

**Powers of DRT / DRAT to impound Passport or put restrictions on traveling abroad of Borrowers during pendency of OA / RC proceedings**

**NO SUCH RESTRAIN CAN BE IMPOSED –**

- (i) **A.S. Mittal Vs. Presiding Officer, DRT & Ors. (SJ, DHC) (2004) 121 CompCas 309, Para 3 and 4 – Held that Tribunal has no authority to either impound Passport or to put any restrictions on the travel of the Petitioner under Section 19(6) read with Section 22 of the RDDB&FI Act. Case pertaining to order passed during pendency of OA proceedings by passing ex-parte order of restrain from traveling.**

“3. Heard learned counsel for the parties and gone through the material on record. I find that Section 19(6) of the Act reads as under :

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

Section 22(1) of the Act reads as follows:

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

"Rule 18 of the Act reads as under:

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

4. A reading of Section 19(6) of the Act makes it abundantly clear that the power of the Tribunal are, namely, to make interim order whether by way of an injunction or stay against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal. This certainly does not empower the Tribunal to restrain the petitioner from travel. Section 22(1) of the Act provides for procedure and does not give powers as have been exercised by the Tribunal. Needless to say that Rule 18 could not be construed to give powers beyond the substantive Section.

5. Having gone through the powers enumerated above, I hold that the Tribunal had no authority whatsoever to either impound the passport of the petitioner or to put any restriction on the travel of the petitioner.”

- (ii) **Sanjeev R. Apte Vs. IFCI & Ors. (DB, DHC) (2009) 3 PLR 44** – Upheld and confirmed the view taken by Single Judge in A.S. Mittal matter and held that no such restraint can be passed even after adjudication of debt. **Case pertaining to order passed by Recovery Officer directing CD to deposit Passport which was upheld by the DRT and DRAT.**

“4. The appellant is aggrieved by the order of the Tribunal insofar as the order in paragraph 10 deals with the judgment of this Court in the case of A.S. Mittal v. P.O. Debts Recovery Tribunal and Ors. in C.M. (M) No. 505/1999 decided on 21st November, 2003. The Tribunal had distinguished the aforesaid judgment on the ground that in that case the recovery of the liability had not taken place as was done in this case. Therefore, the Tribunal's reasoning is to the effect that once a determination of the liability has taken place, the judgment in A.S. Mittal's case (supra) rendered by the learned Single Judge does not apply. The relevant portion of the said judgment are as under:

4. A reading of Section 19(6) of the Act makes it abundantly clear that the power of the Tribunal are namely to make interim order whether by way of an injunction or stay against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of any property and assets belonging to him without the prior permission of the Tribunal. This certainly does not empower the Tribunal to restrain the petitioner from travel. Section 22(1) of the Act provides for procedure and does not give powers as have been executed by the Tribunal. Needless to say that Rule 18 could not be construed to give powers beyond the substantive section.

5. Having gone through the powers enumerated above. I hold that the Tribunal had no authority whatsoever to either impound the passport of the petitioner or to put any restriction on the travel of the petitioner. In the present case, the Tribunal is entitled to pass interim order in accordance with Section 19(6) of the Act and no more. In this view of the matter, I set aside the order dated 4th May, 1999. However, the petitioner is directed to make himself available before the Tribunal as and when he is required, for which purpose he shall give an undertaking to the Tribunal.

5. The law laid down by the learned single Judge is clear that the Tribunal does not have any power to restrain a citizen from traveling. This determination of law by the learned Single Judge that the Tribunal had no authority whatsoever to either impound the passport of the petitioner or to put any restriction on the travel of the petitioner abroad in exercise of its powers to pass an interim order under Section 19(6) of the Act is not

dependent upon determination of liability by the Tribunal. In our view, the judgment has been totally misconstrued by the DRAT in confining it to matters where the liability has not been determined.

6. In our view, the judgment of the learned Single Judge of this Court, which we hereby affirm and endorse, is categorical and denies the Tribunal such a right to impose any restriction on the passport of the petitioner. The applicability of the judgment of the learned single Judge in A.S. Mittal's case was applicable to the exercise of the jurisdiction by the Tribunal and was not conditional as wrongly construed by the Tribunal. Accordingly, the order of the Tribunal, to the extent which imposes restriction on the traveling and passport of the petitioner is quashed and set aside.”

