IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)
[UNDER ORDER XXI RULE 3(1)(A)]

SPECIAL LEAVE PETITION (C) NO. 10911 OF 2021 [

ARISING OUT OF THE IMPUGNED INTERIM ORDER DATED 09.07.2021 PASSED BY THE HON'BLE HIGH COURT OF DELHI IN WRIT PETITION (C) NO. 6313/2021]

(WITH PRAYER FOR INTERIM RELIEF)

IN THE MATTER OF:

STATE BAR COUNCIL OF MADHYA PRADESH

...PETITIONER

VERSUS

UNION OF INDIA

…RESPONDENT

WITH

I.A. No. of 2021

AN APPLICATION FOR EXEMPTION FROM A CERTIFIED COPY OF THE IMPUGNED INTERIM ORDER DATED 09.07.2021

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: MRIGANK PRABHAKAR

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IN THE MATTER OF:

STATE BAR COUNCIL OF MADHYA PRADESH

...PETITIONER

VERSUS

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…RESPONDENT

OFFICE REPORT ON LIMITATION

(i) THE PETITION IS/ARE WITHIN TIME.

(ii) THE PETITION IS BARRED BY TIME AND THERE IS DELAY OF ____DAYS IN FILING THE SAME AGAINST THE INTERIM ORDER DATED 09.07.2021 AND PETITION FOR CONDONATION OF _____DAYS DELAY HAS BEEN FILED.

(iii) THERE IS DELAY OF _____DAYS IN RE-FILING THE PETITION AND PETITION FOR CONDONATION OF_____DAYS IN RE-FILING HAS BEEN FILED.

NEW DELHI:

FILED ON: 15.07.2021

BRANCH OFFICER

A1

LISTING PROFORMA
IN THE SUPREME COURT OF INDIA

SECTION:

The case pertains to (Please tick/check the correct box):

- ☐ Central Act : **The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016**
- ☐ Section : **Section 4**
- ☐ Central Rule : **NA**
- ☐ Rule No(s) :**NA**
- ☐ State Act : **NA**
- ☐ Section : **NA**
- ☐ State Rule : **NA**
- ☐ Rule No(s) : **NA**
- ☐ Impugned Interim order: **Interim**
- ☐ Impugned Final Order/Decree : **NA**
- ☐ High Court : **High Court of Delhi**
- ☐ Names of Judges: **HMJ D.N.Patel, and, HMJ Jyoti Singh**
- ☐ Tribunal/Authority : **NA**

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1. Nature of matter : **CIVIL**

2. (a) Petitioner/appellant No.1 : **State Bar Council of Madhya Pradesh**
   (b) e-mail ID:
   (c) Mobile phone number:

3. (a) Respondent No. 1: **Union of India**
   (b) e-mail ID: **NA**
   (c) Mobile phone number: **NA**

4. (a) Main category classification:
   (b) Sub classification:

5. Not to be listed before: **NA**

6. (a) Similar disposed of matter with citation, if any, & case details: **NA**
(b) Similar pending matter with case details: **NA**

7. **Criminal Matters:**
(a) Whether accused/convict has surrendered: ❑ Yes ❑ No

(b) FIR No. **NA** Date: **NA**

(c) Police Station: **NA**

(d) Sentence Awarded: **NA**

(e) Period of sentence undergone including period of detention/custody undergone : **NA**

8. **Land Acquisition Matters:**
(a) Date of Section 4 notification: **NA**

(b) Date of Section 6 notification: **NA**

(c) Date of Section 17 notification: **NA**

9. **Tax Matters:** State the tax effect: **NA**

10. **Special Category** (first petitioner/appellant only):

❑ Senior citizen > 65 years ❑ SC/ST ❑ Woman/child ❑ Disabled ❑ Legal Aid case ❑ In custody

11. Vehicle Number (in case of Motor Accident Claim matters): **NA**

MRIGANK PRABHAKAR
Advocate for the Petitioner
9953068680
prabhakarmrigank@gmail.com
Code No.2507

New Delhi
Dated: 15.07.2021

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SYNOPSIS

The Petitioner is a Statutory Body created under the provisions of Advocates Act, 1961 and is established and entitled to preserve, protect and further the interest of its member lawyers across the State of Madhya Pradesh. It is also supposed to ensure that the problem faced by the legal fraternity, including, as also the litigants in the administration and dispensation of justice are adequately redressed and dealt with. Therefore, as a statutory body, the Petitioners are not only representing the cause of its lawyer members, but also the litigants, which are an essential feature and ingredient of the justice delivery system. The Petitioner is a representative body of more than 60,000 Advocates registered on its Rolls, practicing across the State of Madhya Pradesh as also a large number of Advocates of the whole State who are practicing before the Debt Recovery Tribunal, Madhya Pradesh (DRT).

The present Special Leave Petition is preferred against the Impugned Interim Order dated 09.07.2021 passed in W.P.(C) No. 6313/2021 passed by the Delhi High Court without appreciating the urgency of the interim reliefs sought for by the Petitioner simply issued notices returnable after almost 6 weeks on 20.08.2021. The High Court despite being vehemently urged for

consideration of the stay application chose not to consider and decide the same. The High Court failed to appreciate that the Petitioner has raised important jurisdictional issues and the very competency of Debt Recovery Tribunal, Lucknow (hereinafter 'DRT Lucknow') to hear and decide cases arising from the State of Madhya Pradesh and Chattisgarh, instead of Debt Recovery Tribunal, Jabalpur (hereinafter 'DRT Jabalpur').

The order of the High Court is assailed on the ground of ignorance of the principle that since the petitioner had laid a challenge to the very foundation of the Notification vesting jurisdiction with the DRT Lucknow, being *ultra vires* and contrary to the express provision of section 4(2) of the Recovery of Debts due to Banks Act, 1993 (hereinafter 'RDDB Act'), therefore the High Court ought to have taken up the interim application at least for consideration at an early date. The serious results that follow is that the DRT Lucknow being vested with the jurisdiction illegally, contrary to section 4(2), shall continue to hear the matters arising before it. The principle of law laid down by the Constitutional Bench of this Hon'ble Court in the ***State of Orissa Vs. Madan Gopal Rungta, [AIR 1952 SC 12]***, would apply squarely on DRT Lucknow hearing any of the matters

arising from MP & CG which were to be earlier heard by DRT Jabalpur.

Brief Facts:

(a) The Parliament enacted the RDDB Act 1993 for speedier recovery of debts from borrowers and guarantors, under which the DRTs were established. The constitutionality of vesting of jurisdiction of DRT was challenged on multiple grounds and was assailed by this Hon'ble Court in the judgment of ***Union of India & Anr. vs. Delhi High Court Bar Association & Ors., [(2002) 4 SCC 275]*** on the ground that such Tribunals were created to effectively serve as substitutes for ordinary Civil Courts and the hierarchy therein for swift resolution of economic and financial disputes. The constitutionality of establishment of DRT was further upheld on the ground that economic and financial matters constitute a special class in themselves, which need special attention and the Parliament rightly did so by intervening through a special legislation in this regard.

(b) Section 2(o) of the RDDB Act, 1993 defines 'Tribunal' as Tribunal established under Section 3(1). Section 4, titled as 'Composition of Tribunal' prior to amendment provided for authorising the Presiding Officer (hereinafter 'P.O.') of one

DRT to discharge also the functions of P.O. of another DRT in his absence.

(c) The aforesaid provision underwent an amendment in 2016, whereafter Section 4 (2) was amended to read as follows :

> *"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—*
> *(a) authorise the Presiding Officer of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal under this Act in addition to his being the Presiding Officer of that Tribunal; or*
> *(b) authorise the judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, to discharge the functions of the Presiding Officer of Debts Recovery Tribunal under this Act, in addition to his being the judicial Member of that Tribunal.]"*

(d) From the above it is thus clear that post amendment of 2016 in the absence of a regular full time P.O. of DRT, the P.O./ Chairperson of any other Tribunal established in the same State under any other law by the Central Govt. can be entrusted with such duties of performance of obligations of the P.O. of DRT. The previous dispensation of vesting P.O. of DRT of any other State as additional charge was dispensed with and a new arrangement was fixed post 2016 amendment.

(e) The Division Bench of the Kerala High Court in the matter of ***M/S. Kerala Fashion Jewellery vs. Union of India (WA. No. 384 OF 2021)*** in its final judgment and order dated 23.03.2021 held that in view of amended Section 4(2) of the RDDB Act, 1993, the DRT situated outside the concerned State cannot be authorised to take over the responsibility of DRTs of another State and that amendment of Section 4(2) has to be given effect to in its letter and spirit. The Kerala High Court quashed the Notification dated 04.01.2021 issued by the Central Govt. (Ministry of Finance, UOI) through which the powers and jurisdiction of DRT Kerala were vested with DRT Bangalore as an interim arrangement. To the instructions of the petitioner, the Judgment of the Kerala High Court has been acted upon by the UOI and has not been taken into appeal.

(f) The DRT Jabalpur has been headless without any full time P.O. for the last one year from July 2020 and additional charges have been conferred on DRTs of other States from time to time. Through Notification dated 04.01.2021, the DRT Lucknow was entrusted with the additional charge of DRT Jabalpur and through the

subsequent Notification dated 05.07.2021 impugned in the subject writ proceedings, the said tenure has been extended to 30.09.2021, which makes the interim arrangement virtually perpetual, expanding over more than a year.

(g) As would be detailed below in the pleadings to follow, the DRT Lucknow has not been taking up regular matters for final hearing for the last almost one year and in fact is not sitting on regular basis for last more than 3 months, but hearing only exceptionally urgent matters through virtual mode.

(h) The petitioner initially approached the Delhi High Court challenging the Notification of January 2021 through W. P. (C) No. 6279/2021 which was filed on 14.06.2021. The petitioner sought for urgent listing of the said W.P. by mentioning it before the Registry and subsequently before the Vacation Bench of the High Court as well, but the Vacation Bench denied the listing of the same for hearing giving liberty to the petitioner for listing after reopening of the Courts.

(i) During the pendency of the aforesaid W.P.(C) No. 6279/2021 challenging the Notification dated

04.01.2021, the Central Govt. issued another Notification dated 05.07.2021, in view of which subsequent separate W. P., titled as W.P.(C) No. 6313/2021 was filed in which the aforesaid subsequent Notification was challenged. The aforesaid writ petition was listed on 09.07.2021, when the impugned order came to be passed.

(j) In the aforesaid W. P. (C) No. 6313/2021 following interim reliefs were prayed for explaining the nature of urgency :

"A. That, this Hon'ble Court may be pleased to stay the operation & effect of the Impugned Notification cum Public Notice No. F.No. 7/1/2021-DRT, dated 05-07-2021 issued by the Respondent GOI, in so far as it relates to DRT Jabalpur, transferring the charge to DRT Lucknow being repugnant and contrary to Section 4(2) of the RDDB Act 1993.

B. Be pleased to hold & direct as an interim measure that DRT Lucknow doesn't possesses the jurisdiction and power to entertain, hear or decide the cases pertaining to the and falling within the territorial jurisdiction of States of MP & CG (or DRT, Jabalpur) in view of the amended provisions of Section 4(2) of the RDDB Act 1993."

(k) On the first date of hearing i.e. 09.07.2021 the petitioner pressed for urgent consideration on the interim relief sought for by them, especially in view of the jurisdiction issued raised by them and competency of the DRT Lucknow to hear even a single matter, the Notification being hit and barred by express provision Section 4(2) of the RDDB Act, 1993.

(l) However, the Division Bench instead of appreciating the deserved urgency, especially the interim application issued the notices and posted the matter after almost 6 weeks, ignoring the pressing urgency involved in the said matter.

(m) In view of the judgment of the Constitution Bench of Hon'ble Court, in the matter of ***State of Orissa Vs. Madan Gopal Rungta***, ***[AIR 1952 SC 12]***, the DRT cannot hear even a single matter, and it would lead to complexity of proceedings and cause grave prejudice to all the appearing parties as also cause inconvenience to members of the petitioner association, when they been agitating this issue for almost a month now.

(n) The present petition has been warranted as the High Court's oversight of pressing urgency of Interim Orders

in the matter, demonstrates a casual outlook, which ought not to have extended in a matter of such a nature.

(o) The petitioner was at pains to request the High Court for early indulgence in the matter on the interim issue, which however declined to accede to the same. Hence the present petition.

LIST OF DATES

Date	Particulars
1993	The Parliament has enacted the RDDB Act, 1993. Section 2(o) defines 'Tribunal' as Tribunal established under Section 3(1). Section 3, titled as 'Establishment of Tribunal', empowers the Central Government to establish DRT for exercising jurisdiction, powers and authorities conferred under the enactment. **Section 4**, titled as 'Composition of Tribunal' reads as: ***"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—*

	(a) *authorise the Presiding Officer of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal under this Act in addition to his being the Presiding Officer of that Tribunal; or* (b) *authorise the judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, to discharge the functions of the Presiding Officer of Debts Recovery Tribunal under this Act, in addition to his being the judicial Member of that Tribunal.]"* By its own inaction of not appointing regular full time P.O. for DRT for many months, negligence and omission, the respondent UOI has defeated the mandatory provisions of the RDDB Act and the SARFAESI Act which provides for time-bound disposal of Original Application (O.A.) and Securitization Applications (S.A.) instituted before it. Section 19(24) of the RDDB Act which categorically lays down that O.A., so preferred

	must be decided within the maximum period of 180 days. The said section reads as follows: ***"19. Application to the Tribunal*** *...* *(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and every effort shall be made by it to complete the proceedings in two hearings, and] to dispose of the application finally within <u>one hundred and eighty days</u> from the date of receipt of the application."*
1995	DRT Jabalpur has been established for the two States of Chhattisgarh and Madhya Pradesh and has been in existence from the date of its establishment in 1995. As per the information available in public domain, there are more than 5000 cases of various categories, viz. S.A. (Securitization Application), O.A. (Original Application), M.A./R.P. (Miscellaneous Applications/ Review Petitions) pending before the DRT Jabalpur. The problem of pendency is colossal to be dealt with and handled by singularly manned DRT for both the States. It has

	been a recurring practice on the part of Respondent authorities in entrusting the charge of DRT Jabalpur to DRTs of other States, going to the extent of entrusting it to the DRT of Cuttack (Odisha), Kolkata (West Bengal), on many occasions in the previous years, whenever the P.O., DRT Jabalpur wasn't available. It is not a disputed fact and is being made responsibly on affidavit by the Petitioner herein. Formerly serving P.O. of DRT Jabalpur Mr. B. R. Sinha demitted the office in the last week of June 2020, where after the impugned Notification cum public notice came to be issued through which the additional charge of DRT Jabalpur was transferred to DRT Lucknow.
2002	Section 17(5) of the SARFAESI Act 2002, which also provides for a time limit of 2 months for final disposal of applications preferred by the DRT. Section reads: ***"17. Application against measures to recover secured debts***-

	(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,1 [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken. …. *(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application."*
2016	The intent and object of the Parliament in introducing the Amendment to Section 4 of the RDDB Act is well borne out from the official commentary available on the officially authorised research wing of "PRS Legislative Research", which clearly elaborates the Objective behind the Amending Act of 2016. True copy of the Commentary about the Aims and Objectives behind Amending Act of 2016, specifically Section

	4, constituting the subject matter of the Writ Petition filed before the Hon'ble High Court as available on the official website of "prsindia.org" is annexed herewith as **Annexure P-1 (p.26 to 27)**.
12.08.2016	Section 4(2) was amended to substitute the original with a new clause altogether through Amending Act No. 44 of 2016 with effect from 12-08-2016. Prior to amendment Section 4(2) read as follows: ***"4. Composition of Tribunal.-*** ... (2)"*Notwithstanding anything contained in subsection (1), the Central Government may authorise the Presiding Officer of one Tribunal to discharge also the functions of the Presiding Officer of another Tribunal".* From the above para it is clear that whereas prior to Amendment, in the absence of any P.O., of DRT, the charge, duties and responsibilities could have been shifted to another corresponding P.O. of DRT in the same state or another state, after amendment, a significant transformation has

	taken place. Post 2016 Amendment, if the P.O. of DRT is not available to discharge his functions or duties, then in such a situation, the P.O. of any other Tribunal, established under 'any other law', shall be authorised to discharge the functions of P.O., DRT under this enactment. In the same way, Section 4(2)(b) authorises the Judicial Member of any other Tribunal under 'any other law', to discharge the functions of P.O. of DRT under the RDDI Act. This implies that the Amendment must be given a purposive and beneficial interpretation for the purpose for which it has been introduced. The purpose of introducing this amendment is to ensure that the litigants or their counsel do not have to run pillar to post for getting justice from the Tribunals established under the RDDI Act, if any P.O., demits office or gets superannuated. It further intends to make justice accessible, affordable, reachable and in the same periphery as the originally established DRT Tribunal is enacted and created. For example, if DRT for

	Madhya Pradesh and Chhattisgarh is established at Jabalpur, then any other Tribunal under 'any other law' established by the Central Govt. must be as accessible, affordable and reachable in the absence of P.O., of regular P.O., of DRT, as it was prior to his demitting office or retirement. For this reason alone the Amendment has been introduced and Tribunals within the same periphery; with the same reach and access have been authorised to deal with such matters on an ad-hoc basis. This is the primary intent of Amending Act of 44, dated 12-08-2016. A true copy of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, dated 12.08.2016 is marked hereto and annexed as **Annexure P-2(p.28 to 42).**
2017	That in the year 2017, the 272nd Law Commission Report under the Chairmanship of Dr. Justice B. S. Chauhan found that the adjudicatory redressal mechanism of DRTs must be strengthened and a

	slew of measures were suggested. Some of them relating to the present Petition were geared towards the expeditious disposal of disputes of more than Rs. 1 cr. And such other many measures were suggested by the Law Commission Report. Further, *Vide Para 3.35 & 6.22, the Report observed as thus:* *"**3.35** The Tribunals have been established in almost all the countries for the reason that they are cheaper (cost-effective), accessible, free from technicalities, expeditious and proceed more rapidly and efficiently as manned by experts, while the Courts are too remote, too legalistic and too expensive. The concept of Tribunalisation was developed to overcome the crisis of delay and backlogs in the administration of justice. However, the data officially available, respect for the working of some of the Tribunals do not depict a satisfactory picture. Though the disposal rate of the Tribunals in comparison to the filing of cases per year had been remarkable i.e., at the rate of 94%, the pendency remains high. Some of the figures of pending cases before the Tribunals are as under:*

	…. ***3.*** *In Debt Recovery Tribunal as on 03-07-2016 number of pending cases is 78,118.* ….. ***6.22*** *The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides for setting up of a Tribunal and an appellate Tribunal. The Constitutional validity of this Act was challenged in Union of India v. Delhi Bar Association, wherein the Supreme Court held:* *'It has to be borne in mind that the decision of the Appellate Tribunal is not final, in the sense that the same can be subjected to judicial review by the High Court under Articles 226 and 227 of the Constitution.'* True Copy of relevant excerpts of the 272nd Law Commission Report is annexed herewith as **Annexure P-3 (p.43 to 49)**.
July 2020	With the retirement of the previously serving P.O. of DRT Jabalpur, the post fell vacant and left wanting for a regular full time P.O. from July 2020 onwards. Since July 2020, therefore regular final hearing matters haven't taken place at all.

