

**HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE MS. JUSTICE J.UMA DEVI**

W.P.No.19009 of 2017

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

Challenge in this writ petition is to the action of the Indian Overseas Bank in issuing Auction Notice dated 05.06.2017 under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (for brevity, 'SARFAESI Act') for sale of the property offered by the petitioner as a security interest in relation to the loan availed by it from the bank.

The grievance of the petitioner was that the recovery of the loan amount was linked to the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) Scheme floated by the Government of India but the bank was seeking to recover the outstanding dues of Rs.97,11,524.21/- ignoring the Scheme.

By order dated 13.07.2017, this Court took note of the counter-affidavit filed by the CGTMSE, the 6th respondent, and stayed the auction sale proposed to be held on 14.07.2017 by the Indian Overseas Bank.

Heard Sri Mummaneni Srinivasa Rao, learned counsel for the petitioner, Sri M.Surya Prakash, learned counsel for the

Indian Overseas Bank and Sri A.L.Raju, learned counsel for the 6th respondent/CGTMSE.

In the light of the interim stay granted by this Court, the impugned Auction Notice dated 05.06.2017 has worked itself out and it is no longer open to the Indian Overseas Bank to proceed on the strength thereof and conduct a sale afresh. The material placed on record by the respective parties would show that the guarantee offered by the 6th respondent/CGTMSE was up to 50% of the loan amount in default of the petitioner as the loan availed by petitioner was above Rs.50 lakh and up to Rs.100 lakh. The bank would therefore be at liberty to proceed independently for realization of the balance 50% of the amount in default. However, these aspects of the matter would have to be spelt out clearly in the proceedings issued by the bank under the SARFAESI Act. The impugned sale notice dated 05.06.2017 did not do so.

In the meanwhile, as the challenge in this writ petition is rendered academic as the impugned sale notice has become ineffective by virtue of the stay orders granted in this writ petition, the Writ Petition is disposed of leaving it open to the Indian Overseas Bank to initiate recovery proceedings keeping in mind the Scheme of the 6th respondent/CGTMSE. In the event, the bank resorts to recovery proceedings afresh in terms

of the scheme of the 6th respondent/CGTMSE, the bank shall take care to indicate the details correctly while issuing proceedings afresh under the SARFAESI Act.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

J.UMA DEVI, J

26.12.2017

*Note: Furnish C.C. in one week
Gsn.*

