

**IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD**

**Regular Appeal No. 329/2015**

Bhartia Industrial Ltd. (now BCH Electric Ltd.) having Registered Office at Block 1E, 216, Acharya Jagdish Chandra Bose Road, Kolkata-700017 and Corporate Office at 1105, New Delhi House, 27, Barakhamba Road, New Delhi-110001.

.....Appellant

Versus

1. Kotak Mahindra Bank Ltd. having office at 17/3-B, Meghdoot Building, Mall Road, Kanpur-208001.
2. M/s Y. A. Fidelity Engineering Pvt. Ltd. having office at 69, Uptron Industrial Estate, Panki Site No. 1, Kanpur-208022.
3. Yogendra Kumar Bhagat, S/o P. L. Bhagat, C/o M/s Y.A. Fidelity Engineering Pvt. Ltd., 69, Uptron Industrial Estate, Panki Site No. 1, Kanpur-208022 also at 4/278, C-2, Vishnupuri, Near Kohana Thana, Kanpur (U.P.)
4. Smt. Divya Bhagat, W/o Yogendra Kumar Bhagat, C/o M/s Y.A. Fidelity Engineering Pvt. Ltd., 69, Uptron Industrial Estate, Panki Site No. 1, Kanpur-208022 also at 4/278, C-2, Vishnupuri, Near Kohana Thana, Kanpur (U.P.)
5. Uttar Pradesh Financial Corporation having office at 14/88, Civil Lines, Kanpur (U.P.)-208001
6. M/s LML Ltd. having office at C-10, Panki Industrial Estate, Kanpur (U.P.)-208022 through its Chairman
7. M/s Lohia Packaging Machines having office at D-III/A, Panki Industrial Area, Kanpur (U.P.)-208022 through its Chairman
8. M/s Precitex Components Mfg. Co. having office at D-III/A, Panki Industrial Area, Kanpur (U.P.)-208022 through its Chairman
9. M/s Lohia Starlinger Ltd. having office at D-III/A, Panki Industrial Area, Kanpur (U.P.)-208022 through its Chairman

.....Respondents

**Advocates, who appeared in this case:**

For the appellants	Shri Azim Ahmad Kazmi, Advocate
For the respondent-Bank	Shri Rakesh Mishra, Advocate
For the respondents no. 2 to 6	Proforma parties
For the respondents no. 7, 8 & 9	None

**JUDGMENT**

**Date of Pronouncement: 02.07.2026**

**JUSTICE R. D. KHARE, CHAIRPERSON**

1. The present appeal has been filed under section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the "RDDBFI Act") against a part of the judgment dated 11.09.2015 whereby the original application filed by the respondent-Bank against the defendants no. 1 to 3 and 5 (appellant herein) to 9 has been allowed.
2. Brief facts of the matter are that the appellant is neither borrower nor guarantor to the loan advanced by the respondent-Bank in favour of the respondent no. 2 through its directors respondents no. 3 & 4, but the appellant is stated to be the acceptor of the bills raised by the respondent no. 2. The respondent no. 5 is also lender, which had disbursed certain credit facilities to the respondent no. 2 and was having first charge with regard to certain assets on which the respondent-Bank had second charge.
3. It is averred that the respondent no.2-company was granted certain credit facilities through its directors-respondent nos. 3 & 4 by the respondent-Bank, which was subsequently enhanced from time to time. The said facilities were secured by hypothecation of stocks in trade, book debts, plant and machinery, second charge on the fixed assets (machinery permanently installed) at site no. 69, Uptron Industrial Estate, Kanpur, as the first charge was in favour of the respondent no. 5-UPFC on the properties owned by M/s Saral Drums and Organics Pvt. Ltd., which was subsequently released. In addition to it, the respondent no.2-borrower executed certain security documents viz; Demand Promissory Note dated 04.10.2002, statement of hypothecation of stocks in trade, machinery, book debts and created equitable

mortgage over its property by depositing original title deed with the respondent-Bank.

