

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION NO.32288 OF 2017

Between:

M/s. Sai Sree Ganesh Industries

... Petitioner

and

The Union of India rep. by its Prl. Secretary,
Revenue (Finance & Banks) and others

... Respondents

DATE OF JUDGMENT PRONOUNCEMENT: 19th JANUARY, 2018

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

J.UMA DEVI, J

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<Gist:

>Head Note:

! Counsel for petitioner : Sri Mummaneni Srinivasa Rao

^Counsel for respondent No.1 : Sri N.Ashwani Kumar,
Assistant Solicitor General

^Counsel for respondent Nos.2 to 5 : Sri A.Krishnam Raju

^Counsel for respondent No.6 : Sri A.L.Raju,

? CASES REFERRED:

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

WRIT PETITION No.32288 OF 2017

ORDER

(Per Justice Sanjay Kumar)

Challenge in this writ petition is to the action of the Syndicate Bank in trying to auction the properties of the petitioner firm situated in Sy.Nos.97/A and 98/A of M.Venkatayapalem Village, Khammam Rural Mandal and District, along with plant and machinery, for recovery of the dues of Rs.53,38,046/- towards its cash credit and term loan accounts, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

The grievance of the petitioner firm is that the bank is not following the prescribed procedure, including the R.B.I. guidelines and the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) scheme, as it did not disclose the amounts recovered from the CGTMSE and it did not claim 75% of the amount in default from the CGTMSE. A consequential direction is sought to the bank not to interfere with the petitioner firm's possession over the subject properties and to recover the amount in question from the CGTMSE.

The case of the petitioner firm is as follows: It secured a term loan of Rs.60,00,000/- and cash credit OD of Rs.5,00,000/- from the Syndicate Bank, having insured it under the CGTMSE scheme. In terms of this scheme, in the event of default in repayment of the loan, the CGTMSE is liable to pay 75% of the amount in default to

the bank and only the remaining 25% of the amount due is liable to be recovered by auctioning the secured assets. While so, the Syndicate Bank, without claiming 75% of the amount due from the CGTMSE and without disclosing full and proper facts as to the procedure adopted by it in terms of the scheme, was attempting to recover 100% of the amount due through sale of the petitioner firm's properties. Claiming that it would be put to irreparable loss and injury if the bank did not follow the procedure under the CGTMSE scheme, the petitioner firm filed the present writ petition.

When this matter was taken up for hearing on 31.10.2017, Sri A.Krishnam Raju, learned counsel for the Syndicate Bank, informed this Court that the bank would not take any coercive measures against the petitioner firm till the next date of hearing and undertook to file his counter. Again, on 14.11.2017, the learned counsel stated that no coercive steps would be taken against the petitioner firm till the next date of hearing. This was reiterated thereafter on 27.11.2017 and 11.12.2017. Comprehensive arguments having been advanced by all the learned counsel, final orders were reserved in the writ petition on 27.12.2017 and this Court directed that no coercive measures should be taken pending further orders.

Sri Mummaneni Srinivasa Rao, learned counsel for the petitioner firm, would contend that the Syndicate Bank is not following the procedure prescribed under the CGTMSE scheme and once the petitioner firm insured its loan accounts with the CGTMSE to its knowledge, it is not open to the bank to unilaterally proceed against the secured assets under the SARFAESI Act without taking recourse to the recovery procedure prescribed

under the CGTMSE scheme. Learned counsel would further contend that after recovery of 75% of the amount in default from the CGTMSE, the bank is at liberty to auction the secured assets for recovery of the balance 25% only. In effect, his contention is that the bank cannot recover 100% of the amount due straightaway by sale of the secured assets.

Sri A.L.Raju, learned counsel for the CGTMSE, would state that as per Clause 10 of the CGTMSE scheme, the lending institution may invoke the guarantee in respect of the credit facility after the account became a Non-Performing Asset (NPA) and the same would be marked on the online portal of the CGTMSE, subject to compliance with the procedure prescribed under the CGTMSE scheme. The guaranteed amount would be released in two instalments. The first instalment is released after the account becomes a NPA and legal action is initiated, while the second instalment would be released after conclusion of the recovery (legal) proceedings. Learned counsel would state that in the case on hand, the petitioner firm's accounts have not been marked as NPAs as per their records and if that is the case, the Syndicate Bank must mark the same as such on the CGTMSE online portal for invocation of the guarantee. However, as per the CGTMSE records, the petitioner firm's case is still reflected as a standard account even as on 20.11.2017 and the Syndicate Bank has not taken any steps to mark the petitioner firm's accounts as NPAs. Further, the Syndicate Bank has not submitted any claim petition to the CGTMSE till date. The learned counsel would however state that the petitioner firm's understanding of the scheme is not correct. The bank, being the Member Lending Institution (MLI), is