- (iii) **Gurbachan Singh Saluja Vs. DRT & Ors. (DB, DHC) WP (C) No. 12030/2009 dated 25.09.2009** – Upheld and confirmed the view taken in the matter of A.S. Mittal and Sanjeev R. Apte. **Case pertaining to order passed during pendency of OA proceedings restraining Borrowers from traveling.**

“3....The said paragraph has reference to a Division Bench judgment of this Court in W.P. (C) No. 9576/2007 entitled Sanjeev R. Apte v. I.F.C.I. Ltd. and Ors. dated 21.05.2008. The said Division Bench decision pertains to the very question in issue before the Debts Recovery Tribunal i.e., as to whether a direction can be given by the Debts Recovery Tribunal restraining a person from travelling. The Division Bench in the case of Sanjeev R. Apte (supra) was clear and categorical that no such restriction can be placed by the Debts Recovery Tribunal. The relevant portion of the said decision is as under:

4. The appellant is aggrieved by the order of the Tribunal insofar as the order in paragraph 10 deals with the judgment of this Court in the case of A.S. Mittal v. P.O. Debts Recovery Tribunal and Ors. In C.M. (M) No. 505/1999 decided on 21st November, 2003. The Tribunal had distinguished the aforesaid judgment on the ground that in that case the recovery of the liability had not taken place as was done in this case. Therefore, the Tribunal's reasoning is to the effect that once a determination of the liability has taken place, the judgment in A.S. Mittal's case (supra) rendered by the learned Single Judge does not apply. The relevant portion of the said judgment are as under:

4. A reading of Section 19(6) of the Act makes it abundantly clear that the power of the Tribunal are namely to make interim order whether by way of an injunction or stay against the defendant to debar him from transferring,

alienating or otherwise dealing with, or disposing of any property and assets belonging to him without the prior permission of the Tribunal. This certainly does not empower the Tribunal to restrain the petitioner from travel. Section 22(1) of the Act provides for procedure and does not give powers as have been executed by the Tribunal. Needless to say that Rule 18 could not be construed to give powers beyond the substantive section.

5. Having gone through the powers enumerated above. I hold that the Tribunal had no authority whatsoever to either impound the passport of the petitioner or to put any restriction on the travel of the petitioner. In the present case, the Tribunal is entitled to pass interim order in accordance with Section 19(6) of the Act and no more. In this view of the matter, I set aside the order dated 4th May, 1999. However, the petitioner is directed to make himself available before the Tribunal as and when he is required, for which purpose he shall give an undertaking to the Tribunal.

5. The law laid down by the learned single Judge is clear that the Tribunal does not have any power to restrain a citizen from traveling. This determination of law by the learned Single Judge that the Tribunal had no authority whatsoever to either impound the passport of the petitioner or to put any restriction on the travel of the petitioner abroad in exercise of its powers to pass an interim order under Section 19(6) of the Act is not dependent upon determination of liability by the Tribunal. In our view, the judgment has been totally misconstrued by the DRAT in confining it to matters where the liability has not been determined.

6. In our view, the judgment of the learned Single Judge of this Court, which we hereby affirm and endorse, is categorical and denies the Tribunal such a right to impose any restriction on the passport of the petitioner. The applicability of the judgment of the learned single Judge in A.S. Mittal's case was applicable to the exercise of the jurisdiction by the Tribunal and was not conditional as wrongly construed by the Tribunal. Accordingly, the order of the Tribunal, to the extent which imposes restriction on the traveling and passport of the petitioner is quashed and set aside.

