REPORT OF THE WORKING GROUP

TO REVIEW THE FUNCTIONING OF

DEBTS RECOVERY TRIBUNALS

1998

RESERVE BANK OF INDIA
MUMBAI

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LD.No. NVD/११२६/B-98/99

31st August 1998

The Deputy Governor,
Reserve Bank of India ,
Mumbai.

Dear Sir,

Working Group to review the functioning of Debts Recovery Tribunals established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993

I have the pleasure in submitting the final report of the above Working Group constituted by the Bank by its Memorandum dated 24th March, 1998. The Report contains the recommendations of the Working Group for amendments to the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Rules framed thereunder and procedural practices followed by the Debts Recovery Tribunals for improving the efficacy of legal machinery. The report also outlines the non-statutory measures for improving the functioning of Debts Recovery Tribunal. The Interim Report of the Working Group was submitted on 18th June 1998.

Yours faithfully,

(N.V. Deshpande)
Legal Adviser/Chairman

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CHAPTER I

INTRODUCTION

Background :

1.1 Over a period of time, the banks and financial institutions have been experiencing considerable difficulties in recovering loans and enforcement of securities charged to them. The prescribed procedure for recovery of debts due to the banks and financial institutions has resulted in blocking a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The data collected around September 1990 revealed that there were more than 15 lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions which were pending in various courts and the recovery of debts involved more than Rs.5622 crores as dues to public sector banks and about Rs.391 crores of dues to financial institutions.

1.2 The First Committee on Financial System (1991) headed by Shri M.Narasimham considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. The Committee emphasised on an urgent need to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. Earlier in 1981, a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and had suggested remedial measures

including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure.

1.3 In the above background on 24th June 1993, an Ordinance was promulgated by the President, viz. the Recovery of Debts Due to Banks and Financial Institutions Ordinance, 1993. This Ordinance was replaced by an Act of Parliament which received the Presidential assent on 27th August 1993. Under the Act, so far, nine Debts Recovery Tribunals (DRTs) have been established at Ahmedabad, Bangalore, Calcutta, Delhi, Jaipur, Chennai, Guwahati, Patna and Jabalpur covering 22 States and 4 Union Territories as detailed in the Annexure I. Out of the nine DRTs, four DRTs have been established recently i.e. Chennai on 1.11.1996, Guwahati on 7.1.1997, Patna on 24.1.1997 and Jabalpur on 7.4.1998. The Appellate Tribunal (DRAT) was established in Mumbai on 12.7.1994. The process for establishment of DRT at Mumbai is stated to be in progress.

1.4 The process of establishment of Tribunals received a setback in March, 1995 when the Delhi High Court set aside the Act declaring it as unconstitutional and void while deciding a writ petition filed by the Delhi High Court Bar Association under Article 226, challenging, inter alia, the constitutional validity of the Act on the ground that the Act is unreasonable and is violative of Article 14 of the Constitution and that it was beyond the legislative competence of Parliament to enact such a law.

1.5 Steps were taken by the Union Government to move the Supreme Court by way of a Special Leave Petition and the Hon'ble Supreme Court stayed the orders of the Delhi High Court. Successively, a large number of cases

had been filed in the various High Courts challenging the validity of the Act. The Central Government, therefore, filed transfer petition for transferring the cases where stay orders had been granted by the various High Courts, to the Supreme Court so that the question of validity of the Act of national applicability could be decided by the Apex Court. The Hon'ble Supreme Court vide its order on the transfer petition on 27.11.1995 stayed further proceedings in these writ petitions and subsequently on 18.3.1996 modified its order directing that notwithstanding any stay order passed in any of these writ petitions, the Debts Recovery Tribunals (DRTs) established under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 shall resume their functions.

1.6 As at the end of June 1997, out of total number of 11700 cases filed and transferred to DRTs involving Rs.8,866.67 crores, only 1045 cases had been decided and a meager amount of Rs.178.08 crores was recovered.

1.7 Taking a serious note of this situation, the Central Board of Reserve Bank of India in their meeting held on 22nd January 1998 at Ahmedabad reviewed the effectiveness of the Debts Recovery Tribunals (DRTs). It was the view of the Board that the working of DRTs had fallen short of the expectations by not creating of a fast track system for recovery of bank dues and they were not serving the purpose for which they were set up. It, therefore, directed that a Working Group comprising of officials from Banking Division, some bankers along with RBI officials be set up to look into the various issues and to suggest measures for their effective functioning.

Composition of Working Group :

1.8 It was in the above background, that the Reserve Bank of India set up this Working Group in March 1998 to review the functioning of DRTs. The Working Group comprised of :

1.	Shri N.V. Deshpande Legal Adviser	Chairman	
2.	Shri D.P. Sharma Jt. Secretary Ministry of Law & Justice, Govt. of India,	Member	upto 28th July 1998
	Shri A. Sinha, Jt. Secretary, Ministry of Law & Justice Govt. of India		from 29th July 1998
3.	Shri S.K. Batra, Under Secretary, Ministry of Finance, (Banking Division), Govt. of India.	Member	
4.	Shri B.D. Ushir Legal Adviser IDBI, Mumbai.	Co-opted as Member on 2.5.98	
5.	Shri S.N. Sahai General Manager (Law), State Bank of India.	Member	
6.	Shri M.T. Udeshi Dy. General Manager (Legal), Bank of Baroda.	Member	

7. Shri V.K. Shah — Member
Legal Officer,
Indian Banks' Association.

8. Shri A.L. Narasimhan — Member
Addl. Chief General Manager,
D.B.O.D., C.O.,
Reserve Bank of India.

9. Shri S.C. Gupta, — Member Secretary
Jt.Legal Adviser,
Legal Department,
Reserve Bank of India

The Secretariat for the Working Group was provided by the Department of Banking Operations and Development/Legal Department, Reserve Bank of India, Central Office, Mumbai.

Terms of reference :

1.9 The terms of reference of the Working Group were as under :

i) To look into various issues and problems confronting the functioning of DRTs in expeditious recovery of bank dues.

ii) To suggest measures for effective functioning of DRTs.

iii) To examine the existing statutory provisions and suggest necessary amendments to the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and Rules framed thereunder with a view to improving efficacy of legal machinery.

iv) Any other relevant aspects.

Methodology -

1.10 Methodology adopted by the Working Group to deal with the above terms of reference included compilation of information/suggestions from banks, financial institutions, Presiding Officers of DRTs/DRAT, Recovery Officers of DRTs, advocates/counsels appearing before DRTs through questionnaires prepared by the Working Group. Different questionnaires were sent to different target groups soliciting information, inter alia, on operational/administrative difficulties faced by them in the expeditious adjudication and recovery of debts and legal hurdles. They were also requested to give their suggestions for effective functioning of DRTs. Copies of the questionnaires are given in Annexures II to V . The Working Group had also an interface with the POs of DRTs/DRAT. The Working Group had very detailed discussion with the representatives of Financial Institutions, the banks as also advocates who had been appearing on behalf of the banks/defendants before DRTs located at New Delhi and Jaipur.

1.11.1 The first meeting of the working Group was held on 20th April, 1998. S/Shri N.V. Deshpande, S.K. Batra, D.P. Sharma, A.L. Narasimhan, S.C. Gupta, S.N. Sahai, M.T. Udeshi and V.K. Shah attended the meeting. It was decided in the meeting to get feedback from various target groups as stated above. It was also decided to have an interface with the Presiding Officers of Debts Recovery Tribunals on 2nd May 1998 when they were expected to be in Mumbai in connection with their conference.

1.11.2 On 2nd May 1998 the working Group had an inter action with the Presiding Officers of DRAT and DRTs who had assembled at Mumbai in connection with their conference. In the same meeting, it was decided to co-opt Shri B.D. Ushir, Chief General Manager (now legal Adviser) of Industrial

Development Bank of India as a member of the Working Group to have the benefit of his experience in the financial sector.

1.11.3 In the meeting held at New Delhi on 28th May 1998, the Working Group met the representatives of IFCI, the banks as also advocates who had been appearing on behalf of the banks/defendants before DRTs at New Delhi and Jaipur.

1.11.4 The fourth meeting of the Working Group was held on 12th June, 1998 and an interim report relating to the legislative amendments as prepared by the secretariat of the Working Group was discussed and finalised. It was also decided to request the Reserve Bank of India to extend the term of the Working Group by at least 3 months as the same was expiring on 23.6.1998..

1.12 An Interim Report of the Working Group was submitted to the Reserve Bank of India on 18th June 1998 and a request to extend the term of the Working Group was made which was accepted by the Bank and the term of the Working Group was extended till the end of the month of August 1998. The Interim Report is marked as Annexure-VI.

1.13 The Working Group received highly satisfactory response from the Banks, Financial Institutions, Debts Recovery Tribunals and Advocates. The suggestions made by these groups were duly evaluated. The Group also deliberated on the theme paper prepared by Shri N.V.Deshpande, Chairman and Legal Adviser, Reserve Bank of India suggesting inter alia, measures for effective functioning of DRTs. The Theme Paper is annexed to this Report as Annexure-VII.

1.14 The fifth and sixth meetings of the Working Group were held on 21st and

24th July 1998 respectively at Mumbai.

1.15 The Working Group was shown the report of the Rajya Sabha Committee on Subordinate Legislation. In its 118th Report dealing with Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Committee concluded in para 3.9 of its report dated 12th June 1998, that debt recovery mechanism under the Act and Rules has failed to achieve the objects for which the Tribunal was set up. According to this Committee, legal infirmities, the bottlenecks in the Rules and infrastructural constraints have contributed together in making this unhappy situation.

1.16 Earlier the national seminar on the DRT/DRAT organised by National Institute of Banking Studies and Corporate Management at New Delhi on 6th December 1997, had made several suggestions for improving the working of the DRTs. On 30th April 1998, Small Scale Manufacturers Exporters' Association, Ludhiana, made a representation to the Prime Minister of the country, making various grievance against the working of the banks in general and the DRTs and particularly location of Jaipur by conferring jurisdiction on it in connection with the debt recovery disputes of the borrowers in Punjab, requiring them to travel 1400 kms. to and fro on each date of hearing.

1.17 The Working Group deliberated on the recommendations of the Rajya Sabha Committee on Subordinate Legislation, the suggestions made by the National Seminar on the DRTs and also the suggestions made by the Small Scale Manufacturers Exporters' Association which had viewed its grievance against the method of implementation of Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

1.18 The Working Group extensively examined the legal provisions contained in the Act, to look into various the operational/administrative difficulties faced by various groups and suggested necessary amendments to the provisions of the Act, Rules framed thereunder and procedural practices followed by DRTs and DRAT with a view to improving the efficacy of legal machinery. The Working Group has also recommended certain measures of effective and expeditious procedure to improve overall functioning of DRTs.

1.19 While this report does not furnish any draft amendments, it sets out ingredients which needs to be incorporated in the Act/Rules. Also the report outlines some non-statutory measures for improving the functioning of DRTs.

1.20 The final meeting of the Working Group was held on 27th August 1998 at New Delhi and the Report of the Working Group was finalised.

Acknowledgements -

1.21 The Working Group is grateful to members of various target groups with whom it had interfaced for giving valuable suggestions. The Working Group acknowledges and appreciates the efforts by the officials and staff of Department of Banking Operations and Development (Legislation Section), and Legal Department, Reserve Bank of India who provided the secretarial services especially Kum. K.R.Pradhan, Deputy General Manager, Shri M.M. Lad, Asstt.Manager, Department of Banking Operations and Development, Central Office and S/Shri G.S.Hegde, Deputy Legal Adviser, K.P.S.Kapoor, Assistant. Legal Adviser and V.K.Siddham, Stenographer, Legal Department, Reserve Bank of India, Central Office, Mumbai. The Working Group is also

thankful to Bank of Baroda and State Bank of India for providing services of their officers Shri V.Srikumaran and Miss Veera Gavai respectively.

