



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE SPECIAL BENCH**  
**COURT NO. 1**

ITEM No.203 – (MP) IA 130 of 2020  
ITEM No.204 – (MP) IA 131 of 2020  
in  
TP 125 of 2019 [CP(IB) 159 of 2018]

**Proceedings under Section 9 IBC**

**IN THE MATTER OF:**

Harshad V Vora  
V/s  
Bhagwan Motors Pvt Ltd

.....Applicant

.....Respondent

**Order delivered on 01/09/2023**

**Coram:**

Mahendra Khandelwal, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

**(MP) IA 130 of 2020 & (MP) IA 131 of 2020**

These cases are fixed for pronouncement of the order.

The common order is pronounced in open Court, *vide* separate sheet.

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**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

A. Bhadauria / Stenographer

-sd-

**MAHENDRA KHANDELWAL  
MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY**  
**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**

**IA/130/MP/2020**

**&**

**IA/131/MP/2020**

**In**

**TP/125/MP/2019**

**CP(IB)/159/2018**

**In the matter of:**

**IA/130/MP/2020**

*(Application under section 60(5) & section 43 of the Insolvency and Bankruptcy Code, 2016, read with rule 11 of the NCLT Rules, 2016)*

**Mr. Mangesh Vitthal Kekre**

Resolution Professional of  
M/s Bhagwan Motors Private Limited  
101/F, Sector-1, Industrial Area Road-II,  
Pithampur, Dist. Dhar,  
Madhya Pradesh- 454775

**.....Applicant/Resolution Professional**

**Versus**

**Belmark Metal (I) Limited**

Plot No. 9 C & 9 Industrial Area,  
Sector-2,  
Pithampur, Dist. Dhar,  
Madhya Pradesh- 454775

**.....Respondent No. 1**

**The Superintendent CGST & CEX**

Range V, Divison I Pithampur

**.....Respondent No. 2**

**IA/131/MP/2020**

*(Application under section 60(5) & section 43 of the Insolvency and Bankruptcy Code, 2016, read with rule 11 of the NCLT Rules, 2016)*

**Mr. Mangesh Vitthal Kekre**

Resolution Professional of  
M/s Bhagwan Motors Private Limited  
101/F, Sector-1, Industrial Area Road-II,  
Pithampur, Dist. Dhar,  
Madhya Pradesh- 454775

**.....Applicant/Resolution Professional**

**Versus**



**V E Commercial Vehicles Limited**

Pithampur,  
Dist. Dhar,  
Madhya Pradesh

.....Respondent No. 1

**Commercial Tax Officer**

Circle 15, Chetak Chambers,  
RNT Marg, Indore,  
Madhya Pradesh

.....Respondent No. 2

**In the main matter of:**

**TP/125/MP/2019 [CP(IB)/159/2018]**

(Application under section 9 of the Insolvency and Bankruptcy Code, 2016)

**Harshad V. Vora**

.....Operational Creditor

**Versus**

**M/s Bhagwan Motors Private Limited**

.....Corporate Debtor

**Order pronounced on: 01.09.2023**

**Coram: Mahendra Khandelwal, Member (J)  
Kaushalendra Kumar Singh, Member (T)**

**Appearance:**

For IRP/RP: Ld. Adv. Mr. Anand Prabhawalkar a.w.

Ld. PCA Ms. Ayushi Patidar &

Mr. Mangesh Vitthal Kekre (RP- in person)

For Respondent: Ld. PCS Ms. Teena Saraswat Pandey (R-2) (IA/131/2020)

Ld. Proxy Adv. Ms. Rini Kothari (R-1) i/b

Ld. Adv. Rajat Lohia (IA/130/2020)

Ld. Adv. Ms. Garima Malhotra (R-1) (IA/131/2020)

**ORDER**

1. IA/130/MP/2020 & IA/131/MP/2020 is filed by Mr. Mangesh Vitthal Kekre, resolution professional of M/s Bhagwan Motors Private Limited (Corporate Debtor) under section 60(5) and section 43 of the Insolvency and



Bankruptcy Code, 2016 (the Code), read with Rule 11 of NCLT Rules, 2016, seeking appropriate directions against the respondents.

2. Submissions made by the resolution professional in its application i.e. IA/130/MP/2020, are summarized hereunder:

(i) This Adjudicating Authority vide order dated 21.06.2019 admitted the corporate debtor into Corporate Insolvency Resolution Process (CIRP). The applicant herein was appointed as the resolution professional for the corporate debtor by the Adjudicating Authority replacing the Interim Resolution Professional (IRP) Mr. Rajesh Lohia vide order dated 07.11.2019.