- (iv) **State Bank of India Vs. Prafullchandra Patel & Ors. (DB, Guj.) (AIR 2011 GUJ 81) LPA No. 1147/2010 in SCA No. 11599/2009** – Held that Tribunal is not empowered under the Act or Rules to put any restrictions on traveling as the same amounts to depriving a person of his personal

liberty guaranteed under Article 21. Therefore, without any enacted law enabling passing of such order, no such restrain can be passed. **Case pertaining to order passed during pendency of OA proceedings restraining Borrowers from traveling.**

“6. Chapter IV of the DRT Act, 1993 deals with "Procedure of Tribunals". Under Section 19, a bank or a financial institution for recovery of any debt from any person may make an application before the Tribunal of competent jurisdiction. The Tribunal is required to summon the Defendant requiring him to show cause and the Defendant may present a written statement of his defence within the time stipulated. The Defendant may also claim to set off. Under Section 19(12), the Tribunal can make an interim order during pendency of the case. In case the Defendant intended to obstruct or delay or frustrate the execution of any order, the Tribunal is empowered to pass order under Section 19(13). In case of disobedience of an order made by the Tribunal under Sub-sections (12), (13) and (18) of Section 19 or breach of any of the terms on which the order was made, the DRT is empowered to hold such person guilty and may detain such person in the civil prison for a term not exceeding three months. The Tribunal is also empowered to appoint a receiver and remove any person from the possession or custody of the property, etc. under Section 19(18). Under Section 19(25) the Tribunal is empowered to make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. The aforesaid provisions being relevant are quoted hereunder.

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

(13)(A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the Defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him, (i) is about to dispose of the whole or any part of his property; or (ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or (iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest, the Tribunal may direct the Defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to

satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

(B) where the Defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the Defendant as appears sufficient to satisfy any certificate for the recovery of debt.

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

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order

(a) appoint a receiver of any property, wither before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending application before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and (e) appoint a Commissioner for preparation of an inventory of the properties of the Defendant or for the sale thereof.

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

9. The detention in a civil prison or arrest of a Defendant and detaining him in prison is prescribed only under Sections 19(17) and Section 25. The power under Section 19(17) can be exercised only if an order passed by the Tribunal under Sub-sections (12), (13) and (18) of Section 19 is disobeyed. Only in case of disobedience of an order or breach of any of the terms on which the order was made, the power under Section 25 can be exercised by

the Recovery Officer. It is also exercised after the decree is passed at the time of attachment or sale of movable or immovable property and in case it is not due to any act on the part of the Defendant.

10. Sub-section (12) of Section 19 deals with the interim order as may be passed by the Tribunal during pendency of the case which maybe by way of injunction or stay or attachment against the Defendant, who may also be debarred from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal. Under Sub-section (13)(A) of Section 19, only when the Tribunal is satisfied that the Defendant, with an intent to obstruct or delay or frustrate the execution of any order for the recovery of debt passed against him or is about to dispose of the whole or any part of the property, or is about to remove the whole or any part of the property or is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest, it has the power to direct the Defendant to furnish security or pass such order as specified therein.

11. It has already been noticed that any order under Sub-section (17) of Section 19 can be passed in case of disobedience of the order passed under Sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made.

13. Thus, it will be evident from Sub-sections (12), (13)(A), 17 and 18 of Section 19 that the Tribunal is not empowered to issue any prohibitory order prohibiting the Defendant from leaving the country without prior permission.

15. The only question arises for determination is whether under Sub-section (25) of Section 19, the Tribunal can issue order prohibiting a Defendant from leaving the country to prevent abuse of its process or to secure the ends of justice.

25. From the reasons mentioned in the aforesaid case, it follows that under Article 21 of the Constitution, no person can be deprived of his right to travel except according to the procedure established by law. The law means 'enacted law' or 'State law'.

26. In the present case, there is nothing on record to show that a law has been made by the State regulating or depriving a person of such right in case proceeding under Section 19 of the DRT Act, 1993 is pending. Section 19(25) read with Rules 18 of the Debts Recovery Tribunal (Procedure), Rules, 1993 empowers the Tribunal to make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. It is an enabling provision empowering the Tribunal to pass interim order to prevent abuse of its process or to secure the ends of justice. Section 19(25) or Rule 18 cannot be held to be procedural law.

27. Section 22 deals with the procedure and powers of the Tribunal and the Appellate Tribunal. It relates to summoning and enforcing the attendance, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses or documents, reviewing its decisions, dismissing an application for default or deciding it ex-parte, setting aside any order of dismissal of any application for default or any order passed by it ex-parte, or any other matter which may be prescribed, but no provision has been made therein or by a separate notification issued by the Central Government empowering the Tribunal to deprive a person of his personal liberty to move abroad as guaranteed under Article 21 of the Constitution of India. In absence of any such 'enacted law' or 'State law', we hold that the Tribunal had no jurisdiction to deprive the Defendants, the Respondents herein, of their right to go abroad. The learned Single Judge for the very same reason having set aside the order passed by the Tribunal, no interference is called for. In absence of any merit, the appeal is dismissed, but there shall be no order as to costs.”

- (v) **Kapil Puri & Ors. Vs. ICICI Bank Ltd. & Ors., IV (2015) BC 134 (DRAT, Delhi)** – Right to travel abroad is a fundamental right and no restriction can be imposed on the same under Section 19 of the RDDB&FI Act.

“28. Counsels for the parties did not raise any dispute that the right to travel abroad is a fundamental right. Obviously, there is no scope of any dispute in this regard. The expression 'personal liberty' is taken in the right of locomotion and to travel abroad as per Full Bench decision of Kerala High Court in the case of Francis Manjooram v. Government of India, Ministry of External Affairs. New Delhi, AIR 1966 Ker 20 (FB). Right to travel abroad is fundamental right as held in the case of Satwant Singh Sawhney v. D. Ramarathnam,, AIR 1967 SC 1836. In this case, the Hon'ble Supreme Court has also held that in the absence of law regulating or depriving a person of such right, refusal to give passport or withdrawal of one given violates Articles 21 and 14 of the Constitution of India. The expression 'personal liberty' in Article 21 of the Constitution was held to take in the right of locomotion and to travel abroad, but the right to move throughout the territories of India is not covered by it inasmuch as it is specifically provided in Article 19. Thus, no person can be deprived of his right to travel except according to the procedure established by law.

34. The Counsel, before the Division Bench in Prafulchandra's case (supra), was justified in equating the provisions of Section 19(25) of the RDDBFI Act and that of Rule 18 of the Rules with Section 151, CPC. Plea was that these provisions of law are not meant for conferring to grant any kind of substantive relief. The scope of inherent power as per

Section 151 by now is fairly settled. As has been observed that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently providing the procedure for them, the Code otherwise being not exhaustive. The principle is well established that when the Code of Civil Procedure is silent regarding a procedural aspect, the inherent power can come to its aid to act *ex debito justitiae* for doing real and substantial justice between the parties. The power under this section, therefore, relates to the matters of procedure. If the ordinary rules of procedure result in injustice and there is no other remedy, these can be broken in order to achieve the ends of justice. The section, otherwise, has been held not to confer any power, but is legislated to indicate that there is power to make such order as may be necessary for achieving the ends of justice and also to prevent abuse of process of the Court. As is observed by the Hon'ble Supreme Court in *Raj Bahadur Ras Raja v. Seth Hiralal*, MANU/SC/0056/1961 : 1961 (SLT Soft) 185 : AIR 1962 SC 527, the inherent power having been conferred on the Courts would itself a power in the Court by virtue of its duty to do justice between the parties before it. Viewed in this background, the provisions of Section 19(25) of the RDDBFI Act or Rule 18 of the Rules are required to be seen in the light of this settled position. The view expressed by the Court that the Tribunals have not been empowered to issue any prohibitory order prohibiting the defendant from leaving the country is legal and justified view. This is the view expressed by Delhi High Court in more than one case which, in any case, is required to be followed by this Tribunal.

35. The view expressed by the Division Bench of Madras High Court in the case of *ICICI Bank Ltd.* (supra) is subject to certain exceptions which have been noted in the order itself. The Court in itself has observed that such power cannot be exercised as a matter of routine and the Tribunal has to satisfy itself whether such directions are absolutely necessary. The Counsel for the appellants is justified in submitting that the order passed by the Tribunal while restraining the appellants from travelling abroad does not disclose any such special reason to justify the directions that were issued. Be that as it may, once the law laid down by the Hon'ble Delhi High Court is a binding precedent for this Tribunal to follow, with which this Tribunal respectfully concurs, the impugned order passed by the Tribunal below cannot be sustained.

