

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

SR/851/2020 in CP/636/(IB)/CB/2017

(filed under Section 70 and 72 of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules 2016, read with Section 424 and 449 of the Companies Act, 2013)

In the matter of M/s. New Chennai Township Private Limited

L.K. Sivaramakrishnan,

RP of M/s. New Chennai Township Pvt.Ltd.
"Rajparis Trimeni Towers" First Floor, 147,
G N Chetty Road, Chennai-600017

... Applicant

-Vs-

R.B. Srinivasan, CFO Mar Limited

Sri Sai Subhadhaya Apartments,
Basement No. 57/2B, East Coast Road,
Thiruvanmiyur, Chennai-600041

... Respondent

Order pronounced on 6th August 2021

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)

For Applicant : V.V. Sivakumar, Advocate
ChethanSagar, Advocate
B. Kishore, Advocate

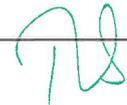
For Respondents : B. Ramana Kumar, Advocate
S. Harishkumar, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under consideration is an application which is moved by the
Applicant/RP under Section 70 and 72 of the Insolvency and

SR/851/2020 in CP/636/(IB)/CB/2017
In the matter of M/s. New Chennai Township Private Limited



Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules 2016, read with Section 424 and 449 of the Companies Act seeking for relief as follows:-

- a) Direct the Registrar of the Hon'ble Adjudicating Authority to register a criminal complaint against the Respondent for offences committed under sections 191, 192, 193, 199, 200, 209 and 120-B of the Indian Penal Code;
- b) In the alternative to prayer clause (a) above, this Hon'ble Adjudicating Authority may be pleased to hold a preliminary inquiry into the offences under sections 191, 192, 193, 199, 200, 209 and 120-B of the Indian Penal Code committed by the respondent or direct the Chief Metropolitan Magistrate, Egmore, Chennai having jurisdiction to hold such an inquiry and on being satisfied that prima facie the offences were committed, to initiate criminal prosecution against the Respondent for such offences;
- c) Pass an appropriate Order and issue appropriate directions under section 340 and Section 195(1)(b)(i) of the Code of Criminal Procedure, 1973; order and direct the respondent to furnish such security for his appearance before the Magistrate as it deems fit and proper; and
- d) Pass such order reliefs as the nature and circumstances of the casemay require.

2. The Registry of this Tribunal has posted this Application for maintainability. From the relief portion as extracted *supra*, it is seen that the Applicant / RP has moved the present Application seeking to direct the Registrar of this Tribunal to register a criminal complaint against the Respondent for offences committed under sections 191, 192, 193, 199, 200, 209 and 120-B of the Indian Penal Code and also to hold a preliminary enquiry in relation to the



same. It is seen that the present Application is filed under Section 70 and 72 of IBC, 2016 which falls under Chapter VII of IBC, 2016 which is termed as "Offences and Penalties". In this regard, it is significant to refer to section 236 of the Insolvency and Bankruptcy Code, 2016 provides for trial of offences by Special Court and same reproduced given below:-

236. (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.

(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.

(3) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint under sub-section (2), the presence of the person authorised by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial.

3. A perusal of Section 236(1) of IBC, 2016 states that the offences under IBC shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013. Further, section 236(2) states that the complainant in all such cases shall be the Insolvency and Bankruptcy Board of India (IBBI). Thus, in



so far as Applications in relation to Chapter VII is concerned only the Special Court is having jurisdiction to try and hear the said Applications. In so far as the relief as sought for by the Applicant, it is clear that this Adjudicating Authority is not a Special Court established under Chapter XXVIII of the Companies Act, 2013, but constituted under Section 408 of the Companies Act, 2013. Hence on the said count, the present Application filed by the Applicant is not maintainable and accordingly, this **SR/851/2020** stands **dismissed** on the ground of maintainability.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond