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“ *Alone we can do so little;
together we can do so much.* ”



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Policy Insights



RBI Offers Modifications to the Framework for External Commercial Borrowings

On October 03, 2025, the Reserve Bank of India (“RBI”) proposed a thorough overhaul of the current External Commercial Borrowing (ECB) regime in the (draft) Foreign Exchange Management (Borrowing and Lending) (Fourth Amendment) Regulations, 2025 (“Draft Regulations”). The proposal modifies borrowing restrictions, puts a general ban on certain end-uses, recalibrates eligibility and lender recognition, replaces hard all-in-cost caps with a market-based strategy subject to Authorized Dealer (“AD”) control, and simplifies

reporting and operational procedures. For Indian borrower organizations seeking to raise international or rupee-denominated ECB, these changes will significantly impact transaction structuring, paperwork, pricing, and internal controls if they are finalized in their current form.

The RBI has proposed to revise borrowing limits under the Draft Regulations, which would replace the existing uniform automatic route cap of USD 750 million by allowing eligible borrowers to raise ECB up to the higher of (a) outstanding ECB up to USD 1 billion or (b) total outstanding borrowing (both domestic and foreign) up to 300% of their net worth as per the most recent audited balance sheet. On the contrary to the current framework, which explicitly includes an ECB liability-to-equity ratio of 7:1 when borrowing from a direct foreign equity holder, the Draft Regulations eliminate this leverage cap and instead give Designated Authorized Dealer Category 1 banks (“banks with which the ECB borrower maintains the current account and is designated by the borrower for meeting the reporting requirements in respect of ECB and monitoring of ECB transactions”) more responsibility for evaluating prudential risk and adhering to sectoral or regulatory leverage standards applicable to the respective borrower.

By allowing any resident of India (other from an individual) created or registered under a Central or State Act and otherwise allowed to borrow, the Draft Regulations suggest, a substantial extension of eligibility under the ECB framework. In line with this, the list of approved lenders has been expanded to include any individual who resides outside of India as well as overseas branches or IFSC-based branches of organizations that participates in RBI-regulated lending activities.

Brief overview of the Draft Regulation:

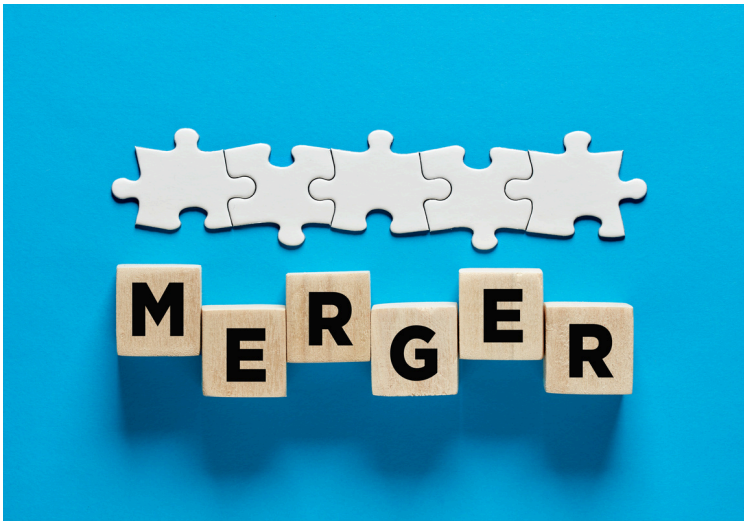
- **Definitions:** The Draft Regulations have attempted to provide clarity by inserting the following definitions - *arm’s length basis; benchmark rate; cost of borrowings; designated authorised dealer category 1 bank; financial sector regulator; foreign currency convertible bonds (FCCBs); foreign currency exchangeable bonds (FCEBs); group entity; and networth.*
- This is a positive shift that will enable various companies, such as Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs), to raise external commercial borrowings (ECBs).
- **Prohibition on end-use borrowed funds:** The Draft Regulations inserted Regulation 3A which puts a restriction that the borrowing funds shall not be utilised for the purposes mentioned therein. For example, “.....(a) *In the business of chit fund; (b) In the business of Nidhi Company; (c) Agricultural or plantation activities, except activities/sectors permitted for Foreign Direct Investment (FDI); (d) Real estate business or construction of farmhouses (exceptions provided), (ii) Purchase/long-term leasing of industrial land as part of new project/modernisation or expansion of existing units; (e) Trading in Transferrable Development Rights (TDR);(e) On-lending, (exceptions provided); and (f) Transacting in listed/unlisted securities (exceptions provided);”.*

