

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

Company Appeal (AT) (Insolvency) No. 558 of 2025

In the matter of:

Starlog Enterprises Ltd.

....Appellant

Vs.

Pulkit Gupta, RP of Vadraj Cement Ltd.

...Respondent

For Appellant

**Mr. Kshitij Sharda, Mr. Shubhanker Sharda,
Advocates.**

For Respondent

**Mr. Viraj Parekh, Mr. Navneet R, Ms. Alankrita
Sinha, Advocates for R1.**

ORDER

(Hybrid Mode)

03.04.2025: Heard Learned Counsel for the Appellant and Counsel appearing for the Resolution Professional.

2. This Appeal has been filed against the order dated 25.03.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai, Court-I in IA No.5247 of 2024.

3. Brief facts necessary to be noticed for deciding the Appeal are:-

3.1. CIRP of the corporate debtor commenced on 02.02.2024. Applicant's cranes were in possession of the corporate debtor. It is matter of record that winding up proceeding against the corporate debtor has commenced in 2017-18. Applicant has issued invoices for hire charges. Last invoices were issued in June 2018. In the winding up proceeding, the cranes were in possession of

Official Liquidator. The process under Section 7 commenced and Resolution Professional came to be appointed.

3.2. Appellant case is that the Appellant has written to the Resolution Professional and filed its claim on 16.02.2024. It is submitted that the Resolution Professional did not initially respond to the claim and it was subsequently only partial claim was admitted on 31.07.2024. It is submitted that the Resolution Professional did not offer to return the cranes or acknowledge. It was only on 27.11.2024 Resolution Professional asked that cranes can be taken by the Appellant. It is submitted that the joint inspection has been made and some of the cranes are taken over and process is still on.

3.3. Appellant has filed IA No.5247 of 2024 praying for various reliefs which prayers has been quoted in paragraph 1 of the order, which is as follows:-

“1. Direct the Resolution Professional of the Corporate Debtor to admit the claim of the Applicant to the extent of Rs. 2,54,80,792 (Rupees Two Crores Fifty Four Lakhs Eighty Thousand Seven Hundred and Ninety Two Only), in addition to the amount of Rs. 6,21,21,671 (Rupees Six Crores Twenty One Lakhs Twenty One Thousand Six Hundred and Seventy One Only) which has already been admitted by the Resolution Professional of the Corporate Debtor.

2. In the alternative to prayer clause (a), direct the Resolution Professional of the Corporate Debtor to either admit or reject the Applicant's claim with sufficient reasons within seven days of the Order passed by this Hon'ble Tribunal or within such other

period as may be deemed appropriate by this Hon'ble Tribunal;

3. Direct the Resolution Professional of the Corporate Debtor to handover possession of the Cranes of the Applicant lying in the premises of the Corporate Debtor to the Applicant within seven days of the Order passed by this Hon'ble Tribunal or within such other period as may be deemed appropriate by this Hon'ble Tribunal;

4. Direct the Resolution Professional of the Corporate Debtor to include the hiring charges in respect of the Applicant's Cranes in the custody of the Corporate Debtor amounting to Rs. 14,50,000 (Rupees Fourteen Lakhs and Fifty Thousand Only) per month from the date of commencement of CIRP i.e. February 2, 2024 till the date of return of the Cranes to the Applicant as CIRP Costs in respect of the Corporate Debtor and;

5. Pass any such orders as may be deemed just and necessary in the facts and circumstances of the present case.”

3.4. Adjudicating Authority by the impugned order has rejected the application holding that the hire charges for the cranes cannot be accepted as CIRP costs. Appellant aggrieved by the said order has come up in this Appeal.

4. Counsel for the Appellant submits that the Appellant due to moratorium was unable to take possession of the cranes, hence, his rights have prejudicially affected and by virtue of Section 14(1)(d) r/w sub-clause (b) of Regulation 31 of the CIRP Regulations 2016, Appellant was entitled for hire

charges as CIRP cost and the Adjudicating Authority committed error in rejecting the said application.

5. Counsel for the Resolution Professional refuting the submission of the Counsel for the Appellant submits that Resolution Professional has at no point of time refused the appellant's claim to take away the cranes and some time was taken in inspection and Resolution Professional has already asked the Appellant to remove the cranes. It is submitted that the cranes were never in use since the corporate debtor was not a going concern and plants were already closed. It is submitted that no invoices were raised after June, 2018 by the Appellant and the Adjudicating Authority has rightly rejected the application.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. It is useful to notice the following observations made by the Adjudicating Authority in paragraph 32, which is as follows:-

“32.....It is relevant to note that the Applicant is not claiming any hire charges for the period from June, 2018 till the admission of Corporate Debtor into CIRP. From the perusal of the list of the invoice(s) raised by the Applicant in relation to hire charges, we find that the Applicant had raised an invoice of Rs. 4,72,000/- on 16.5.2018 and thereafter two invoices in June 2018 for a sum of Rs. 3,44,923/- and Rs. 90,769/-. No invoice has been raised thereafter, even though it is case of the Applicant that all 6 cranes remained in the possession of the

Corporate Debtor. Undisputedly, the Surat and Kutch Plant of the Corporate Debtor were not in operations since the winding up, accordingly, these cranes could not be claimed to be in usage of the Corporate Debtor since then. Since, these cranes were not required to keep Corporate Debtor as going concern in view of shut down of its activities, CoC never considered the approval of such hire charges or necessity of keeping such cranes for the purpose of business of the Corporate Debtor. Accordingly, we are of considered view that no amount can be said to be due to Applicant in relation to hire charges, for the reasons such cranes remained in possession of the Corporate Debtor. The claim of such hire charges, even if it may be permissible under law for depriving the applicant the legitimate custody of its cranes, constitute claim for damages and this Tribunal cannot adjudicate on the aspect of award of damages in the absence of stipulation in the work order to this effect. It is also relevant to note here that the tenure of hiring in terms of work orders have been extended by amendments from time to time, but no amendment to work order has been placed on record demonstrating that the extension was in force on commencement of winding up process.”

8. A cost to be entitled to be treated as CIRP costs when any goods and services are permitted to be taken or utilized with the direction of the Resolution Professional or the CoC. Present was a case where cranes were never in use and the Resolution Professional never permitted for use of cranes. It is not even disputed that cranes were not used in the project, corporate debtor not being a going concern. The submission which has been pressed by

the Appellant is that by virtue of Section 14(1)(d), Appellant was prohibited from taking possession of the cranes, hence, he has prejudicially suffered and by virtue of Regulation 31(b) the amount need to be treated as CIRP costs. Regulation 31(b) of the CIRP Regulation provides as follows:-

“31. Insolvency resolution process costs. (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d)”

9. Regulation 31(b) provides amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d). The present is a case where admittedly the Appellant was not receiving any hire charges or rent with regard to cranes for last several years, admittedly after June 2018, no invoices were issued nor any amount of hire or rent were received by the Appellant. We, thus are of the view that mere fact that moratorium commenced after 02.02.2024, Appellant's rights cannot be said to be prejudicially affected by moratorium. Thus, the submission of the Appellant that under Regulation 31(b), the hire chares should be treated as CIRP costs cannot be accepted. Adjudicating Authority has also dealt with the said submission in paragraph 37 of the order.

10. We are of the view that no error has been committed by the Adjudicating Authority rejecting the application. However, as submitted by the Resolution Professional, the process of handing over cranes is already on and certain cranes had been handed over. We only observe that the process of return of the cranes shall be completed.

11. With these observations, we dismiss the Appeal.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

Anjali/nn