4. It appears that a tripartite agreement was also executed on 03.12.2002 between the respondent no.1-Bank, respondent no.5-UPFC and respondent no. 2-borrower with regard to second charge on the properties mentioned in the said agreement, for which the necessary charge was also registered with the Registrar of companies at Kanpur by the respondent no.2-borrower in favour of the respondent no. 1-Bank on 03.11.2003. Since, the borrowers did not maintain the financial discipline, therefore, the account was classified as NPA and the original application no. 60 of 2008 was filed by the respondent-Bank against M/s Y.A. Fidelity Engineering Pvt. Ltd. and Ors. including the present appellant, who was arrayed as defendant no. 5 and the said O.A. has been decreed vide order impugned holding the defendants no. 5 (appellant) to be liable severely and jointly with the respondents no. 2, 3 & 4 for their respective dues as decreed vide the order impugned. Being aggrieved by the said part of the order impugned, the present appeal has been filed by the appellant.
5. Learned counsel for the appellant submitted that the impugned order has been passed only on the basis of Hundies/Bills, which were neither accepted by the appellant nor presented by the respondent No. 1-Bank along with its Original Application. It was further contended that the appellant, who was arrayed as Defendant No 5 in the O.A., is neither borrower nor guarantor along with the original borrowers and guarantors i.e. respondents No. 2 to 4, as the claim of the Respondent No. 1-Bank against the appellant is confined to Rs 19,26,175/- in respect of alleged

outstanding bills for goods purchased by the appellant from Respondent No. 2, which were allegedly discounted by Respondent Bank at the instance of Respondent No. 2 and the same were allegedly not honoured by the appellant, but the said allegation made by the Bank is false, incorrect and without any record. It was further contended that the respondent-bank did not make any attempt to confirm and recheck the said bills from defendant No. 5/appellant, whereas the appellant had cleared all the bills of the goods actually received and verified.

6. It was further contended that the alleged Purchase Order No. 4500007477 was for the supply of 6000 pieces of goods, whereas, if calculated, the total number of goods supplied by Respondent No. 2 as per the invoices attached with O.A. exceeds 19000 pieces, which clearly shows that some fraud has been played.
7. It may be noted that invoices annexed as Ex. A-59 by the Bank contain only one Purchase Order No. 4500007477, which was actually issued by the appellant on 02.09.2003, copy of which has been filed as Annexure 4 to the Memo of appeal at page no. 168 of Paper Book, however, the invoices attached by the Bank in O.A. at page 98 to 123 of Paper Book contain three different dates i.e. 25.05.2005, 01-04.2005 and 25.02.2005 in respect of this very Purchase Order, which makes it doubtful on the face of it and needs to be dealt with carefully. It was thus contended that the respondent-Bank ought to have at least verified the same from actual Purchase Order placed by the appellant with Respondent No. 2, instead of blindly discounting the bills purportedly raised against such numerous purchase orders containing the same number and as such this fact was sufficient to

raise doubt in genuineness of the bills, but the respondent Bank has acted with deliberate negligence by ignoring this or by being part of such manipulation, which disentitled the Bank to claim the amount of bills against the appellant.

8. Learned counsel further submitted that there is no document on record of O.A. filed by the respondent-Bank to establish that it has presented the alleged bills for payment before the appellant. It was also contended that the only document, which has been filed in support of its claim by the Bank, is Exhibit A-60 at page no. 124 of Paper Book, which is a letter dated 31.12.2005 purportedly sent by it to the appellant in respect of the bills, seeking to establish the fact of alleged presentation of bills before the appellant. It was further contended that the said document is not acceptable for two reasons, firstly, there is no proof on record that the letter dated 31.12.2005 (Ex. A-60) was actually sent and served upon the appellant and secondly, even if for the sake of arguments, it is presumed that it has been served upon the appellant, the said letter does not establish the presentation of entire bills before the appellant, as admittedly, only bills mentioned from serial No. 1 to 8 in the said letter dated 31.12.2005 actually fell due by the said date, whereas the rest of the bills mentioned at serial no. 9 to 24 in the said letter of demand are stated to become due after 31.12.2005. It was thus contended that even if the said letter is taken as correct, it can be only be considered valid for presentation of bills having become due by that date, which are mentioned from serial no. 1 to 8 therein for a total claim of Rs. 7,88,542/- only as against Rs. 19,26,175/- claimed by it and the rest of the bills cannot be considered to have been presented for payment, as their date of maturity was subsequent to

the date of said letter. It was, therefore, prayed that the order impugned to the extent of the liability fixed by the Tribunal below upon the appellant may be set aside and the appeal filed by the appellant may be allowed.

