

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1009 of 2020

IN THE MATTER OF:

MSTC Ltd.

...Appellant

Vs.

Supriyo Kumar Chaudhuri and Ors.

...Respondents

Present:

For Appellant : Mr. Prashant Agrawal, Advocate

**For Respondents : Ms. Swati Dalmia and Mr. Indranil Ghosh,
Advocates for R-1**

O R D E R
(Through Virtual Mode)

26.11.2020 Appellant's application I.A. (IB) No. 611/KB/2020 under Section 60(5) of the 'I&B Code' has been dismissed in terms of the impugned order dated 21st August, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata with observation that the same is devoid of merit. However, the Resolution Professional has been directed to deal with the claim of the Appellant along with other Operational Creditors. The Adjudicating Authority has observed in the impugned order that the Appellant (Operational Creditor) does not have any right to the goods or raw material lying in the premises of the Corporate Debtor even after the order of the 'corporate insolvency resolution process' and that the 'Resolution Professional' is authorised under law to take possession of the moveable or immovable properties of the 'Corporate Debtor' after commencement of the 'CIRP'. It is further observed that if there be any claim against the 'Corporate Debtor', it will have to submit its claim to the Resolution Professional.

The impugned order is assailed on the strength of the security interest being available to the Appellant (Operational Creditor) in terms of the agreement executed, *inter-se*, MSTC limited and Rohit Ferro Tech Limited. On a query put to the learned counsel for the Appellant it is admitted that the Appellant (Operational Creditor) has already submitted its claim which has been admitted. It has also not been disputed by the learned counsel for the Appellant that the goods and raw material lying in the premises of the Corporate Debtor is the asset

of the Corporate Debtor which is subjected to Moratorium. In view of the same, the Appellant cannot claim any right on the basis of the agreement when its claim has already been admitted. Of course, he can claim priority in allocation/distribution of the funds, whether in terms of the approved resolution plan or in the event of liquidation as per distribution mechanism provided in terms of Section 53 of the I&B Code, if it is found that he has a subsisting security interest.

At this stage Ms. Swati Dalmia, Advocate appearing on advance notice on behalf of the Respondent submits that the term of Agreement has already expired before the commencement of the 'CIRP'. However, we do not intend to make any observation on that aspect of the matter as the question with regard to the status of Appellant (Operational Creditor) as a 'secured creditor' is to be determined at the stage of approval of resolution plan and the distribution mechanism taking effect. Be that as it may, in view of admission of Appellant's claim and the fact that the raw material lying in the premises of Corporate Debtor is the property of the Corporate Debtor, Appellant (Operational Creditor) cannot claim any right thereto. There is no merit in this appeal and the same is dismissed at the very threshold stage.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

/ns/gc/