- **Changes in certain parameter, terms and conditions:** Under the Draft Regulations, **Regulation 14** provides for certain conditions where such changes need the lender's consent and compliance with the Schedules provided therein; and some changes even require approval from RBI.
- There is **no hardcoded cap on the total cost**. The current state of the market can be taken into consideration by ECB parties when making decisions. Penal interest has no hardcoded cap.
- **Standardize Minimum Average Maturity Period (MAMP):** Minimum Average Maturity Period requirements have been simplified and are no longer dependent on the underlying end use (apart from the manufacturing sector) for the general corporate sector, working capital needs, and rupee loan repayment. The existing regulation provides for maturity period of 3, 5, 7 and 10 years, however in the proposed Draft Regulation, the consolidated MAMP will be 3 (three) years. But, as per the Draft Regulation, there are certain conditions where MAMP as specified in Regulation no 6 (1) and (2) shall not be required to be met, for e.g. where “... ECB is converted into non-debt instruments; Repayment of ECB is made using proceeds from NDI issued on repatriation basis (if received after drawdown); there is a waiver of debt by the lender; or where the borrower or lender undergoes closure, merger, acquisition, resolution, or liquidation...”
- (a) Acquisition finance is now permitted; (b) There are no restrictions on general corporate purposes or the repayment of rupee loans; (c) While on-lending is permitted by the financial sector (including NBFCs) and group entities, it appears that restrictions have been placed on the use of ECB proceeds for on-lending to individuals; d) Investment in primary market instruments.
- **Conversion :** The Draft Regulation also provides for conversion of ECB which is being matured but unpaid into non-debt instruments. However, it should satisfy the conditions as stipulated in Draft Regulation 13 (2).
- **Reporting:** The Draft Regulation linked the submission with the cash flow, earlier it was based on monthly basis, it provides for submission of ECB Form 2 withing 30 days from date of such cashflow.

Conclusion:

The proposed Draft Regulation is a major change in standardisation and advancement of India's cross-border borrowings. By adoption of a market-driven approach, net worth-linked ECB regime with streamlined compliance requirements; relaxed borrowing limits; exclusion of cost ceilings etc. will ensure that the funds are being utilised for productive economic activities subject to compliances. . This evolving Draft Regulation also highlights the importance of requirement of comprehensive guidance on structuring, compliance, and risk management. The borrower and lenders must collaborate closely to navigate the interplay between FEMA regulations, the Companies Act, and sector-specific guidelines, while leveraging the opportunities provided under the Draft Regulation. The recalibrated ECB framework is set to redefine the contours of international borrowing in India ushering in both new opportunities and greater responsibilities for stakeholders across the financial and corporate landscape.

Emerging Trends



MCA Introduces Simplified Framework for Mergers and Amalgamations under Section 233

Recently, the Ministry of Corporate Affairs (“MCA”) in order to streamline India’s corporate notified the **Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025 (“Amendment”)**. The newly introduced amendment modified Rule 25 of the existing Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“Rule”), thereby expanding the scope of mergers and amalgamations that may be approved through the “fast-track merger” route under **Section 233** of the Companies Act, 2013 (“Act”).

Wider Eligibility for Fast-Track Mergers:

Section 233 of the Act provides for a merger mechanism for certain classes of companies, allowing them to bypass the National Company Law Tribunal (“NCLT”) and obtain approval directly from the Central Government through the Regional Director. The 2025 amendments have broadened the classes of companies eligible for such treatment.

