

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

51 of 1993

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CONTENTS

CHAPTER 1 :- PRELIMINARY

1. Short title, extent, commencement and application
2. Definitions

CHAPTER 2 :-ESTABLISHMENT OF TRIBUNAL AND APPELLATE TRIBUNAL

3. Establishment of Tribunal
4. Composition of Tribunal
5. Qualifications for appointment as Presiding Officer
6. Term of office
7. Staff of Tribunal
8. Establishment of Appellate Tribunal
9. Composition of Appellate Tribunal
10. Qualifications for appointment as Presiding Officer of the
Appellate Tribunal
11. Terms of office
12. Staff of the Appellate Tribunal
13. Salary and allowances and other terms and conditions of service
of Presiding Officers
14. Filling up of vacancies
15. Resignation and removal
16. Orders constituting Tribunal or an Appellate Tribunal to be final
and not to invalidate its proceedings

CHAPTER 3 :-JURISDICTION, POWERS AND AUTHORITY OF TRIBUNALS

17. Jurisdiction, powers and authority of Tribunals
- 17A. Power of Chairperson of Appellate Tribunal
18. Bar of jurisdiction

CHAPTER 4 :- PROCEDURE OF TRIBUNALS

19. Application to the Tribunal
20. Appeal to the Appellate Tribunal

- 21. Deposit of amount of debt due, on filing appeal
- 22. Procedure and powers of the Tribunal and the Appellate Tribunal
- 23. Right to legal representation and Presenting Officers
- 24. Limitation

CHAPTER 5 :- RECOVERY OF DEBT DETERMINED BY TRIBUNAL

- 25. Modes of recovery of debts
- 26. Validity of certificate and amendment thereof
- 27. Stay of proceedings under certificate and amendment of withdrawal thereof
- 28. Other modes of recovery
- 29. Application of certain provisions of Income-tax Act
- 30. Appeal against the order of Recovery Officer

CHAPTER 6 :- MISCELLANEOUS

- 31. Transfer of pending cases
- 31A. Power of Tribunal to issue certificate of recovery in case of decree or order
- 32. Chairperson, Presiding Officer and Staff of Appellate Tribunal and Tribunal to be public servants
- 33. Protection of action taken in good faith
- 34. Act to have overriding effect
- 35. Power to remove difficulties
- 36. Power to make rules
- 37. Repeal and saving

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

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An Act to provide for the establishment of Tribunals for expeditious, adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:-

CHAPTER 1 PRELIMINARY

1. Short title, extent, commencement and application :-

(1) This Act may be called the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

(2) It extends to the whole of India except the State of Jammu and

Kashmir.

(3) It shall be deemed to have come into force on the 24th day of June, 1993.

(4) The provisions of this Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(a) "Appellate Tribunal" means an Appellate Tribunal established under sub- section (1) of Section 8 ;

(b) "application" means an application made to a Tribunal under Section 19 ;

(c) "appointed day", in relation to a Tribunal or an Appellate Tribunal, means the date on which such Tribunal is established under sub-section (1) of Section 3 or, as the case may be, sub-section (1) of Section 8 ;

(d) "bank" means-

(i) a banking company;

(ii) a corresponding new bank;

(iii) State Bank of India;

(iv) a subsidiary bank; or

(v) a Regional Rural Bank;

(e) "banking company" shall have the meaning assigned to it in clause (c) of S.5 of the Banking Regulation Act, 1949;

¹"(ea) "Chairperson" means a Chairperson of an Appellate Tribunal appointed under Sec. 9;"

(f) "corresponding new bank" shall have the meaning assigned to it in clause (da) of S.5 of the Banking Regulation Act, 1949;

²"(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the

course of any business activity undertaken by the banks or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;"

(h) "financial institution" means- (i) a public financial institution within the meaning of Section 4A of the Companies Act, 1956 ; (ii) such other institution as the Central Government may, having regard to its business activity and the area of its operation in India, by notification, specify;

(i) "notification" means a notification published in the Official Gazette;

(j) "prescribed" means prescribed by rules made under this Act;

¹ "(ja) "Presiding Officer" means the Presiding Officer of the Debts Recovery Tribunal appointed under sub-sec. (1) of Sec. 4;"

(k) "Recovery Officer" means a Recovery Officer appointed by the Central Government for each Tribunal under sub-section (7) of Section 7 ;

(l) "Regional Rural Bank" means a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 ;

(m) "State Bank of India" means the State Bank of India constituted under Section 3 of the State Bank of India Act, 1955 ;

(n) "subsidiary bank" shall have the meaning assigned to it in clause (k) of S.2 of the State Bank of India (Subsidiary Banks) Act, 1959;

(o) "Tribunal" means the Tribunal established under sub-section (1) of Section 3 .

