

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-1990/2023

In

IB-2688(ND)/2019

IN THE MATTER OF IB-2688(ND)/2019:

M/s. STANDARD CHARTERED BANK SINGAPORE (LIMITED)

..... Operational Creditor

VERSUS

M/s. RCI INDUSTRIES AND TECHNOLOGIES LIMITED

.....Corporate Debtor

IN THE MATTER OF IA-1990/2023:

M/s. MUDRAKSH INVESTFIN PRIVATE LIMITED

..... Applicant

VERSUS

Mr. BRIJESH SINGH BHADAURIYA

Resolution Professional of M/s. RCI Industries and Technologies Limited

..... Respondent

Order Delivered On: 10.11.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Appellant :

For the RP : Mr. Brijesh Singh Bhadauriya, Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by M/s. Mudraksh Investfin Private Limited, the Applicant on 30.03.2023 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 before this Adjudicating Authority for seeking the following reliefs:

a) *“Allow the present Application*

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- b) *Set aside the Resolution Professional/Respondent's email dated 21.12.2022, wherein the Applicant was declared as "Operational Creditor".*
- c) *Direct the Resolution Professional/Respondent to admit the claim of the Applicant as "Financial Creditor" and accordingly, allow right to vote in the Committee of Creditors.*
- d) *Direct the Resolution Professional and Committee of Creditors to not consider, deliberate, negotiate and vote upon any Resolution Plan received from any Prospective Resolution Applicant, till the final adjudication of the instant Application.*
- e) *Pass such other orders, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice."*

2. **Brief Background of the Case**

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e., M/s. Standard Chartered Bank Singapore (Limited) against the Corporate Debtor i.e., M/s. RCI Industries and Technologies Limited and the said application was admitted by this Adjudicating Authority vide order dated 25.11.2022 and a moratorium was declared including approving the appointment of Mr. Brijesh Singh Bhadauriya as an Interim Resolution Professional.

3. It is the case of the Applicant that the Public Announcement dated 30.11.2022 was made by the Respondent wherein the last date for submission of claims was mentioned as 13.12.2022. It is submitted that pursuant to the Public Announcement, the Applicant duly submitted its claim in Form-C dated 13.12.2022.
4. The Respondent intimated to the Applicant vide email dated 21.12.2022 that since the debt owed to the Applicant is in nature of an Operational Debt, the Applicant should file its claim through claim Form-B as an Operational Creditor. The Applicant is aggrieved with the said decision of the Resolution Professional. It is submitted that the claim of the Applicant has not been rejected on the merits



and the limited grievance of the Applicant is w.r.t. its classification as an Operational Creditor. On 21.12.2022, the Applicant immediately pointed out the wrong categorization on the part of the Respondent and also requested for reconsideration of the same.

5. It is submitted that the Applicant is an assignee of the Financial Debt owed by the Corporate Debtor to one SBI Global Factors Limited and DBS Bank India Ltd ("Financers") wherein the said debt was assigned to the Applicant vide Assignment Agreements dated 23.06.2022 and 08.08.2022. Both financers had entered into a Master Service Agreement/Master Financer Agreement dated 28.04.2017 and 05.12.2018 with one M/s. Mynd Solutions Pvt. Ltd. for providing factoring services in the form of trade finance facility/discounting and re-discounting of the invoices raised by the supplier on the buyer of the goods and services so provided.
6. The Corporate Debtor was one of the buyers who purchased various ferrous and non-ferrous products from BC Power Controls Ltd. ("Seller"). However, since the Corporate Debtor did not have sufficient liquidity/funds to make payment against the goods purchased from the Seller, the Corporate Debtor entered into a Master Buyer Agreement dated 21.12.2018 with M/s. Mynd Solutions Pvt. Ltd. for availing the facilities of discounting and re-discounting of the trade receivables/invoices of the suppliers (BC Power) from the Buyer (Corporate Debtor) through the above-named Financers.
7. The Corporate Debtor defaulted in repayment of the debt and as on the Insolvency Commencement Date, the Corporate Debtor is liable to make a total payment of Rs. 7,05,91,531/- to the Financers.
8. The Respondent wrongly categorised the Applicant as an Operational Creditor without understanding the true nature of the transaction vis-a-vis factoring, between the Corporate Debtor and the financers, and has solely contended that "the original liability arose in respect of operational debt" which was initially assigned to the financers, being DBS Bank India Ltd and SBI Global Factors Ltd.