In addition to transaction between small companies and holding company-wholly-owned subsidiaries, the following categories of mergers can now avail the fast-track process:

1. Mergers involving companies falling under Section 8 with one or more unlisted companies, subject to- aggregate outstanding loans, debentures, or deposits do not exceed Rs. 200 crore; and There has been no default in repayment of such dues.
2. An auditor’s certificate confirming compliance with these conditions must accompany the approved scheme in Form CAA-10A.
3. Mergers between holding and subsidiary companies, whether listed or unlisted (except where the transferor company is listed).
4. Mergers among subsidiaries of the same holding company, provided none of the transferor companies are listed.
5. Mergers among two startup companies, the companies falling under this category will be able utilize the simplified fast-track process as provided. The inclusion of startup companies was made to facilitate business within the start-up ecosystem, reducing procedural burdens, and enabling quicker restructuring to attract investors or consolidate operations.
6. Cross-border mergers between a foreign holding company incorporated outside India and its wholly owned Indian subsidiary, aligning with Rule 25A (5).

These additions significantly expanded the ambit of companies eligible for a fast-track merger, particularly benefiting group restructurings, Section 8 (companies with charitable objectives) entities, and corporate groups with multiple subsidiaries.

Enhanced Regulatory Coordination:

The amendment mandates that where the merging entities are regulated by sectoral authorities such as the Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), Insurance Regulatory and Development Authority of India (IRDAI), or Pension Fund Regulatory and Development Authority (PFRDA), then in such cases the notice of the proposed scheme must also be issued to such regulators and, in the case of listed companies, to the relevant stock exchanges. This ensures that any objections or suggestions from regulatory bodies are duly considered before the scheme is approved.

Revised Procedural Forms:

To align with the new provisions, several statutory forms have been substituted- **Form CAA-9** which deals with notice of the proposed scheme inviting objections or suggestions; **Form CAA-10** which deals with declaration of solvency by directors.; **Form CAA-10A** which deals with newly introduced auditor's certificate confirming compliance with financial criteria; **Form CAA-11** which deals with notice of approval of the scheme by members and creditors; and **Form CAA-12** which deals with order confirming the merger or amalgamation scheme.

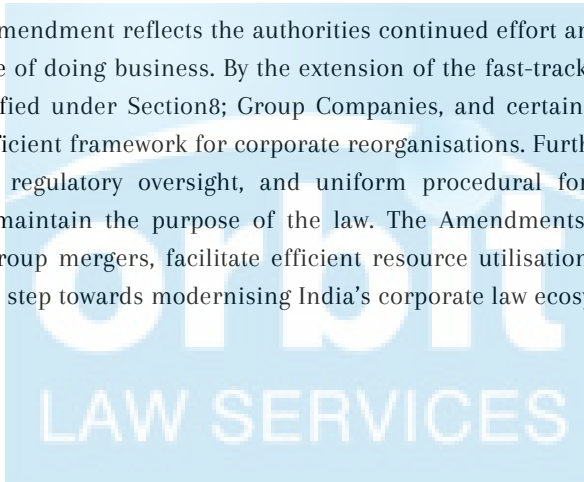
These revised forms aims to bring transparency and consistency in documentation, while allowing online filing through e-forms linked with the MCA portal.

Extension to Divisions and Transfers of Undertakings:

The other substantive amendment is the insertion of Sub-Rule 9, which expands the application of Rule 25 mutatis mutandis to the scheme which will be falling within the ambit of Section 232 (1) (b) of the Act. The provision will empower the Central Government to incorporate provisions similar to those as provided under Section 232(3) while approving such schemes.

Conclusion:

Lastly, it can be concluded that the Amendment reflects the authorities continued effort and emphasis on simplifying corporate restructuring and improving the ease of doing business. By the extension of the fast-track route to a wider coverage of class of companies, including entities, classified under Section 8; Group Companies, and certain cross-border mergers, the MCA has provided a more flexible and time efficient framework for corporate reorganisations. Further at the same time, the requirement for auditor certification, enhanced regulatory oversight, and uniform procedural forms ensures that transparency and accountability remain intact as to maintain the purpose of the law. The Amendments and the change it is intended and expected to speed up the internal group mergers, facilitate efficient resource utilisation, and reduce procedural bottlenecks before the NCLT marking yet another step towards modernising India's corporate law ecosystem.



