

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 261 of 2018**

[Arising out of Order dated 14<sup>th</sup> May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in MA 421/2018 in C. P. No. (IB) 1371 and 1372 (MB)/ 2017)

**IN THE MATTER OF:**

**Cooperative Rabobank U. A. Singapore Branch**

38 Beach Road, #31 – 11, South Beach Tower,  
Singapore 189 757

**...Appellant**

**Vs**

**Mr. Shailendra Ajmera,**

EY Restructuring LLP, 3<sup>rd</sup> Floor,  
Worldmark 1, IGI Airport Hospitality,  
District – Aerocity, New Delhi - 110037

**....Respondent**

**Present:**

**For Appellant:** Mr. Arun Kathpalia, Sr. Advocate assisted by  
Mr. Krishnendu Datta, Ms. Silpa Nair and  
Mr. Vividh Tandon, Advocates.

**For Respondent:** Mr. Ramji Srinivasan, Sr. Advocate assisted by  
Mr. Raunak Dhillon, Ms. Gauri Rasgotra, Mr. Karan  
Khanna and Ms. Sylona Mohapatra, Advocates.

## **J U D G M E N T**

### **SUDHANSU JYOTI MUKHOPADHAYA, J.**

In the Corporate Insolvency Resolution Process against 'Ruchi Soya Industries Ltd.' (Corporate Debtor), the Appellant - 'Cooperative Rabobank U. A. Singapore Branch', one of the creditors, made claim before the Resolution Professional stating that the Corporate Debtor owed to pay USD 107,36,972.90, basing on the Bills of Exchanges, ordering this Corporate Debtor to pay to the Creditor for the goods supplied by another party in between, i.e. 'Avanti Industries Pvt. Ltd.'. The Appellant claimed to be the 'Financial Creditor' which was rejected by the Resolution Professional. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by order dated 14<sup>th</sup> May, 2018 also held that the Appellant is not a 'Financial Creditor' but an 'Operational Creditor'.

2. The question arises for consideration in this appeal is whether on the basis of Deed of Exchange, the Appellant can claim to be a 'Financial Creditor'?

3. The case of the Appellant is that it is an international bank, which is in the business of providing banking and financial services including financing export/ import transactions by discounting bills of exchange

(BoEs). The sole consideration for the Appellant in discounting BoEs is the discount interest and commission earned by the Appellant based upon the maturity period of the BoEs i.e. based on the time value of money. Such discounting facilities are akin to lending of money for earning interest and are, therefore, purely financial in nature. The Appellant is neither made a party to the export/ import contracts nor is it responsible for any obligations whatsoever under the export/ import contracts.

4. BoEs discounting is one of the modes of raising finance in trade transactions. Banks and financial institutions extend such discounting facilities on the premise that the repayment of debts owed under the BoEs would not be subject to the underlying export/ import transaction.

5. According to learned counsel for the Appellant, certain banks in India such as 'Export Import Bank of India' are primarily involved in the business of discounting BoEs for financing export/import transactions. To classify such BoEs discounting transactions as 'operational debts' would discourage banks and financial institutions from financing trade debts, unless they want to be automatically classified as 'operational creditors' much like suppliers of goods. This would defeat the very objective of the Insolvency and Bankruptcy Code, 2016 to promote the growth of credit market in India.

6. According to the Appellant, it entered into a Master Sales and Purchase Agreement dated 22<sup>nd</sup> October 2013 (MSPA), wherein it was agreed

that upon acceptance by the Corporate Debtor of certain BoEs, the Appellant would discount the BoEs and disburse the discounted proceeds to a third party supplier of the Corporate Debtor, Aavanti Industries Pvt. Ltd. (Aavanti). *(Clause 1,2 of the MSPA)*.

