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IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. (IB) No.322/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

Rajendra P.
No.67-A, 4th C Main Road,
OMBR layout, Bhuvanagiri,
Banaswadi,
Bengaluru- 560 043. - Petitioner/Applicant/Operational Creditor

Versus

M/s.Indiranagar Chit Funds & Trading Company Private Limited
#33, PKAN Building,
Opposite to BDA Commercial Complex,
1st stage, Inidranagar,
Bangalore – 560 038. & Another - Respondents/Corporate Debtors

Date of Order: 28th January, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri. Krishna Bhargav MV

For the Respondent No.1 : Shri. Unni Krishnan M.

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.322/BB/2019 is filed by Rajendra P. (hereinafter referred to as 'Petitioner/Operational Creditor) U/s 9 of the IBC, 2016, R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency

Resolution Process (CIRP) in respect of M/s.Indiranagar Chit Funds And Trading Company Pvt Ltd, on the ground that it has committed default for total amount of Rs.20,02,250/-(Rupees Twenty Lakhs Two Thousand Two Hundred and Fifty Only) as on 10.04.2017.

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

   (1) Mr. Rajendra.P (Petitioner/Financial Creditor) has subscribed to the Chits of Indiranagar Chit funds and Trading Co. Pvt. Ltd. (Corporate Debtor). The Financial Creditor entered into 2 Chit Agreements dated 06/09/2015 and 02/06/2016 for a sum of 10 Lakhs and 25 Lakhs respectively under Chit Number YHSSI/2015 and AXI/5. The monthly amount comes to Rs.50,000/- to be paid in 20 instalments and Rs.62,500 to be paid in 40 instalments respectively.

   (2) M/s. Indiranagar Chit Funds and Trading Company Pvt Ltd (Respondent/Corporate Debtor), having CIN: U65992KA1976PTC003007 incorporated on 28th May 1976. The Nominal Share Capital is Rs.30,00,000/- (Rupees Thirty Lakhs Only) and Paid up Share Capital of the Company is Rs.5,00,000/-(Rupees Five Lakhs Only).

   (3) It is stated that the Corporate Debtor having its business into Chit Fund which comprises of a group of members called Subscribers. The main object of the Corporate Debtor is to carry on business of chit funds without conducting any prize chit or money circulation scheme in contravention of the provisions of the Prize Chit and Money circulation schemes Act(Banning) 1978, promoting and conducting auction chits.

   (4) It is also stated that Operational Creditor has provided chit funds to the Corporate Debtor and the said funds have not been paid as per the practice followed. The Operational Creditor has paid the chit instalments amounts regularly and did not default the payments. The amount paid by the

Operational Creditor does not fall within the purview of the definition of 'Financial Debt' as provided under section 5(8) of I B Code 2016.

(5) It is stated that subsequently, the Chit Agreement expired on 10/04/2017 on attaining maturity, which is also the closing date of Subscribed chit account. The Operational Creditor sought for repayment of balance chit amount/Prize amount to the tune of Rs.20,02,250/- which is the claim amount herein and also sent 2 demand letters dated 05/10/2018 & 17/12/2018 to Corporate Debtor requesting to consider the matter on a top priority basis and settle the due amount, as the Operational Creditor is in financial distress and is in need of Money that he is legally entitled to. But the Corporate debtor failed to repay the said amount and evaded the communications of the Operational Creditor with a mala-fide intention to cheat the Operational Creditor.

(6) Finally, the Operational Creditor has sent a demand notice to Corporate Debtor on 30/04/2019 claiming an amount of Rs.20,02,250/- which is due and it has been acknowledged by the Corporate Debtor on 02/05/2019, but no reply has been sent to the demand notice issued by the Corporate Debtor. Having left with no other remedy, the Operational Creditor has filed the instant Company Petition by seeking to initiate Corporate Insolvency proceedings (CIRP) against the Operational Debtor, appointing IRP etc.

