

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
01-04-2024 AT 10:30 AM**

CP(IB) No. 93/7/HDB/2023
u/s. 7 of IBC, 2016

IN THE MATTER OF:

Smt. Neeraja Kanumili

...Financial Creditor

AND

Nagasuri Chit funds Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. In the result, **this company petition is rejected. No costs.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

CP (IB) No. 93/7/HDB/2023

Under Section 7 of the Insolvency &
Bankruptcy Code, 2016 and Rule 4 of
Insolvency and Bankruptcy (application
to adjudicating authority) Rules, 2016.

In the matter of M/s. Nagasuri Chit Funds Private Limited

1. Mr. Venkata Vara Prasad Kanumilli

S/o. Late Nagabushanam, Age: 55 years,
Occ: Business, R/o. Flat No.303,
A-Block, 3rd Floor, JMR White Lotus,
Shaikpet, Hyderabad.

2. Smt. Neeraja Kanumilli,

W/o. Venkata Vara Prasad Kanumilli,
Age: 47 years, Occ: Business, R/o. Flat No.303,
A-Block, 3rd Floor, JMR White Lotus,
Shaikpet, Hyderabad.

... Financial Creditors

Versus

M/s. Nagasuri Chit Funds Private Limited,

Having its registered office at Flat No.601,
Nagasuri Plaza, 7-1-419/10N/31,
Behind Marivanam, Ameerpet, Hyderabad.

... Corporate Debtor

Date of Order: 1st April 2024

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)**

Appearance of Counsel :

For the Financial Creditors : Mr. P.Amarender Reddy, Advocate
For the Corporate Debtor : Mr. S.Ravi, Sr. Counsel and
Mr. M.Naga Deepak, Advocate

PER: BENCH

1. This Company Petition is filed by Mr. Venkata Vara Prasad Kanumilli and Smt. Neeraja Kanumilli, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against M/s. Nagasuri Chit Funds Private Limited, alleging

non-payment of Rs. 6,80,00,000/- (*Rupees Six Crores Eighty Lakhs Only*), including interest which is said to be due and payable as on 10.02.2023, by Corporate Debtor to Financial Creditor, under the promissory notes said to have been executed by K. Suryanarayana Raju on behalf of the respondent,

2. The averments put forth by the Petitioners/ Financial Creditor are:

2.1 It is averred that the Corporate Debtor/M/s. Nagasuri Chit Funds Private Limited represented by its Managing Director Mr. Suryanarayana Raju addressed a letter dated 26.02.2020 to the Financial Creditors duly affixed with Common seal of the Company, wherein the Corporate Debtor has referred to Rs.1.00 Crore borrowed by his son Mr.

Satyanarayana Raju (Director of the Corporate Debtor) and Rs.3.00 Crores due towards four chits: Group B1 – Chit No’s. 18 and 19 for Rs.1.00 Crore each (Rs.2.00 Crores) and Chit Group No. B2 – Chit Nos. 14 and 15 for Rs.50.00 lakhs each (Rs.1.00 Crore) due to Smt. Neeraja (Petitioner No.2), which were completed in August, 2019 and sought 6 months’ time to settle the dues and offered to pay interest at 24% PA on the dues till that time.

2.2 It is submitted that the Corporate Debtor represented by Managing Director Mr. Suryanarayana also gave 6 (Six) Promissory Notes, under his signature for a total value of Rs.4,00,00,000/- (Rupees Four Crores only) – Two promissory notes of Rs.1,00,00,000/- (Rupees One Crore only) each and four (4)

Promissory notes of Rs.50,00,000/- (Rupees Fifty Lakh only) each. It is stated that the Corporate Debtor has admitted its liability issued the letters dated 26.02.2020 filed as Annexure-E & F as well as Promissory Notes filed as Annexure-G undertaking to pay the Petitioners .