required under the scheme to recover all amounts in default from the borrower by taking legal action, even if the MLI invokes the guarantee and the CGTMSE releases sums to it towards the amount in default in accordance with the scheme. Therefore, the borrower has no right to seek adjustment of the guaranteed amount released by the CGTMSE against the amount in default and would still be liable to discharge all its outstanding dues to the MLI. Reference is made by the learned counsel to Clause 7(v) in Chapter II of the CGTMSE scheme, which states to the effect that payment of the guarantee claim by the CGTMSE to the MLI would not in any way take away the responsibility of the MLI to recover the entire outstanding dues from the borrower by exercising all necessary precautions, including initiation of recovery proceedings in relation to the entire outstanding amount, and such other action as may be advised by the CGTMSE. Learned counsel would therefore state that the petitioner firm would not be absolved of its liability to pay its dues, irrespective of whether the CGTMSE advances amounts as guaranteed under the scheme.

The Chief Manager, Syndicate Bank, Regional Office (Rural), Hyderabad, filed a counter. Therein, while admitting that the loans availed by the petitioner firm were covered under the CGTMSE scheme, he pointed out that the benefit thereof would be that the MLI would lend money to the borrower by considering the primary security as a charge to realize the amounts due to the bank, without insisting on collateral security and third party guarantees. He stated that in banking parlance, primary security means the asset created/acquired with the help of the loan availed and a charge is created over the same. In the event the Micro and Small

Enterprise (MSE) unit which avails such loan facilities fails to discharge its dues to the MLI, the CGTMSE would make good the loss incurred by the MLI upto a particular percentage. In the instant case, the scheme would cover upto 50% of the amount in default, as the loan facility was above Rs.50,00,000/- and below Rs.1,00,00,000/-. The account should be classified and reported as a NPA and legal action should be initiated against the borrower by the bank before the lodging of a claim with the CGTMSE. On receipt of the first instalment of the claim from the CGTMSE, the bank would have to undertake recoveries from the borrower after adjusting the legal expenses, without further delay. The bank is also required to give an undertaking to the CGTMSE that it would pursue all recovery steps, including legal proceedings, so that it can refund to the CGTMSE the claim amount settled by it, along with interest thereon. The Chief Manager asserted that it is palpable that the CGTMSE scheme is meant only to encourage the MLIs to finance the benefited units without insisting upon collateral security and third party guarantees and to cover part of the risk involved but not for claiming the guaranteed amount only from the CGTMSE, thereby restricting recovery to the balance due from the borrower, as contended by the petitioner firm. He would point out that in the event necessary steps are not taken by the MLI to recover the amount due from the borrower, the CGTMSE is entitled to claim that amount with interest thereon at 4% over and above the prevailing bank rate from the MLI and such penal consequences for the inaction, if any, on the part of the MLI, clearly indicate that the claim of the petitioner firm is incorrect. On facts, he stated that only 50% of the amount in default payable by

the petitioner firm was covered under the scheme and not 75% as claimed by it. He referred at length to the provisions of the CGTMSE scheme and stated that the interpretation thereof by the petitioner firm, to suit its own interests, was untenable and prayed for dismissal of the writ petition.

Sri A.Krishnam Raju, learned counsel, while reiterating the averments made in the counter-affidavit, would argue that it is open to the bank to either choose to invoke the guarantee under the CGTMSE scheme or proceed independently under the SARFAESI Act for recovery of its dues from the petitioner firm.

