

UNIT 6 - Banker 's Right of Set Off- Explained



Introduction

The set-off refers to “combining of two or more account for final settlement of accounts”

In other words set off is a process where the bank recovers its due loan, to the debit of deposit account of the burrower

The essential condition is that one of such accounts must show a debit balance and the other, a credit balance

Different Branches are one unit

For exercising the right to set off all branches of a bank are treated as a single unit, which means a loan from branch-A can be adjusted by the funds in branch-B under following conditions.

CONDITIONS

There are certain conditions to be followed before using right to set off.

RELATIONSHIP

The right can be exercised when the relationship is that of debtor/creditor on one hand and creditor/debtor on the other and exist simultaneously.

NOTICE

The right can be exercised only after sending a prior notice to the depositor, expressing the intention to exercise the right. The notice will be of a reasonable period.

TYPE OF LOAN

The loan should be certain, determined, due and not a future debts and where no agreement to the contrary exists. In other words, the right can be used, for those loans, which have become due for payment and customer has defaulted. Where the customers has been paying the loan as per agreed terms, the right is not available.

TIME BARRED LOANS

Time barred loans can be recovered by use of right of set-off, since such loans continue to be lawful.

SAME NAME AND CAPACITY

It is essential that the account must be in the same name and in the same capacity. The money belonging to someone else cannot be made available to satisfy personal debts of some other person.

PARTNERS/PARTNERSHIP

Where a partner's account shows credit balance, the right can be exercised for the dues of the partnership firm. But where the firm's account shows credit balance, the bank cannot set off the credit balance against the debts due from the individual partner.

GUARDIAN

Where account is opened in the name of minor child in the capacity of a guardian, the account with the bank. Hence, bank cannot exercise right of set-off on such accounts.

TRUST

The funds held by a person in a trust account are to be treated in a different right from his own liability as an individual. These cannot be used by the bank for set-off.

JOINT ACCOUNTS

If the account of a person shows debit balance, such dues cannot be recovered from his joint account with others. To settle the loan in the joint names, the funds lying in the individual account of one or more of them, can be used to settle the joint liability.

GUARANTOR'S ACCOUNT

The right can be exercised against the lying in the account of a guarantor but only when demand is made on the guarantor which determines his liability.

TERM DEPOSITS WHICH ARE NOT DUE

Though the right is available, but the right can be used only after the term deposit becomes due.

LIEN AND SET-OFF - DISTINCTION

TRANSACTIONS	LIEN	SET-OFF
SUBJECT MATTER	Goods and Securities	Bank Deposit
RELATIONSHIP	Creditor and Debtor	Creditor/debtor and Creditor/debtor simultaneously
If available for time barred loans	Yes, If otherwise lawful and due	Yes, If otherwise lawful and due
Receipt of garnishee or attachment order	Not applicable	Right can be exercised for lawful and due debts
POSSESSION	With the bank is must	Possession of deposit receipt or pass book not necessary with bank
Account with different branches	It is available by treating the branches as one bank	It is available by treating the branches as one bank