3. The Respondent No.1 has filed its the reply dated 27/01/2020 by inter alia stating as follows:

(1) It is admitted that the Operational Creditor entered into Two Chit Agreement dated 06.09.2015 and 02.06.2016 with the applicant for a sum of Rs.10,00,000/- and Rs.25,00,000/- respectively and thus debt and default in question are also admitted. ought for repayment of the chit amount to the tune

of Rs.20,02,250/- which is the claim amount and also sent two demand letter on 05.10.2018 and 17.12.2018 to the Corporate Debtor requesting to consider his case on top priority and settle the amount as the Operational Creditor was in financial distress are also part of records.

(2) Indiranagar Chit Funds and Trading Company (Corporate Debtor) was registered as a Chit Fund Company, under the provisions of the Companies Act, 1956 in the year 1976. The Company gained popularity over a period of time in the Chit Fund business and has completed about 2000 Chit groups. The Company grew to become a force to reckon with in the Chit Fund business and transacted with several Crores of Rupees and with more than around 5000 satisfied customers. In fact, the Company was started by one Mr. Achuthan Nair. That after his demise his sons Mr. P.K. Chandrashekhara Babu and Mr. P.K. Ravi Kumar were managing the business as its directors. It is stated that due to general slump in the financial marker and also due to the demonetization of money, many of the subscribers of the Chits who were paying in cash started defaulting in payment of monthly instalments. That apart, many customers/ subscribers who has bid for the chit also did not repay the Company as a result of which, there was a huge short fall in collection every month. However, the expenses and out flow from the Company did not reduce. The Chit Groups were also not fully subscribed.

(3) It is stated that unfortunately, instead of focusing on recoveries, the Corporate Debtor started repaying the customers whose chits had matured by borrowing heavily with huge rates of interest i.e. 2% to 4% as a result of which, there was financial pressure over the Company. Though, the Company made sure of making payments in time, more than 80% of the customers could not bid for the chit and

accordingly, the Company had to consider the same as its borrowing and dividend was disbursed to make sure all customers benefited and made profit while they took their money in the end of the group.

(4) In many cases, the customers did not take the chit and left it with the Company to get interest, which were considered as subscription for a new chit. This resulted unhealthy and unfinished groups having less collection every month and with shortage of collections and inflow of funds only in Books and not in reality. Thus the Company was in the red, which resulted in no inflow of cash. On the contrary, the Company had to pay its subscribers, which could not be done due to the foregoing reasons. The Company has sold some of its properties and repaid many customers. In fact, the family Members of one of its Director MR. Chnadrashekar Babu also sold their personal properties and repaid many persons. The Superintendent, in the office of the Assistant Registrar of Co-operative Societies, filed a complaint before Indiranagar Police Station, when many subscribers of Chit fund Companies started complaining regarding default of the Company. Accordingly, the police has registered a complaint, under Sec.420 of India Penal Code and Section 76 of the Chit Fund Act 1982 agianst the Directors of the M/s. Indiranagar Chit Funds and Trading Company and the case is under investigation.

(5) The Corporate Debtor further submits that is has to receive a sum of around Rs.8,00,00,000/- (Rupees Eight Crores) from various customers, who have received the chit amount but not repaid. Likewise the Corporate Debtor is liable to pay to various subscribers, who have paid chit amounts, and also lenders to the tune of Rs.47,00,00,000/- (Rupees Forty Seven Crores). Hence the receivables of the Corporate Debtor is far

lesser than what it is due to Customers, lenders etc. Therefore, the Corporate Debtor finds it impossible to pay the Operational Creditor since it has absolutely no funds at its disposal. That apart, its offices and accounts have been frozen by the Indiranagar police and GST. The Corporate Debtor has no movable or immovable properties also for liquidation so that some of the chit subscribers could not repaid. It is stated that about Rs.1.5 crores is lying in deposits i.e. by way of Fixed Deposits with the Deputy Registrar of Chits, Bangalore.

