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

+ W.P.(C) 3668/2021 and C.M. Nos.11126/2021 & 20497/2021

EDELWEISS ASSET RECONSTRUCTION
COMPANY LTD

..... Petitioner

Through: Mr. R.P. Agrawal, Ms. Manisha
Agrawal & Mr. Priyal Modi,
Advocates.

versus

THE SECRETARY, DEPARTMENT OF
FINANCIAL SERVICES & ORS.

..... Respondents

Through: Mr. Ravi Prakash, CGSC and
Ms.Shruti Shivkumar, Advocate for
respondents No.1 & 2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

16.08.2021

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1. An affidavit has been filed on behalf of respondent No.1, i.e. the Secretary, Department of Financial Services (DFS) by Mr. Subhashchandra Amin, working as Under Secretary, Government of India, Ministry of Finance, DFS, stated to be in compliance of our orders dated 11.05.2021 & 14.07.2021. These orders were passed by us since the petitioner had raised an issue of disposal of high value recovery cases pending before the Debt Recovery Tribunal (DRT), which are not being attended to.

2. The affidavit discloses that a Committee was constituted to examine the aspect of disposal of high value recovery cases chaired by Mr. Justice

Tarun Kumar Kaushal (Retd.), Chairperson, DRAT, Chennai. The Committee has made recommendations which have also been set out in the affidavit. One of the primary recommendations is that the high value recovery cases of Rs.100 Crores, or more, should be filed through electronic mode. The purpose appears to be to ease the process of electronic transmission of record of all such cases to all concerned and to cut short the delays in service of copies and also to nip in the bud the disputes with regard to the service of copies on all concerned. Apart from this, the respondent states that advisories are being issued that in high value recovery cases, the matters should not be adjourned for more than a week. It also discloses that reports are proposed to be called from the DRTs in relation to such matters. The recommendations made by the said Committee have been set out in communication dated 12.07.2021 issued by the DFS, Ministry of Finance to the Chairpersons of the DRATs at Allahabad, Chennai, Kolkata and Mumbai. Mr. Prakash states that these recommendations are in the process of being implementing.

3. The recommendations made by the aforesaid Committee would, if seriously implemented, to some extent, help in early disposal of high value recovery cases. However, the real problem being faced by the DRTs today is that they are headless and more or less defunct without qualified and competent incumbents.

4. In response to our query, we are informed that the DRT-I is not having its Presiding Officer since January 2020; the DRT-II is without the Presiding Officer since May 2020; and the DRT-III does not have the Presiding Officer since December 2021. These positions have not been

filled up till date.

5. It also appears that despite the decisions of the Supreme Court holding that the lawyers with 10 years standing, or more, should also be qualified to offer their candidature for appointment to the DRT, the respondent has till date not implemented the said decisions. It appears to us that either the respondents are completely unmindful of the seriousness of the problem, or despite being aware of the problem, are deliberately and consciously ensuring that DRTs do not function.

6. At this stage, we may observe that the Debt Recovery Tribunals were constituted with a view to expedite recovery of debts owed to banks and financial institutions since monies held by banks and financial institutions are public monies. Thus, the failure on the part of the respondent to make appointments to fill up the vacancies in the DRTs is causing a serious prejudice to a larger public interest.

7. The petitioner has disclosed information received under the Right to Information Act from the DFS, according to which, a total of 1,25,395 Original Applications for recovery are pending as on 31.03.2020 involving an amount of Rs.15,15,146.00 Crores. Out of these, the number of Original Applications with claims of Rs.100 Crores, or above, are 1,537 – which involve an amount of Rs.11,89,198.00 Crores. Thus, the high value recovery cases – though much lesser in number, account for the bulk of the amount of public monies to be recovered. The high value recovery cases account for 1% of the total pendency of the Original Applications before the DRTs, but represent the 80% of the total amount involved.

8. We are completely dismayed and are also not able to understand as to

how the respondent can be so unconcerned about the seriousness of the problem. It is not fathomable as to why the respondents are turning a deaf ear to the appeals made not only by banks and financial institutions, but also orders passed by us calling upon the respondent to discharge its duty of appointing officers to fill up the vacancies in the DRTs.

9. We direct respondent No.1 to file a specific and a better affidavit on the aforesaid aspect, namely on the aspect of filling up of vacancies in the DRTs, within a week. On the next date, the Secretary, Department of Financial Services shall also remain present during the hearing to answer the queries of the Court. In the meantime, the petitioner may file response to the affidavit filed by the respondent No.1, before the next date.

10. In the meantime, the respondents should also examine the suggestions made by the petitioner in C.M. No. 20497/2021 with a view to improve the functioning of the DRTs, particularly in relation to the high value recovery cases, and be ready with their response on the next date.

11. List on 25.08.2021.

VIPIN SANGHI, J

JASMEET SINGH, J

AUGUST 16, 2021

B.S. Rohella