

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

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Reserved on: 31st January, 2019

Decided on: 19th August, 2019

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W.P.(CRL) 2397/2018 & Crl.M.A.29851/2018

MR. MUNISH KUMAR BHUNSALI

.. Petitioner

Represented by: Mr.Rajeev Mehra, Sr.Advocate with
Mr.Pallav Saxena, Ms.Bindu Das and
Mr.Abhilash Attri, Advocates

versus

KOTAK MAHINDRA BANK LTD.

.. Respondent

Represented by: Mr.Ravi Gupta, Sr.Advocate with
Mr.Mahip Dutta, Mr.Sachin Jain and
Ms.Diya Kapoor, Advocates

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. M/s. KEW Precision Parts Private Limited (in short the company) approached the respondent/ Bank for availing financial facilities which were sanctioned vide letter dated 23rd November, 2012. For the said facilities Munish Kumar Bhunsali, the petitioner herein besides Kumud Jain and Mohit Kumar Bhunsali executed several security documents to secure the facilities. The company again approached the respondent/ Bank for renewal of existing financial facilities in March, 2013 which were renewed vide the letter dated 11th March, 2013. Again the above-noted persons executed several security documents to secure the facilities. These financial facilities were further renewed vide letter dated 7th February, 2014 and as noted the petitioner, Munish Kumar Bhunsali is a guarantor having executed

guarantee documents in relation to the financial facilities taken by the company. The petitioner Munish Kumar Bhunsali created security interest in favour of the applicant/Bank for repayment of the term loan by way of deposit of title deeds of immovable property and extended the mortgage charge from time to time in respect of the entire second floor of property bearing No. B-384 situated at New Friends Colony admeasuring 2976.62 sq.ft. In terms of the financial facilities the petitioner and the company were required to repay the principal amount of loan in accordance with the repayment schedule besides interest and other charges, however the company defaulted in re-paying the principal and interest amount along with other charges and thus the account of the company was classified as Non-Performing Assets (NPA) on 30th September, 2015. Further, petitioner herein who stood as guarantor also failed to make repayment of the outstanding dues.

2. The respondent/Bank through its authorized officer issued a statutory demand notice on 19th November, 2015 to the company and its three guarantors under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short the SARFAESI Act) and called upon them to make the payment for a sum of ₹18,65,05,035.86/- (Rupees Eighteen Crores Sixty Five Lakhs Five Thousand Thirty Five and Paise Eighty Six only) due on 17th November, 2015 together with further interest and charges starting from 18th November, 2015 till actual payment within 60 days from the date of receipt of the demand notice failing which the bank intimated the company that it would be entitled to exercise all or any of its rights under Section 13(4) of SARFAESI Act in respect of the mortgaged property.

3. Despite the expiry of 60 days of the receipt of demand notice under Section 13(3) of the SARFAESI Act no payment was made. Vide their letter dated 22nd January, 2016 the company raised objections/representations under Section 13(3) of the SARFAESI Act before the authorized officer of the bank against demand notice dated 19th November, 2015 which were duly adjudicated upon under Section 13(3A) of the SARFAESI Act, vide reply letter dated 16th February, 2016, whereafter action under Section 13(4) of the SARFAESI Act was initiated and the authorized officer proceeded to take possession of the mortgaged property on 25th February, 2016. However, the authorized officer was not able to take the physical possession as borrower, mortgagors and guarantors and their authorized representatives refused to hand-over the peaceful and vacant possession of the secured asset and thus only took the symbolic possession of the mortgaged property on 25th February, 2016 which was published in the local newspaper on 26th February, 2016. Thus the respondent/Bank was constrained to approach the Court of learned Chief Metropolitan Magistrate, South East District for exercising its power under Section 14 of the SARFAESI Act and to take physical possession of the said mortgaged property and to hand-over the same to the authorized officer of the respondent/Bank.

4. The application of the Bank under Section 14 of SARFAESI Act was allowed by the learned CMM vide order dated 28th April, 2016. The petitioner preferred a Securitization Application under Section 17 of the SARFAESI Act against the respondent/Bank before the Debt Recovery Tribunal, Lucknow (in short DRT Lucknow) being SA No. 250/2016 and an interim order dated 26th April, 2016 was passed restraining the respondent/

Bank from proceeding further pursuant to demand notice dated 19th November, 2015 and possession notice dated 25th February, 2016. Vide the final order dated 10th April, 2017 the DRT Lucknow allowed SA No. 250/2016 setting aside the action initiated by the Bank and directed the Bank to hand-over the possession of the secured assets to the petitioner and the company. However, liberty was granted to the Bank to recover the outstanding dues by proceeding afresh under the provisions of SARFAESI Act.