04.01.2021	The additional charge of MP & CG, DRT was given to the Presiding Officer of DRT, Lucknow Bench. The said Notification was challenged by the petitioner through W.P.(C) No. 6279/2021 before the Delhi High Court. The aforesaid writ petition has been challenged on the very same grounds and with the very same annexures. However, since during the pendency of the aforesaid petition, titled as State Bar Council of Madhya Pradesh v. Union of India, in W.P.(C) No. 6279/2021, the present impugned Notification came to be issued on 05.07.2021. In view thereof, the necessity of filing a fresh petition arose, which is being done by way of the present proceedings. True copy of the Notification dated 04.01.2021 by the GOI is annexed here with **Annexure P-4 (p.50 to 51)**.
04.01.2021	As per Notification dated 04.01.2021, the additional charge of Kerala DRT was given to the Bangalore DRT, which was quashed by the Kerala High Court as aforementioned in the preceding

	paragraphs. Thereafter the respondent GOI has not issued any order for the State of Kerala and have deliberately omitted to make a mention thereof with a separate dispensation being provided for the State of Kerala. To the knowledge of the petitioner, the litigants of Kerala have started approaching the High Court of Kerala in the absence of any forum for remedy provided by the respondent GOI. This fact needs to be taken into consideration specially for considering the grant of interim relief of stay of operation of the aforesaid Notification by this Hon'ble Court.
23.03.2021	The Kerala High Court in the matter of *M/S. KERALA FASHION JEWELLERY VS. UNION OF INDIA (WA. NO. 384 OF 2021)* through its final judgment and order dated 23.03.2021 has also affirmed the aforesaid proposition that on the retirement or non-availability of P.O. of any DRT, the responsibility and authority of the same cannot be shifted to DRT outside the State, but must remain or be retained within the same State

	with same accessibility. Copy of the Final Judgment and Order dated 23.03.2021 of the Division Bench of the Kerala High Court in the matter of *M/s Kerala Fashion Jewellery vs. Union of India* is annexed herewith as **Annexure P-5 (p.52 to 65)**.
March 2021 – 06.04.2021	After the last week of March, or to say the last virtual hearing dated 06.04.2021, there's not even been a single sitting of DRT Lucknow for hearing matters of DRT Jabalpur till the filing of the present Writ Petition, barring a few handful cases. There is absolute uncertainty about hearing and consideration of cases filed, instituted and pending at DRT Jabalpur, due to such ad-hoc and interim arrangements made by the Central Government without due application of mind. Apart from the above, there have been a lot of administrative, infrastructural and managerial problems being faced for pursuing and contesting the cases at DRT Lucknow. Administrative, infrastructural and managerial problems being

	faced for pursuing and contesting case at DRT Lucknow, instead of DRT Jabalpur, situated at a distance of around 600 kms away. The files, records, including urgent hearing applications are to be transmitted physically on a regular and daily basis by Registry Officers specifically deputed for this purpose, travelling from Jabalpur to Lucknow. This is because, the electronic infrastructure at DRT Jabalpur hasn't developed to such an extent that all the files can immediately be uploaded on the internet and then forwarded to the P.O., at DRT Lucknow, which office is also not that technologically advanced and equipped. This exposes the court records to a serious risk of being tampered with, stolen or misplaced, especially the important documents filed by the Financial Institutions and Banks before the DRT. This also multiplies the cost incurred in dispensation of justice as not only the officials of Registry, but also the entire office has to be arranged in such a manner as to ensure

	hearings at DRT Lucknow. On occasions more than 100 in the past few months, it has happened that the hearings of urgent matters had to be postponed, rescheduled for many days only because the records could not reach from DRT Jabalpur to DRT Lucknow and other such associated problems. This is compounded by the fact that virtual hearings of all the categories of cases around 200-250 instituted per month are being done only on a date and day given once or twice a week by DRT Lucknow.
18.06.2021	The Petitioner, immediately after the second wave of Covid Pandemic subsided for more than two months, when not a single hearing took place of DRT Lucknow (neither virtually or physically), approached the Delhi High Court through W.P.(C) 6279/2021 challenging the initially issued Notification dated 04.01.2021. The matter was also mentioned for urgent listing before the Registrar, Judicial as also the Vacation Bench, both of whom denied the urgent listing of the

	same permitting the Petitioners to seek listing after reopening of the Court proceedings. True copy of the W.P.(C) 6279/2021 dated 18.06.2021 filed before the Delhi High Court by the petitioner herein is annexed herewith as **Annexure P-6 (p.66 to 91)**.
05.07.2021	During the pendency of the aforesaid W.P.(C) 6279/2021, the new Notification came to be issued extending the tenure of DRT Lucknow as the incharge DRT for DRT Jabalpur further to 30th September 2021. Pertinently in the previously issued Notification dated 04.01.2021, the additional charge of Kerala DRT was given to the Bangalore DRT, which was quashed by the Kerala High Court as aforementioned in the preceding paragraphs. Therefore, the respondent GOI has not issued any order for the State of Kerala and have deliberately omitted to make a mention thereof with a separate dispensation being provided for the State of Kerala. This fact needs to be taken into consideration specially for

	considering the grant of interim relief of stay of operation of the aforesaid Notification by this Hon'ble Court. A true copy of the Notification dated 05.07.2021 issued by the respondent GOI is annexed herewith as **ANNEXURE P-7 (p.92 to 93)**.
07.07.2021	The Petitioner immediately filed a fresh Writ Petition bearing W.P.(C) 6313/2021 laying a challenge to the newly issued Notification dated 05.07.2021 as being *ultra vires* and repugnant to mandatory provisions to Amended Section 4(2) of the RDDB Act, 1993. The Petitioners pleaded in the Writ Petition that the DRT Lucknow lacks jurisdiction and competency to hear the matters arising within the territorial jurisdiction of M.P and C.G., which were to be heard by DRT Jabalpur. An Interim Application seeking the following interim reliefs was also referred along with the Writ Petition, praying for the following reliefs: *"A. That, this Hon'ble Court may be pleased to stay the operation & effect of the Impugned*

	Notification cum Public Notice No. F.No. 7/1/2019-DRT, dated 04-01-2021 issued by the Respondent GOI, in so far as it relates to DRT Jabalpur, transferring the charge to DRT Lucknow being repugnant and contrary to Section 4(2) of the RDDB Act 1993. *B. That this Hon'ble Court may be pleased to issue any appropriate Writ/Order/Direction directing the Respondent GOI, to commence and conclude the process of appointment of Presiding Officer for DRT Jabalpur as also other DRT's as mentioned in the impugned Notification dated 04.01.2021 within a time bound period of one month."* True Copy of the W.P.(C) No. 6313/2021 filed before the Delhi High Court on 07.07.2021 by the petitioner is annexed herewith as **ANNEXURE P-8 (Pg.94 to 119).** True Copy of the 'Application for Interim Relief' filed as C.M.Appl.No.19884/2021 in W.P.(C) No. 6313/2021 before the Delhi High Court by the petitioner dated 07.07.2021 is annexed herewith as **ANNEXURE P-9(Pg.120 to 123).**
09.07.2021	The previously filed W.P.(C) No. 6279/2021, was listed before the Division Bench of the Delhi High

	Court (HMJ Vipin Sanghi and HMJ Jasmeet Singh), which was disposed of as withdrawn.
09.07.2021	The subject Writ Petition (viz. W.P. (C) No. 6313/2021) was listed before the Division Bench headed by the Chief Justice on the same date. The Petitioner in the course for their oral submissions prayed for urgent consideration of the Interim Application, which was to be considered purely on the question of law, especially a direction seeking stay on the Notification dated 05.07.2021 whilst holding that DRT Lucknow lacks competency and jurisdiction to hear and decide matters pertaining to DRT Jabalpur (M.P. and C.G. States). The Petitioner vehemently insisted for early consideration and listing of their Interim Application, since it would have the cascading effect of multiplicity of proceedings, since the very jurisdiction of the DRT Lucknow is in question. The Petitioner also urged the Division Bench of the High Court to consider that the Central Government itself is defeating the mandatory

	provisions of the RDDB, 1993 and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for time bound expeditious final disposal of various statutory applications preferred before it by referring to Section 19 (24) of the RDDB Act (which categorically lays down that O.A., so preferred must be decided within the maximum period of 180 days) and Section 17(5) of the SARFAESI Act of 2002 (which also provides for a time limit of 2 months for final disposal of applications preferred by the DRT). However, the Division Bench of the High Court failed to consider the pressing urgency of the matter, especially the Interim Application and the fact that DRT Lucknow cannot proceed to hear even a single matter, as its proceedings are in the teeth of and *ultra vires* Section 4(2) of the RDDB Act, 1993. The Division Bench simply issued notices without passing any orders on the Interim Application, despite being pressed for it, posting

	the matter after almost six weeks on 20th of August 2020. The Petitioner anticipates reasonably that even on the next date, the Interim Application might be deferred as the High Court has simply failed to appreciate the due urgency which the matter deserved particularly at the instance of a Statutory body like the State Bar Council being before it.
15.07.2021	Hence, the present Special Leave Petition.

$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 6313/2021

STATE BAR COUNCIL OF MADHYA PRADESH THROUGH SECRETARY ..... Petitioner

Through Mr. Siddharth R. Gupta, Mr. Ankur Maheshwari, Ms. Sakshi Banga & Mr. Mrigank Prabhakar, Advocates

Versus

UNION OF INDIA THROUGH SECRETARY ..... Respondent

Through None

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% 09.07.2021

Proceedings have been conducted through video conferencing.

CM APPL. 19885/2021 (Exemption from filing certified copies of the annexures/attested affidavit/court fees)

For the reasons stated in the application and in view of the present prevailing situation, the present application is allowed. However, the applicant is directed to file duly signed and affirmed affidavits within a period of one week and the requisite Court fee within a period of 72 hours from the date of resumption of regular functioning of the Court.

Application is disposed of.

W.P.(C) 6313/2021 & CM APPL. 19884/2021

Issue notice to the Respondent, through ordinary process, returnable on 20th August, 2021.

CHIEF JUSTICE

JYOTI SINGH, J

JULY 9, 2021/rk

//TRUE COPY//

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)
[UNDER ORDER XXI RULE 3(1)(A)]

SPECIAL LEAVE PETITION (CIVIL) NO. _____OF 2021

[ARISING OUT OF THE IMPUGNED INTERIM ORDER DATED 09.07.2021 PASSED BY THE HON'BLE HIGH COURT OF DELHI IN WRIT PETITION (C) NO. 6313/2021]

(WITH PRAYER FOR INTERIM RELIEF)

	BETWEEN:		
	Arising out of WP NO. 6313/2021	IN THE HON'BLE HIGH COURT	IN THIS HON'BLE COURT
1.	**STATE BAR COUNCIL OF MADHYA PRADESH** Through its Secretary, Mr. Prashant Dubey, Aged about 41 years, State Bar Council Building, High Court Campus, Jabalpur, Madhya Pradesh - 482007	Petitioner	Petitioner No.1
	VERSUS		
1.	**UNION OF INDIA** Through Secretary, Ministry of Finance,	Respondent No. 1	Contesting Respondent No. 1

	Department of Financial Services, Jeevan Deep Building, Parliament Street, New Delhi - 110 001		

TO,

HON'BLE THE CHIEF JUSTICE OF
INDIA AND HIS OTHER HON'BLE
COMPANION JUDGES OF THE
HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-

1. The Petitioner is a Statutory Body created under the provisions of Advocates Act, 1961 and is established and entitled to preserve, protect and further the interest of its member lawyers across the State of Madhya Pradesh. It is also supposed to ensure that the problem faced by the legal fraternity, including, as also the litigants in the administration and dispensation of justice are adequately redressed and dealt with. Therefore, as a statutory body, the Petitioners are not only representing the cause of its lawyer members, but also the litigants, which are an essential feature and ingredient of the justice delivery system. The Petitioner is a representative body of more than 60,000

Advocates registered on its Rolls, practicing across the State of Madhya Pradesh as also a large number of Advocates of the whole State who are practicing before the Debt Recovery Tribunal, Madhya Pradesh (DRT).

1A. That no Letter Patent Appeal or Writ Appeal lies against the impugned order.

2. <u>QUESTIONS OF LAW:</u>

In the facts and circumstances of the case the following questions of law arise for kind consideration of this Hon'ble Court:

A. Whether the High Court failed to appreciate that the Petitioner has raised important jurisdictional issues and the very competency of Debt Recovery Tribunal, Lucknow (hereinafter 'DRT Lucknow') to hear and decide cases arising from the State of Madhya Pradesh and Chattisgarh, instead of Debt Recovery Tribunal, Jabalpur (hereinafter 'DRT Jabalpur')?

B. Whether the High Court erred in failing to appreciate the deserved urgency, especially the interim application of the petition, and posted the matter after almost 6 weeks, without working out an immediate redressal to the interim reliefs sought for in the writ petition?

C. Whether the High Court failed to appreciate that the Petitioner has raised important jurisdictional issues and the very competency of Debt Recovery Tribunal, Lucknow (hereinafter 'DRT Lucknow') to hear and decide cases arising from the State of Madhya Pradesh and Chhattisgarh, instead of Debt Recovery Tribunal, Jabalpur (hereinafter 'DRT Jabalpur')?

D. Whether the High Court failed to appreciate that in view of the judgment of the Constitution Bench of Hon'ble Court, in the matter of ***State of Orissa Vs. Madan Gopal Rungta, [AIR 1952 SC 12]***, the DRT, Lucknow cannot hear even a single matter, and it would lead to complexity of proceedings and cause grave prejudice to all the appearing parties as also cause inconvenience to members of the petitioner association, when they been agitating this issue for almost a month now?

E. Whether the High Court whilst passing the impugned interim order failed to appreciate the pressing urgency for interim relief in the matter, without so much as a cursory consideration of the application for interim relief, which it ought to have extended in a matter of such a nature?

3. **DECLARATION IN TERMS OF RULE 3(2)**

The Petitioner states that no other petition seeking leave to appeal has been filed by him against the impugned Interim Order dated 09.07.2021 passed by the Hon'ble Delhi High Court in WP No. 6313/2021.

4. **DECLARATION IN TERMS OF RULE 5**

The Annexures P-1 to P-9 produced along with the Special Leave Petition are true copies of the pleadings/documents which formed part of the records of the case in the High Court against whose order the leave to appeal is sought for in this petition.

5. **GROUNDS:**

The Petitioner craves leave to appeal, *inter-alia* on the following grounds which are without prejudice to each other:-

A. Because the Hon'ble High Court erred in failing to appreciate the deserved urgency, especially the interim application of the petition and posted the matter after almost 6 weeks, without working out an immediate redressal to the interim reliefs sought for in the writ petition.

B. Because the Hon'ble High Court failed to appreciate that the Petitioner has raised important jurisdictional issues

and the very competency of Debt Recovery Tribunal, Lucknow (hereinafter 'DRT Lucknow') to hear and decide cases arising from the State of Madhya Pradesh and Chhattisgarh, instead of Debt Recovery Tribunal, Jabalpur (hereinafter 'DRT Jabalpur').

C. Because the Hon'ble High Court failed to appreciate that in view of the judgment of the Constitution Bench of Hon'ble Court, in the matter of ***State of Orissa Vs. Madan Gopal Rungta, [AIR 1952 SC 12]***, the DRT, Lucknow cannot hear even a single matter, and it would lead to complexity of proceedings and cause grave prejudice to all the appearing parties as also cause inconvenience to members of the petitioner association, when they been agitating this issue for almost a month now.

D. Because the Hon'ble High Court whilst passing the impugned interim order overlooked the pressing urgency of Interim Orders in the matter, demonstrates a casual outlook, which ought not to have extended in a matter of such a nature. The petitioner was at pains to request the High Court for early indulgence in the

matter on the interim issue, which however declined to accede to the same. Hence the present petition.

E. Because the Hon'ble High Court failed to consider that the Central Government itself is defeating the mandatory provisions of the RDDB, 1993 and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for time bound expeditious final disposal of various statutory applications preferred before it by referring to Section 19 (24) of the RDDB Act (which categorically lays down that O.A., so preferred must be decided within the maximum period of 180 days) and Section 17(5) of the SARFAESI Act of 2002 (which also provides for a time limit of 2 months for final disposal of applications preferred by the DRT).

F. Because the Hon'ble High Court failed to consider the pressing urgency of the matter, especially the Interim Application and the fact that DRT Lucknow cannot proceed to hear even a single matter, as its proceedings are in the teeth of and *ultra vires* Section 4(2) of the RDDB Act, 1993. The Division Bench simply issued notices without passing any orders on the Interim

Application, despite being pressed for it, posting the matter after almost six weeks on 20th of August 2020. The Petitioner anticipates reasonably that even on the next date, the Interim Application might be deferred as the High Court has simply failed to appreciate the due urgency which the matter deserved particularly at the instance of a Statutory body like the State Bar Council being before it.

G. Because the Hon'ble High Court failed to appreciate that as per the information available in public domain, there are more than 5000 cases of various categories, viz. S.A. (Securitization Application), O.A. (Original Application), M.A./R.P. (Miscellaneous Applications/ Review Petitions) pending before the DRT Jabalpur. The problem of pendency is colossal to be dealt with and handled by singularly manned DRT for both the States. It has been a recurring practice on the part of Respondent authorities in entrusting the charge of DRT Jabalpur to DRTs of other States, going to the extent of entrusting it to the DRT of Cuttack (Odisha), Kolkata (West Bengal), on many occasions in the previous years, whenever the P.O., DRT Jabalpur wasn't available.

H. Because the Hon'ble High Court failed to consider that for the past more than six months, without appointment of any regular full-time incumbent P.O. for DRT Jabalpur, the additional charge has been entrusted to the Lucknow DRT. This is extremely astonishing, when the very purpose of establishing DRTs is to expedite bank cases and recovery matters pertaining to Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter SARFAESI Act) and RDDB Act. The lawyers are compelled and constrained to travel 600 kms from Jabalpur or more than 1000 kms in case of places like Indore and Bhopal for attending the physical hearings for DRT Lucknow, making the whole litigation exorbitantly expensive, unaffordable and beyond reach of an already crushed borrower/ guarantor whose bank accounts are treated as NPAs. Further, the virtual hearing of the said DRT took place from January only till last week of March 2021, that too once or twice a week for cases relating to DRT Jabalpur, whereas for all other days, the litigants as well as their

Counsels were directed to appear physically and personally before DRT Lucknow.

I. Because the Hon'ble High Court failed to appreciate that after the last week of March 2021, or to say the last virtual hearing dated 06.04.2021, there's not even been a single sitting of DRT Lucknow for hearing matters of DRT Jabalpur till the filing of the present Writ Petition. There is absolute uncertainty about hearing and consideration of cases filed, instituted and pending at DRT Jabalpur, 16 due to such ad-hoc and interim arrangements made by the Central Government without due application of mind.

J. Because the Hon'ble High Court failed to appreciate that the necessity for the Petitioners to file the present petition has arisen in view of the insurmountable problems being faced by the lawyer community at large, for both the sides, the borrower as well as those representing the banks and financial institutions. Being a statutory body created under the Advocates Act, 1961, the State Bar Council espouses the cause of litigants who are an equally important part of the justice dispensation machinery of the State. Therefore,

in view of the aforesaid circumstances the present petition has been filed, by the Bar Council espousing the larger interest, concern of its subject.

K. Because the Hon'ble High Court ignored that the Hon'ble Supreme Court in the matter of ***Union of India & Anr. vs. Delhi High Court Bar Association & Ors. [(2002) 4 SCC 275],*** underscored the importance of DRTs as specialised Tribunals created under RDDB Act. Whilst discussing about the necessity of expeditious and swift decision over such type disputes in a time bound manner, the Hon'ble Supreme Court Vide Paras 14 & 17 observed as follows:

> ***"14.*** *… In exercise of its legislative power relating to banking, Parliament can provide the mechanism by which monies due to the banks and financial institutions can be recovered. The Tribunals have been set up in regard to the debts due to the banks. The special machinery of a Tribunal which has been constituted as per the preamble of the Act, "for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto" would squarely fall within the ambit of Entry 45 of List I. As none of the items in the lists are to be read in a narrow or restricted sense, the term "banking" in Entry 45*

would mean legislation regarding all aspects of banking including ancillary or subsidiary matters relating to banking. Setting up of an adjudicatory body like the Banking Tribunal relating to transactions in which banks and financial institutions are concerned would clearly fall under Entry 45 of List I giving Parliament specific power to legislate in relation thereto.

...

17. *The very purpose of establishing the Tribunal being to expedite the disposal of the applications filed by the banks and financial institutions for realisation of money, the Tribunal and the Appellate Tribunal are required to deal with the applications in an expeditious manner. It is precisely for this reason that Section 22(1) stipulates that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure. Therefore even though the Tribunal can regulate its own procedure, the Act requires that any procedure laid down by it must be guided by the principles of natural justice while, at the same time, it should not regard itself as being bound by the provisions of the Code of Civil Procedure."*

L. Because the Hon'ble High Court failed to appreciate that another facet of establishment of Tribunals is 'affordable and convenient access to justice', which must be ensured on all the occasions. The DRT

Jabalpur has been established as a Nodal Tribunal for the two States of Madhya Pradesh and Chhattisgarh and therefore caters to litigants within the periphery of 500-600 kms. Shifting and throwing the functions and responsibilities of such DRT to further 600 kms away, ruptures and disturbs the convenience, affording capacity, reach of the litigants to such Tribunals. As stated infra, virtual hearings for matters of DRT Jabalpur are being held hardly for a day or two in a week, whilst all other remaining days the litigants and their Counsels without any redress or arrangements of hearing, the availability of sufficient time for effective consideration and adjudication of disputes also gives rise to impediments in the said easy access to justice.

M. Because the High Court failed to appreciate that in the matter of ***Rojer Mathew v. South Indian Bank Ltd., [(2018) 16 SCC 341]*** the Hon'ble Supreme Court emphasized upon the accessibility of justice whilst establishment of Tribunals. ***Vide Para 32,*** the court observed that:

"32. *We broadly approve the concept of having an effective and autonomous oversight body for all the*

tribunals with such exceptions as may be inevitable. Such a body should be responsible for recruitments and oversight of functioning of members of the tribunals. Regular cadre for tribunals may be necessary. The learned Amicus Curiae suggests setting up of All India Tribunal Service on the pattern of UK. The members can be drawn either from the serving officers in Higher Judicial Service or directly recruited with appropriate qualifications by national competition. Their performance and functioning must be reviewed by an independent body in the same way as superintendence by the High Court under Article 235 of the Constitution. Direct appeals must be checked. Members of the Tribunals should not only be eligible for appointment to the High Courts but a mechanism should be considered whereby due consideration is given to them on the same pattern on which it is given to the members of Higher Judicial Service. This may help the High Courts to have requisite talent to deal with issues which arise from decisions of tribunals. A regular cadre for the tribunals can be on the pattern of cadres for the judiciary. The objective of setting up of tribunals to have speedy and inexpensive justice will not in any manner be hampered in doing so. Wherever there is only one seat of the tribunal, its Benches should be available either in all States or at least in all regions wherever there is litigation instead of only one place."