Judicial Precedents



arise from a series of Special Leave Petitions filed by certain wind power companies from Andhra Pradesh against their lenders.

Background: The Dispute and the Borrowers' Plea:

The Borrowers are independent developers of wind power projects who had availed credit facilities from Banks and Financial Institutions to develop their respective power projects. Following the defaults in repayment obligations, the lenders classified their loan accounts as NPAs. To counter this, the Borrowers argued that their payment defaults were the result of disputes and delayed payments from the **Andhra Pradesh Southern Power Distribution Company Limited (APSPDCL) ("DISCOM")** under Power Purchase Agreements (PPAs). Consequently, they contended that they should not be treated as defaulters or NPAs since their financial distress resulted from pending receivables under the PPAs.

Proceedings Before the Andhra Pradesh High Court:

In 2019, the Borrowers approached the Andhra Pradesh High Court by way of a writ petition seeking directions for payment under their PPAs. During the pendency of these petitions, the High Court passed an interim order restraining the lenders from declaring the defaulted account as NPA and to take any coercive action against the Borrowers.

The lenders challenged the interim order and subsequently the Division Bench held that the lenders are third party to the PPAs and therefore could not be denied their right to recover dues merely because the Borrowers have disputes with the DISCOM.

Further the Division Bench clarified that the *"contractual obligations under the loan agreements were distinct from the*

Supreme Court upholds the contractual obligations arising under Loan agreements between lender and borrowers as legally distinct

On September 16, 2025, the Hon'ble Supreme Court of India upheld the right of the lender to classify borrower's account as a Non-Performing Assets (NPA) and to initiate legal proceedings even when the Borrower's reason for default is due to dispute with a third party.

The judgment in the case of **Dhanu Wind Parks Private Limited v. Union of India and Others (SLP No. 21753/2025)**

commercial disputes under the PPAs and that lenders' recovery rights could not be made contingent on payments from APSPDCL".

Supreme Court's Ruling: Reinforcing Financial Discipline:

Aggrieved by the order, the Borrowers filed Special Leave Petitions before the Hon'ble Supreme Court. After extensive hearings, the Supreme Court dismissed the petitions and upheld the High Court's decision.

Supreme Court reaffirmed principle of banking law that the **lender-borrower relationship is independent of any third-party contractual disputes**. Therefore, borrowers cannot escape the repayment on the pretext of pending claims or payment delays from other entities.

In affirming the lenders' right to classify accounts as NPAs, the Supreme Court recognized that allowing such exceptions would undermine credit discipline and destabilize the banking sector's recovery framework. The Court also emphasized that financial institutions cannot be made to suffer losses due to commercial disagreements between borrowers and their counterparties. Hence to sum it up, Supreme Court held that the **contractual obligations arising under loan agreements between lender and borrower are legally distinct and enforceable independently of parallel commercial disputes the borrower may have with third parties**.

Conclusion:

Supreme Court's decision marks an important reaffirmation of lender's right and financial discipline. By upholding that the Borrowers cannot escape their

repayment obligations due to third-party disputes, the Court has reaffirmed that financial accountability cannot be conditional or deferred. This judgment is important to enhance credit stability across sectors, especially in project-based financing.



Stamp Duty Classification of Security Bond-cum-Mortgage Deeds: Supreme Court clarifies the Law

On October 8, 2025, the Hon'ble Supreme Court of India resolved ambiguity regarding the classification of instruments falling under the category of '**Security Bond cum Mortgage Deed**' under the Indian Stamp Act, 1899 ("**Stamp Act**"). The Court laid down that an instrument is being executed by a principal debtor for its obligations, must be charged under **Article 40 (Mortgage Deed)** and not under **Article 57 (Security Bond)** of **Schedule 1-B** of the Stamp Act.

