



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH AT BENGALURU**

*(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(Through Physical Hearing/VC Mode (Hybrid))*

**CP (IB) No.30/BB/2024**

U/s 9 of I&B Code, 2016

R/w Rule 6 of I&B (AAA) Rules, 2016

**IN THE MATTER OF:**

**Mrs. Poorna Chandra**

#90/1, 13<sup>th</sup> Cross,  
Opp. Nimishambha Temple,  
Ideal Home Township,  
Rajarajeshwarinagar,  
Bengaluru – 560 098.

- Petitioner / Operational Creditor

**Versus**

**M/s. Surabhi Chits Limited**

#5, Gajendra Towers, 11<sup>th</sup> Main,  
4<sup>th</sup> Block, Jayanagar,  
Bengaluru – 560 011.

- Respondent / Corporate Debtor

**Order delivered on: 07<sup>th</sup> November, 2024**

**CORAM:**

1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Ms. Laxmi Menon & Ms. Mansi C., Advs.

For the Respondent : Shri Akshay Kumar Jain, Adv.

**O R D E R**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The instant Petition has been filed on 15.12.2023 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC/Code'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **Mrs. Poorna Chandra** (for brevity 'Petitioner/



Operational Creditor') *inter alia* seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against **M/s. Surabhi Chits Limited** (for brevity 'Respondent/Corporate Debtor') on the ground that the Corporate Debtor has committed default for a total outstanding amount of Rs.1,52,92,624/- (Rupees One Crore Fifty-Two Lakh Ninety-Two Thousand Six Hundred and Twenty-Four Only). It is noticed that the date of default is stated as 24.09.2022 in the Form-D Record of Default issued by the NeSL in respect of two Chit Group Nos. BDG 3/34 and BDG 3/35. In Column 2 of Part-IV of Form 5 filed with the Petition, the amount claimed to be in default is extracted hereunder:

2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	Amount claimed to be in default as on 11.12.2023 is INR 1,52,92,624 /- (Rupees One Crore Fifty-Two Lakh Ninety-Two Thousand Six Hundred and Twenty-Four Only), which is calculated as follows:																					
	<table><tr><th>Particulars</th><th>Amount (INR)</th></tr><tr><td colspan="2"><b>Chit Group No. BDG 3/34</b></td></tr><tr><td>Amount Outstanding</td><td>71,04,400/-</td></tr><tr><td>Interest Due from 25.08.2022 till 11.12.2023</td><td>5,60,469/-</td></tr><tr><td><b>Total A</b></td><td><b>76,64,869/-</b></td></tr><tr><td colspan="2"><b>Chit Group No. BDG 3/35</b></td></tr><tr><td>Amount Outstanding</td><td>70,70,000/-</td></tr><tr><td>Interest Due from 25.08.2022 till 26.11.2023</td><td>5,57,755/-</td></tr><tr><td><b>Total B</b></td><td><b>76,27,755/-</b></td></tr><tr><td><b>Total of A+B</b></td><td><b>1,52,92,624/-</b></td></tr></table>		Particulars	Amount (INR)	<b>Chit Group No. BDG 3/34</b>		Amount Outstanding	71,04,400/-	Interest Due from 25.08.2022 till 11.12.2023	5,60,469/-	<b>Total A</b>	<b>76,64,869/-</b>	<b>Chit Group No. BDG 3/35</b>		Amount Outstanding	70,70,000/-	Interest Due from 25.08.2022 till 26.11.2023	5,57,755/-	<b>Total B</b>	<b>76,27,755/-</b>	<b>Total of A+B</b>	<b>1,52,92,624/-</b>
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Interest is calculated at SBLR of 6.5% per annum due from the date of default i.e., 24.09.2022 till date i.e. 11.12.2023.																						
Date of Default - 24.09.2022, i.e., 30 days from 25.08.2022, in accordance with the letter dated 25.08.2022 attached as <b>Annexure-I</b> .																						
Security - It is to be noted that pursuant to section 43 of the Chit Funds Act 1982, any amount due to the Subscriber shall be a first charge on the chit assets. Accordingly, the security interest is created by operation of law.																						



