

**Comments received on the suggestions given by Edelweiss Asset Reconstruction Ltd relating to expeditious disposal of cases involving Rs.100 crore and above in Debt Recovery Tribunals (DRTs)
(In WP (C) No. 3668/2021 Titled as Edelweiss Asset Reconstruction Ltd Vs Union of India before the Hon'ble High Court of Delhi)**

| S.No | Suggestions | Rationale | Required Steps | Comments from Different Stakeholders | | | | | | | | | |
|------|--|--|--|---|---|---|---|---|---|--|--|---|---|
| 1 | Pecuniary Jurisdictions of DRTs under Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) starts with Rs. 20 lacs. The same should be enhanced to Rs. 1.00 cr | The proposed step, it is estimated will reduce the workload of DRTs by 50-60%. In case the pecuniary jurisdiction is revised as suggested, the DRTs will be in better position to concentrate on high value cases. It is clarified that the cases of banks and FI below Rs. 1.00 cr will be commercial suits and shall be liable to be dealt with by Commercial Courts which is also speedy way of disposal of cases | a) In terms of Section 1(4) of RDB Act, Central Govt, may issue a notification for revising the Pecuniary limit. | 1. DRTs were formed under RDB Act, 1993 to overcome the difficulties faced by the bank in recovering of amount due to them. The suggestion to transfer the adjunction of part of cases under DRT bank to Civil court, whose pendency levels was one of the reasons for creation of DRT, may not be prudent. | 1. Proposed suggestion, suits less than 1 cr are required to be filed before the Commercial Courts. The commercial courts are required to adjudicate the dispute of commercial nature of the merchants, traders, Banks etc. However DRTs are exclusively established for recovery of dues of the banks. | 1. If the debts threshold is increased to Rs. 1.00 cr, it would shift the entire stock of recovery suits to commercial courts, which would put extra burden on commercial courts, delaying recovery of debts due to Banks and FIs, hence there is no merit in enhancing the pecuniary jurisdiction. | Pecuniary jurisdiction of DRTs under RDB Act should be enhanced to Rs. 50.00 lacs | Pecuniary jurisdiction will not be helpful for FIs. | Pecuniary jurisdiction of DRTs under RDB Act should be enhanced to Rs. 50.00 lacs | For effective monitoring of DRT cases above Rs. 100 Crores, we can't ignore our major volume of cases i.e. below Rs. 1.00 Crores. Rationale submitted by the applicant is that, cases below Rs. 1.00 crore be shifted to commercial courts. The Commercial Courts Act, 2015 (Act) was enacted in December 2015, to enable a speedy redressal of commercial disputes in India. It emphasized the need "to expedite the disposal of high stakes' commercial disputes, and thereby, enhance investor confidence". Hence, we are of the view that, suggestion is not feasible. Already, bracket of Rs. 10 Lakh – Rs. 20 Lakh has been shifted from DRT to Civil courts. Further enhancement of pecuniary jurisdiction will badly impact Bank's recovery process. | With respect to Suggestion No. 1, enhancement of pecuniary jurisdiction from Rs. 20 lakhs to Rs. 1 Cr in RDB Act may not be advisable. The reason being maximum number of cases fall in this bracket. As the DRT Proceedings are summary in nature, thus disposal is expected at the earliest. We suggest for enhancing infrastructure of DRTs i.e. establishing more DRTs or appointment of additional Presiding Officers /Recovery Officers in DRT, to expedite disposal of cases OR two tier system may be created at DRT on pecuniary basis i.e. one for below Rs. 1 Crore and other for above Rs. 1 Crore | We are of the view that changing pecuniary jurisdiction at this juncture may not yield good results as the commercial court are not yet established in full-fledged manner. | This amounts to pushing the Bankers back to civil court for recovery of dues, which is already flooded with matters. The process for conducting civil court matters are lengthy process which will create lot of pendency in low ticket matters. Exploring arbitration process in mortgage matters also not possible in view of Booz Allen Judgement. It would be ideal to strengthen existing DRT mechanism rather than increasing the pecuniary jurisdiction. In the event, if the pecuniary jurisdiction is increased, it should be applicable to prospectively and existing matters to be continued with DRTs. This would prevent over loading of matters with Civil Court. |
