
(2020) 08 SHI CK 0162

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2399 Of 2020

Hamco Industries Private Limited

APPELLANT

Vs

Kangra Central Cooperative Bank Ltd. And Others

RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Security Interest (Enforcement) Rules, 2002 — Rule 4, 4(1), 5, 6, 6(2), 7, 8, 8(1), 8(2), 8(5), 8(6), 9, 9(1), 9(5)
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(4), 13 (4)(10)(12), 17, 17(1), 17(2), 17(3), 17(4), 17(7), 18, 38(1)(b), 38(2)

Citation : (2020) 08 SHI CK 0162

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : R.L. Sood, Rakesh Kumar Thakur, Ajay Vaidya, Shivank Singh Panta, Ashwani Prashar

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Whether auction proceedings conducted under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of

Securities Interest (SARFAESI) Act, 2002 and Rules framed thereunder can be challenged in writ jurisdiction of this Court by a person, who though

participated in the auction proceedings, but was neither the borrower nor the secured creditor, is the question, which needs to be adjudicated before

merits of the matter can be ventured into.

2. Bare minimum facts required to be noticed at this stage:-

2(i) Respondent No.6 had availed several credit facilities from respondents No.1

& 2 (The Kangra Central Cooperative Bank Limited). It defaulted in meeting its financial obligation towards the bank, therefore, the respondents-bank taking recourse to SARFAESI Act, decided to sell the secured-movable and immovable properties of respondent No.6, by holding E-auction of the same.

2(ii). The E-auction notice for sale of secured movable/immovable assets under the SARFAESI Act read with proviso to Rule 6(2) and Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, was issued for 03.07.2020. Petitioner participated in the E-auction alongwith others. On culmination of auction proceedings, specified LOT- B of the secured assets was allotted to respondent No.4. Sale of Lot-B was statedly confirmed in favour of respondent No.4 on 14.07.2020.

2(iii). Petitioner, a participant in the auction proceedings, instituted instant writ petition inter alia praying for quashing and setting aside the E-auction proceeding held on 03.07.2020, primarily on the ground that respondent bank failed to conduct auction proceedings in accordance with law and declared terms and conditions governing the E-auction.

3. Contentions at this stage:-

3(i) Learned counsel for the appearing respondents raised preliminary objection with respect to maintainability of the instant writ petition. It was contended that an alternate, efficacious, statutory remedy is available to the petitioner under Section 17 of the SARFAESI Act, whereunder petitioner is required to seek redressal of its grievance from the Debts Recovery Tribunal having jurisdiction in the matter. Without availing the statutory remedy in terms of Section 17 of the SARFAESI Act, the petitioner has directly approached this Court, therefore, the writ petition is not maintainable and is liable to be dismissed.

3(ii). Learned senior counsel for the petitioner submitted that the remedy provided under Section 17 of the SARFAESI Act is not available to the petitioner and therefore petitioner is within its right to invoke the extraordinary jurisdiction of this Court. He further submitted that the petitioner is neither the borrower nor the secured creditor. Petitioner is also not aggrieved by respondent bank's exercise of right to auction the secured assets, a measure covered under Section 13(4) of the SARFAESI Act. However, petitioner is aggrieved only against the alleged illegal mode and manner of

conducting the auction proceedings. According to learned Senior Counsel, raising/redressal of such grievance at the behest of participant of auction

proceedings does not fall within the ambit of Section 17 read with Section 13(4) of the SARFAESI Act and therefore he contends that the writ petition

is maintainable.

4. The above submissions lead to following two questions:-

(a) Whether alternate statutory remedy under the provisions of SARFAESI Act is available to the petitioner for redressal of its grievance raised in the

instant writ petition and;

(b) If yes, whether petitioner is entitled to invoke extraordinary jurisdiction of this Court without exhausting the alternate statutory remedy.

4(i) First question:-

4(i)(a) It would be appropriate at this stage to extract hereinafter relevant provision of Section 17 of the SARFAESI Act.