5. Pursuant to the final order dated 10th April, 2017 of the DRT Lucknow, the Bank through its officer issued a fresh statutory demand notice on 13th December, 2017 under Section 13(2) of the SARFAESI Act calling upon the company and the petitioner to pay a sum of ₹34,79,70,950/- (Rupees Thirty Four Crores Seventy Nine Lakhs Seventy Thousand Nine Hundred and Fifty only) due as on 7th December, 2017 together with further interest and other charges starting from 8th December, 2017 till actual realization thereon within 60 days of the receipt of the demand notice, failing which the Bank was entitled to exercise its right under Section 13(4) of the SARFAESI Act in respect of the mortgaged property. The demand notice was duly served and copy of the same was also published in local newspapers on 3rd January, 2018. The company and the petitioner besides the other guarantors failed to make payment even after the expiry of 60 days of receipt of the demand notices under Section 13(2) of the SARFAESI Act and send their objections vide letter dated 9th February, 2018 against the demand notice dated 13th December, 2017. The said objections under Section 13(3) of the SARFAESI Act were duly adjudicated under Section 13(3A) of the SARFAESI Act vide reply letter dated 23rd February, 2018

and the authorized officer proceeded to take possession of the mortgaged property on 17th April, 2018. However no peaceful possession could be taken and thus symbolic possession of the mortgaged property was taken on 17th April, 2018 which fact was also published on 19th April, 2018 in local newspapers. The Bank thereafter filed an application under Section 14 of the SARFAESI Act before the learned CMM which was allowed vide the order dated 16th July, 2018 appointing a receiver to take physical possession of the secured asset. Aggrieved by the order dated 16th July, 2018 the petitioner filed an application for recalling thereon which was dismissed by the learned CMM vide order dated 20th July, 2018. Hence the present petition challenging the two orders of the learned CMM dated 16th July, 2018 and 20th July, 2018.

6. In the application filed by the petitioner seeking recalling of the order dated 16th July, 2018 the principal plea of the petitioner was that the respondent bank cannot be permitted to take recourse to enforcement measures contemplated under Sections 13(4) and 14 of the SARFAESI Act because the representation/objection dated 9th February, 2018 raised in response and in opposition to the demand notice dated 13th December, 2017 issued by the respondent bank under Section 13(2) of the SARFAESI Act had not been disposed by the bank till date despite the fact that the representation/objection dated 9th February, 2018 was duly served on the respondent bank on 12th February, 2018. Further, the respondent bank without disposing the representation/objection dated 9th February, 2018 of the petitioner in violation to the mandate of Section 13 (3A) of the SARFAESI Act, proceeded to issue possession notice dated 17th April, 2018 which was affixed on the property in question.

7. The possession notice dated 17th April, 2018 was also objected to by the petitioner vide its letter dated 21st April, 2018 in which a categorical plea was taken regarding non-disposal of the representation/objection dated 9th February, 2018. The letter dated 21st April, 2018 of the petitioner has also been delivered/served on the respondent bank on 24th April, 2018. It is contended that in violation of the provisions of law, respondent bank published the possession notice dated 17th April, 2018 in Business Standard newspaper. Further, the order dated 16th July, 2018 was obtained by the respondent bank by perpetrating fraud on the Court and suppressing material facts and being nullity is liable to be recalled.

8. Challenging the order dated 16th July, 2018 learned counsel for the petitioner contends that the learned CMM has not complied with the provisions of the first and second proviso to Section 14(1) of SARFAESI Act 2002 which mandated the learned CMM to satisfy himself on the contents of the affidavit required to be filed by the secured creditor/authorized officer relating to compliance of provisions of SARFAESI Act 2002 by verifying the same. Reliance is placed on the decisions reported as (2013) 9 SCC 620 Standard Chartered Bank Vs. V. Noble Kumar & Ors., MANU/MH/1873/2016 Housing Development financial corporation Ltd. Vs. District Magistrate, Washim & Ors., 2014 SCC OnLine Guj 9203 Harsora Hotels Pvt. Ltd. & Ors. Vs. Kotak Mahindra Bank Ltd. and MANU/CG/0417/2017 G.P.Ispat Pvt. Ltd. & Ors. Vs. Authorized Officer and chief Manager, State Bank of India & Ors.

