



\$~16

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

% *Date of Decision: 25.09.2023*

+ W.P.(C) 14190/2021

EDELWEISS ASSET RECONSTRUCTION
COMPANY LTD.

..... Petitioner

Through: Mr. Sudhir Makkar, Sr. Adv. with
Ms. Manisha Agrawal & Ms.
Snigdha Agarwal, Advs.

versus

NISHILAND PARK LTD & ORS.

..... Respondents

Through: Mr. Sanjeev Bhandari, Mr. Kunal
Mittal & Mr. Arjit Sharma, Advs.
for R1to3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, praying
as under: -

“A) issue a writ of mandamus or any other appropriate
writ/direction/order for quashing the proceedings of
MA No. 33/2021 in Appeal No. 280/2019 titled as
*'Edelweiss Asset Reconstruction Company Limited vs
Nishiland Park Ltd. &Ors.;*

B) set aside the Order dated 01.10.2021 passed by the
Hon'ble DRAT in MA No. 33/2021 in Appeal No.
280/2019 titled as *'Edelweiss Asset Reconstruction
Company Limited vs Nishiland Park Ltd. &Ors.;*

C) direct DRT-1, Delhi to dispose off the OA No.



280/1999 titled as '*Edelweiss Asset Reconstruction Limited vs. Nishil and Park Ltd. & Ors.*' in a reasonable time as may be fixed by this Hon'ble Court, keeping in view the fact that the said OA is pending adjudication for more than 22 years:

D) costs of the petition be allowed to the Petitioner; and"

2. This case has a chequered history. The Tourism Finance Corporation of India Ltd. (hereafter '**the TFCI**') had extended certain financial facilities to respondent no.1 (hereafter '**the borrower**'). It is the TFCI's case that the borrower defaulted in its repayment obligations. Consequently, the TFCI filed the Original Application (OA) under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (now known as Recovery of Debts and Bankruptcy Act, 1993) for recovery of the amount due from the borrower. The said application was registered as O.A. 280/1999.

3. The said application, O.A 280/1999, was dismissed in default on 27.02.2015. In the meantime, the TFCI had assigned its financial asset (being the amount recoverable in respect of financial facilities extended to the borrower) to the petitioner (hereafter '**Edelweiss**')

4. Thereafter, an application was filed before the learned Debts Recovery Tribunal (hereafter '**the DRT**') for restoration of the OA which was dismissed in default on 27.02.2015. The said application was dismissed as well. This led Edelweiss to file an appeal (Regular Appeal No. 280/2019) before the learned Debts Recovery Appellate Tribunal (hereafter '**the DRAT**'). The same was disposed of by an order dated 04.08.2020. The learned DRAT held that the OA was



liable to be restored. The learned DRAT was further of the view that there was no dispute regarding the principal amount owed by borrower against the loan advanced by the TFCI and therefore, directed the learned DRT to issue a recovery certificate for a sum of ₹7,96,49,202/- in favour of the TFCI. The learned DRAT had noted that the OA was filed for the said sum along with *pendente lite* and future interest at contractual rates, however, the learned DRAT did not directed issuance of a recovery certificate in respect of the *pendente lite* and future interest and confined the recovery certificate to ₹7,96,49,202/- and left the remaining contentious issues to be decided by the learned DRT. Paragraph no.17 of the said order is relevant and set out below: -

“17. The DRT shall now take up the O.A. on its board on 29.08.2020 and then proceed with the proceedings in accordance with law and after giving opportunity to the concerned parties of addressing fresh arguments, if so desired by them. Considering the fact that this legal battle for recovery of crores of public money is going on since the year 1999 the learned DRT will do well in disposing of the O.A., as far as possible, within a period of three months from the date of communication of this order and will ensure that the proceedings are not adjourned unjustifiably as was being done before dismissal of the O.A.”

5. The respondents, aggrieved by the said decision, preferred a writ petition before this Court being W.P.(C) No.6593/2020 captioned ***Nishi Land Park Ltd. & Ors. v. Edelweiss Assets Reconstructions Co. Limited.*** It is material to note that the said petition was taken up by the Coordinate Bench of this Court on 17.09.2020. On the said date, the principal contention advanced on behalf of the respondents was that that amount for which the



recovery certificate is directed to be issued (that is, ₹7,96,49,202/-) had already been paid. It was the respondents' case that the learned DRAT had erred in failing to take notice of the said fact.

6. This Court had noted the said contention and observed that if the learned DRAT had erroneously failed to take notice of the factual position, it was for the respondents to approach the learned DRAT for pointing out the said error. In view of the above, the respondents withdrew the writ petition while reserving the right to approach the learned DRAT for seeking review of the order dated 04.08.2020 passed by the learned DRAT. The order passed by this Court on 17.09.2020 in the said writ petition [W.P.(C) No.6593/2020] reads as under:-

“CM No. 23011/2020 (exemption)

Allowed, subject to all just exceptions.

W.P.(C) 6593/2020 and CM Nos. 23010/2020 (stay)

1. The petitioners have filed the present petition being aggrieved by the order dated 04.08.2020, passed by the learned DRAT and the subsequent order dated 21.08.2020, passed by the DRT. Vide order dated 04.08.2020, the learned DRAT has set aside the order dated 27.02.2015, passed by the DRT in O.A No. 280/1999 and has remanded the matter back to the DRT for disposal. Further, the learned DRAT has observed that that O.A was filed by the predecessor-in-interest of the respondent No.1 for recovery of Rs.7,96,49,202/- along with the pendente lite and future interest against the petitioners and resultantly, directed issuance of a Recovery Certificate for the amount admitted as due and payable by the petitioners. The DRT has been directed to proceed to dispose of the O.A on the remaining aspects of the matter that were being contested by the petitioners herein in the written statement filed by them in



response to the O.A.