CHAPTER- II

Statutory Provisions & Proposals for Amendments

2.1 The recovery of over dues is as vital for the growth and profitability of the banks and financial institutions as is the need for recycling such funds for the general economic development. Thus, the imperative for speedy recovery of such over dues does not require any separate justification. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was enacted by the Parliament in August 1993, in pious hope that the recovery of the bank dues would become more prompt and less cumbersome. It is now clear that these hopes have been totally belied. In this Chapter it is proposed to deal with the causes, both legal and otherwise, which led to the present unhappy state of affairs to suggest necessary remedial measures, including the amendment of the Act to ensure that the DRTs under the Act play important role in effecting the recoveries which was assigned to them while passing the Act by the Parliament.

2.2 The Working Group is fully aware that any delay in recovery of the funds lent by the banks and the financial institutions deprives the other eligible borrowers of funds. Therefore, the expeditious recovery of outstanding loans and advances is of utmost importance to the banks and also to the country ultimately. It is for this reason that the Section 19(8) of the Act enjoins upon the DRTs to deal with the applications expeditiously within a period of six months from the receipt of such applications.

2.3 In the interim report dated 18th June 1998, the Working Group had referred to the general feeling amongst the banks and the financial institutions, Pos of DRTs and advocates that the number of cases that are presently being handled by DRTs are very large resulting in large number of pending cases. Nearly all the DRTs have jurisdiction over very extensive areas. For example, the DRT at Jaipur had jurisdiction not only over the State of Rajasthan, but also over the States of Punjab, Himachal Pradesh, Haryana and Chandigarh. Small Scale Manufacturers Exporters' Association of Ludhiana had made representation to the Central Government about the large area under the jurisdiction of the DRT, Jaipur saying that borrowers of the banks and financial institutions have to travel, some times more than 1400 kms. to and fro on each date of hearing and in the process, they lose valuable time, money and energy. Presently, its jurisdiction has been extended for the time being to the States of Gujarat, Dadra and Nagar Haveli and Div and Daman, as there is no PO of the DRT at Ahmedabad. Similarly, DRT at Bangalore has jurisdiction not only over the State of Karnataka, but also over the Andhra Pradesh. DRT, Jabalpur has jurisdiction over the two most populous states of India, viz. Madhya Pradesh and Uttar Pradesh. DRT at Patna has jurisdiction not only over the State of Bihar, but also covers the State of Orissa. These DRTs, apart from the civil cases transferred to them under Section 31 of the Act which are very large number, have to cope with the new claims filed by the banks and financial institutions with the result that they do not get adequate time to pay proper attention to the cases before them. The Working Group, in paragraph 6 of its interim report, had recommended that more POs should be appointed so that the cases can be disposed of expeditiously. The Rajya Sabha Committee on the Subordinate Legislation, in its 118th report dated 12th June 1998, has also adversely commented on the vast geographical jurisdiction of

the DRTs. It has stressed the need to have separate tribunals for large states so that the burden of cases of the existing tribunals is lessened. In the opinion of the Working Group, not only there should be tribunal in every State, but there should be more than one PO appointed on DRT in the same State if the work load of the Tribunals so justify. The PO of a DRT should not have more than 30 cases on the board on any given date and there should not be more than 800 cases pending before it at any given point of time. If the number of cases go beyond 800 cases, the Government should consider appointing more POs and even more tribunals to deal with such cases.

2.4 Section 5 of the Act prescribes the qualifications for the appointment POs of the DRTs. In terms of this Section, no person is qualified for appointment of the PO of the tribunal unless he is qualified to be a District Judge. Many banks and financial institutions and advocates have made representation that many of the POs are judicial officers who tend to follow the procedures of CPC while dealing with the applications filed by the banks and financial institutions resulting in inordinate delay in disposal of the matters before them. According to the banks, the Judges have no knowledge of banking laws and practice and, therefore, are unable to appreciate the naunces involved in granting of loans, etc. They have, therefore, suggested that the candidates having knowledge and practical experience in banking law should also be considered for appointment as POs. On the other hand, some of the Registrars attached to the DRTs have pleaded that they should also be considered for appointment of POs after having put in more than 2 years of service as the Registrar. The matter was deliberated in great detail by the Working Group. It felt that while there were advantages in having judicial officers as POs of the tribunals, the claim of the experts and eminent persons with knowledge of banking law and practice also merits

consideration. It, therefore, recommends that Section 5 of the Act, which deals with the qualifications for appointment as POs of DRTs, may be amended to make such experts in banking laws as eligible for being considered for appointment as the Pos. While making this recommendation, the Working Group has taken into account the fact that under the Debt Recovery Tribunals (Procedure for appointment as the Presiding Officers of the Tribunal) Rules, 1998, the selection of POs is now made by a committee consisting, inter alia, Chief Justice of India and the representative of Reserve Bank of India, which itself will ensure that the persons selected as the PO of DRTs are only those people who have some good knowledge of the working of the banking and the laws applicable to it. We, accordingly, recommend the amendment of Section 5 of the Act.

2.5 Under Section 6 of the Act, the PO of the tribunal holds office for a term of 5 years from the date on which he enters upon his office or until he attains the age of 62 years, which ever is earlier. There is no provision in the Act for reappointment of such POs even though they may not have completed the age of 62 years. Several banks and advocates have stated that competent people refuse to take the assignment as PO, as they have to demit their office even before they have reached the normal age of their retirement. The Working Group finds merit in the submissions and recommends that Section 6 of the Act may be amended to provide for reappointment of such PO, until they reach the age of 62 years which is regarded as the normal age of retirement for such officers.

2.6 Section 7 of the Act stipulates that the Central Government shall provide the tribunal with a Recovery Officer and such officers or employees as the Government may deem fit. A very large number of banks, financial

institutions and POs have complained that one of the main reasons for delay in effecting the recovery of the banks dues is inadequate number of ROs as the Act provides for the appointment of one RO to each DRT. It was brought to our notice that due to large volume of work pending before the ROs, they were unable to give proper attention to effect recoveries due under the recovery certificates. The Working Group, in its interim report dated 18th June 1998, had recommended the amendment of Section 7 to enable the Central Government to appoint more than one RO with each tribunal. The exact number of such ROs should necessarily depend upon the number of recovery certificates pending with such officer. The Rajya Sabha Committee on Subordinate Legislation in para 4.4(d) of its report dated 12th June 1998 recommended that a Recovery Officer should not have more than 300 cases at a time. Accordingly, under each tribunal, more number of ROs should be appointed to ensure speedy recovery of banks dues. The Working Group is in complete agreement with the recommendations of the Rajya Sabha Committee and recommends accordingly. The Rajya Sabha Committee's recommendation is also an endorsement of the views which were expressed by the Working Group in its interim report dated 18th June 1998.

2.7 Several valuable suggestions have been made as to who should be supervisory authority over the DRTs. Some of the advocates have suggested that the working of the DRT should be subject to the superintendence and control of High Court. This suggestion probably was made more with an eye to protect the validity of the Act which is presently under challenge before the Supreme Court. As of today, DRAT exercises appellate powers over the orders passed by the DRTs. It is noted that the PO of the appellate tribunal is normally one who is or has been or is qualified to be a Judge of

the High Court. In our opinion, such appellate tribunal would be better qualified to exercise supervisory jurisdiction over such DRT. It is no doubt true that presently there is only one DRAT and it may be difficult for him to supervise all the DRTs. However, we understand from the Government of India that they are already committed to establish at least 4 more appellate tribunals in major centres in the country, which are likely to be located at Delhi, Chennai, Calcutta and Guwahati. It will, therefore, be possible for the appellate tribunals to exercise supervisory control over such DRTs within the areas of their jurisdiction. We accordingly recommend the amendment of Section 12 of the Act to provide for this. This supervisory control will, it goes without saying, include evaluation of the work done by DRTs and their annual confidential reports by DRATs.

2.8 Section 19 of the Act enables the banks and financial institutions to make an application to the tribunal for recovery of debt due from any person. Presently, only recovery cases filed by the banks and financial institutions are entertained by the DRTs. In the case of State Bank of India Vs. M/s.V.K.Tayal and Others, reported in AIR 1997 – Delhi – 170 and M/s.Cofex Exports Ltd. Vs. Canara Bank, reported in AIR 1997, Delhi 355, the Delhi High Court has held that under the Act, the tribunal has jurisdiction only to decide the claims or dues to the banks and financial institutions and cannot pass any order or decree against such banks or financial institutions. This has created multiplicity of fora and is opposed to the principles of natural justice, inasmuch as the borrowers are denied the access to the forum, whereas the lender can pursue his claim. The Act, as it stands today, requires the banks/financial institutions to place their claim before one forum and a counter-claim by the other party before another forum. Therefore, it is necessary that all claims by the banks and borrowers

should be adjudicated only by one forum by making change in the statutory provisions. There is always a possibility that if the proceedings are adjudicated by two different judicial authorities, apart from resultant delay and inconvenience to both, it may result in conflicting decisions. The Working Group, therefore, recommends that at least the counter-claim to the extent of the claim made by the banks and financial institutions should be allowed to be adjudicated before DRTs. Of course, in order to discourage frivolous counter-claims by unscrupulous litigants, it would be advisable to fix court fees on such counter-claims. The Working Group, however, would like to point out that so far as the set-offs are concerned, they are even presently under the jurisdiction of the tribunals and, therefore, not subject to any court fee by the defendants. The Working Group may not, therefore, be taken to have recommended the payment of any court fees in respect of the claims for set-offs by the defendants. In order to put the matter beyond doubt, the Working Group recommends that the definition of expression "counter-claim" may be inserted in the Act and jurisdiction of the tribunal be accordingly enlarged to entertain such counter-claims by the other parties.

2.9 Even though Section 20 of the Act provides for filing of appeal by the aggrieved party against any order made or deemed to have made by the tribunal, it was brought to the notice of the Working Group that the borrowers have been moving the various High Courts and obtaining the stay against the operation of such orders passed by the tribunals. Accordingly, the representations have been made to us to make suitable recommendations for amendment to the Act to restrict the interference by the High Courts. In view of the superior courts' constitutional writ jurisdiction, the suggestion cannot be accepted. The Working Group studied the judgements to ascertain the grievances for which the courts are

being approached. On careful reading of the judgements of the High Courts, the Working Group has come to the conclusion that the High Courts have been entertaining writ petitions (even when such petitioners have alternative remedy of appeal before DRATs) because of the failure on the part of the Central Government to appoint adequate number of DRATs. In Writ Petition No.15891 of 1997, the Madras High Court referred with approval to the judgement of Calcutta High Court, AIR 1997 – Calcutta 96 and observed that approaching the appellate tribunal at Mumbai against the simple interlocutory order of the tribunal involves not only expenses but also considerable period of time and delay in disposal of appeal and defeats the very purpose of the Act. The Madras high Court, therefore, suggested that there should be at least four appellate tribunals, one for each region if not one for each State. According to the Court, the delay on the part of the Central Government to constitute adequate number of appellate tribunals to serve all the regions of the country in terms of Section 8 of the Act cannot be excused to inflict hardship on litigant public. While describing the object of the Legislature in having brought forth the Act as "welcome", the Court recommended to the Central Government to appoint adequate number of appellate tribunals to serve all the regions of the country. Now that the Government has already agreed to constitute at least four more appellate tribunals, the High Courts will be more unlikely to interfere with the interim orders passed by the tribunals as quick efficacious remedy will be available to the parties under the Act.

2.10 The Recovery Officers attached to each DRT can effect recovery of dues only on the basis of recovery certificates issued by the tribunal. If the party has gone in appeal and the amount of the outstanding demand is reduced as a result of the appeal, the tribunal that originally issued the

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recovery certificates has to amend the same. However, the Act does not provide for enhancement of such recovery certificate if on appeal preferred by the bank/financial institution, the amount of recovery certificate is enhanced. The Working Group recommends that Section 27(4) of the Act may be amended to empower the DRTs to amend the certificate by enhancing or reducing the amount as the case may be, depending upon the order passed by the DRAT.