	<p>Mrs. Poorna Chandra had raised demand notice in Form 3 dated 26.10.2023 upon Surabhi Chits Limited requesting to unconditionally repay the unpaid operational debt (in default) in full within ten days from the receipt of this letter failing which she shall initiate a corporate insolvency resolution process in respect of Surabhi Chits Limited.</p> <p>Copies of Demand Notice dated 26.10.2023 along</p>
	<p>with postal receipts and tracking reports is annexed as <b>Annexure L</b> (Colly).</p> <p>In light of the above it is submitted that the Corporate Debtor have failed to discharge their obligations for payment of the chit prized amount and the interest accrued thereon, consequently event of default had occurred and is continuing.</p> <p>The Corporate Debtor were called upon number of times to repay the dues but in spite of various reminders, they have time and again failed and willfully neglected to repay the dues to the Applicant/Operational Creditor and therefore, it is just and necessary the CIRP proceedings be initiated against the Corporate Debtor.</p> <p><b>Limitation:</b> - In accordance with Section 18 of the Limitation Act, a fresh period of limitation shall be computed from the time an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability.</p> <p>Since Surabhi Chits Limited acknowledged the debt vide letter dated 25.08.2022 pertaining to both the chits, intimating the due amount after making all the adjustments i.e. INR 71,04,400/- for Chit Group No. BDG 3 Ticket No. 34 and INR 70,70,000/- for Chit Group No. BDG 3 Ticket No. 35 and it was explicitly stated in the said letter that the said amounts shall be payable within 30 days from the date of the letters i.e. 24.09.2022. Accordingly, present Application is well within the limitation period of three years.</p>



**2.** Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner in the Petition are hereunder:

**2.1** M/s. Surabhi Chits Limited (for brevity 'Respondent / Corporate Debtor') is a Public Limited Company incorporated under the provisions of the Companies Act, 1956 on 02<sup>nd</sup> December, 1991 having CIN: U85110KA1991PLC012571. The Authorised Share Capital of the Corporate Debtor is Rs.10,00,00,000/- and Paid-up Share Capital is Rs.4,92,00,000/-. The main objects of the Respondent Company was to carry on the business of conducting chits of all types, kinds and descriptions and to carry on such business as the Central Government or State Government may permit, in general or particular, the Chit Companies to carry on subject to the approval of Chit Fund Commissioner/Registrar.

**2.2** The Corporate Debtor (CD) entered into two Chit Agreements with Mrs. Poorna Chandra on 31.01.2018 for Chit Group No. BDG 3 Ticket No. 34 and Ticket No. 35, each valued at Rs. 1 Crore with a monthly subscription of Rs. 2 Lakh. For Ticket No. 34, the Petitioner paid 44 installments by 23.12.2021, and although the chit was prized on 09.06.2022, no payment has been received since then. Similarly, for Ticket No. 35, the Petitioner also paid 44 installments by 23.12.2021; this chit was prized earlier on 09.11.2020, and the Petitioner received Rs. 10,000/- on 08.12.2020 and Rs. 7 lakh on 09.02.2021 from the CD, but the remaining balance has not been paid. Both Agreements are collectively hereinafter referred to as "Chit Agreements".

**2.3** After several follow-ups by the Petitioner herein for the payment of prized amounts, the CD acknowledged the debt in a letter dated 25.08.2022, specifying amounts of Rs. 71,04,400/- for Chit Group No. BDG 3 Ticket No. 34 and Rs. 70,70,000/- for Ticket No. 35. The letter stated these amounts were payable within 30 days, i.e. by 24.09.2022. However, the CD failed to make the payments, and thus committed



default. Consequently, on 26.10.2023, the Petitioner served a statutory Demand Notice in Form 3, demanding repayment of the unpaid operational debt totalling to Rs. 1,51,76,511/-, which includes interest at 6.5% per annum from the date of default (24.09.2022) until the date of Demand Notice (26.10.2023). It is stated that the amounts, as stated in Form 3, are due and payable which remains unpaid till date:

<i>Chit Group No./ Ticket No.</i>	<i>Date on which Chit was prized</i>	<i>Amount (incl. interest) (INR) as on 26.10.2023</i>
BDG-3/34	09.06.2022	76,06,671
BDG-3/35	09.11.2020	75,69,839
<b>Total</b>		<b>1,51,76,511</b>

**2.4** It is further stated that despite receiving the statutory notice, the CD has neither responded nor fulfilled its repayment obligations under the Chit Agreements. It is also asserted that as of 11.12.2023, the total outstanding amount owed to the Petitioner is Rs. 1,52,92,624/-, and the debt is not disputed. Since the CD acknowledged the debt in a letter dated 25.08.2022, which is payable by 24.09.2022, the present CP is within the three-year limitation period. Hence, this Petition.