9. Learned counsel for the respondent-Bank submitted that the Bank has filed the above said Original Application claiming an amount of Rs.19,26,175.12 against the appellant towards the unpaid bills. It was further contended that the Tribunal below vide its judgment/order dated 11.09.2015 has decreed the above said Original Application against the appellant for an amount of Rs.19,26,175.12 along with further interest with effect from 04.02.2006 @ 10% simple per annum till the full recovery is made.
10. It was further contended that the appellant was the acceptor of the bills, which were drawn on them by the respondent no.2 M/s Y. A. Fidelity Engineering Pvt. Ltd., but the appellant has not made payment of the bills raised by the respondent no. 2 despite its acceptance on the due dates, whereas, the liability of the appellant is joint, several and co-extensive for the respective amount of Rs.19,26,175.12 along with further interest with the respondent nos.2, 3 & 4-borrowers. It was also contended that the bills accepted by the appellant were returned unpaid in the accounts, against which the respondent-Bank wrote a letter dated 31.12.2005. Learned counsel has referred to page no. 364-365 of the O.A., which are the copies of the letter dated 31.12.2005 issued by the respondent-Bank, but the appellant failed to repay the amounts of the unpaid bills despite request made by the Bank. It was, therefore, prayed that the appeal filed by the appellant may be dismissed with costs.

11. I have considered the rival contentions of the learned counsels for the parties and perused the record.
12. Undisputedly, the respondent no. 2-Firm was granted various credit facilities by the respondent no. 1-Bank through its directors respondents no. 3 & 4 including the bill discounting limit. The appellant, who was the defendant no. 5 before the Tribunal below, is stated to be the acceptor of the bills. After issuance of summons by the Tribunal below, only defendant no. 5 had appeared and filed written statement, but no one had appeared on behalf of the respondents no. 2 to 9 before the Tribunal below, therefore, the claim of the Bank was rebutted only by the appellant, who was the defendant no. 5 before the Tribunal below.
13. The dispute in the present case is, as to whether the bills/hundies raised by the respondent no. 2 towards supply of goods were paid by the appellant to the respondent no. 1-Bank or not?
14. Admittedly, the respondent no. 2 used to supply the goods to the appellant and as per letter dated 20.12.2002, a power of attorney for supply bill was executed by the respondent no. 2 in favour of the respondent no. 1-Bank, whereby the respondent no. 1-Bank was authorized to collect the payment of the sale proceeds and in case the bill received from the party was passed for an amount lesser than the invoice amount for any reasons of rejection of quality, quantity and differences, the payment would be made by the respondent no. 2 for the reduced amount. Thereafter, different types of items were supplied by the respondent no. 2 to the appellant, against which 25 nos. invoices were raised, which were received by the official of the appellant-company, copies of details of Bills along with

invoices are placed from page no. 98 to 123 of the paper book. The said invoices were received subject to inspection of the goods, which is mentioned in the seal of the appellant-company. Since the said bills were not paid by the appellant, therefore, the respondent-Bank issued a letter to the appellant requesting therein that payment of the said bills may be made by way of demand draft/cheques directly in favour of Ing Vyasa Bank Ltd. account of Y.A. Fidelity Eng. Pvt. Ltd., but it appears that despite the said request, no payment was made by the appellant to the Bank. In this regard, it has been contended on behalf of the appellant that the products supplied by the respondent no. 2 were subject to inspection and if they were found defective, the appellant used to return them back to the respondent no. 2. No doubt, the articles/goods were received by the appellant from the respondent no. 2, subject to inspection, but no document has been placed on record by the appellant to show that the inspection of the goods received was ever made and any article was returned back. The appellant have also not whispered even a single word either in the pleadings of the present case or in its written statement filed before the Tribunal below that the goods received through these invoices were ever inspected and returned to the respondent no. 2. Thus the contention of the appellant that it has already cleared all the dues of the respondent-Bank is not tenable because if any payment towards the present bills was ever made, the onus of proving the said payment lies upon the shoulder of the appellant, but it did not do so either before the Tribunal below or before this Tribunal.

15. So far as the contention of the appellant that the Bank cannot make the appellant liable without giving any prior intimation and without giving any opportunity to explain

the circumstances is also not tenable, because the respondent-Bank had well informed the appellant in writing about non-payment of the aforesaid invoices/bills, copy of the said letter dated nil is at page no. 124 to 125 of the paper book. Thus the Tribunal below has rightly held the appellant to be liable for payment as ordered in the order impugned.

16. In view of the discussions as recorded above, the order impugned to the extent of the liability of the appellant as determined by the Tribunal below does not call for any interference by this Tribunal. Consequently, the appeal filed by the appellant is dismissed with no order as to costs.
17. A copy of this judgment be forwarded to the parties as well the DRT concerned and also be uploaded on the e-DRT portal.

**CHAIRPERSON**

VN GIRI,PS