36. Before parting with the case, protest raised by the Counsel for the Bank may call for a notice when he says that if permitted to travel abroad, the appellants are not likely to return back. There is no material shown to me in support of this contention. More so, for prosecution of OA presence of the borrower or the guarantor before the Tribunal is not necessary. Facilities advanced by the Bank/Financial Institution are generally secured

by the property(ies) which is/are known as secured assets. These may be by personal guarantees which are accompanied by mortgage of some property or otherwise. Thus, these are the securities through which recovery is to be effected. No doubt, a stage may come when need for taking the borrower in custody may arise but generally that is very rare and may have to be resorted in exceptional cases. Unlike, criminal trials where proceedings cannot continue in the absence of accused, the proceedings before the Debts Recovery Tribunals can continue even when the borrower or the guarantor is not present. Thus, the order placing restriction on the movement of the appellants is not called for though prosecution of the OA is pending before the Tribunal below. Accordingly, the impugned order is set aside and the appeal is allowed.”

- (vi) **ICICI Ltd., Bangalore Vs. Passport Officer, Bangalore & Ors., (SJ, Kar HC) AIR 2002 Kar 118** – In this case Bank after issuance of Recovery Certificate approached the Passport Officer and gave notice for putting restrictions. When no steps were taken, Bank preferred Writ Petition. Writ Petition has been dismissed on the ground that no person is entitled to approach the Passport Officer seeking such a relief.

“7. Respondents 2 to 4 have filed written objections pointing out that the petition is not maintainable, that the allegations made against these respondents in the writ petition are not correct and are not admitted and that the situation does not come within the scope or ambit of provisions of Section 10(3)(h) of the Act. Sri. Amar Kumar, learned Counsel appearing on behalf of these respondents submitted that the situation contemplated under Section 10(3)(h) of the Act, particularly in the light of a person against whom the Court has issued summons or warrant which has remained unexecuted, in respect of whom the Passport Officer may impound travel documents preventing such person's departure from the Country are persons against whom criminal proceedings are pending and not persons who are before the Court in a civil proceeding. It is accordingly submitted that the petitioner is not entitled to either maintain the writ petition or claim any relief in such a writ petition and prays for dismissal of the writ petition.

11. The Apex Court has ruled that the right of a citizen to hold a passport which enables one to go abroad is part of one's fundamental right under Article 21 of the Constitution of India. Provisions of sub-Section 3 of Section 10 of the Act place restrictions on the right of a citizen to hold a passport. Therefore, unless such restrictions are fully authorised by law and are also strictly in conformity with such authorisation, the action is rendered illegal being violative of Article 21 of the Constitution of India. While understanding and interpreting a restrictive provision like

Section 10(3)(h) of the Act, care should be taken to ensure its scope is not unduly enlarged which will lead to the very provision being rendered unconstitutional. While interpreting a provision of this nature it cannot be understood as a provision giving rise to a right in favour of aggrieved persons like the petitioner who can complain of inaction on the part of an authority and seek for issue of a writ of mandamus from this Court as if it was a right of the petitioner. On the other hand, accepting the submission on behalf of the petitioner will amount to conferring a right in favour of persons like petitioner to affect or curtail the rights of citizens under Article 21 of the Constitution of India by a public authority at their behest. No such right in favour of private persons can be read into the provisions of Section 10(3)(h) of the Act as already indicated. Accordingly the submissions of the learned Counsel on behalf of the petitioner are not accepted.

12. In this view of the matter, the petition is misconceived. There is neither any legal right in favour of the petitioner nor corresponding obligation on the passport Officer to consider the notice or representation made by the petitioner. Accordingly this petition is rejected without issue of rule.”

- (vii) **Sam Verma vs. Tourism Finance Corporation of India (DRAT, Delhi) Appeal no 174 of 2007** – Bank after issuance of recovery Certificate could not auction the hypothecated goods. In the recovery proceedings, order was passed directing the appellant to deposit his passport. **Held, tribunal has no authority either to impound the passport or to put restriction on the travel abroad of the petitioner in exercise of its powers to pass an interim order under s19(6) of the RDDBFI Act.** Court directed to give an undertaking to the Recovery Officer to make himself available.