N. Because the High Court has also failed to consider that on the similar lines as stated above, in the matter of ***Anita Kushwaha v. Pushap Sudan, [(2016) 8 SCC 509],*** *Vide Para 33*, the Hon'ble Supreme Court observed in the context of access to justice as follows:

> ***"33.*** *Four main facets that, in our opinion, constitute the essence of access to justice are:*
>
> (i) *the State must provide an effective adjudicatory mechanism;*
>
> (ii) *the mechanism so provided must be reasonably accessible in terms of distance;*
>
> (iii) *the process of adjudication must be speedy; and*
>
> (iv) *the litigant's access to the adjudicatory process must be affordable.*

O. Because the High Court has failed to consider that in the matter of ***All India Judges Association v. Union of India, [(2018) 17 SCC 555],*** the Supreme Court ***Vide Para 10*** observed as thus*:*

> *"**10**. The court development plan should comprise of three components.*
>
> *...*
>
> *In other words, the core factors in the design of a court complex must reckon — (a) optimum working conditions facilitating increased efficiency of judicial officers and the administrative staff; (b) <u>easy access to justice to all</u>*

and particularly to the underprivileged, persons with disability, women and senior citizens; (c) safety and security of Judges, administrative staff, litigants, witnesses and undertrial prisoners."

P. The High Court further failed to appreciate the decision of the Supreme Court in the matter of ***Madras Bar Association v. Union of India, [(2014), 10 SCC 1]***, where *Vide para 56***,** the Court observed that:

"*56. … Therefore, it is crucial that these tribunals are run by a robust mix of experts, i.e. those with experience in policy in the relevant field, and those with judicial or legal experience and competence in such fields. The functioning or non-functioning of any of these tribunals due to lack of competence or understanding has a direct adverse impact on those who expect effective and swift justice from them. The resultant fallout is invariably an increased docket load, especially by recourse to Article 226 of the Constitution of India. These aspects are highlighted once again to stress that these tribunals do not function in isolation, but are a part of the larger scheme of justice dispensation envisioned by the Constitution and have to function independently, and effectively, to live up to their mandate. The involvement of this Court, in the series of decisions, rendered by no less than six Constitution Benches, underscores the importance of this aspect…."*

6. GROUNDS FOR INTERIM RELIEF:

The Petitioner submits the following grounds, inter alia, for interim relief:

a. Because the Hon'ble High Court erred in failing to appreciate the deserved urgency, especially the interim application of the petition and posted the matter after almost 6 weeks, without working out an immediate redressal to the interim reliefs sought for in the writ petition.

b. Because the transfer of case from the DRT of Jabalpur to the DRT of Lucknow is making the entire litigation exorbitant, unaffordable and beyond reach of an already crushed borrower/ guarantor whose bank accounts are treated as NPAs.

c. Because the Impugned Notification cum Public Notice would cause irreparable harm and injury to the members of the Petitioner Council and thus it is utmost necessary to have a stay on such a order passed by the respondent authorities.

d. Because in the previously issued Notification dated 04.01.2021, the additional charge of Kerala DRT was given to the Bangalore DRT, which was quashed by the Kerala High Court, as aforementioned in the preceding

paragraphs. Therefore, the respondent GOI has not issued any order for the State of Kerala and have deliberately omitted to make a mention thereof with a separate dispensation being provided for the State of Kerala.

e. Because the Petitioner has a good prima facie case and shall suffer irreparable loss in case the interim relief is not granted in favour of the Petitioner.

f. Because the balance of convenience lies in favour of the Petitioner.

g. Because the denial of interim relief to the Petitioner shall lead to grave irreparable injury and shall cause undue hardship to the Petitioner.

7. **PRAYER:**

The Petitioner, therefore, most respectfully pray that this Hon'ble Court may be pleased to:

a. Grant Special Leave to Appeal against the impugned Interim Order dated 09.07.2021 passed by the Hon'ble Delhi High Court in W.P.(C) No. 6313/2021; and/or,

b. Pass any other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the case.

8. **PRAYER FOR INTERIM RELIEF**

The Petitioner, therefore, most respectfully prays that this Hon'ble Court may be pleased to:

a. Grant an ex-parte ad-interim stay of the impugned Interim Order dated 09.07.2021 passed by the Hon'ble Delhi High Court in WP No. 6313/2021; and/ or,

b. to stay the operation and effect of the Impugned Notification cum Public Notice No. F.No. 7/1/2021-DRT, dated 05-07-2021 issued by the Respondent UOI, in so far as it relates to DRT Jabalpur, transferring the charge to DRT Lucknow being repugnant and contrary to Section 4(2) of the RDDB Act 1993; and/or,

c. hold and direct as an interim measure that DRT Lucknow doesn't possesses the jurisdiction and power to entertain, hear or decide the cases pertaining to the and falling within the territorial jurisdiction of States of MP & CG (or DRT, Jabalpur) in view of the amended provisions of Section 4(2) of the RDDB Act 1993.

d. Pass any other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

MRIGANK PRABHAKAR
Advocate for the Petitioner

DRAWN ON: 10.07.2021

NEW DELHI

FILED ON:15 .07.2021

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

[UNDER ORDER XXI RULE 3(1)(A)]

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2021

IN THE MATTER OF:

STATE BAR COUNCIL OF MADHYA PRADESH

…PETITIONER

VERSUS

UNION OF INDIA

…RESPONDENT

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Hon'ble High Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts/documents or grounds have been taken herein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the special leave petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the special leave petition for consideration of this Hon'ble Court. This certificate is given on the instruction of the Petitioner whose affidavit filed with this Special Leave Petition.

NEW DELHI FILED BY

DATE: 15.07.2021

MRIGANK PRABHAKAR

Advocate for the Petitioner

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION [CIVIL] NO. _____ OF 2021

10 JUL 2021

IN THE MATTER OF:
State Bar Council of Madhya Pradesh ...Petitioner

VERSUS

Union of India ...Respondents

AFFIDAVIT

I, Prashant Dubey, S/o Late Shri V.K. Dubey, aged about 41 years, R/o having office at High Court Campus, Jabalpur, M.P.482001, do hereby solemnly affirm and state as under: -

1. That I am the Secretary, and authorised signatory of the Petitioner in the abovenoted matter and fully acquainted with the facts and circumstances of the present case and as such am competent to sign and swear this Affidavit.
2. That I have gone through a copy of the Synopsis and List of Dates from running pages B to DD and a copy of the Special Leave Petition from paragraphs 1 to 8 from running pages 3 to 23 and I state that the contents thereof are true and correct to my knowledge and belief.
3. That I have gone through copies of the Interlocutory Applications and state that the contents thereof are true and correct to my knowledge and belief.
4. That the annexures annexed to the present Special Leave Petition are true copies of their respective originals.

VERIFICATION

10 JUL 2021

Secretary
State Bar Council of
Madhya Pradesh
DEPONENT

Verified at Jabalpur, on this the ____ day of July , 2021 that the contents of the above affidavit are correct and true to the best of my knowledge and nothing material has been concealed therefrom.

PREM KUMAR TIWARI
NOTARY
3706, Trimurti Nagar
Jabalpur (M.P.)

Secretary
State Bar Council of
Madhya Pradesh
DEPONENT

10 JUL 2021

Solemnly affirmed before me
Dr. ... before me ...
Shri Prasat ~~Mishra~~ Dubey
S/o late V.K. Dubey
Age 41
Secretary State Bar Council of MP at Jabalpur
... by Self

NOTARY
GOVT. OF INDIA
Jabalpur

PREM KUMAR TIWARI
NOTARY
3706, Trimurti Nagar,
Jabalpur (M.P.)

10 JUL 2021

ANNEXURE P-1

The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016

Ministry: Finance

- The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 was introduced by the Minister of Finance, Mr. Arun Jaitley, in Lok Sabha on May 11, 2016. It seeks to amend four laws: (i) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), (ii) Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI), (iii) Indian Stamp Act, 1899 and (iv) Depositories Act, 1996.
- Amendments to the SARFAESI Act: The SARFAESI Act allows secured creditors to take possession over a collateral, against which a loan had been provided, upon a default in repayment. This process is undertaken with the assistance of the District Magistrate, and does not require the intervention of courts or tribunals. The Bill provides that this process will have to be completed within 30 days by the District Magistrate.
- In addition, the Bill empowers the District Magistrate to assist banks in taking over the management of a company, in case the company is unable to repay loans. This will be done in case the banks convert their outstanding debt into equity shares, and consequently hold a stake of 51% or more in the company.
- The Act creates a central registry to maintain records of transactions related to secured assets. The Bill creates a central database to integrate records of property registered under various registration systems with this central registry. This includes integration of registrations made under Companies Act, 2013, Registration Act, 1908 and Motor Vehicles Act, 1988.
- The Bill provides that secured creditors will not be able to take possession over the collateral unless it is registered with the central registry. Further, these creditors, after registration of security interest, will have priority over others in repayment of dues.
- The Act empowered the Reserve Bank of India (RBI) to examine the statements and any information of Asset Reconstruction Companies related to their business. The Bill further empowers the RBI to carry out audit and inspection of these companies. The RBI may penalise a company if the company fails to comply with any directions issued by it.
- The Bill provides that stamp duty will not be charged on transactions undertaken for transfer of financial assets in favour of asset reconstruction companies. Financial assets include loans and collaterals.
- Amendments to the RDDBFI Act: The RDDBFI Act established Debt Recovery Tribunals and Debt Recovery Appellate Tribunals. The Bill increases the retirement age of Presiding Officers of Debt Recovery Tribunals from 62 years to 65 years. Further, it increases the retirement age of Chairpersons of Appellate Tribunals from 65 years to 67 years. It also makes Presiding Officers and Chairpersons eligible for reappointment to their positions.
- The Act provides that banks and financial institutions will be required to file cases in tribunals having jurisdiction over the defendant's area of residence or business. The Bill allows banks to file cases in tribunals having jurisdiction over the area of bank branch where the debt is pending.
- The Bill provides that certain procedures under the Act will be undertaken in electronic form. These include presentation of claims by parties and summons issued by tribunals under the Act.
- The Bill provides further details of procedures that the tribunals will follow in case of debt recovery proceedings. This includes the requirement of applicants to specify the assets of the borrower, which have been collateralised. The Bill also prescribes time limits for the completion of some of these procedures.

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The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016

(Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016)

[Act 44 of 2016]

[12th August, 2016]

The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016[1]

An Act further to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Indian Stamp Act, 1899, and the Depositories Act, 1996, and for matters connected therewith or incidental thereto

Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows—

Prefatory Note—Statement of Objects and Reasons.— The Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, were enacted for expeditious recovery of loans of banks and financial institutions. Presently, there are approximately seventy thousand cases pending in Debts Recovery Tribunals. Though the Recovery of Debts due to Banks and Financial Institutions Act provides for a period of 180 days for disposal of recovery applications, the cases are pending for many years due to various adjournments and prolonged hearings. In order to facilitate expeditious disposal of recovery applications, it has been decided to amend the said Acts and also to make consequential amendments in the Indian Stamp Act, 1899 and the Depositories Act, 1996.

2. The amendments in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are proposed to suit changing credit landscape and augment ease of doing business which, inter alia, include (*i*) registration of creation, modification and satisfaction of security interest by all secured creditors and provision for integration of registration systems under different laws relating to property rights with the Central Registry so as to create Central database of security interest on property rights; (*ii*) conferment of powers upon the Reserve Bank of India to regulate asset reconstruction companies in a changing business environment; (*iii*) exemption from stamp duty on assignment of loans by banks and financial institutions in favour of asset reconstruction companies; (*iv*) enabling non-institutional investors to invest in security receipts; (*v*) debenture trustees as secured creditors; (*vi*) specific timeline for taking possession of secured assets; and (*vii*) priority to secured creditors in repayment of debts.

3. The amendments proposed in the Recovery of Debts due to Banks and Financial Institutions Act, 1993 inter alia, include (*i*) expeditious adjudication of recovery applications; (*ii*) electronic filing of recovery applications, documents and written statements; (*iii*) priority to secured creditors in repayment of debts; (*iv*) debenture trustees as financial institutions; (*v*) empowering the Central Government to provide for uniform procedural rules for conduct of proceedings in the Debts Recovery

Tribunals and Appellate Tribunals.

4. The Bill also seeks to amend the Indian Stamp Act, 1899, so as to exempt assignment of loans in favour of asset reconstruction companies from stamp duty and the Depositories Act, 1996 for facilitating transfer of shares held in pledge or on conversion of debt into shares in favour of banks and financial institutions.

5. The Bill aims to improve ease of doing business and facilitate investment leading to higher economic growth and development.

6. The Bill seeks to achieve the above objectives.

Chapter I

PRELIMINARY

1. Short title and commencement.— (1) This Act may be called the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates[2] may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Chapter II

AMENDMENTS TO THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

2. Amendment of long title.— In the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), (hereinafter referred to in this Chapter as the principal Act), for the long title, the following shall be *substituted*, namely—

"An Act to regulate securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interests created on property rights, and for matters connected therewith or incidental thereto.".

3. Substitution of references to certain expressions by other expressions.— Throughout the principal Act,—

(*i*) for the words "securitisation company", "reconstruction company", "securitisation or reconstruction company", "securitisation company or the reconstruction company" or "securitisation company or a reconstruction company", wherever they occur, the words "asset reconstruction company" shall be *substituted*;

(*ii*) for the words "securitisation companies or reconstruction companies", wherever they occur, the words "asset reconstruction companies" shall be *substituted*;

(*iii*) for the words "qualified institutional buyer", wherever they occur, the words "qualified buyer" shall be *substituted*;

(*iv*) for the words "qualified institutional buyers", wherever they occur, the words "qualified buyers" shall be *substituted*.

4. Amendment of Section 2.— In the principal Act, in Section 2, in sub-section (1),—

(*i*) after clause (*b*), the following clause shall be *inserted*, namely—

'(*ba*) "asset reconstruction company" means a company registered with Reserve Bank under Section 3 for the purposes of carrying on the business of asset reconstruction or securitisation, or both;';

(*ii*) in clause (*f*), after the words "financial institution in relation to such financial

assistance", the words "or who has raised funds through issue of debt securities" shall be *inserted*;

(*iii*) after clause (*g*), the following clause shall be *inserted*, namely—

'(*ga*) "company" means a company as defined in clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013);';

(*iv*) for clause (*ha*), the following clause shall be *substituted*, namely—

'(*ha*) "debt" shall have the meaning assigned to it in clause (*g*) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and includes—

(*i*) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;

(*ii*) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset;';

(*v*) after clause (*i*), the following clause shall be *inserted*, namely—

'(*ia*) "debt securities" means debt securities listed in accordance with the regulations made by the Board under the Securities and Exchange Board of India Act, 1992 (15 of 1992);';

(*vi*) for clause (*j*), the following clause shall be *substituted*, namely—

'(*j*) "default" means—

(*i*) non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor; or

(*ii*) non-payment of any debt or any other amount payable by the borrower with respect to debt securities after notice of ninety days demanding payment of dues served upon such borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of such debt securities;';

(*vii*) in clause (*k*), after the words "any bank or financial institution", the following words shall be *inserted*, namely—

"including funds provided for the purpose of acquisition of any tangible asset on hire or financial lease or conditional sale or under any other contract or obtaining assignment or licence of any intangible asset or purchase of debt securities;";

(*viii*) in clause (*l*), after sub-clause (*v*), the following sub-clauses shall be *inserted*, namely—

"(*va*) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or

(*vb*) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or";

(*ix*) in clause (*m*), after sub-clause (*iii*), the following sub-clauses shall be *inserted*, namely—

"(*iii-a*) a debenture trustee registered with the Board and appointed for secured debt securities;

(*iii-b*) asset reconstruction company, whether acting as such or managing a trust created for the purpose of securitisation or asset reconstruction, as the case may be;";

(*x*) after clause (*m*), the following clause shall be *inserted*, namely—

'(*ma*) "financial lease" means a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where the lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be;';

(*xi*) after clause (*n*), the following clause shall be *inserted*, namely—

'(*na*) "negotiable document" means a document, which embodies a right to delivery of tangible assets and satisfies the requirements for negotiability under any law for the time being in force including warehouse receipt and bill of lading;';

(*xii*) in clause (*t*), in sub-clause (*v*), after the words "right of similar nature", the words "as may be prescribed by the Central Government in consultation with Reserve Bank" shall be *inserted*;

(*xiii*) in clause (*u*), after the words "regulations made thereunder,", the words, figures and brackets "any category of non-institutional investors as may be specified by the Reserve Bank under sub-section (1) of Section 7" shall be *inserted*;

(*xiv*) clause (*v*) shall be *omitted*;

(*xv*) clause (*za*) shall be *omitted*;

(*xvi*) for clause (*zd*), the following clause shall be *substituted*, namely—

'(*zd*) "secured creditor" means—

(*i*) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (1);

(*ii*) debenture trustee appointed by any bank or financial institution; or

(*iii*) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or

(*iv*) debenture trustee registered with the Board appointed by any company for secured debt securities; or

(*v*) any other trustee holding securities on behalf of a bank or financial institution,

in whose favour security interest is created by any borrower for due repayment of any financial assistance.';

(*xvii*) clause (*zf*), the following clause shall be *substituted*, namely—

'(*zf*) "security interest" means right, title or interest of any kind, other than those specified in Section 31, upon property created in favour of any secured creditor and includes—

(*i*) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an

obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

(*ii*) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset;'.

5. Amendment of Section 3.— In the principal Act, in Section 3,—

(*i*) in sub-section (1), for clause (*b*), the following clause shall be *substituted*, namely—

"(*b*) having net owned fund of not less than two crore rupees or such other higher amount as the Reserve Bank, may, by notification, specify:";

(*ii*) in sub-section (3),—

(*a*) for clause (*f*), the following clause shall be *substituted*, namely—

"(*f*) that a sponsor of an asset reconstruction company is a fit and proper person in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such persons;";

(*b*) clause (*d*) shall be *omitted*.

(*iii*) in sub-section (6),—

(*a*) after the words "any substantial change in its management", the words "including appointment of any director on the board of directors of the asset reconstruction company or managing director or chief executive officer thereof" shall be *inserted*;

(*b*) in the Explanation, after the words "by way of transfer of shares or", the words "change affecting the sponsorship in the company by way of transfer of shares or" shall be *inserted*.

6. Amendment of Section 5.— In the principal Act, in Section 5,—

(*i*) after sub-section (1), the following sub-section shall be *inserted*, namely—

"(1-A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of Section 8-F of the Indian Stamp Act, 1899 (2 of 1899):

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.";

(*ii*) after sub-section (2), the following sub-section shall be *inserted*, namely—

"(2-A) If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under sub-section (1).";

7. Amendment of Section 7.— In the principal Act, in Section 7, in sub-section (1), for the brackets and words "(other than by offer to public)", the words "or such other category of investors including non-institutional investors as may be specified by the Reserve Bank in consultation with the Board, from time to time," shall be *substituted*.

8. Substitution of new section for Section 9.— In the principal Act, for Section 9, the following section shall be *substituted*, namely—

"*9. Measures for assets reconstruction*.— (1) Without prejudice to the provisions contained in any other law for the time being in force, an asset reconstruction company may, for the purposes of asset reconstruction, provide for any one or more of the following measures, namely—

(*a*) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;

(*b*) the sale or lease of a part or whole of the business of the borrower;

(*c*) rescheduling of payment of debts payable by the borrower;

(*d*) enforcement of security interest in accordance with the provisions of this Act;

(*e*) settlement of dues payable by the borrower;

(*f*) taking possession of secured assets in accordance with the provisions of this Act;

(*g*) conversion of any portion of debt into shares of a borrower company:

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

(2) The Reserve Bank shall, for the purposes of sub-section (1), determine the policy and issue necessary directions including the direction for regulation of management of the business of the borrower and fees to be charged.

(3) The asset reconstruction company shall take measures under sub-section (1) in accordance with policies and directions of the Reserve Bank determined under sub-section (2).".

9. Amendment of Section 12.— In the principal Act, in section 12, in sub-section (2), after clause (*b*), the following clauses shall be *inserted*, namely—

"(*c*) the fee and other charges which may be charged or incurred for management of financial assets acquired by any asset reconstruction company;

(*d*) transfer of security receipts issued to qualified buyers.".

10. Insertion of new Section 12-B.— In the principal Act, after Section 12-A, the following section shall be *inserted*, namely—

"*12-B. Power of Reserve Bank to carry out audit and inspection*.— (1) The Reserve Bank may, for the purposes of this Act, carry out or caused to be carried out audit and inspection of an asset reconstruction company from time to time.

(2) It shall be the duty of an asset reconstruction company and its officers to provide assistance and cooperation to the Reserve Bank to carry out audit or inspection under sub-section (1).

(3) Where on audit or inspection or otherwise, the Reserve Bank is satisfied that business of an asset reconstruction company is being conducted in a manner detrimental to public interest or to the interests of investors in security receipts issued by such asset reconstruction company, the Reserve Bank may, for securing proper management of an asset reconstruction company, by an order—

(*a*) remove the Chairman or any director or appoint additional directors on the board of directors of the asset reconstruction company; or

(*b*) appoint any of its officers as an observer to observe the working of the board of directors of such asset reconstruction company:

Provided that no order for removal of Chairman or director under clause (a) shall be made except after giving him an opportunity of being heard.

