to curb the inefficiencies.

Session 2- Role and Responsibilities of DRT post SARFAESI

Speakers: Justice Deepak Gupta & Mr. Sanjay Bhatt

The session initiated by highlighting *Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Ltd., (2020) 9 SCC 215***.** The Supreme Court in the said case held that, cooperative banks under the State legislation and multi-state cooperative banks are 'banks' under section 2(1)(c) of SARFAESI. The recovery is an essential part of banking; as such, the recovery procedure prescribed under section 13 of the SARFAESI Act, is applicable. The Parliament has legislative competence under Entry 45 of List I of the Seventh Schedule of the Constitution of India to provide additional procedures for recovery under section 13 of the SARFAESI with respect to cooperative banks. The provisions of Section 2(1)(c) (iva), of SARFAESI, adding 'a multi-state cooperative bank' is not ultra vires. Cooperative banks have to act under Banking Regulation Act with respect to banking business. It was also highlighted that by enacting the SARFAESI Act, Parliament did not intend to regulate the incorporation, regulation, or winding up of a corporation, company, or cooperative bank/cooperative society. It provides for recovery of dues to banks, including co-operative banks, which is an essential part of banking activity.

The session further discussed the role and responsibilities of DRTs viz.

- Recovery of Debts
- Execution of Recovery Certificates
- Appeals
- Power of Civil Court
- Time-bound Disposal

It was underscored that DRTs have the authority to adjudicate and determine the amount of debt due to banks and financial institutions. At the same time they are responsible for recovering the debts due to banks and financial institutions from the defaulters. They have the power to attach and sell the properties of the defaulters to recover the debt amount. DRTs also issue Recovery Certificates (RCs) after determining the amount of debt due. These RCs are executed as a decree of a civil court. Moreover, DRTs hear appeals against the orders of the Recovery Officer, and the Debt Recovery Appellate Tribunals (DRATs) hear appeals against the orders of the DRTs. The discussion further emphasised that DRTs have the power of a civil court, including the power to summon and enforce attendance of witnesses, compel the production of documents, and issue warrants. At the same time DRTs are required to dispose of cases within a time-bound manner, to ensure speedy resolution of the cases. Precisely speaking the overall prime responsibility of DRTs is to facilitate the recovery of debts due to banks and financial institutions in a time-bound manner, while ensuring fairness to both the creditors and debtors.

The discourse while highlighting the interplay between DRT and the Insolvency and Bankruptcy Code, 2016 (IBC) emphasised that for dealing with personal insolvency and bankruptcy of individuals, partnership and proprietorship firms, the DRT constituted under the RDDBFI Act has been given the power of Adjudicating Authority under Section 179 of the IBC. With respect to the filing of simultaneous applications before DRT and National Company Law Tribunal (NCLT) Section 60 of IBC was highlighted. In the same breath *Lalit Kumar Jain v. Union of India (2021) 9 SCC, 321* was discussed. This landmark judgment of the Supreme Court increased the rights and powers of the creditors to initiate proceedings against the personal guarantors to the corporate debtor. It also increased the accountability and responsibility of personal guarantors. The court

held that time and again an involuntary act of the principal debtor has led to the loss of security, and the same would not absolve a guarantor of its liability. While emphasizing the applicability of moratorium on personal guarantors under Section 14 of IBC, the significance of Section 238 IBC that overrides other laws was underscored and *SBI v. V. Ramakrishnan, (2018) 17 SCC 394* was highlighted. In the said judgment the Supreme Court after taking note of the different provisions of IBC and report of Insolvency Law Committee dated 26.03.2018 Amendment Ordinance dated 06.06.2018, which amended Section 14, held that the provisions of moratorium under section 14 of the IBC shall not apply to personal guarantor for Corporate Debtor.

