

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
SINGLE BENCH, CHENNAI**

MA/697/2018  
In  
CP/381/IB/2018

(Under Sections 19(2) and 60(5) of the Insolvency and  
Bankruptcy Code, 2016)

In the matter of **M/s. Thiripura Chits Private Limited**

**J. Manivannan**

*...Resolution Professional / Applicant*

Vs.

**The Deputy Superintend of Police  
Economic offences wings**

*...Respondent*

*Order delivered on 19<sup>th</sup> March, 2019*

**CORAM:**

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**

For Applicant: H. Mubarak Jan, Counsel  
J. Manivannan, RP

For Promoter: K. Gawtham Kumar, Athiban Vijay, Counsels

For Respondent: N. Venkatesan, Dy SP, EOW, Chennai

**ORDER**

Per: CH. MOHD SHARIEF TARIQ, Member (J)

1. Under consideration is MA/697/2018 filed in  
CP/381/IB/2018 by the Resolution Professional against the

Respondent viz. The deputy superintend of police, Economic Offences Wing with the prayers as follows:

- i. *Direct the Respondent No. 1 to provide the books of accounts, records and latest list of payables and receivables of the Corporate Debtor seized by them to the Applicant immediately in order to enable the Applicant to carry out the duties in accordance with the Insolvency and Bankruptcy Code, 2016.*
  - ii. *Pass such other orders as are deemed fit and proper in the circumstances of the case in the interest of the justice.*
2. The factual matrix of the case is that an application under Section 9 of the Insolvency and Bankruptcy Code 2016 (in short IBC,2016) read with Rule 6 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 was filed by the Operational Creditor viz. Mrs. T. Preethi against *M/s. Thiripura Chits Private Limited* (the “**Corporate Debtor**”) which was admitted by this adjudicating authority vide its order dated 17.09.2018 and the Applicant was appointed as Interim Resolution Professional (IRP).
3. However, when the Applicant visited the registered office of the Corporate Debtor in order to take control of the management, he found that the same was under lock and

no person was available in the premises. It is learnt from the various sources that the Managing Director and others Directors of the Corporate Debtor were arrested by the Economics Offences Wing-CID, Chennai, who have accused of cheating numerous depositors. The EOW CID registered the case against them under IPC Sections 406 (Criminal Breach of Trust) and 420 (Cheating) and Section 5 of the Tamil Nadu Protection of Interest of Depositors Act (TNPID Act).

4. The Applicant has submitted that books of accounts and other records of the Corporate Debtor were seized by the Economic Offence Wing (EOW) authority and keeping the same under their custody. The Applicant has intimated the EOW department about commencement of corporate insolvency resolution process against the Corporate Debtor and requested to provide the necessary information of the Corporate Debtor so as to enable the applicant to perform his duties as envisaged under the provisions of the Insolvency and Bankruptcy Code, 2016, for which EOW replied that the records of the Corporate Debtor can be

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handed over subject to specific directions issued by this Hon'ble NCLT, Chennai.

5. The Applicant has submitted that till the date, the majority of the required information/documents etc., were not available for the aforesaid reasons which was making it difficult for the applicant to verify the records and take decision on the further process. The statutory Auditor has submitted the Financial Statements up to the period ending 31.03.2016 only and informed that he doesn't have the statements subsequent to the said period. As per the Audited Financial Statements for FY 2015-16, the payable to various stakeholders is around Rs. 454 Crores and the receivable is around Rs.492 Crores. The Applicant has further submitted that the current position of the Corporate Debtor will be known after receipt of complete back up from the EOW or the Directors of the Corporate Debtor.

6. The Applicant has submitted that on 28.08.2018 he made the public announcement calling for submission of claims. Based on the claims received, he has constituted the committee of creditors in terms of Section 21 of the Code

and conducted the First COC meeting on 26<sup>th</sup> October, 2018, wherein the applicant informed to the COC about the aforesaid challenges and practical difficulties in taking over the affairs and management of the Corporate Debtor and discharging his duties.

7. The Applicant has submitted that as evident from news item published in the Hindu Newspaper, the Corporate Debtor had 220 branches all across the country out of which 130 branches in Tamil Nadu and 25 in Chennai. The representatives of the Corporate Debtor collected deposits from 80,000 persons on promise of returns with a high rate of interest but did not return any money to the respective chit deposit holders. It seems numerous deposit holders were affected due to fraud, cheating, misrepresentation and criminal breach of trust committed by the management of the Corporate Debtor.

8. The Respondent has filed his report dated 25.02.2019 stating therein that a case in Economic Offences Wing-II Headquarters Cr.No.12/2017 u/s 406, 420, r/w 120(B) IPC & 5 of TNPID Act was registered on 17.11.2017 based on the

complaint of one Tmt. Gayathri W/o Nageswaran, No.2, Mariyamman Koil Street, Kodambakkam, Chennai-24 against "*Thiripura Chits Private Limited*" and its directors for non-payment of her Principle amount of Rs. 19,60,300/- and also submitted the chit Deposit passbook for open chit deposit scheme in the name of "*Thiripura Chits Private Limited*" and the case is under investigation.