1. Inserted by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

2. Substituted for "(g) "debt" means any liability (inclusive of interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order

of any civil court or otherwise and subsisting on, and legally recoverable on, the date of the application;" by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

CHAPTER 2

ESTABLISHMENT OF TRIBUNAL AND APPELLATE TRIBUNAL

3. Establishment of Tribunal :-

(1) The Central Government shall, by notification, establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

(2) The Central Government shall also specify, in the notification referred to in sub-section (1), the areas within which the Tribunal may exercise jurisdiction for entertaining and deciding the applications filed before it.

4. Composition of Tribunal :-

(1) A Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer) to be appointed, by notification, by the Central Government.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may authorise the Presiding Officer of one Tribunal to discharge also the functions of the Presiding Officer of another Tribunal.

5. Qualifications for appointment as Presiding Officer :-

A person shall not be qualified for appointment as the Presiding Officer of a Tribunal unless he is, or has been, or is qualified to be, a District Judge.

6. Term of office :-

The Presiding Officer of a Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of ¹ [sixty-two years], whichever is earlier.

1. Substituted for "sixty-two years" by the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 1995.

7. Staff of Tribunal :-

(1) The Central Government shall provide the Tribunal "with one or more Recovery Officers" and such other officers and employees as

that Government may think fit.

(2) "The Recovery Officers" and other officers and employees of a Tribunal shall discharge their functions under the general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of "The Recovery Officers" and other officers and employees of a Tribunal shall be such as may be prescribed.

8. Establishment of Appellate Tribunal :-

(1) The Central Government shall, by notification, establish one or more Appellate Tribunals, to be known as the Debts Recovery Appellate Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

(2) The Central Government shall also specify in the notification referred to in sub-section (1) the Tribunals in relation to which the Appellate Tribunal may exercise jurisdiction.

"(3) Notwithstanding anything contained in sub-sees. (1) and (2), the Central Government may authorise the Chairperson of one Appellate Tribunal to discharge also the functions of the Chairperson of other Appellate Tribunal."

9. Composition of Appellate Tribunal :-

An Appellate Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Appellate Tribunal) to be appointed, by notification, by the Central Government.

10. Qualifications for appointment as Presiding Officer of the Appellate Tribunal :-

A person shall not be qualified for appointment as the Presiding Officer of the Appellate Tribunal unless he-

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or

(c) has held office as the Presiding Officer of a Tribunal for at least three years.

11. Terms of office :-

The Presiding Officer of an Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office

or until he attains the age of ¹ [sixty-five years] whichever is earlier.

1. Substituted for "sixty-two years" by the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 1995.

12. Staff of the Appellate Tribunal :-

The provisions of Section 7 (except those relating to Recovery Officer) shall, so far as may be, apply to an Appellate Tribunal as they apply to a Tribunal and accordingly references in that section to "Tribunal" shall be construed as references to "Appellate Tribunal" and references to "Recovery Officer" shall be deemed to have been omitted.

13. Salary and allowances and other terms and conditions of service of Presiding Officers :-

The salary and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Presiding Officer of a Tribunal or an Appellate Tribunal shall be such as may be prescribed: Provided that neither the salary and allowances nor the other terms and conditions of service of ¹ "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal shall be varied to his" disadvantage after appointment.

1. Substituted for "the said Presiding Officers shall be varied to their" by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

14. Filling up of vacancies :-

If, for any reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of a Tribunal or an Appellate Tribunal, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Tribunal or the Appellate Tribunal from the stage at which the vacancy is filled.

15. Resignation and removal :-

(1) The Presiding Officer of a Tribunal or an Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office: ¹"the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months

from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Presiding Officer of a Tribunal or an Appellate Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after inquiry,-

(a) in the case of the Presiding Officer of a Tribunal, made by a Judge of a High Court;

(b) in the case of the Presiding Officer of an Appellate Tribunal, made by a Judge of the Supreme Court, in which ²"the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehavior or incapacity of ³ "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal".