9. Learned counsel for the petitioner reiterates that the respondent bank did not comply with the mandate of Section 13 (3A) of SARFAESI Act. He further contends that respondent has placed on record before the learned

CMM letter dated 23rd February, 2018 which was never received by the petitioner and no proof of service/delivery of the letter dated 23rd February, 2018 was filed before the learned CMM. Under Section 13 (3A) of the SARFAESI Act a secured creditor is not only required to take a decision on the representation/objection raised by a borrower to its demand notice but also to communicate the same to the borrower. The said provision is mandatory and inviolable as held in the following decisions:

- (i) 2018 SCC Online SC 237 ITC Ltd. Vs. Blue Coast Hotels Ltd.;
- (ii) 2010 SCC Online Bom 1733 Vinay container Services Pvt. Ltd. Navi Mumbai & Ors. Vs. Axis Bank, Mumbai;
- (iii) 2011 SCC Online Bom 86 Clarity Gold Pvt. Ltd. & Anr. Vs. State Bank of India & Ors.;
- (iv) 2008 SCC Online Ori. 47 Krushna Chandra Sahoo Vs. Bank of India & Ors.;
- (v) MANU/KA/1014/2006 Sunanda Kumari Vs. Standard Chartered BankTC Ltd.;
- (vi) 2006 SCC Online Guj 68 Tensile Steel Ltd. & Ors. Vs. Punjab & Sind Bank & Ors.

10. It is for placing incorrect facts and that the letter of the bank dated 23rd February, 2018 had not been received by the petitioner, the petitioner sought recall of the order dated 16th July, 2018 and initiated proceedings under Section 340 Cr.P.C. against the respondent and its authorized officers which application has been dismissed by the learned CMM by the impugned order dated 20th July, 2018.

11. The preliminary objection raised by learned counsel for the respondent bank is that the present petition under Article 226 of the

Constitution of India is not maintainable as the petitioner has a remedy of filing an appeal. Reliance in this regard is placed on the decisions reported as 2014 (14) DRJ 207 Bijender Kumar Gupta Vs. Corporation Bank of India, Manu/SC/0054/2018 Authorized Officer, State Bank of Travancore & Ors. Vs. Mathew K.C. and (2010) 8 SCC 110 United Bank of India Vs. Satyavati Tandon. Reference is also made to the decision reported as Manu/MP/0361/2018 Sunil Garg Vs. Bank of Baroda & Ors.

12. Learned counsel for the respondent contends that a conjoint and harmonious reading of Sections 13(4), 14(3) and 17 of the SARFAESI Act does not bar the remedy of the borrower under Section 17 of the SARFAESI Act. He further contends that the word ‘communication’ as used in proviso to Section 13(3A) has been interpreted by the courts to mean ‘to impart, confer or transmit information’. Thus, communication of the order is essential and not its actual receipt by the borrower.

13. Opposing the contentions of learned counsel for the petitioner that the petitioner had also sent a letter dated 21st April, 2018 learned counsel for the respondent submits that once the representation of the petitioner was rejected, any further communication was immaterial and the obligation on the respondent bank was only to decide objection under Section 13(3A) and not any further continuous representations made.

14. On the contentions raised by learned counsels, the three issues which arise for consideration in the present petition are :-

- (i) Whether the present writ petition is maintainable or the petitioner has an alternate remedy in view of Section 17 of the SARFAESI Act?

- (ii) Whether proviso to Section 13(3A) requiring “communication” of the reasons of rejection contemplates service of the reasons of rejection on the borrower mandatorily?
- (iii) Whether the impugned orders of the learned CMM are vitiated for non placing of complete facts on affidavit by the respondent resulting in non-compliance of the mandate of first and second provisos to Section 14(1) of the Act which aspect cannot be decided in proceedings under Section 17 of the Act?

15. Before proceeding to decide the issues raised in the present petition it would be appropriate to note Sections 13(1), (2), (3), (3A), (4), Section 14 and Section 17 of the SARFAESI Act as under:-

*“13. Enforcement of security interest.-
(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.*

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub- section (4).

Provided that –

(i) *the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and*

(ii) *in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;*

(3) *The notice referred to in sub- section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non- payment of secured debts by the borrower.*

(3-A) *If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:*

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17 or the Court of District Judge under Section 17-A.

(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 business 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 or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt;

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 the debt;

(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.

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.- (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured

creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor.

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a nonperforming asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets ²[within a period of thirty days from the date of application:

Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,-

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub- section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorized by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.”

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.—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 jurisdiction-

- (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.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures

referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,-

- (a) declare the recourse to any one or more measures referred to in-sub-section (4) of section 13 taken by the secured creditor as invalid; and*
- (b) restore the possession of the secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and*
- (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]*

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt."

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16. As noted above, explanation to Section 17(1) clearly notes that the communication of the reasons to the borrower by the secured creditors 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 to make an application to the Debt Recovery Tribunal under sub-section (1) of Section 17 of the SARFAESI Act. Thus, as per the explanation communication of the reasons do not give cause of

action to the borrower to file an application under Section 17 of the SARFAESI Act. In the present case, grievance of the petitioner is not the communication of the reasons for rejection but the non-communication of the reasons for rejection and the consequential impugned orders of the learned CMM under Section 14 of the Act.