2.11 Neither the Act nor the Rules framed thereunder provides for the jurisdiction of the RO as it is assumed that the jurisdiction of RO can not be beyond the jurisdiction of DRT. At times, the properties of the borrowers may be spread all over the country, the RO have faced difficulties in executing recovery certificates on the ground of lack of jurisdiction. To overcome this difficulty, we recommend that there should be the provision for transfer of recovery certificate from one RO to another. However, such transfer of recovery certificate should be made only on the direction of the tribunal, which has issued the recovery certificate. This will facilitate the recovery of the dues of banks and financial institutions through RO within whose jurisdiction the property of the borrower may be situated. The Working Group recommends amendment of Section 18 of the Act for the purpose.

2.12 Some of the banks have suggested that in all cases where the decree has already been passed by the civil court and the case has been transferred to the tribunal under Section 31, it should not be necessary for the tribunal to issue any recovery certificate and that the decree passed by the civil court should be treated as recovery certificate and the RO should be empowered to straight away initiate steps for recovery of dues awarded by such decree.

There is merit in the suggestion inasmuch as while passing the decree, the civil court has already adjudicated the claims of the parties and all that remains is the execution of such decree. Section 31(2)(b) of the Act provides that where any suit or proceedings have been transferred to DRT, it may proceed to deal with such suit to or other proceedings in the same manner as in the case of an application made under Section 19(of the Act) from the stage which was reached or even de novo as the DRT may deem fit. However, the decrees passed by the civil courts stand on a different footing as much as the claims of the parties are already adjudicated by the civil court and all that remains is execution of such decrees. Therefore, in all such cases, the DRT should pass the order for issue of recovery certificate. We, accordingly, recommend that a proviso may be added to Section 31(2) of the Act to provide that where a decree has already been passed by a civil court, DRT will issue the recovery certificate specifying the amount as per the decree passed by the civil court. Needless to say that since the parties have already paid the court fees while instituting the suit in the civil court, banks/financial institutions should not be burdened with further obligation to pay court fees in respect of such transfer of suit/decree.

2.13 Section 22 of the Act provides that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Civil Procedure Code, 1908 and shall be guided by the principles of natural justice and subject to the other provisions of this Act, and of any rules, tribunal and the appellate tribunal shall have the powers to regulate their own procedure, including places at which they shall have their sittings. We are advised by the Central Government that pursuant to this provision, all the DRTs have framed nearly identical Regulations of practices on the lines of the Regulations of practice prepared by the DRT, Bangalore. According to the

Government, certain minor variations have been allowed in such rules of practice having regard to the local conditions prevailing in those areas. However, from the submissions made by the banks and financial institutions it seems to us that the Tribunals do follow different practice at different centres. For example, according to Bank of Maharashtra, Delhi, Jaipur and Bangalore tribunals insist on the evidence of banks witnesses and do not accept banks affidavit, while other DRTs insist on all the affidavits in support of evidence to be filed along with the main application. In case of some of the DRTs, they follow the provisions of Civil Procedure Code which cause undue delay. Similarly, there is also divergence of practice followed by DRTs regarding the scale of fees of the advocates engaged by the banks and financial institutions. While there are separate guidelines generally followed by the banks, all of them pay fees to the advocates depending upon the value of the claims before DRTs. Our attention has been brought to Rule 50(b) of the DRT Regulations of Practice, 1996 of Bangalore, where the applicant banks are required to pay the fees to the advocates according to the scales of fees fixed by the High Courts of Karnataka and Andhra Pradesh. There are several other major deviations followed by the tribunals. The Working Group is of the opinion that such important matters cannot be left to the discretion of the individual tribunals. The matter was deliberated upon at length amongst the members of the Working Group and the Working Group recommends that Section 22 of the Act should be amended also to provide for framing of Rules of practices by each DRAT and should be applicable to all DRTs under his jurisdiction.

2.14 More than the change in the Regulations of Practices to be followed by the DRTs, it is necessary to consider some of the procedures that can greatly reduce the pressure on the available time with the DRTs. During

the course of interaction with the representatives of the banks, financial institutions and their advocates, several advocates referred to the procedural difficulties as the cause for delay in the proceeding before the tribunals. One of the reasons given by them for the delay is non or delayed service of notices on the defendants. Section 19(3) of the Act provides that on receipt of the application, under Sub-Section (1), the tribunal shall issue summons requiring the defendant to show cause within 30 days of the service of summons as to why the relief prayed for should not be granted. Presently, Rule 11 of the DRT (Procedure) Rules, 1993, requires the Registrar of the tribunals to serve a copy of the application and paper book to the defendants by registered post. It is the general feeling that due to inadequate infrastructure available with the tribunals, the office of the tribunal takes very long time, even in preparing the summons to the defendant. It is also not unusual to see such notices returned undelivered by the postal department for various reasons including that the defendants have left the place. The matter was considered at length by the Working Group and it is felt that it is necessary to simplify the procedure for service of summons to the defendants. The banks and financial institutions being the interested parties, it should be their responsibility and obligation to ensure that the notice to the defendants are properly served and the matter is not prolonged merely on account of non-service of summons on the other party. In fact, even the Central Government had moved a Bill in Rajya Sabha (being Bill No.50 of 1997) for amendment of provisions of Civil Procedure Code to simplify the procedure and to eliminate delay in the civil courts. While the Bill has not been passed and made into an Act of Parliament, the Working Group feels that some of the provisions contained in the Bill can be used in the administration of the DRT Act to eliminate delay. One such item is the service of the summons on the other parties by the plaintiffs. The

Working Group recommends that once the tribunal has directed issue of summons, it should be the obligation of the banks/financial institutions to ensure the service of the summons on the other party. Some of the representatives of the banks were somewhat reluctant to undertake this obligation of service of summons as in many cases they did not have the proper address of the defendants. The Working Group is surprised at their reluctance as it is banks who give loans to the borrowers and thereafter, file applications before the DRT by making payment of court fees and other expenses but even without keeping a track of whereabouts of such borrowers. Of course, it is possible that in an unlikely event of a defendant not being traceable, they can approach the tribunals for substituted service. But the responsibility of effecting service on the defendants should be that of the applicants. How the service is effected by the plaintiff bank/financial institution should be left to them. Further to ensure that the banks do effect service on the defendants, any delay should disentitle them for interest for the period of delay in effecting service on the defendants. This suggestion when implemented will greatly reduce the total time taken by the tribunals and can be implemented by mere amendment of the Rules.

2.15 Before the DRT Act was passed by the Parliament in 1993, RBI had constituted the V.G.Hegde Committee on Legal Aspects Relating to Operations of Banking and Financial System, which in its report dated 27th March 1992, had made the following recommendations:

"The proposed legislation should provide for certain presumptions to be drawn by the Banking Tribunals for the purpose of dealing with the claims. When there is documentary evidence regarding the passing of consideration or the creation of assets from the loan proceeds or when a regularly

maintained account is there between borrowers and the banks and financial institutions, the Banking Tribunals should proceed on the presumption that the documents are executed, the relationship of creditor and debtor exists and the debt is due. Only in exceptional cases, oral evidence may be recorded. Normally, the Tribunals should act on the basis of the documentary evidence before them. The Committee feels that a time bound programme could be stipulated for disposal of the claims and that a period of 180 days from the date of claim should be sufficient" Dealing with the procedure, it recommended that a notice may be issued to the borrowers calling upon them why a certificate of recovery for the amount due (to be specified in the notice) should not be issued. Unless the borrower comes up with a specific defence, pointing out the discrepancies in the calculation, etc. the recovery certificate should follow immediately.

2.16 Section 19(3) of the Act when it provides for issue of the notice to defendants as to why the relief prayed for should not be granted, contemplates summary procedure. However, the Act does not make any presumption in favour of the banks or financial institutions to make summary procedure really effective. The Working Group recommends that the Act should be amended to provide for statutory presumption in favour of the banks/financial institutions. Therefore, once the bank or financial institution produces duly certified statement of account of the borrower showing the principal amount and the calculation of interest and the outstanding amount of loan supported by the loan agreement of debit confirmation or other acknowledgement of debt, the burden of proof should be on the defendant to prove that no monies were borrowed by it or the monies borrowed and due were less than claimed in the application. Further, once the presumption is made a part of the Act, the tribunal should order

issue of recovery certificate on the first date of hearing unless the defendant is granted leave to defend after he has shown cause against such issue of certificate. This presumption will also obviate the need for proving the documents and other evidence on behalf of the lending banks and financial institutions.

2.17 Having regard to Section 34 of the Act, the legal position as it stands today is that in view of the non-obstante clause in Section 34(1), the provisions of Companies Act, 1956 (regarding the companies being wound-up) are not applicable to the proceeding before the DRT. As there have been conflicting rulings by some of the High Courts in the country, the Working Group feels that it would be appropriate to incorporate a specific provision in the Act to put the controversy to rest. We recommend that the procedure as to how the matter will be dealt with in the event of the debtor company) going into liquidation be indicated in the Act to the effect that notwithstanding anything contained in Section 446 of the Companies Act, an application under Section 19 of the Act may be filed or pending proceedings may be continued, as the case may be, without the permission of the winding up court and that the tribunal shall inform of its order passed under Section 19(7) and issue of recovery certificate to the said court.

2.18 Under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the enquiry or registration of an Industrial Company as a sick unit operates as a bar for any proceeding for winding-up of such industrial company or execution, distress or the like against the properties or the appointment of a receiver or any suit for recovery of money or for enforcement of any security of the industrial company without the consent of the Board or the appellate authority. The provisions of this

section were found to be too restrictive in its operation and, therefore, a bill called Sick Industrial Company (Special Provision) Bill, 1997 (Bill No.72 of 1997) was introduced in the Lok Sabha to dilute the rigour of the existing Section 22. It is provided in Clause 28 of the Bill that the Board, on an application made by such company and after giving an opportunity of being heard by such party as may be deemed fit and for reasons to be recorded in writing, declare inter alia that the proceeding of winding-up or suit or proceeding for recovery of monies or enforcement of any security or guarantee in respect of any loans or advances or appointment of receiver, etc., shall be suspended for a period as it deems fit and upon such declaration, all such suits or proceedings, shall be suspended accordingly. As can be seen from the said proposed amendment of Clause 28 in the draft Bill, automatic stay of all proceedings against the sick company as provided for under the present Act are now proposed to be replaced by an express order to be made by the Board after hearing the concerned parties and by recording the reasons in writing for making such order. In fact after this Amendment Bill is enacted by the Parliament and brought into force, many of the complaints of the banks and financial institutions will be automatically taken care of.

2.19 Nearly all banks and financial institutions have proposed the exclusion of the provisions of Sick Industrial Companies Act, 1985 (SICA) in respect of the proceedings pending before the tribunals. Presently, though Section 34(2) of the Act has over riding effect, the jurisdiction of the Tribunal gets restricted as many companies are known to have resorted to filing of application for declaring them sick under the provisions of SICA and thus thwarting the attempt by the banks to recover their dues. Once a company rushes for its registration as a sick unit with BIFR recovery proceeding

should continue till a direction for viability study or revival scheme is issued by BIFR. The Working Group recommends accordingly.

2.20 The present scheme of the Act does not take into consideration the secured debts for the purpose of passing a certificate or for recovery thereof as envisaged in Order 34 of the Civil Procedure Code. Therefore, it is necessary that a similar provision be made in the Act to cover the secured debts like mortgage, hypothecation, pledge, etc. and be given same treatment as has been envisaged in Civil Procedure Code. If this is not done, the banks and financial institutions as mortgagees will lose their right of priority and may be treated as an unsecured creditors for the purpose of (a) priority and (b) deciding the claim by the liquidator under recovery in the even of company being wound up. We, therefore, recommend that a specific provision be made in the recovery certificate by covering the details of the secured properties, goods, etc. A similar provision may have to be incorporated under Section 25 dealing with modes of recovery of debts by specifying that recovery officer will have to proceed in terms of the certificate issued.