The aforestated rival contentions of the learned counsel would require analysis and proper understanding of the CGTMSE scheme. Availability of bank credit without the hassles of collateral/third party guarantees was recognized as a major source of support to first generation entrepreneurs to realize their dream of setting up a Micro and Small Enterprise (MSE) of their own and keeping this objective in view, the Ministry of Micro, Small and Medium Enterprises (MSME), Government of India, launched the Credit Guarantee Scheme (CGS) so as to strengthen the credit delivery system and facilitate flow of credit to the MSE sector. To operationalize this scheme, the CGTMSE was set up in August, 2000 with a committed corpus of Rs.2,500 crore, to be contributed by the Government of India and the Small Industries Development Bank of India. The main objective of the scheme was that the lender should give importance to project viability and secure the credit facility purely on the primary security of the asset financed and the other objective was that the lender availing guarantee facility should endeavour to give composite credit to the borrower

so that the borrower obtains both term loan and working capital facility from a single agency. The scheme sought to reassure the lender that in the event a MSE unit, which availed collateral free credit facility, fails to discharge its liability to the lender, the CGTMSE would make good the loss incurred by the lender upto 50/75/80/85 percent of the credit facility.

The cardinal principles of the scheme are as follows: Only MSEs engaged in manufacturing activities and those in the service sector, excluding retail trade, were eligible thereunder. The entire credit facility had to be given without collateral and/or third party guarantee. Loans were to be secured against the primary security which was defined under the scheme to include assets created out of the credit facility extended to the borrower and/or which are directly associated with the business/project of the borrower for which the credit facility had been extended.

The process for lodgment of claims by the MLIs was prescribed as under: (1) Online reporting of the NPA in the CGTMSE portal, where the NPA had to be reported by the end of the subsequent quarter from the date of classification as a NPA. (2) Initiation of legal action against the defaulting unit as per the scheme. (3) Online claim to be lodged as per Annexure-3 within one year of NPA date or expiry of lock-in-period, whichever is later. The time period for claim lodgment was increased to two years for cases sanctioned on or after 01.01.2013. (4) The lock-in-period would be 18 months from the guarantee start date or last date of disbursement in case of a term loan, whichever is later. (5) After submission of the online claim, the 'Declaration and Undertaking' (D & U) form, duly stamped and signed, is to be sent by the MLI

and only on receipt and updation of such D & U form, the claim would be checked and processed, and (6) The application for the second instalment of the claim is to be submitted on conclusion of the recovery proceedings by the MLI. The second instalment would be paid only on conclusion of the recovery proceedings or three years after obtaining the decree of recovery, whichever is earlier.

The note appended to the process of lodgment of claim reads to the effect that on payment of the first instalment of the claim, the MLI should undertake to remit all such recoveries from the borrower, after adjusting legal expenses, to the CGTMSE without delay. In the event a one-time settlement amount is received from the borrower, then the MLI has to remit the entire amount of OTS, after adjusting its legal expenses to enable the CGTMSE to arrive at the total loss in respect of such account, for settling the final instalment of the claim. The Check List for claim lodgment requires the MLI to ensure that the guarantee is in force as on the date of the NPA and the MSE/borrower has paid the guarantee fee and annual service fee/annual guarantee fee regularly. The MLI must also ensure that the lock-in period of 18 months is completed. The borrower account must be classified as a NPA as per norms and the application should be lodged online in the CGTMSE portal. The MLI must ensure that legal proceedings are initiated and must furnish the relevant details, such as date of initiation of legal action, DRT/Revenue Recovery Authority/Lok Adalat/Civil Court/SARFAESI etc, under which the legal application is filed. In case of SARFAESI proceedings, the MLI must ensure possession of the secured asset as per Section 13(4) of the SARFAESI Act. The MLI must ensure that the D & U form is submitted after filing of the

online claim. The MLI must update disbursement details before online submission of claim.

‘Amount in Default’ is defined under Clause 2(i) in the Introduction Chapter to mean the principal and interest amount outstanding in the account of the borrower in respect of the term loan and outstanding working capital facilities as on the date of the account becoming a NPA, or on the date of lodgment of the claim application, whichever is lower. ‘Guarantee Cover’ is defined under Clause 2(v) to mean the maximum cover available per eligible borrower of the amount in default covered under the scheme. In Clause 3, falling under the Chapter relating to ‘Scope and Extent of the Scheme’, the ‘Guarantees by the Trust’ is defined to mean that the CGTMSE would undertake in relation to the credit facilities extended to eligible borrowers to provide a guarantee on account of the said credit facilities. Clause 6 thereunder states to the effect that the MLI would not be entitled to a guarantee in respect of any eligible credit facility granted by it unless it has entered into an agreement with the CGTMSE in such form as may be required. Clause 7 details the responsibilities of MLIs under the scheme. Under Clause 7(i), the MLI is required to evaluate credit applications by using prudent banking judgment and business discretion. The accounts of the borrowers are to be conducted with normal banking prudence. Under Clause 7(ii), the MLI is required to closely monitor the borrower’s account. Clause 7(iii) requires the MLI to safeguard the primary security taken from the borrower in respect of the credit facilities in good and enforceable condition. Clause 7(iv) requires the MLI to ensure that the guarantee claim in respect of the credit facility and borrower is lodged with the