The judgement is significant for real estate developers, banks, and municipal authorities, as it brings clarity to how hybrid instruments securing contractual obligations need to be stamped and treated for fiscal purposes.

Background and Factual Context:

The dispute arose from a development project undertaken by **M/s Godwin Construction Private Limited** which had been granted permission by the Meerut Development Authority (MDA) to develop a colony. To secure performance of its obligations particularly the payment of external development charges, the company executed a document titled "Security Bond-cum-Mortgage Deed" on 19 December 2006 in favour of the MDA. Through the deed, plots of land measuring approximately 2,934 square metres as security was mortgaged and was declared that the MDA would have the right to sell the mortgaged properties if the developer defaulted in its obligations. The company paid lower stamp duty, classifying their deed under Article 57 (Security Bond) of the Stamp Act, applicable to instruments executed "by a surety to secure the due performance of a contract." However, the Deputy Commissioner (Stamps), upon review, reclassified the instrument as a Mortgage Deed under Article 40, which attracts a significantly higher duty based on the value secured. This order was successively affirmed by the Commissioner, the Allahabad High Court, and finally came before the Supreme Court through civil appeals filed by the company.

Issues:

The central question before the Supreme Court was:

"Whether a 'Security Bond-cum-Mortgage Deed' executed by the principal debtor to secure its own contractual obligations is chargeable under Article 40 or Article 57 of Schedule 1-B of the Indian Stamp Act, 1899?"

Article 40 deals with Mortgage Deeds, which include instruments where a person transfers rights over its owned property to secure repayment of a loan or performance of an engagement.

Article 57, on contrary, applies to Security Bonds or mortgage deeds executed by a surety that is, a third party guaranteeing the obligations of another person. The difference in stamp duty between these two provisions is substantial, making the classification financially consequential.

Court's Analysis: Substance Over Nomenclature:

In the order Justice Prashant Kumar Mishra, emphasized that there is a well-settled principle that ***the true nature of an instrument must be determined by its substance and operative provisions, not by its title or nomenclature.*** The Court meticulously examined the recitals of the deed executed and observed that the company transferred an interest in its own immovable property to the MDA as security for due performance of obligations relating to the development of the colony. The operative clauses expressly empowered the MDA to sell the mortgaged plots in case of event of default. Considering the clause the Court held that the instrument satisfies every element of a "Mortgage Deed" as provided under Section 2(17) of the Stamp Act

Thus, despite being described as a "Security Bond-cum-Mortgage Deed," the instrument, in substance, was a mortgage executed by the principal debtor itself, and therefore could not be treated as a security bond under Article 57.

The judgment further provides a valuable clarification on the legal meaning of the term “*surety*”, referring to Section 126 of the Indian Contract Act, 1872, the Court reiterated that a contract of guarantee involves three parties- surety; principal debtor and creditor. The surety undertakes to discharge the liability of the principal debtor in case of default. Therefore, a security bond under Article 57 necessarily presupposes the existence of a third-party surety distinct from the principal debtor.

In the current case, the Court found that there were only two parties to the document the debtor and the creditor. There was no independent surety or guarantor executing the bond. The company, although represented through its director, was acting on its own behalf, not as a guarantor for another’s obligation. Consequently, Article 57 could not apply.

Application to Similar Transactions:

The Court extended the same reasoning to the connected appeal (S.L.P. (Civil) No. 36434/2014) involving Allahabad Bank, where the borrower company executed a similar document to secure repayment of its loan. Although the deed contained a clause stating that the mortgagor would be “personally liable” for repayment, the Court held that this did not convert the instrument into a security bond. The company’s director executed the deed solely in his representative capacity; hence, the deed continued to be a mortgage executed by the principal debtor, attracting Article 40.

Broader Implications:

The ruling brings much-needed clarity in real estate and financial transactions, where hybrid instruments such as “Security Bond-cum-Mortgage Deeds” are frequently executed to secure obligations under development agreements, loan facilities, or infrastructure contracts. By drawing a clear distinction between self-secured mortgages and third-party guarantees, the Court prevents misuse of lower stamp duty categories and ensures uniformity in fiscal administration.

