

## Banking and Finance Bytes

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### ✚ Relief to 1.8 Million Investors- Ponzi Scheme

- Ambreen Shaikh, Associate

Around 1.8 million investors had lost their savings of Rs 8,500 crore in the holiday package Ponzi schemes floated by the companies Royal Twinkle Star Club and Citrus Check Inns Ltd which promised high returns on their investments.

Ponzi scheme is basically a form of fraud that makes investors invest in the scheme and pay the money to old investors. It is like a chain reaction where the old investors get paid by the new investors.

In 2017, two investors had moved to National Company Law Tribunal (NCLT) seeking the Royal Twinkle Star Club liquidation. Subsequently, more investors intervened saying the Securities and Exchange Board of India (SEBI) has already banned Royal Twinkle from collecting money from investors. Earlier in December 2018, SEBI had imposed a penalty of INR 50 lakhs on Citrus Check Inns and its directors for non-compliance of its order and barred them from raising monetary investments from the public. However, SEBI, even after this move, received several complaints against Citrus alleging that Royal Twinkle Star Club is now running its collective investment scheme through Citrus Check Inns Ltd.

However, due to these instances of forum shopping, the matter remained subjudice before both the NCLT as well as SEBI for a considerable period and the investors suffered delay due to this conflict of 'jurisdictions' between Securities and Exchange Board of India Act, 1992 (SEBI Act) and the Insolvency and Bankruptcy Code,

2016 (IBC). However, eventually, it landed before the Hon'ble Supreme Court of India for adjudication.

The Hon'ble Supreme Court had established a sale cum monitoring committee ("SMC") and had appointed the Resolution Professional for investigating the cause and solution for the investors. A web portal was created 'citrusroyal.com' with the orders of the Apex Court providing the relevant documents of Royal Twinkle Star Club, Citrus Check Inns and its sister concern companies.

In the meantime, on December 13, 2019, the bench of Justice Rohinton Fali Nariman and Justice S Ravindra Bhat in the matter "**Anant Kajare vs Eknath Aher**"<sup>1</sup> directed certain guidelines and clarifications on the functions of the SMC headed by Justice J P Deodhar (Retd). They are stated as below:

1) The SMC is directed to proceed with the sale of 114 properties/investments identified by the Resolution Professional and to complete the sales of these properties within a period of 6 months.

2) Sale of these properties shall be carried out by the SMC following the procedure laid down by the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. It is also clarified that the functions of the SMC, subject to further orders that may be passed, will include the sale of assets as well as related issues including the distribution of sale proceeds amongst investors. The Resolution Professional shall execute all the decisions taken by the SMC.

3) The sale proceeds received upon the sale of assets shall not be used for any purpose at this stage and shall be retained for distribution amongst investors.

4) SMC is permitted to proceed with the sale of properties/investments indicated above notwithstanding any attachment levied on these properties by the Economic Offences Wing (EoW) Unit 7, Mumbai, and other EoW Units, State of Maharashtra and upon the sale by SMC any attachment levied with respect to such property will be deemed to have been raised.

5) It directed the scheme promoter, O P Goenka, to furnish a tangible scheme for repaying all investor dues, including the sale of overseas assets and bringing money into India and to provide full particulars with respect to

<sup>1</sup> Civil Appeal No 20971/2017

<https://indiankanoon.org/doc/70495711/>

all the companies/entities to whom amounts received from investors/customers have been channelled.

6) The Apex court has also issued show-cause notices to the directors of Citrus Check Inn, Mr. Narayan Kotnis, Mr. Prakash G. Utekar and Mr. V. Natrajan for contempt of court for failing to show their worldwide assets in compliance of order dated May 10, 2018.

This is the first case that involved no financial creditors but huge investors.

The Court has also directed M/s Deloitte enlisted by SEBI to submit a supplementary forensic report upon conducting a forensic audit of the 24 companies/entities identified as additional associate/sister concerns of Royal Twinkle.

#### PIL filed before the High Court of Gujarat, challenging the jurisdiction of Gujarat Real Estate Appellate Tribunal

- Gokul L, Associate

The constitution of the Gujarat Real Estate Appellate Authority was recently challenged through a Public Interest Litigation (PIL)<sup>2</sup> before the High Court of Gujarat as its constitution is “coram non iudice”. The very reason is that there is only one judicial member in the Gujarat Real Estate Appellate Authority and there is no technical or administrative member exists therein. Hence, the bench comprising of Chief Justice Vikram Nath and Justice A J Shastri has issued a notice to both, the State Government and the Gujarat Real Estate Appellate Authority to look into the issue.