(4) It shall be the duty of every director or other officer or employee of the asset reconstruction company to produce before the person, conducting an audit or inspection under sub-section (1), all such books, accounts and other documents in

his custody or control and to provide him such statements and information relating to the affairs of the asset reconstruction company as may be required by such person within the stipulated time specified by him.".

11. Amendment of Section 13.— In the principal Act, in Section 13,—

(*i*) in sub-section (2), the following proviso shall be *inserted*, namely—

"Provided that—

(*i*) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(*ii*) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;";

(*iii*) for sub-section (8), the following sub-section shall be *substituted*, namely—

"(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,—

(*i*) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(*ii*) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.".

12. Amendment of Section 14.— In the principal Act, in Section 14, in sub-section (1),—

(*i*) in the second proviso, after the words "secured assets", the words "within a period of thirty days from the date of application" shall be *inserted*;

(*ii*) after the second proviso, the following proviso shall be *inserted*, namely—

"Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.".

13. Amendment of Section 15.— In the principal Act, in section 15, in sub-section (4), the following proviso shall be *inserted*, namely—

"Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the business to such borrower.".

14. Amendment of Section 17.— In the principal Act, in Section 17,—

(*i*) for the marginal heading "Right to appeal", the words "Application against measures to recover secured debts" shall be *substituted*;

(*ii*) after sub-section (1), the following sub-section shall be *inserted*, namely—

"(1-A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(*a*) the cause of action, wholly or in part, arises;

(*b*) where the secured asset is located; or

(*c*) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.";

(*iii*) for sub-section (3), the following sub-section shall be *substituted*, namely—

"(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(*a*) declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditor as invalid; and

(*b*) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(*c*) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub -section (4) of Section 13.";

(*iv*) after sub-section (4), the following sub-section shall be *inserted*, namely—

"(4-A) Where—

(*i*) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(*a*) has expired or stood determined; or

(*b*) is contrary to Section 65-A of the Transfer of Property Act, 1882 (4 of 1882); or

(*c*) is contrary to terms of mortgage; or

(*d*) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section 13 of the Act; and

(*ii*) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (*a*) or sub-clause (*b*) or sub-clause (*c*) or sub-clause (*d*) of clause (*i*), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.".

15. Amendment of Section 19.— In the principal Act, in Section 19, for the words, figures and letters "concerned borrowers, such borrowers", the words "concerned borrowers or any other aggrieved person, who has filed the application under Section 17 or Section 17-A or appeal under Section 18 or Section 18-A, as the case may be, the borrower or such other person" shall be *substituted*.

16. Insertion of new Sections 20-A and 20-B.— In the principal Act, after Section 20, the following sections shall be *inserted*, namely—

"*20-A. Integration of registration systems with Central Registry*.— (1) The Central Government may, for the purpose of providing a Central database, in consultation with State Governments or other authorities operating registration

system for recording rights over any property or creation, modification or satisfaction of any security interest on such property, integrate the registration records of such registration systems with the records of Central Registry established under Section 20, in such manner as may be prescribed.

Explanation.— For the purpose of this sub-section, the registration records includes records of registration under the Companies Act, 2013 (18 of 2013), the Registration Act, 1908 (16 of 1908), the Merchant Shipping Act, 1958 (44 of 1958), the Motor Vehicles Act, 1988 (59 of 1988), the Patents Act, 1970 (39 of 1970), the Designs Act, 2000 (16 of 2000) or other such records under any other law for the time being in force.

(2) The Central Government shall after integration of records of various registration systems referred to in sub-section (1) with the Central Registry, by notification, declare the date of integration of registration systems and the date from which such integrated records shall be available; and with effect from such date, security interests over properties which are registered under any registration system referred to in sub-section (1) shall be deemed to be registered with the Central Registry for the purposes of this Act.".

"*20-B. Delegation of powers*.— The Central Government may, by notification, delegate its powers and functions under this Chapter, in relation to establishment, operations and regulation of the Central Registry to the Reserve Bank, subject to such terms and conditions as may be prescribed.".

17. Amendment of Section 23.— In the principal Act,—

(*i*) Section 23 shall be numbered as sub-section (1), and in sub-section (1) as so renumbered,—

(*a*) the words "within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be" shall be *omitted*;

(*b*) the first proviso shall be *omitted*;

(*c*) in the second proviso, the word "further" shall be *omitted*;

(*ii*) in Section 23, after sub-section (1) so renumbered, the following sub-sections shall be *inserted*, namely—

"(2) The Central Government may, by notification, require the registration of transaction relating to different types of security interest created on different kinds of property with the Central Registry.

(3) The Central Government may, by rules, prescribe forms for registration for different types of security interest under this section and fee to be charged for such registration.".

18. Insertion of new Chapter IV-A.— In the principal Act, after Section 26-A, the following chapter shall be *inserted*, namely—

"Chapter IV-A

REGISTRATION BY SECURED CREDITORS AND OTHER CREDITORS

26-B. Registration by secured creditors and other creditors.— (1) The Central Government may by notification, extend the provisions of Chapter IV relating to Central Registry to all creditors other than secured creditors as defined in clause (*zd*) of sub-section (1) of Section 2, for creation, modification or satisfaction of any security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower.

(2) From the date of notification under sub-section (1), any creditor including the secured creditor may file particulars of transactions of creation, modification or satisfaction of any security interest with the Central Registry in such form and manner as may be prescribed.

(3) A creditor other than the secured creditor filing particulars of transactions of creation, modification and satisfaction of security interest over properties created in its favour shall not be entitled to exercise any right of enforcement of securities under this Act.

(4) Every authority or officer of the Central Government or any State Government or local authority, entrusted with the function of recovery of tax or other Government dues and for issuing any order for attachment of any property of any person liable to pay the tax or Government dues, shall file with the Central Registry such attachment order with particulars of the assessee and details of tax or other Government dues from such date as may be notified by the Central Government, in such form and manner as may be prescribed.

(5) If any person, having any claim against any borrower, obtains orders for attachment of property from any court or other authority empowered to issue attachment order, such person may file particulars of such attachment orders with Central Registry in such form and manner on payment of such fee as may be prescribed.

26-C. Effect of the registration of transactions, etc.— (1) Without prejudice to the provisions contained in any other law, for the time being in force, any registration of transactions of creation, modification or satisfaction of security interest by a secured creditor or other creditor or filing of attachment orders under this Chapter shall be deemed to constitute a public notice from the date and time of filing of particulars of such transaction with the Central Registry for creation, modification or satisfaction of such security interest or attachment order, as the case may be.

(2) Where security interest or attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration under the provisions of Chapter IV and this Chapter, the claim of such secured creditor or other creditor holding attachment order shall have priority over any subsequent security interest created upon such property and any transfer by way of sale, lease or assignment or licence of such property or attachment order subsequent to such registration, shall be subject to such claim:

Provided that nothing contained in this sub-section shall apply to transactions carried on by the borrower in the ordinary course of business.

26-D. Right of enforcement of securities.— Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of this Chapter, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry.

26-E. Priority to secured creditors.— Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

Explanation.— For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.".

19. Amendment of Section 27.—In Section 27, the following proviso shall be *inserted*, namely—

"Provided that provisions of this section shall be deemed to have been omitted from the date of coming into force of the provisions of this Chapter and Section 23

as amended by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.".

20. Omission of Section 28.— In the principal Act, Section 28, shall be *omitted*.

21. Insertion of new Sections 30-A, 30-B, 30-C and 30-D.— In the principal Act, after Section 30, the following sections shall be *inserted*, namely—

"*30-A. Power of adjudicating authority to impose penalty*.— (1) Where any asset reconstruction company or any person fails to comply with any direction issued by the Reserve Bank under this Act the adjudicating authority may, by an order, impose on such company or person in default, a penalty not exceeding one crore rupees or twice the amount involved in such failure where such amount is quantifiable, whichever is more, and where such failure is a continuing one, a further penalty which may extend to one lakh rupees for every day, after the first, during which such failure continues.

(2) For the purpose of imposing penalty under sub-section (1), the adjudicating authority shall serve a notice on the asset reconstruction company or the person in default requiring such company or person to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall be given to such person.

(3) Any penalty imposed under this section shall be payable within a period of thirty days from the date of issue of notice under sub-section (2).

(4) Where the asset reconstruction company fails to pay the penalty within the specified period under sub-section (3), the adjudicating authority shall, by an order, cancel its registration:

Provided that an opportunity of being heard shall be given to such asset reconstruction company before cancellation of registration.

(5) No complaint shall be filed against any person in default in any court pertaining to any failure under sub-section (1) in respect of which any penalty has been imposed and recovered by the Reserve Bank under this section.

(6) Where any complaint has been filed against a person in default in the court having jurisdiction no proceeding for imposition of penalty against that person shall be taken under this section.

Explanation.— For the purposes of this section and Sections 30-B, 30-C and 30-D,—

(*i*) "adjudicating authority" means such officer or a committee of officers of the Reserve Bank, designated as such from time to time, by notification, by the Central Board of Reserve Bank;

(*ii*) "person in default" means the asset reconstruction company or any person which has committed any failure, contravention or default under this Act and any person in-charge of such company or such other person, as the case may be, shall be liable to be proceeded against and punished under Section 33 for such failure or contravention or default committed by such company or person.

30-B. Appeal against penalties.— A person in default, aggrieved by an order passed under sub-section (4) of Section 30-A, may, within a period of thirty days from the date on which such order is passed, prefer an appeal to the Appellate Authority:

Provided that the Appellate Authority may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within such period.

30-C. Appellate Authority.— (1) The Central Board of Reserve Bank may designate such officer or committee of officers as it deems fit to exercise the power

of Appellate Authority.

(2) The Appellate Authority shall have power to pass such order as it deems fit after providing a reasonable opportunity of being heard to the person in default.

(3) The Appellate Authority may, by an order stay the enforcement of the order passed by the adjudicating authority under Section 30-A, subject to such terms and conditions, as it deems fit.

(4) Where the person in default fails to comply with the terms and conditions imposed by order under sub-section (3) without reasonable cause, the Appellate Authority may dismiss the appeal.

30-D. Recovery of penalties.— (1) Any penalty imposed under section 30A shall be recovered as a "recoverable sum" and shall be payable within a period of thirty days from the date on which notice demanding payment of the recoverable sum is served upon the person in default and, in the case of failure of payment by such person within such period, the Reserve Bank may, for the purpose of recovery,—

(*a*) debit the current account, if any, of the person in default maintained with the Reserve Bank or by liquidating the securities, if any, held to the credit of such person in the books of the Reserve Bank;

(*b*) issue a notice to the person from whom any amount is due to the person in default, requiring such person to deduct from the amount payable by him to the person in default, such amount equivalent to the amount of the recoverable sum, and to make payment of such amount to the Reserve Bank.

(2) Save as otherwise provided in sub-section (4), a notice issued under clause (*b*) of sub-section (1) shall be binding on every person to whom it is issued, and, where such notice is issued to a post office, bank or an insurance company, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry or endorsement thereof before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(3) Any claim in respect of any amount, arising after the date of issue of notice under sub-section (1) shall be void as against the demand contained in such notice.

(4) Any person, to whom the notice is sent under sub-section (1), objects to such notice by a statement on oath that the sum demanded or any part thereof is not due to the person in default or that he does not hold any money for or on account of the person in default, then nothing contained in this section shall be deemed to require, such person to pay such sum or part thereof, as the case may be.

(5) Where it is found that statement made by the person under sub-section (4) is false in material particulars, such person shall be personally liable to the Reserve Bank to the extent of his own liability to the person in default on the date of the notice, or to the extent of the recoverable sum payable by the person in default to the Reserve Bank, whichever is less.

(6) The Reserve Bank may, at any time, amend or revoke any notice issued under sub-section (1) or extend the time for making the payment in pursuance of such notice.

(7) The Reserve Bank shall grant a receipt for any amount paid to it in compliance with a notice issued under this section and the person so paying shall be fully discharged from his liability to the person in default to the extent of the amount so paid.

(8) Any person discharging any liability to the person in default after the receipt of a notice under this section shall be personally liable to the Reserve Bank—

(*a*) to the extent of his own liability to the person in default so discharged; or

(*b*) to the extent of the recoverable sum payable by the person in default to the Reserve Bank, whichever is less.

(9) Where the person to whom the notice is sent under this section, fails to make payment in pursuance thereof to the Reserve Bank, he shall be deemed to be the person in default in respect of the amount specified in the notice and action or proceedings may be taken or instituted against him for the realisation of the amount in the manner provided in this section.

(10) The Reserve Bank may enforce recovery of recoverable sum through the principal civil court having jurisdiction in the area where the registered office or the head office or the principal place of business of the person in default or the usual place of residence of such person is situated as if the notice issued by the Reserve Bank were a decree of the Court.

(11) No recovery under sub-section (10) shall be enforced, except on an application made to the principal civil court by an officer of the Reserve Bank authorised in this behalf certifying that the person in default has failed to pay the recoverable sum.".

22. Amendment of Section 31.— In the principal Act, in Section 31, clause (*e*) shall be *omitted*.

23. Amendment of Section 31-A.— In the principal Act, in Section 31-A, for sub-section (2), the following sub-sections shall be *substituted*, namely—

"(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in sub-section (2) is prorogued or adjourned for more than four consecutive days.

(4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.".

24. Amendment of Section 32.— In the principal Act, in Section 32, for the words "any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower", the words "the Reserve Bank or the Central Registry or any secured creditor or any of its officers" shall be *substituted*.

25. Amendment of Section 38.— In the principal Act, in Section 38, in sub-section (2),—

(*i*) clause (*a*) shall be numbered as clause (*aa*) and before clause (*aa*) as so renumbered, the following clause shall be *inserted*, namely—

"(*a*) other business or commercial rights of similar nature under clause (*t*) of Section 2;";

(*ii*) after clause (*bc*), the following clauses shall be *inserted*, namely—

"(*bca*) the manner of integration of records of various registration systems with the records of Central Registry under sub-section (1) of Section 20-A;

(*bcb*) the terms and conditions of delegation of powers by the Central Government to the Reserve Bank under Section 20-B.";

(*iii*) after clause (*d*), the following clauses shall be *inserted*, namely—

"(*da*) the form for registration of different types of security interests and fee thereof under sub-section (3) of Section 23;";

(*iv*) after clause (*f*), the following clauses shall be *inserted*, namely—

"(*fa*) the form and the manner for filing particulars of transactions under

sub-section (2) of Section 26-B;

(*fb*) the form and manner of filing attachment orders with the Central Registry and the date under sub-section (4) of Section 26-B;

(*fc*) the form and manner of filing particulars of attachment order with the Central Registry and the fee under sub-section (5) of Section 26-B.".

Chapter III

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

26. Amendment of Section 2.— In the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) (hereinafter in this Chapter referred to as the principal Act), in Section 2,—

(*i*) in clause (*g*), after the words "the date of the application", the following words shall be *inserted*, namely—

"and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;";

(*ii*) after clause (*g*), the following clause shall be *inserted*, namely—

'(*ga*) "debt securities" means debt securities listed in accordance with regulations made by the Securities Exchange Board of India under the Securities and Exchange Board of India Act, 1992 (15 of 1992);';

(*iii*) in clause (*h*), after sub-clause (*ia*), the following sub-clause shall be *inserted*, namely—

"(*ib*) a debenture trustee registered with the Board and appointed for secured debt securities;";

(*iv*) after clause (*h*), the following clause shall be *inserted*, namely—

'(*ha*) "financial lease" means a lease under a lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be;';

(*v*) after clause (*ja*), the following clause shall be *inserted*, namely—

'(*jb*) "property" means—

(*a*) immovable property;

(*b*) movable property;

(*c*) any debt or any right to receive payment of money, whether secured or unsecured;

(*d*) receivables, whether existing or future;

(*e*) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature, as may be prescribed by the Central Government in consultation with Reserve Bank;';

(*vi*) after clause (*l*), the following clauses shall be *inserted*, namely—

'(*la*) "secured creditor" shall have the meaning as assigned to it in clause (zd) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(*lb*) "security interest" means mortgage, charge, hypothecation, assignment or any other right, title or interest of any kind whatsoever upon property, created in favour of any bank or financial institution and includes—

(*a*) such right, title or interest upon tangible asset, retained by the bank or financial institution as owner of the property, given on hire or financial lease or conditional sale which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or any credit provided to enable the borrower to acquire the tangible asset; or

(*b*) such right, title or interest in any intangible asset or licence of any intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit extended to enable the borrower to acquire the intangible asset or licence of intangible asset;'.

27. Amendment of Section 4.— In the principal Act, in section 4, for sub-section (2), the following sub-section shall be *substituted*, namely:—

"(2) Notwithstanding anything contained in sub-section (1), the Central Government may—

(*a*) authorise the Presiding Officer of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal under this Act in addition to his being the Presiding Officer of that Tribunal; or

(*b*) authorise the judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, to discharge the functions of the Presiding Officer of Debts Recovery Tribunal under this Act, in addition to his being the judicial Member of that Tribunal.".

28. Amendment of Section 6.— In the principal Act, for Section 6, the following section shall be *substituted*, namely—

"*6. Term of office of Presiding Officer*.— 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 and shall be eligible for reappointment:

Provided that no person shall hold office as the Presiding Officer of a Tribunal after he has attained the age of sixty-five years.".

29. Amendment of Section 8.— In the principal Act, in Section 8, in sub-section (1), the following proviso shall be *inserted*, namely—

"Provided that the Central Government may authorise the Chairperson of any other Appellate Tribunal, established under any other law for the time being in force, to discharge the functions of the Chairperson of the Debts Recovery Appellate Tribunal under this Act in addition to his being the Chairperson of that Appellate Tribunal.".

30. Amendment of Section 11.— In the Principal Act, for Section 11, the following section shall be *substituted*, namely—

"*11. Term of office of Chairperson of Appellate Tribunal*.— The Chairperson of an Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that no person shall hold office as the Chairperson of a Appellate Tribunal after he has attained the age of seventy years.".

31. Amendment of Section 17-A.— In the principal Act, in Section 17-A, after sub-section (1), the following sub-sections shall be *inserted*, namely—

"(1-A) For the purpose of exercise of general powers of superintendence and control over Tribunals under sub-section (1), the Chairperson may—

(*i*) direct the Tribunals to furnish, in such form, at such intervals and within such time, information relating to pending cases both under this Act and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), or under any other law for the time

ANNEXURE P-3

GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Report No.272

Assessment of Statutory Frameworks of Tribunals in India

October, 2017

डॉ0 न्यायमूर्ति बलबीर सिंह चौहान
पूर्व न्यायाधीश, सर्वोच्च न्यायालय
अध्यक्ष
भारत का विधि आयोग
विधि एवं न्याय मंत्रालय
भारत सरकार

सत्यमेव जयते

Dr. Justice B. S. Chauhan
Former Judge, Supreme Court of India
Chairman
Law Commission of India
Ministry of Law & Justice
Government of India

D.O. No.6(3)299/2016-LC(LS)

27th October, 2017

Dear Shri Ravi Shankar Prasad Ji,

The Supreme Court, in *Gujarat Urja Vikas Nigam Ltd* v. *Essar Power Ltd*, (2016) 9 SCC 103, has asked the Law Commission of India to, *inter alia*, to consider, changes required to be made in the statutory framework constituting various Tribunals keeping the very objective of their establishment and the procedure and terms and conditions for appointment of Chairperson and Members to such Tribunals.

The Commission considered working of the tribunal system in our country and foreign countries, reports of the earlier Law Commissions and various Committees, judicial pronouncements of the Supreme Court and High Courts, and analysed the provisions in the existing laws constituting Tribunals along with the relevant data available on the subject. After examination, the Law Commission has drawn a detailed step-by-step procedure for improving the working of the tribunal system in the country.

I have the privilege of forwarding the Two Hundred and Seventy Second Report of the Commission titled "**Assessment of Statutory Framework of Tribunals in India**" for consideration by the Central Government.

With warmest regards,

Yours sincerely,

[Dr. Justice B.S. Chauhan]

Shri Ravi Shankar Prasad
Hon'ble Minister for Law and Justice,
Government of India
Shastri Bhawan
New Delhi

कमरा सं. 405, चतुर्थ तल, 'बी' विंग, लोक नायक भवन, खान मार्केट, नई दिल्ली-110003 / Room No. 405, 4th Floor, 'B' Wing, Lok Nayak Bhawan, Khan Market, New Delhi-110003
दूरभाष/Tel: 011-24654951, फैक्स/Fax : 24654950 ई-मेल/email : justicechauhan@gmail.com

Report No. 272

Assessment of Statutory Frameworks of Tribunals in India

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functions should be separated to respect the need of judicial independence.[67] In pursuance thereof, the Competition Act, 2002 was enacted.