(ii) In the present application i.e. IA/130/MP/2020, a sum of Rs 29,08,415/- is recoverable on the date of initiation of CIRP from respondent no. 1, as per the statement of accounts available with the present applicant. The resolution professional vide demand letter dated 19.01.2020 called upon respondent no. 1 to immediately provide a statement of account of the corporate debtor in their books of accounts as well as to make the payments due as per books of accounts of the corporate debtor. In response, respondent no. 1 vide their reply dated 25.01.2020 submitted that no amount is recoverable from them, rather a sum of Rs 17,77,285/- is due from the corporate debtor to them.

(iii) Respondent no. 1 has unduly/unauthorized adjusted the accounts of the corporate debtor after initiation of CIRP which is clear from the ledger attached to their reply dated 25.01.2020, that by passing a Journal Voucher dated 01.08.2019, respondent no. 1 has intentionally debited a sum of Rs 49,15,286/- to the account of the corporate debtor. The act of respondent no. 1 is not in accordance with the law as after the CIRP initiation date moratorium has already been declared as per section 14 of the Code, prohibiting any recovery of the amount due from the corporate debtor.

(iv) The resolution professional has reminded respondent no. 1 a number of times through e-mail to either repay the outstanding amount



or show the challan by which the amount has been deposited with the VAT/GST department. Respondent no. 1 has given no heed to all such efforts made by the resolution professional.

(v) Ultimately, on 20.03.2020 through challan identification no. SBIN20032300094449, respondent no. 1 has deposited an amount of Rs 26,26,584/- with the VAT/GST department and thereafter, vide e-mail dated 21.07.2020, it has informed the resolution professional that the amount has been deposited with the GST department.

(vi) The above adjustment made by respondent no. 1 has put the VAT/GST department in a preferential position consequently, putting the whole CIRP in a jeopardized state. The above transaction of making entries in the books in favor of the VAT/GST department and thereafter making a deposit with the same during the period of moratorium falls under the category of a preferential transaction as laid down in section 43 of the Code.

(vii) Resolution professional seeks direction from this Adjudicating Authority to direct respondent no. 1 to clear the outstanding dues of Rs 29,08,415/- forthwith and deposit the same with the resolution professional immediately. Further, to direct the VAT/GST department to reverse the payment made by respondent no. 1, and deposit the same with the resolution professional.

3. In reply, submissions made by respondent no. 1 in IA/130/MP/2020 are summarized hereunder:

(i) At the outset respondent no. 1 denies and refuses all the allegations averred by the resolution professional. The relief as claimed by the resolution professional cannot be allowed as a statutory liability of the corporate debtor under CIRP cannot be imposed upon the debtor of the corporate debtor, therefore, such application is extraneous to respondent no. 1.

(ii) There are two restrictions imposed under the CGST Act on claiming Input Tax Credit (ITC). These are as follows:



- (a) Section 16(4): It puts a restriction on availing ITC if such corporate debtor has delayed filing GSTR-3B for tax periods.
- (b) Rule 36(4): It stipulates a cap of 10% provisional ITC. Even a registered person receiving goods from such companies can claim ITC on invoices bearing the earlier GSTIN in compliance with the conditions specifies under Chapter V of the GST Act.
- (iii) Respondent no. 1 being a registered entity receiving supplies from the corporate debtor is eligible to claim ITC on invoices bearing earlier GSTIN as per the conditions specified under Chapter V of the CGST Act.
- (iv) Respondent no. 1 was further liable to modify/withdraw the ITC since the corporate debtor failed to file its returns with the GST department and therefore, was held accountable by respondent no. 2 to pay the amount against which the ITC was claimed.
- (v) The VAT/GST department has also issued a letter dated 03.07.2019 and 19.08.2019 stating that the corporate debtor have not filed its returns and there are outstanding tax dues with the department, and warned us towards the prosecution.
- (vi) Therefore, respondent no. 1 modified/withdrew the ITC return under CGST Act with the corporate debtor to the taxation extent and reversed the unpaid GST credit availed during the financial year 2018-19 and 2019-20 to respondent no. 2.
4. Submissions made by the resolution professional in its application i.e. IA/131/MP/2020, are summarized hereunder:
- (i) In the present application i.e. IA/131/MP/2020, a sum of Rs 29,84,217/- is recoverable on the date of initiation of CIRP from respondent no. 1, as per the statement of accounts available with the present applicant. The resolution professional through a demand letter dated 19.01.2020 called upon respondent no. 1 to immediately provide the statement of account of the corporate debtor in their books of accounts as well as to make the payment dues as per the books of accounts of the corporate debtor.