It was more fully highlighted by the said PIL that any orders or any proceedings held by the Gujarat Real Estate Appellate Authority shall be deemed to be void ab initio since the appellate authority lacks the administrative member and the technical member.

At the same time referring to the recent judgment passed by the Bombay High Court in the case of “**Man Global Limited vs. Bharat Prakash Joukani**”<sup>3</sup>, the High Court of

<sup>2</sup> <https://www.livelaw.in/news-updates/guj-hc-issues-notice-on-pil-challenging-coram-of-gujarat-real-estate-appellate-tribunal-151186>.

Gujarat took the view that any order passed by the sole member would be without jurisdiction.

The PIL also highlighted that real estate is a valuable business where the customers have to be provided with effective protection of their rights under the Article 19 (1) (g) of the Indian Constitution and mandate the trade and business happen within the four corners of the Article 300-A of Indian Constitution.

Hence, the PIL has emphasized on the importance of having the technical members with specialized knowledge in the tribunals to escalate the efficiency of adjudication of certain kinds of disputes.

#### RBI’s Notification on Cyber Security controls for Third-party ATM Switch Application Service Providers.

-Gokul L, Associate

It is a well-known fact that a number of RBI Regulated Entities (RREs) manage their ATM Switch ecosystem through shared services of third-party ATM Switch Application Service Providers (ASPs). It was recently decided to put in some cybersecurity controls to these service providers since they are exposed to the Payment System Landscapes.

With this regard, the RBI issued a notification as on December 31, 2019,<sup>4</sup> specifying the necessary mandates which are to be complied by the third-party ATM Switch Application Service Providers (ASPs) from now on. The RBI has notified that it shall be the duty of the RREs to make necessary changes in the respective contract agreements before March 31, 2020.

However, this notification containing the prescribed controls over the ASPs are applicable only to those ASPs which are limited to the IT ecosystem (such as physical infrastructure, hardware, software, reconciliation system, network interfaces, security solutions, hardware security module, middleware, associated people, processes, systems, data, information, etc..) providing ATM switch services as well as any other type of payment system-related services to the RREs.

Henceforth, through this notification, it’s clear that the RBI is trying to establish its on-site and off-site supervision

<sup>3</sup> MANU/MH/2753/2019.

<sup>4</sup> <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11773&Mode=0>.

upon the ASPs which needs to maintain efficiency on the aspects such as (a) Preventing access of unauthorized software, (b) Environmental Controls Network Management and Security, (c) Data Leak prevention strategy, (d) Secure Configuration, (e) Advanced Real-time Threat Defence and Management, etc.

### ✚ **RBI's guidelines on constituting Board of Management in Urban Cooperative Banks**

- Gokul L, Associate

The Reserve Bank of India recently in one of its notification has mandated the constitution of Board of Management (**BoM**) in every Urban Cooperative Banks (**UCBs**) having deposits of INR 100 crore and above. This is to bring improvement in the governance and functioning of UCBs. The BoM is said to function along with the Board of Directors (**BoD**) of the UCBs and assist BoD in policy framing and escalating the administrative efficiency in the UCBs.

These guidelines are introduced by the RBI in response to the recommendations made by the High-Powered Committee on Urban Cooperative Banks constituted in 2015, headed by Shri R. Gandhi, which reiterated the recommendations made by a previously established Expert Committee on Licensing of New Urban Co-operative Banks, 2011 headed by Shri. Y. H. Malegam.

However, the RBI before mandating these new guidelines had uploaded the report of the High-Powered Committee on its website for the feedback from the stakeholders. Also, it had held the discussions on the recommendations made by the above-mentioned committee with the Standing Advisory Committee for UCBs and the Registrars of Co-operative Societies. Subsequently, after considering the feedbacks of the stakeholders, the Reserve Bank on December 31, 2019, released the final guidelines<sup>5</sup> on the constitution of BoM in UCBs.

The guidelines provide that the BoD of UCBs with deposit size of ₹100 crore and above, other than Salary Earners' Banks, shall constitute BoM. It shall be mandatory for such banks to constitute BoM for seeking approval to expand their area of operation and/or open new

branches. These UCBs will also require prior approval of RBI for the appointment of their CEOs.

On the other hand, the UCBs with a deposit size less than ₹100 crore and Salary Earners' Banks are exempted from constituting BoM although they are encouraged to do so voluntarily.

The BoM has to report to the BoD and monitor the banking operations of the UCBs, assist on the formulation of policies and any other related matter specifically delegated to it by the BoD for the proper functioning of the bank. However, the BoD will continue to be the apex policy setting body and shall continue to be responsible for the general direction and control of a UCB. It will continue to look after all the administrative functions as spelled out in the respective Co-operative Societies Acts.

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<sup>5</sup>

<https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11774&Mode=0>