7. It was further agreed under the MSPA that the Appellant will not have any recourse to Aavanti and would be able to claim the amounts due under the BoEs only from the Corporate Debtor. *(Clause 4 (C) of the MSPA)*

8. In accordance with the MSPA, the Corporate Debtor accepted the BoEs by signing on the BoEs and thereby, unconditionally agreed to pay the amounts due under the BoEs to the Appellant. *(Sample BoE)*

9. It is only upon the acceptance of the BoEs by the Corporate Debtor, that the Appellant disbursed the discounted proceeds to Aavanti. Accordingly, an aggregate amount of USD 107,376,972.90 (excluding interest and other charges) was payable by the Corporate Debtor to the Appellant under the BoEs. Subsequently, on the maturity of the said BoEs, the BoEs were presented for payment to the Corporate Debtor and were dishonoured due to non-payment

10. Learned counsel for the Appellant submitted that the Resolution Professional has accepted and admitted Appellant's claim of USD 107,36,972.90 alongwith interest and other charges. However, attempt

is being made to classify the debt as an 'Operational Debt' and not a 'Financial Debt' despite the pure financial nature of the payments.

11. It was submitted that Bill of Exchange is an independent contract under the provision of Negotiable Instruments Act, 1881 (NI Act). As per Section 32 and 37 of the NI Act, upon acceptance of Bill of Exchange, the acceptor i.e. Corporate Debtor becomes the Principal Debtor of the amount due under the Bill of Exchange. Under the law, unless agreed to the contrary, the drawer would continue to remain liable. However, in the present case, the Bill of Exchanges were discounted without recourse to the Drawer i.e. 'Avanti Industries Pvt. Ltd.'. Reliance has been placed on the decision of Hon'ble Supreme Court in **"American Express Bank Ltd. Vs. Calcutta Steel Co. (1993) 2 SCC 199"**.

12. It was further submitted that discounting of Bill of Exchange falls within the definition of 'Financial Debt' as defined under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') and the 'time value' means the compensation or the price paid for the length of time for which the money has been disbursed. Reliance has also been placed on decision of this Appellate Tribunal in **"Dr. B.S.V. Lakshmi Vs. Geometrix Laser Solutions Pvt. Ltd., decided on 13<sup>th</sup> March, 2017"**, against which the appeal was dismissed by the Hon'ble Supreme Court.

13. Learned counsel appearing for the Resolution Professional submitted that the dispute in the present case arises out of a transaction, whereby 'Aavanti Industries Pte.' ("Aavanti" - an Operational Creditor of the Corporate Debtor) entered into an agreement to supply goods and services to 'Ruchi Soya Industries Limited' (Corporate Debtor) and Aavanti granted the Corporate Debtor, the usual credit facility for supply of goods and services.

14. It was submitted that in terms of Section 5(20) of the Insolvency and Bankruptcy Code, 2016, which defines an 'Operational Creditor' to mean a person to whom an 'Operational Debt' is owed and includes any person to whom such debt has been legally assigned or transferred, the Aavanti being an 'Operational Creditor', its assignee i.e. Appellant will also come within the meaning of 'Operational Creditor'.

15. We have heard learned counsel for the parties and perused the record.

16. Section 5(21) of the I&B Code defines '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'. Admittedly, the Corporate Debtor owed money to 'Aavanti', who is an 'Operational Creditor', which supplied goods which falls squarely within the definition of 'Operational Debt'. Furthermore, in the books of accounts of the 'Corporate Debtor', the overdue

amounts have been reflected as over-dues towards 'provision of goods and services'.

17. Section 5(20) of the Code defines an 'Operational Creditor' to mean not only a person to whom an 'Operational Debt' is owed but also a person to whom such 'operational debt' is assigned. In other words, the 'Aavanti' having transferred its right to collect payment due towards the sale of goods to any person, including the Appellant bank, under a Bill of Exchange, the transferee Appellant bank will also remain as an 'Operational Creditor', and cannot become a 'Financial Creditor'.

18. The aforesaid proposition of law is also evident from Sub-section (5) of Section 21 of the I&B Code, which reads as follows:-

*"21. (5) Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer."*

19. Therefore, it is clear that an 'Operational Creditor', who has assigned or legally transferred any 'Operational Debt' to a 'Financial Creditor', the assignee or transferee shall be considered as an 'Operational Creditor' to the extent of such assignment or legal transfer.