2.21 While Section 19 of the Act, inter alia, provides that where a bank or financial institution has to recover any debt from any person, it can make an application to the tribunal within the local limits of whose jurisdiction the defendant or each of the defendants actually and voluntarily reside or the cause of action, wholly or in part, has arisen, Rule 6 of DRT(Procedure) Rules, 1993, requires the application to be filed with the Registrar of DRT under whose jurisdiction the applicant is functioning as a bank or financial institution. Thus, this Rule is contrary to the Section 19(1) of the Act. The

Rule 6, therefore, needs to be amended to bring to its conformity with the Section 19(1) of the Act.

2.22 One of the suggestions made at the National Seminar on DRTs held on 6th December 1997, was the amendment of Section 28 of the Act to provide for recovery of dues out of the salary of the defendant borrowers and to recommend amendment of the Act to provide that the Section 60 of Civil Procedure Code would apply to such recoveries out of the salaries. The Working Group deliberated on the proposal, but could not convince itself about the merit of the suggestion. When large amounts are lent by the banks and financial institutions to commercial, industrial or trading undertakings, such loans are not given to the parties who are salaried employees. In any case, even if such large loans are given to salaried employees, such loans cannot be recovered within twenty four months out of the attachable portion of such employee. The Working Group does not find any merit in the suggestion.

2.23 One of the suggestions received from the POs of the DRTs is to amend the Act to provide for resignation and removal of RO. The Working Group's attention has been drawn to Section 7(3) of the Act which provides that the salary and allowance and other conditions of the service of the ROs and other officers and employees of the tribunal shall be such as may be prescribed. Therefore, the provision regarding resignation or removal of RO can be made in the Rules and it is not necessary to make specific amendment in the Act.

2.24 Rule 5A of the Rules provides for review of the order made by the tribunal on account of some mistake or error apparent on the face of record.

A suggestion has been made that this Rule is contrary to Section 22(2)(e) of the Act which authorises the DRAT or DRT to review its own decision. In the opinion of the Working Group, there is no conflict between Section 22(2)(e) of the Act and Rule 5A and no amendment of this Rule is called for.

2.25 Rule 10 of the Rules bars plural remedies and provides that the applicant shall not seek relief or reliefs based on more than one single cause of action in one single application unless the relief prayed for are consequential to one another. In the opinion of the Working Group, this Rule is against the legislative mandate given in the definition of "debt" in Section 2(g) of the Act and also contrary to the letter and the spirit of Order II, Rule 2 of Civil Procedure Code, read with Section 67A of the Transfer of Property Act, 1882. The Working Group, accordingly, recommends the amendment of Rule 10 to provide for recovery of all debts against the same debtor though under different transactions to be included in one application made by the bank/financial institution.

2.26 One of the members Shri S.N.Sahai submitted a representation dated 18th July 1998 received by him from SBI Funds Management Ltd. to include mutual funds for effecting the recovery of their dues through the DRTs under the Act. In terms of Section 2(h) of the Act, financial institutions include the public financial institutions as defined in Section 4A of the Companies Act, 1956 and also such other institutions as may be notified by the Central Government. Therefore, it is possible for the Central Government to notify the mutual funds as financial institutions. Having regard to the work load on DRTs, this Working Group is not inclined to recommend issue of such notification at this stage. However, when more DRTs are appointed and the work load with them is considerably reduced,

there would not be any objection in such mutual funds being given the benefit of recovery of their dues under the Act.

2.27 In para 12 of it interim report dated 18th June 1998, the Working Group recommended that Section 19(6) of the Act may be suitably amended to empower DRTs to pass orders for attachment of property before judgement or for appointment of Commissioner/ Receiver for preparation in inventory or for taking possession of property and for the sale thereof. Once this suggestion is accepted by amending the Act, it will also be necessary to provide for penalties for breach of such order passed by DRTs. The Working Group, therefore, recommends that a suitable provision be made in the Act to provide for penalties in case of breach or non compliance of the orders passed by the DRTs. Penal provisions which include fine or imprisonment should also cover the obstruction caused by the debtor to the receiver taking over the properties in terms of the orders passed by the tribunals, etc. for imprisonment the provisions of Criminal Procedure Code should apply.

2.28 Some of the banks have proposed that provisions may be made on the lines of Order XXI, Rule 41 of Code of Civil Procedure, directing the defendant borrowers to disclose the details of the properties owned by them. At the first reading, the suggestion seems to be ridiculous, inasmuch as the banks are expected to know the details of the properties belonging to the borrowers more so when the amounts lent are quite large. In fact, it is expected of the lender to know the creditworthiness and the assets of the borrower before the amounts are lent. The banks should have the accurate details of the personal properties of the debtors. However, it is not always necessary that a bank, as a lender, may be aware of all the properties of the

borrower and the properties known to the lender bank may have been destroyed or otherwise lost. It would, therefore, be legitimate for the banks to expect recovery of their monies out of the other properties of the borrowers which may not be then their knowledge. The Working Group accordingly recommends that the provision be made requiring the debtors to disclose under the order of the tribunal by way of an affidavit the details of the property and other assets belonging to them.

2.29 In the interaction with the Working Group, several advocates suggested that in order to avoid delay in the proceedings before the DRTs, the DRTs should entertain the applications made by the either parties to the proceedings only if the copy of the same has already been delivered to the other party at least 48 hours before the date of hearing. The suggestion made by the advocates is valuable one and needs to be considered favourably. It is a matter of common knowledge that whenever an application is made, the advocates invariably seeks time to study the implications and to seek instructions from their clients. Once this practice is introduced, unnecessary adjournments of hearing resulting in delay, will be substantially reduced. The purpose can be achieved by amending the Rules of procedures.

2.30 The Working Group deliberated on the 118th Report of the Rajya Sabha Committee on Subordinate Legislation on the Recovery of Debts due to the Banks and Financial Institutions Act, 1993 (the Committee). In para 4.2 of the Report, the Committee has directed the Ministry of Finance, Banking Division, to closely interact with the management of all banks and financial institutions and representatives of all India Banks Federation/Association and employees unions. In the opinion of the

Working Group, the involvement of association/unions is very important and they have very vital role to play in recovery proceedings. The Working Group, therefore, recommends to the management of the banks and financial institutions to actively interact with the unions/federations for the expeditious recovery proceedings.

2.31 As regards the suggestion made by the Committee in para 4.4(a) of the Report, that the DRT and DRATs could be re-structured on the lines of Revenue Courts, Special Courts with codified rules and procedure and liberated from the deemed judicial status, in the opinion of the Working Group, there is no need to make any structural change in the status of the DRTs or DRATs. While appreciating the suggestion made by the Committee, the Working Group does not find any specific advantage in making change in the structure of the tribunals as the purpose for establishing the DRTs can be achieved with same force without being subjected to the rigour of the codified procedure and law. In para 2.28 of the Report, the Working Group has already recommended the penal provision for non-compliance with the order by the tribunal. This will make DRTs and DRATs more effective and deterrent.

2.32 The suggestion made by the Committee in para 4.4(b) is that, the ROs should be given magisterial power including the power of attachment of the property. While the powers of ordinary attachment and sale of movable and immovable property of the defendant already exist in Section 25(a) of the Act, in the opinion of the Working Group, no further powers need to be given to ROs.

2.33 In para 4.4(e), the suggestion made by the Committee is that the Central Government may notify that the provisions of the Act shall also apply to the cases of not less than Rs.2 lakh and also widening the definition of "Debt" to include the liability of any person to the banks and financial institutions and should also specifically include any debt secured by mortgage, hypothecation, pledge, etc. The Working Group is of the opinion that having regard to the infrastructural constraints and large number of court cases which have been transferred to the DRTs under Section 31 of the Act, there is acute pressure on the DRTs, resulting in inordinate delay in disposal of applications pending before them. Once recommendations made by the Working Group to appoint more DRTs is accepted by the Government and the number of pending cases before them come down, the Government may consider lowering the present limit of Rs.10 lakh in terms of Section 1(4) of the Act, so that more cases of recovery of bank dues are covered by the DRTs. As regards the suggestion to widen in the definition of "debt", to include debts secured by mortgage, hypothecation, etc., the Working Group finds that the expression "debt" as defined in Section 2(g) of the Act, already includes dues from any person whether secured or unsecured, subsisting and legally recoverable on the date of application. Since the secured debt is already included in the definition of "debt", it is not necessary to specifically mention debts secured by mortgage, hypothecation, pledge or otherwise in the definition of the "debt".

2.34 In para 4.4(f), the Committee has observed that the defendants are generally avoiding participation in the proceedings before the tribunal, leading to ex-parte orders, but at the stage of certificate proceedings, they appear before the tribunal and pray for the setting aside ex-parte orders on flimsy grounds. The Committee has, therefore, proposed that there should be

provision in the Act/Rules that if the tribunal is satisfied and decides to set aside ex-parte order, then the order should be made subject to payment of 50% of the certificate amount.The Working Group in para 2.14of the Report, has recommended that it should be the duty of the applicant bank/ financial institution to ensure that the due service is effected on the borrower. Once the lending banks/institutions take interest in effecting service of notices on their borrowers, the borrower is unlikely to remain absent from the proceedings and in spite of the proper service on him, he chooses not to participate in the proceedings and the ex-parte order is passed by the tribunal, the tribunals should avoid entertaining requests for setting aside such ex-parte orders unless very cogent reasons are shown by the borrower/defendant why he could not participate in the proceedings on the notified date. In such a case, in the opinion of the Working Group, it should be left to the discretion of the PO of DRTs to decide whether to set aside such ex-parte order and if so, subject to what terms. However, it will not be proper to curtail the discretion of the PO by providing payment of 50% of the certificate amount for setting aside such ex-parte order.

2.35 The last suggestion made by the Committee in para 4.4(g) is to empower the tribunal to notify the names of the defaulters after the decrees have been passed. In the opinion of the Working Group, the suggestion is welcome one and we recommend accordingly. However, such notification of names of defaulters should be done only after the period prescribed for filing appeal has elapsed.

CHAPTER – III

Administrative and Infrastructural Issues

It is now clear that the Act passed with noble objects of expediting the recovery of proceeds has failed to achieve the objectives, because of several in-built constraints which have nothing to do with the lacunae in the legal frame-work. It is, therefore, necessary to set right those constraints so that the work of the tribunals can be carried out smoothly. The constraints are not only in the field of infrastructure made available to the tribunals, but also include the non-involvement of the banks' staff in diligently prosecuting the claims before the tribunals. Of course, the challenge to the constitutional validity of the Act and the reluctance on the part of Government to appoint proper number of POs of DRTs are also equally contributing factors. Nearly all the parties involved viz. the banks, financial institutions, DRTs, ROs and the advocates both for the banks and other parties referred to the deficiencies in the system and made valuable suggestions for making the debt recovery system more effective.

3.2 One of the basic problems constraining the smooth functioning of the tribunals is lack of adequate office space for the DRTs. Nearly all the parties including the ROs of the DRTs complain about the inadequate premises for DRTs and the staff attached to them. While in some cases, adequate office space was provided to the POs, other staff like Registrars, ROs and the supporting staff working with them had very little space available to them to perform their duties. On the matter being taken with the Government of India, the Working Group was advised that originally each DRT was allowed to hire 2700 sq.ft. of the area as per the guidelines issued

by the Directorate of the Estate, (Government of India). However, on the representation being received from the DRTs regarding inadequate space, the matter was re-examined and all the DRTs have been permitted to have the office accommodation up to 5000 sq.ft. It should be borne in mind that the space is required not only for the PO/RO and the staff, but also for the litigating parties as also the advocates who represent them in the matter. The tribunal premises should not only be adequate but also be located in the areas convenient to the parties appearing before it. The Working Group recommends to the Government to seek the help of the banks and financial institutions in securing space which can be used for locating the offices of DRTs. The Working Group is making this recommendation as it is acutely aware that it is not possible to acquire office premises on rent on the scales approved by the Directorate of Estate and very big banks and financial institutions can make available such office space at less than commercial rates. In fact, some of the banks have expressed their willingness to consider allocating space to the DRTs, if such a request comes from Government of India. We recommend to the Government to explore possibility in this regard. It is all the more necessary as the Working Group has, in the earlier Chapter, recommended the establishment of more DRTs to cope with the large number of cases. The Central Government should also consider allotting residential accommodation to the POs and other staff out of the Central Government pool on a priority basis. Unless the residential accommodation is assured, it is unlikely that the competent and deserving persons will opt to take over the work of DRTs. The Working Group, therefore, recommends that the Finance Ministry should take up the matter with the Directorate of Estate in this regard.