| | | | | 2. To increase the limit of Rs. 1.00 lacs to reduce the pendency in DRTs may be undesirable and might severely curtail the remedies available to lender in recovering dues | 2. The procedure of adjuration under RDB Act, 1993 provides maximum limit of 180 days for disposal of OA filed by Banks/ FI. The RDB Act provides for appointment of Recovery Officers for execution of Recovery Certificates. These provisions are not available in commercial courts. | | Pecuniary jurisdiction of DRTs under SARFAESI Act, 2002 to be enhanced to Rs. 5.00 lacs | | Pecuniary jurisdiction of DRTs under SARFAESI Act, 2002 to be enhanced to Rs. 5.00 lacs | | | | By enhancing the the pecuniary limit under sarfeasi Act, the small tickets loans with secured assets would be outside the preview of the Sarfeasi Act. Sarfeasi Actions are to be exercised by authorised officers and most of the cases are settled even before going to DRT. If the Sareasi act is not made applicable to below 50 Lakh matters, the only option available to the Bankers would be to approach the Civil Court, which is already over burdened. |
| | | | | 3. If the debts threshold is increased to Rs. 1.00 cr, it would shift the entire stock of recovery suits to commercial courts, which would merely result in transfer of pendency from one forum to another. | 3. It is not advisable to enhance pecuniary jurisdiction of DRT to 1 cr. If DRTs can further be staffed, the issue may be address to great extent. Also, a new DRT may be established to reduce work load | | If pecuniary jurisdiction of DRTs is enhanced to Rs. 1.00 cr, most of the court cases will be filed before Civil court and disposal of which will take more time. | | If pecuniary jurisdiction is enhance to 1.00 cr most of the Tribunals will be left to deal with very few cases. | | | | Agreeable for this suggestion |

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| 2 | Pecuniary Jurisdiction of DRTs under SARFAESI Act, 2002 starts with Rs. 1.00 lacs. The same should be enhanced to Rs. 50 lacs | | b) Amendment of Section 21(f) of SARFAESI Act will be required. | | 4. If the suggestion is implemented bank will not be able to take action under SARFAESI Act for recovery of dues where value of Bank's debt is less than 50 lacs. Hence, not advisable. | | | | | | From creditors point of view, we may agree with suggestion as same will reduce the burden of DRTs particularly w.r.t. Securitization Appeals. However, necessary amendments should be brought to take care of SARFAESI Appeals involving amount from Rs 1.00 lakh to Rs 50 lakh. | With respect to Suggestion No. 2, enhancement of jurisdiction of DRTs under SARFAESI Act, 2002 from Rs. 1 lakh to Rs. 50 Lakhs not suitable for Banks as most of the secured loans like Housing Loans /Mortgage Loan etc are of below Rs. 50 lakhs wherein recovery is speedier through SARFAESI Action. However, a separate bench may be established under DRT for dealing matter with SARFAESI Action, it is observed from daily listing in DRTs, most of the matters listed were with respect to SARFAESI Action. | We are of the view that changing pecuniary jurisdiction at this juncture may not yield good results as the commercial court are not yet established in full-fledged manner. | Agreeable for this suggestion |
| 3 | Provision of Listing all Original Applications within three days of filing before the presiding Officers | It has been observed that the OAs filed by Banks and FIs remain pending in the Registry for months for one or other reason which leads to delay in disposal of the same. | By Amending the Debt Recovery Tribunal (Procedure) Rules, (DRT Procedure Rules), 1993 | As a principle, the suggestion is agreed upon. | As a principle, the suggestion is agreed upon. | Rule 5 of DRT (Procedure) Rules, 1993 may be suitably modified stipulating a time period within which scrutiny of Applications is to be completed by Registrar. | OAs is to be scrutinized and listed before PO in 7 days. However, in urgent matter, Registrar may be directed to expedite for early date | | OAs is to be scrutinized and listed before PO in 7 days. | As a matter of practice, large volume of paper books are filed in OAs involving Rs. 100 Crores and above. If we make provision for listing all such OAs within three days of filing, it will prejudice the scrutiny of the OAs filed with the Registrar as it will be practically not feasible to scrutinize & remove the defects within three days. Rather, we can make provision for listing within 15 days instead of 03 days. | The suggestion may expedite the proceedings. We agree. | The suggestion may be accepted as it is one of the reasons for delay in disposal of cases. Further, the formats of Recovery Application, application for IAs should be simplified. A checklist to be prepared and documents must be submitted as per the check list. Proof affidavit is to be filed along with Recovery Application (RA) and also along with Written Statement by the Defendant. Instead of filing original documents along with the Recovery application, Photocopies duly certified by the officer of the Banks/ Financial Institutions (FI) should be considered sufficient to process the Recovery application and the originals can be shown to the Presiding Officer (PO) during evidence. | Agreeable for this suggestion | |