2. Mr. Sanjeev Bhandari, learned counsel for the petitioners opens his arguments by claiming that the entire amount referred to in para 16 of the impugned order passed by the learned DRAT has already been paid by the petitioners, which submission is vehemently disputed by Mr. Rajiv Bansal, Senior Advocate appearing for the respondent.

3. If it is the stand of the petitioners that the amount mentioned in para 16 of the impugned order has already been paid by the petitioners and the DRAT has erroneously failed to take notice of the said factual position, it is for them to approach the DRAT pointing out the said error and seeking necessary corrections in the impugned order.

4. Mr. Bhandari, learned counsel for the petitioners states that he may be permitted to withdraw the present petition while reserving the right of his clients to approach the DRAT for seeking review of the impugned order.

5. Without commenting on the merits of the pleas taken in the present petition or the contention of learned counsel for the petitioners as recorded hereinabove, leave, as prayed for, is granted. The petition is dismissed as withdrawn along with the pending application.”

7. It is apparent from the above that the respondents’ limited contention before this Court was regarding an error committed by the learned DRAT in not noticing that the amount, as directed to be paid, already stood discharged. In this context, this Court had observed that if there was a factual error, the respondents ought to have approached the learned DRAT. The respondents had reserved the right to do so as is apparent from paragraph no.3 & 4 of this Court’s order dated 17.09.2020.

8. In terms of the order dated 04.08.2020, a recovery certificate was issued by the learned DRT, which was sought to be enforced by the recovery officer.



9. There is some controversy before the recovery officer as to who could represent the TFCI in that case. Apparently, Edelweiss's counsel had sought to represent the TFCI in those proceedings as the recovery certificate was issued in favour of the TFCI. The respondents have sought to raise another controversy in regard to whether the recovery certificate issued in favour of the TFCI could be enforced in favor of Edelweiss. We find that the said controversies are insubstantial.

10. The learned DRT had, pursuant to the order dated 04.08.2020 passed by the learned DRAT, allowed the petitioner's application for being substituted and had noted that the amended memo of parties was already on record.

11. Although on 17.09.2020, the respondents had – with the purpose of pointing out that the amount as directed by the learned DRAT to be recovered from the respondents was already paid – withdrew their petition with liberty to file a review. The respondents filed a substantive review before the learned DRAT on several other grounds as well. In the review petition, the respondents sought to urge that the learned DRAT had directed recovery only in respect of the principal amount, which was outstanding but the sum of ₹7,96,49,202/- included interest and other charges as well.

12. By an order dated 08.02.2021, the learned DRAT issued notice in the review application [Misc. (Review) Application No. 48/2020] to the limited extent of reviewing the amount directed to be paid by the order dated 04.08.2020. In respect of all other issues raised by the respondents, the learned DRAT was of the view that the same were in the '*nature of challenge to the correctness of the order dated 04.08.2020*' and therefore, could not be considered.

13. The respondents have not taken any steps to assail the said order dated 08.02.2021, which has attained finality.



14. Although the scope of controversy now before the learned DRAT is limited to the review petition [Misc. (Review) Application No. 48/2020] confined to the amount of the recovery certificate. It appears that the respondent has sought to expand the scope of controversy before the learned DRAT and has filed an application under Section 340 of the Code of Criminal Procedure, 1973 (hereafter 'CrPC') being Miscellaneous Application No.33/2021. According to the petitioner, the said application is not maintainable as Appeal No. 280/2019 has already been disposed of.

15. Mr. Bhandari, learned counsel appearing for the respondents, submits that the order dated 04.08.2020 passed by the learned DRAT was in the nature of assuming original jurisdiction and therefore, it would be permissible for the petitioner to treat that the OA was pending before the learned DRAT. This contention is insubstantial. Appeal no. 280/2019 was disposed of by an order dated 04.08.2020 with the direction to the learned DRT to issue the recovery certificate and proceed with the OA in respect of other aspects. After disposal of the said appeal, no proceedings in respect of that appeal (Appeal No. 280/2019) survives before the learned DRAT. A review petition has been filed by the respondents. Although styled as an application, the same is an independent proceeding. As stated above, the learned DRAT has issued notice in that petition to a limited extent of considering the amount for which the recovery certificate was required to be issued.

16. Having stated the above, we do not consider it apposite to set aside the proceedings relating to the application filed by the respondents under Section 340 of the Cr.PC as it would be for the learned DRAT to first examine whether it has any jurisdiction to proceed with the said application.

17. In view of the above, the present petition is disposed of with the direction that the learned DRAT will, in the first instance consider the



petitioner's challenge to the maintainability of the application (Miscellaneous Application No. 33/2021) as a preliminary question, before proceeding further.

18. It is clarified that all rights and contentions of the parties in connection with Miscellaneous Application No. 33/2021 are reserved.

19. We also direct the learned DRT to take up OA No. 280/1999 and dispose of the same as expeditiously as possible and preferably within a period of three months from today.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 25, 2023
Ch