The discussion on limitation period accentuated that pendency of a proceeding under the RDDBFI Act would not stop the limitation period for a proceeding to be initiated under SARFAESI Act or under the IBC. A proceeding under the SARFAESI Act or the IBC are independent of the proceedings, and both can run parallel to each other, subject to the law of limitation. Therefore, pendency of the proceedings before DRT under RDDBFI Act or under the SARFAESI Act would not save the period of limitation for a proceeding under the IBC. However, acknowledgment of debt in balance sheet can result in extension of limitation period under Section 18 of the Limitation Act, 1963. In *Asset Reconstruction Company (India) Limited v. Bishal Jaiswal & Anr, 2021 SCC Online SC 321*, the Supreme Court laid down that admission of indebtedness in a balance sheet is sufficient to construe an admission in terms of Section 18 of the Limitation Act. However, this finding would depend on the facts of each case as to whether such an entry qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined to establish existence of an acknowledgement of liability, thereby extending limitation under Section 18 of the Limitation Act.

It was further highlighted that one of the key purposes of tribunals is to reduce the workload of courts, so that there is quicker disposal of cases. The appeal against an order of Recovery Officer ("RO") to DRT can be requested within 30 days from the date of order. The Tribunals have to resolve the claim within six months. However due to the large backlog of cases and lack of human resources there is accumulation of pending cases in the Tribunals.

With respect to interim orders by DRT it was underlined that Under Section 19(12) of the RDDBFI Act, the DRT has the powers to pass an interim order against the borrower in order to restrict him from disposing or transferring any property belonging to him without the prior permission from the Tribunal. DRT can go to the extent of detaining the borrower for a period of maximum 3 months for any disobedience of an order or breach of any order issued under 19(12), 19(13) or 19(18) of the RDDBFI Act. The Supreme Court in *Industrial Credit and Investment Corporation of India Ltd v.. Grapco Industries Ltd and ors*, *(1999) 4 SCC 710,* held that the tribunal can grant interim ex parte injunctions and can even travel beyond Code of Civil Procedure and the only fetter that is put on its powers is to observe principles of natural justice.

It was further highlighted that a recovery certificate is given for the purpose of the recovery of amount of debt specified in the Certificate. Sub-section 22-A of Section 19 of the Debt Recovery Act provides that any recovery certificate issued by the Presiding officer under sub-section (22) shall be deemed to be decree or order of the Court for the purposes of initiation of winding up proceedings against a company. In *Kotak Mahindra Bank Limited v. A. Balakrishnan and Another (2022) 9 Supreme Court Cases 186* the Supreme Court observed that sub-section (22) of Section

19 of the Debt Recovery Act empowers the Presiding officer to issue a certificate of recovery along with the final order. The later part of the session briefly discussed appeal against the order of DRT in DRAT (Section 20), appeal against the order of recovery officer before PO, DRT (Section 30) and petition against the order of DRAT before the High Court (Article 226).

It was suggested that DRTs must be strengthened since recovery of debt is vital to the economy and delays adversely affect banking, investment and prospect economic development of the country. The working of DRTs ought to be enhanced by judicious appointment of manpower and providing swift sustenance in refining the substructure for effectual functioning.

Session 3- Procedural Issues and Challenges faced by Debt Recovery Tribunals

Speakers: Justice Vineet Kothari & Mr. Sanjay Bhatt

The session commenced with focalising upon the wide ambit of powers enjoyed by the presiding officers *vis a vis* a civil court judge. It is pertinent to note that the fetter upon this scope are the principles of natural justice, equity and conscience.

An elaborate analysis of sections 19 and 22 of the RDB Act, 1993 *vis a vis* section 13(2) and 13(4) of the SARFAESI Act was undertaken. These provisions are similar to each other in the nature of enabling applicants the objective of recovery and restoration. It was stated that application arising out of these sections are bound to give rise to questions of fact and law. Any adjudication upon these issues must always be done in an upright and thoroughly reasonable manner. Such a reasoned order is also capable of withstanding scrutiny by way of appeal in the higher courts.