J. The Finance Act, 2017

3.33 The Finance Act, 2017 has merged eight tribunals on the ground of functional similarity and has given the power to the Government to appoint and remove the members. The tribunals merged are listed in a tabular form, which is annexed as **Annexure-I.**

3.34 In exercise of the powers conferred by section 184 of the Finance Act, 2017, the Central Government has framed 'The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017.' These rules are applicable to the Chairman, Vice-Chairman, Chairperson, Vice- Chairperson, President, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member, Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority as specified in column (2) of the Eighth Schedule of the Finance Act, 2017. Nineteen Tribunals/Appellate Tribunals/ Authorities constituted under their respective Acts are mentioned in column (3) of the Eighth Schedule. The constitutional validity of the Finance Act and the rules is challenged by way of Writ Petition which is pending before the Supreme Court.[68]

3.35 The Tribunals have been established in almost all the countries for the reason that they are cheaper (cost-effective), accessible, free from technicalities, expeditious and proceed more rapidly and efficiently as manned by experts, while

[67] Anusha Ramesh, "Tribunalisation of India's Competitive Regime" 9 *NUJSLR* 272-273 (2016).
[68] In *Jairam Ramesh* v. *Union of India*, Writ Petition (Civil) No. 558 of 2017, it is alleged that The Tribunal, Appellate Tribunal and other Authorities (Qualifications, experience and other conditions of service of members) Rules, 2017 be declared ultra vires the NGT Act, 2010, as the same suffers from vice of excessive delegation. Notice has been issued to the Ministries of finance, law and justice, environment, parliamentary affairs, the Cabinet Secretariat and the National Green Tribunal (NGT); *See* also *Central Administrative Tribunal (Principal Bench) Bar Association through its President* v. *Union of India*, Writ Petition (Civil) No. 640 of 2017; *All India Lawyers Union* v. *Union of India*, Writ Petition (Civil) No. 778 of 2017; and *Social Action for Forest and Environment* v. *Union of India*, Writ Petition (Civil) No. 561 of 2017.

the Courts are too remote, too legalistic and too expensive. The concept of Tribunalisation was developed to overcome the crisis of delay and backlogs in the administration of justice. However, the data officially available, in respect of working of some of the Tribunals do not depict a satisfactory picture. Though the disposal rate of the Tribunals in comparison to the filing of cases per year had been remarkable i.e., at the rate of 94%, the pendency remains high. Some of the figures of pending cases before the Tribunals are as under:

	Tribunal	**As On**	**Number of Pending Cases**
1.	Central Administrative Tribunal	July, 2017	44,333
2.	Railway Claims Tribunal	30-09-2016	45,604
3.	Debt Recovery Tribunal	03-07-2016	78,118
4.	Customs, Excise and Service Tax Appeal Tribunal	End of 2016	90,592
5.	Income Tax Appellate Tribunal	End of 2016	91,538

Division Bench of the High Court within whose jurisdiction, the concerned Tribunal is located.

6.20 Administrative Tribunals under Article 323-A could examine all the disputes pertaining to service conditions, including the constitutional validity of any Statute or rules except that of the Act under which that Tribunal is established. For challenging the constitutional validity of such an Act, one will have to approach the concerned High Court. Against an Administrative Tribunal's decision, a writ would lie to a High Court having jurisdiction over it and against such decision an appeal would lie to the Supreme Court under Article 136.

6.21 In *The State of Maharashtra* v. *Labour Law Practitioners*,[96] the Court applied the tests laid down in *Bharat Bank's Case (Supra)* wherein it had been held that the Industrial Tribunal is a Civil Court exercising civil jurisdiction. The test laid down in the matter was based on an English case of *Cooper* v. *Wilson*,[97] which prescribed the following parameters:

i. the presentation of their case by the parties;
ii. ascertainment of facts by means of evidence adduced by the parties often with the assistance of argument;
iii. if the dispute relates to a question of law, submission of legal arguments by the parties; and
iv. by decision which disposes of the whole matter by findings on fact and application of law to facts so found.

6.22 The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides for setting up of a Tribunal and an appellate Tribunal. The Constitutional validity of this Act was challenged in *Union of India* v. *Delhi Bar Association*,[98] wherein the Supreme Court held:

> *'It has to be borne in mind that the decision of the Appellate Tribunal is not final, in the sense that the same*

[96] AIR 1998 SC 1233.
[97] [1937] 2 K.B. 309.
[98] AIR 2002 SC 1479.

> *can be subjected to judicial review by the High Court under Articles 226 and 227 of the Constitution.'*

6.23 In *Union of India* v. *R Gandhi*,[99] the Constitutional validity of Chapters 1B and 1C of the Companies Act, 1956 under which National Company Law Tribunal ('NCLT') and National Company Law Appellate Tribunal ('NCLAT') are constituted. The Court upheld the Constitutional validity observing:

> *'A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.'*

6.24 In *Raja Ram Pal* v. *Hon'ble Speaker, Lok Sabha,*[100] a Constitutional bench of five judges considered the question of judicial review in relation to the exercise of Parliamentary provisions. The Court summarised the principles relating to the same and laid down amongst other things:

> '*An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.'*

6.25 In the case of *Mohammed Ansari* v. *Union of India*,[101] the order of the High Court holding that the Tribunal has no jurisdiction in case of non-grant of non-functional financial upgradation to the appellant was under scrutiny. The Tribunal had held that it had the jurisdiction. The Supreme Court considered whether after coming into force of Armed Forces Tribunal Act, 2007, the Armed Forces Tribunals (AFT) could deal with the controversy or the High Court would still have jurisdiction under Article 226 of the Constitution. It was held that the AFT shall have the jurisdiction to hear appeals only against courts martial verdicts, qua GREF personnel. But, if the

[99] (2010) 11 SCC 1.
[100] (2007) 3 SCC 184.
[101] (2017) 3 SCC 740.

ANNEXURE P-4

(TO BE PUBLISHED IN PART I, SECTION 2 OF THE GAZETTE OF INDIA)

F.No.7/1/2019-DRT
Government of India
Ministry of Finance
Department of Financial Service

.....

New Delhi, dated the 4th January, 2021

NOTIFICATION

In exercise of powers conferred by Sub-Section 2 (a) of Section 4 of the Recovery of Debts and Bankruptcy Act, 1993, the Central Government hereby entrusts the additional charge of the post of Presiding Officer in Debts Recovery Tribunals for a period 06 months, or till joining of a regular incumbent, or till further orders, whichever is the earliest, as per following details:

S. No	DRT	Name of PO to whom additional charge is entrusted	Period of the additional charge arrangement	
			From	To
1	Pune	Shri Vimal Gupta DRT Aurangabad	05.01.2021	04.07.2021
2	Patna	Shri Sanjiv Kumar, DRT Ranchi	06.01.2021	05.07.2021
3	Jabalpur	Shri Azaj Hussain Khan, DRT Lucknow	07.01.2021	06.07.2021
4	Chandigarh-1	Sh.Vivek Saxena, DRT Jaipur	07.01.2021	06.07.2021
5	Chandigarh-2		13.01.2021	12.07.2021
6	Ernakulam-2	Ms. S.V. Gowramma, DRT-2, Bengaluru	10.01.2021	09.07.2021

Roy

(Jnanatosh Roy)
Under Secretary to the Government of India

To,

The Manager,
Government of India Press,
Minto Road,
New Delhi-110001

Copy to:

1. Shri Vimal Gupta, Presiding Officer, Debts Recovery Tribunal, Aurangabad
2. Shri Sanjiv Kumar, Presiding Officer, Debts Recovery Tribunal, Ranchi
3. Shri Azaj Hussain Khan, Presiding Officer, Debts Recovery Tribunal, Lucknow
4. Sh.Vivek Saxena, Presiding Officer, Debts Recovery Tribunal, Jaipur
5. Ms. S.V. Gowramma, Presiding Officer, Debts Recovery Tribunal-2, Bengaluru

....2

6. The Registrar, Debts Recovery Tribunal (DRT) Pune, DRT Patna, DRT Jabalpur, DRT-1 & 2, Chandigarh and DRT-2 Ernakulam with a request to place the notification on notice board and a copy may also be sent to respective Bar Association
7. The Registrars of all Debts Recovery Appellate Tribunals and all Debts Recovery Tribunals.
8. The Pay & Accounts Officer, Ministry of Finance, Department of Economic Affairs, National Savings Organisation Building, Civil Lines, Nagpur.
9. The Pay & Accounts Officer (Banking), New Delhi.
10. Department of Personnel & Training (DoP&T) for information
11. Personal files.
12. Guard file.

//True Copy//

ANNEXURE P-5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 23RD DAY OF MARCH 2021 / 2ND CHAITHRA, 1943

WA. No. 384 OF 2021

[AGAINST THE JUDGMENT DATED 05.02.2021 IN WP(C) NO. 2966/2021(U) OF HIGH COURT OF KERALA]

APPELLANTS/PETITIONERS IN THE WPC:

1 M/S. KERALA FASHION JEWELLERY,
D.NO.PP/VI, 656, MANJERY ROAD, PANDIKKAD,
MALAPPURAM-676 521, REPRESENTED BY
ITS MANAGING PARTNER O.K. BIJU, 4/43,
THEKKARA OLARI, OLLUR, TRISSUR-680 306.

2 MR. O.K.ROY,
S/O. OLARI KOCHUVAREED KOCHUVARUNNI, NO.4/562,
THEKKEKARA PERINTHALMANNA, MALAPPURAM-679 322.

3 O.K.JOJU, S/O. OLARI KOCHUVAREED KOCHUVARUNNI,
4/43, THEKKARA OLARI, OLLUR THRISSUR-680 306.

4 MRS. SHEEJA ROY
W/O. O.K.ROY, RESIDING AT NO.4/562, THEKKEKARA,
PERINTHALMANNA, MALAPPURAM-679 322.

5 O.K.BIJU, S/O. LATE OLARI KOCHUVEED KOCHUVARUNNI,
RESIDING 4/43, THEKKARA OLARI, OLLUR, THRISSUR-680 306.

6 SINDRELLA JOJU
W/O. O.K.JOJU, RESIDING AT 4/43,
THEKKARA OLARI, OLLUR THRISSUR-680 306.

7 MINI BIJU, W/O. O.K.BIJU,
4/286, NAMBADAN HOUSE,
CHALAKUDY, THRISSUR-680 307.

8 KOCHU THRESSIA
W/O. OLARI KOCHUVAREED KOCHUVARUNNI, 4/43,
THEKKARA OLARI, OLLUR, THRISSUR-680 306.

BY ADVS. SRI.P.CHANDRASEKHAR
SRI.K.K.MOHAMED RAVUF
SRI.SATHEESH V.T.
SMT.MANJARI G.B.
SRI.C.S.ULLAS

RESPONDENTS/RESPONDENTS IN THE WPC:

1 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF FINANCE (DEPARTMENT OF
FINANCIAL SERVICE), NEW DELHI-110 001.

2 THE DEBTS RECOVERY TRIBUNAL-2,
(ERNAKULAM & LAKSHADWEEP), 5TH FLOOR,
KERALA STATE HOUSING BOARD BUILDING,
PANAMPILLY NAGAR, ERNAKULAM-682 014, REPRESENTED BY
ITS REGISRAR.

3 MS.S.V.GOURAMMA, THE PRESIDING OFFICER,
DEBT RECOVERY TRIBUNAL-2, BANGALURU-560 025.

4 KOTAK MAHINDRA BANK LIMITED,
REGD. OFFICE 27 BKC, C 27, G BLOCK,
BANDRA KURLA COMPLEX, BANDRA (E),
MUMBAI-400 051, REPRESENTED BY
ITS MANAGING DIRECTOR.

5 THE AUTHORISED OFFICER,
M/S. KOTAK MAHINDRA BANK LIMITED, BKC,
C 27, G BLOCK, BANDRA KURLA COMPLEX,
BANDRA (E), MUMBAI-400 051.

R1 BY ADV. SHRI P.VIJAYAKUMAR, ASG OF INDIA
R4 & R5 BY ADVS. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.V.T.LITHA
SMT.K.R.MONISHA
SMT.SHRUTHI SARA JACOB

BY ADV. SRI. JAGADEESH LAKSHMAN, CGC FOR R1

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 23rd day of March, 2021

S. Manikumar, CJ

Being aggrieved by the judgment dated 5.2.2021 in W.P.(C) No.2966 of 2021, instant writ appeal is filed.

2. Short facts leading to the filing of the writ petition are petitioners are the applicants in S.A. No.372 of 2018 on the file of the Debt Recovery Tribunal-II, Ernakulam, filed under Section 17(1) of the SARFAESI Act, 2002, challenging the physical possession measures taken by the 4th respondent-M/s. Kotak Mahindra Bank Limited, Mumbai, represented by its Managing Partner. The petitioners are aggrieved by the additional charge given by the Union of India, 1st respondent, to the 3rd respondent, the Presiding Officer of Debt Recovery Tribunal-II, Bangalore, as the said action of issuing order authorising the Presiding Officer of one Debt Recovery Tribunal to act as such, as additional charge by the 1st respondent, is *ultra vires* of Section 4 sub sections (2)(a) and (b) of the Recovery of Debts and Bankruptcy Act, 1993, which came into force from 2016, repealing and substituting the previous provision, authorising additional charge to the Presiding Officer of another Debt Recovery Tribunal. The petitioners, therefore seek, to quash Exhibit-P1 notification dated 4.1.2021 and for issuance of a writ of prohibition against the 3rd respondent restraining from acting as in charge of Debt Recovery Tribunal-II,

Ernakulam, as per Exhibit P1, and also for a direction to 1st respondent to entrust the additional charge of Debt Recovery Tribunal-II, Ernakulam to any Presiding Officer or Judicial member of any other Tribunal established and constituted under any other law other than the Recovery of Debts and Bankruptcy Act, 1993 functioning under the Government of India in Ernakulam till a regular incumbent joins as a Presiding Officer in Debt Recovery Tribunal-II, Ernakulam, or till further orders.

3. After hearing the learned counsel for the parties, the learned single Judge dismissed the writ petition, holding thus:

> "6. It is trite that every word used in the legislation is to be given meaning. The golden rule is to adopt to the ordinary meaning of the words used and to the grammatical construction unless the same leads to manifest absurdity. The inconvenience however great would be of little consequence. Similarly, it is also well established that such interpretation as would reduce the legislation to futility needs to be avoided.
>
> In the case in hand, the term 'Tribunal' is defined to mean that the Tribunal established under sub section 1 of Section 3 of the Recovery of Debts and Bankruptcy Act, 1993. The Central Government is empowered to establish one or more Tribunal to be known as DRT by notification for exercising the jurisdiction, power and authority conferred on such Tribunal under the said Act. If the meaning of the word 'Tribunal' as defined by this Act is kept in mind, then it is clear that the Government can entrust the charge of one DRT

> to any other DRT so also to other Tribunals established under any other law for the time being in force. The provisions of sub section 2 of Section 4 cannot be read to exclude entrustment of powers of one DRT with another DRT."

4. Assailing the correctness of the said judgment, appellants have, *inter alia*, raised the following grounds:

A. Learned Single Judge went wrong in holding that power of the Central Government to entrust the charge of a Debt Recovery Tribunal to any other Debt Recovery Tribunal, established under any other law, is in addition to the power of the Central Government to entrust the charge of one Debt Recovery Tribunal to any other Debt Recovery Tribunal.

B. Learned Single Judge went wrong in reading an additional provision into Section 4(2) of RDB Act which has been intentionally and consciously deleted by the Parliament as per the Amendment Act 44 of 2016.

C. Learned single Judge failed to note that on a plain reading of Section 4(2) of RDB Act, 1993, as amended by Act 44 of 2016, the power granted to the Central Government is only to authorize the Presiding officer or Judicial Member of any other Tribunal, established under any other law for the time being in force, to discharge the function of the Presiding Officer of Debt Recovery Tribunal.

D. Learned Single Judge went wrong in not adopting purposive construction and interpretation of Section 4(2) of RDB Act, 1993 as per the law laid down by the Hon'ble Supreme Court in the matter of interpretation of statute.

E. Learned Single Judge failed to note that the very purpose of Act 44 of 2006 and amendment to Section 4(2) of RDB Act, 1993 is to safeguard the interest of the litigants, so that they would be entitled to access justice and get their case adjudicated at the same place they reside and where the cause of action has arisen.

F. Learned Single Judge failed to note that the impugned notification, inasmuch as it relates to the discharge of function of the Presiding Officer of Debt Recovery Tribunal-II, Ernakulam by Debt Recovery Tribunal -II, Bangalore is highly arbitrary, unreasonable and beyond the scope and intention of Section 4(2) of RDB Act, 1993, and therefore, the said notification is in violation of Articles 14 and 21 of the Constitution of India.

5. Respondents 1 to 3 have filed a statement dated 26.02.2021, the relevant portions of which read thus:

> "2. There has been no regular Presiding Officer in DRT-2, Ernakulam since 01.07.2020. In pursuance of Exhibit-P1 notification No. F. No.7/1/2019-DRT dated 04.01.2021 issued by the 1st respondent - Government of India, Ministry of Finance, Smt. S. V. Gowramma, Presiding Officer of DRT-2, Bengaluru has taken over additional charge of the post of Presiding Officer, DRT -2, Ernakulam on 11.01.2021 for a period of six months. In view of the present COVID-19 pandemic situation, urgent matters pertaining to DRT-2, Ernakulam are being taken up for hearing by Smt. S. V. Gowramma., Hon'ble Presiding Officer, through Video Conferencing facilities on all Thursdays and Fridays and most urgent matters, if any, regarding sale of the secured assets, dispossession etc., are being taken up on other working days as well.

3. It is further contended that M/s. Kerala Fashion Jewellery & 7 others had filed SA No.372/2018 before the Tribunal on 15.09.2018 under S.17(1) of the SARFAESI Act against M/s. Kotak Mahindra Bank Ltd., challenging the order dated 21.08.2018 of the CJM Court, Thrissur in Crl.M.P.No.1082/2017. As the subject matter pertains to the measures/action taken by the secured creditor bank under the provisions of the SARFAESI Act, the question of taking evidence does not arise; and the matter can be decided based on the pleadings and documents (photocopies only) available on record.

4. It is further contended that the matter was already heard and reserved for orders on 16.11.2019. However, as the applicants themselves have come out with I.A.No.1711/2019 for amendment, I.A.No.1712/2019 for reopening the hearing of the S.A., I.A.No.1713/2019 for production of documents and I.A.No.1714/2019 for joint trial with another S.A., the matter was re-opened on 14.11.2019 and adjourned for hearing from time to time at the instance of the parties to the S.A. Finally, the matter was taken up for hearing on 11.02.2021 through Video Conference and now stands posted for hearing on 12.03.2021.

5. It is further contended that the Hon'ble Supreme Court in in **Union of India & Anr v. Delhi High Court Bar Association & others** [AIR 2002 SC 1479] held that it is common knowledge that hardly any transaction with the Bank would be oral and without proper documentation, whether in the form of letters or formal agreements. In such an event, the *bona fide* need for the oral examination of a witness should rarely arise.

6. Heard learned counsel for the parties and perused the material available on record.

7. Exhibit-P1 notification dated 4.1.2021 - F. No.7/1/2019-DRT, giving additional charge of the post of Presiding Officer of Debts Recovery Tribunals, is extracted hereunder:

(TO BE PUBLISHED IN PART I, SECTION 2 OF THE GAZETTE OF INDIA)

F.No.7/1/2019-DRT
Government of India
Ministry of Finance
Department of Financial Service

.....

New Delhi, dated the 4th January, 2021

NOTIFICATION

In exercise of powers conferred by Sub-Section 2 (a) of Section 4 of the Recovery of Debts and Bankruptcy Act, 1993, the Central Government hereby entrusts the additional charge of the post of Presiding Officer in Debts Recovery Tribunals for a period 06 months, or till joining of a regular incumbent, or till further orders, whichever is the earliest, as per following details:

S. No	DRT	Name of PO to whom additional charge is entrusted	Period of the additional charge arrangement	
			From	To
1	Pune	Shri Vimal Gupta DRT Aurangabad	05.01.2021	04.07.2021
2	Patna	Shri Sanjiv Kumar, DRT Ranchi	06.01.2021	05.07.2021
3	Jabalpur	Shri Azaj Hussain Khan, DRT Lucknow	07.01.2021	06.07.2021
4	Chandigarh-1	Sh.Vivek Saxena, DRT Jaipur	07.01.2021	06.07.2021
5	Chandigarh-2		13.01.2021	12.07.2021
6	Ernakulam-2	Ms. S.V. Gowramma, DRT-2, Bengaluru	10.01.2021	09.07.2021

(Jnanatosh Roy)
Under Secretary to the Government of India

To,

The Manager,
Government of India Press,
Minto Road,
New Delhi-110001

Copy to:

1. Shri Vimal Gupta, Presiding Officer, Debts Recovery Tribunal, Aurangabad
2. Shri Sanjiv Kumar, Presiding Officer, Debts Recovery Tribunal, Ranchi
3. Shri Azaj Hussain Khan, Presiding Officer, Debts Recovery Tribunal, Lucknow
4. Sh.Vivek Saxena, Presiding Officer, Debts Recovery Tribunal, Jaipur
5. Ms. S.V. Gowramma, Presiding Officer, Debts Recovery Tribunal-2, Bengaluru

8. Before adverting to the submissions, let us see the impugned order issued by the Central Government.

9. Recovery of Debts and Bankruptcy Act, 1993 is an Act to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions insolvency resolution and bankruptcy of individuals and partnership firms and for matters connected therewith or incidental thereto. Chapter II of the Act deals with establishment of Tribunal and Appellate Tribunal. Section 3 of Chapter II speaks about establishment of tribunal and it reads thus:

> "**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.
>
> [(1A) The Central Government shall by notification establish such number of Debts Recovery Tribunals and its benches as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under the Insolvency and Bankruptcy Code, 2016.]
>
> (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."