“4. I have considered the matter. The argument of the learned counsel for the appellant has sufficient force and is supported by a decision of the Hon'ble Delhi High Court in the case of A.S. Mittal v. P.O. Debt Recovery Tribunal & Ors, 109 (2004) DLT 16. Examining the provisions of the RDDBFI Act and the rules made there-under, the Hon'ble High Court has held that the Tribunal had no authority whatsoever either to impound the passport of the petitioner or to put any restriction on the travel of the petitioner abroad. The Tribunal is entitled to pass interim orders in accordance with Section 19(6) of the RDDBFI Act and no more. However, in that case the petitioner was directed by the Hon'ble High Court to make himself available before the Tribunal as and when he was required. For this purpose he was directed to give an undertaking to the Tribunal. The view taken in A.S. Mittal's case has been endorsed by the Hon'ble Delhi High

Court in the case of Sanjeev R. Apte v. IFCI Ltd. and Ors. [W.P. (C) No. 9576/2007 and CM No. 17993/2007, decided on 21.5.2008]. It has been reiterated that the Tribunal has no authority whatsoever either to impound passport or to put restriction on the travel abroad of the petitioner in exercise of its powers to pass an interim order under Section 19(6) of the RDDBFI Act. Such an order could not be passed even if the liability of the person concerned had been determined.

5. In view of the case law referred to above, the appeal deserves to be allowed. However, the appellant - CD No. 2 should be directed to give an undertaking to the Recovery Officer to make himself available as and when required in the recovery proceedings.”

- (viii) **Ailmil Pharmaceuticals (P) Ltd. and Ors. Vs. Standard Chartered Bank (Order, SJ) II (2010) BC 141**– Presiding officer restrained the appellant from leaving India without prior permission of DRT. **Set aside the order where appellant was restrained from travelling. Held, such order cannot be passed.**

“2. Counsel for the appellant picks up a conflict with the above directions. He has invited my attention towards two authorities. The first authority is reported in Sanjeev R. Apte v. IFCI Ltd., III (2008)BC 127 : 2008 (154) DRT 77 and the other authority is reported in Gurbachan Singh Saluja v. DRT and Ors. IV (2009) BC 495 : 163 (2009) DLT 369 (DB). These authorities go to reveal that Tribunal has no such authority to either impound passport of petitioner or put any restriction on the travelling of petitioner. It was further held that Tribunal was entitled to pass interim order under Section 19(6) of the DRT Act and no more. The order passed by the Tribunal restraining the respondents not to travel from India were set aside in both the above mentioned cases.

5. Keeping in view all the facts and circumstances of the case I hereby set aside the order wherein the appellant is restrained from leaving India before the prior permission of the learned DRT. Such order cannot be passed in view of the above said authorities.”

- (ix) **Jasitha Onden v State Bank of India (SJ) 2016 SCCOnLine Ker 19296** – Petition against order of DRT declining to release the passport of the petitioner. Petitioner wanted to leave India for job opportunities. **Held, the passport of the petitioner is to be released. Further added, there is no reason to detain (by impounding the passport) the petitioner merely for the reason that steps could be taken to arrest and detain her in civil prison.**

“7. The facts being so, it is clear that there is no reason to detain the petitioner merely for the reason that steps could be taken to arrest and detain her in the civil prison. No such proceedings could be initiated by the

recovery officer for recovering money from a lady, if she has no other assets worthy of being attached and sold in execution of the decree passed or award made by the Tribunal. However, her presence may be required for the Bank to take steps for realising the secured assets and presently, steps are being taken in that regard. If she is not present and the notice could not be served on her, the Bank will have to again incur expenditure for effecting service of notice. It is submitted that even in this proceedings, when notice could not be served, paper publication had to be effected by incurring huge expenditure

8. Having regard to the above factual situation, I am of the view that if at all any modification has to be made to the impugned order, it can only be on certain conditions. The petitioner will have to authorise a person to receive notice on her behalf and she should undertake that she shall come back within a specified time. For that purpose, she will have to give a guarantee through a third person along with sufficient collateral security to ensure her presence as and when it is required during the above proceedings”

**RESTRICTIONS CAN BE IMPOSED –**

- (i) **Annai Jayabharathi Vs. DRT, Ernakulam & Anr., (DB) AIR 2005 Kerala 137** – Powers under Section 22(1) are wide and must be read and understood to give free hand to the Tribunal to pass any order for speedy trial and effective enforcement of decree. **Upheld the order passed by DRT of impounding of Passport during pendency of OA proceedings.**