2.3 It is stated that, as the said amount was not paid despite demands, the Financial Creditors have approached the Jt. Commissioner of Police, CCS, Hyderabad/Investigation Officer with a complaint on 29.09.2020 and an FIR in Cr. No. 145/2020 was registered citing A-1: M/s. Nagasuri Chit Fund Private Limited, its Directors A-2: Satyanarayana Raju and his father A-3: Suryanarayana Raju and others as accused in the said crime for the offence

under Section 406, 420 of IPC and Section 5 of TSDEPE Act (Depositors Act).

2.4 It is stated that the Investigation Officer has filed a Petition before the Hon'ble Metropolitan Sessions Judge, Nampally, Hyderabad, with a prayer to take the signatures of the Corporate Debtor (Mr. Suryanarayana Raju) in the open Court for the purpose of sending them to Forensic Science Laboratory (FSL) report. The FSL report filed as Annexure-K has confirmed that the signatures are that of Mr. Suryanarayana Raju which appearing on the Promissory notes.

2.5 It is stated that, it thus clear that the corporate debtor became liable to pay is Rs.6,80,00,000/- (Rupees Six Crore and Eighty Lakh only) to the both petitioners along with interest as admitted in the letters dated

26.02.2020 to gather with interest at 24% per annum.

However, as the said debt, which according to the petitioner is a financial debt since not paid despite the same became due and payable, the present petition is filed.

3. The contentions by the Respondent/ Corporate Debtor in its COUNTER are that:

3.1 The Corporate Debtor denied the averments made by the Financial Creditor and submitted that the petition is liable to be dismissed.

3.2 It is averred that as per the definition of 'corporate person' under Section 3(7) of the Insolvency and Bankruptcy Code, 2016, it has been specifically stated that the corporate person shall not include any 'financial service provider'. A 'financial service

provider’ has been defined under Section 3(17) of IBC to mean a person engaged in the business of providing *financial services* in terms of authorization issued or registration granted by financial sector regulator.

3.3 It is stated that Section 3(16) of IBC provides an inclusive definition of “*financial service*”. *Inter alia*, a *financial service* includes:

“*Definitions.*

3. In this Code, unless the context otherwise requires --

(1) to (15)

(16) “*financial service*” includes any of the following services, namely:-

(a) *accepting of deposits;*

(b) *safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;*

(c) *effecting contracts of insurance;*

(d) *offering, managing or agreeing to manage assets consisting of financial products belonging to another person;*

(e) *rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—*

(i) *buying, selling, or subscribing to, a financial product;*

(ii) *availing a financial service; or*

(iii) exercising any right associated with financial product or financial service;

(f) establishing or operating an investment scheme;

(g) maintaining or transferring records of ownership of a financial product;

(h) underwriting the issuance or subscription of a financial product; or

(i) selling, providing, or issuing stored value or payment instruments or providing payment services;”

The term “financial product” as defined under Section 3(15) of the IBC:

“Definitions.

3. In this Code, unless the context otherwise requires --

(1) to (14)

(15) “financial product” means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument as may be prescribed;”

3.4 It is stated that the Hon’ble Supreme Court, in the case of Sriram Chits and Investments (P.) Ltd. Vs. Union of India and Ors., AIR 1993 SC 2063, while

referring to the Banking Commissioner Report dated 10.08.1971, stated that ‘chit fund’ can thus be described as a mutual recurring deposit scheme under which every member is entitled to receive prize amount as loan from the chit fund; for the last prize winner, however, the prize amount cannot be considered as loan. Although no rate of interest is specifically mentioned, the deductions on account of discount and the foreman’s commission make the loan in a majority of the cases, an interest-bearing one, the interest rate depending on the specific terms and conditions under which the scheme operates. For the foreman, however, no interest rate is involved on his ‘loan’.

3.5 It is stated that Section 3(18) of the I & B Code, 2016 defines a “financial sector regulator” as:

“Definitions.

3. In this Code, unless the context otherwise requires --

(1) to (17)

(18)

(18) “financial sector regulator” means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government.”