20. Section 3 (37) of I&B Code provides that the words and expressions used but not defined in the Code have the same meaning as defined in other Acts as mentioned therein and reads as follows:-

*“3. In this Code, unless the context otherwise requires,—*

*.....X .....X.....X....*

*(37) words and expressions used but not defined in this Code but defined in the Indian Contract Act, 1872, the Indian Partnership Act, 1932, the Securities Contract (Regulation) Act, 1956, the Securities Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts.”*

In view of Section 3(37), the Appellant cannot derive any advantage of expressions used in Negotiable Instruments Act, 1881.

21. The agreement dated 22<sup>nd</sup> October, 2013 has been enclosed by the Appellant. It is between ‘Aavanti Industries Pte Ltd.’ (the “Seller”) and ‘Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. (trading as



Rabobank International) Singapore Branch' (the "Bank"). The relevant portion relating to transaction is as under:-

Enclosure A



**Master Sales and Purchase Agreement for Bills of Exchange**

This Master Agreement is entered into this 22 day of October 2013 by and between Aavanti Industries Pte Ltd (the "Seller") and Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. (trading as Rabobank International) Singapore Branch (the "Bank").

This Master Agreement sets out the terms and conditions of the sale and purchase from time to time and up to the Limit (as defined below) of bills of exchange between the Seller and the Bank as buyer. The Seller shall send a request to the Bank in the Bank's standard form attached as Appendix A (the "Request"), together with the Discount Documents (as defined below) attached to the Request. The purchase of any bill of exchange shall be at the sole and absolute discretion of the Bank.

1. **The Underlying Security**

Underlying Security:	Bills of exchange.
Drawer:	Seller
Drawee/Acceptor:	Ruchi Soya Industries Ltd
Payee:	To the order of the Bank.

2. **The Transaction**

Limit:	Subject to the Bank's sole and absolute discretion to revise the Limit.
Settlement Date:	After receipt by the Bank of notification of acceptance by the Drawee of the Underlying Security (as advised by a collecting bank via an authenticated SWIFT message).
Purchase Price:	Face value of Underlying Security less Discount Interest.
Discount Interest, Commissions and Charges:	As from time to time agreed between the Bank and the Seller.
Discount Documents:	Underlying Security and related shipping documents in form and substance that are acceptable to the Bank, together with Seller's instruction to the Bank.





**Rabobank**

- (C) The sale of an Underlying Security by the Seller to the Bank is without recourse to the Seller if the Drawee does not pay the Underlying Security on the maturity date as stipulated on the respective Request by reason of:
- (1) its financial condition (including its insolvency, it being wound up or liquidated, or being subject to winding up or liquidation or administration proceedings);
  - (2) currency control regulations or other similar prohibitions imposed by the government of the country where the Drawee has its principal place of business; and/or
  - (3) its failure to honour its obligations under the Underlying Security within 6 months of due date or extended due date hereinafter described as protracted default.
- (D) The terms and conditions of this Master Agreement shall apply to each Request from the Seller to purchase bills of exchange drawn on any of the aforementioned Drawee/ Acceptor. In the event of any conflict between the terms and conditions of this Master Agreement and those of the Request, the terms and conditions of this Master Agreement shall prevail.
- (E) Notwithstanding the foregoing, the Seller undertakes to use all reasonable efforts to cooperate fully with the Bank in the collection of any monies in connection with an Underlying Security and the enforcement of payment thereof.
- (F) This Master Agreement and each Request shall be governed by the laws of Singapore and the parties agree to submit to the non-exclusive jurisdiction of the courts of Singapore.

IN WITNESS WHEREOF the parties hereto have executed this Master Agreement by the hand of their respective authorised signatories.

**COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.(TRADING AS RABOBANK INTERNATIONAL), SINGAPORE BRANCH**

  
\_\_\_\_\_  
Authorised Signatory  
**Rabobank International**  
 Trade & Commodity Finance  
Ong Poon Lee  
Head, Agri & Metals

  
\_\_\_\_\_  
Authorised Signatory  
**Rabobank International**  
 Risk Management  
Kooi Tiong Seah  
Head of Credit Analysis



22. The Deed of Exchange has also been enclosed, which is between 'Aavanti Industries Pte Ltd., Singapore' and 'Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. (Rabobank Nederland) Singapore Branch'.

THIS DEED is made on 1st July 2010

**BETWEEN**

- (1) **AAVANTI INDUSTRIES PTE LTD, REG. NO. 199304717K**, a company incorporated in Singapore and having its registered office at 17 Phillip Street, 05-01, Grand Building, Singapore 048695 (the "Company"); and
- (2) **COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B. A. (RABOBANK NEDERLAND), SINGAPORE BRANCH** having an office at 77 Robinson Road #09-00 SIA Building, Singapore 068896 (the "Bank").

**NOW THIS DEED WITNESSES** as follows:

**INTERPRETATION**

1.1 In this Deed, except so far as the context otherwise requires:

*the Act* means the Conveyancing and Law of Property Act, Chapter 61;

*Charged Property* means the property, assets and rights for the time being comprised in or subject to the charges and pledges contained in this Deed; and reference to the Charged Property include references to any part of it;

*Contract Rights* means all and any rights of the Company under any Goods Sale Agreement, including without limitation, all rights to delivery of any quantity of Goods under any Goods Sale Agreement, and all rights to any sum or sums of money (whether in the nature of debt, purchase price, damages liquidated or unliquidated, or otherwise) under any Goods Sale Agreement, and all and any such sums when paid; and also all and any rights or interest of the Company in or to the proceeds of any insurance payable or paid in respect of the Goods;

*Credit Balances* means all and any credit balances of the Company (including without limitation time or other deposits whether or not evidenced by deposit receipts) now or in the future made by or held for the account of the Company at the Bank or at any branch of the Bank;

*this Deed* means this present deed and any other document by which, pursuant to any of its provisions or otherwise, the Company may grant a Security Interest to the Bank, as, in each case, from time to time varied in any manner or respect whatsoever;



23. One Bill of Exchange out of many has been enclosed by the Appellant, which reads as follows:-

Enclosure

008171671  
Annexure-A  
Singapore 20-OCT-15

Bill No. 501/70/161261 DATE OF ISSUE

Exchange for US\$ 2,099,483.40 AMOUNT IN FIGURES

At 180 DAYS FROM ACCEPTANCE DATE, sight of this FIRST OF EXCHANGE (second of the same tenor and date being unpaid) pay to the order of RABOBANK SINGAPORE

the sum of US DOLLARS TWO MILLION NINETY NINE THOUSAND FOUR HUNDRED EIGHTY THREE AND CENTS FORTY ONLY

value received DRAWN UNDER DOCUMENTS AGAINST ACCEPTANCE

To: RUCHI SOYA INDUSTRIES LIMITED For AAVANTI INDUSTRIES PTE LTD.  
301, MAHAKOSH HOUSE, 75 SOUTH TUKOGANI, NATH  
MANDIR ROAD,  
INDORE-452 001, M.P., INDIA.

Authorised Signature

Notary Public  
MUMBAI  
INDIA

DPE 840315

24. From the record also we find that the 'Bill of Exchange' relates to supply of goods and whatever finance given by the Appellant is to 'Aavanti Industries Pte Ltd., Singapore' and not to the 'Corporate Debtor'. The Corporate Debtor has merely received the goods and therefore we hold that the Appellant is not a 'Financial Creditor' but at best can claim to be an 'Operational Creditor' as held by the Adjudicating Authority.

25. We find no merit in this appeal. It is accordingly dismissed. There shall be no orders as to costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

**NEW DELHI**

**29<sup>th</sup> April, 2019**

AM