

DEBT RECOVERY TRIBUNAL

AURANGABAD

RELEVANT PORTIONS PERTAINING TO DRT/DRAT IN THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (54 of 2002)

An Act to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.

Section 13: Enforcement of Security Interest

(Sub Section 10): When the dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner may be prescribed to the Debt Recovery Tribunal having Jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower

Section 17. Right to appeal.- (1) Any person (including borrower), aggrieved by any of the measures referred to in *sub-section (4) of section 13** taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

(3) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made there under.

Objections and Reasons- Clause 17. - *This Clause contains provisions relating to appeal.*

Sub-clause (1) of this clause provides that any person (including borrower) aggrieved by any of the measures referred to in sub-clause (4) of clause 13 taken by the secured creditor or his authorised officer under the proposed legislation, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

Sub-clause (3) of this provides that the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

**[Sub Section.4 of Section 13: In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-*

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realize the secured asset;

(c) Appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.]

Section 18. Appeal to Appellate Tribunal.-(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

Objects and Reasons- *Clause 18.- This clause contains provisions relating to the appeal to Appellate Tribunal.*

Sub-clause(1) of this clause provides that any person aggrieved by any order made by the Debts Recovery Tribunal under clause 17 may prefer an appeal to the Appellate Tribunal within thirty days from the date of receipt of the order of the Debts Recovery Tribunal.

Sub-clause(2) of this provides that the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder

Section 19. Right of borrower to receive compensation and costs in certain cases.- If the Debts Recovery Tribunal or the Appellate Tribunal, as the case may be, on an appeal filed under section 17 or section 18 holds the possession of secured assets by the secured creditor as wrongful and directs the secured creditor to return such secured assets to the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or Appellate Tribunal.

Objects and Reasons-*Clause 19.- This clause contains provisions relating to the right of borrower to receive compensation and costs in certain cases.*

If the Debts Recovery Tribunal or the Appellate Tribunal holds the possession of secured assets by the secured creditor as wrongful possession, and directs the secured creditor to return such secured assets to the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or Appellate Tribunal.

THE SECURITY INTEREST (ENFORCEMENT) RULES,2002

In exercise of the powers conferred by sub-section (1) and clause(b) of sub-section (2) of section 38 read with sub-section (4), (10) and (12) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 (Ord.3 of 2002), the Central Government hereby makes the following rules, namely:-

The following rule is related to DRTs and DRATs.

Rule 11. Procedure for Recovery of shortfall of secured debt.-(1)An application for recovery of balance amount by any secured creditor pursuant to sub-section (1) of section 13 of the Ordinance shall be presented to the Debts Recovery Tribunal in the form annexed as Appendix VI to these rules by the authorised officer or his agent or by a duly authorised legal practitioner, to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar of Debts Recovery Tribunal.

(2) The provisions of the Debts Recovery Tribunal (procedure) Rules, 1993 made under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), shall mutatis mutandis apply to any application filed by under sub-rule (1)

(3) An application under sub-rule (1) shall be accompanied with fee as provided in rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993.

APPENDIX VI
FORM

(See Rule 11(1))

Application under sub-section (10) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002.

For use in Office.

Date of filing

Date of receipt by post.....

Date of receipt by post.....

Registration No.....

Signature
Registrar

IN THE DEBTS RECOVERY TRIBUNAL
(NAME OF THE PLACE)

Between

A.B.

Applicant

And

C.D.

Defendant

Delete whichever is not applicable

Details of the Application:

1. *Particulars of the applicant*

- (i) Name of the applicant :
- (ii) Address of Registered Office :
- (iii) Address for service of all notice :

2. *Particulars of the (defendant)*

- (i) Name of the (defendant) :
- (ii) Office address of the (defendant) :
- (iii) Address for service of all notices :

3. *Jurisdiction of the Tribunal.* –The applicant declares that the subject-matter of the recovery of debt due falls within the jurisdiction of the Tribunal.

4. *Limitation.* - The applicant further declares That the application is within the limitation Prescribed in section 24 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

5. *Facts of the case.*- The facts of the case are Given below:
(Give here a concise statement of facts in a chronological order, each paragraph containing as nearly as possible a separate issue, fact or otherwise.)

6. *Details of recoveries made by sale of securities:-*
(Give here securitywise details of sale/s conducted and realizations, appropriations of sale proceeds towards, costs, interest and principal amount and the balance amount to be recovered.)