3.6 It is stated that the Reserve Bank of India while categorizing Chit Fund as a Non-Banking Financial Company (NBFC), in its FAQs as updated on 10.01.2017, on the question- “is it necessary that every NBFC should be registered with RBI?” has answered the following:

“In terms of Section 45 IA of the RBI Act, 1934, no NBFC can commence or carry on business of a non-banking financial institution without obtaining a certificate of registration from the Bank. However, in terms of the powers given to the Bank, to obviate dual regulation, certain categories of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI. One of the exempted categories is Chit Fund Companies as defined in Section 2(fb) of the Chit Funds Act, 1982”.

A copy of the RBI's FAQ document dated 10.01.2017 has been attached herewith as Annexure R/1.

3.7 It is stated that the Petitioner No.1 herein had filed CC.No.145/2020 before the Hon'ble Sessions Judge at Hyderabad for offences under Section 406, 420 of IPC, Section 76 of the Chit Fund Act and Section 5 of the Telangana Protection of Depositors of Financial Establishments Act ("TSPDFE Act"), in which the Investigating Officer had submitted a report concluding that there was a "lack of evidence". A copy of the Protest Petition filed by the Petitioner No.1 has been attached herewith as Annexure R3.

3.8 It is stated that in Para 11 of the Protest Petition filed as Annexure-R3, it is stated that:

"A2- Satyanarayana Raju, has come to collect cash at his residence."

In the present application however, it is stated that it was Mr. *Suryanarayana Raju* who had come to collect cash. Mr. Suryanarayana Raju is the Managing Director of the Respondent, whereas Mr. Satyanarayana Raju is his son, who is a Director. The change in narrative further substantiates the orchestration and the fraud played by the Petitioners.

3.9 It is stated that the purported letter dated 26.02.2020 is a fabricated document, never issued and the reliance on the same is baseless and unfounded. Further, the alleged promissory notes said to be issued by Mr. Suryanarayana Raju, are also forged. None of the promissory notes contain a date. Further, none of the alleged promissory notes have filled in receipts. The handwriting in the promissory notes is

the same as that of the Receipts mentioned in Annexure A and B filed along with the application.

3.10 It is stated that the Forensic Science Laboratory (“FSL”) report which was submitted to the Hon’ble Metropolitan Sessions Judge, Hyderabad, attached as Annexure K in the application, clearly gives the finding that the signatures in the Demand Notes and the Receipts filed do not match the standard signatures of either Mr. Suryanarayana Raju or Mr. Satyanarayana Raju. The findings in the FSL Report filed as Annexure K in the application, filed by the Petitioners herein, goes heavily against them, to establish the forgery and fraud orchestrated by them.

3.11 It is stated that the Petitioners herein have forged documents, orchestrated a narrative to frame the

Respondent, and to mislead this Tribunal that there existed a contractual relation in which the Respondent owed monies to the Petitioners. It is further stated that for the reasons stated above, the present application deserves to be dismissed in limine with exemplary costs on the Petitioners.

4. REJOINDER filed by the Petitioners/ Financial Creditors, inter-alia stating that:

4.1 It is stated that the Financial Creditors vide their letter dated 21.09.2020 has requested the Asst. Registrar of Chits, Unit III, Golconda to verify their records and issue a certificate/ letter regarding their status. The Asst. Chit Registrar, has stated that the Group No.B1 and B2 of Corporate Debtor i.e., M/s. Nagasuri Chit Fund Private Limited, Hyderabad, towards which the

Company has issued Promissory Notes, were not registered with their office. The letter issued by the Registrar of Chits to the Financial Creditor is filed as **Annexure-B** to the rejoinder.

4.2 It is stated that the Financial Creditor has again filed a protest petition before the Hon'ble Metropolitan Sessions Judge, Hyderabad at Nampally and the same was allowed vide its order dated 10.02.2023 in CrI.M.P.No.2580/2022 and has taken the case on record vide C.C.No.2 of 2022 citing the Company as A-1 and Mr.K.Suryanarayana Raju as A-2 and his son Mr.K.Satyanarayana Raju as A-3 and presently the matter is posted to 31.07.2023 for "Consideration of Charges" and the same filed as **Annexure-C** to the rejoinder.