**2.5** In support of her submissions, Petitioner has relied upon the following decisions, filed *vide* Diary No.2940 dated 24.05.2024:

- a. *A.P. Airports Developments Corpn. Ltd. vs. Supreme Transport Organisation (P) Ltd.*, 2023 SCC OnLine NCLT 16523;
- b. *A2 Interiors Products Pvt. Ltd. vs. Ahluwalia Contracts (India) Ltd.*, 2021 SCC OnLine NCLT 438;
- c. *G4S Secure Solutions (India) (P) Ltd. vs. Heavy Engineering Corpn. (P) Ltd.*, 2022 SCC OnLine NCLT 184;

**3.** The Corporate Debtor filed its reply *vide* Diary No. 2532 dated 29.04.2024 by *inter alia* contending as under:

**3.1** It is averred that the CD engages only in business activities that the Central Government/State Government may authorize chit companies



to undertake, either generally or specifically, subject to the approval of the Chit Fund Commissioner/Registrar.

- 3.2** The CD has entered into two Chit Agreements with the Petitioner on 31.01.2018 for Chit Group No. BDG 3 Ticket No. 34 and Ticket No. 35, each valued at Rs. 1 Crore with a monthly subscription of Rs. 2 Lakh. The Petitioner made 44 payments of Rs. 2 Lakh each based on a reduced dividend until 23.12.2021. Chit Group No. BDG 3 Ticket No. 34 was prized on 09.06.2022, while Ticket No. 35 was prized on 09.11.2020. The CD subsequently made partial payments of Rs. 10,000 on 08.12.2020 and Rs. 7 Lakh on 09.02.2021 to the Petitioner.
- 3.3** The CD acknowledged the debt vide letter dated 25.08.2022, detailing outstanding amounts of Rs. 71,04,400/- for Chit Group No. BDG 3 Ticket No. 34 and Rs. 70,70,000/- for Ticket No. 35, and sought more time to settle on the ground that the global COVID-19 pandemic has adversely affected the businesses, including the Corporate Debtor. This unprecedented situation hindered the CD's ability to clear its debts and in fulfilling its repayment obligations under the Chit Agreements.
- 3.4** Due to default on payments, the Petitioner served a statutory demand notice, seeking repayment of unpaid operational debt totalling to Rs. 1,51,76,511/-, including interest at 6.5% p.a. from the date of default i.e. 24.09.2022. It is contended that the Section 9 petition against the CD is legally flawed, as the provisions of the IBC, 2016, should not be invoked for money recovery as laid down by the Hon'ble Supreme Court in *Invent Asset Securitisation and Reconstruction Pvt. Ltd. vs. Gimar Fibers Ltd.*, reported in (2022) SCC OnLine SC 808. Similar principle was also held by the Hon'ble NCLT Delhi Bench in *Yash Nachrani v. Pardesi Construction Pvt. Ltd. & Ors.*, (2023) ibclaw.in 178 NCLAT. The CD has approached transactions with clean hands and has made genuine efforts to repay the debt, and therefore seeking reasonable time to clear the owed amount, and prays to dismiss the instant CP.