3.3 Some of the banks and the advocates have complained about lack of basic facilities like toilets and drinking water facilities. The Working Group hopes that such complaints are without any substance but nevertheless recommends that Central Government should ensure that there are adequate toilets and drinking water facilities available to the parties who come before DRTs. In the summar season, water facilities could also include the provision for water coolers in the court room and for other staff attached to DRTs. Some of the bank officials and their advocates complained that there are no adequate number of chairs for sitting. While there is no doubt that the Government would have provided sufficient furniture for sitting of the advocates and the parties, the Working Group would request the Government to direct DRTs and DRATs to look into such minor complaints expeditiously as and when received.

3.4 It is a general feeling amongst the banks, financial institutions and POs that inadequate staff has been provided without taking into account the functional requirements of the DRTs. The Working Group understands from the Government that initially each DRT was sanctioned 19 posts which was subsequently increased to 29. While the number of sanctioned posts appears to be adequate, actual working strength of the number of staff available with each DRT is much less. For example, in case of DRT Patna, against the sanctioned strength of 29, working strength of staff was only 9, which adversely effects the working of the DRTs. At least one of the tribunals did not even have the RO attached to it. The Working Group understands that this is due to the fact that each DRT/DRAT is required to recruit its own staff up to the level of Section Officer which naturally takes of its own time. In the earlier Chapter, the Working Group has referred to the decision of the Central Government to create at least 4 additional posts of DRATs in Delhi,

Calcutta, Chennai and Guwahati. In the earlier chapter, the Working Group has also recommended appointment of several additional DRTs to cope up with the work load. Naturally it will be necessary to have additional staff for being posted with the new DRATs and DRTs. The Working Group, therefore, recommends that the work relating to the recruitment of staff for DRATs and DRTs should be delegated to the DRATs and they should exercise the power to post the staff to various DRTs, also taking into account the exigencies when there may be shortage of staff at one or the other DRT.

3.5 Continuing the same subject, even where the appointment of the staff is made by the Central Government itself, there are complaints that either there are no Registrar or no ROs available with DRTs. The communication letter dated 27th May 1998 from the Government, indicated that out of 9 DRTs only 5 of them had Registrars attached to their office. However, we understand that the process of filling up vacant posts is already under way. The Working Group recommends to Central Government to expedite the selection and the appointment of officers so that the work of DRTs can continue smoothly. We also request the Government to take into account the possible number of officers that would be required when more DRTs and DRATs are appointed. In fact, when DRTs for Mumbai and Goa are appointed, the working of the tribunal may not take off unless the Registrar and the ROs are already put in place.

3.6 The Working Group understands that the Registrars and the ROs attached to the DRTs are on deputation either from the State Government or from the Central Government. The Registrar is expected to have the thorough knowledge of the working of the court practices and procedures. Therefore, while accepting the officers on deputation, the Central

Government should ensure that only people having adequate experience of the court practices and procedures, are selected as Registrars of DRTs. Similarly, as the ROs are required to effect the recoveries of the debts due to the defendants and the provisions of Schedule II and III to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 are applicable. Therefore, person appointed as RO may be taken either on deputation from Income-tax Department or should have at least adequate knowledge of the Income-tax Act and the Income-tax (Certificate Proceedings) Rules, 1962 and they should have been involved in recovery of the Government dues. The Working Group, therefore, recommends that only the experienced and trained people should be taken on deputation as Registrar and ROs as they have very vital role in the smooth working of the tribunals and recovery of the amounts under the recovery certificates issued by DRTs. For being posted on deputation with the DRT and DRATs, it would be advantageous if some officers are taken from the banking industry on deputation to help the ROs in expeditious recovery of the amounts under the recovery certificates. The concerned branch managers of the banks and financial institutions should be actively involve in helping the ROs in effecting the recoveries of their dues from the borrowers.

3.7 It goes without saying that since the DRTs/DRATs have all the trappings of the courts, adequate funds should be made available to them. The DRTs presently work on the principle of self sustenance by generating their own revenues. The Committee recommends budgetary support to the functioning of these DRTs at least to the extent of bridging the deficit in the revenues generated by them, as faster recovery by DRTs would help banks generate more profits and may also help the Government indirectly enhancing its revenues.

3.8 The DRTs may be provided funds for buying law books and maintaining libraries by subscribing to law reports. The decision as to which law reports should be subscribed can be taken by the Committee of DRATs and such law reports should be made available to all DRTs and DRATs.

3.9 DRAT, Mumbai, has suggested installation of computers in each tribunal and sanction of additional funds and one post of computer operator. In fact the Working Group is advised that the suggestion made by DRAT has already been implemented by the Central Government and the office of DRT Bangalore has already been computerised. Some other DRTs have reported to have purchased the computers. In the present age, importance of computer does not need to be over emphasised. The Working Group recommends that all the existing DRTs and the new DRTs and DRATs when established, should be adequately computerised.

3.10 There appears to be some minor irritants like lack of adequate security arrangements for offices and maintenance and settlement of day-to-day accounts of the tribunals which are presently dealt with by Pay and Accounts Office at New Delhi. The Working Group hopes that the Central Government will look into the difficulties faced by the tribunals and take necessary remedial measures to the extent possible.

3.11 One of the valuable suggestions received by the Working Group is that the secretariat of each DRT should have a panel of competent valuers, surveyors and security agencies who should be in a position to safeguard the suit property till they are finally sold. The suggestion is welcome one. In the opinion of the Working Group such panels should also include others

agencies including auctioneers who could be entrusted the work of realising the sale proceeds.

3.12 Some of the DRTs complained that it was their sad experience that the advocates appearing on behalf of the banks and financial institutions are often unprepared for the cases and often request for adjournments on flimsy grounds. The advocates, on the other hand, have brought to the notice of the Working Group that once an application has been made to DRT, the Branch Managers and the staff of the bank do not take any interest in the proceedings. On several occasions these officers and employees are not even aware of the execution of the loan documents or the names of the borrowing parties. These bank officials are, therefore, neither in a position to brief the advocate properly nor do they take any interest in the proceedings before the tribunal. According to the advocates, some of these officials regard their duty as over once the application has been filed for recovery of amounts due. This, if true, is a very sorry state of affairs. Needless to state that unless the banks themselves take interest in recovery of their dues, no amount of legislative provisions can come to their rescue in effecting the recoveries. The Working Group, therefore, calls upon the banks and financial institutions in their own interest, to earnestly impress upon the officers and staff to take keen interest in the proceeding, so that the amounts can be recovered without any difficulty, making the expeditious recovery procedure prescribed under the DRT Act a success.

CHAPTER IV

Procedural Measures for Effective Functioning of DRTs.

The Committee dwelt upon the theme paper "Debt Recovery Tribunals - A New Approach" by the Chairman, Shri Deshpande. The paper deals with certain aspects falling outside the purview of the terms of reference. Keeping these aspects in the background, but based on the theme paper, the Committee suggests in this Chapter certain measures for effective functioning of the DRTs. The Committee observes that while measures suggested in the earlier Chapter would, no doubt, improve the functioning, however some solutions, which go to the root of the matter, may be required to overhaul the total scheme involved in the procedural aspect of the functioning.

Present Position

4.2 The DRTs are presently following the procedures similar to the procedures followed by the Civil Courts which are time consuming and have not really served the purpose for which the DRTs were set up. The delays are attributed to the difficulties in service of summons/notices to the parties as also the difficulties in examining witnesses and getting the documents produced.

Need for simple procedure

4.3 The Committee is satisfied that it is necessary for the DRTs to follow a simple procedure regarding service of summons and recording of evidence so that the time of the DRT is gainfully utilised for hearing and disposal of the claims. One of the solutions which requires to be examined seriously in simplifying the procedures is to privatise the procedures to the extent possible. DRTs should have the authority in respect of monitoring the issue of summons/notices and the recording of evidence without the DRT being required to spend time on those matters unnecessarily.

American example

4.4 It is advantageous to refer to the procedures followed in this regard in other countries particularly USA where issue of subpoena by the attorneys of the parties to legal proceedings are reported to be effective in saving the time of the Courts. By way of illustration a reference may be made to Civil Practice Law and Rules cited as CPLR which covers the procedure in civil judicial proceedings in all the Courts of New York State, as also the Rules governing the procedure in the United States District Courts in all suits of civil nature (RCP).

Commencement of action

4.5 Under Article 3 (§ 304) of CPLR filing a summons and complaint or summons with notice commences an action. "..... filing shall mean the delivery of the summons with notice, summons and complaint, notice of petition or order to show cause to the clerk of the Court in the county in

which the action or special proceeding is brought ...". Similarly, under Rule 3 of RCP, a civil action is commenced by filing a complaint with the Court.

Issue of summons/subpoena

4.6 Under Rule 4 of RCP, the summons shall be signed by the clerk, bear the seal of the Court, identify the Court and the parties, be directed to the defendant, and state the name and the address of the plaintiff's attorney or if unrepresented, of the plaintiff. Under Clause (b) of Rule 4 of RCP, the plaintiff is responsible for service of a summons and complaint. However, under Clause (c) of Rule 4 of RCP, at the request of the plaintiff the court may direct that service be effected by United States marshal, deputy United States marshal or other person or Officer specially appointed by the Court for that purpose.The Committee noticed that dasti service which is allowed in India as an exception, is the rule in USA and that service through State machinery is allowed only on request by the plaintiff in USA unlike in India.

4.7 Article 23 of CPLR deals with subpoena, oaths and affirmations. Subpoena may be judicial subpoena or non-judicial subpoena. The procedures applicable to non-judicial subpoena would be more relevant in this context. § 2302 of CPLR deals with authority to issue subpoena. Subpoenas may be issued without a Court order *inter alia* by "an attorney on record for a party to an action". Subpoena may be issued where " the attendance of a person as a witness may be required". It appears that if the presence of a defendant or any other party to the proceeding is required as a witness, it is open to the attorney of a party to issue subpoena.

Fees of witness

4.8 Under § 2303 of CPLR, any person subpoenaed shall be paid or tendered in advance authorised travelling expenses and one day's witness fee. Under § 2305 of CPLR, at the end of each day's attendance, the person subpoenaed may demand his fee for the next day on which he is to attend. If the fee is not then paid he shall be deemed discharged. § 2304 of CPLR makes provisions for quashing or modifying the subpoena.

Disobedience of subpoena

4.9 The consequences of disobedience of subpoena are laid down in § 2308 of CPLR. Clause (b) of § 2308 deals with the disobedience of non-judicial subpoena. Normally if a person fails to comply with a subpoena, which is not returnable in a Court, the issuer or the person on whose behalf the subpoena was issued may move the Court to compel compliance. The Court may impose costs not exceeding $ 50. The Court may issue a warrant directing Sheriff to bring the witness before the person or body requiring his appearance. If the person attends or is brought before the person or body issuing subpoena, but refuses without any reasonable cause to be examined, or to answer a legal and pertinent question or to produce a book, paper or other thing which he was directed to produce by the subpoena, the Court may issue a warrant directed to the Sheriff of the county where the person is, committing him to jail.