17. Application against measures to recover secured debts (1) Any person (including borrower), aggrieved by any of the measures

referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along

with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which

such measures had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.â"For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not

having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower

shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdictionâ

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining

an account in which debt claimed is outstanding for the time being.-----

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder?

The above extract makes it evident that remedy provided under Section 17 of the SARFAESI Act is against the measures taken by a secured creditor

in terms of Section 13(4) of the Act to recover the secured debt. This remedy is available not only to the borrower, but also to any person

aggrieved against such measures. Petitioner, a participant in the auction proceedings, would therefore fall within the word any person used in

Section 17 (1) of the Act. Further Section 17(2) of the Act empowers learned Tribunal to consider whether any of the measures referred to in Section

13(4) as taken by the secured creditor were in consonance with the provisions of the Act and Rules framed thereunder or not.

4(i)(b) Section 13(4) of the Act.

Whether holding of auction and conduct of auction proceedings, would fall within the scope of measures referred in Section 13(4) of the Act

is the next related question. Section 13(4) of the SARFAESI Act reads as under:-

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse

to one or more of the following measures to recover his secured debt, namely:-

(a) Take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured

asset;

(b) Take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising

the secured asset;

Provided that the right to transfer by way of lease, assignment and sale shall be exercised only where the substantial part of the business of the

borrower is held as security for the debts:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the

management of such business of the borrower, which is relatable to the security or debts;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is

due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.â??

In terms of above provision, a secured creditor for recovery of its secured assets can take recourse to various measures indicated in Section 13(4) of

the Act including taking possession of secured assets of the borrower, the right to transfer the assets by way of lease, assigning or sale. Notifying the

auction and conducting the auction proceedings are steps in furtherance of sale of secured assets for realising the secured debt. Therefore, conduct of

auction proceedings would fall within the scope of measures contemplated in Section 13(4) of SARFAESI Act.

4(i)(c) Additionally it may be noticed here that the impugned auction proceedings were initiated by the respondent-bank under the Security Interest

(Enforcement) Rules, 2002 (in short referred to as the Rules) framed in exercise of powers conferred by Section 38(1)(b), Section 38(2) read with

Section 13(4)(10)(12) of the SARFAESI Act.

Rule 4 of these Rules lays down the procedure to be followed after issue of demand notice for realising the amount by adopting any one or more of

measures specified in Section 13(4) of the Act for taking possession of movable secured assets. Rule 5 pertains to valuation of movable secured

assets and Rule 6 pertains to actual sale of movable secured assets. Rule 7 provides for issue of sale certificate on sale of movable secured assets.

Similarly, a complete mechanism is provided for sale of secured immovable assets under Rule 8 & 9. Rule 6 & 8 under which recourse was taken by

the respondent bank for conducting E-auction are extracted hereinafter:-

â??Rule: 6. Sale of movable secured assets.

(1) The authorised officer may sell the moveable secured assets taken possession under sub-rule (1) of rule 4 in one or more lots by adopting any of

the following methods to secure maximum sale price for the assets, to be so sold-

- (a) obtaining quotations from parties dealing in the secured assets or otherwise interested in buying such assets; or
- (b) inviting tenders from the public; or
- (c) holding public auction including through e-auction mode; or
- (d) by private treaty.

(2) The authorised officer shall serve to the borrower a notice of thirty days for sale of the movable secured assets, under sub-rule (1): Provided that

if the sale of such secured assets is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall

cause a public notice in the Form given in Appendix II-A to be published in two leading news papers, including one in vernacular language having wide circulation in the locality.

Provided further that if sale of movable property by any one of the methods specified under sub-rule (1) fails and the sale is required to be conducted

again, the authorised officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower for any subsequent sale.

(3) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the secured creditors and the proposed purchaser.

(4) The authorised officer shall upload the detailed terms and conditions of the sale of the movable secured assets on the web-site of the secured

creditor, which shall include,

- (a) details about the borrower and the secured creditor;
- (b) complete description of movable secured assets to be sold with identification marks or numbers, if any, on them;
- (c) reserve price of the movable secured assets , if any, and the time and manner of payment;
- (d) time and place of public auction or the time after which sale by any other mode shall be completed;
- (e) deposit of earnest money as may be stipulated by the secured creditor;
- (f) any other terms or conditions which the authorised officer considers it necessary for a purchaser to know the nature and value of movable secured assets.