9. The Respondent has further stated in his report that Mr. P.V. Krishana Prasath (Accused 2), Managing Director/shareholder, Mrs. K. Sumana (Accused 3), director/shareholder along with another directors namely Tr. M. E. Venu (Accused 4), Tr. K. Vasu (Accused 5), Tr.M.G.Karumbaiah (Accused 6), Tr.N.Balakrishnan (Accused7), and Tr. Jayapraksh Basavaraj (Accused 8) were running a company and collected deposits in the form of chits in the name and style of "*Thiripura Chits Private Limited*" having corporate office at No.36, Jeenis Road, 2<sup>nd</sup> Floor, Saidapet, Chennai-15 and also operated various branches throughout Tamil Nadu and other states, i.e., Karnataka, Andhra Pradesh, Telungana, Maharashtra and Pondicherry. They canvassed among the public in Chennai

about the various chit deposit schemes. The maturity of amount varying between 10,000/- to 25,00,000/-. They announced such schemes in the form of monthly payment for a fixed period enabling with incentives. It is further submitted that the said company had collected huge amount of deposits as Chit Subscription from the general public and defaulted to repay the matured chit amount to large number of subscribers even after maturity.

10. The Respondent has submitted that so far as many as 4750 complaints have been received in Economic Offences wing-II, Chennai against Thiripura Chits Private Ltd and its directors for the total default amount of Rs. 115 crores. The number of complaints and default amount are increasing day by day. It is also submitted that Accused Nos. 2, 3, 4, 6 and 7 were arrested. Subsequently on course of investigation Dasarathan (Accused 9), Manager of Perambur branch and Sree Rahul (Accused 10), divisional manager of poonamallee were arrested. Accused Nos. 5 and 8 are absconding.



11. Respondent has submitted that in this case chits security deposit amount of Rs.2.71 crores in Chennai with the District Registrar of Chits were identified, and the same was frozen and the attachment proposal have already submitted for obtaining ad-interim attachment order from the Government and the same has been obtained on 14.02.2019 and necessary steps are being taken to file the OA before the Hon'ble TNPID Court against G.O.Ms.No.73 Home (Police XIX) Department, dated 31.01.19.

Moreover, 27 immovable properties in the name of Thiripura Chits Private Limited (Accused 1), P.V. Krishana Prasath (Accused 2), K.Sumana (Accused 3) and Vasu (Accused 5) are identified for the approximately value of Rs.50 crores in and around Chennai. The proposal for attachment is pending for obtaining building valuation report of PWD.

12. The Respondent has further submitted that accused Nos. 2 & 3 were taken into police custody and they have confessed that as on date total receivable amount is of Rs. 200 crores (approximately) from 20,000 to 25,000 borrowers



to the company in all over India. During the investigation a search was conducted on 01.02.2019 at No. B5/09, Elegant Villa, Olympia Panache, Navallur, OMR Road, Kancheepuram Dist-103 and 33 boxes containing particulars of chit borrowers who had failed to repay the borrowed amount were seized and the document are being scrutinized.

13. It is also submitted by the Respondent that 11 cases were registered by the District EOW-II offices against this company branch offices and involved staff. As many as 3768 depositors in the Districts of Tamil Nadu have given their complaints for the total defaulted amount of 49,57,19,961/- in respective jurisdiction EOW-II.

14. On perusal of the pleadings the legal issue involved is framed as follows:

*Whether the proceedings pending under the Tamil Nadu Protection of Interest of Depositors Act, 1997 (TNPID Act) can be taken over by the Resolution Professional under the Provisions of the Insolvency and Bankruptcy code, 2016?*

The above issue seems to have been settled by the catena of judgements passed by the Hon'ble Supreme Court. The Hon'ble Supreme Court in ***Innovative Industries limited*** v/s. ***ICICI Bank and Anr.***, has referred to **Section 238** of the IBC, 2016 which reads as under;

*“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

While interpreting the said provision of the IBC, 2016 and Section 4 of the Maharashtra Act, the Apex Court has observed that *‘it is clear that the later non-obstante clause of the parliamentary enactment will prevail over the limited non-obstante clause contained in Section 4 of Maharashtra Act.’* For the said reason it was held that *‘the Maharashtra Act cannot stand in the way of Corporate Insolvency Process under the Code.* Further the Hon'ble Supreme Court in SLP No. 6483/2018 titled ***PR. Commissioner of income tax vs. Monnet ispat and energy ltd.***, has held that given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent

contained in any other enactment, including the Income-Tax Act.