4.3 It is stated that the present transaction does not come under Section 3(15), 3(16) and 3(17) of the Chit Fund business as the same is not “a Registered Chit” with the competent authority as per Chit Fund Act 1982, hence cannot be treated as a case of Financial Service provider as contemplated under the Section 2(17) of the IBC 2016. All the other issues raised by the Respondents are subject matter of the Trial pending before the Hon’ble MSJ for the offences committed by the Respondents under the provisions of IPC.

4.4 It is stated that only after a complaint was lodged by the daughter of the Petitioners and themselves and the Registrar of Chits has intervened and the Corporate Debtor was constrained to pay the chit amounts after Bidding the same, failing which the Registrar of Chits can adjudicate and award which would have

complicated the matters for the Corporate Debtor. It is equally false to state that as there was a default of chit amount the subsequent chits were put on hold. However, the said transaction is nothing to do with the present case on hand. The disputes with regard to the chits registered with the Registrar of Chits, Golconda, Hyderabad were settled and closed and the Petitioners' withdrawal of their Complaint is with regard to these Chits only.

4.5 It is stated that the plea of the respondents that the contents in the FSL report are false, is baseless and only an attempt to escape from the liability. The Corporate Debtor is put to strict proof the same that they have always maintained the chit group with "NS" and there is no necessity for the Petitioners to mention the Chit Group B1 is fake, the Petitioners

were not aware that the Corporate Debtor was running the fake chits without registering with the Registrar of Chits as per law, till the Petitioners were informed as such by the Registrar of Chits, Golkonda, Hyderabad. For the present transaction in question, thus the fraud is played by the Corporate Debtor has come to the knowledge of the Petitioners then and they have lodged the complaint as per the advice of the Registrar of Chits as the Corporate Debtor was running the chits without registering them with Registrar of Chits. The Chit Group B1 is not fake as contended.

4.6 It is further stated that the Petitioners have filed a protest petition even when Second IO has filed a closure report. Allowing the Protest Petition, the Hon'ble Metropolitan Sessions Judge, Hyderabad has

taken cognizance of the offence against the Corporate Debtor and the case is numbered as CC.No.2 of 2023, for the offence under Section 406, 420 of IPC, Section 76 of Chit Fund Act and Section 5 of the Telangana State Protection of Depositors from Financial Establishments Act, the Corporate Debtor represented by its Directors is appearing before the Hon'ble Sessions Judge, Nampally, prior to the date of filing of the counter before this Tribunal, thus the Corporate Debtor is suppressing the true facts to suit its claim.

4.7 It is stated that after pursuing the FSL report only, the Hon'ble Metropolitan Sessions Judge, Hyderabad has taken cognizance of the case against the Corporate Debtor and it is posted for framing of charges. Thus, the contention of the Corporate Debtor that the FSL

report is against the petitioners is contrary to the record and the same is mentioned only to mislead this Tribunal and other contents are false even to the knowledge of the Corporate Debtor.

4.8 It is stated that the documents which are filed by the Petitioners goes to show that there existed a contractual relationship and admittedly the letters and promissory notes issued by the Corporate Debtor, which were sent to FSL, proves that promissory notes are not forged and they are issued by the Corporate Debtor in discharge of the liability towards the “Completed/ Matured” Chits and hence the Corporate Debtor cannot say that they are forged and fabricated documents.

5. The learned Counsel for the Petitioners filed written arguments reiterating the oral submissions.

Petitioners have relied on the following Judgments in support of their case.

(i) Sanjay Jain Vs. Nilesh Sharma, Hon'ble NCLAT Judgment dated 2nd August, 2023 reported in 2023 SCC OnLine NCLAT 429

(ii) Company Appeal (AT) (Insolvency) No. 1131 of 2022 before the Hon'ble NCLAT, Delhi, Date of decision: 21.07.2023, between Anuj Gaur Vs. M/s. Som Resorts Pvt. Ltd.