The interplay between the SARFAESI and RDB Act, 1993 was also enunciated upon. SARFAESI is a simplified special enactment pursuant to the international standards or best practices which empowers the lenders rather than the conventional court. Under section 13(4) all pervasive powers are given to take possession and overall control, which gives rise to a hoard of litigation for quicker debt recovery. The speaker also expressed concern over the multiplicity of law for a same issue and to attain the same objective which has not only defeated the real intent but also made the procedure very cumbersome and slow.

Furthermore, in the light of *Mardia Chemicals Ltd. v. Union of India,* (2004) 4 SCC 311 it was also mooted that in the challenge to constitutional validity of the act in the Apex Court it was held that it is not *ipse dixit* for banks to classify any account as NPA. There are procedural norms issued by the RBI under which they ought to examine such assets and then decide. Additionally, whilst the validity of the act was upheld, Section 17(2) which made it mandatory for borrowers to deposit 75% of the claim amount as a precondition to challenging the lenders' action at the Debts Recovery Tribunal was struck down.

On the issue of invocation of section 17, it was stated that although at the stage of section 13 (2) no action can arise under section 17, still litigants approached the tribunals under it. With regards section 13(4) the Supreme Court in the case of *Standard Chartered Bank v. Noble Kumar* (2013) 9 SCC 620, held that without having possession, the right under section 17 will lie only when one is divested of possession of the property and not before that. Additionally, it is not mandatory that bank should first try to take possession under Section 13(4) of SARFAESI Act prior to approaching Magistrate. Banks can directly approach Magistrate. The same principle was reiterated although with dilution in case of *Hindon Forge (P) Ltd. v. State of U.P.,* (2019) 2 SCC 198 that application under Section 17(1) is maintainable even before taking physical possession, i.e., even at the stage

of constructive or symbolic possession. One can approach DRT even if served with a possession notice by the borrower.

The session then proceeded with the discussion on factors behind the huge backlogs in DRTs. The factors enumerated inter alia are as follows:

1. Failure to timely fill the vacant posts of officers, including both the Presiding and Recovery Officers which form the backbone of the debt recovery regime. It is seldom that a DRT functions with full strength.
2. Usually, the Recovery Officer is overburdened as having been assigned to more than one presiding officer that hampers implementation.
3. Out of 39 DRTs, 4 are yet to have a presiding officer.
4. Lack of proper infrastructure and conducive environment leading to collapse of total ecosystem.
5. Lack of proper diligence on banks; need for a forum to act as an intermediary or a linkage between the Government and the DRTs/personnel. Such a link would act as an immediate regulator to cater to the issues at both the ends leading to cohesive action.
6. Untimely intervention by higher courts also causes hindrances in justice dispensation.
7. Post COVID, the DRTs have witnessed a massive surge in the backlog of cases which is yet a herculean task to be arrested.

The session concluded with exchange of views amongst the participants.

Session 4- Case Management: Improving Efficiency &Efficacy of DRT

Speakers: Justice Sunil Ambwani & Justice Roshan Dalvi

The session initiated by highlighting elements of management as propounded by the Management Guru, Peter Drucker i.e., Planning, Organising, Directing, Coordinating and Controlling.

The session dealt with the fundamentals of case management which essentially makes the Practitioners and Judges better at what they do which is to achieve the same end with lesser resources and in lesser time as quoted by Lord Justice Woolf, Master of the Rolls, UK. The need for case management arises to improve efficiency, reduce delays and cutting costs.

The essential aspects of court management were elaborated upon i.e., scrutiny, teamwork, role clarity, effective delegation, established institutional systems and processes, mentoring, experiential learning, planning, strategy and execution, and work life balance were discussed.

The model court for management of cases in judiciary was discussed. The case management initiatives in UK were highlighted and compared with the initiatives in India. The stages of adjudication where case management tools can be employed were dwelt upon to emphasize on the methods in which case management can be integrated into the adjudicatory procedure. The business management principles which are applicable to court management were discussed. The major aspects where court management tolls would enable effective and timely adjudication were highlighted. Participants were advised to tackle non-value added items in their caseload first rather than delay it. Time management, decentralization and procedural simplification were also suggested as tools for effective court management.