8. Sale of immovable secured assets (1) Where the secured asset is an

immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix-IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer.

(2A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule(2) of Rule 8.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as an owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:--

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction; or

(d) by private treaty.

(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

PROVIDED that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured

creditor shall cause a public notice in the Form given in Appendix IV-A to be

published in two leading newspapers; including one in vernacular language having wide circulation in the locality.

(7) Every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web-site of the secured creditor, which shall include;-

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price, below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other terms and conditions, which the authorised officer considers it necessary for a purchaser to know the nature and value of the property.

(8) Sale by any method other than public auction or public tender, shall be on such terms as may be settled between the secured creditors and the proposed purchaser in writing parties in writing.â??

Rule 9 provides for time of sale, issue of sale certificate and delivering of possession etc. in the following manner:-

Rule: 9. Time of sale, Issue of sale certificate and delivery of possession, etc.

(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the

public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub rule (5) of rule 8 fails and sale is required to be

conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the

authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by

sale price is less than the reserve price, specified under sub-rule (5)

of rule 8:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the

secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be,

pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer

conducting the sale and in default of such deposit, the property shall be sold again;

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of

confirmation of sale of the immovable property or such extended period 4[as may be agreed upon in writing between the purchaser and the secured

creditor, in any case not exceeding three months.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor] and the property shall be

resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power

of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with

him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to

meet the contingencies or further cost, expenses and interest as may be determined by him.

Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of money deposited by the

purchaser such surplus shall be paid to the purchaser within fifteen day, from date of finalisation of the sale.

(8) On such deposit of money for discharge of the encumbrances, the authorised

officer shall issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make, the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.â??

It is evident from the above Rules that measure of sale of secured assets of the borrower, adopted by the secured creditor under Section 13(4) of the

SARFAESI Act for realising the secured debts is inclusive of the methods/modes adopted for such sale as well as complete proceeding in furtherance

of such modes till their logical conclusion. Therefore sale of movable/immovable secured assets by E-auction, the mode/manner of conducting the

auction as well as actual conduct of auction proceedings would fall within the scope of Section 13(4) of the Act.

4(i)(d) In (2018) 1 SCC 626 titled Agarwal Tracom Private Limited Vs. Punjab National Bank and others ,the question for consideration before

Honâ??ble Apex Court was whether remedy of auction-purchaser in challenging the action of secured creditor in forfeiting the deposit lies in filing

an application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal or in filing writ petition under Articles 226 & 227 of the

constitution of India. It was held that auction purchaser falls within the definition of â??any personâ?? specified under Section 17(1) and that Section

17(2) of the Act empowers the Tribunal to examine all the issues arising out of measures taken under Section 13(4) including the measures taken by

the secured creditor under the Rules for disposal of secured assets. Relevant paras from the above referred judgment are reproduced hereinafter:-

â??26. Reading of the aforementioned Sections and the Rules and, in particular, Section 17(2) and Rule 9(5) would clearly go to show that an action

of secured creditor in forfeiting the deposit made by the auction purchaser is a part of the measures taken by the secured creditor under Section 13(4).

27. The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including

the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression ""provisions of this

Act and the Rules made thereunder"" occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under

Section 13(4) as also includes therein the action taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other

words, the measures taken under Section 13 (4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured

assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Section 17(2),(3) and (4) to examine all

the steps taken by the secured creditor with a view to find out as to whether the sale of secured assets was made in conformity with the requirements

contained in Section 13(4) read with the Rules or not?

29. In our view, therefore, the expression ""any of the measures referred to in Section 13(4) taken by secured creditor or his authorized officer"" in

Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section 13(4).

30. The auction purchaser (appellant herein) is one such person, who is aggrieved by the action of the secured creditor in forfeiting their money. The

appellant, therefore, falls within the expression ""any person"" as specified under Section 17(1) and hence is entitled to challenge the action of the

secured creditor (PNB) before the DRT by filing an application under Section 17(1) of the SARFAESI Act.â??

