

ABSTRACT

Poor debt collection has been a perennial issue that confronts the financial services sector of Sri Lanka. While it results in the disruption of the smooth flow of capital in the financial sector institutions, the lack of efficient and efficacious recovery mechanisms in the legal system means that a large percentage of loans and other facilities disbursed end up as bad or non performing debts. The Debt Recovery (Special Provisions) Act No. 02 of 1990 was enacted, consequent to the legislative recognition of the fact that the regular procedure that was available in the sphere of civil litigation through courts, was protracted, cumbersome and inefficient for the purpose of such recovery.

The Act recognizes the fact that a special and an expedient procedure is necessary for the speedy recovery of debt in the case of Banks and licensed lending institutions. While the applicability of the provisions are confined to the lending institutions, licensed by law, it facilitates a procedure which is more in line with the summary procedure , which, recognizes the legal validity of certain written documents and the necessity to enforce them without delay with a view to lubricating business transactions without unnecessary stagnation.

The Researcher evaluates the effectiveness of the Act and its implementation by the Lending Institutions during the last five years and its efficacy compared to other alternative methods of recovery through litigation in Sri Lanka. The Act remains one of the most widely resorted means of debt recovery by lending institutions. Banks who were initially reluctant to make use of this special piece of legislation, too, have followed suit and joined non-Banking lending institutions in reaping benefits of the expeditious procedure at their disposal.

This Research being mainly of a qualitative character the Researcher has also resorted to gathering of quantitative data which has been used for the evaluation of effectiveness of DR actions filed in terms of the Act. In the discussion and analysis which constitutes a main component of the Research the analysis deals with the unique nature of the Act in relation to procedure, dues recoverable, prima facie sustainable defense, effecting of settlements, summary procedure character and consequences of manipulation of the provisions of the Act by Lending Institutions have been dealt with.

In the research, the salutary features of this unique piece of legislation will be discussed with a view to supporting the premise that, it has in fact, expedited the recovery of debt of the lending institutions. At the same time, some of the concerns, in terms of the borrowers, against whom legal action is instituted in terms of the Act and whose rights before the law are to be safeguarded, will be addressed, albeit, in passing.