The Authorized officer, Union Bank of India has filed the present petition U/s.14 of the SARFAESI Act, 2002 praying to pass an order for taking possession of the schedule property and deliver the same to the authorized officer by appointing the Court Commissioner with suitable directions to the police authorities to assist the court Commissioner.

2. It has contended by the applicant that the Erstwhile Andhra bank subsequently it is merged with Union Bank of India, the petitioner is a body corporate under the Banking Companies Act 1970. The applicant is a bank within the definition u/s.(2) (c) of SARFAESI Act. The respondent no.1 and 2 are the borrowers and respondent no.3 is the guarantor. At the request of the respondent, the Erstwhile Andhra Bank has sanctioned the mortgage loan facilities of 1) Rs.15,00,000/- through loan a/c.No.158230100013612 + 2) SOD loan of Rs.10,00,000/- through A/c.No.158231100000371 and 3) Credit card loan a/c.No.4373782101237000 for Rs.50,000/- by the petitioner bank and mortgaged the immovable property and

executed the various documents. The 1st respondent has created the mortgage by way of deposit of title deeds and mortgaged the schedule property. But the respondents have failed to repay the loan instalments as agreed. The loan account of Respondents has classified as Non performing assets with the applicant bank on 27/1/22 as per the SARFAESI Act. To recover the due amount from the respondent, petitioner issued demand notice dtd: 7/2/22 as provided u/s.13(2) of SARFAESI Act and calling upon the respondent to discharge in full his liabilities to the petitioner bank within 60 days from the date of notice. The said notice has been duly served to the respondent. Even then the respondent failed to discharge the liability even after expiry of 60 days nor replied to the said. After issuance of notice, the petitioner has taken the symbolic possession of the schedule property and issued Possession Notice dtd: 18/5/22 u/s.13(4) of SARFAESI Act. The notice is published in Kannada Prabha and Financial Express dtd: 19/5/22. A sum of Rs.22,79,800.08 is a due as on 31/1/21. Accordingly, the petitioner prayed to pass an order of taking physical possession and to deliver the same to the applicant bank or authorized officer by appointment of Court

Commissioner to take the possession of immovable property with a directions to the concerned police to assist the Court Commissioner in evicting the occupants of the schedule property by empowering to break open the locks of the schedule property if found lock while taking the possession.

3. After filing of the petition no notice has sent to the respondents, who are the borrowers, in view of recent ruling of Hon’ble High Court of Karnataka in Crl.Pet.No.1395/05 and Writ Pet.No.9694/05 on 11/4/05 and 23/02/2006 respectively.

4. The authorized officer has filed his Affidavit in support of the version stated in the petition. The petitioner bank has produced the copy of all the documents and also produced the original documents and after scrutinizing the same, the original documents have been returned to the petitioner.

5. Heard. Perused the records.

6. The petitioner 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.

7. 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.

8. The Respondents are liable to pay Rs.22,79,800.08 as on 31/1/21 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 Hon'ble CMM has informed to the Judicial Officers of IPC courts in CMM unit to assign the advocates instead of Sheristedar of the courts to enforce and execution of the orders, as per the intimation of the Hon’ble CMM dtd: 21/6/22 in respect of SARFASESI Act. Hence, as per the memo of counsel for petitioner bank, Sri.Nagendra Babu.V.N, Advocate Enrol.No.KAR/502/2008 is hereby 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.

XXIV A.C.M.M., BANGALORE.