Moreover, the judgment reinforces judicial consistency with earlier precedents that emphasized that the essence of a transaction must guide fiscal treatment. It underscores the need for accurate legal drafting and appropriate stamping of instruments to avoid costly litigation and penalties.

Conclusion:

The Supreme Court’s decision in the case marks a definitive interpretation of the intersection of Articles 40 and 57 of the Stamp Act. It reiterates that the categorisation of an instrument cannot disguise its true legal character, and that only instruments executed by a distinct surety qualify as security bonds. For all other cases where the principal debtor mortgages its own property, the correct classification is a mortgage deed.

By affirming the previous legal precedents, the Court has not only resolved a specific dispute but also established guiding principles for public authorities, stamp collectors, and contracting parties across India. The judgment ultimately reinforces the fiscal integrity of the stamp duty framework and contributes to greater legal certainty in property and financial documentation.



Know Your Laws



UNFOLDING ROADBLOCKS IN RECOVERY DEBT IN INDIA

The crisis of recovery of debts of banks and financial institutions (**"Lenders"**) is not a new phenomenon; in other words, default is as old as debt itself. Various steps have been taken by the Reserve Bank of India (**"RBI"**) and the Ministry of Finance, Government of India (**"MOF"**) to make improvements from time to time with respect to the recovery mechanism by framing and revising recovery laws to speed up the recovery process for recovery of debt.

Judicial and Administrative roadblocks:

Despite the best possible measures taken by MoF and RBI to address the problems of delayed recovery of debts, all such efforts failed to yield desired results due to various reasons including judicial and administrative road blocks faced by the Lenders, primarily attributable to old mindsets (e.g civil court approach) of the majority of the judges/ members of tribunals/ officials of registries and their limited capacity to manage recovery applications at a desirable pace. It is also not out of place to say that even the poor management of records by the Lenders of financing documents results in delayed in drafting of recovery applications and further the lack of understanding by the Lenders' lawyers of the nature of financial transaction, consumes a lot time for expediting the recovery of debt from courts/tribunals. This is also compounded by the fact that some lawyers take repeated adjournments for proper understanding of the financing documents before concluding evidence from Lenders' side.

Observations & Suggestions made by Raghuram Rajan:

The former RBI Governor Mr. Raghuram Rajan in his book "I do What I do" rightly pointed out that the area of resolution of distress in banking sector we made the least progress, despite the involvement of the best and the brightest in the RBI, was in getting the banks to recognise financial distress and deal with it. This was also the area where the prevailing mindset was shaped most by the existing weak institutional structure, making changes very hard without changing institutions. Mr Rajan also suggested a number of solutions for recovery management like (i) Creation of a Centralised Database of Defaulters to track large borrowers and prevent evergreening of loans; (ii) Strengthening

Asset Reconstruction Companies (**ARCs**) to improve capitalisation and giving them more operational flexibility; (iii) Improved Coordination Among Regulators and Banks: Proposed setting up frameworks such as the Joint Lenders' Forum (JLF) and Corrective Action Plan (CAP) to ensure collective decision-making in large loan recoveries; and (iv) reducing Political and Bureaucratic Interference by taking quick recovery decisions to be made on commercial grounds, not influenced by political or administrative pressure. All such suggestions, if implemented properly by Lenders, would result in early recovery.

Fast Track Debt Recovery Mechanism:

In order to remove the roadblock of lengthy procedure of civil courts for adjudication of debt, the Debt Recovery Tribunals (**"DRTs"**) were set up in accordance with provisions of the Recovery of Debts and Bankruptcy Act, 1993 (as it is presently known), as amended by time to time (**"RDB Act"**) for purpose of fast track recovery mechanism, pursuant to which all pending cases before the Civil courts or High Courts (as per the pecuniary jurisdiction stipulated) were transferred to the respective DRTs having jurisdictions over the matters.