10. That apart, Section 4 speaks about composition of Tribunal and it reads thus:

> "**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-
>
> (a) authorise the Presiding Officer of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal under this Act in addition to his being the Presiding Officer of that Tribunal; or
>
> (b) authorise the judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, to discharge the functions of the Presiding Officer of Debts Recovery Tribunal under this Act, in addition to his being the judicial Member of that Tribunal."

11. The subject issue relates to posting of cases on the file of the Debt Recovery Tribunal-II, Ernakulam with the Presiding Officer of Debt Recovery Tribunal-II, Bangalore. The paramount contention advanced by the learned counsel for the appellants is that going by the statutory provisions, there is no power vested with the Central Government to entrust the Charge of the Tribunal to any other Debt Recovery Tribunal outside the State of Kerala.

12. The case put forth by the appellants is that as per the amended Section 4(2) of the Recovery of Debts and Bankruptcy Act, 1993, the functions of a Debt Recovery Tribunal can be entrusted only to a Presiding

Officer of any other Tribunal established under any other law for the time being in force to discharge the functions of a Presiding Officer of a Debt Recovery Tribunal under the Act, 1993, in addition to his being the Presiding Officer of that Tribunal. In fact, sub-section (2) of Section 4 of the Act, 1993 as above substituted the following:

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

13. Therefore, it was contended by the learned counsel for the appellants that the provision, which enabled the Central Government to authorise the Presiding Officer of one Debt Recovery Tribunal to discharge the functions of the Presiding Officer of another Debt Recovery Tribunal under the Act, 1993, is taken away and the only option available to the Central Government is, to authorise the Presiding Officer of any other Tribunal under any other law, to discharge the functions of the Presiding Officer of a DRT under the Act, 1993, in addition to his being the Presiding Officer of that Tribunal. However, the learned single Judge had relied on the definition of Tribunal contained under Section 2(o) of the Recovery of Debts and Bankruptcy Act, 1993 defined to mean, the Tribunal established under sub-section (1) of Section 3, and concluded the findings holding that on a conjoint reading of the relevant provisions discussed above, the Central Government was vested with powers to authorise the Debt Recovery Tribunal constituted in

another State, and in the instant case, the Tribunal at Bangalore to hold the additional charge of the Tribunal at Ernakulam. But, sub-section (1) of Section 3 mandates that the Central Government shall by notification establish one or more Tribunals to be known as the Debt Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the Act, 1993. Therefore, when two Tribunals were established within the State of Kerala, as per the provisions of the Act, 1993, the Central Government was vested with powers to entrust the charge to the other existing Tribunal, constituted under the Act, 1993, when the post of the Presiding Officer, Debt Recovery Tribunal-II, Ernakulam became vacant, or to appoint the presiding officer of any other Tribunal in contemplation of Section 4(2) of Act 1993.

14. Going by the provisions of the Amended Act, 1993 and consequent to the substitution of sub-section (2) of Section 4, it is clear that when there is a vacancy, the Central Government is vested with the powers only to authorise a Presiding Officer of any other Tribunal constituted by the Central Government in the State under any other law for the time being in force to discharge the functions of the Presiding Officer of a Debt Recovery Tribunal under the Act, 1993. This would be more clear, on a reading of the unamended sub-section (2) of Section 4 of Act, 1993 that even though the Central Government was vested with powers, to authorise the Presiding Officer of one Tribunal to discharge also the functions of the Presiding Officer of

another Tribunal, that was taken away consequent to the substitution of sub-section (2) of Section 4 of Act, 1993, by virtue of Section 27 of the Amendment Act 44 of 2016.

15. However, the learned single Judge was of the opinion that by virtue of the definition of 'Tribunal' given under the Act, 1993, the Central Government was vested with the powers to authorise any other Tribunal, constituted under the Act, 1993, to discharge the functions of a vacant Tribunal. But, going by the provisions of Section 4 of the Act, 1993, there is no doubt that the view adopted by the learned single Judge in the impugned judgment is not correct, because, if and when the office of the Tribunal under the Act, 1993 falls vacant, the course open to the Central Government is only to authorise the Presiding Officer of any other Tribunal constituted under any other law within the jurisdictional State, to discharge the functions of the Presiding Officer of a DRT, which would be more beneficial and accessible to the litigant public. That being so, we are of the definite opinion that the stand taken by the learned single Judge cannot be sustained in law and, therefore, Exhibit-P1 notification dated 4.1.2021 to the extend entrusting the additional charge to the Presiding Officer of DRT-II, Bangalore, to function as the Presiding Officer, of DRT-II, Ernakulam has to be quashed.

In the result, we set aside the judgment of the learned single Judge dated 5.2.2021 in W.P.(C) No.2966 of 2021 and quash Exhibit-P1 notification

dated 4.1.2021, to the extent of conferring additional charge of the Debt Recovery Tribunal-II, Ernakulam, to the Presiding Officer, Debt Recovery Tribunal-II, Bangalore, with effect from 10.01.2021 to 09.07.2021, however, leave open the liberty of the Central Government to issue a fresh notification, in terms of the provisions of Section 4(2) or otherwise, in accordance with law as per the provisions of the Recovery of Debts and Bankruptcy Act, 1993, at the earliest. Writ appeal is allowed.

Sd/-
S. Manikumar
Chief Justice

Sd/-
Shaji P. Chaly
Judge

vpv & krj

//TRUE COPY//

P.A. TO C.J.

ANNEXURE P-6

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRA ORDINARY CIVIL WRIT JURISDICTION
W.P. (CIVIL) NO. 6279 OF 2021

IN THE MATTER OF

State Bar Council of Madhya Pradesh
Through its Secretary,
Mr. Prashant Dubey,
Aged about 41 years,
State Bar Council Building,
High Court Campus,
Jabalpur, Madhya Pradesh ...Petitioner

VERSUS

Union of India,
Through Secretary,
Ministry of Finance,
Department of Financial Services,
Jeevan Deep Building,
Parliament Street,
New Delhi - 110 001 ...Respondent

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

To,
THE HON'BLE CHIEF JUSTICE AND
OTHER PUISNE JUDGES OF THIS
HON'BLE HIGH COURT

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. The Petitioner is a Statutory Body created under the provisions of Advocates Act, 1961 and is established and

entitled to preserve, protect and further the interest of its member lawyers across the State of Madhya Pradesh. It is also supposed to ensure that the problem faced by the legal fraternity, including, as also the litigants in the administration and dispensation of justice are adequately redressed and dealt with. Therefore, as a statutory body, the Petitioners are not only representing the cause of its lawyer members, but also the litigants, which are an essential feature and ingredient of the justice delivery system. The Petitioner is a representative body of more than 60,000 Advocates registered on its Rolls, practicing across the State of Madhya Pradesh as also a large number of Advocates of the whole State who are practicing before the Debt Recovery Tribunal, Madhya Pradesh (DRT). The Petitioner has authorised the Secretary, Mr. Prashant Dubey for filing the present petition as an Authorised Signatory on its behalf, and the Resolution for filing the present petition is annexed herewith as **ANNEXURE P-1 (p.34).**

2. That the present petition has been filed challenging the validity and legality of the Impugned Notification cum

Public Notice dated 04.01.2021 issued by the Respondent, Government of India, through which the charge of Presiding Officer of DRT, Jabalpur (for MP & CG) stands transferred from Jabalpur to Lucknow. The prayer is sought for appropriate guidelines to the Respondent Ministry for appointing Presiding Officers (hereinafter 'P.O.') prior to retirement or demitting of office by the foregoing P.O. of the concerned DRT. Ancillary relief is also prayed for direction to appoint a regular full-time incumbent P.O. for DRT Jabalpur and for appropriate orders in this regard to all other DRTs of the country. True copy of the impugned order dated 04.01.2021 issued by the Respondent GOI is annexed herewith as **ANNEXURE P-2 (p.35 to 36).**

3. That before proceeding ahead, it would be necessary to refer to some of the statutory provisions occupying the field. The Parliament has enacted Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter "RDDBFI Act"). Section 2(o) defines 'Tribunal' as Tribunal established under Section 3(1). Section 3, titled as 'Establishment of Tribunal', empowers the Central

Government to establish DRT for exercising jurisdiction, powers and authorities conferred under the enactment. **Section 4**, titled as 'Composition of Tribunal' reads as:

> ***"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—*
>
> *(a) authorise the Presiding Officer of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal under this Act in addition to his being the Presiding Officer of that Tribunal; or*
>
> *(b) authorise the judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, to discharge the functions of the Presiding Officer of Debts Recovery Tribunal under this Act, in addition to his being the judicial Member of that Tribunal.]"*
>
> *(Emphasis applied)*

4. That pertinently Section 4(2) was inserted through Amending Act No. 44 of 2016 with effect from 12-08-2016. Prior to amendment Section 4(2) read as follows:

> ***"4. Composition of Tribunal***.-
> ...
> (2)"*Notwithstanding anything contained in subsection (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. From the above para it is clear that whereas prior to Amendment, in the absence of any P.O., of DRT, the charge, duties and responsibilities could have been shifted to another corresponding P.O. of DRT in the same state or another state, after amendment, a significant transformation has taken place. Post 2016 Amendment, if the P.O. of DRT is not available to discharge his functions or duties, then in such a situation, the P.O. of any other Tribunal, established under '*any other law',* shall be authorised to discharge the functions of P.O., DRT under this enactment. In the same way, Section 4(2)(b) authorises the Judicial Member of any other Tribunal under '*any other law',* to discharge the functions of P.O. of DRT under the RDDBFI Act. This implies that the Amendment must be given a purposive and beneficial interpretation for the purpose for which it has been introduced. The purpose of introducing this amendment is

to ensure that the litigants or their counsel do not have to run pillar to post for getting justice from the Tribunals established under the RDDBFI Act, if any P.O., demits office or gets superannuated. It further intends to make justice accessible, affordable, reachable and in the same periphery as the originally established DRT Tribunal is enacted and created. For example, if DRT for Madhya Pradesh and Chattisgarh is established at Jabalpur, then any other Tribunal under '*any other law*' must be as accessible, affordable and reachable in the absence of P.O., of regular P.O., of DRT, as it was prior to his demitting office or retirement. For this reason alone the Amendment has been introduced and Tribunals within the same periphery; with the same reach and access have been authorised to deal with such matters on an ad-hoc basis. This is the primary intent of Amending Act of 44, dated 12-08-2016.

6. That the aforesaid intent and object of the Parliament in introducing the Amendment to Section 4 of the RDDBFI Act is well born out from the official commentary available on the officially authorised research wing of "PRS

Legislative Research", which clearly elaborates the Objective behind the Amending Act of 2016. True copy of the Commentary about the Aims and Objectives behind Amending Act of 2016, specifically Section 4, constituting the subject matter of the present Writ Petition as available on the official website of "prsindia.org" and on the Amendment Act of 2016, is annexed herewith **ANNEXURE P-3 (Colly) (p.37 to 53).**

7. That recently, the Kerala High Court in the matter of *M/S. Kerala Fashion Jewellery vs. Union of India (WA. No. 384 OF 2021)* through its final judgment and order dated 23.03.2021 has also affirmed the aforesaid proposition that on the retirement or non-availability of P.O. of any DRT, the responsibility and authority of the same cannot be shifted to DRT outside the State, but must remain or be retained within the same State with same accessibility. Copy of the final judgment in order dated 23.03.2021 of the Division Bench of the Kerala High Court in the matter of *M/S. Kerala Fashion Jewellery vs. Union of India* is annexed herewith as **ANNEXURE P-4 (p.54 to 67).**

8. That coming to the facts of the present matter, DRT Jabalpur has been established for the two States of Chhattisgarh and Madhya Pradesh and has been in existence from the date of its establishment in 1995. As per the information available in public domain, there are more than 5000 cases of various categories, viz. S.A. (Securitization Application), O.A. (Original Application), M.A./R.P. (Miscellaneous Applications/ Review Petitions) pending before the DRT Jabalpur. The problem of pendency is colossal to be dealt with and handled by singularly manned DRT for both the States. It has been a recurring practice on the part of Respondent authorities in entrusting the charge of DRT Jabalpur to DRTs of other States, going to the extent of entrusting it to the DRT of Cuttack (Odisha), Kolkata (West Bengal), on many occasions in the previous years, whenever the P.O., DRT Jabalpur wasn't available. It is not a disputed fact and is being made responsibly on affidavit by the Petitioner herein. The formerly serving P.O. of DRT Jabalpur Mr. B. R. Sinha demitted the office in the first week of January 2021, where after the impugned notification cum public

notice came to be issued through which the additional charge of DRT Jabalpur was transferred to DRT Lucknow.

9. That for the past more than six months, thus without appointment of any regular full-time incumbent P.O. for DRT Jabalpur, the additional charge has been entrusted to the Lucknow DRT. This is extremely astonishing, when the very purpose of establishing DRTs is to expedite bank cases and recovery matters pertaining to Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter SARFAESI Act) and RDDBFI Act. The lawyers are compelled and constrained to travel 600 kms from Jabalpur or more than 1000 kms in case of places like Indore and Bhopal for attending the physical hearings for DRT Lucknow, making the whole litigation exorbitantly expensive, unaffordable and beyond reach of an already crushed borrower/ guarantor whose bank accounts are treated as NPAs. Further, the virtual hearing of the said DRT took place from January only till last week of March 2021, that too once or twice a week for cases relating to DRT Jabalpur, whereas for all other days, the litigants as well

as their Counsels were directed to appear physically and personally before DRT Lucknow.

10. That after the last week of March, or to say the last virtual hearing dated 06.04.2021, there's not even been a single sitting of DRT Lucknow for hearing matters of DRT Jabalpur till the filing of the present Writ Petition. There is absolute uncertainty about hearing and consideration of cases filed, instituted and pending at DRT Jabalpur, due to such ad-hoc and interim arrangements made by the Central Government without due application of mind.

11. That apart from the above there have been a lot of administrative, infrastructural and managerial problems being faced for pursuing and contesting the cases at DRT Lucknow. Administrative, infrastructural and managerial problems being faced for pursuing and contesting case at DRT Lucknow, instead of DRT Jabalpur, situated at a distance of around 600 kms away. The files, records, including urgent hearing applications are to be transmitted physically on a regular and daily basis by Registry Officers specifically deputed for this purpose,

travelling from Jabalpur to Lucknow. This is because, the electronic infrastructure at DRT Jabalpur hasn't developed to such an extent that all the files can immediately be uploaded on the internet and then forwarded to the P.O., at DRT Lucknow, which office is also not that technologically advanced and equipped. This exposes the court records to a serious risk of being tampered with, stolen or misplaced, especially the important documents filed by the Financial Institutions and Banks before the DRT. This also multiplies the cost incurred in dispensation of justice as not only the officials of Registry, but also the entire office has to be arranged in such a manner as to ensure hearings at DRT Lucknow. On occasions more than 100 in the past few months, it has happened that the hearings of urgent matters had to be postponed, rescheduled for many days only because the records could not reach from DRT Jabalpur to DRT Lucknow and other such associated problems. This is compounded by the fact that virtual hearings of all the categories of cases around 200-250 instituted per month are being done only on a date and day given once or twice a week by DRT Lucknow.

12. That, thus by its own inaction, negligence and omission, the respondent UOI has defeated the mandatory provisions of the RDDBFI Act and the SARFAESI Act which provides for time-bound disposal of Original Application (O.A.) and Securitization Applications (S.A.) instituted before it. In this respect reference can be made to Section 19 (24) of the RDDBFI Act which categorically lays down that O.A., so preferred must be decided within the maximum period of 180 days. The said section reads as follows:

> *"**19. Application to the Tribunal***
> *...*
> *(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and every effort shall be made by it to complete the proceedings in two hearings, and] to dispose of the application finally within one hundred and eighty days from the date of receipt of the application."*

13. That in the same vein, reference can be made to Section 17(5) of the SARFAESI Act 2002, which also provides for a time limit of 2 months for final disposal of applications preferred by the DRT. Section reads:

> ***"17. Application against measures to recover secured debts***-
> *(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,1 [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.*
>
> ….
> *(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application."*

14. That the Central Government cannot be allowed to defeat the mandatory provisions of the RDDBFI Act and the SARFAESI Act by being a mute spectator to recurring vacancies in various DRTs of the country. The bare glance of the impugned notification dated 04-01-2021 amply demonstrated the fact that six DRTs are being run on an ad-hoc basis by being shifted to other DRTs of other states.

15. That the DRTs as specialised Tribunals were brought into existence with a vowed objective of timely and efficacious adjudication of recovery matters pertaining to banks and financial institutions which were earlier dealt with by the regular Civil Courts and High Courts.

16. That in the year 2017, the 272nd Law Commission Report under the Chairmanship of Dr. Justice B. S. Chauhan found that the adjudicatory redressal mechanism of DRTs must be strengthened and a slew of measures were suggested. Some of them relating to the present Petition were geared towards the expeditious disposal of disputes of more than Rs. 1 cr. And such other many measures were suggested by the Law Commission Report. Further, *Vide Para 3.35 & 6.22, the Report observed as thus:*

> *"**3.35** The Tribunals have been established in almost all the countries for the reason that they are cheaper (cost-effective), accessible, free from technicalities, expeditious and proceed more rapidly and efficiently as manned by experts, while the Courts are too remote, too legalistic and too expensive. The concept of Tribunalisation was developed to overcome the crisis of delay and backlogs in the administration of justice. However,*

the data officially available, respect for the working of some of the Tribunals do not depict a satisfactory picture. Though the disposal rate of the Tribunals in comparison to the filing of cases per year had been remarkable i.e., at the rate of 94%, the pendency remains high. Some of the figures of pending cases before the Tribunals are as under:

....

3. *In Debt Recovery Tribunal as on 03-07-2016 number of pending cases is 78,118.*

.....

6.22 *The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides for setting up of a Tribunal and an appellate Tribunal. The Constitutional validity of this Act was challenged in Union of India v. Delhi Bar Association, wherein the Supreme Court held:*

'It has to be borne in mind that the decision of the Appellate Tribunal is not final, in the sense that the same can be subjected to judicial review by the High Court under Articles 226 and 227 of the Constitution.'

True Copy of relevant excerpts of the 272nd Law Commission Report is annexed herewith as **ANNEXURE P-5 (p.68 to 74).**

17. That the Central Government by its sheer inaction cannot defeat the mandatory provisions of the RDDBFI Act and the SARFAESI Act by not appointing timely the adjudicating officers/ P.Os of DRT, which it is duty bound to appoint. It would be pertinent to mention that there is only one DRT for the States of M. P. and Chhattisgarh and the absence of P.O. for a long run period of time, specifically for a situation like this when a post remains vacant for almost six months, the same casts a serious doubt over the efficacy and efficiency of DRTs as adjudicating authorities. It is therefore necessary that not only a mandamus be issued to the Central Government for guidelines must be issued for time bound appointment of Presiding Officer prior to vacating, superannuation or demitting of office by the outgoing/ foregoing P.O. of any DRT. This is because the working of an important Tribunal like DRT cannot be paralysed and be compelled to be carried on crutches due to inaction and omissions of the GOI. In the previous years also, for five to six months the posts of various DRTs have remained vacant including DRT Jabalpur on many occasions and that the charge had

to be transferred to other DRTs of other States ranging from Cuttack, Kolkata, even Delhi on an ad-hoc basis.

18. That the necessity for the Petitioners to file the present petition has arisen in view of the insurmountable problems being faced by the lawyer community at large, for both the sides, the borrower as well as those representing the banks and financial institutions. Being a statutory body created under the Advocates Act, 1961, the State Bar Council espouses the cause of litigants who are an equally important part of the justice dispensation machinery of the State. Therefore, in view of the aforesaid circumstances the present petition has been filed, by the Bar Council espousing the larger interest, concern of its subject.

19. Apart from the aforesaid ground, it is also important to submit that the Hon'ble Supreme Court in the matter of *Union of India & Anr. vs. Delhi High Court Bar Association & Ors. (2002) 4 SCC 275*, underscored the importance of DRTs as specialised Tribunals created under RDDBFI Act. Whilst discussing about the necessity of expeditious and

swift decision over such types disputes in a time bound manner, the Hon'ble Supreme Court *Vide Paras 14 & 17* observed as follows:

> ***"14.*** *... In exercise of its legislative power relating to banking, Parliament can provide the mechanism by which monies due to the banks and financial institutions can be recovered. The Tribunals have been set up in regard to the debts due to the banks. The special machinery of a Tribunal which has been constituted as per the preamble of the Act, "for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto" would squarely fall within the ambit of Entry 45 of List I. As none of the items in the lists are to be read in a narrow or restricted sense, the term "banking" in Entry 45 would mean legislation regarding all aspects of banking including ancillary or subsidiary matters relating to banking. Setting up of an adjudicatory body like the Banking Tribunal relating to transactions in which banks and financial institutions are concerned would clearly fall under Entry 45 of List I giving Parliament specific power to legislate in relation thereto.*
>
> *...*
>
> ***17.*** *The very purpose of establishing the Tribunal being to expedite the disposal of the applications filed by the banks and financial institutions for*

> *realisation of money, the Tribunal and the Appellate Tribunal are required to deal with the applications in an expeditious manner. It is precisely for this reason that Section 22(1) stipulates that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure. Therefore even though the Tribunal can regulate its own procedure, the Act requires that any procedure laid down by it must be guided by the principles of natural justice while, at the same time, it should not regard itself as being bound by the provisions of the Code of Civil Procedure."*

20. That another facet of establishment of Tribunals is *'affordable and convenient access to justice'***,** which must be ensured on all the occasions. The DRT Jabalpur has been established as a Nodal Tribunal for the two States of Madhya Pradesh and Chhattisgarh and therefore caters to litigants within the periphery of 500-600 kms. Shifting and throwing the functions and responsibilities of such DRT to further 600 kms away, ruptures and disturbs the convenience, affording capacity, reach of the litigants to such Tribunals. As stated *infra*, virtual hearings for matters of DRT Jabalpur are being held hardly for a day

or two in a week, whilst all other remaining days the litigants and their Counsels without any redress or arrangements of hearing, the availability of sufficient time for effective consideration and adjudication of disputes also gives rise to impediments in the said easy access to justice.