1. Substituted for "the said Presiding Officer" by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

2. Substituted for "the Presiding Officer concerned" by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

3. Substituted for "the aforesaid Presiding Officer" by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

16. Orders constituting Tribunal or an Appellate Tribunal to be final and not to invalidate its proceedings :-

No order of the Central Government appointing any person as the Presiding Officer of a Tribunal or an Appellate Tribunal shall be called in question in any manner, and no act or proceeding before a Tribunal or an Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Tribunal or an Appellate Tribunal.

CHAPTER 3

JURISDICTION, POWERS AND AUTHORITY OF TRIBUNALS

17. Jurisdiction, powers and authority of Tribunals :-

(1) A Tribunal shall exercise, on and from the appointed day, the

jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

17A. Power of Chairperson of Appellate Tribunal :-

1 (1) The Chairperson of an Appellate Tribunal shall exercise general power of superintendence and control over the Tribunals under his jurisdiction including the power of appraising the work and recording the annual confidential reports of Presiding Officers. (2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties, and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal."

1. Inserted by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

18. Bar of jurisdiction :-

On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17 .

CHAPTER 4

PROCEDURE OF TRIBUNALS

19. Application to the Tribunal :-

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(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction- (a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or (c) the cause of action, wholly or in part, arises.

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-sec. (1) and against the same person another bank or financial institution also has a claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

(3) Every application under sub-sec. (1) or sub-sec. (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed: Provided that the fee may be prescribed having regard to the amount -of debt to be recovered: Provided further that nothing contained in this subsection relating to fee shall apply to cases transferred to the Tribunal under sub-sec. (1) of Sec. 31.

(4) On receipt of the application under sub-sec. (1) or sub-sec. (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, at or before the first hearing or within such time as Tribunal may permit, present a written statement of his defence.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

(8) A defendant in an application may, in addition to his right of pleading a set off under sub-sec. (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendants has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-sec, (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

(10) The applicant shall be at liberty to file a written statement in answer to the counterclaim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate- the execution of any order for the recovery of debt that may be passed against him,- (i) is about to dispose of the whole or any part of his property; or (ii) is about to remove the whole or any part of the property from the local limits of the jurisdiction of the Tribunal; or (iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest, the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security. (B) Where the defendant fails to show cause why he should furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the

recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-sec. (14).

(16) If an order of attachment is made without complying with the provisions of sub-sec. (13), such attachment shall be void.

(17) In the case of disobedience of an order made by the Tribunal under sub-secs. (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order,- (a) appoints a receiver of any property, whether before or after grant of certificate for recovery of debt (b) remove any person from the possession or custody of the property; (c) commit the same to the possession, custody or management of the receiver; (d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and (e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956 (I of 1956), the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of Sec. 529-A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

(20) The Tribunal may, after giving the applicant and the

defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated: Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-sec. (1) or sub-sec. (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

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1. Substituted for section 19 for "19. Application to the Tribunal (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction,- (a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or (c) the cause of action, wholly or in part, arises. (2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee for filing the application as may be

prescribed: Provided that the fee may be prescribed having regard to the amount of debt to be recovered: Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of section 31. (3) On receipt of the application under sub-section (1), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted. (4) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such orders on the application as it thinks fit to meet the ends of justice. (5) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant. (6) The Tribunal may make an interim order (whether by way of injunction or stay) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal. (7) The Presiding Officer shall issue a certificate under his signatures on the basis of the order of the Tribunal, to the Recovery Officer for recovery of the amount of debt specified in the certificate. (8) The application made to the Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within six months from the date of receipt of the application." by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

20. Appeal to the Appellate Tribunal :-

(1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed: Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming,

modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under subsection (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

21. Deposit of amount of debt due, on filing appeal :-

Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy five per cent of the amount of debt so due from him as determined by the Tribunal under Section 19 : Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

22. Procedure and powers of the Tribunal and the Appellate Tribunal :-

(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or

documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte,

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(h) any other matter which may be prescribed.

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228, and for the purposes of Section 196 of the Indian Penal Code, 1860 and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of S.195 of Code of Criminal Procedure, 1973.