(iii) The Hon'ble Supreme Court has upheld the decision of this Hon'ble Tribunal in its judgment reported in 2023 SCC Online SC 608 between M.Suresh Kumar Reddy Vs. Canara Bank and others.

(iv) The Hon'ble National Company Law Appellate Tribunal (NCLAT) in its judgment reported in 2023 SCC

On-Line NCLAT 402 dated August 4, 2023 between Tenny Jose and Others Vs. Pratap Pillai and others.

(v) The Hon'ble National Company Law Appellate Tribunal, (NCLAT) New Delhi in its reported judgment 2023 SCC OnLine NCLAT 473 between Kasha E.Sai Vs. Yarn Udyog and Others Company in Appeal (AT) (Ch) (Ins.) No.187/2023 decided on August, 2, 2023.

6. The Counsel for the Respondent also filed WRITTEN SUBMISSIONS by reiterating the oral submissions and relied on Rayappa Chinnusamy Vs. HNS Chits Private Limited (MANU/ NC/ 12478/ 2019), wherein Hon'ble National Company Law Tribunal, Chennai Bench, held that:

“Chit Fund Company falls within the definition of Financial Service Provider”.

7. It is further stated that during the Course of arguments, the counsel for the Petitioners had filed a MEMO dated 16.08.2023 to clarify the Bank Statements as produced in Volume III of the Petition. The Petitioners were asked to highlight the transactions which were in relation to the Group B Chit Funds. The Petitioners in their Memo dated 16.08.2023 have produced a table and as counter to that table, the Respondent in their Memo dated 21.08.2023 have produced corresponding receipts of the said bank transactions, and contended that that the said transactions are in relation to Chit Group 'NS', which was the only Chit Group ever issued by the Respondent. However the respondent contends that the Petitioners have failed to show a single bank transaction with respect to 'Group B' Chit Fund, which forms the genesis of their orchestration, that there existed a

contractual relation, and the Respondent has defaulted in repayment.

8. In light of the contest aforementioned the point that emerges for our consideration is:

POINT:

Whether a financial debt of a sum exceeding rupees one crore due and payable by the respondent to the petitioner exists? *If so*, the respondent has committed default in repayment of the same?

9. We have heard Mr. P. Amarender Reddy, learned advocate for the petitioners/ Financial Creditors; Mr. S. Ravi, learned Senior Counsel, who is assisted by Mr. Naga Deepak, learned advocate for the respondent.

POINT:

Whether a financial debt of a sum exceeding rupees one crore due and payable by the respondent to the petitioner exists? *If so*, the respondent has committed default in repayment of the same?

10. According to the petitioners the petitioners have subscribed to four chits run by the respondent, namely,

		Rupees in crores
• Chit Group B1 – Chit Nos. 18 and 19 for Rs.1.00 Crore each.	..	2.00
• Chit Group No. B2 – Chit Nos.14 and 15 for Rs.50 lakhs each.	..	1.00
TOTAL	..	3.00

The amounts shall carry interest at the rate of 24% per annum. The petitioners also contend that, in addition, they have deposited rupees one crore towards Fixed Deposit and thus, in all, the respondent owes a sum of rupees four crores payable to the petitioners with interest at the rate of 24% per annum, and it is a financial debt.

11. It is further stated that, the director of the respondent K. Suryanarayana Raju vide letters dated 26/02/2020 admitted on behalf of the respondent, that the respondent had received the above amounts from the petitioners. It is the further case of the petitioners that , when the amount under the above chits and the deposit became payable the petitioners have approached the respondent for repayment of the same and pursuant thereto the respondent represented by its Director K. Suryanarayana Raju executed six Promissory Notes for a value of rupees three crores, and two Promissory Notes for a value of Rs.50 lacs each towards the repayment of the entire amount, on behalf of the respondent. Therefore, according to the petitioners, the financial debt of a sum of rupees six crores stands admitted by the respondent on executing the Demand Promissory Notes by the Director

of the respondent, wherein it was agreed to pay the same on demand with interest at 24% per annum..