21. That the Hon'ble Supreme Court in the matter of *Rojer Mathew v. South Indian Bank Ltd., (2018) 16 SCC 341* emphasised upon the accessibility of justice whilst establishment of Tribunals. *Vide Para 32***,** the court observed that:

> ***"32.*** *We broadly approve the concept of having an effective and autonomous oversight body for all the tribunals with such exceptions as may be inevitable. Such a body should be responsible for recruitments and oversight of functioning of members of the tribunals. Regular cadre for tribunals may be necessary. The learned Amicus Curiae suggests setting up of All India Tribunal Service on the pattern of UK. The members can be drawn either from the serving officers in Higher Judicial Service or directly recruited with appropriate qualifications by national competition. Their performance and functioning must be*

reviewed by an independent body in the same way as superintendence by the High Court under Article 235 of the Constitution. Direct appeals must be checked. Members of the Tribunals should not only be eligible for appointment to the High Courts but a mechanism should be considered whereby due consideration is given to them on the same pattern on which it is given to the members of Higher Judicial Service. This may help the High Courts to have requisite talent to deal with issues which arise from decisions of tribunals. A regular cadre for the tribunals can be on the pattern of cadres for the judiciary. The objective of setting up of tribunals to have speedy and inexpensive justice will not in any manner be hampered in doing so. Wherever there is only one seat of the tribunal, its Benches should be available either in all States or at least in all regions wherever there is litigation instead of only one place."

22. That on the similar lines, in the matter of *Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509, Vide Para 33*, the Hon'ble Supreme Court observed in the context of access to justice as follows:

> ***"33.*** *Four main facets that, in our opinion, constitute the essence of access to justice are:*

(i) *the State must provide an effective adjudicatory mechanism;*

(ii) *the mechanism so provided must be reasonably accessible in terms of distance;*

(iii) *the process of adjudication must be speedy; and*

(iv) *the litigant's access to the adjudicatory process must be affordable.*

23. *That in the matter All India Judges Association v. Union of India, (2018) 17 SCC 555***,** the Supreme Court *Vide Para 10* observed as thus*:*

> *"**10**. The court development plan should comprise of three components.*
>
> *...*
>
> *In other words, the core factors in the design of a court complex must reckon — (a) optimum working conditions facilitating increased efficiency of judicial officers and the administrative staff; (b) easy access to justice to all and particularly to the underprivileged, persons with disability, women and senior citizens; (c) safety and security of Judges, administrative staff, litigants, witnesses and undertrial prisoners."*

24. In the matter of *Madras Bar Association v. Union of India, (2014), 10 SCC 1, Vide para 56***,** the Court observed that:

> **"***56. … Therefore, it is crucial that these tribunals are run by a robust mix of experts, i.e. those with experience in policy in the relevant field, and those with judicial or legal experience and competence in such fields. The functioning or non-functioning of any of these tribunals due to lack of competence or understanding has a direct adverse impact on those who expect effective and swift justice from them. The resultant fallout is invariably an increased docket load, especially by recourse to Article 226 of the Constitution of India. These aspects are highlighted once again to stress that these tribunals do not function in isolation, but are a part of the larger scheme of justice dispensation envisioned by the Constitution and have to function independently, and effectively, to live up to their mandate. The involvement of this Court, in the series of decisions, rendered by no less than six Constitution Benches, underscores the importance of this aspect.*
>
> *…"*

25. That from all the above, it is thus clear that the action of the Respondent UOI in changing the goal post again and again, viz., of shifting DRT Jabalpur to other States is clearly arbitrary and dehors the provisions of Section 4(2) of the RDDBFI Act. The Impugned Notification cum Public

Notice dated 04.01.2021 deserves to be quashed and struck down by this Hon'ble Court, with a direction to the Respondent authorities to appoint a Presiding Officer within a time bound period to all the DRTs mentioned in the said notification as also DRT Jabalpur. It is further necessary that appropriate guidelines be laid down for initiation of time bound appointment to DRTs, prior to conclusion of tenure of the outgoing member of DRT, so that the post doesn't remain vacant for long, for more than 30 days at a time and the adhoc arrangements do not work as a perpetual arrangement.

26. It is submitted that no other similar case has been filed by the Petitioner in any other court of law.

PRAYER

In view of the aforesaid facts and circumstances, and keeping in view the urgency of the matter, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

A) issue any appropriate Writ/Order/Direction quashing the Impugned Notification cum Public Notice No. F.No. 7/1/2019-DRT, dated 04-01-2021 issued by the Respondent UOI, in so far as it relates

to DRT Jabalpur, transferring the charge to DRT Lucknow being repugnant and contrary to Section 4(2) of the RDDBFI Act 1993; and/or,

B) issue any appropriate Writ/Order/Direction directing the Respondent UOI, to commence and conclude the process of appointment of Presiding Officer for DRT Jabalpur as also other DRT's as mentioned in the impugned notification dated 04.01.2021 within a time bound period of one month; and/or,

C) issue appropriate Guidelines/Directions to the Respondent UOI, providing for a time bound appointment process to Presiding Officers of DRTs and Chairpersons of DRATs, prior to conclusion of tenure or demitting of office by the outgoing/foregoing P.O. of DRT or Chairperson of DRAT, to be followed stringently by the Central Government for all the DRTs and DRATs across the country; and/or,

D) Any other relief, which this Hon'ble Court deems just and proper in the facts and circumstances of the case may also kindly be granted to the Petitioner.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTYBOUND SHALL EVER PRAY

PETITIONER

Through:

MRIGANK PRABHAKAR
Advocate for the Petitioner
A-601, Tower H-I, ATS Advantage,
Ahinsa Khand - I, Indirapuram,
Ghaziabad, Uttar Pradesh - 201014
9953068680, prabhakarmrigank@gmail.com

Place: New Delhi
Date: 18.06.2021

//TRUE COPY//

(TO BE PUBLISHED IN PART I, SECTION 2 OF THE GAZETTE OF INDIA)

F.No.7/1/2021-DRT
Government of India
Ministry of Finance
Department of Financial Service

.....

New Delhi, dated the 5th July, 2021

NOTIFICATION

In exercise of powers conferred by Section 4 of the Recovery of Debts and Bankruptcy Act, 1993 the Central Government hereby extend the entrustment of additional charge of the post of Presiding Officer in Debts Recovery Tribunals for a further period up to 30.09.2021, or till joining of a regular incumbent, or till further orders, whichever is the earliest, as per following details:-

S. No.	Name of DRT	Name of PO to whom additional charge has been entrusted	Period of the additional charge arrangement extended/changed	
			From	To
1	Pune	Shri Vimal Gupta, DRT Aurangabad	05.07.2021	30.09.2021
2	Patna	Shri Sanjiv Kumar, DRT Ranchi	06.07.2021	30.09.2021
3	Delhi-1	Shri Ram Murti Kushawaha, DRT, Allahabad	With immediate effect	30.09.2021
4	Delhi-3			30.09.2021
5	Chandigarh-1	Sh.Vivek Saxena, DRT Jaipur	07.07.2021	30.09.2021
6	Chandigarh-2		13.07.2021	30.09.2021
7	Nagpur	Shri Asokraj, DRT-3, Mumbai	03.09.2021	30.09.2021
8	Jabalpur	Shri Azaj Hussain Khan, DRT Lucknow	07.07.2021	30.09.2021
9	Dehradun	Ms. Rekha G. Dhakar	19.08.2021	30.09.2021
10	Chandigarh-3	Shri Kuruppath Ravindran Nair, DRT-1, Bengaluru	23.08.2021	30.09.2021
11	Chennai-1	Shri Rajesh T., DRT-2, Chennai	24.08.2021	30.09.2021
12	Cuttack	Shri Duppala Vasudeva Rao, DRT Visakhapatnam	24.08.2021	30.09.2021
13	Delhi-2	Shri Devendra Singh Mahra, DRT, Siliguri	03.09.2021	30.09.2021
14	Kolkata-1	Shri Anil Kumar Chaturvedi DRT-3, Kolkata	17.06.2021	30.09.2021*

*The notification issued vide notification No. 7/1/201-DRT dated 17.06.2021 stands modified.

(Subhashchandra Amin)
Under Secretary to the Government of India

To,
The Manager,
Government of India Press,
Minto Road,
New Delhi-110001

Copy to:

1. Shri Vimal Gupta, Presiding Officer, Debts Recovery Tribunal, Aurangabad.

....2

2. Shri Sanjiv Kumar, Presiding Officer, Debts Recovery Tribunal, Ranchi.
3. Shri Ram Murti Kushawaha, Presiding Officer, Debts Recovery Tribunal, Allahabad.
4. Shri Vivek Saxena, Presiding Officer, Debts Recovery Tribunal, Jaipur.
5. Shri T.S. Asokraj, Presiding Officer, Debts Recovery Tribunal-3, Mumbai.
6. Shri Azaj Hussain Khan, Presiding Officer, Debts Recovery Tribunal, Lucknow.
7. Ms. Rekha G. Dhakar, Presiding Officer, Debts Recovery Tribunal -1, Mumbai.
8. Shri Kuruppath Ravindran Nair, Presiding Officer, Debts Recovery Tribunal -1, Bengaluru.
9. Shri Rajesh T., Presiding Officer, Debts Recovery Tribunal -2, Chennai.
10. Shri Duppala Vasudeva Rao, Presiding Officer, Debts Recovery Tribunal, Visakhapatnam.
11. Shri Devendra Singh Mahra, Presiding Officer, Debts Recovery Tribunal, Siliguri.
12. Shri Anil Kumar Chaturvedi, Presiding Officer, Debts Recovery Tribunal -3, Kolkata.
13. The Registrar, Debts Recovery Tribunal (DRT) Pune, DRT Patna, DRT Delhi-1, DRT Delhi-3, DRT Chandigarh-1, DRT Chandigarh-2, DRT Nagpur, DRT Jabalpur, DRT Dehradun, DRT Chandigarh-3, DRT Chennai-1, DRT Cuttack, DRT Delhi-2 and DRT Kolkata-1 with a request to place the notification on notice board and a copy may also be sent to respective Bar Association.
14. The Registrars of all Debts Recovery Appellate Tribunals and all Debts Recovery Tribunals.
15. The Pay & Accounts Officer, Ministry of Finance, Department of Economic Affairs, National Savings Organisation Building, Civil Lines, Nagpur.
16. The Pay & Accounts Officer (Banking), New Delhi.
17. Department of Personnel & Training (DoP&T) for information.
18. Personal files.
19. Guard File.

*****

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ANNEXURE P-8

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRA ORDINARY CIVIL WRIT JURISDICTION
W.P. (CIVIL) NO. 6313 OF 2021

IN THE MATTER OF

State Bar Council of Madhya Pradesh
Through its Secretary,
Mr. Prashant Dubey,
Aged about 41 years,
State Bar Council Building,
High Court Campus,
Jabalpur, Madhya Pradesh ...Petitioner

VERSUS

Union of India,
Through Secretary,
Ministry of Finance,
Department of Financial Services,
Jeevan Deep Building,
Parliament Street,
New Delhi - 110 001 ...Respondent

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

To,
THE HON'BLE CHIEF JUSTICE AND
OTHER PUISNE JUDGES OF THIS
HON'BLE HIGH COURT

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. The Petitioner is a Statutory Body created under the provisions of Advocates Act, 1961 and is established and entitled to preserve, protect and further the interest of its member lawyers across the State of Madhya Pradesh. It is

also supposed to ensure that the problem faced by the legal fraternity, including, as also the litigants in the administration and dispensation of justice are adequately redressed and dealt with. Therefore, as a statutory body, the Petitioners are not only representing the cause of its lawyer members, but also the litigants, which are an essential feature and ingredient of the justice delivery system. The Petitioner is a representative body of more than 60,000 Advocates registered on its Rolls, practicing across the State of Madhya Pradesh as also a large number of Advocates of the whole State who are practicing before the Debt Recovery Tribunal, Madhya Pradesh (DRT). The Petitioner has authorized the Secretary, Mr. Prashant Dubey for filing the present petition as an Authorized Signatory on its behalf, and the Resolution for filing the present petition is annexed herewith as **ANNEXURE P-1 (p.34).**

2. That the present petition has been filed challenging the validity and legality of the Impugned Notification cum Public Notice dated 05.07.2021 issued by the Respondent, Government of India, through which the charge of Presiding Officer of DRT, Jabalpur (for MP & CG) stands

transferred from Jabalpur to Lucknow. The prayer is sought for appropriate guidelines to the Respondent Ministry for appointing Presiding Officers (hereinafter 'P.O.') prior to retirement or demitting of office by the foregoing P.O. of the concerned DRT. Ancillary relief is also prayed for direction to appoint a regular full-time incumbent P.O. for DRT Jabalpur and for appropriate orders in this regard to all other DRTs of the country. True copy of the impugned order dated 05.07.2021 issued by the Respondent GOI is annexed herewith as **ANNEXURE P-2 (p. 35 to 36).**

3. That before proceeding ahead, it would be necessary to refer to some of the statutory provisions occupying the field. The Parliament has enacted Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter "RDDBFI Act"). Section 2(o) defines 'Tribunal' as Tribunal established under Section 3(1). Section 3, titled as 'Establishment of Tribunal', empowers the Central Government to establish DRT for exercising jurisdiction, powers and authorities conferred under the enactment. **Section 4**, titled as 'Composition of Tribunal' reads as:

> ***"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—*
>
> *(a) authorise the Presiding Officer of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal under this Act in addition to his being the Presiding Officer of that Tribunal; or*
>
> *(b) authorise the judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, to discharge the functions of the Presiding Officer of Debts Recovery Tribunal under this Act, in addition to his being the judicial Member of that Tribunal.]"*
>
> *(Emphasis applied)*

4. That pertinently Section 4(2) was inserted through Amending Act No. 44 of 2016 with effect from 12-08-2016. Prior to amendment Section 4(2) read as follows:

> ***"4. Composition of Tribunal**.-*
>
> *...*
>
> (2)"*Notwithstanding anything contained in subsection (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. From the above para it is clear that whereas prior to Amendment, in the absence of any P.O., of DRT, the charge, duties and responsibilities could have been shifted to another corresponding P.O. of DRT in the same state or another state, after amendment, a significant transformation has taken place. Post 2016 Amendment, if the P.O. of DRT is not available to discharge his functions or duties, then in such a situation, the P.O. of any other Tribunal, established under '*any other law',* shall be authorised to discharge the functions of P.O., DRT under this enactment. In the same way, Section 4(2)(b) authorises the Judicial Member of any other Tribunal under '*any other law',* to discharge the functions of P.O. of DRT under the RDDBFI Act. This implies that the Amendment must be given a purposive and beneficial interpretation for the purpose for which it has been introduced. The purpose of introducing this amendment is to ensure that the litigants or their counsel do not have to run pillar to post for getting justice from the Tribunals established under the RDDBFI Act, if any P.O., demits

office or gets superannuated. It further intends to make justice accessible, affordable, reachable and in the same periphery as the originally established DRT Tribunal is enacted and created. For example, if DRT for Madhya Pradesh and Chattisgarh is established at Jabalpur, then any other Tribunal under '*any other law*' must be as accessible, affordable and reachable in the absence of P.O., of regular P.O., of DRT, as it was prior to his demitting office or retirement. For this reason alone the Amendment has been introduced and Tribunals within the same periphery; with the same reach and access have been authorised to deal with such matters on an ad-hoc basis. This is the primary intent of Amending Act of 44, dated 12-08-2016.

6. That the aforesaid intent and object of the Parliament in introducing the Amendment to Section 4 of the RDDBFI Act is well born out from the official commentary available on the officially authorised research wing of "PRS Legislative Research", which clearly elaborates the Objective behind the Amending Act of 2016. True copy of the Commentary about the Aims and Objectives behind Amending Act of 2016, specifically Section 4, constituting

the subject matter of the present Writ Petition as available on the official website of "prsindia.org" and on the Amendment Act of 2016, is annexed herewith **ANNEXURE P-3 (Colly) (p.37 to 53).**

7. That recently, the Kerala High Court in the matter of *M/S. Kerala Fashion Jewellery vs. Union of India (WA. No. 384 OF 2021)* through its final judgment and order dated 23.03.2021 has also affirmed the aforesaid proposition that on the retirement or non-availability of P.O. of any DRT, the responsibility and authority of the same cannot be shifted to DRT outside the State, but must remain or be retained within the same State with same accessibility. Copy of the final judgment in order dated 23.03.2021 of the Division Bench of the Kerala High Court in the matter of *M/S. Kerala Fashion Jewellery vs. Union of India* is annexed herewith as **ANNEXURE P-4 (p.54 to 67).**

8. That coming to the facts of the present matter, DRT Jabalpur has been established for the two States of Chhattisgarh and Madhya Pradesh and has been in existence from the date of its establishment in 1995. As per the information available in public domain, there are more than 5000 cases of various categories, viz. S.A.

(Securitization Application), O.A. (Original Application), M.A./R.P. (Miscellaneous Applications/ Review Petitions) pending before the DRT Jabalpur. The problem of pendency is colossal to be dealt with and handled by singularly manned DRT for both the States. It has been a recurring practice on the part of Respondent authorities in entrusting the charge of DRT Jabalpur to DRTs of other States, going to the extent of entrusting it to the DRT of Cuttack (Odisha), Kolkata (West Bengal), on many occasions in the previous years, whenever the P.O., DRT Jabalpur wasn't available. It is not a disputed fact and is being made responsibly on affidavit by the Petitioner herein. The formerly serving P.O. of DRT Jabalpur Mr. B. R. Sinha demitted the office in the first week of January 2021, where after the impugned notification cum public notice came to be issued through which the additional charge of DRT Jabalpur was transferred to DRT Lucknow.

9. That for the past more than six months, thus without appointment of any regular full-time incumbent P.O. for DRT Jabalpur, the additional charge has been entrusted to the Lucknow DRT. This is extremely astonishing, when the very purpose of establishing DRTs is to expedite bank

cases and recovery matters pertaining to Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter SARFAESI Act) and RDDBFI Act. The lawyers are compelled and constrained to travel 600 kms from Jabalpur or more than 1000 kms in case of places like Indore and Bhopal for attending the physical hearings for DRT Lucknow, making the whole litigation exorbitantly expensive, unaffordable and beyond reach of an already crushed borrower/ guarantor whose bank accounts are treated as NPAs. Further, the virtual hearing of the said DRT took place from January only till last week of March 2021, that too once or twice a week for cases relating to DRT Jabalpur, whereas for all other days, the litigants as well as their Counsels were directed to appear physically and personally before DRT Lucknow.

10. That after the last week of March, or to say the last virtual hearing dated 06.04.2021, there's not even been a single sitting of DRT Lucknow for hearing matters of DRT Jabalpur till the filing of the present Writ Petition. There is absolute uncertainty about hearing and consideration of cases filed, instituted and pending at DRT Jabalpur,

due to such ad-hoc and interim arrangements made by the Central Government without due application of mind.

11. That apart from the above there have been a lot of administrative, infrastructural and managerial problems being faced for pursuing and contesting the cases at DRT Lucknow. Administrative, infrastructural and managerial problems being faced for pursuing and contesting case at DRT Lucknow, instead of DRT Jabalpur, situated at a distance of around 600 kms away. The files, records, including urgent hearing applications are to be transmitted physically on a regular and daily basis by Registry Officers specifically deputed for this purpose, travelling from Jabalpur to Lucknow. This is because, the electronic infrastructure at DRT Jabalpur hasn't developed to such an extent that all the files can immediately be uploaded on the internet and then forwarded to the P.O., at DRT Lucknow, which office is also not that technologically advanced and equipped. This exposes the court records to a serious risk of being tampered with, stolen or misplaced, especially the important documents filed by the Financial Institutions and Banks before the DRT. This also multiplies the cost

incurred in dispensation of justice as not only the officials of Registry, but also the entire office has to be arranged in such a manner as to ensure hearings at DRT Lucknow. On occasions more than 100 in the past few months, it has happened that the hearings of urgent matters had to be postponed, rescheduled for many days only because the records could not reach from DRT Jabalpur to DRT Lucknow and other such associated problems. This is compounded by the fact that virtual hearings of all the categories of cases around 200-250 instituted per month are being done only on a date and day given once or twice a week by DRT Lucknow.