Civil Court Mindset:

The lack of infrastructure in DRT including staff etc. and the civil court mindset of the Presiding Officers (**"POs"**) and Registrars failed to achieve the purpose and object of setting up DRTs. The whole approach of POs for deciding issues while disposing any application in DRT is based on their experience in civil matters.

Most of the time the POs' precious time is being wasted for granting adjournments and not able to devote time to hear matters with quality attention. The daily listed matters are regularly discharged without hearing in the matters as taking up such matters is beyond the capacity of POs'. In many cases the POs are not able to pronounce orders in **Reserved For Orders** matters even after hearing is completed owing to shortage of stenographers and other staff. Many times, POs are transferred without passing an order and incumbent PO requires a fresh hearing in the already heard matters. In such a situation time and money both are wasted. The PO who heard the matter should not be allowed to be relieved till orders in the Reserved For Orders matters are pronounced by the Presiding Officer, so that fresh hearing in Reserved For Orders may be avoided.

Time Consuming Procedure :

DRTs were supposed to be bankers' friendly institutions and only banks and financial institutions are allowed to file an application for recovery of debt before the DRT. DRTs are not governed by the Code of Civil Procedure, 1908 ("CPC") but can apply its provisions where it is necessary to understand and resolve the issue in the interest of justice while providing remedy to the parties. As per Section 22 of the RDB Act, DRTs/DRATs shall not be bound the procedure laid down by the CPC, but shall be guided by the principles of natural justice and, subject to the other provisions of the RDB Act and of any rules, the DRTs/DRATs shall have powers to regulate their own procedure including the places at which they shall have their sittings.

Improvement through Artificial Intelligence ("AI"):

The present situation could be improved including from filing of recovery application till enforcement of RC by using modern technology like Artificial Intelligence ("AI"). Probably, the system driven registry works with less intervention of human element and may improve efficiency in fast numbering/registration of cases and faster

and efficient listing of cases before POs, pronouncement of Recovery Certificate and execution of the RC's in shortest possible time.

Services of Summons:

For speedy recovery, in addition to improvement in infrastructure and competency and capacity of POs and registry staffs, the procedure for managing the process for service to the defendants and prove of claim by the Lenders needs to improve. The major delay is associated in the service to the defendants. Generally, notices are served to the defendants on the last known addresses by the Lenders. Many times, either defendants are not available or offices are found to be closed or no one receives such notices at those addresses. Then DRT issues order to publish the same in newspapers accordingly. Such a procedure is neither cost effective nor achieve the objective of fast-track recovery mechanism within a stipulated time frame. In order to avoid the delay in service of notices, ***the Lenders may stipulate the conditions at the time when the lending documents are executed that the defendants should appoint Service Agent (may be law firms or professional service agent or their financial advisor) and such agent should not change their addresses without prior approval of Lenders.*** In case their addresses change without the approval from the lenders the notices sent to their addresses may be treated as deemed service under law. Such a procedure may save substantial time in the service process.

Interim Relief:

Generally, interim reliefs as prayed for by the Lenders before DRT are to restrain defendants or its agents for selling, transferring their assets including hypothecated and mortgaged assets etc. In my view, appointment of the receiver, in terms of Section 19 (18) of RDB Act by the Presiding Officer, for taking possession of the assets of borrower/ guarantors as an interim measure and such an order would ensure the presence of all Directors before DRT for early resolution of recovery of debt and defendants may not be in position intentionally avoid service of notices / summons.

Delay in Proving Claim:

Based on my personal experiences, the delayed problem in recovery mechanism is not only contributed in DRT mechanism but Lenders also failed to maintain proper ledger and clearly indicate the Principal Amount, Applicable Rate of Interest, Further Interest, Liquidated Damages, Penalty etc. in accordance with RBI Guidelines and guidelines as laid down by the Supreme Court in matter of Ravindra v. Central Bank of India (2002) 1 SCC 367. If the ledger entries of the borrower is correctly maintained as per law, there is presumption in law that the outstanding amount as reflected in the Ledger of the Lenders is correct in accordance with the Bankers Books Evidence Act, 1891 though may not be conclusive evidence but burden of proving such entries may be wrong or incorrect on the defendants. As per Section 4 of the said Act, a certified copy of ***any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry,*** and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry

itself is now by law admissible, but not further or otherwise. The definition of Bankers' books is wide and includes ledgers, day-books, cash-books, account books and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both.

