THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.32585 OF 2015

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

The prayer of the petitioner in this case reads as under:

> "For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a Writ, Order or Direction particularly one in the nature of writ of mandamus declaring the impugned notice of possession dated 28.09.2015 unilaterally taking physical possession of petitioner's manufacturing unit for pet jars and bottles situated at Plot No.86, ALEAP Industrial Estate, Surampally, Gannavaram Mandal, Vijayawada under the same proceedings, including any recourse to provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and rules there-under as totally illegal, without jurisdiction and set aside the same and pass such other and further orders in the interest of justice."

Sri S.Rahul Reddy, learned counsel for the petitioner, would submit that this writ petition was filed as the petitioner-company had availed the insurance offered under the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) Scheme floated by the Government of India, it was not open to the IDBI Bank Limited, the secured creditor, to initiate measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') for recovery of its dues from the petitioner-company. Learned counsel would however submit in all fairness that in the light of the decision of this Court in W.P.No.32288 of 2017, the issue sought to be raised in the present writ petition does not survive for consideration afresh.

A copy of the order dated 19.01.2018 passed in W.P.No.32288 of 2017 is placed on record. Perusal thereof reflects that having considered the parameters of the CGTMSE Scheme, this Court directed the secured creditor and the Trust which runs the said Scheme to abide by the procedure prescribed thereunder. This Court also made it clear that the secured creditor is bound to endeavour to recover the entire outstanding dues from the borrower so as to make good the amounts released by the Trust under the CGTMSE Scheme and it is only if the recovery proceedings fall short that the Trust would have to release the second instalment of 25% of the guaranteed amount.

In the light of the aforestated judgment, it is not open to the petitioner company to stall the proceedings initiated by the IDBI Bank under the provisions of the SARFAESI Act. Needless to state, the IDBI Bank and the second respondent Trust shall strictly adhere to the procedure prescribed under the CGTMSE Scheme.

The writ petition is accordingly dismissed subject to the above observations. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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JUSTICE SANJAY KUMAR

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JUSTICE M.GANGA RAO

Date: 27.02.2018
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