23. Right to legal representation and Presenting Officers :-

(1) A bank or a financial institution making an application to a Tribunal or an appeal to an Appellate Tribunal may authorise one or more legal practitioners or any of its officers to act as Presenting Officers and every person so authorised by it may present its case before the Tribunal or the Appellate Tribunal.

(2) The defendant may either appear in person or authorise one or more legal practitioners or any of his or its officers to present his or its case before the Tribunal or the Appellate Tribunal.

24. Limitation :-

Limitation Act, 1963, shall, as far as may be, apply to an application made to a Tribunal.

CHAPTER 5

RECOVERY OF DEBT DETERMINED BY TRIBUNAL

25. Modes of recovery of debts :-

The Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of Section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely :-

(a) attachment and sale of the movable or immovable property of the defendant;

(b) arrest of the defendant and his detention in prison;

(c) appointing a receiver for the management of the movable or

immovable properties of the defendant.

26. Validity of certificate and amendment thereof :-

(1) It shall not be open to the defendant to dispute before the Recovery Officer the correctness of the amount specified in the certificate, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the Presiding Officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(3) The Presiding Officer shall intimate to the Recovery Officer any order withdrawing or cancelling a certificate or any correction made by him under sub-section (2).

27. Stay of proceedings under certificate and amendment of withdrawal thereof :-

(1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the Presiding Officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the Presiding Officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate to the Recovery Officer.

(3) Where the order giving rise to a demand of amount for recovery of debt has been modified in appeal, and, as a consequence thereof the demand is reduced, the Presiding Officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal remains pending.

(4) Where a certificate for the recovery of debt has been received by the Recovery Officer and subsequently the amount of the outstanding demands is reduced ¹ "or enhanced" as a result of an appeal, the Presiding Officer shall, when the order which was the subject matter of such appeal has become final and conclusive, amend the certificate or withdraw it, as the case may be.

1. Inserted by THE RECOVERY OF DEBTS DUE TO BANKS AND

28. Other modes of recovery :-

(1) Where a certificate has been issued to the Recovery Officer under sub- section (7) of Section 19 , the Recovery Officer may, without prejudice to the modes of recovery specified in Section 25 , recover the amount of debt by any one or more of the modes provided under this section.

(2) If any amount is due from any person to the defendant, the Recovery Officer may require such person to deduct from the said amount, the amount of debt due from the defendant under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Recovery Officer: Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under Section 60 of the Code of Civil Procedure, 1908 .

(3)

(i) The Recovery Officer may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the defendant or to any person who holds or may subsequently hold money for or on account of the defendant, to pay to the Recovery Officer either forthwith upon the money becoming due or being held or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount of debt due from the defendant or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the defendant jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such amount shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the defendant at his last address known to the Recovery Officer and in the case of a joint account to all the joint holders at their last addresses known to the Recovery Officer.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice

is issued to a post office, bank, financial institution, or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like to be made before the payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or the part thereof is not due to the defendant or that he does not hold any money for or on account of the defendant, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant on the date of the notice, or to the extent of the defendant's liability for any sum due under this Act, whichever is less.

(vii) The Recovery Officer may, at any time or from time to time amend or revoke any notice under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the defendant to the extent of the amount so paid.

(ix) Any person discharging any liability to the defendant after the receipt of a notice under this sub-section shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant so discharged or to the extent of the defendant's liability for any debt due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Recovery Officer, he shall be deemed to be a defendant in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were a debt due from him, in the manner provided in Section 25 , Section 26 and Section 27 and the notice shall have the same effect as an

attachment of a debt by the Recovery Officer in exercise of his powers under Section 25 .

(4) The Recovery Officer may apply to the court in whose custody there is money belonging to the defendant for payment to him of the entire amount of such money, or if it is more than the amount of debt due, an amount sufficient to discharge the amount of debt so due.

¹ "(4A) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company, any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets."

(5) The Recovery Officer may recover any amount of debt due from the defendant by distraint and sale of his movable property in the manner laid down in the Third Schedule to the INCOME TAX ACT, 1961 .

1. Inserted by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

29. Application of certain provisions of Income-tax Act :-

The provisions of the Second and Third Schedules to the INCOME TAX ACT, 1961 and the INCOME TAX (CERTIFICATE PROCEEDINGS) RULES, 1962 , as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income-tax: Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the defendant under this Act.