“8....In fact, a presumption can be raised very safely that the special Tribunals are vested with such powers so as to adopt such procedure, by which all effective measures can be taken not only for fast disposal of the case, but, for fast recovery of the dues, as may be found to be payable after adjudication. It is specifically provided that after adjudication, a decree is passed, and, in execution thereof, under section 25 of the Act, decree passed by the DRT can be enforced by (i) attachment and sale of movable or immovable property of the judgment debtor; (ii) arrest of the judgment debtor and his retention in prison; and (iii) appointing Receiver for the management of the movable or immovable properties of the judgment debtor. But, what happens if the judgment debtor escapes from the country in order to evade and defeat the decree? Is the DRT so powerless to do anything is the question. If a power is given to arrest the judgment debtor and to detain him in prison for enforcing the realisation of a debt ordered to be paid in decree by issuance or a Certificate under Section 19(7) of the Act, it carries with it an incidental power to prevent a person from going abroad, as an interim measure, so as to give effect to the power of ordering arrest of the judgment debtor and his detention in prison conferred by Section 25(b) of the Act. Otherwise, the said provision becomes redundant and otiose. The arguments of the learned counsel for the appellant that Section 22 of the Act bars the application of C.P.C., excepting those which are enumerated in subsection (2) thereof, and that power to impound the passport is not the one of such powers enumerated, and, therefore, the DRT has got no power to impound a passport cannot be acceded to, as Section 22(1) has to be read in a different perspective than understood by the learned counsel for the appellant. Section 22(1) of the Act relieves the DRT from the bondage of rigour of procedure laid down by the Code of Civil Procedure, leaving it to be guided by the Principles of Natural Justice, subject to other provisions of the Act and the rules, and, vests the DRT with such wide powers to regulate its own procedure including the place at which it can have sittings. As such, the powers of DRT have not to be read to have been truncated by Section 22(1), and, in fact, it has to be read and understood to have been widened giving a free hand to the Tribunal to pass may such orders, which have got the effect of not only speedy trial, but, effective enforcement of the decree in the event of the same being passed. It cannot be denied that presence of the appellant in the country enables the

smooth and speedy disposal of the case before the DRT, and, in the event of the decree being passed and a Certificate is issued under section 19(7) of the Act, the same can be effectively executed. If there are no grounds to pass the impugned order, certainly, it is arbitrary as it violates not only the fundamental right under Article 21, but also Articles 14 and 19 too. But, the DRT is of the considered view that the security offered is far too meagre as compared to the debt to be realised, and, in that context, it cannot be said that the order of the tribunal is arbitrary. Under Section 22(2) of the Act, the DRT is vested with some powers as are vested in a civil court under CPC while trying a suit, and, while such powers are enumerated in clauses (a) to (g), but clause (h) is residuary in nature, which empowers to adopt a procedure on any other matter, which may be prescribed. Further, under Section 29 of the Act, provisions of the II and III Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, are also made applicable by referential legislation to read the assessee as a "judgment debtor" and 'tax due' as 'the debt payable under the Act'. Under Clause 75 of Schedule II of the Income-tax Act, interim detention can be ordered pending enquiry relating to final detention in jail for recovery of the amount determined under the Income-tax Act. Section 34 gives overriding effect to the act over other enactments. Section 36 confers rulemaking power by virtue of which the Debts Recovery Tribunal (Procedure) Rules, 1993 were framed. Rule 18 of the Rules empowers the DRT to make such orders and to give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice and, certainly, the impugned order falls within this Rule read with Section 25(2) of the Act. The Karnataka High Court in ICICI's case (2 supra) did not deal with these aspects and, in our considered view, the order of the DRT sustains, as it is valid under law. The writ appeal, therefore, is dismissed. This order shall not preclude the appellant from furnishing sufficient security to the satisfaction of the DRT and to file an application to consider lifting the impounding of passport and, on such an application, the DRT can always consider the matter in accordance with law. No costs."