12. It is further contended that, despite demand when the amount due and payable as aforementioned since not paid, the petitioners have approached the Joint Commissioner of Police, CCS, Hyderabad with complaint and the same was registered as C.R. No.145 of 2020 dated 29.09.2020 against the respondent (A-1), Satyanarayana Raju (A-2), Director of respondent and Suryanarayana Raju (A-3) and others for the offence under sections 406 and 420 of the IPC. A-1 and A-2 are son and father. It is also contended that the Forensic Science Laboratory (FSL), Hyderabad have submitted a report to the Police confirming the signatures on the Promissory Notes as that of the executants therein.

It is the further case of the petitioners that they also approached the Registrar of Chits, Andhra Pradesh within whose jurisdiction the respondent/ chit fund company is situate, demanding action against the respondent. However, to the utter surprise of the petitioners, the petitioners were informed that the chit groups mentioned by them are not registered; as such no action can be taken on the complaint of the petitioners by the Registrar of Chits.

13. Therefore, according to the learned counsel for the petitioners, when the execution of Promissory Notes has been proved and non-payment of the amount due under the said Promissory Notes is also established, irrespective of the fact that the subject Chits are unregistered, both the

debt and default stands established, hence the petition is liable to be allowed.

In support of this plea the petitioners have relied on the following ruling.

14. The respondent at the outset refuted the claim of the petitioners, mainly contending that, Hon'ble Supreme Court, in *Sriram Chits and Investments (P.) Ltd. Vs. Union of India and Ors.*, AIR 1993 SC 2063, while referring to the Banking Commissioner Report dated 10.08.1971, held that 'chit fund' can thus be described as a mutual recurring deposit scheme under which every member is entitled to receive prize amount as loan from the chit fund; for the last prize winner, however, the prize amount cannot be considered as loan. Although no rate of interest is specifically mentioned, the deductions on

account of discount and the foreman's commission make the loan in a majority of the cases, an interest-bearing one, the interest rate depending on the specific terms and conditions under which the scheme operates. For the foreman, however, no interest rate is involved on his 'loan'.

15. The respondent further submitted that the respondent being a Chit fund Company is a Financial Service Provider (FSL), hence cannot be treated as a 'corporate person' as defined under Section 3(7) of the IBC, 2016; therefore, it is not a Corporate Debtor in terms of section 3(8) of I&B Code, 2016. In support of this plea, the respondents relied on the ruling of the National Company Law Tribunal, Chennai Bench, in the case of Rayappa Chinnusamy Vs. HNS Chits Private

Limited (MANU/NC/12478/2019), wherein it was held that Chit Fund Company falls within the definition of Financial Service Provider.

16. The respondent vehemently denied the execution of the letters dated 26.02.2022 and the promissory notes contending that, the same are forged and fabricated for the purpose of this case.

17. Having heard the learned counsel for both the sides and upon perusal of the record, at the outset, we wish to state that, according to the petitioners, the *genesis* of the present claim is the 'Chit' transaction between the petitioners and the respondent, besides the Fixed Deposit. It is also the admitted case of the petitioners that the respondent being unable to pay the said amounts due on their maturity, through its Director, K. Suryanarayana

Raju, executed six Promissory Notes, in all, for a sum of rupees four crores, agreeing to repay the same on demand together with interest at 24% per annum. As the amount due under the said promissory notes also was not paid even after demands, the petitioners have complained to the Registrar of Chits against the respondent and were informed that the subject Chit numbers or deposit were not registered with the Registrar of Chits, Andhra Pradesh, as such no action can be taken on the complaint of the petitioners against the respondents by the Registrar.

18. Therefore, under this undeniable back drop, the petitioners have based the present claim exclusively on the promissory notes the due execution of which according to the petitioners has been admitted by the respondent, therefore, notwithstanding the fact that the

subject Chits since are not registered before the Registrar of Chits, Andhra Pradesh, the present petition deserves to be allowed. In support of this plea of admission of debt the petitioners heavily relied on the letters dated 26.02.2020 stated to have been addressed by K. Suryanarayana Raju on behalf of the respondent/ Corporate Debtor.