4. Heard Shri Krishna Bhargav MV, learned Counsel for the Petitioner and Shri Unni Krishnan M., learned Counsel for the Respondent No.1. We have carefully perused the pleadings of the parties and the extant provisions of the Code, the Rules made thereunder and the law on issue.

5. Shri Krishna Bhargav MV, learned Counsel for the Petitioner, has inter alia submitted that Debt and Default in question admittedly is not in dispute as the Respondent No.1 has also admitted the same it in reply dated 27.01.2020. The instant Petition is filed in accordance with law and also suggested a qualified Resolution Professional namely Shri Pankaj Srivastava, with Registration No.IBBI/IPA-001/IP-P00245/2017-18/10474, who also filed Written Communication in Form-2 dated 28th January, 2020 and necessary declaration. Therefore, he has urged the Adjudicating Authority to admit the case by initiating CIRP in respect of Corporate Debtor appointing IRP imposing moratorium etc.

6. Mr. Unni Krishnan M., learned Counsel for the Respondent No.1 has also no objection to initiate CIRP as the Company has become insolvent and the Company has no assets movable or immovable.

7. The case is listed for admission on various dates viz. 21.08.2019, 04.09.2019, 12.09.2019, 19.09.2019, 26.09.2019, 30.09.2019, 14.10.2019, 29.10.2019, 15.11.2019, 28.11.2019, 18.12.2019, 31.12.2019, 21.01.2020 & 28.01.2020. The case is adjourned due to

National Company Law Tribunal, Bengaluru Bench various reasons viz., for compliance of office objections, serving the notice etc.

8. As stated supra, the Debt and Default are admittedly not in dispute and the Respondent also agreed that they had committed default to the Petitioner apart from so many other creditors. The instant Petition is filed strictly in accordance with the extant provisions of the Code, and debt and default is established by the Operational Creditor by submitting substantial evidence in support of the claim and also suggested a qualified Resolution Professional namely Shri Pankaj Srivastava, with Registration No.IBBI/IPA-001/IP-P00245/2017-18/10474, who also filed Written Communication in Form-2 dated 28th January, 2020 and necessary declaration. Therefore, we are of the prima facie opinion that said IRP is eligible to be appointed as IRP in this case and thus inclined to initiate CIRP as prayed for.

9. The Corporate Debtor has stated that they have to receive about Rs.8 Crores from various customers, who have received the Chit amount but not repaid. However, they are liable to pay to various subscribers, who have paid Chit amounts and also lenders to the tune of Rs.47 Crores. The Corporate Debtor has no movable or immovable properties. Therefore, the question of reviving the Company during the CIRP is very bleak and thus the IRP is directed to analyse the issue by inviting the claims from the Claimants against the Corporate Debtor, vis a vis its Assets and constitute CoC, and thereafter take a decision whether any possibility of reviving business of Corporate Debtor or to file an application for liquidation of the Company, in accordance with provision of the Code, instead following entire process of CIRP.

10. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, U/s 9(5)(i) and other extant provisions of the IBC, 2016, we hereby admitted C.P.(IB)No.322/BB/2019 by initiating Corporate

Insolvency Resolution Process (CIRP) in respect of Respondent/Corporate Debtor with the following consequential directions:

1) **Shri Pankaj Srivastava**, bearing **Registration No.** IBBI/IPA-001/IP-P00245/2017-18/10474, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/ Corporate Debtor namely M/s.Indiranagar Chit Funds And Trading Company Pvt. Ltd. to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;

2) The following moratorium is declared prohibiting all of the following, namely:

   a) the institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

   b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

   c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

   d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;

राष्ट्रीय कम्पनी विधि अधिकरण बेंगलूरु बेन्च
National Company Law Tribunal Bengaluru Bench

e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;

f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;

3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.

4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.

5) Post the case for report of IRP on **06.03.2020.**

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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30/01
for Deputy/Asst. Registrar
National Company Law Tribunal
Bengaluru Bench
Rajeshwari