12. That, thus by its own inaction, negligence and omission, the respondent UOI has defeated the mandatory provisions of the RDDBFI Act and the SARFAESI Act which provides for time-bound disposal of Original Application (O.A.) and Securitization Applications (S.A.) instituted before it. In this respect reference can be made to Section 19 (24) of the RDDBFI Act which categorically lays down that O.A., so preferred must be decided within the maximum period of 180 days. The said section reads as follows:

> ***"19. Application to the Tribunal***
>
> ...
>
> *(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and every effort shall be made by it to complete the proceedings in two hearings, and] to dispose of the application finally within <u>one hundred and eighty days</u> from the date of receipt of the application."*

13. That in the same vein, reference can be made to Section 17(5) of the SARFAESI Act 2002, which also provides for a time limit of 2 months for final disposal of applications preferred by the DRT. Section reads:

> ***"17. Application against measures to recover secured debts***-
>
> *(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,1 [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.*
>
> ....
>
> *(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of <u>within sixty days</u> from the date of such application."*

14. That the Central Government cannot be allowed to defeat the mandatory provisions of the RDDBFI Act and the SARFAESI Act by being a mute spectator to recurring vacancies in various DRTs of the country. The bare glance of the impugned notification dated 05-07-2021 amply demonstrated the fact that six DRTs are being run on an ad-hoc basis by being shifted to other DRTs of other states.

15. That the DRTs as specialized Tribunals were brought into existence with a vowed objective of timely and efficacious adjudication of recovery matters pertaining to banks and financial institutions which were earlier dealt with by the regular Civil Courts and High Courts.

16. That in the year 2017, the 272nd Law Commission Report under the Chairmanship of Dr. Justice B. S. Chauhan found that the adjudicatory redressal mechanism of DRTs must be strengthened and a slew of measures were suggested. Some of them relating to the present Petition were geared towards the expeditious disposal of disputes of more than Rs. 1 cr. And such other many measures were suggested by the Law Commission Report. Further, *Vide Para 3.35 & 6.22, the Report observed as thus:*

*"**3.35** The Tribunals have been established in almost all the countries for the reason that they are cheaper (cost-effective), accessible, free from technicalities, expeditious and proceed more rapidly and efficiently as manned by experts, while the Courts are too remote, too legalistic and too expensive. The concept of Tribunalisation was developed to overcome the crisis of delay and backlogs in the administration of justice. However, the data officially available, respect for the working of some of the Tribunals do not depict a satisfactory picture. Though the disposal rate of the Tribunals in comparison to the filing of cases per year had been remarkable i.e., at the rate of 94%, the pendency remains high. Some of the figures of pending cases before the Tribunals are as under:*

....

***3.** In Debt Recovery Tribunal as on 03-07-2016 number of pending cases is 78,118.*

.....

***6.22** The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides for setting up of a Tribunal and an appellate Tribunal. The Constitutional validity of this Act was challenged in Union of India v. Delhi Bar Association, wherein the Supreme Court held:*

'It has to be borne in mind that the decision of the Appellate Tribunal is not final, in the sense that the same can be subjected to judicial

review by the High Court under Articles 226 and 227 of the Constitution.'

True Copy of relevant excerpts of the 272nd Law Commission Report is annexed herewith as **ANNEXURE P-5 (p.68 to 74).**

17. That the Central Government by its sheer inaction cannot defeat the mandatory provisions of the RDDBFI Act and the SARFAESI Act by not appointing timely the adjudicating officers/ P.Os of DRT, which it is duty bound to appoint. It would be pertinent to mention that there is only one DRT for the States of M. P. and Chhattisgarh and the absence of P.O. for a long run period of time, specifically for a situation like this when a post remains vacant for almost six months, the same casts a serious doubt over the efficacy and efficiency of DRTs as adjudicating authorities. It is therefore necessary that not only a mandamus be issued to the Central Government for guidelines must be issued for time bound appointment of Presiding Officer prior to vacating, superannuation or demitting of office by the outgoing/ foregoing P.O. of any DRT. This is because the working of an important Tribunal like DRT cannot be paralysed and be compelled

to be carried on crutches due to inaction and omissions of the GOI. In the previous years also, for five to six months the posts of various DRTs have remained vacant including DRT Jabalpur on many occasions and that the charge had to be transferred to other DRTs of other States ranging from Cuttack, Kolkata, even Delhi on an ad-hoc basis.

18. That the necessity for the Petitioners to file the present petition has arisen in view of the insurmountable problems being faced by the lawyer community at large, for both the sides, the borrower as well as those representing the banks and financial institutions. Being a statutory body created under the Advocates Act, 1961, the State Bar Council espouses the cause of litigants who are an equally important part of the justice dispensation machinery of the State. Therefore, in view of the aforesaid circumstances the present petition has been filed, by the Bar Council espousing the larger interest, concern of its subject.

19. Apart from the aforesaid ground, it is also important to submit that the Hon'ble Supreme Court in the matter of *Union of India & Anr. vs. Delhi High Court Bar Association & Ors. (2002) 4 SCC 275*, underscored the importance of

DRTs as specialised Tribunals created under RDDBFI Act. Whilst discussing about the necessity of expeditious and swift decision over such types disputes in a time bound manner, the Hon'ble Supreme Court *Vide Paras 14 & 17* observed as follows:

> ***"14.*** *... In exercise of its legislative power relating to banking, Parliament can provide the mechanism by which monies due to the banks and financial institutions can be recovered. The Tribunals have been set up in regard to the debts due to the banks. The special machinery of a Tribunal which has been constituted as per the preamble of the Act, "for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto" would squarely fall within the ambit of Entry 45 of List I. As none of the items in the lists are to be read in a narrow or restricted sense, the term "banking" in Entry 45 would mean legislation regarding all aspects of banking including ancillary or subsidiary matters relating to banking. Setting up of an adjudicatory body like the Banking Tribunal relating to transactions in which banks and financial institutions are concerned would clearly fall under Entry 45 of List I giving Parliament specific power to legislate in relation thereto.*
>
> ...

> ***17.*** *The very purpose of establishing the Tribunal being to expedite the disposal of the applications filed by the banks and financial institutions for realisation of money, the Tribunal and the Appellate Tribunal are required to deal with the applications in an expeditious manner. It is precisely for this reason that Section 22(1) stipulates that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure. Therefore even though the Tribunal can regulate its own procedure, the Act requires that any procedure laid down by it must be guided by the principles of natural justice while, at the same time, it should not regard itself as being bound by the provisions of the Code of Civil Procedure."*

20. That another facet of establishment of Tribunals is *'affordable and convenient access to justice'***,** which must be ensured on all the occasions. The DRT Jabalpur has been established as a Nodal Tribunal for the two States of Madhya Pradesh and Chhattisgarh and therefore caters to litigants within the periphery of 500-600 kms. Shifting and throwing the functions and responsibilities of such DRT to further 600 kms away, ruptures and disturbs the convenience, affording capacity, reach of the litigants to such Tribunals. As stated *infra*, virtual hearings for

matters of DRT Jabalpur are being held hardly for a day or two in a week, whilst all other remaining days the litigants and their Counsels without any redress or arrangements of hearing, the availability of sufficient time for effective consideration and adjudication of disputes also gives rise to impediments in the said easy access to justice.

21. That the Hon'ble Supreme Court in the matter of *Rojer Mathew v. South Indian Bank Ltd., (2018) 16 SCC 341* emphasised upon the accessibility of justice whilst establishment of Tribunals. *Vide Para 32***,** the court observed that:

> ***"32.*** *We broadly approve the concept of having an effective and autonomous oversight body for all the tribunals with such exceptions as may be inevitable. Such a body should be responsible for recruitments and oversight of functioning of members of the tribunals. Regular cadre for tribunals may be necessary. The learned Amicus Curiae suggests setting up of All India Tribunal Service on the pattern of UK. The members can be drawn either from the serving officers in Higher Judicial Service or directly recruited with appropriate qualifications by national competition. Their performance and functioning must be*

reviewed by an independent body in the same way as superintendence by the High Court under Article 235 of the Constitution. Direct appeals must be checked. Members of the Tribunals should not only be eligible for appointment to the High Courts but a mechanism should be considered whereby due consideration is given to them on the same pattern on which it is given to the members of Higher Judicial Service. This may help the High Courts to have requisite talent to deal with issues which arise from decisions of tribunals. A regular cadre for the tribunals can be on the pattern of cadres for the judiciary. The objective of setting up of tribunals to have speedy and inexpensive justice will not in any manner be hampered in doing so. Wherever there is only one seat of the tribunal, its Benches should be available either in all States or at least in all regions wherever there is litigation instead of only one place."

22. That on the similar lines, in the matter of *Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509, Vide Para 33*, the Hon'ble Supreme Court observed in the context of access to justice as follows:

> ***"33.*** *Four main facets that, in our opinion, constitute the essence of access to justice are:*

(i) *the State must provide an effective adjudicatory mechanism;*

(ii) *the mechanism so provided must be reasonably accessible in terms of distance;*

(iii) *the process of adjudication must be speedy; and*

(iv) *the litigant's access to the adjudicatory process must be affordable.*

23. That in the matter of *All India Judges Association v. Union of India, (2018) 17 SCC 555***,** the Supreme Court vide Para 10 observed as thus*:*

> *"**10**. The court development plan should comprise of three components.*
>
> *...*
>
> *In other words, the core factors in the design of a court complex must reckon — (a) optimum working conditions facilitating increased efficiency of judicial officers and the administrative staff; (b) easy access to justice to all and particularly to the underprivileged, persons with disability, women and senior citizens; (c) safety and security of Judges, administrative staff, litigants, witnesses and undertrial prisoners."*

24. In the matter of *Madras Bar Association v. Union of India, (2014), 10 SCC 1, Vide para 56***,** the Court observed that:

> **"***56. … Therefore, it is crucial that these tribunals are run by a robust mix of experts, i.e. those with experience in policy in the relevant field, and those with judicial or legal experience and competence in such fields. The functioning or non-functioning of any of these tribunals due to lack of competence or understanding has a direct adverse impact on those who expect effective and swift justice from them. The resultant fallout is invariably an increased docket load, especially by recourse to Article 226 of the Constitution of India. These aspects are highlighted once again to stress that these tribunals do not function in isolation, but are a part of the larger scheme of justice dispensation envisioned by the Constitution and have to function independently, and effectively, to live up to their mandate. The involvement of this Court, in the series of decisions, rendered by no less than six Constitution Benches, underscores the importance of this aspect.*
>
> *…"*

25. That previously the petitioner had challenged the notification dated 04.01.2021, through which the additional charge of MP & CG, DRT was given to the Presiding Officer DRT of Lucknow Bench. The aforesaid writ petition has been challenged on the very same grounds and with the very same annexures. However,

since during the pendency of the aforesaid petition, styled as *State Bar Council of Madhya Pradesh v. Union of India,* numbered as W.P.(C) D.No.398173/2021, the present impugned notification came to be issued on 05.07.2021. In view thereof, the necessity of filing a fresh petition has arisen, which is being done by way of the present proceedings. True copy of the previously issued notification dated 04.01.2021 impugned in the aforesaid *State Bar Council of Madhya Pradesh v. Union of India,* numbered as W.P.(C) D.No.398173/2021 is annexed here with **ANNEXURE P-6 (p.75 to 76).**

26. That the aforesaid writ petition *State Bar Council of Madhya Pradesh v. Union of India,* numbered as W.P.(C) D.No.398173/2021 is likely to be listed for hearing on 09.07.2021, when on the aforesaid date the petitioner shall be withdrawing the same with the liberty to pursue the present Writ Petition. Since the former W. P. has been rendered infructuous in view of the issuance of the notification assailed in the present writ petition.

27. That in the previously issued notification dated 04.01.2021, the additional charge of Kerala DRT was given to the Bangalore DRT, which was quashed by the

Kerala High Court as aforementioned in the preceding paragraphs. Therefore, the respondent GOI has not issued any order for the State of Kerala and have deliberately omitted to make a mention thereof with a separate dispensation being provided for the State of Kerala. To the knowledge of the petitioner the litigants of Kerala have started approaching the High Court of Kerala in the absence of any forum for remedy provided by the respondent GOI. This fact needs to be taken into consideration specially for considering the grant of interim relief of stay of operation of the aforesaid notification by this Hon'ble Court.

28. That from all the above, it is thus clear that the action of the Respondent UOI in changing the goal post again and again, viz., of shifting DRT Jabalpur to other States is clearly arbitrary and dehors the provisions of Section 4(2) of the RDDBFI Act. The Impugned Notification cum Public Notice dated 05.07.2021 deserves to be quashed and struck down by this Hon'ble Court, with a direction to the Respondent authorities to appoint a Presiding Officer within a time bound period to all the DRTs mentioned in the said notification as also DRT Jabalpur. It is further

necessary that appropriate guidelines be laid down for initiation of time bound appointment to DRTs, prior to conclusion of tenure of the outgoing member of DRT, so that the post doesn't remain vacant for long, for more than 30 days at a time and the adhoc arrangements do not work as a perpetual arrangement.

29. It is submitted that no other similar case has been filed by the Petitioner in any other court of law, except as stated above.

PRAYER

In view of the aforesaid facts and circumstances, and keeping in view the urgency of the matter, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

A) issue any appropriate Writ/Order/Direction quashing the Impugned Notification cum Public Notice No. F.No. 7/1/2021-DRT, dated 05.07.2021 issued by the Respondent UOI, in so far as it relates to DRT Jabalpur, transferring the charge to DRT Lucknow being repugnant and contrary to Section 4(2) of the RDDBFI Act 1993; and/or,

B) issue any appropriate Writ/Order/Direction directing the Respondent UOI, to commence and conclude the process of appointment of Presiding Officer for DRT Jabalpur as also

other DRT's as mentioned in the impugned notification dated 05.07.2021 within a time bound period of one month; and/or,

C) issue appropriate Guidelines/Directions to the Respondent UOI, providing for a time bound appointment process to Presiding Officers of DRTs and Chairpersons of DRATs, prior to conclusion of tenure or demitting of office by the outgoing/foregoing P.O. of DRT or Chairperson of DRAT, to be followed stringently by the Central Government for all the DRTs and DRATs across the country; and/or,

D) Any other relief, which this Hon'ble Court deems just and proper in the facts and circumstances of the case may also kindly be granted to the Petitioner.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

PETITIONER

Through:

MRIGANK PRABHAKAR
Advocate for the Petitioner
A-601, Tower H-I, ATS Advantage,
Ahinsa Khand - I, Indirapuram,
Ghaziabad, Uttar Pradesh - 201014
9953068680, prabhakarmrigank@gmail.com

Place: New Delhi
Date: 07.07.2021

//TRUE COPY//

ANNEXURE P-9

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY CIVIL WRIT JURISDICTION

CM Appl No. 19884/2021

IN

W.P. (CIVIL) NO. 6313 OF 2021

IN THE MATTER OF:

State Bar Council of Madhya Pradesh Petitioner

Versus

Union of India Respondent

APPLICATION FOR GRANT OF INTERIM RELIEF UNDER S.151 OF CPC

TO HON'BLE THE CHIEF JUSTICE
AND HIS COMPANION JUSTICES
OF THE HON'BLE HIGH COURT

THE HUMBLE APPLICATION
ON BEHALF OF THE APPLICANT

The petitioners, above named, most respectfully beg to submit as under:-

MOST RESPECTFULLY SHOWETH: -

1. That, the present petition has been filed challenging the validity and legality of the Impugned Notification cum Public Notice dated 05.07.2021 issued by the Respondent, Government of India, through which the charge of Presiding Officer of DRT, Jabalpur (for MP & CG) stands transferred from Jabalpur to Lucknow. The prayer is also sought for appropriate guidelines to the Respondent Ministry for

appointing Presiding Officers (hereinafter 'P.O.') prior to retirement or demitting of office by the foregoing P.O. of the concerned DRT. Ancillary relief is also prayed for direction to appoint a regular full-time incumbent P.O. for DRT Jabalpur and for appropriate orders in this regard.

2. That the facts, grounds, annexures with their description and circumstances giving rise to the captioned Writ Petition had been set out in detail in the Writ Petition and as such, are not being repeated herein for the sake of brevity. The Petitioner craves leave to refer to and rely upon the contents of the same as and when required.

3. That the transfer of case from the DRT of Jabalpur to the DRT of Lucknow is causing the whole litigation exorbitantly expensive, unaffordable and beyond reach of an already crushed borrower/ guarantor whose bank accounts are treated as NPAs.

4. That the Impugned Notification cum Public Notice would cause irreparable harm and injury to the petitioners and thus it is utmost necessary to have a stay on such a stigmatic order passed by the respondent authorities.

5. That in the previously issued Notification dated 04.01.2021, the additional charge of Kerala DRT was given to the Bangalore DRT, which was quashed by the Kerala High Court, as aforementioned in the preceding paragraphs. Therefore, the respondent GOI has not issued any order for the State of Kerala and have deliberately omitted to make a

mention thereof with a separate dispensation being provided for the State of Kerala. To the knowledge of the petitioner the litigants of Kerala have started approaching the High Court of Kerala in the absence of any forum for remedy provided by the respondent GOI. This fact needs to be taken into consideration specially for considering the grant of interim relief of stay of operation of the aforesaid notification by this Hon'ble Court.

6. That the petitioners have a very good prima facie case on merits and the balance of convenience is in its favor; Irreparable harm and injury would be caused to the Petitioners in the event the interim relief sought hereinafter for is not granted.

PRAYER

In view of the aforesaid facts and circumstances, and keeping in view the urgency of the matter, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

A. That, this Hon'ble Court may be pleased to stay the operation & effect of the Impugned Notification cum Public Notice No. F.No. 7/1/2021-DRT, dated 05-07-2021 issued by the Respondent GOI, in so far as it relates to DRT Jabalpur, transferring the charge to DRT Lucknow being repugnant and contrary to Section 4(2) of the RDDBFI Act 1993.

B. Be pleased to hold & direct *as an interim measure* that DRT Lucknow doesn't possesses the jurisdiction and power to entertain, hear or decide the cases pertaining to the and falling within the territorial jurisdiction of States of MP & CG (or DRT,

Jabalpur) in view of the amended provisions of Section 4(2) of the RDDBFI Act 1993.

C. That this Hon'ble Court may be pleased to issue any appropriate Writ/Order/Direction directing the Respondent GOI, to commence and conclude the process of appointment of Presiding Officer for DRT Jabalpur as also other DRT's as mentioned in the impugned notification dated 05.07.2021 within a time bound period of one month.

D. That this Hon'ble Court may be pleased to issue any appropriate guidelines/directions to the Respondent GOI, providing for a time bound appointment process to Presiding Officers of DRTs and chairpersons of DRATs, prior to conclusion of tenure or demitting of office by the outgoing/foregoing P.O. of DRT or chairperson of DRAT, to be followed stringently by the Central Government for all the DRTs and DRATs across the country.

E. Any other interim relief, which this Hon'ble Court deems just and proper in the facts and circumstances of the case may also kindly be granted to the Petitioners.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTYBOUND SHALL EVER PRAY

PETITIONER

Through:

MRIGANK PRABHAKAR
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prabhakarmrigank@gmail.com

Place: New Delhi
Date: 07.07.2021

//TRUE COPY//

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)
I.A. NO. OF 2021
IN
SPECIAL LEAVE PETITION (CIVIL) NO._____OF 2021

IN THE MATTER OF:

STATE BAR COUNCIL OF MADHYA PRADESH

...PETITIONER/APPLICANT

VERSUS

UNION OF INDIA ...RESPONDENT

APPLICATION FOR SEEKING EXEMPTION FROM FILING A CERTIFIED COPY OF THE IMPUGNED INTERIM ORDER DATED 09.07.2021

TO,
THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

THE PETITION ON BEHALF OF
THE ABOVE-NAMED
PETITIONER.

MOST RESPECTFULLY SHEWETH:

1. The present Special Leave Petition under Article 136 of the Constitution of India has been preferred against the impugned Interim Order dated 09.07.2021 (pronounced on 09.07.2021) passed by the Hon'ble Delhi High Court in W.P. No. 6313/2021 through which the Hon'ble High Court has

passed an order without appreciating the urgency of the interim reliefs sought for by the Petitioner and simply issued notices returnable after almost 6 weeks on 20.08.2021.

2. That the facts in detail have been set out in the accompanying Special Leave Petition and have not been reproduced herein for the sake of brevity and in order to avoid repetition and the same maybe treated as a part of the present Application. The Petitioner craves leave of this Hon'ble Court to refer to and rely upon the same.
3. Due to paucity of time, a certified copy of the impugned Interim Order dated 09.07.2021 passed by the Delhi High Court could not be obtained by the Petitioner.
4. The Petitioner is filing the instant application requesting for grant of an exemption from filing the certified copy of the impugned Interim Order dated 09.07.2021 passed by the Delhi High Court.
5. That the present application is made bona fide and is in the interests of justice and the Petitioner will suffer irreparable loss and injury if the prayer made herein below is not allowed.

PRAYER

It is most respectfully prayed that this Hon'ble Court may be pleased to:

a. Exempt the Petitioner from filing a certified copy of the impugned Interim Order dated 09.07.2021 passed by the Delhi High Court in W.P. No. 6313/2021; and/or

b. Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

MRIGANK PRABHAKR
ADVOCATE FOR THE PETITIONER

NEW DELHI
FILED ON: 15 .07.2021