4. Pursuant to this Tribunal Order dated 31.05.2024, the Petitioner has filed Memo regarding maintainability of the Petition along with Judgments *vide* Diary No.3799 dated 01.07.2024 by *inter alia* stating as under:
- 4.1** As regards the maintainability of this Petition against the Corporate Debtor, the Petitioner has relied upon Sections 3(7), 3(15), 3(16), 3(17), 3(18) and 227 of the Code along with Rules 2 and 5 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority Rules, 2019 ('FSP Rules')). It is stated that to qualify as a Financial Services Provider (FSP) under the Code, an entity must be notified by the Central Government as per Section 227 and any alternative interpretation would undermine the legislature's intent to exclude specific FSPs from the Code's direct application.
- 4.2** Rule 2 of the FSP Rules, in conjunction with Section 227 of the IBC, states that these rules apply to FSPs or specific categories of FSPs notified by the Central Government. According to Rule 5, only the appropriate regulator, such as the RBI for registered Non-Banking Financial Companies (NBFCs), can initiate the CIRP against an FSP. It is averred that this requirement applies strictly to FSPs covered under Rule 2; and for other Corporate Debtors (CDs) that are FSPs and not included under this Rule, any party can file for CIRP if the conditions in Sections 7, 9, or 10 of the Code are met.
- 4.3** It is further averred that in order to determine the applicability of this legal framework to the present case, it is essential to ascertain whether chit funds are notified under Section 227. The Ministry of Corporate Affairs (MCA), through a notification dated 18.11.2019, has specified that the FSP Rules apply solely to NBFCs with an asset size of Rs. 500 Crore or more, based on the latest audited Balance Sheet.
- 4.4** The classification of the CD as an NBFC is determined by Regulations from the Reserve Bank of India. Specifically, a chit fund is categorized



as a "miscellaneous NBFC" under Clause 3(g) of Notification No. DNBC.39/DG(H)-77 dt.20.06.1977. Therefore, the definition / scope of miscellaneous NBFC as defined therein tallies with the definition of a "chit" under Section 2(d) of the Chit Funds Act, 1982.

- 4.5** It is also stated that the RBI in its FAQs on its website has stated that the Chit Fund Companies are NBFCs which have been exempted from the requirement of registration u/s 45-IA of the RBI Act, 1934 subject to certain conditions. Therefore, it is clear that a chit fund is a NBFC. It is submitted that the Asset size of the CD (which is an NBFC) is only Rs.20,30,93,977/-, and it is well below the threshold set by notification dated 18.11.2019 issued by the MCA and therefore, does not fall under the FSP Rules. Therefore, the FSP Rules do not apply to case in hand.
- 4.6** As regards the locus standi of the Petitioner, they have relied on the definitions of Sections 5(20) and 5(21) of the Code. The expression 'services' used in Section 5(21) has also not been defined in the Code. In P Ramanathan Aiyar - Advanced Law Lexicon, the word 'services' has been defined as *service which is made available to potential users and includes the provisions of facilities in connection with banking, financing, insurance, chit fund, real estate, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the conveying of news or other information but does not include the rendering of any service free of charge or under a contract of personal service.*
- 4.7** Further, the Chit Agreement and the CD's communication indicate that the CD treats chit subscribers' contributions as a service, charging GST on the prize amount. This suggests that the CD has classified the chit subscription as a service, and the GST is applicable only to 'goods' and 'services'. In this regard, reliance has been placed on Section 2(102) and Section 2(52) which defines 'services' and 'goods' respectively under the Central Goods and Services Tax Act, 2017.





- 4.8** Therefore, the Agreements dated 31.01.2018 are not with regard to any 'goods'. The Agreements must then be read to mean that the Agreement between the parties was with regard to 'services' within the meaning of Section 5, sub-section (21) of the Code. It is also averred that had the Agreements not contemplated services, there would have been no occasion to make the subscriber liable to pay GST over and above the prize amount.
- 4.9** Reliance has been also placed on the definitions of Sections 3(6) and 3(33) of the Code and on a combined reading of these provisions, it is stated an Agreement, the breach of which leads to a 'claim' which is enforceable under the law, is also contemplated as falling within the purview of the Code.
- 4.10** Thus, there can be no iota of doubt that the services contemplated in the Chit Agreement, and the subsequent breach of the commitment of the CD in the Agreements dated 31.01.2018 to prize the chits are a "transaction" leading to a "claim", which in turn constitute an "operational debt" since the claim arises from a "claim in respect of services" as required u/s 5(20) of the Code. Since the existence of an operational debt is no longer in question, the applicant qualifying as an "operational creditor" u/s 5(21) of the Code is also established.
- 4.11** In support of her submissions, following decisions were relied upon:
- a. *Cox and Kings Pvt. Ltd. vs. SAP India Pvt. Ltd. & Ors.*, MANU/SC/1310/2023;
  - b. *Keshavlal Khemchand and Sons Pvt. Ltd. & Ors. vs. Union of India & Ors.*, (2015) 4 SCC 770;
  - c. *Rajendra P. vs. M/s. Indiranagar Chit Funds & Trading Co. Pvt. Ltd.*, in CP (IB) No.322/BB/2019 dated 28.01.2020 of NCLT Bengaluru Bench;
  - d. *Shanmuga Sundaram E.P. vs. M/s. Gokula Kannan Chits Tamil Nadu Pvt. Ltd.* in CP/1385/IB/2018 dated 21.01.2019 of NCLT Single Bench, Chennai;
  - e. *Dr. Rayappa Chinnusamy vs. M/s. HNS Chits Pvt. Ltd.*, in SR. No. 1449/2019 dated 28.11.2019 of NCLT Division Bench-I, Chennai.