Accordingly remedy under Section 17 of the SARFAESI Act is definitely available to â??any personâ?? in respect of auction proceedings allegedly

having been conducted illegally. Petitioner therefore has a statutory alternate remedy available to it under Section 17 of the SARFAESI Act for

redressal of its grievance raised in the instant writ petition. Point is answered accordingly.

4(ii) Second question:-

4(ii)(a) Honâ??ble apex court in (2018) 3 SCC 85 titled as Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C, .held that

writ petition filed by an aggrieved party without exhausting the statutory remedy available under the SARFAESI Act and Recovery of Debts Due to

Banks and Financial Institution Act is not maintainable. The broader principles of

law enunciated in the judgment are:-

1. The statement of objects and reasons of the SARFAESI Act states that the banking and financial sector in the country was felt not to have a level

playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not have the power to take

possession of securities and sell them. The existing legal framework relating to commercial transactions had not kept pace with changing commercial

practices and financial sector reforms resulting in tardy recovery of defaulting loans and mounting non performing assets of banks and financial

institutions. The Narasimhan Committee I and II as also the Andhyarujina Committee constituted by the Central Government Act had suggested

enactment of new legislation for securitisation and empowering banks and financial institutions to take possession of securities and sell them without

court intervention which would enable them to realise long term assets, manage problems of liquidity, asset liability mismatches and improve recovery.

The proceedings under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, with passage of time, had become synonymous with

those before regular courts affecting expeditious adjudication.

2. The SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the

remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal

under Section 18.

3. High Court should not entertain the writ petition in view of the adequate alternate statutory remedies available under the SARFAESI Act. Such writ

petitions should be dismissed at the threshold on the ground of maintainability.

4. High Court will not ordinarily entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person.

This rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other

financial institutions. While dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must

keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as

they not only contain comprehensive procedure for recovery of the dues but also

envisage constitution of quasijudicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

5. High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able

to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, Whirlpool*

Corpn. v. Registrar of Trade Marks and Harbanslal Sahnia v. Indian Oil Corpn. Ltd . and some other judgments, then the High Court may, after

considering all the relevant parameters and public interest, pass an appropriate interim order.

Honâ??ble Supreme Court further observed that It was a matter of serious concern that despite repeated pronouncements, the High Courts continue

to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing

orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. It was hoped that in future the

High Courts would exercise their discretion in such matters with greater caution, care and circumspection.

In (2019) 13 SCC 497 titled as *ICICI Bank Limited and others Vs. Umakanta Mohapatra and others*. The above legal position was reiterated in

following manner:-

â?? 2. Despite several judgments of this Court, including a judgment by Honâ??ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in

Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C ., (2018) 3 SCC 85 ,the High Courts continue to entertain matters which

arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting

interim orders infavour of persons who are NonPerforming Assets (NPAs).3. The writ petition itself was not maintainable, as a result of which, in

view of our recent judgment, which has followed earlier judgments of this Court, held as follows:

â?? 17. We cannot help but disapprove the approach of the High Court for

reasons already noticed in *Dwarikesh Sugar Industries Ltd. vs. Prem*

Heavy Engineering Works(P) Ltd.and Another, (1997) 6 SCC 450, observing:

“32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.”

4. The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside.

Relying upon above judgments, this Court vide judgment dated 20.03.2020 dismissed CWP No.1362/2020, titled as *M/s Himalaya Pack & Print and*

others vs. Punjab and Sind Bank and others, which was instituted by the borrower against the rejection of its case for One Time Settlement after the

bank approached the concerned District Magistrate under the SARFAESI Act for delivery of possession.

4(ii)(b) Learned Senior counsel for the petitioner relying upon the judgment passed by the Hon^{ble} Apex Court in (2020) 2 SCC 442 titled as

Balkrishna Ram Vs. Union of India & another, contended that rule of alternate remedy is a rule of discretion and not a rule of jurisdiction. Merely

because the Court may not exercise its discretion is not a ground to hold that it has no jurisdiction. Reliance has been placed upon following para-14 of

the judgment.