(ii) Respondent no. 1 has unduly/unauthorized deposited a sum of Rs 17,12,133/- with the VAT/GST department even after the initiation of the CIRP period and during the moratorium period. This adjustment which has been done with the consent of the suspended management of the corporate debtor put the VAT/GST department in a preferential position.

(iii) Even after payment of the said amount to the VAT/GST department, still there remained a balance of Rs 11 Lakhs approximately which is recoverable from respondent no. 1.

(iv) Resolution professional seeks direction from this Adjudicating Authority to direct respondent no. 1 to clear the outstanding dues of Rs 29,84,217/- forthwith and deposit the same with the resolution professional immediately; and also, to direct the VAT/GST department to reverse the payment made by respondent no. 1, and deposit the same with the resolution professional.

5. In reply, submissions made by respondent no. 1 in IA/131/MP/2020 are summarized hereunder:

(i) Section 60(5) of the Code does not provide the power to the resolution professional to claim monies relating to third parties.

(ii) The contention of the resolution professional of treating the sum of Rs 17,12,133/- deposited by respondent no. 1 to the VAT/GST department falls under the category of preferential transaction under section 43 of the Code is preposterous, misconceived, and untenable.

(iii) As per section 43 of the Code a resolution professional can approach the Adjudicating Authority for avoidance of a preferential transaction if it is of the opinion that the corporate debtor has given a transaction preference at a relevant time. However, in the present case, payment of the VAT/GST by respondent no. 1, who is not a corporate debtor, can under no circumstances fall within the purview or be regarded as a preferential transaction created by the corporate debtor.



(iv) The contention of the resolution professional that the said deposit was made with the consent of the suspended management is false and hence denied. Respondent no.1 paid the aforesaid amount to the VAT/GST department in compliance with a notice issued by the concerned authorities dated 03.07.2019 under section 28(1) of the Madhya Pradesh VAT Act, 2002 and hence, for complying with the said notice and the applicable laws and regulations, respondent no. 1 did not require the consent of the management of the corporate debtor.

(v) The claim made in the present application is strongly disputed. In this context, it is submitted from the latest statement of account of respondent no.1, a sum of Rs 69,41,214/- has been shown as a GST amount paid by respondent no. 1 to the corporate debtor as of 01.03.2020 but the same has not been remitted by the corporate debtor to the GST authority, therefore, despite such payment, the corporate debtor has failed to make a contemporaneous payment to the GST Authority. Assuming an amount of Rs 11,90,744/- as claimed by the resolution professional is payable, the same is to be deducted from the sum of Rs 69,41,214/- which is the unremitted GST amount withheld by the corporate debtor, for which respondent no. 1 is entitled to the ITC of a sum of Rs 57,15,862/-. Despite the remittance of the payment to the corporate debtor, the said amount was not paid further to the competent authority and respondent no. 1 is unable to claim a credit for such amount.

(vi) Respondent no. 1 was unaware of the order dated 21.06.2019 of this Adjudicating Authority admitting the corporate debtor into CIRP and declaration of a moratorium until respondent no. 1 received notice of the present application on 27.02.2020. Hence, respondent no. 1 being bound by notice dated 03.07.2019 of the VAT/GST department, made a *bona fide* payment.

6. Submissions made by Leaned PCS appearing on behalf of respondent no. 2 in IA/131/MP/2020 are summarized hereunder:



(i) The applicant has filed the present application under section 43 of the Code, none of the essential ingredients of the said section are attracted and therefore, the present application is liable to be dismissed at threshold.

(ii) The alleged preferential transaction, is made at the behest of respondent no. 1 who is not a corporate debtor but is a third party which in no manner is related to the CIRP of the corporate debtor. Thus, the transaction in question does not fall within section 43 of the Code.

(iii) The case of the applicant herein is that respondent no. 1 has paid the amount of Rs 17,12,133/- to respondent no. 2 with the consent of the suspended management of the corporate debtor. This fact is false and incorrect. Respondent no. 1 has paid the said amount in consonance with the notice dated 03.07.2019 issued by respondent no. 2. Further, there is no consent required by respondent no. 1 of the corporate debtor to pay such an amount to the department as the corporate debtor is always entitled to claim ITC, if any.

