

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

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

**IN THE MATTER OF:**

**M/s. Roma Enterprises**

**...Appellant**

**Vs.**

**Mr. Martin S.K. Golla  
Resolution Professional**

**...Respondent**

**Present: For Appellant: - Mr. Jasdeep Singh Dhillon, Advocate.**

**For Respondent: -Mr. Davesh Bhatia, Advocate.**

**O R D E R**

**06.05.2019—** The Appellant who claimed to be a 'Financial Creditor' submits that the cranes have been hypothecated in its name. The grievance of the Appellant is that the 'Resolution Professional' wanted to take over the hypothecated goods i.e. the four cranes, against which he had moved before this Appellate Tribunal, which had not been accepted.

2. Learned counsel appearing on behalf of the Respondent referred to some order passed by the Bombay High Court. However, we are not inclined to decide the claim and counter claim made by the parties for the reasons below.

3. The Appellant earlier moved before this Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 232 of 2018 and challenged the

Contd/-.....

order dated 2<sup>nd</sup> 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' was not entertained. This Appellate Tribunal by order dated 22<sup>nd</sup> February, 2019 passed the following orders:

*“22.02.2019 The appellant, who claims to be 'Operational Creditor', has challenged the order dated 2<sup>nd</sup> 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 22<sup>nd</sup> 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."*

4. In **“Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.— 2019 SCC OnLine SC 73”**, the Hon’ble Supreme Court has already held that the ‘Resolution Professional’ has no jurisdiction to decide the claim of one or other party. This Appellate Tribunal has also held earlier that the ‘Resolution Professional’ can only collate the claim. Apart from the fact that earlier the same issue was raised and we did not entertain the appeal in view of the fact that nobody appeared on behalf of the Appellant and observed that the Appellant can raise such issue and claim at an appropriate stage i.e. after ‘Moratorium’ is over, we are not inclined to give any finding for the same prayer in this appeal.

The appeal is dismissed. No costs.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice A.I.S. Cheema)  
Member(Judicial)

Ar/g