4.10 If a procedure similar to the procedure under CPLR/RCP referred to above is either stipulated in the Act, or the DRTs adopt the said procedure,

the Advocates for the Banks and Financial Institutions and the parties may themselves issue subpoena to the witnesses of the other side under the authority of DRT/DRAT, examine the witnesses, get the documents produced and keep the case ready for arguments before the DRT. This would save the time of the DRT to a great extent.

4.11 After a petition/suit is registered with the DRT, the service of notice could be undertaken by the Lawyers' offices on the lines of subpoenas issued in USA by the Attorneys of parties. After the service of notices, the advocates for the parties may even record evidence and take documents on record by getting them notarised. The objections, if any raised during recording of evidence, can be noted and decided by the DRTs at the time of hearing.

4.12 The oral submissions could be restricted only to points of law. The arguments should be brief and confine to a specified limit of time fixed by the DRT. The DRT should pass orders in the open Court without losing further time and issue certificate of dues to its recovery officer.

4.13 The defences taken by the borrowers in almost all claims are repetitive and flimsy such as, non-execution of documents; non-receipt of loan, repayment of loan, wrong calculation of interest, etc. These routine defences may be dealt with by obtaining evidence in the form of affidavits and witnesses may be examined only at the discretion of the Presiding Officer. In this connection, it is relevant to take into consideration the recommendations of V.G. Hegde Committee regarding presumptions in respect of documents

and production of certified copy of documents causing shifting of onus of proof on the defendant

Need for detailed examination

4.14 At this stage the Committee feels that it is necessary to examine in detail how these provisions work in practice and what safeguards are built into the system to avoid harassment of the witnesses by being called unnecessarily or the parties moving the Courts for modification, cancellation etc. of the subpoenas. Pending such examination, the Committee suggests that the procedure may be adopted in two stages. In the first stage the procedure regarding service of subpoenas may be adopted and in the light of the experience gained in the implementation of these procedures and compalring them with the system prevailing in USA the procedure regarding examination of witnesses etc could be considered.

4.15 As regards the enforcement of the awards passed by DRTs and DRATs, the Committee agrees that the Recovery Officers should be given assistance of agencies like police and professional debt recovery agencies and the Act may be amended to provide for licensing and regulating professional recovery agencies. The Committee recognises that such a step would encourage growth of factoring agencies, it would facilitate acts like purchase of certificates of dues by Tribunals at a discount which in turn would provide liquidities to the banks and financial institutions

CHAPTER- V

SUMMARY OF RECOMMENDATIONS

The recovery of over dues is as vital for the growth and profitability of the banks and financial institutions as is the need for recycling such funds for the general economic development.Thus, the imperative for speedy recovery of such over dues do not require any separate justification. (Para 2.1)

5.2 In the opinion of the Working Group, not only there should be tribunal in every State, but there should be more than one DRT in the same State if the work load of the Tribunals so justify. The PO of DRTs should not have more than 30 cases on the board on any given date and there should not be more than 800 cases pending before it at any given point of time. If the number of cases go beyond 800 cases, the Government should consider appointing more tribunals to deal with such cases.(Para 2.3)

5.3. In terms of Section 5 of the Act, no person is qualified for appointment of the PO of the tribunal unless he is qualified to be a District Judge. The Committee feels that while there were advantages in having judicial officers as POs of the tribunals the claim of the experts and eminent persons with knowledge of banking law and practice also merits consideration. It, therefore, recommends that Section 5 of the Act, which deals with the qualifications for appointment as POs of DRTs, may be amended to make such experts in banking laws as eligible for being considered for appointment as the POs. (Para 2.4)

5.4 There is no provision in the Act for reappointment of POs even though they may not have completed the aged of 62 years. The Working Group recommends that Section 6 of the Act may be amended to provide for reappointment of such PO, until they reach the age of 62 years which is regarded as the normal age of retirement for such officers.(Para 2.5)

5.5 The Working Group, in its interim report dated 18th June 1998, had recommended the amendment of Section 7 to enable the Central Government to appoint more than one RO with each tribunal. The Rajya Sabha Committee on Subordinate Legislation in para 4.4(d) of its report dated 12th June 1998 recommended that a Recovery Officer should not have more than 300 cases at a time. Accordingly, under each tribunal, more number of ROs should be appointed to ensure speedy recovery of banks dues. The Working Group is in complete agreement with the recommendations of the Rajya Sabha Committee and recommends accordingly.(Para 2.6)

5.6 DRAT exercises appellate powers over the orders passed by the DRTs. It will, therefore, be possible for the appellate tribunals to exercise supervisory control over such DRTs within the areas of their jurisdiction. We accordingly recommend the amendment of Section 12 of the Act to provide for this. (Para 2.7)

5.7 Presently, only recovery cases filed by the banks and financial institutions are entertained by the DRTs. The Working Group recommends that the counter-claim to the extent of the claim made by the banks and financial institutions should be allowed to be adjudicated before DRTs. Of course, in order to discourage frivolous counter-claims by unscrupulous

litigants, it would be advisable to fix court fees on such counter-claims. The Working Group recommends that the definition of expression "counter-claim" may be inserted in the Act and jurisdiction of the tribunal be accordingly enlarged to entertain such counter-claims by the other parties.(Para.2.8)

5.8. The Working Group recommends that Section 27(4) of the Act may be amended to empower the DRTs to amend the certificate by enhancing or reducing the amount as the case may be, depending upon the order passed by the DRAT.(Para 2.10)

5.9 Working Group recommends that there should be the provision for transfer of recovery certificate from one RO to another. However, such transfer of recovery certificate should be made only on the direction of the tribunal, which has issued the recovery certificate. (2.11)

5.10 Working Group recommends that a proviso may be added to Section 31(2) of the Act to provide that where a decree has already been passed by a civil court, DRT will issue the recovery certificate specifying the amount as per the decree passed by the civil court. Since the parties have already paid the court fees while instituting the suit in the civil court, banks/financial institutions should not be burdened with further obligation to pay court fees in respect of such transfer of suit/decree. (Para 2.12)

5.11 The Working Group recommends that Section 22 of the Act should be amended to provide for framing of Rules of practices by each DRAT and should be applicable to all DRTs under his jurisdiction. (Para 2.13)

5.12 The Working Group recommends that once the tribunal has directed issue of summons, it should be the obligation of the banks/financial institutions to ensure the service of the summons on the other party. This suggestion when implemented will greatly reduce the total time taken by the tribunals and can be implemented by mere amendment of the Rules. (Para 2.14)

5.13 The Act does not make any presumption in favour of the banks or financial institutions to make summary procedure really effective. The Working Group recommends that the Act should be amended to provide for statutory presumption in favour of the banks/financial institutions. This presumption will also obviate the need for production of documents and other evidence on behalf of the lending banks and financial institutions.(Para 2.16)

5.14 We recommend that the procedure as to how the matter will be dealt with in the event of the debtor company) going into liquidation be indicated in the Act to the effect that notwithstanding anything contained in Section 446 of the Companies Act, an application under Section 19 of the Act may be filed or pending proceedings may be continued, as the case may be. without the permission of the winding up court and that the tribunal shall inform of its order passed under Section 19(7) and issue of recovery certificate to the said court. (Para 2.17)

5.15 The Working Group recommends the exclusion of the cases from the purview of SICA where the recovery proceedings are pending before the DRT. (Para 2.18)

5.16 A bill called Sick Industrial Company (Special Provision) Bill, 1997 (Bill No.72 of 1997) was introduced in the Lok Sabha to dilute the rigour of the existing Section 22 of the Act. This amendment, if carried out in Section 34 of the Act will take care of the problems presently faced by the banks. The Working Group recommends accordingly.(Para 2,19)

5.17 Working Group recommends that a specific provision be made in the recovery certificate by covering the details of the secured properties, goods, etc. A similar provision may be incorporated in Section 25 dealing with modes of recovery of debts by specifying that recovery officer will have to proceed in terms of the certificate issued.(Para.2.20)

5.18 Rule 6 of DRT(Procedure) Rules, 1993, being contrary to the Section 19(1) of the Act needs to be amended to bring to its conformity with the Section 19(1) of the Act. (Para 2.21)

5.19 The Working Group does not find any merit in one of the suggestions made as the National Seminar on DRTs to amend Section 28 of the Act to provide for recovery of dues out of the salary of the defendant borrowers. (Para 2.22)

5.20 One of the suggestions received from the POs of the DRTs is to amend the Act to provide for resignation and removal of RO. The provision regarding resignation or removal of RO can be made in the Rules and it is not necessary specific amendment in the Act.(Para. 2.23)

5.21 The Working Group recommends the amendment of Rule 10 to provide for recovery of all debts though against the same debtor under

different transactions to be included in one application made by the bank/financial institution. (Para 2.25)

5.22 When more DRTs are appointed and the work load with them is considerably reduced, there would not be any objection in mutual funds being given the benefit of recovery of their dues under the Act.(Para 2.26)

5.23 The Working Group, therefore, recommends that a suitable provision be made in the Act to provide for penalties in case of breach or non compliance of the orders passed by the DRTs. Penal provisions which include fine or imprisonment should also cover the obstruction caused by the debtor to the receiver taking over the properties in terms of the orders passed by the tribunals, etc. for imprisonment the provisions of Criminal Procedure Code should apply. (Para 2.27)

5.24 The Working Group accordingly recommends that the provision be made requiring the debtors to disclose under the order of the tribunal by way of an affidavit the details of the property and other assets belonging to them. (Para 2.28)

5.25 In order to avoid delay in the proceedings before the DRTs, the DRTs should entertain the applications made by the either parties to the proceedings only if the copy of the same has already been delivered to the other party at least 48 hours before the date of hearing. Once this practice is introduced, unnecessary adjournments of hearing resulting in delay, will be substantially reduced. (Para 2.29)

5.26 In para 4.2 of the Report, the Rajya Sabha Committee has directed the Ministry of Finance, Banking Division, to closely interact with the management of all banks and financial institutions and representatives of all India Banks Federation/Association and employees unions. The Working Group recommends to the management of the banks and financial institutions to actively interact with the unions/federations for the expeditious recovery proceedings.(Para 2.30)

5.27 In the opinion of the Working Group, since the power of ordinary attachment and sale of movable and immovable property of the defendant already exist in Section 25(a) of the Act, no further power need be given to ROs. (Para 2.32)

5.28 RO should not have more than 300 cases at a time. Accordingly, more number of tribunals and under each tribunal, more number of ROs should be appointed to ensure speedy recovery of all bank dues. Once the number of pending cases before DRTs come down, the Government should consider lowering the present limit of Rs.10 lakh in terms of Section 1(4) of the Act, so that more cases of recovery of bank dues are covered by the DRTs. (Para 2.33)

5.29 The last suggestion made by the Committee is to empower the tribunal to notify the names of the defaulters after the decrees have been passed. In the opinion of the Working Group, the suggestion is welcome one and we recommend accordingly. (Para 2.35)

5.30 The Working Group recommends to the Government to seek the help of the banks and financial institutions in securing space which can be used

for locating the offices of DRTs. In fact, some of the banks have expressed their willingness to consider allocating space to the DRTs, if such a request comes from Government of India. The Central Government should also consider allotting residential accommodation to the POs and other staff out of the Central Government pool on a priority basis. (Para 3.2)

5.31 Central Government should ensure that there are adequate toilets and drinking water facilities available to the parties who come before DRTs. In the summar season, water facilities should also include the provision for water coolers in the court room and for other staff attached to DRTs. (3.3)

5.32 The Working Group recommends that the work relating to the recruitment of staff for DRATs and DRTs should be delegated to the DRATs and they should exercise the power to post the staff to various DRTs, also taking into account the exigencies when there may be shortage of staff at one or the other DRT.(Para 3.4)

5.33 The Working Group recommends to Central Government to expedite the selection and the appointment of officers so that the work of DRTs can continue smoothly and only the experienced and trained people should be taken on deputation as Registrar and ROs It would be advantageous if some officers are taken from the banking industry on deputation to help the ROs in expeditious recovery of the amounts under the recovery certificates. The concerned branch managers of the banks and financial institutions should be actively involve in helping the ROs in effecting the recoveries of their dues from the borrowers. (Para 3.6)

5.34 Working Group recommends budgetary support to the functioning of DRTs. (Para 3.7)

5.35 Adequate funds should be made available to DRTs for buying law books and maintaining libraries by subscribing to law reports. (Para 3.8)

5.36 The Working Group recommends that all the existing DRTs and the new DRTs and DRATs when established, should be fully computerised. (Para 3.9)

5.37 The Working Group requests the Government to look into the minor irritants like lack of adequate security arrangements and day-to-day accounts of the tribunals and other administrative difficulties faced by the tribunals and take necessary remedial measures to the extent possible. (Para 3.10)

5.38 The Secretariat of each Debts Recovery Tribunal should have panel of competent valuers, surveyors and security agencies. They should also have panels of other agencies including auctioneers. (Para 3.11)

5.39 The Working Group calls upon the banks and financial institutions in their own interest, to impress upon the officers and staff to take keen interest in the proceeding, so that the amounts can be recovered without any difficulty, through the expeditious procedure prescribed under the DRT Act. (Para 3.12)

5.40 There is need to simplify and privatise the procedure of DRTs and DRATs so that they can gainfully utilise their time for disposal of cases. (Para 4.3)

5.41 The procedure in vogue in USA for service of summons and subpoenas may be adopted by DRTs and DRATs and advocates can examine witnesses of other side, get documents on record and keep the case ready for arguments before the DRTs. (4.10).