9. The financiers had disbursed an amount, on behalf of the Corporate Debtor to the sellers/suppliers of the Corporate Debtor by way of factoring against which the Corporate Debtor was under an obligation to make repayment of the debt so disbursed with interest as provided for in the Master Service Agreement and penal interest in case of any delay. Therefore, it is evident that the financiers had not only disbursed a sum, but such sum was against the "consideration for the time value of money". Therefore, there can be no iota of doubt in concluding that the debt owed to the Applicant herein was in nature of the Financial Debt.
10. The Respondent has without application of mind classified the Applicant as an "Operational Creditor" merely on the basis of the assignment of receivables by the supplier of the Corporate Debtor to the erstwhile financiers. However, the Respondent has failed to consider that the facility of availing factoring services from an NBFC/Banking Institution falls within the definition of "financial debt" as there is the disbursement of money against the consideration for the time value of money u/s 5(8) of the Code.
11. The Respondent has filed a reply affidavit and submitted that it is the Respondent vide email dated 17.12.2022, requested the Applicant for additional documents for the purpose of verification of the claim submitted in terms of Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
12. Upon verification of the claim of the Applicant, the Respondent vide its email dated 21.12.2022, pointed out to the Applicant that the claim calculation sheet along with invoices or supporting documents for the claim amount of Rs. 7,05,91,531.39 has not been provided. Further, it was informed that the Applicant has wrongly filed its claim as a Financial Creditor under "Form-C" and requested to file the claim as an Operational Creditor through Claim "Form-B".
13. The operational debt owed by the Corporate Debtor to the Supplier was initially assigned to DBS Bank Limited (erstwhile Lakshmi Vilas Bank) & SBI Global Factors Limited (SBIG) ("Financer") pursuant to



its successful bidding on M/s. Mynd Solution Pvt. Ltd., Ml exchange platform.

14. The assignment and re-assignment (dated 23.06.2022 and 08.08.2022) do not change the nature of the transactions from which the obligation of the Corporate Debtor to pay operational debt arose. Moreover, it is an admitted position that the amount in relation to the alleged debt/claim was never disbursed to the Corporate Debtor but a transaction entered into between the Supplier, Financier and the Applicant. The Corporate Debtor simply consented to pay the outstanding operation debt to the Financier and thereafter to the Applicant instead of the Supplier.
15. The interest amount calculations relied upon by the Applicant are arbitrary and have not been substantiated. As there is no interest rate specified in any agreement submitted by the Applicant wherein both the Corporate Debtor and Financier are a party.
16. It is submitted that the definition of operational creditor includes any person to whom such operation debt has been legally assigned or transferred which in this case is an admitted position by the Applicant that trade receivables were assigned from the Supplier to Financier and then to the Applicant. Therefore, the debt owed by the Corporate Debtor to the Supplier is an Operational debt within the meaning of Section 5(21) of the Code. Therefore, the debt owed by the Corporate Debtor to the Supplier is Operational debt within the meaning of Section 5(21) of the Code.
17. The Supplier has transferred its Trade Receivables to the Financers, and the Corporate Debtor has agreed to pay the amount which was inherently owed to the Supplier and then to the Financers. The said assignment does not change the nature of the underlying debt owed by the Corporate Debtor.
18. The debt owed to Applicant by the Corporate Debtor does not satisfy the requirements of the definition of "financial debt" under Section 5(8) of the Code. In the above-stated transaction, the money was never disbursed to the Corporate Debtor much less for the time value



of money. By virtue of discounting the trade receivable of the Supplier, the Financiers entered the shoes of the Supplier and had become Operational Creditors in terms of Section 5(20) as well as Section 21(5), and Section 5(7) and Section 5(8) of the code is not at all applicable.

19. The original liability arose in respect of operational debt, any further assignment of said operational debt shall also be treated similarly in view of provisions of Section 21(5) of the Code.
20. The Corporate Debtor has agreed and acknowledged its obligation towards the Financiers pursuant to the above assignment of trade receivables through a Master Buyer Agreement dated December 21, 2018, however not availed any services, financial or otherwise from the Financier. The acknowledgement of the assignment of its obligation by the Corporate Debtor, to pay the outstanding amount to the Supplier shall not be constituted as a financial transaction with respect to the Corporate Debtor. Therefore, in the present case, the claim raised by the Applicant shall be constituted in its original nature only i.e. operational debt as reiterated earlier.
21. The Respondent is a court appointed officer and is only undertaking its duties under the Code. The Applicant has preferred the present Application, in a subterfuge manner, only to mislead this Adjudicating Authority, by not presenting the correct factual matrix. Furthermore, the Respondent has within its powers as bestowed upon it by the Code, and is only acting in furtherance of its duties, to achieve the purpose of the Code.
22. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
23. We agree with the Resolution Professional that the transactions between the Corporate Debtor and the Supplier are for the purchase of goods in the normal course of business of the Corporate Debtor, and therefore according to the definition of operational debt given under Section 5(21) of the Code, the debt is operational in nature.



24. We find that the assignment and re-assignment (dated 23.06.2022 and 08.08.2022) do not change the nature of the transactions from which the obligation of the Corporate Debtor to pay operational debt arose.
25. We are of the considered view that the debt assigned to the Applicant through the Assignment agreements (dated 23.06.2022 and 08.08.2022) in which providing factoring services in the form of trade finance facility/discounting and re-discounting of the invoices raised by the supplier on the buyer of the goods and services is an operational debt and the applicant should file the claim as Operational Creditor in "Form-B".
26. Hence, we are of the view that the Resolution Professional has not committed any illegality w.r.t. the Applicant's classification as an Operational Creditor.
27. We also advise the RP as well as the Applicant to make their best endeavors to get the ultimate essence in the implementation of the Code and in the interest of justice to expedite the process of CIRP under the Code.
28. In view of the above, the IA-1990/2023 stands **dismissed**

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**