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| 4 | Defendants to file their Evidence as well as all documents on which they seek to rely along with their Written Statement and also the affidavit of admission/Denial of documents filed with a OA with a proviso that in case of non-compliance of any these requirements, it will be deemed that no WS has been filed by the Defendants | This amendment is necessary to curtail the delays on behalf of the Defendants. | By Amending Section 19(5)(i) as well as Section 19 (10-A) of RDB Act. | Opportunity of filing documents and evidence should not be denied. However, necessary discretionary powers should be conferred on DRTs, allowing the parties to file necessary documents against imposition of cost, if not filed in compliance of the statutory provisions. | The suggestion is agreed upon | Section 19 (5) (i) already stipulates a time period for submission of Written Statement by the defendant. Section 19 (5-A) deals with the Admission /Denial of documents. Since the act has already stipulates a time limit and procedure, the said suggestion is superfluous. | May be accepted. | Suitable amendment can be made in Section 19 (5)(i) as well as 19 (10)(A) of RDB Act, so the defendants will file their written statements along with affidavit of admission / denial of the documents filed with O.A. Amencement will help FI to control vague evasive replies. | May be accepted. | If the said provision is allowed, it will be against the principal of natural justice & audi alteram partem. Already provision for 30+15 days has been provided under Section 19(5)(i) of the RDB Act. Making provision for non-compliance would make it more stringent for the genuine borrowers. Rather, we can make provision for imposing cost for delayed filing of written statements by the defendants. | The suggestion may expedite the proceedings. We agree with the same. | The suggestion may be accepted. | Agreeable for this suggestion |
| 5 | To provide that no interim application will be entertained once the OA has been fixed for oral arguments upon completion of the pleadings. | Generally, the Defendants make all kinds of efforts and employ all possible tricks to prevent the OA from being decided. Usually the Defendants file several interim applications – one after the other, which are mostly false and frivolous in nature. The only purpose of such IAs is to delay the final disposal of the OA. | By Amending Section 19 of RDB Act. | The suggestion is agreed upon | The suggestion is agreed upon | Curtailling of filing of IAs will lead to filing of WP before High courts which will lead to considerable delay of OAs. Instead time limits should be stipulated for disposal of IA. | May not be accepted as it will curtail legal rights of parties. However, it may be decided expeditiously and adequate penalty may be imposed if application is found frivolous. | Normally IAs should be discouraged. However IAs can be entertained as an exception and subject to suitable costs on the person who is author of delay and lapses. | Not accepted. | Legislature can't take away right of defendants to file application before any court of law for enforcement of his right. If such provisions are incorporated, it will definitely will be subject of Judicial review by Hon'ble Supreme Court of India and is most likely to be struck down. | We do not agree with the same as the said suggestion curtails the right of the respondent. | IAs filed by the Defendants should be heard simultaneously along with the arguments upon completion of Pleadings. The arguments should not be postponed only because an IAs has been filed. | Agreeable for this suggestion |

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| 6 | <p>To enhance the court fee payable on interim applications in OAs involving claim amount of Rs. 100 Crores or above. These fees should be such that it discourages the Defendants from filing false and frivolous applicants.</p> <p>It may also be considered that if a Defendant files more than 3 interim applications, then on and from the 4th application onwards, the defendants should deposit 0.1% of the claim amount but not exceeding Rs. 50 Lakhs along with the 4th and onward applications.</p> | | <p>By Amending Rule 7 of DRT Procedure Rule And by incorporating an appropriate provision in Section 19 of RDB Act.</p> | <p>As such the suggestion is agreed upon, however the discretionary power may be given to DRTs to dispense the deposit to be made before fining of IAs in appropriate cases.</p> | <p>The proposed suggestion is agreed upon, however the same would not stand in judicial scrutiny of High Court/ Supreme Court. Hon'ble Supreme Court had declared section 17(2) of the SARFAESI Act as ultra vires article 14 of the constitution because the said sub section provides for deposit of 75% of the amount claimed before entertaining an appeal by DRT under Section 17.