5.42 There is need for detailed examination of the practice in USA and the safeguards built into the system to make it work. (4.14)

5.43 Recovery Officers may be given the assistance of Police and professional debt recovery agencies. (4.15)

Shri N.V.Deshpande
Chairman

Shri A.Sinha
Member

Shri S.K.Batra
Member

Shri B.D.Ushir
Member

Shri S.N.Sahai
Member

Shri M.T.Udeshi
Member

Shri V.K.Shah
Member

Shri A.L.Narasimhan
Member

Shri S.C.Gupta
Member Secretary

ANNEXURE-I

List of Debts Recovery Tribunals and their Jurisdiction :

Place	Date of Establishment	Jurisdiction
1. Ahmedabad	21.12.1994	Gujarat & Union Territories of Dadra, Nagar Haveli, Daman & Diu.
2. Bangalore	30.11.1994	Karnataka & Andhra Pradesh
3. Calcutta	27.04.1994	West Bengal and Andaman & Nicobar Islands
4. Delhi	05.07.1994	National Capital Territory of Delhi
5. Jaipur	22.08.1994	Himachal Pradesh, Punjab, Haryana, Chandigarh & Rajasthan
6. Chennai	01.11.1996	Tamil Nadu, Kerala and Union Territory of Pondicherry, Lakshdweep
7. Guwahati	07.01.1997	States of Assam, Meghalaya, Manipur, Mizoram, Tripura, Arunachal Pradesh and Nagaland
8.Patna	24.01.1997	States of Bihar and Orissa
9. Jabalpur	07.04.1998	States of Madhya Pradesh & Uttar Pradesh

Appellate Tribunal was established in Mumbai on 12th July 1994.

ANNEXUT E-JJ

WORKING GROUP - DEBTS RECOVERY TRIBUNALS

QUESTIONNAIRE - PUBLIC SECTOR BANKS/FINANCIAL INSTITUTIONS

1. No. of cases transferred to DRT's and amount involved up to 31.3.1998.
2. No. of cases decided by the DRTs and amount involved up to 31.3.1998.
3. Amount recovered up to 31.3.1998.
4. No. of cases in which appeals have been filed with DRAT.
5. What are the difficulties and time lag in completion of legal formalities ?
6. What is the normal time taken by the DRT to fix up dates for hearing and what is the time lag for further hearing ?
7. Whether the banks have the scale of fees payable to advocates at different tribunals, if so, the details thereof.
8. Should counter claims against the banks be considered by DRT's ?
9. Should the banks' own personnel be appointed as Recovery Officers ?
10. Is there uniformity in the procedures followed by the different DRT's ?
11. What is the time taken by the DRT's to issue Recovery certificates ?
12. The operational / administrative difficulties, if any, faced in the expeditious adjudication and recovery of debts and the suggestions for removing these difficulties .
13. Do you have any suggestions for simplification of documents for filing before DRT's ?
14. Do you feel there are any shortcomings in the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ? If so, your suggestions for removing these shortcomings.
15. Is your bank having any separate set up/outfit/cell for monitoring the cases filed with DRT's ? If not, what is the existing arrangement for monitoring the cases filed with DRT's at Head Office/Zonal Office/Regional Office ?
16. Do you have any system for liaisoning with your Standing Counsels who appear before DRT's on behalf of your bank for enabling them to make effective presentation ?

ANNEXURE-III

WORKING GROUP - DEBTS RECOVERY TRIBUNALS

QUESTIONNAIRE - PRESIDING OFFICERS, DRTs

1. Are you satisfied with the infrastructure provided; if not, do you have any suggestions ?

2. Is the staff provided experienced and skilled ?

3. What is the procedure adopted by the DRT's while deciding applications for recovery ?

4. Do you feel that the existing territorial jurisdiction is very large; if so, what are your suggestions ?

5. Is there any need to appoint more than one Presiding Officer for each DRT, considering the volume of cases ?

6. Is there any delay in the preparation of summons to the defendants ? If so, the reasons therefor.

7. Do you find the procedure for disposal of cases cumbersome ? If so, your suggestions for its simplification.

8. Can photocopies of the documents to be submitted to the DRT's be accepted instead of typed copies ?

9. What are the operational/ administrative difficulties, if any, faced in the expeditious adjudication and recovery of debts ?

10. Do you have any suggestions for removing these difficulties ?

11. What are the arrangements during the leave period of the Presiding Officer for hearing the cases, issuing recovery certificates, etc. ?

12. Do you feel there are any shortcomings in the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ? If so, your suggestions for removing these shortcomings.

ANNEXURE-IV

WORKING GROUP - DEBTS RECOVERY TRIBUNALS

QUESTIONNAIRE - RECOVERY OFFICERS, DRTs

1. Are you well equipped, in terms of infrastructure and skilled staff, for the effective implementation and enforcement of the powers conferred on you by sections 25 & 28 of the Act; if not, do you have any suggestions /requirements ?

2. Is the staff provided experienced and skilled ?

3. Are there any delays in the execution of Recovery certificates ? If so, please specify the reasons.

4. The operational/administrative difficulties, if any, faced in the expeditious adjudication and recovery of debts and your suggestions for removing these difficulties .

5. Do you feel there are any shortcomings in the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ? If so, your suggestions for removing these shortcomings and making it more effective

ANNEXURE-V

WORKING GROUP - DEBTS RECOVERY TRIBUNALS

Questionnaire for the Banks' Advocates/Counsels appearing before the DRTs

1. Are you satisfied with the infrastructural facilities made available to DRTs ?

2. What are the difficulties, if any, faced during the proceedings before the DRTs ?

3. What are the operational/ administrative difficulties, if any, faced in the expeditious adjudication and recovery of debts ?

4. Do you have any suggestions for removing these difficulties ?

5. Do you feel there are any shortcomings in the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ?

6. Do you have any suggestions /amendments for removing these shortcomings ?

ANNEXURE-VI

INTERIM REPORT OF THE WORKING GROUP ON RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

न. वि. दशपाण्डे
विधि परामर्शदाता
N. V. DESHPANDE
Legal Adviser

भारतीय रिज़र्व बैंक
विधि विभाग,
केन्द्रीय कार्यालय,
फोर्ट, मुंबई - 400 001.
RESERVE BANK OF INDIA
Legal Department,
Central Office,
Fort, Mumbai - 400 001.

LD.NO.NVD.58/B-98

18 June 1998

The Deputy Governor,
Reserve Bank of India
Mumbai.

Dear Sir,

Working Group on Recovery of Debts due to Banks and Financial Institutions Act,1993

I have the pleasure in submitting the interim report of the above Working Group constituted by the Bank by its Memorandum dated 24th June 1998. The interim report contains the recommendations of the Working Group for amendment of certain provisions of the Recovery of Debts due to the Bank and Financial Institutions Act, 1993.

2. As the term of the Working Group is expiring on 23rd June 1998, I, on behalf of the Working Group, request that the term of the Group may be extended by 3 months.

Yours faithfully,

(N.V.Deshpande)
Legal Adviser
Chairman

In the backdrop of general feeling that the working of Debt Recovery Tribunals (DRTs) has fallen short of expectations, Reserve Bank of India constituted a Working Group on 24th March 1998 to review the functioning of the DRTs under the chaimanship of its Legal Adviser Shri N.V. Deshpande and the following members, viz.:

1. Shri D.P.Sharma, Jt.Secy. & Legal Adviser, Ministry of Law
2. Shri S.K.Batra, Under Secretary, Ministry of Finance
3. Shri A.L.Narsimhan, Addl.Chief Gen.Manager, RBI
4. Shri S.N.Sahai, General Manager (Law), SBI
5. Shri M.T.Udeshi, Dy.Gen.Manager (Law), Bank of Baroda
6. Shri V.K.Shah, Legal Officer, IBA
7. Shri S.C.Gupta, Jt.Legal Adviser,RBI

2. The terms of reference of the Working Group are as under :

(i) To look into various issues and problems confronting the functioning of the DRTs in expeditious recovery of bank dues.

(ii) To suggest measures for effective functioning of DRTs.

(iii) To examine the existing statutory provisions and suggest necessary amendments to the Recovery of

Debts due to banks and Financial Institutions Act, 1993 and Rules framed thereunder with a view to improving efficacy of legal machinery.

(iv) Any other relevant aspects.

3. In its first meeting held at Mumbai on 20th April 1998, the Working Group decided to solicit the views and suggestions from Target Group viz., Presiding Officers of the Debt Recovery Appellate Tribunal(DRAT), and DRTs, banks and the financial institutions, Debt Recovery Officers attached to the Tribunals, as also some of the counsel who generally appear on behalf of the banks and opposite parties before DRTs. On 2nd May 1998, the Working Group had an inter action with the Presiding Officers of DRAT and the DRTs who had assembled at Mumbai in connection with their conference. In the meeting held on 2nd May 1998, the Working Group also decided to co-opt Shri B.D.Ushir, Chief General Manager (Legal) of Industrial Development Bank of India, to have the benefit of his experience in the financial sector. In the meeting held at New Delhi on 28th May 1998, the Working Group had very detailed discussions with the representatives of IFCI, the banks as also the advocates who had been appearing on behalf of the banks or defendants before the DRTs at New Delhi and Jaipur.

4. The Working Group has received highly satisfactory response from the banks, financial

institutions, DRTs and advocates. While the response received from the Target Group is still being evaluated, a suggestion has been received both from the Reserve Bank of India and Government of India to make, through an interim report, recommendations on legislative amendments to the Recovery of Debts due to the Banks and Financial Institutions Act, 1993. Accordingly, the Working Group met on 12th June 1998 and agreed to submit an interim report only in respect of such legislative amendments which can be recommended unanimously. As the present term of the Working Group is expiring on 23rd June 1998, the Working Group agreed to request the Reserve Bank of India to extend its term by at least 3 months.

5. Based on the material collected and the views expressed by various parties during the interactions, the Working Group had with them, the Working Group has identified and unanimously recommended the following amendments for incorporating in the Act.

6. There is a general feeling, amongst the banks and the financial institutions, Presiding Officers of DRTs and also advocates appearing before them that the number of cases that are presently being handled by the DRTs is very large. In reply to the questionnaire given to the banks and the financial institutions, nearly all the banks and financial institutions have stated that due to the large number of cases pending before the DRTs, the minimum time

taken by the DRTs was 30 days for taking up the case at the next date of hearing and in many cases, the time taken by DRTs for the next date of hearing was as high as 240 days which defeats the very purpose of providing a time frame of 6 months in the Act. Therefore, for proper and smooth functioning of DRTs and in order to ensure expeditious disposal of the applications before them, the Working Group recommends that more Presiding Officers should be appointed so that the cases can be disposed of expeditiously. This would necessitate the amendment of Section 4 of the Act.