7. *Relief sought for.*-In view of the facts mentioned in Para 5 above, the applicant prays for the following relief(s):-
(Specify below the relief(s) sought explaining the ground for relief(s) and the legal provisions (if any relief sought upon).)

8. *Interim order, if prayed for.*- Pending final decision on the application, the applicant seeks issue of the following interim order:
(Give here the nature of the interim order prayed for with reasons.)

9. *Matter not pending with any other Court, etc.*-
The applicant further declares that the matter Regarding which this application has been made is not pending before any Court of law or any other authority or any other Bench of the Tribunal.

10. *Particulars of Bank Draft/Postal Order in respect of the application fee:-*

(1) Name of the Bank on which drawn	:	
(2) Demand Draft No.	:	
		or
(1) Number of Indian Postal Order(s)	:	
(2) Name of the Issuing Post Office	:	
(3) Date of issue of Postal Order(s)	:	
(4) Post Office at which payable	:	

11. *Details of Index.*-An index in duplicate containing

the details of the documents to be relied upon is enclosed.

(Such documents should include copies of sale certificates or any other documents relating to sale of secured assets and sale proceeds realised.)

12. *List of enclosures.-*

VERIFICATION

I,.....(Name in full and block letters), son/daughter/wife of Shri.....being the(designation).....(name of the company) holding a valid power of attorney from(name of the company) do hereby verify that the contents of Paras 1 to 11 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Signature of the Applicant

Place:

Date:

To:

The Registrar

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MINISTRY OF FINANCE
(Department of Economic Affairs)
(Banking Division)

ORDER

New Delhi, the 6th April, 2004

S.O.466(E)- Whereas the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) (hereinafter referred to as the said Act came into force on the 18th day of **December**, 2002;

And whereas any person (including borrower), aggrieved by any of the measures referred to in sub-section(4) of section 13 of the said Act taken by the secured creditor or his authorised officer under Chapter III of the said Act, may prefer an appeal under sub-section (1) of section 17of the said Act to the Debts Recovery Tribunal established under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 having jurisdiction in the matter;

And whereas the provisions contained in sub-section (3) of section 17 of the said Act provides that the Debts Recovery Tribunal shall, as far as may be, dispose of an appeal arising with the said Act in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and Rules made thereunder;

And whereas section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, read with rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 made under that Act, specifies the fee for the purpose of filing an application to the Debts Recovery Tribunal under the Act;

And whereas any person (including borrower), aggrieved by any order made by the Debts Recovery Tribunal under sub-section (3) of section 17 of the said Act may prefer an appeal under sub-section (1) of section 18 of the said Act to the Debts Recovery Appellate Tribunal referred to under sub-section (1) of section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the Appellate Tribunal) having jurisdiction in the matter;

And whereas the provisions contained in sub-section (2) of section 18 of the said Act provides that the Appellate Tribunal shall, as far as may be, dispose of an appeal arising with the said Act in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder;

And whereas section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, read with rule 8 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994 made under that Act, specifies the fee for the purpose of filing of an appeal to the Appellate Tribunal;

And whereas in the absence of express provisions to levy fees, difficulties have arisen in the matter of levying of fees for filing of appeals under section 17 and 18 of the said Act to the Debts Recovery Tribunal and the Appellate Tribunal established under the Recovery of Debts Due to banks and Financial Institutions Act, 1993;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 40 of the said Act, the Central Government hereby makes the following Order to make the provisions for levying of the fee for filing of appeals under sections 17 and 18 of the said Act, being not inconsistent with the provisions of the Act, to remove the difficulty, namely:-

1. *Short title and commencement:*

- (i) This Order may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2004.**
- (ii) It shall come into force at once.**

2. *Definition-* Debts Recovery Tribunal (Procedure) Rules, 1993 means the Debts Recovery Tribunal (Procedure) Rules, 1993 made under section 9 read with clause (e) of sub-section (2) of section 36 of the Recovery of Debts Due to banks and Financial Institutions Act, 1993.

3. *Fee for filing of an appeal to Debts Recovery Tribunal.* – The fee for filing of an appeal to the Debts Recovery Tribunal under sub-section (1) of section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 shall be mutatis Mutandis as provided for filing of an application to the Debts Recovery Tribunal under rule 7 of Debts Recovery Tribunal (Procedure) Rules, 1993.

4. *Fee for filing of an appeal to Debts Recovery Appellate Tribunal.*- The fee for filing of an appeal to the Debts Recovery Appellate Tribunal under sub-section (1) of section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 shall be mutatis mutandis as provided for filing of an appeal to the Debts Recovery Appellate Tribunal under rule 8 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994.