</p> | <p>The proposed suggestion may not be feasible. As imposing a fee for IAs which is more than a fee of OA is not reasonable. Any such provision shall be susceptible to challenge before High Court/ Supreme Courtland also encourage the borrowers to approach High courts under Writ Jurisdiction thereby leading to delay in disposal of OAs. Instead, the time of disposal of IAs if it is determined that there is no merit in the application, exemplary cost may be imposed on the party.</p> | <p>May be accepted.</p> | | <p>May be accepted.</p> | <p>We concur with the suggestion.</p> | <p>The suggestion may expedite the proceedings. The fee may be fixed commensurating with fee paid OA.</p> | <p>For filing of frivolous IAs the DRTs/ Court should impose exemplary costs which would discourage the Defendants from filing of petitions only with an intention to delay the proceedings on frivolous grounds rather than enhancing the Court fees.</p> | <p>Agreeable for this suggestion</p> |
| 7 | <p>To provide that time limit of 180 days for disposal of OA under Section 19(24) of RDB Act should be strictly implemented in cases of OAs involving claim amount of Rs. 100 Crore or more.</p> | <p>It is possible that due to excessive burden of work, the DRTs may not be able to dispose of all OAs within a period of 180 days as prescribed in Section 19(24) of RDB Act.</p> <p>As per the information received under RTI from Department of Financial Services, the status of total pending OAs involving Rs. 100 Crores and above as on 31.03.2020 was as under: Total No of OAs- Amount involved 1,25,395 Rs. 15,15,146.00 Cr.</p> | <p>By amending Section 19(24) of RDB Act.</p> | <p>The same is existing legal mandate irrespective of the claim amount. Hence, no amendment may be necessary</p> | <p>The suggestion is agreed upon</p> | <p>Section 19 (24) of RDB act already stipulates time frame of 180 days from the receipt of application. However, filling up of existing vacancies and constitution of additional benches of DRRS in new location will lead to speeding of disposal of OAs.</p> | <p>May be accepted.</p> | | <p>May be accepted.</p> | <p>The guiding principle of Article 14 of Constitution of India states that all persons and things similarly circumstanced shall be treated alike both in respect of privileges conferred and liabilities imposed. Strict adherence of timelines of 180 days in cases of OAs involving claim amount of Rs. 100 Crore or more and no guidelines for OAs below Rs. 100 Crores, is definitely against the principle of intelligible differentia. Rather, we should work upon improvising the present infrastructures of DRTs. We have mentioned the same in our suggestion</p> | <p>While providing breakup of 180 days period in Section 19(24), there must be a provision of penalty for non-compliance of such break up period. Delay in disposal of OA beyond 180 days, reasons to be recorded in writing. A concept of maximum limit of 180+60 days or 90 days may be introduced i.e. in any case disposal may be completed within a period of 240 days or 360 days. Heavy penalty upon the party responsible for delay may also be considered.</p> | <p>The suggestion may be accepted and we wish to add that each day dedicated time slots may be allocated for hearing OAs involving claim amount of Rs. 100 crores or more by amending Section 19 (24) of RDB Act. Further, the number of DRTs should be increased and the vacancies of PO, Registrar and RO should be filled up without any time lag.</p> | <p>Agreeable for this suggestion</p> |

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| 8 | Section 19(4)(ii) of the RDB Act directs the defendant to disclose particulars of properties or assets, but it does not prescribe any format for such disclosure. Hence, a format for disclosure of Assets on the lines as provided in the judgment of Hon'ble Delhi High court in the matter of Bhandari Engineers and Builders Pvt. Ltd. V/s MahariAsRaj Joint Venture and Ors. | In absence of the format the Defendants file a very vague disclosure which frustrates the very purpose for which Section 19(4) was inserted by Act of 44 of 2016 with effect from 04.11.2016. | By incorporating a new form being FORM 5 for disclosure of Assets under Section 19(4)(ii). | The formulated affidavits and very comprehensive and useful to determine whether the judgement debtor has the means to satisfy the decree/ award. . The a court has formulated the affidavits on basis of best international practices. Suggestion is agreed upon. | The suggestion is agreed upon. It would restrain borrower/ guarantor to dispose of their assets during pendency of O.A | Incorporation of a specific format for disclosure of Assets by