The ambit of case management is twofold- procedural and substantive. They both require infrastructure and sensitivity. The major causes of delay were dwelt upon –

- Lack of knowledge and/or preparation of the advocate
- Tardiness and bad work habits of advocates

- Dilatory tactics adopted by advocates
- Lengthy and Unfocussed cross examination
- Bar opposition to changes introduced
- Ignoring rules of the court
- Lack of judicial control over the court
- Failure to limit time for evidence and arguments
- Non-use of case flow management principles
- Failure to define and narrow down issues

The session proceeded with identification of major bottlenecks in judicial administration and causes for delay. They are: –

- Pendency of criminal cases
- Adjournments
- Delay in submitting the charge sheet
- Accused absconds- case goes on backburner
- Accused avoids – deliberate nonappearance to evade trial
- Non-execution of service and process
- Delay in investigation
- Non-appearance of accused
- Delay at a stage of prosecution evidence – shows lack of coordination between police and prosecution and Delay in completing the investigation.

The session concluded with a famous quote from Chief Judge, Alfred Marrah, Federal Court, USA- "No case is inherently complex or protracted. Cases are made complex or protracted by inefficient

practices.” Therefore, the significance of court and case management as a tool to ensure the Right to Speedy Trial is indispensable.

Session 5- Judicial Discretion; and the Art, Craft and Science of Drafting Judgments/Orders

Speakers: Justice Sunil Ambwani & Justice Roshan Dalvi

The art of court craft was the basic theme of this session. Without venturing into equity beyond the law a judicial officer ought to deliver judicious and pragmatically written orders. The writing of a judgment is one of the most important and time-consuming tasks performed by a Judge reflecting the characteristic of a Judge. A judgment is distinct from a formal order as it gives reasons for arriving at a conclusion.

It was observed that a judgment is not written merely for the benefit of the parties but also for benefit of the appellate court, members of legal profession, other judges, students of law, and civil society at large. Herein, the losing party is the primary focus of concern. These judgments and orders also uphold the intellectual integrity of the system of law, impartiality, and logical reasoning. A proper reasoning to be given without any fear, bias, prejudice or personal perceptions and any concern that the appellate Court may reach to a different conclusion is a sine qua non of every judgement ever written. The Judge must state the facts explicitly, precisely, and consciously as they are found on record and give reasons with sufficient and honest reasoning without any bias, prejudices, or perceptions for the decision.

A judgment must begin with clear recital of facts of the case, cause of action and the way the case has been brought to the Court. A Judge must have essential facts in mind, and its narration should be brief but without any mistake. Ordinarily a brief statement of fact is sufficient if it indicates the

context of the dispute so that legal principle/s chosen for decision can be understood. The judgment must quote the issues/ or charges immediately after the narration of facts. It is always advisable to decide preliminary issues like limitation, valuation, or authority of Court before going into the merits of the case. The formulation of issues, should be initiated as early in the proceedings as possible. Once the parties are clear in their mind about the essential questions, they may shorten the proceedings.

The judge must give the details of the evidence led before it. However, only the cogent relevant and admissible evidence must be narrated and that too very briefly giving the purpose for such evidence was led. A Judgment must briefly state the contentions of the counsels on the points of determination. As far as possible all the contentions raised by the counsels except those, which are frivolous, must be mentioned on the record. After the Judge has met with all the contentions, he must record that no other point was pressed.

Before deciding an issue or recording finding on a charge, the relevant evidence must be discussed. Every Judge has his own style of discussing the evidence. It is, however, always better to discuss the evidence before giving an opinion to rely upon it.

The reasons are the soul of a judgment. The findings recorded by the Judge must be based on the reasons and reasoning to support or to explain such findings. There is no rigid rule, as to how a finding may be recorded. The Judge, however, should give his reasons. It is not sufficient to say that he believes the evidence or agrees with the argument. The reasons even if they are brief must satisfy the logical mind.