30. Appeal against the order of Recovery Officer :-

¹ (1) Notwithstanding anything contained in Sec. 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal. (2) On receipt of an appeal under sub-sec. (1), the Tribunal may, after giving an opportunity to the appellate to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Secs. 25 to 28 (both inclusive)."

1. Substituted for section 30 for "30. Orders of Recovery Officer to

be deemed as orders of Tribunal Notwithstanding anything contained in section 29, an order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive), shall be deemed to have been made by the Tribunal and an appeal against such order shall lie to the Appellate Tribunal." by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

CHAPTER 6

MISCELLANEOUS

31. Transfer of pending cases :-

(1) Every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal: Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any court.

(2) Where any suit or other proceeding stands transferred from any court to a Tribunal under sub-section (1),-

(a) the court shall, as soon as may be after such transfer, forward the records of such suit or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made under Section 19 from the stage which was reached before such transfer or from any earlier stage ¹ as the Tribunal may deem fit.

1. Omitted for "or de novo" by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

31A. Power of Tribunal to issue certificate of recovery in case of decree or order :-

¹ (1) Where a decree or order was passed by any court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 and has not yet been executed, then, the decree-holder may apply to the Tribunal to pass an order for recovery of the amount. (2) On receipt of an application under sub-sec. (1), the Tribunal may issue a certificate for recovery to a Recovery officer. (3) On receipt of a certificate under sub-sec. (2), the Recovery Officer shall proceed to recover

the amount as if it was a certificate in respect of a debt recoverable under this Act."

1. Inserted by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

32. Chairperson, Presiding Officer and Staff of Appellate Tribunal and Tribunal to be public servants :-

¹ The Chairperson of an Appellate Tribunal, the Presiding Officer of a Tribunal, the Recovery Officer and other officers and employees of an Appellate Tribunal and a Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860)."

1. Substituted for "32. Members and staff of Tribunals to be public servants The Presiding Officer, the Recovery Officer and other officers and employees of a Tribunal and an Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860)." by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

33. Protection of action taken in good faith :-

No suit, prosecution or other legal proceeding shall lie against the Central Government or against the Presiding Officer of a Tribunal or of an Appellate Tribunal or against the Recovery Officer for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

34. Act to have overriding effect :-

(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 , the State Financial Corporations Act, 1951 , the Unit Trust of India Act, 1963 , the Industrial Reconstruction Bank of India Act, 1984 (52 of 1984)¹ "the Sick Industrial Companies (Special Provisions) Act, 1985 and the Small Industries Development Bank of India Act, 1989 (39 of 1989)"

1. Substituted for "and the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986)" by THE RECOVERY OF DEBTS

DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

35. Power to remove difficulties :-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty: Provided that no such order shall be made after the expiry of the period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

36. Power to make rules :-

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :-

(a) the salaries and allowances and other terms and conditions of service of ¹, "the Chairperson, the Presiding Officers" Recovery Officers and other officers and employees of the Tribunal and the Appellate Tribunal under Section 7 , Section 12 and SECTION 13 ;

(b) the procedure for the investigation of misbehaviour or incapacity of ²"the Chairpersons of Appellate Tribunals and the Presiding Officers of the Tribunals" under sub- section (3) of Section 15 ;

(c) the form in which an application may be made under Section 19 , the documents and other evidence by which such application shall be accom- panied and the fees payable in respect of the filing of such application;

(d) the form in which an appeal may be filed before the Appellate Tribunal under Section 20 and the fees payable in respect of such appeal;

(e) any other matter which is required to be, or may be, prescribed.

3 "(3) Every notification issued under sub-sec. (4) of Sec. I, Sec. 3 and Sec. 8 and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be issued or made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule."

1. Substituted for "the Presiding Officer" by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

2. Substituted for "the Presiding Officers of the Tribunals and Appellate Tribunals" by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

3. Substituted for "(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule." by THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

37. Repeal and saving :-

(1) The Recovery of Debts Due to Banks and Financial Institutions Ordinance, 1993 (Ord. 25 of 1993) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

(1) The Recovery of Debts to Banks and Financial Institutions (Amendment) Ordinance, 2000 (Ord. I of 2000) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.