CGTMSE in the form and in the manner and within such time as may be specified by the CGTMSE and there should be no delay on its part in notifying the default in the borrower's account which would result in the CGTMSE facing higher guarantee claims.

Clause 7(v) is of relevance and reads as under:

'The payment of guarantee claim by the Trust to the lending institution does not in any way take away the responsibility of the lending institution to recover the entire outstanding amount of the credit from the borrower. The lending institution shall exercise all the necessary precautions and maintain its recourse to the borrower for entire amount of credit facility owed by it and initiate such necessary actions for recovery of the outstanding amount, including such action as may be advised by the Trust'.

Clause 7(vi) requires the MLI to comply with the directions issued by the CGTMSE from time to time for facilitating recoveries in the guaranteed account or safeguarding its interest as a guarantor, as the CGTMSE may deem fit, and the MLI shall be bound to comply with such directions.

Clause 7(vii) is also of import and is worthy of extraction:

'The lending institution shall, in respect of any guaranteed account, exercise the same diligence in recovering the dues, and safeguarding the interest of the Trust in all the ways open to it as it might have exercised in the normal course if no guarantee had been furnished by the Trust. The lending institution shall, in particular, refrain from any act of omission or commission, either before or subsequent to invocation of guarantee, which may adversely affect the interest of the Trust as the guarantor. In particular, the lending institution should intimate the Trust while entering into any compromise or arrangement, which may have effect of discharge or waiver of personal guarantee(s) or security. The lending institution shall also ensure either through a stipulation in an agreement with the borrower or otherwise, that it shall not create any charge on the security held in the account covered by the guarantee for the benefit of any account not covered by the guarantee, with itself or in favour of any other creditor(s) without intimating the Trust. Further the lending institution shall secure for the Trust or its appointed agency, through a stipulation in an agreement with the borrower or otherwise, the right

to list the defaulted borrowers’ names and particulars on the Website of the Trust.’

Chapter 4 dealing with ‘guarantees’ details the extent of the guarantee coverage and the table thereunder reads as follows:

Category	Maximum extent of Guarantee where credit facility is		
	Up to Rs.5 lakh	Above Rs.5 lakh up to Rs.50 lakh	Above Rs.50 lakh up to Rs.100 lakh.
Micro Enterprises	85% of the amount in default subject to a maximum of Rs.4.25 lakh	75% of the amount in default subject to a maximum of Rs.37.50 lakh	50% of amount in default.
Women entrepreneurs/Units located in North East Region (incl.Sikkim) (other than credit facility up to Rs.5 lakh to micro enterprises)	80% of the amount in default subject to a maximum of Rs.40 lakh.		
All other category of borrowers	75% of the amount in default subject to a maximum of Rs.37.50 lakh.		

Chapter 5 deals with ‘Claims’ and Clause 10 thereunder details the procedure for invocation of the guarantee. Clause 10(i)(d) states that mere issuance of recall notice under the SARFAESI Act cannot be construed as initiation of legal proceedings for the purpose of preferring a claim and MLIs were advised to take further action as contained in Section 13(4) of the SARFAESI Act, whereunder a secured creditor can take recourse to any one or more of the recovery measures out of the four measures indicated therein, before submitting claims for the first instalment of the guaranteed amount. In the event, the MLI is not in a position to take any of the actions indicated in Section 13(4) of the SARFAESI Act, it may initiate fresh recovery proceedings under any other applicable law and claim the first instalment from the CGTMSE. Clause 10(iii) requires the CGTMSE to pay 75% of the guaranteed amount on preferring of an eligible claim by the MLI

within a time frame. The CGTMSE is required to pay to the MLI interest on the eligible claim amount for the period of delay thereafter. The balance 25% of the guaranteed amount would be paid on conclusion of recovery proceedings or if the decree gets time barred. For loans sanctioned on or after 01.01.2013, the balance 25% of the guaranteed amount would be paid on conclusion of recovery proceedings by the MLI or after three years of obtaining the decree of recovery, whichever is earlier. On a claim being paid, the CGTMSE is deemed to have been discharged from all its liabilities on account of the guarantee, but MLIs should undertake to refund any amount received from the unit after payment of the full guaranteed amount by the CGTMSE.