The session then embarked onto issue of biases both explicit and latent. It was discussed that the logical reasoning, however, must follow in reaching to a conclusion. A Judge is not free from

partiality and bias. There may be a lurking or sub-conscious bias, which may not be known to the Judge himself. The best way to overcome the judgment to be affected by such outside and unknown factors is to follow logical reasoning.

The method of arriving at a conclusion is the most important part of judgment writing. The process by which the conclusion is arrived, and the statement in the judgment of that process, tests a judge of his ability, impartiality, and integrity.

The demarcation between neutrality and impartiality was emphasized. The neutrality means the Judge is non-partisan and non-aligned. Impartiality requires a Judge to rise above all values and perspectives. It requires a judge or adjudicator to be fair and give equal treatment in the proceedings to all rivals or disputants. Rationality is a term related to the idea of reason. It has dual aspects. One aspect associates it with comprehension, intelligence or inference drawn in an orderly way such as syllogism. The other aspect associates it with explanation, understanding and justification.

A Judge must clearly write the operative portion of the judgment, which pronounces his conclusion over the issues brought before him. He must give clear and precise direction and the way the directions must be obeyed in conformity with the prayers made in the plaint. The operative portion of the order should as far as possible be self-executing and self-contained.

Brevity, simplicity, and clarity are the hallmarks of the good judgment Plain and simple language has always been preferred and appreciated in writing judgments. A judge must avoid invidious examples, jargons, unnecessary quotations, and lecture. A controlled judgment without any legalese, sharp criticism, pinching comments, and sarcasm invokes respect to the court. A judge

should keep a dictionary, preferably legal, a grammar book and a thesaurus of the language in which the judgment is written close to him, when writing judgment.

The judgment must be designed and structured so that readers find their way through it easily and quickly. There is no such thing as skillful writing. There is only good rewriting. It is necessary to revise the judgment. A revised judgment takes care of errors and reassures the Judge of the correctness of his opinion. Judges should see that their pronouncements are judicial in nature and do not normally depart from sobriety, moderation, and reserve. They should refrain from sarcasm, and factiousness.

Citing ***Bhupinder Sharma vs. State of HP (2003) 8 SCC 551 and State of Karnataka vs. Puttaraja (2004) 1 SCC 475***, it was highlighted that with the view to prevent social ostracism of the victim of a sexual offence the Apex Court held that in the judgments, be it Supreme Court, High Court or District Courts the name of victim should not be indicated. It is sufficient to refer to her as victim. Similarly, the victims of sexual harassment, molestation, children in conflict with law or victims of offences under POSCO Act or in divorce and custody cases it is advisable to hide party names. The software 'Case Information System 2.1' used by the courts in India also provides for hiding party names in public display of cases and in open domain and to mention them as XXX for public access of the websites.

A judge, is not expected to drift away from pronouncing upon a controversy, and to sit in judgment over the conduct of the judicial or quasi-judicial authority, or the parties before him and indulge in criticism and commenting thereon unless such conduct comes, of necessity under review and the expression becomes part of reasoning to arrive at a conclusion necessary to decide the main controversy. The judges avoid using words or expression showing gender, caste or creed bias, and their personal preferences.

On timelines in pronouncing judgments it was asserted that in light of ***Anil Rai vs. State of Bihar (2001) 7 SCC 318***, the Supreme Court took notice of the observations of the Arrears Committee constituted by Govt. of India. It recommended that the reserved judgments should ordinarily be pronounced within a period of six weeks from the date of conclusion of the arguments. Furthermore, the judgment once pronounced cannot be altered or added to, save as provided in law.

The session ended with the speakers elaborating upon diversity of opinion in judgment writing as the strength of the common law judicial tradition. It provides never ending stream of ideas and ways of communicating them. The experimental variety helps to develop the law. It is the privilege of each succeeding generation of judges to nurture the proud heritage and advance this precious legacy.