5. The Petitioner has also filed a Memo enclosing certain documents including Balance Sheets of the Corporate Debtor for the Financial Year 2021-22 and 2022-23 *vide* Diary No.3836 dated 02.07.2024. The same is taken on record.
6. Pursuant to Order dated 20.08.2024, the Petitioner has also filed written submissions *vide* Diary No. dated by *inter alia* further stating as under:
  - 6.1 In response to the Tribunal's query regarding the clubbing of separate claims against the CD in a single Section 9 application, the Petitioner asserted that there is essentially one Agreement, which encompasses two identical tickets under the same Chit Agreement. However, in the alternative, should the Tribunal consider the existence of two distinct Agreements, the Petitioner in this regard relied on '*G4S Secure Solutions (India) Pvt. Ltd. v. Heavy Engineering Corporation Private Limited*', 2022 SCC OnLine NCLT 184, wherein, the Tribunal reaffirmed the principles established by the Hon'ble Supreme Court and other Tribunals concerning the clubbing of claims. It was determined that separate claims from the same Operational Creditor can indeed be included in a single application. Therefore, there is no prohibition u/s 9 of the Code against clubbing debts arising from two separate Agreements when they are asserted by the same Operational Creditor.
  - 6.2 Regarding the CD's status as a FSP and its applicability under the IBC, the Petitioner reiterated that, based on Sections 3(7), 3(15), 3(16), 3(17), 3(18), and 227 of the IBC, an entity must be notified by the Central Government to qualify as an FSP. Additionally, as per FSP Rules 2 and 5, parties other than the relevant financial regulator can initiate CIRP against non-notified FSPs.
  - 6.3 The CD, which is classified as a "miscellaneous NBFC" as per Notification No. DNBC.39/DG(H)-77 dated 20.06.1977 from the RBI, does not meet the criteria for the FSP Rules, which apply only to NBFCs with an asset size of Rs. 500 Crore or more, as per MCA Notification dated 18.11.2019. The CD's asset size, as per its last audited balance



sheet dt.31.03.2019, is only Rs. 93,67,91,935/-, which is well below this threshold, and thus is exempted from the FSP Rules.

**6.4** In response to the Tribunal's query regarding whether chit fund holders qualify as Operational Creditors under the IBC, the Applicant stated that the term “services” in Section 5(21) of the Code encompasses chit funds. This is supported by Chit Agreement and CD’s communications, which treat the subscriber's contribution as a service, with GST charged on the prize amount. The necessity of GST implies that services are integral to the arrangement. Additionally, Sections 3(6) and 3(33) clarify that a breach of agreement leading to a legally enforceable claim falls under the IBC, confirming the existence of operational debt by the Corporate Debtor. Therefore, it is evident that since the CD does not fall under the excluded FSPs and that the Petitioner qualifies as an Operational Creditor, the instant CP is maintainable.

7. Heard the learned Counsels for the Petitioner and the Respondent, and perused the pleadings on record.

8. The two issues that arises for our consideration are as under:

- i. **Whether this application is filed within limitation period?**
- ii. **Whether a Chit holder is an “operational creditor” under Sections 5(20) and 5(21) of the Code?**