15. As per the scheme of the I&B Code 2016, initially 180 days period is prescribed for Insolvency Resolution Process for the Corporate Debtor from the date of the admission of the Application under Section 9 of the IBC, 2016 which could be extended under Section 12 of the IBC, provided a resolution is passed by the COC seeking the extension and on the satisfaction of the Adjudicating Authority. The time is the essence of the CIRP proceedings. Therefore, on completion of the maximum period of time provided under Section 12, if no resolution plan is received by the Adjudicating Authority under Section 30 (6) or it rejects the resolution plan under Section 31 for the non-compliance of the requirements specified under Section 30(2) of the IBC, 2016, then liquidation order has to be passed against the Corporate Debtor under Section 33 of the IBC, 2016 and in the process of the liquidation, the Assets of the Company are to be disposed of in order to distribute the proceeds among the stakeholders as per the waterfall mechanism provided under Section 53 of the IBC, 2016. In short, a

comprehensive scheme is available under the IBC, 2016 for the companies which fail to pay its debt to the creditors.

16. In view of the legal position stated above, the IBC, 2016 being a special legislation and by virtue of Section 238 of the IBC, 2016, overrides the provisions of TNPID Act. This view is fortified by the proposition settled by the Hon'ble High Court of Bombay in the matter of ***M/s. Aryarup Tourism Club Resorts Private Limited*** (in Liquidation), in Company Petition No. 278 of 2014, wherein it has been held that the powers of the competent authority appointed under the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 (for short MPID Act) and the MPID Court does not supersede or prevail upon the powers of the Official liquidator or of the Company Court under the provision of the Companies Act. Therefore, in the light of the provisions of the IBC, 2016 the proceedings initiated under TNPID Act can legally be taken over by the Resolution Professional in relation to the Corporate Debtor viz. ***Thiripura Chits Private Limited***. Accordingly, the issue framed herein above is answered in affirmative.

17. Besides the above, the reply filed by the Respondent viz. Deputy Superintendent of Police, Economic Offence wing-II, reveals that chits security deposit amount of Rs. 2.71 cores in Chennai with the District Registrar of Chits were identified, and the same was frozen and the proposal has already been submitted for obtaining ad-interim attachment order from the Government and the same has been obtained on 14.02.2019 and necessary steps is being taken to file the OA before the Hon'ble TNPID Court against G.O. Ms. No.73 Home(Police XIX) Department, dated 31.01.2019. The said ad-interim attachment order has been passed during the moratorium which has been declared vide order dated 17.09.2018. The ad-interim attachment order is in violation of the provisions of the Section 14(1)(a) of the IBC, 2016. Therefore, the said ad-interim order dated 14.02.2019 pertaining to the Chits security deposits amounting to Rs. 2.71 cores is hereby set aside and declared null and void. This view is fortified with the ruling that has been given by the NCLT Mumbai in M.A 1280/2018 filed in C.P. 405/ 2018 under Section 60 (5) of the IBC, 2016 in the matter of **SREI Infrastructure Finance**

**Limited v/s. Sterling SEZ and Infrastructure Limited**, wherein the NCLT Mumbai Bench has set aside the order dated 29.05.2018 passed by the PMLA Court and declared the same as null and *nonest* in law in view of Sections 14(1)(a), 63 and 238 of IBC, 2016.

18. On perusal of the pleadings of the parties, it reveals that the Corporate Debtor had 220 branches all over the country i.e. Tamil Nadu, Karnataka, Andhra Pradesh, Telungana, Maharashtra and Pondicherry, out of which 130 branches were in Tamil Nadu and 25 in Chennai. The representative of the Corporate Debtor collected deposits from 80,000 persons on promise of return with a high rate of interest but did not return any money to the respective chit deposit holders. In these circumstances, the competent authorities and the court under TNPID Act cannot extend their jurisdiction across the country except Tamil Nadu. Whereas, the IB Code 2016 provides a comprehensive solution to such a complex issue(s) being the special Central legislation. In view of it and the legal position stated above, the competent authority and the investigation officer(s) under TNPID Act including Deputy Superintend Police,

Economic offences wing-II, are directed to hand over all the records of the Corporate Debtor viz. **Thiripura Chits Private Limited**, including books of Account along with chits security deposits amounting to Rs. 2.71 Crores as mentioned above, to the Resolution Professional viz. J. Manivannan, within a period of two weeks after receiving the certified copy of this order. The Resolution Professional is directed to obtain a certified copy of this order and to submit to the competent authorities and the investigating officers of the Police including Deputy Superintendent of Police, Economic offences wing-II for record and compliance. However, it is made clear that the Deputy Superintendent of Police, Economic offences wing-II may retain the Xerox copies of the record, <sup>original</sup> ~~which~~ will be handed over to the Resolution Professional, for taking appropriate action against the accused persons in accordance with law.

19. The order is pronounced in the open court.

  
**(CH. MOHD SHARIEF TARIQ)**  
MEMBER (JUDICIAL)