7. Based on their experience, several banks have stated that after the recovery certificates are issued by DRTs, the actual recovery takes very long time due to preoccupation of the Recovery Officers with other cases. Presently, Section 7 of the Act provides for appointment of only one Recovery Officer. Depending upon the amount of work with them, it should be possible for the Government to appoint more than one Recovery Officer if the work load so requires. The Working Group, therefore, recommends that Section 7 of the Act may be amended to provide for appointment of more that one Recovery Officers.

8. The Working Group is acutely aware of the fact that a Division Bench of the Delhi High Court had quashed the constitution of the DRT at Delhi, inter alia, on the grounds that the constitution of DRTs under the statute was negation of principles of

independence of judiciary as the appointment of both the DRT and DRAT were fully within the control of Central Government and before whom the principle litigant was the Central Government itself. While the High Court upheld the legislative competence of the Central Government to establish the tribunal under Article 323(B) of the Constitution of India, it struck down the Act on the ground that in the appointment of presiding officers of the tribunal and the appellate tribunal, there is no role for the High Court and that the High Court also does not exercise any judicial control under Article 235 of the Constitution, although the tribunals have been conferred with the powers of the civil court. It is no doubt true that on appeal preferred by the Union of India, the Supreme Court has stayed the operation of the Delhi High Court's order dated 10th March 1995 and the appeal is still pending before the Supreme Court.

9. The main ground on which the Act was held by the Delhi High Court to be unconsti-tutional was that in the matter of appointment of presiding officers of the DRTs and DRAT, there was no consultation with the High Court regarding their appointment which was negation of independence of judiciary. The objection of the High Court has already been met to a limited extent by the Debt Recovery Appellate Tribunal (Procedure for Appointment as Presiding Officers of Appellate Tribunal) Rules, 1998 and Debt Recovery Tribunal

(Procedure for Appointment as Presiding Officer of the Tribunal) Rules, 1998, which were framed by the Central Government on 19th January 1998. In terms of Rule 3 of the Rules, a Selection Committee has been constituted, consisting, inter alia, of the Chief Justice of India or a judge of Supreme Court nominated by him and such judge of Supreme Court is also the Chairman of the Selection Committee and no committee meeting can be held without him. This, however, is not sufficient. The provision for consultation with the Supreme Court should be a part of the Act itself. The Working Group, therefore, recommends that Section 3 of the Act may be amended to provide for consultation with the Chief Justice of India or a judge of the Supreme Court appointed by him. This will ensure that the persons selected for appointment as presiding officers of the DRTs and the DRATs are men of adequate knowledge of law to discharge the judicial functions entrusted to them under the Act and will also take care of the challenge to the Act on the ground of negation of independence of judiciary. Several advocates with whom the Group had interaction at New Delhi on 2nd May 1998, suggested that only the District Judges and the officers from the State judicial services should be considered for appointment as presiding officers of the DRTs. The Working Group deliberated upon this and felt that though there may be some advantages in appointing the District Judges as presiding officers of DRTs, it would

not like the choice of DRTs to be restricted only to the District Judges more so because the Working Group views DRTs as a dedicated system which is not affected by the rigours of Civil Procedure Code.

10. Unlike Civil Procedure Code, there is no provision in the Act for transfer of cases from one tribunal to another tribunal. There may be many occasions when it may be more convenient to the banks and other parties to have their matter adjudicated at some other centre. The Working Group, therefore, recommends that the provision should be made in the Act to empower the DRAT to transfer cases from one tribunal to another. This recommendation would necessitate introduction of a new section in the Act. The Working Group also recommends that the powers may be given to Presiding Officer of DRAT to exercise the jurisdiction over the Tribunals which are within his jurisdiction to appraise the judicial work of the Tribunal, writing of CRs of Presiding Officers and inquiring into the complaints against staff of the Recovery Tribunals and recording his finding and sending his recommendations to Government of India for necessary action.

11. Several representations were made to the Group that Section 19 of the Act should be amended to provide for entertaining of counter claims, set offs, etc. by the defendants in respect of the applications made by the banks and financial institutions for recovery of debts. The judgements of the Delhi High Court in State

Bank of India Vs. V.K.Tayal, AIR 1997, Delhi 170, and Central Bank Vs. Seth Brothers reported in 1997 1SJ (Bombay) 139, have raised questions on the admissibility of the counter claims by the defendants particularly when they are based on different cause of action. This is also one of the items argued before the Supreme Court on 18th November 1997. Since a special forum has been created for recovery of dues from the banks and financial institutions, any specific amounts due to the defendants from such bank or financial institution, should be subject to the jurisdiction of the DRTs. The Working Group, therefore, recommends that a sub-section may be inserted in Section 19 of the Act to empower the tribunal to consider the counter-claims/ set off, arising out of the same cause of action which is the subject matter of the proceedings before it. Of course, it is not the intention of the Group to recommend the inclusion of the claims for damages by the defendants in the proceedings before the tribunal.

12. The Group deliberated on the suggestion received from the banks and the financial institutions for amending Section 19(6) of the Act which authorises the DRTs to make interim orders. There is, however, no power to a DRT for attachment of property before judgement or appointment of commissioner or receiver for preparation of inventory or possession of the property and sale thereof. The Group recommends that the Section 19(6) of the Act may be suitably amended to

empower DRTs to pass orders for attachment of property before judgement or for appointment of commissioner or receiver for preparation of inventory or possession of property and the sale thereof.

13. The attention of the Working Group has been drawn to the recommendations of the Parliamentary Committee on Subordinate Legislation for laying, on the table of both the Houses of Parliament, the notifications issued under Sections 1(4), 4 and 8 and also that this may be made part of the Act. Presently, all subordinate legislations i.e. the rules made under the Acts passed by the Parliament are required to be placed before both the Houses of Parliament. The recommendations made by the Parliamentary Committee on Subordinate Legislation has gone one step further and has recommended laying of notifications issued under Section 1(4) 4 and 8 of the Act on the table of both the Houses of Parliament and also that the same may be made part of the Act. The Working Group agrees with the Parliamentary Committee and recommends accordingly.

Other recommendations for amendment of the Act will be made in the light of responses received to the questionnaire issued by the Working Group and further interactions and deliberations of the Working Group.

Annexure VII

DEBT RECOVERY TRIBUNALS - A NEW APPROACH

Very often, need is felt to bring and consolidate all regulatory provision relating to banking and financial sector under one statute. Similarly, a case can be argued for marshalling under one umbrella all provisions in respect of dispute resolution arising in the areas of banking and finance. Basically these areas could be identified as below:

(1) Between banker and customer

(2) Between banker and banker

(3) Between banker and central bank

2. As regards the first category, dispute could be either fund based or service related. While the former is settled in civil courts, [when they are not criminal in nature and when it is for an amount less than Rs. Ten Lakh] and Debt Recovery Tribunals, latter is decided either by Consumer Forum or by banking ombudsmen.

3. As regards the second category, presently, the disputes between the public sector banks are settled in arbitration either by the Legal Department of Reserve Bank [when the amount involved is less than Rs. Fifty Thousand] or by Law Ministry [when the amount exceeds Rs. Fifty Thousand]. However, as suggested in para 11 below, disputes between all banks including private sector banks could be delegated to an authority i.e. RBI.

4. As regards the third category, it is not recognised that there could exist any dispute and hence no forum is available at present to consider any such dispute.

5. The present working group is concerned with the working of the Debt Recovery Tribunals which under present set up considers only dispute exceeding Rs. Ten Lakh and only when the application is made by a bank or a financial institution. An application for an amount less than prescribed or a claim by a borrower will lie to a civil Court only. This creates multiplicity of fora and this is opposed to the principles of natural justice inasmuch as a borrower is denied access to a forum where a lender can agitate his claim. The Debt Recovery Act requires a bank/financial institution to press its claim in one forum and defend in other forum in the case of set-offs claimed by the other party. It is therefore necessary that all claims by a banker and customer be decided by one forum barring jurisdiction of any other forum for a similar dispute. No doubt this may result in one forum being burdened with too many cases and that is where it may become necessary to evolve a procedure which will reduce the time lag in the decisions of the tribunal. It may be seen that under the Act freedom is given to the Tribunals to make their own Procedure, provided the procedure is not violative of Principles of natural justice. Presently, the procedure followed by the Tribunals is more or less that

of civil courts resulting in same problems faced by the civil courts and as a result defeating the very purpose of creating these Tribunals. What is required therefore is a complete new approach different from the existing one to look at the procedures to be followed by these Tribunals.

6. The panacea for the above problems could be found in privatising to the extent possible the procedures but at the same time retaining the authority in the Tribunals, in respect of the same. It is observed from the responses received from the various target groups that the delay is caused mainly in areas like service of notices, recording of evidence and actual recovery process. It is suggested that after a suit is registered with the Tribunal, the service of notice could be undertaken by the lawyer's offices on the lines subpoenas are issued in the U.S.A.through the attorneys offices. After the service of notices even evidence could be recorded and documents taken on record after they are notarised by the notary public attached to the offices of the advocates. The institution of a notary public can be well utilised for this purpose, as they are authorised to administer oath to any person and record statements on oath. Any objections raised during recording of evidence can be noted and decided by the Tribunals during the oral submissions which should be entertained by the Tribunals only when the case is ready and ripe for hearing

after recording of evidence. The Tribunals should take written submissions on the evidence from the parties and ask them to confine oral submissions to the points of law. Oral arguments should be brief and should confine to a specified time as may be given by the Tribunal. The Tribunals should give their orders in a open court without losing further time after the arguments and issue certificates of dues when necessary thereafter to its Recovery Officer.

7. The Recovery Officer should be given discretion to take the assistance of agencies like Police or professional debt recovery agencies or such private agencies as exigency requires under the authority or order of the Tribunals in each case. It is suggested in this connection that statute could be amended to provide for licensing and regulating professional debt recovery agencies which would encourage them or even for that matter the factoring agencies to buy the certificates of dues issued by Tribunals at a discount and provide liquidity to the banks and financial institutions.

8. The whole object of making these suggestions is to reduce the outlay on infrastructure on the part of Tribunals as also reduce the consequential delay caused in the process.

9. We are aware that the other two areas lie outside the reference of the working group but the idea is that if these suggestions are considered and incorporated in the

Act, it would make this Act a self contained code on this subject.

10. It is suggested that the statute dealing with the debt recovery should be broad based to include banking ombudsmen and the arbitrators and may be called the Banking Tribunals Act. A statutory recognition to ombudsman in banking with the ouster of jurisdiction of Consumer Forum from this area will give the Banking Ombudsman more authority to decide these disputes and will make this forum more effective and efficient too. While the present ombudsman scheme is more or less in order it needs to be amended to give the banks a level playing field. Also, a right of appeal may be provided therein which could lie to Reserve Bank and whose decision could be final leaving no further scope for any judicial review. Also, the subject matter of the dispute may be confined to only services rendered by the banks.

11. As regards the arbitration of disputes between the banks (both in public and private sector) it could be delegated to an authority named under the Act which can follow the procedure presently followed for this purpose, i.e. to decide on the basis of records of the parties. RBI can be the appropriate authority for the purpose.

12. Insofar as the disputes between the banks and the Central bank are concerned, though no such dispute is recognised today there is no objection to make a provision on these lines in a statute for the sake of fairplay and to

project a fair image of the Central bank. A provision may be made to constitute a Tribunal with a judge of a Supreme Court, either retired or puisne, along with an official of the Reserve Bank or Finance Ministry to assist the Judge. The Tribunal could be constituted under the Act by the Chief Justice of India if and when a dispute arises or is contemplated. The decision may be in the nature of a recommendatory award which could be either accepted or not at the discretion of the Governor of the Reserve Bank.