17. Supreme Court in the decision reported as (2014) 6 Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited & Ors. adverting to Sub-Section (3) of Section 14 of the SARFAESI Act which provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorized done in pursuance to Section 14 shall be called in question in any Court or before any authority, held that in view of this statutory bar, the remedy of filing a writ petition under Article 226 and 227 of the Constitution is not affected. It was held:

“29. Sub-section (3) of Section 14 of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorised by the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of Section 14 shall be called in question in any court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the District Magistrate and this decision cannot be challenged before any court or any authority. But this Court has repeatedly held that statutory provisions attaching finality to the decision of an authority excluding the power of any other authority or court to examine such a decision will not be a bar for the High Court or this Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power vested by the Constitution. To quote, the observations of this Court in Columbia Sportswear Co. v. Director of Income Tax[(2012) 11 SCC 224] : (SCC p. 234, para 17)

“17. Considering the settled position of law that the powers of this Court under Article 136 of the Constitution and the powers of the High Court under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the legislature making the decision of the tribunal final or conclusive, we hold that sub-section (1) of Section 245-S of the Act insofar as it makes the advance ruling of the authority binding on the applicant, in respect of the transaction and on the Commissioner and Income Tax Authorities subordinate to him, does not bar the jurisdiction of this Court under Article 136 of the Constitution or the jurisdiction of the High Court under Articles 226 and 227 of the Constitution to entertain a challenge to the advance ruling of the authority.”

In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law.”

18. However, it is trite law that if an alternate efficacious remedy is available, the High Court would not exercise its discretionary jurisdiction under Article 226 of the Constitution of India. Supreme Court in the decision reported as (2010) 8 SCC 110 United Bank of India Vs. Satyawati Tondon & Ors. after considering in detail, the scheme under the SARFAESI Act held that a writ petition ought not to be entertained in view of the alternate statutory remedy available to the aggrieved under Section 17 before the Tribunal and appellate remedy under Section 18 before the Appellate Tribunal as under:

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is

available to the aggrieved person and that 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. In our view, 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 quasi-judicial 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.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, 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. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

19. It is thus required to be seen in the present case whether the impugned orders passed by the learned CMM result in a situation where the petitioner is left remediless and that the only recourse available to him is by filing of the writ petition. In case the basic grievance of the petitioner can be remedied in an application under Section 17 of the SARFAESI Act, the present petition would have to be dismissed for the alternate remedy available.

20. Following the decision in the Standard Chartered Bank (supra) the Division Bench of Madhya Pradesh High Court in Sunil Garg's case (supra) held:-

5. Sub-section (4) of section 13 of the Act authorizes the secured creditor to take possession of the secured assets including that the secured creditor has a right to transfer by way of lease, assignment or sale for realising the secured debts. Still further, the District Magistrate or the Chief Metropolitan Magistrate or any Officer authorised by him is competent to take possession of any secured asset. There is no distinction between symbolic and physical possession either under section 13(4) or under section 14 of the Act or for that matter in any other provisions of the Act or the Rules made thereunder.

6. The Supreme Court in the judgment in Transcore's case (supra), was examining the right to take possession of the secured assets which the secured creditor may exercise. The Supreme Court held that the dichotomy between symbolic and physical possession does not find place in the Act. When the creditor obtains ownership of or interest in the property concerned, the property is appropriated to the satisfaction of the debt. Therefore, when the Bank takes the possession in terms of section 13(4) of the Act, the aggrieved person has a right to file an application under section 17 of the Act.

7. The invocation of jurisdiction of the District Magistrate under section 14 of the Act is one of the modes available to the secured creditor to take possession of the secured assets. Therefore, when the District Magistrate under section 14 of the Act hands over possession to the secured creditor, it is possession as is contemplated under sub-section (4) of section 13 of the Act. Therefore, for an aggrieved person against an action taken by the secured creditor either under sub-section (4) of section 13 or under section 14 of the Act, the remedy is by way of an application under section 17 of the Act before the Tribunal.

8. In *G.P. Ispat's case (supra)*, the attention of the Chhattisgarh High Court was not drawn to the earlier judgment of the Supreme Court in *Transcore's case (supra)*. Therefore, we are unable to agree with the reasoning recorded given in *G.P. Ispat's case (supra)*. The Full Bench of Allahabad High Court in *N.C.M.L. case (supra)*, has examined the judgment of Supreme Court in *Transcore's case (supra)*, and held that the said judgment deal with the right of secured creditor to take possession under section 13(4) of the Act. Therefore, the same was found not applicable to hold that an order passed by the District Magistrate to take possession under section 14 of the Act can be challenged by way of an application under section 17 of the Act. The relevant extract from the judgment in the case of *N.C.M.L.* reads as under:

"19.3. The judgment in *Transcore (supra)*, as quoted above, needs to be read in the light of the question that fell for consideration. The question in short was whether taking possession contemplated under section 13(4) comprehends the power to take actual possession. While dealing with this question, the Supreme Court considered the relevant Rules which prescribe the procedure for taking over possession of secured assets. The Supreme Court did not consider the question whether an application under section 17(1) of the Act could be filed even before the measures/possession are/is taken as contemplated under sub-section (4) of section 13. In other words, the Supreme Court did not consider the question whether an application under section 17(1) of the Act is maintainable before the measures, such as taking possession as provided for under section 13(4)(a) is available. A notice under rule 8 of the rules, as prescribed with Appendix IV is required to be given to the borrower who has failed to repay the amount informing him and the public that the bank has taken possession of the property under sub-section (4) of section 13, read with rule 9 of the rules."

We are unable to agree with the Full Bench judgment of Allahabad High Court in N.C.M.L.'s case (supra), as when the secured creditor invokes jurisdiction of the District Magistrate, it is, in fact, invoking right to take possession under section 13(4) of the Act itself.

9. The reliance on the judgment of Supreme Court in Standard Chartered Bank. v. V. Noble Kumar and others, reported as MANU/SC/0874/2013 : (2013) 9 SCC 620, again does not advance the argument raised by the petitioner. In Noble Kumar's case (supra), the High Court in the order under appeal held that when the creditor faces resistance to take possession of the secured assets only then the creditor could resort to the procedure under section 14 of the Act. The argument raised was that action to take possession under section 13(4) or section 14 of the Act are alternate procedures. The Supreme Court set aside the finding recorded and held as under:

"20. In every case where the objections raised by the borrower are rejected by the secured creditor, the secured creditor is entitled to take possession of the secured assets. In our opinion, such action-having regard to the object and scheme of the Act-could be taken directly by the secured creditor. However, visualising the possibility of resistance for such action, Parliament under section 14 also provided for seeking the assistance of the judicial power of the State for obtaining possession of the secured asset, in those cases where the secured creditor seeks it.

21. Under the scheme of section 14, a secured creditor who desires to seek the assistance of the State's coercive power for obtaining possession of the secured asset is required to make a request in writing to the Chief Metropolitan Magistrate or District Magistrate within whose jurisdiction, secured asset is located praying that the secured asset and other documents

relating thereto may be taken possession thereof. The language of section 14 originally enacted purportedly obliged the Magistrate receiving a request under section 14 to take possession of the secured asset and documents, if any, related thereto in terms of the request received by him without any further scrutiny of the matter.

26. It is in the above-mentioned background of the legal frame of sections 13 and 14, we are required to examine the correctness of the conclusions recorded by the High Court. Having regard to the scheme of sections 13 and 14 and the object of the enactment, we do not see any warrant to record the conclusion that it is only after making an unsuccessful attempt to take possession of the secured asset, a secured creditor can approach the Magistrate. No doubt that a secured creditor may initially resort to the procedure under section 13(4) and on facing resistance, he may still approach the Magistrate under section 14. But, it is not mandatory for the secured creditor to make attempt to obtain possession on his own before approaching the Magistrate under section 14. The submission that such a construction would deprive the borrower of a remedy under section 17 is rooted in a misconception of the scope of section 17.

27. The "appeal" under section 17 is available to the borrower against any measure taken under section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under section 13(4). Alienating the asset either by lease or sale etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, section 14 authorises the Magistrate only to take

possession of the property and forward the asset along with the connected documents to the borrower (sic the secured creditor). Therefore, the borrower is always entitled to prefer an "appeal" under section 17 after the possession of the secured asset is handed over to the secured creditor, section 13(4)(a) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under section 17 is available."

12. A Division Bench of this Court in the case of India Sent Asset Reconstruction Co. Ltd. v. State of M.P. and others Writ Appeals No. 489/2016 (Indore Bench) decided on 21.12.2017 has held that there is effective remedy to approach the Tribunal under section 17 of the Act in respect of an order passed under section 14 of the Act. It was held that an order under section 14 of the Act could be challenged before the Tribunal under section 17 of the Act. The relevant extract from the judgment reads as under:

"22. On due consideration of the aforesaid and the law laid down by the Five Judges Bench of this Court in the case of Jabalpur Bus Operators Association and others v. State of M.P. and another [MANU/MP/0423/2002 : 2003 (1) JLJ 105 : 2003 (1) MPLJ 513], so also the fact that judgment of United Bank of India, Jagdish Singh v. Heeralal and others, MANU/SC/1126/2013 : (2014) 4 SCC 479, were not considered while upholding the view taken in the matter of Mis. Ambika Solvex Ltd. v. State Bank of India and others [(2016) SCC Online MP 5772], we are more incline to follow the earlier judgment of the Hon'ble Supreme Court

where the question of maintainability of writ petition has been considered in great detail, we find that the appellant has an effective alternative remedy to approach the Debt Recovery Tribunal under section 17 of the SARFAESI Act, the writ appeal filed by the appellant has no merit and is accordingly, dismissed with a liberty to the appellant to avail the remedy of appeal under section 17 of the SARFAESI Act, in accordance with law."