7. We have heard the learned counsel, resolution professional, and learned PCS appearing for the parties and have perused the documents available on record. It is noted that in both applications (IA/130/MP/2020 and IA/131/MP/2020) the resolution professional has claimed a sum of Rs 29,08,415/- and Rs 29,84,217/- respectively. A demand notice dated 19.01.2020 claiming the said amount was sent by the resolution professional to respondent no. 1 in both applications. Further, it was averred by the resolution professional that a certain amount that was due and payable to the corporate debtor by respondent no. 1 in both applications was paid to the VAT/GST department on behalf of the corporate debtor.

In reply, respondent no. 1 in both applications has submitted that the said transaction was made on the basis of a notice dated 03.07.2019 received from respondent no. 2 i.e. VAT/GST department.

For ready reference, the notices issued by the VAT/GST department to the respondent no. 1 in both referred applications are reproduced hereunder:



**Notice in IA/130/MP/2020:**

***“Notice under section 28(1) of the Madhya Pradesh VAT Act, 2002***

To,

Date: 03.07.2019

*Belmarks Metal (India) Ltd.  
Plot No. 9C & 9E, Sector No. 2  
Pithampur, Dhar (M.P.)  
Tin- 23101653951*

*Where the sum of Rs 17,12,094/- VAT TAX TOTAL AMT Rs 17,12,094/- is due of A.Y. 01.04.2014 to 31.03.2015 of **M/s Bhagwan Motors Pvt Ltd, Indore TIN 23111503890** on account of VAT.*

*I M/s Bhagwan Motors Pvt Ltd, Indore TIN 23111503890 hereby require you under section 28(1) of the Madhya Pradesh Vat Act, 2002 to pay into the Government Treasury at Indore on or before Three Days (date) and to produce of Five Days any amount due from you to, or held by you for or on account of said VAT TAX upto the amount of arrears shown above also require you to pay money, which may subsequently become due from you to him/them or which you may subsequently held for or on account of him/them upto the amount of arrears still remaining unpaid within Three Days of the money becoming due or being held by you as aforesaid as such payment is required to meet the amount due from the above said dealer in respect of arrears of Indore.*

*Please note that any payment made by you in compliance with this notice is in las deemed to have been made under the authority of the above named dealer and money receipt will constitute a good and sufficient discharge of your liability to the person to the extent of the amount specified in the receipt.*

*Please note further that if you fail to make payment in pursuance of this notice, proceedings will be initiated to recover the said amount from you as an arrear of land revenue.*

*A copy of this notice is being sent to (dealer)*



Copy to

(Name)- M/s Bhagwan Motors Pvt Ltd, Indore TIN 23111503890

Commercial Tax Officer  
(Additional Tehsildar)  
Indore, Circle-15”

**“Government of India/Ministry of Finance/Department of Revenue  
Office of The Commissioner  
CGST & Central Excise Division-1 Pithampur  
Plot No. 510 Sector-3 Pithampur Dist. Dhar (M.P.)**

Date: 19.08.2019

F. No. GL-6/02/R-II/Pith-I/Bhagwan motors/18-19/244

To,

M/s Belmark Metal (India) Ltd.  
[GSTIN No. 23AABCB6353R1ZD]  
Plot No. 9C-9E, Sector-II, Pithampur,  
Dist. Dhar, [M.P.] 454775

**Notice under Section 11 of the Central Excise Act, 1944 for  
recovery of Central Excise duty.**

It has come to the notice of this office that M/s Bhagwan Motors Pvt Ltd 101-F, Sector-I, Industrial Area, Pithampur, Dist. Dhar [M.P.] having registration no. AACB6434EXM001 [here in after referred to as ‘the party’] is supplying goods to your organization. The amount of Central Excise duty comes to the tune of Rs 4,60,460/- which is recoverable from them under section 11(4) of the Central Excise Act, 1944 read with section 142 of the Customs Act, 1962. Due interest amount is also recoverable from them as provided under section 11AA of CEA and a penalty of Rs 2,30,230/- under proviso to clause (c) of sub-section (1) of section 11AC of CEA and a penalty of Rs 25,000/- under Rule 26 of Central Excise Rules, 2002.