- (ii) **ICICI Bank Ltd. Vs. DRAT, Chennai (DB, Madras HC), 2011 (6) CTC 70** – Power to impound is inherent under Section 19(25) of the RDDB&FI Act. While issuing such order Tribunal should satisfy itself as to whether such directions are absolutely necessary.

“28. As we have held that both the enactments operate on different field and the powers conferred on the Tribunal to pass interim orders particularly under Section 19(25) of the Act is wide enough to cover the power to pass an order directing the surrender of Passport, we hold that the

order of the Debts Recovery Appellate Tribunal is unsustainable and is liable to be set aside.

29. The provisions of the RDDBFI Act must be interpreted by the Courts to give effect to the object for which such enactment was made. In order to ensure recovery of the dues to the Bank, and for that matter such recovery is in the interest of sustained growth of economy of the country, measures like directing surrender of Passport and ordering the borrower/guarantor not to leave the country without the permission of the Tribunal would be well within the powers conferred on the Tribunal under Section 19(25) of the RDDBFI Act. Such an order, in our opinion, is sustainable especially in the present case in view of the fact that the Application filed by the Bank was in respect of recovery of Rs.221,97,76,635.78p which was due as on 31.12.2009 from the Respondent and the Respondent also owed more than a sum of Rs.800 crores to various lenders and that there are no assets worth the value available with the borrower. The Debts Recovery Appellate Tribunal has miserably failed to take note of the above aspects while setting aside the order of the Debts Recovery Tribunal.”

- (iii) **Varun Industries Ltd. & Ors. Vs. Indian Bank (DRAT, Mumbai), II (2015) BC 54 (DRAT)** – Restrictions imposed on traveling abroad has been upheld by the DRAT. However, held that Passport cannot be impounded.

“8. Since this Court has no power to confiscate the passports or to direct to surrender the passports that portion of the order alone has been set aside. But at the same time, it is for the Banker to communicate this order to the Airport and Passport Authorities and concerned persons for the effective implementation of this order. Hence with these observations, the Appeal is partly ordered.

#### ORDER

The appellants are directed not to leave the territory of India till the disposal of the case and this order can be communicated by the respondent Bank to the Passport and Airport Authorities for their implementation of the order”

- (iv) **ICICI Bank Ltd. Vs. Kapil Puri & Ors. (DB, Delhi) WP (C) No. 10765/2015 & CM No. 27682/2015 (Stay) dated 31.03.2016** – DRAT, Delhi order is pending consideration before the Delhi High Court. By an interim order High Court has restrained Borrowers from traveling abroad. However this was keeping in view the peculiar facts of the case and there is as on date no finding on law.

“10. Noting the conduct of R-1 and R-2 of promising to mortgage 5 properties but having mortgaged only 3 as also the evasiveness in not receiving the Court notices we are constrained to pass an ex-parte ad-interim order restraining R-1 and R-2 from leaving the shores of this country.”

- (v) **Sanjay Suri & Ors. Vs. DRT-I, Chandigarh & Ors. (DB, P&H HC) CWP No. 10071/2016 (O&M) dated 03.06.2016** – Petitioner granted to approach DRT for seeking modification of order of impounding of Passport during pendency of OA proceedings more specifically observes that for passing such order certain issues are required to be considered. Thus this order is also subject and puts condition of passing speaking order.

“4. The petitioners, on the other hand, in order to show their bona fides, filed affidavits disclosing their assets. The respondents understandably contend that that is of little consolation to the respondents who have been running from pillar to post to recover their dues. We appreciate that an application for impounding a passport requires the banks or any creditors to establish more than the fact that a debt is due. Assuming that the DRT has the jurisdiction to impound the passports, it would be necessary for the DRT to consider whether it ought to do so in the facts of a given case. It would, for instance, be necessary to consider whether the dues of the bank are adequately safeguarded and whether there is a reasonable apprehension that the defendants/respondents would abscond once they leave India. 5. The order was passed without notice to the petitioners but that by itself is not illegal. The petitioners are always at liberty to make an application to the DRT for setting aside or modifying the order. They ought to do so in the first instance. There is no warrant for our interfering at this stage. 6. The petition is, therefore, disposed of with liberty to the petitioners to make an application to the DRT for setting aside or modifying the impugned order.”