9. The first issue for consideration is ‘**Whether this application is filed within limitation**’. It is seen from the records that the Chit No. BDG-3/35 amounting to Rs. 76,27,755/- was prized on 09.11.2020 and the Chit No. BDG-3/34 amounting to 76,64,869/- was prized on 09.06.2022. The total claimed amount as per Part-IV of the Form 5 is Rs. 1,52,92,624/- as on 11.12.2023, which is inclusive of interest. However, it is also submitted by the Operational Creditor that the Corporate Debtor vide letter dt.25.08.2022 (Page 59 of CP) had acknowledged the debt pertaining to both the chits and promised to pay the amount pertaining to both the chits within 30 days. As,



the Hon'ble Apex Court has laid down the law in case of **Laxmi Pat Surana vs Union Bank of India & Anr.** (2021) *ibclaw.in* 53 SC that a fresh limitation period starts when the principal borrower acknowledges their liability before the prescribed period of limitation expires. Keeping in view of the fact that the present application is filed on 15.12.2023, it falls within the period of limitation of three years.

10. The Second issue for consideration is '**Whether a Chit holder is an "operational creditor" under Sections 5(20) and 5(21) of the Code**'. In the present case, the Petitioner has entered into two Chit Agreements wherein certain amounts were paid to the Corporate Debtor in installments. In this context, it is relevant to reproduce Sections 5(20) and 5(21) of the Code, which reads thus:

**Section 5(20)**

*"operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.*

**Section 5(21)**

*"operational debt" means a claim in respect of the **provision of goods or services** including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.*

The Petitioner contended that the Corporate Debtor is treating the Chit Subscriber's contribution as a service and is charging GST on the prize amount. Further, the breach of contract by Corporate Debtor by non-payment of prized money leads to a claim arising out of deficiency in service, therefore, the debt falls under the category of "Operational Debt" and the Petitioner becomes "Operational Creditor". It is seen from the Agreements that the Petitioner is providing monetary funding to the Corporate Debtor on monthly basis and in return of the same, the Corporate Debtor has to repay



the amount as prized money. The argument of the Petitioner that since the prized money falls under the ambit of “Services” as per GST Act, 2016, therefore, it should be considered as an “Operational Debt” is not tenable. The transaction seems to be a commercial transaction of lending and borrowing money as per terms and conditions of the Chit Agreements. It is subscription to an investment Scheme in the Chit Fund in instalments; and later the investment is matured and returned in the form of prized money. It is somewhat akin to a recurring deposit with a Bank. Mere depositing of GST does not qualify a transaction of commercial nature as “Operational Debt”. It is settled law that mere deduction of TDS by the Corporate Debtor cannot prove the ‘Operational Debt’. The Petitioner has failed to show how the prized money is termed as ‘Service’. Hence, it cannot be termed as an “Operational Debt”.

- 11.** Further, it is apt to refer the definition of ‘chit’ as per Section 2(b) of the Chit Funds Act, 1982, which reads thus:

**“chit”** means a transaction whether called chit, chit fund, chitty, kuri, fraternity fund, Rotating Savings and Credit Institution or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical instalments over a definite period and that each such subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the net chit amount.

**Explanation.**—A transaction is not a chit within the meaning of this clause, if in such transaction,—

some alone, but not all, of the subscribers get the net chit amount without any liability to pay future subscriptions; or

all the subscribers get the gross chit amount by turns with a liability to pay future subscriptions;”



12. It is also relevant to refer **Section 3(7)** of the Code, which reads thus:

**“corporate person”** means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force **but shall not include any financial service provider.**

13. It is clear from the above that the Corporate Person shall not include any Financial Service Provider. The definition of Financial Service Provider has been given under **Section 3(17)** of the Code, which reads as under:

**“financial service provider”** means a person engaged in the business of providing **financial services** in terms of authorisation issued or registration granted by a **financial sector regulator.**

Further, **Section 3(16)** of the Code reads as under:

**“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 a 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.*

**Section 3(18)** of the Code reads as under:

**“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.

**14.** The Hon’ble NCLAT in the matter of **Housing Development Finance Corporation Ltd. Vs. RHC Holding Private Ltd.** at para 13 of its Order dated 10.07.2019 held that, *the definition of ‘financial services’ as defined in Section 3(16) of I&B Code is not limited to the 9 activities as shown at Clause (a) to (i) of Section 3(16). The aforesaid Clauses (a) to (i) are inclusive which means there are other services which come within the meaning of ‘financial services’.* In view of the above, we are of the view that the Corporate Debtor is a ‘financial service provider’ providing ‘financial services’ and cannot be treated as ‘Corporate Person’.