2. Section 11 of the Central Excise Act, 1944 provides:



*(1) In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or the Rules made thereunder [including the amount required to be paid to the credit of the Central Government under section 11D], the officer empowered by the Central Board of Excise & Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1964) to levy such duty or required to the payment of such sums may deduct or require any other Central Excise Officer or a proper officer referred to in section 142 of the Customs Act, 1962 to deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control or may be in the hands or under disposal or control of such officer, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person to pay the same.*

*(2) (i) The Central Excise Officer may by notice in writing, require any other person from whom money is due to such person, or may become due to such person, or who holds or may subsequently hold money for or on account of such person to pay the credit of Central Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice, not being before the money become due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money it is equal to or less than that amount.*

*(ii) every person to whom a notice is issued under this subsection shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company, or an insurer, it shall not be necessary to produce any passbook, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like*



*being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.*

*(iii) in a case where the person to whom a notice under this sub-section has been issued, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be a person from whom duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or the rules made thereunder have become due, in respect of the amount specified in the notice and all the consequences under this Act shall follow.*

*3. You are therefore required to pay Rs 4,60,460/- as Central Excise duty, Rs 2,55,230/- (2,30,203+25,000) as penalty along with applicable rate of interest as enumerated under para (2) above, to the credit of the Central Government payable by the said party, from any amount due to the party or from any amount held by you against the party within 7 days of the receipt of this letter.*

*4. Please note that in the event of your failure to make the payment in pursuance of this notice, you shall be deemed to be the party in default in respect of amount payable as dues by M/s Bhagwan Motors Pvt Ltd 101-F, Sector-I, Industrial Area, Pithampur Dist. Dhar (M.P.).*

*Anurag Ranjan Khare  
Asst. Commissioner”*

**Notice in IA/131/MP/2020:**

**“Notice under section 28(1) of the Madhya Pradesh VAT Act,2002**

To,

VE Commercial Ltd.  
22/2 Y.N. Road Indore (M.P.)  
Tin- 23321001945

Date: 03.07.2019

*Where the sum of Rs 17,12094/- VAT TAX TOTAL AMT Rs 17,12,094/- is due of A.Y. 01.04.2014 to 31.03.2015 of M/s Bhagwan Motors Pvt Ltd, Indore TIN 23111503890 on account of VAT.*



*I M/s Bhagwan Motors Pvt Ltd, Indore TIN 23111503890 hereby require you under section 28(1) of the Madhya Pradesh Vat Act, 2002 to pay into the Government Treasury at Indore on or before Three Days (date) and to produce of Five Days any amount due from you to, or held by you for or on account of said VAT TAX upto the amount of arrears shown above also require to pay money, which may subsequently become due from you to him/them or which you may subsequently held for or on account of him/them upto the amount of arrears still remaining unpaid within Three Days of the money becoming due or being held by you as aforesaid as such payment is required to meet the amount due from the above said dealer in respect of arrears of Indore.*

*Please Note that any payment made by you in compliance with this notice is in las deemed to have been made under the authority of the above named dealer and money receipt will constitute a good and sufficient discharge of your liability to the person to the extent of the amount specified in the receipt.*

*Please not further that if you fail to make payment in pursuance of this notice, proceedings will be initiated to recover the said amount from you as an arrear of land revenue.*

*A Copy of this notice is being sect to (dealer)*

*(Name) M/s Bhagwan Motors Pvt Ltd., Indore TIN 23111503890*

*Commercial Tax Officer  
(Additional Tehsildar)  
Indore, Circle-15”*

8. The Ministry of Finance (Department of Revenue, Central Board, of Indirect Taxes and Customs GST policy wing) in its Circular No. 134/04/2020-GST dated 23.03.2020 has also clarified with regards to the dues pertaining to the pre-CIRP period that in accordance with the provisions of the Code on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. Further, the dues of the period prior to the commencement of the CIRP



will be treated as 'operational debt' and claims may be filed by the proper officer before the Adjudicating Authority.

Admittedly, the corporate debtor has supplied goods to respondent no. 1 in both applications and the corporate debtor has to recover a certain amount from those respondent no. 1 in both applications. The reply as given by respondent no. 1 in both applications is quite misplaced. Rather this is a case where the VAT/GST department had recovered the amount of tax payable by the corporate debtor as per notice dated 03.07.2019, from respondent no. 1 in both applications. The CIRP of the corporate debtor was initiated vide order dated 21.06.2019. Thus, the recovery of the tax amount has been made by the VAT/GST department during the period of moratorium only. As such the VAT/GST authorities are liable to refund the amount collected during moratorium period.

Accordingly, respondent no. 2 in both applications is directed to refund the amount to the corporate debtor (represented by the resolution professional) within 2 weeks from the date of passing of this order.

9. With these directions, IA/130/MP/2020 and IA/131/MP/2020 in TP/125/MP/2019 [CP(IB)/159/2018] are disposed of.

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**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

**MAHENDRA KHANDELWAL**  
**MEMBER (JUDICIAL)**

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