Case called out. **Sri.JMP** Advocate for petitioner present, he files affidavit of the authorized officer, Memo with original documents. Same is taken on record. Perused and compared with original documents with xerox copy of the documents produced along with the petition and same is returned to the Counsel/Authorized officer.

Sri.JMP Advocate relay upon the ruling of Hon'ble Supreme Court in Civil Appeal No.10243-10250 dtd: 5/10/18 and SLP

Nos.9145-9142/2014 dtd: 5/10/18 and in a recent ruling of our Hon'ble High Court in Writ Appeal No.6330-6337/2017 (GM RES) dtd: 30/11/18 and submitted that soon after filing the petition there is no need to issue noti/ce either to the principal borrower or to the tenants. Accordingly, prayed to allow the petition.

Heard **Sri.JMP** Advocate for petitioner.

ORDER

The Authorized officer, **M/s. RELIGARE FINVEST LTD.,** has filed the present petition u/s 14 of the sarfaesi act, 2002. Soon after filing of the petition no notice was sent to the respondents, who are the borrower, in view of recent ruling of Hon'ble High Court as cited above. Affidavit of the authorized officer is filed in support of the version stated in the petition.

2. Heard. Perused the records.

3. The applicant/petitioner has filed the petition and sought for the assistance of the Court for taking possession of the schedule property U/sec.14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred as the Act). No Notice is sent to the Respondents in view of the ruling of Hon'ble Supreme and High Court. The petitioner has also sworn an affidavit stating similar facts as mentioned in the petition. Further, he has produced the original loan documents before this court.

4. On perusal of the available materials, I am satisfied that applicant/petitioner is a secured creditor and Respondents are the secured debtors and schedule property is secured asset within the

meaning of the provisions of this Act. Before filing this petition petitioner as secured creditor has given 60 days notice and complied provisions of Sec.13(2) of the Act. In-spite of 60 days notice, Respondents have not paid the dues to the petitioner. By looking into these aspects coupled with the ratio of the decision of Hon’ble Supreme Court and our High Court as stated above and in a reported ruling of Hon’ble High Court of Punjab in the matter of Sindh Bank V/s. M/s. Gemini Fashions Pvt. Ltd. And Others in Criminal Petition 1395-2005, it was held that U/Sec.13 and 14 of the Act, petitioner being the secured creditors is entitled to enforce security interest against the Respondents for recovery of the dues.

5. As on **29/12/2021**, the Respondents are liable to pay **Rs.32,24,965.87** along with interest to the Petitioner Bank. In fact, even from the date of the filing of the petition the Respondents have not made attempt to make any payment. This attitude of the Respondents clearly reveals that they have become chronic defaulters. Thus the Petitioner Financier without any alternative has presented the petition. Thus, there is no malafide in filing the petition. Therefore, the Petitioner is at liberty to proceed against the Respondents as per SARFAESI Act, 2002. For the reasons stated supra, petition is liable to be allowed. Accordingly, the following :

O R D E R

Petition is allowed with following terms.

1. Applicant/petitioner is entitled to take possession of the schedule property towards satisfaction of the creditors due.

2.The Advocate for petitioner submits that Sri. Chidananda may be appointed as a Commissioner, in view of the above, Sri.Chidananda Enrolment No.Kar.1552/2007 – Advocate may be appointed as a Commissioner to deliver the possession of the secured property to the petitioner.

3. Police Inspector of Jurisdictional Police Station is hereby directed to give necessary assistance to the applicant/petitioner while taking possession of the schedule property.

4. Applicant/petitioner shall bear the legal expenses if any of the said police.

5. The Petitioner is at liberty to break open the lock after following due procedure of law in the presence of the respectable persons.

(SHANKARAPPA B.MALASHETTI)
XXXI A.C.M.M., Bengaluru.