19. We have carefully perused the photocopies of all the promissory notes as originals are not produced, besides the letters dated 26.02.2020. Six promissory notes (Annexure 6) which are undated are stated to have been executed by K. Suryanarayana Raju, and two promissory notes which are dated 30/08/2019 (Annexures 'H' and 'I', pages 153 and 154 of the Company Petition) are stated to have been executed by one Satyanarayana Raju Kantheti,

s/o K. Suryanarayana Raju. In so far as the letters dated 20.06.2020 (Annexures 'E', 'F' and 'G' of the petition), wherein it was mentioned that the chit amounts and the amounts owed as detailed in the said letter will be paid within reasonable time of six months from the date of issuance of the letter, the same discloses that it was addressed by K. Suryanaraya Raju and in the bottom portion of the said letter it was mentioned as '*For Nagasuri Chit Funds Pvt Ltd*, however no signature is found therein. A rubber stamp said to be that of the respondent also is found on these letters. According to respondent these letters and also the promissory notes are forged.

It is important to note the descriptive particulars of the alleged executant of the promissory notes (Annexure 6)

namely, K. Suryanarayana Raju, that the promissory notes were executed (allegedly) by said K. Suryanarayana Raju, in his *individual capacity* and not as the director of the respondent/ Corporate Debtor. There is no seal or stamp of the respondent on any of these Promissory Notes. There is no reference whatsoever to the corporate debtor in the promissory note. No official record showing the nexus between the said K. Suryanarayana Raju has been filed. No Resolution/ Power by the respondent authorizing K. Suryanarayana Raju to execute the Promissory Notes on behalf of the Corporate Debtor is filed . Likewise, even the purported letters dated 26.02.2020 claimed to have been issued on behalf of the respondent by K. Suryanarayana Raju does not bear any reference to the corporate debtor. The petitioners having taken a clear

stand that the present case is filed on the strength of promissory notes and the letters dated 26.02.2020 are bound to establish the legal nexus and authority of the so called executant of the promissory notes and the corporate debtor. The balance sheet of the respondent or the Record of Default if any, issued by the information utility also is not filed. Having admitted that the present case is filed on the strength of the promissory and not on the Chits subscribed the petitioners are not entitled to rely of Annexures A to D which exclusively relates to the Chit Transactions.

20. Therefore, even assuming for a moment that subject Promissory Notes were duly executed by K. Suryanarayana Raju in favor of the petitioners, the same having been executed in his individual capacity, for non-

payment of the amounts due under the said Promissory Notes the petitioners' claim if any, shall be only against said K. Suryanarayana Raju and certainly not against the respondent/ Corporate Debtor. In that view of the matter the present petition is not maintainable against the respondent.

21. Since the petitioners' case is based on the promissory notes, but not on Chits stated to have been subscribed, all the pleas and contentions including legal insofar as the same relates to Chit transaction, shall pale into insignificance. Hence there is no need to enter into any finding on the said pleas.

22. Therefore, in the light of our discussion as above, we are of the view that as the petitioners have failed in establishing the existence of a financial debt exceeding

rupees one crore due and payable by the respondent to the petitioners and its default, this petition is not maintainable before this Tribunal. Hence this petition is liable to be *rejected*, accordingly we hereby reject the same. We make it clear that since this petition is disposed of holding that the petitioners have failed in establishing the existence of a financial debt exceeding rupees one crore due and payable by the respondent to the petitioners and its default, which is *sine qua non*, in a Petition filed under section 7 IBC, we have not entered into any finding on the merits on the claim under the Promissory Notes, *supra*, as a Petition under section 7 IBC is only for initiation corporate insolvency resolution process against the corporate debtor and not for recovery of amount.

23. In the result this Company Petition is hereby rejected. No costs.

SD/-

**CHARAN SINGH
MEMBER (TECHNICAL)**

SD/-

**DR.VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)**

sridher/ karim