14. In respect of an argument that the order passed by the District Magistrate or the Chief Metropolitan Magistrate, or any other officer authorized by them cannot be called in question in any Court or before any authority is again not tenable. Such provision excludes the jurisdiction of the civil Court but not of the Tribunal, who has been conferred the jurisdiction to entertain an application under section 17 of the Act. It is well settled principle of interpretation of statutes that there has to be conjoint and harmonious construction of the various provisions of a Statute. Keeping in view the said principle, if the provision of sections 13(4) and 14(3) and section 17 of the Act are read together, it is clear that bar under sub-section (3) of section 14 is not in respect of the remedy before the Tribunal in terms of section 17 of the Act.

21. Thus from the law laid down as above, it is clear that the remedy under Section 14 availed by the creditor is only one of the modes of taking possession and for any grievance to the recovery of possession by the creditor, the borrower has the remedy available under Section 17 SARFAESI Act. Hence in view of an alternate efficacious remedy available, the discretionary remedy to writ petition is not required to be invoked. However where the case of the borrower is that the order of the learned Metropolitan Magistrate is illegal and the illegality pointed out

cannot be gone into in the proceedings under Section 17 SARFAESI Act, the writ petition would be maintainable, for non-availability of an alternate efficacious remedy as laid down in Harshad Govardhan Sondagar (supra).

22. As regards the issue of communication of the reasons for rejection of the objections of the borrower, Supreme Court in ITC Ltd. Vs. Blue Coast Hotels Ltd. following the decision in Transcore (supra) held:

"11. In Transcore's case (supra), has been quoted with approval in a recent judgment of Supreme Court in Civil Appeals No. 2928-2930 of 2018 (ITC Limited v. Blue Coast Hotels Ltd. and others) decided on 19.3.2018. The relevant extract from the judgment reads as under:

"30. Moreover, this provision provides for communication of the reasons for not accepting the representation/objection and the requirement to furnish reasons for the same. A provision which requires reasons to be furnished must be considered as mandatory. Such a provision is an integral part of the duty to act fairly and reasonably and not fancifully. We are not prepared in such circumstances to interpret the silence of the Parliament in not providing for any consequence for non-compliance with a duty to furnish reasons. The provision must nonetheless be treated as 'mandatory'.

We agree with the view of this Court in this regard in Mardia Chemicals Ltd. v. Union of India, MANU/SC/0323/2004 : (2004) 4 SCC 311, Transcore v. Union of India, MANU/SC/5319/2006 : (2008) 1 SCC 125 and Keshavlal Khemchand and Sons (P) Ltd. v. Union of India, MANU/SC/0073/2015 : (2015) 4 SCC 770."

23. In Mardia Chemicals Ltd. and others v. Union of India and others (2004) 4 SCC 311, the Supreme Court held:

“45. In the background we have indicated above, we may consider as to what forums or remedies are available to the borrower to ventilate his grievance. The purpose of serving a notice upon the borrower under sub-section (2) of section 13 of the Act is, that a reply may be submitted by the borrower explaining the reasons as to why measures may or may not be taken under sub-section (4) of section 13 in case of noncompliance with notice within 60 days. The creditor must apply its mind to the objections raised in reply to such notice and an internal mechanism must be particularly evolved to consider such objections raised in the reply to the notice. There may be some meaningful consideration of the objections raised rather than to ritually reject them and proceed to take drastic measures under sub-section (4) of section 13 of the Act. Once such a duty is envisaged on the part of the creditor it would only be conducive to the principles of fairness on the part of the banks and financial institutions in dealing with their borrowers to apprise them of the reason for not accepting the objections or points raised in reply to the notice served upon them before proceeding to take measures under sub-section (4) of section 13. Such reasons, overruling the objections of the borrower, must also be communicated to the borrower by the secured creditor. It will only be in fulfillment of a requirement of reasonableness and fairness in the dealings of institutional financing which is so important from the point of view of the economy of the country and would serve the purpose in the growth of a healthy economy. It would certainly provide guidance to the secured debtors in general in conducting the affairs in a manner that they may not be found defaulting and being made liable for the unsavoury steps contained under sub-section (4) of section 13. At the same time, more importantly, we must make it clear unequivocally that communication of the reasons for not accepting the objections taken by the secured borrower may not

be taken to give occasion to resort to such proceedings which are not permissible under the provisions of the Act. But communication of reasons not to accept the objections of the borrower, would certainly be for the purpose of his knowledge which would be a step forward towards his right to know as to why his objections have not been accepted by the secured creditor who intends to resort to harsh steps of taking over the management/business of viz. secured assets without intervention of the Court. Such a person in respect of whom steps under section 13(4) of the Act are likely to be taken cannot be denied the right to know the reason of non-acceptance and of his objections. It is true, as per the provisions under the Act, he may not be entitled to challenge the reasons communicated or the likely action of the secured creditor at that point of time unless his right to approach the Debts Recovery Tribunal as provided under section 17 of the Act matures on any measure having been taken under sub-section (4) of section 13 of the Act."