defendants may not impact the disposal of OAs but will be useful during recovery proceedings after disposal of OA. | May be accepted. | Defaulter be invariable be asked to disclose their assets. Otherwise they will loose their right of defence. A suitable amendment in Section 19 (4)(ii) in the line of Form 5 be made. | May be accepted. | We concur with the suggestion. DRTs should be empowered to issue pre-judgment certificates based on the last balance confirmation executed by the borrowers and or last balance sheet of the company and such certificates should be executable pending final disposal of the OA. The amount received during the pendency of the proceedings be made over to the bank upon undertaking for appropriation in the loan account. This in turn will reduce the NPA level and also the interest burden on the borrowers. Necessary amendment may also be brought in empowering Presiding Officer to order for surrendering of passports of borrowers/guarantors.DRTs are giving ex-parte interim orders of stay against sale of assets under SARFAESI and in many cases Banks are directed not to confirm the sale or not to issue sale certificates until further orders. On account of such orders, prospective bidders are reluctant to participate in the bidding process and the entire recovery efforts of the Banks are getting delayed. Similarly DRATs are admitting appeals by condoning the payment of the required amount by the appellant. Resultantly borrowers are filing appeal before DRAT whenever the order of the DRT is disadvantageous to them. We suggest that necessary amendments be brought to remove this lacuna. | Section 19(4) (ii) RDB Act direct the defendant to disclose particulars of properties , assets. Act should provide particular formats. Defendants has to comply with the same failing which DRT may impose penalty on defaulters. RDB Act is a procedural law. Therefore, a uniform procedure to be specified for all DRTs/DRATs. | The suggestion may be accepted and a common format for disclosure of assets/ properties may be prescribed u/s 19(4) (ii). | Agreeable for this suggestion |
| 9 | Adjournments – It needs to be provided that ordinarily in OAs involving claim amount of Rs. 100 Crores or more, no adjournment shall be granted for a period more than 15 days. Secondly, when the OA is taken up for final arguments, then the hearings should take place on day to day basis, barring compelling situations. | Adjournments on one ground or the other are one of the main concerns which cause delay in administration of justice. Hence, it is necessary to deal with this menace in a strict manner. | By making appropriate amendments in DRT Procedure Rules, 1993. | The suggestion is agreed upon | The suggestion is agreed upon. However, it is advisable it is not linked with the value of O.A. It is better to make it applicable irrespective of O.A value | The act already provides a procedure for speedy and expeditious disposal of cases. However, the same is hampered due to positions lying vacant in DRTs. Hence, vacancies should be filled in timely manner. Formation of a separate cadre for DRTs and direct recruitment on permanent basis to the same will help in brining effective functioning in DRTs. | May be accepted. | | May be accepted. | We concur with the suggestion. In addition to that, if adjournments are being sought by Banks, matter be referred to General Manager (Law) of the concerned Bank directly through DRT. We again concur with the suggestion that, when the OA is taken up for final arguments, then the hearings should take place on day to day basis. However, same is only possible when we improvise the present infrastructures of DRTs. | The Adjournments (except medical grounds) may be granted subject to the imposition of pecuniary penalty amount (certain %of OA amount). When the case reaches stages of final argument , the same should be in daily basis. | The suggestion may be accepted by making appropriate amendments in the DRT Procedural Rules 1993. | Agreeable for this suggestion |

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| 10 | To provide a break up of a period of 180 days provided in Section 19(24). | This period of 180 days provided for in Section 19(24) for decision of OAs commences from the date of filing the OA. It will be critical held if a further clarification is incorporated regarding separate time limits for completion of pleadings, hearing of arguments, and for delivery of judgements from the date of conclusion of hearings. | By amending Section 19(24) of RDB Act and DRT Procedure rules. | Not advisable as the same may result in micro regulation of the proceedings by the Act. | The suggested separate time limits for completion of each stage such as hearing, arguments, delivery of judgements may help in disposal of OAs within 180 days as provided in the