“14. It would be pertinent to add that the principle that the High Court should not exercise its extraordinary writ jurisdiction when an

efficacious alternative remedy is available, is a rule of prudence and not a rule of law. The writ courts normally refrain from exercising

their extraordinary power if the petitioner has an alternative efficacious remedy. The existence of such remedy however does not mean that

the jurisdiction of the High Court is ousted. At the same time, it is a well settled principle that such jurisdiction should not be exercised when

there is an alternative remedy available. The rule of alternative remedy is a rule

of discretion and not a rule of jurisdiction. Merely because the Court may not exercise its discretion, is not a ground to hold that it has no jurisdiction. There may be cases where the High Court would be justified in exercising its writ jurisdiction because of some glaring illegality committed by the AFT. One must also remember that the alternative remedy must be efficacious and in case of a NonCommissioned Officer (NCO), or a Junior Commissioned Officer (JCO); to expect such a person to approach the Supreme Court in every case may not be justified. It is extremely difficult and beyond the monetary reach of an ordinary litigant to approach the Supreme Court. Therefore, it will be for the High Court to decide in the peculiar facts and circumstances of each case whether it should exercise its extraordinary writ jurisdiction or not. There cannot be a blanket ban on the exercise of such jurisdiction because that would effectively mean that the writ court is denuded of its jurisdiction to entertain such writ petitions which is not the law laid down in *L. Chandra Kumar*.??

Reliance has also been placed upon judgment in 2010 (8) SCC 110 titled *Union of India Vs. Satyavati Tandon* ,to contend that rule of exhaustion of alternate remedy is a rule of discretion and not one of compulsion. Learned senior counsel for the petitioner also relied upon (2014) 5 SCC 651 titled *J. Rajiv Subramaniam & Another Vs. Pandiyas & others* to contend that respondent-bank was duty bound to conduct the auction in accordance with mandate of law and in not doing so, it failed to discharge its public duty. For enforcement of this public duty, discretion for invoking extraordinary jurisdiction under article 226 of the Constitution of India should be exercised.

4(ii)(c) Honâ??ble Apex Court in *Mathew K.Câ??s*. case (supra) as well as in *ICICI Bank Limitedâ??s* case (supra) has clearly held that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions and provides remedy of appeal under Section 17 to any person aggrieved against the measures adopted by the secured creditor under Section 13(4) of the SARFAESI Act before the Debts Recovery Tribunal followed by right to appeal before the Appellate Tribunal under Section 18. It has been clearly directed in the aforesaid judgments that in view of adequate alternate statutory remedy available to the aggrieved person, the writ petition cannot be

entertained. We do not find any extraordinary circumstances in the instant case justifying any departure from the settled route of alternate statutory remedy. Second point is answered accordingly.

5 In view of foregoing discussions, we hold that:-

(a) Petitioner, a participant in the impugned auction proceedings falls within the definition of “any person” specified under Section 17(1) of the

SARFAESI Act & hence is entitled to challenge the impugned action of secured creditor before the Debts Recovery Tribunal.

(b) Challenge to auction proceedings on the ground of same having been conducted in violation of mandate of law/terms and conditions, falls within the term “measures taken by secured creditor” under Section 13(4) of the Act read with Rules 6, 8 & 9 of the Security Interest (Enforcement)

Rules.

(c) Section 17(2) of the Act empowers the Debts Recovery Tribunal to examine all the issues arising out of measures taken by the secured creditor

under Section 13(4) of the Act & Rules framed thereunder.

(d) On the ground of availability of alternate, statutory remedy to the petitioner in filing application under Section 17(1) of the SARFAESI Act before the Tribunal, instant writ petition is therefore not maintainable.

Instant writ petition is therefore dismissed as not maintainable alongwith all pending application(s).

While availing the alternate, statutory remedy, it shall be open to the petitioner to seek exemption of the time period spent by it in pursuing instant writ

petition from being counted towards limitation. We hope and trust that such prayer shall be sympathetically considered by the learned Tribunal.