24. The word 'communicate' was interpreted by the Constitution Bench of the Supreme Court in AIR 1970 SC 214 State of Punjab Vs. Khemi Ram wherein it was held:-

16. The question then is whether communicating the order means its actual receipt by the concerned Government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word 'communicate' is to impart, confer or transmit information, (cf. Shorter Oxford English Dictionary, Vol. 1, p. 352). As already stated, telegrams dated July 31, and August 2, 1958 were despatched to the respondent at the address given by him where communications by Government should be despatched.

Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958 after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958, i.e., before August 4, 1958 when he would have retired ? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it.

25. On the facts, it is the case of the respondent bank that it had sent/dispatched the reply at the right address of the petitioner, however, the case of the petitioner is that no service was effected on him because on reaching the place, the petitioner was not found. Once by dispatch of the order, it gets out of the hand of the bank, it is sufficient compliance of the provision by the bank and would be deemed to be “communicated” to the borrower as envisaged under Section 13(3A) SARFAESI Act.

26. For the last argument of learned counsel for the petitioner that the impugned orders of the learned CMM are vitiated for non placing of complete facts on affidavit by the respondent and thus the remedy of filing a writ petition availed, it would be relevant to note the decision of the Supreme Court in Standard Chartered Bank (supra) as under:

“18. Consequent upon the said decision in *Mardia Chemicals Ltd.* [*Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311], Parliament introduced sub-section (3-A) [“13. (3-A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:”.] by Act 30 of 2004, which now provides for consideration of the objections, if any raised by the borrower. By definition under Section 2(f) of the Act a borrower includes the guarantor of the debt.

19. Sub-section (3-A) further provides that if the secured creditor reaches a conclusion that the objections raised by the borrower are not acceptable or tenable, the creditor shall communicate the reasons for non-acceptance of the objections within a period of 15 days. The proviso to the said sub-section declares that the rejection of the objections does not confer any right on the borrower to resort to the proceedings, contemplated either under Section 17 or 17-A. We may indicate here both Sections 17 and 17-A afford an opportunity to the borrower to approach the Debts Recovery Tribunal or (in the cases of Jammu & Kashmir) the District Court concerned against any measure taken under Section 13(4).

20. In every case where the objections raised by the borrower are rejected by the secured creditor, the secured creditor is entitled to take possession of the secured assets. In our opinion, such action—having regard to the object and scheme of the Act—could be taken directly by the secured creditor. However, visualising the possibility of resistance for such action, Parliament under Section 14 also provided for seeking the assistance of the judicial power of the State for obtaining possession of the secured asset, in those cases where the secured creditor seeks it.

21. Under the scheme of Section 14, a secured creditor who desires to seek the assistance of the State's coercive power for obtaining possession of the secured asset is required to make a request in writing to the Chief Metropolitan Magistrate or District Magistrate within whose jurisdiction, the secured asset is located praying that the secured asset and other documents relating thereto may be taken possession thereof. The language of Section 14 originally enacted purportedly obliged the Magistrate receiving a request under Section 14 to take possession of the secured asset and documents, if any, related thereto in terms of the request received by him without any further scrutiny of the matter.

22. However, the Bombay High Court in *Trade Well v. Indian Bank* [2007 Cri LJ 2544 (Bom)] opined:

“2. ... CMM/DM acting under Section 14 of the NPA Act is not required to give notice either to the borrower or to the third party.

3. He has to only verify from the bank or financial institution whether notice under Section 13(2) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction. There is no adjudication of any kind at this stage.

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under Section 14 of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under Section 14.”

The said judgment was followed by the Madras High Court in *Indian Overseas Bank v. Sree Aravindh Steels Ltd.* [AIR 2009 Mad 10] Subsequently, Parliament inserted a proviso to Section 14(1) and also sub-section (1-A) by Act 1 of 2013.

“Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

(i) the aggregate amount of financial assistance granted and the total claim of the bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the bank or financial institution is holding a valid and subsisting security interest over such properties and the claim of the bank or financial institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days' notice as required by the provisions of sub-section (2) of Section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the authorised officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of Section 13 read with Section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the authorised officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.”] and also sub-section (1-A)

[“14. (1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him—(i) to take possession of such assets and documents relating thereto; and(ii) to forward such assets and documents to the secured creditor.(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.”] by Act 1 of 2013.

23. We must make it clear that these provisions were not in existence on the date of the order impugned [V. Noble Kumar v. Standard Chartered Bank, (2010) 8 MLJ 282 : (2011) 1 CTC 513] in the instant proceedings. These amendments are made to provide safeguards to the interest of the borrower. These provisions stipulate that a secured creditor who is seeking the intervention of the Magistrate under Section 14 is required to file an affidavit furnishing the information contemplated under various sub-clauses (i) to (ix) of the proviso and obligates the Magistrate to pass suitable orders regarding taking of the possession of the secured assets only after being satisfied with the contents of the affidavits.”

27. Thus, the role of the Magistrate while dealing with an application under Section 14 of the Act is not adjudicatory nor is he obliged to give notice to the borrower. By filing an application under Section 14 of the Act, the secured creditor exercises one of the options available with him to take possession of the secured asset. All that the Magistrate at this stage is required to see is that requirements of the Act and the rules framed thereunder are satisfied in the affidavit filed on behalf of the secured creditor and proceed to pass an order.

28. In Standard Chartered Bank (supra) relied upon by the learned counsel for the petitioner, Supreme Court held that a Secured creditor, who is seeking the intervention of the Magistrate under Section 14 is required to file an affidavit furnishing the information contemplated under various sub-Clauses (i) to (ix) of the proviso which obligates a Magistrate to pass suitable orders regarding taking of the possession of the secured assets only after being satisfied with the contents of the affidavits. Noting the nine sub-clauses to the proviso to Section 14 of the Act, it was held that the affidavit must inter alia indicate that the reasons for such rejection of the objections of the borrowers had been communicated to the borrower. It was further held that the satisfaction of the Magistrate contemplated under second proviso to Section 14(1) necessarily requires a Magistrate to examine the factual correctness of the assertion made in such an affidavit but not the legal niceties of the transactions. On recording of his satisfaction, the Magistrate can pass appropriate orders regarding taking of possession of the secured assets. It is thus evident that besides the other requirements, the Magistrate is required to see whether the reasons for rejection of the objections of the borrower have been communicated to the borrower by

sending the same to the last known registered address of the borrower and not that he has to ensure that it is duly received by the borrower who may have employed measures to not receive the same by avoiding service or being not available at the address.

29. Case of the petitioner before this Court is that the reply of the bank dated 23rd February, 2018 to his objections was not served on the petitioner, hence, not communicated, therefore, the learned CMM failed to satisfy itself that the mandate of first and second provisos to Section 14(1) of the Act is fulfilled, thus the impugned orders being vitiated, the writ petition is maintainable as the petitioner in terms of Section 14(3) of the Act has no alternative remedy.

30. Case of the respondent-bank is that the reply to the objections of the petitioner by the bank under Section 13(3A) of the Act were sent at the three addresses i.e. 41, DLF Industrial Area, Kirti Nagar, New Delhi, B-384, 2nd Floor, New Friends Colony, New Delhi – 110065 and Flat No.312, Block-B, Phase II, Noida-201305. These were the three addresses available with the bank which were always used for earlier communications exchanged between the parties. The endorsement of the service at the first address i.e. 41, DLF Industrial Area, Kirti Nagar was “left”, qua B-384, 2nd Floor, New Friends Colony, New Delhi it was “house locked since many months” and for Flat No.312, Block-B, Phase-II, Noida, “the company was closed”.

31. In the present petition, it is not the case of the petitioner that the addresses on which reasons for rejection were communicated were not the addresses of the petitioner but his claim is that he was not present when the reasons were purportedly communicated. Even in the present petition, petitioner has claimed his residential address as B-384, New Friends

Colony, New Delhi. In the complaint filed by the respondent, not only the copy of the reply dated 23rd February, 2018 but also the copy of receipts of speed post were placed on record, thereby leading to the inference that the reply by the respondent to the petitioner has been communicated not only to the petitioner but also to M/s. KEW Precision Parts Pvt. Ltd., Mrs. Kkumud Jaain and Mr. Mohit Kumar Bhunsali. The learned CMM was not required to see any further compliance even as per Section 14(1)(ix) of the Act and having been satisfied that the material placed satisfies the requirement of affidavit in terms of Section 14(1) of the Act, impugned orders do not stand vitiated.

32. Consequently, the writ petition is dismissed.

Crl.M.A.29851/2018

Dismissed as infructuous.

AUGUST 19, 2019
‘rk/ga’

(MUKTA GUPTA)
JUDGE