Act. The said time limits to be fixed irrespective of O.A amount. | May be accepted. | Break up is not necessary | May be accepted. | We concur with the suggestion.DRTs & DRATs are adjudicated by Summary proceedings, in order to expedite the court proceedings. Specific break up of a period of 180 days will definitely expedite the recovery proceedings. | A provision of penalty for non-compliance of such break up period on both the parties | The suggestion may be accepted by amending Section 19 (24) of the RDB Act and DRT Procedure Rules wherein separate time limits for completion of pleadings, hearing of arguments and for delivery of judgement from the date of conclusion of hearing are prescribed. Process Servers/ amin to be engaged for service of notice who will accompany the branch officials during service of notice. Further, City Civil Court Amin should be authorized to serve the notice on behalf of the Branch along with Branch officials. for service of summons/ notice, courier/ email or any other electronic mode such as Whatsapp may be considered as official mode of service of summons. | Agreeable for this suggestion |
| 11 | It needs to be clarified in Section 19 that after completion of pleadings, the OA will be taken up for final arguments. | As per the present system being following in Delhi, after completion of pleadings, the OA is taken up by the Registrar for exhibition of documents. This stage leads to considerable delays due to one or the other reason. This stage is avoidable and moreover any such stage is not contemplated in any provisions of RDB Act or DRT Procedure Rules. Hence the | By Amending Section 19(20) of RDB Act and by amending Rule 12 of DRT Procedure Rules. | OAs must be taken for the final arguments after completion of pleadings in routine matters. | Concur with the opposed suggestion | No change required. | | No change required. | It is further extension of earlier suggestion at Sl. No. 10. | RDB Act is a procedure law. Therefore, a uniform procedure to be specified for all DRTs/DRATs. | The suggestion may be accepted by amending Section 19 (20) of the RDB Act and by amending Rule 12 of the DRT Procedure Rules and a uniform practice should be followed by all the DRTs. Proof affidavit is to be filed along with Recovery Application (RA) and also along with Written Statement by the Defendant. In case Defendant wants to cross examine the Banks's witness the same to be done through exchange of questionnaire and reply by way of notarized affidavit which will reduce time completion of trial of the matter. | Agreeable for this suggestion |

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| 12 | Cases involving claim amount of Rs. 100 Crores or more should be heard by a bench comprising 2 members out of which one should be a judicial members and the other one should be from the financial area. | In many Tribunals , the system of bench is being followed. For example, case in NCLTs, CAT etc are heard by benches only. | By amending the RDB Act. | In the case of a multi member Bench, the final decision will have the benefit of the views of all the members. At the same time practical issues like availability of manpower and the possible delay in decision making process are to be taken into account. Perhaps one possible course may be to take multi member benches for dues beyond a threshold limit , such as Rs. 100 crores , which can be notified from time to time. | Main object of the suggestion is to expediate the disposal of OA with 100 cr and more. If the suggestion is accepted than structure of DRAT needs to be changed. | Amending RDB Act and introducing a bench system would not help in reducing the time taken for disposal of cases. Vacancies in DRTs to be filled in timely manner and additional DRTs to be opened for expeditious disposal of cases. | Not accepted. | Two member bench will not yield good result. | Not accepted. | We concur with the suggestion. In fact, this pattern of adjudication is very much successful in NCLT cases. | The suggestion may be accepted. | the number of DRTs to be increased. The vacancies of PO/ Registrar and RO to be gilled up on the priority basis. A pool of retired officers in the rank of GM (Law), DGM (Law), AGM (Law)from Central Government/ PSU may be created and from this pool of retired officers the post of PO may be filled up after due selection process for smooth functioning of DRTs. Likewise, Recovery Officer may be deputed/ recruited from the Banks/ FI who are in scale of Senior Manager (Law)/ Chief Manager (Law) (who can be serving as well as retired officers) to fill up the vacancies of ROs in DRTs which will create a pool of experienced officers who are well evrved in enforcement of securities. Each DRTs should be fixed up with targets of monthly disposal of cases. | Agreeable for this suggestion |