Clause 10(iv) and (v) are also relevant and read as under:

‘(iv) In the event of default the lending institution shall exercise its rights, if any, to take over the assets of the borrowers and the amount realized, if any, from the sale of such assets or otherwise shall first be credited in full by the lending institutions to the Trust before it claims the remaining 25 per cent of the guaranteed amount.

(v) The lending institution shall be liable to refund the claim released by the Trust together with penal interest at the rate of 4% above the prevailing Bank Rate, if such a recall is made by the Trust in the event of serious deficiencies having existed in the matter of appraisal/renewal/follow-up/conduct of the credit facility or where lodgement of the claim was more than once or where there existed suppression of any material information on part of the lending institutions for the settlement of claims. The lending institution shall pay such penal interest, when demanded by the Trust, from the date of the initial release of the claim by the Trust to the date of refund of the claim.

The Guarantee Claim received directly from the branches or offices other than respective operating-offices of MLIs will not be entertained.’

Clause 11(3) states that every amount recovered by the MLI which is due to be paid to the CGTMSE shall be paid without delay

and in the event of such payment remaining due beyond 30 days from the date of its recovery, interest would be payable to the CGTMSE by the MLI at a rate which is 4% above the bank rate.

Clause 13, falling in Chapter VI 'Miscellaneous', details the appropriation of amount realized by the MLI in respect of the credit facility after guarantee has been invoked and reads as under:

'13. Appropriation of amount realized by the lending institution in respect of a credit facility after the guarantee has been invoked.'

Where subsequent to the Trust having released a sum to the lending institution towards the amount in default in accordance with the provisions contained in the Section 10 of this scheme, the lending institution recovers money subsequent to the recovery proceedings initiated by it, the same shall be deposited by the lending institution with the Trust, after adjusting towards the cost incurred by it for recovery of the amount. The Trust shall appropriate the same first towards the pending service fee, penal interest, and other charges due to the Trust, if any, in respect of the credit facility towards which the amount has been recovered by the lending institution, and the balance, if any, shall be appropriated in such a manner so that losses on account of deficit in recovery of the credit facility between the Trust and the lending institution are in the proportion of 75%/80%/85% and 25%/20%/15%, respectively.'

The 'Frequently Asked Questions' appended to the scheme are also of significance. Question No.11, falling under the Chapter 'Credit Guarantee – extent of cover, invocation, claim etc.', is of particular importance and reads as under:

'11. Whether the responsibility to recover the defaulted credit is taken over by the Trust after the settlement of claim (issuance of 1st Instalment of claim) in respect of particular borrower account?'

No, the lender continues to remain responsible to take all efforts in recovery of credit advanced to the borrower who had defaulted, even after the initial settlement of the claim by the Trust. However such recovery should be remitted by the lender (after adjusting towards legal expenses) to CGTMSE without delay.'

The annual guarantee fee payable by the MLI to the CGTMSE is quantified at a percentage of the credit facility, ranging from .75% to .1% for credit facilities upto Rs.5,00,000/- and ranging from .85% to .1% for credit facilities above Rs.5,00,000/- and upto 1,00,00,000/-. The discretion to pass on the incidence of the annual guarantee fee to the borrower is left to the MLI. It is on this basis that Sri Mummaneni Srinivasa Rao, learned counsel, would state that the petitioner firm has been paying such annual guarantee fee regularly and assert that his client would stand released from the responsibility of making good its dues once the CGTMSE makes the payment.

The aforestated conspectus of the CGTMSE scheme however puts it beyond doubt that the contention of Sri Mummaneni Srinivasa Rao, learned counsel, that the petitioner firm would stand absolved of remitting 75% of the amount in default, once the CGTMSE pays the first instalment, is not correct. The MLI is required to take every possible measure to effect recoveries of the total outstanding dues from the borrower, so as to reimburse the CGTMSE for the amounts released by it. It is only after the recovery proceedings are completed that the CGTMSE is required to assess as to the amount of loss and pay the second instalment (25% of the guaranteed amount in default).