Six Months' Time Limit :

The DRTs were required to issue recovery certificate within six months from the date of filing of recovery application by the Lenders. However, in practice getting a recovery certificate ("RC") within three years from the date of filing is a distant dream especially in cities like Mumbai and Delhi due to procedural delays as well as overburdened DRTs and Registry. In my understanding of law, the RDB Act needs to be interpreted in the light of recovery of public money rather than too much emphasis on procedural defects of the original application filed by the Lenders. In fact, DRT is now become more of procedural tribunal rather than to decide the substantive aspect of recovery of debt. The intention and purpose of stipulation of Six months' time limit is to treat the DRT as the summary court, where the borrower and guarantors need to prove that the debt is not due and payable to the Lenders within fixed time limit otherwise their right to defence may not be available unless 75% of the principal amount as per Ledger of Lenders deposited with DRT. Such an approach may bring discipline in the recovery mechanism of public money.

In order to improve the timeline for issuance of RC through DRT Mechanism, it is suggested that the default as determined under the IBC should also be made applicable to recovery applications filed under RDB Act and the information filed with Information Utilities may be taken into account for determining the default. Such an approach may reduce the timeline for determination of liability of borrower. Accordingly, RDB Act will require suitable amendment.

Bankers' and Lawyers' Limitations :

Since all lawyers are not well trained in accounting system of banks and financial institutions, they need to understand the terms and system of charging the Applicable Rate of Interest, Further Interest, Liquidated Damages, Penalty and also maintaining of ledger entries as per law before drafting and filing recovery application in consultation with the dealing officer of banks. Such an approach will improve the drafting of original recovery application under section 19 of the RDB Act in such a manner to avoid filing further interlocutory application ("IA") and affidavit to prove the claim amount.

Further, each financial transaction is different and drafting of recovery application may not be precedent based (based upon earlier base draft of earlier transaction). Therefore, the skill of drafting of recovery application of our lawyers is based upon complete understanding of the financial transaction and documents of each case. In fact, the Bankers' lawyers need training to understand the lending transaction and their documentation for better understanding of issues before their submission before courts/ DRTs.

Lawyers' Fee Structure:

Lenders need to review the fee structure of lawyers/ law firms based on the nature of transaction and also provide incentive for achieving the milestones in the recovery process so that the lawyers may be motivated to focus on their matters with their own financial interest rather than handling the cases in routine way. In my view the performance of lawyers needs to be monitored on quarterly basis individually, not in group and change the lawyer/firm, if they failed to perform as per agreed terms due their failure to act with prudence in managing the recovery process. In regard to the advocates' fee, Indian Banks' Association ("IBA") should come forward and indicate a minimum fee which is reasonable or even suggest a fee band of minimum and maximum considering merits of each case.

Documents Management:

The major roadblock for early filing of recovery application before DRT by lawyers is not receiving relevant copies of the financing and security documents from banks and financial institutions including mortgage related documents, various corporate and statutory compliances records like filing requisite returns in the public offices, namely Registrar of Companies and CERSAI.

Conclusion :

Problems faced by Lenders for recovery of debt is not only attributable to delays in courts and tribunals alone and there are many roadblocks which need to be addressed by the Government of India, Judicial Authorities and lawyers including the officials of the Lenders for better management of debt recovery either with or without intervention of the courts and tribunals. In my view, the problem of delay in recovery is also due to human factors and mindsets of all Stakeholders rather than deficiency in statutes for recovery of debt. Blaming courts/ tribunals may not yield solutions but all stakeholders including IBA need to take initiative to remove the deficiencies in the road to recovery of debt even if amendment is required in the RDB Act.



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