

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 232 of 2018

IN THE MATTER OF:

M/s. Roma Enterprises

...Appellant

Versus

Mr. Martin S.K. Golla, R.P.

...Respondent

Present:

For Appellant : None

For Respondent : Mr. Davesh Bhatia, Advocate

O R D E R

22.02.2019 The appellant, who claims to be 'Operational Creditor', has challenged the order dated 2nd April, 2018 passed by the Adjudicating Authority (National Company law Tribunal), Mumbai Bench, Mumbai whereby and whereunder the application filed by the appellant against the decision of the 'Resolution Professional' rejecting the claim of appellant with the observation to place the matter before the 'Committee of Creditors' in the interest of justice, has not been entertained.

2. There being a disputed claim of the 'Operational Creditors'; on 22nd May, 2018 the appellant was directed to file additional affidavit and to state whether claims were shown in the records of the 'Corporate Debtor' and the assets and liabilities of the 'Corporate Debtor'. Pursuant to the same, an affidavit has been filed by the appellant but according to the respondent the records of the 'Corporate Debtor' do not reflect the claim, nor the liability and assets of the

'Corporate Debtor' prepared by the 'Interim Resolution Professional' reflect any such case.

3. Earlier, this Appellate Tribunal considered the question as to whether 'Resolution Professional' or the 'Adjudicating Authority' can decide whether goods hypothecated, such as four cranes, belongs to the 'Corporate Debtor' or not. It was held that no such claim can be decided by the 'Resolution Professional'.

4. Today, the case was placed for hearing. Nobody appeared on behalf of the appellant in spite of repeated calls. From the record we find that there is a disputed question of fact which cannot be decided by the 'Resolution Professional' or the 'Adjudicating Authority'. The appellant can raise such issue and claim at an appropriate stage, i.e. after moratorium is over.

In the aforesaid background, we are not inclined to decide such claim. Appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

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