The petitioner firm, having availed loan facilities from the Syndicate Bank, cannot seek to exit scot-free from the picture merely because such credit facilities were covered by the CGTMSE scheme. Further, the terms and conditions of the scheme demonstrate that mere issuance of a demand notice under Section 13(2) of the SARFAESI Act would not suffice for initiation of legal

proceedings and the MLI is required to take recourse to one of the measures under Section 13(4) of the SARFAESI Act. The scheme also makes it clear that the MLI must ensure possession of the primary security. Therefore, the scheme contemplates that the MLI would obtain actual physical possession of the primary security and also decide upon one of the measures under Section 13(4) of the SARFAESI Act. One such measure is sale of the security.

In the present case, no details are forthcoming from the pleadings as to when the petitioner firm's loan accounts were classified as NPAs and when proceedings were initiated by the Syndicate Bank under the SARFAESI Act. However, the bank is stated to have taken recourse to such a measure but is yet to make a claim with the CGTMSE. However, in terms of the scheme, the bank is required to immediately inform the CGTMSE upon the petitioner firm's loan accounts becoming NPAs, so that the same could be marked on the online portal of the CGTMSE. Surprisingly, the Syndicate Bank seems to have done no such thing. Once the bank admits that the petitioner firm's loan accounts were covered by the guarantee offered by the CGTMSE, it is not open to it to say that it would ignore the scheme and proceed independently against the petitioner firm's primary securities under the SARFAESI Act. The thrust of the CGTMSE scheme is to come to the aid of first generation entrepreneurs who wish to set up MSEs, while at the same time, guaranteeing the risks of MLIs who come forward to offer credit facilities to them. Therefore, the interests of both parties stand protected under the scheme. When the Syndicate Bank has been passing on the liability of paying the CGTMSE's annual guarantee fee to the petitioner firm, and it has been doing

so dutifully, it is not open to the bank to ignore the scheme and say that it would recover its dues, independent of the said scheme. In terms of the scheme, the CGTMSE must be informed of the default resulting in the subject loan accounts becoming NPAs, so as to cover its own guarantee risks. However, the Syndicate Bank did not abide by this condition.

That having been said, the fact however remains that the action of the Syndicate Bank in proposing to put the primary security offered by the petitioner firm to sale does not violate the conditions of the CGTMSE scheme. It is only after such a measure is initiated that the bank would be at liberty to make a claim to the CGTMSE. Therefore, the petitioner firm's contention in this regard cannot be accepted. However, as the provisions of the SARFAESI Act read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules of 2002'), cast a duty upon the secured creditor to be forthright in its dealings with the borrower and also the purchaser who may come forward to buy the secured assets, it is incumbent upon the Syndicate Bank to mention the fact that the subject loan accounts are covered by the CGTMSE scheme and indicate the details thereof. Unless full particulars of the loan accounts in relation to which the sale is proposed to be held are disclosed, it would not amount to compliance with the *proviso* to Rule 8(6) of the Rules of 2002. The Syndicate Bank must therefore be more mindful of this aspect when it takes recourse to this measure under Section 13(4) of the SARFAESI Act.

The writ petition is accordingly disposed of directing the Syndicate Bank to immediately inform the CGTMSE of the factum of the petitioner firm's loan accounts having become NPAs, in

terms of the CGTMSE scheme, and thereafter abide by the procedure prescribed under the said scheme for realizing its dues in relation thereto. It is made clear that the petitioner firm's understanding that it need not pay 75% of the guaranteed amount in default, which would be released by the CGTMSE under the first instalment, is incorrect, being contrary to the import and intendment of the scheme. The Syndicate Bank would necessarily have to endeavour to recover the entire outstanding dues from the petitioner firm so as to make good the amounts released by the CGTMSE and it is only if the recovery proceedings fall short that the CGTMSE would have to release the second instalment of 25% of the guaranteed amount. The Syndicate Bank shall take steps accordingly.

Interim order dated 27.12.2017 shall stand vacated.

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

19th JANUARY, 2018
L/R copy to be marked - Yes
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