**15.** As per the RBI FAQs it is noticed that a non-banking institution which is a company and has principal business of receiving deposits under any scheme or arrangement in one lump sum or in installments by way of contributions or in any other manner, is also a non-banking financial company (Residuary Non-banking Company). Based on RBI FAQs, the Petitioner has also admitted in the submissions filed on 01.07.2024 that the Chit Fund was a NBFC. However, in terms of the powers given to the RBI, to obviate dual regulation, certain categories of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI, which



includes Chit companies as defined in clause (b) of Section 2 of the Chit Funds Act, 1982, and thus it is stated that Chit Fund Companies are regulated by the respective State Governments. The Registrar of Chits is the corresponding Regulatory Authority. Therefore, the Regulator for the Chit Fund Companies will be the Registrar of Chits of the respective State Government. Considering the above, we are of the view that the Corporate Debtor herein is a NBFC (even though not registered with the RBI due to exemption) rendering financial services and, thus, is out of the purview of the I&B Code; since it cannot be treated as a Corporate Person in accordance with Section 3(7) of the I&B Code, 2016.

**16.** Additionally, it is seen from page 140 of the CP that M/s. G.S. Rao and Co., Chartered Accountants *vide* Report dated 26.09.2018 given in Form No.29B under Rule 40B read with Section 115JB of Income Tax Act, 1961, it has been observed that the Corporate Debtor is engaged in the business of Financial Services-Chit Fund, and also at page 157 of the CP being Form-3CD under the Income Tax Act, the Corporate Debtor's Sector category has been stated as '*Financial Services*' and Sub-Sector category has been stated as '*Chit Fund*'. Thus, it is clear that the Corporate Debtor is a Financial Services Provider and thus falls in the ambit of Section 3(17) of the Code and hence cannot be treated as a 'Corporate Person' as defined u/s 3(7) of the Code, and therefore is not a 'Corporate Debtor' as defined u/s 3(8) of the Code. Thus, the Petition against the Financial Service Provider is liable to be dismissed as not maintainable.

**17.** In this context, we rely on the decision of the Hon'ble NCLT Division Bench-1, Chennai in the matter of **Dr. Rayappa Chinnusamy Vs. M/s. HNS Chits Private Limited** in SR. No.1449/2019 dated 28.11.2019, which squarely applies to the facts of instant case. Incidentally, the Petitioner has relied upon this Order in the citations filed *vide* Diary No.3799 dated 01.07.2024; but actually it is against the Petitioner's case. We are conscious of the fact that the Order dated 21.01.2019, relied upon by the Petitioner, which was





passed by a Single Member of the Hon'ble NCLT Chennai Bench in *Mr. Shanmuga Sundaram E.P. Vs. M/s. Gokula Kannan Chits Tamil Nadu Pvt. Ltd.* which has been filed u/s 9 of the Code has not discussed the specific issue as to whether the Respondent-Chit Company falls within the definition of 'financial service provider' as provided under the IBC, 2016. Similarly, the Petitioner has relied on the decision of this Tribunal in the matter of *Rajendra P. Vs. M/s. Indiranagar Chit Funds & Trading Company Private Limited* dated 28.01.2020 wherein the Petition filed by the Chit Subscriber against the Corporate Debtor has been admitted. However, on perusal of the same, it is seen that the said Order has not specifically discussed whether the Petitioner therein comes under the definition of 'operational creditor' as defined u/s 5(20) of the Code and whether the Respondent therein is covered under the definition of 'financial service provider' as defined u/s 3(17) of the Code, and thus the same does not help the case in hand of the Petitioner.

- 18.** As a sequel to the above discussions and the facts as well as circumstances, since the Petitioner has failed to show the existence of Operational debt against the Corporate Debtor, and also since a Petition is not maintainable against the Financial Service Provider, the Section 9 Petition is liable to be rejected, being not maintainable. The instant Petition consequently stands **dismissed**. The Petitioner, however, is at liberty to avail other remedies at the appropriate forum, if so advised.

**Sd/-**

**MANOJ KUMAR DUBEY**  
**MEMBER (TECHNICAL)**

*jsr*

**Sd/-**

**K. BISWAL**  
**MEMBER (JUDICIAL)**