

(2021) 04 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition (ST) No. 280 Of 2021

Raman Roadways Private Limited

APPELLANT

Vs

State Of Maharashtra & Ors

RESPONDENT

Date of Decision : 06-04-2021

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 62(1), 62(2)
Maharashtra Motor Vehicles Rules 1989 — Rule 2(1), 2(f)
Maharashtra Motor Vehicles Taxation Rules, 1998 — Rule 24
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 —
Regulation 12, 12(3), 12(3)(a), 33

Citation : (2021) 04 BOM CK 0013

Hon'ble Judges : K.K. Tated, J;R.I. Chagla, J

Bench : Division Bench

Advocate : Mayur Khandeparkar, Prasad Lakeshri, Suhas Shivaji Deokar, S.S. Panihpor, Naman Gudhia

Final Decision : Disposed Of

Judgement

R.I. Chagla, J

1. Rule. Rule made returnable forthwith. Heard by consent of the parties.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioner is seeking direction against the Respondents to transfer ownership of 153 trucks ("subject Vehicles ") (list annexed at Exhibit "H" to the Petition) in favour or in the name of the Petitioner and further quash and set aside the impugned tax demand notices dated 16th June 2020 and 19th June 2020 issued by Respondent No. 3.

3. The Petitioner further seeks direction against Respondents to allow the Petitioner to approach the local RTO within whose jurisdiction the Vehicles are at a standstill for physical verification , fitting of trolley wherever necessary and issuance of renewal of fitness certificate under Rule 62(2) of Central Motor Vehicles Rule and submit form No. 38(A) in the office of Respondent No. 3.

4. The Petitioner is a private limited company incorporated under the Companies Act, 1956 and carrying out transportation business. Respondent No. 1 is the State of Maharashtra through its Transport Secretary having control over Respondent Nos. 2 and 3; Respondent No. 2 is the Transport Commissioner defined under Rule 2(1) of Maharashtra Motor Vehicles Rules 1989; Respondent No. 3 is the Regional Transport Officer defined under Rule 2(f) of the Maharashtra Motor Vehicles Rules 1989; Respondent No. 4 is the Resolution Professional appointed by the National Company Law Tribunal, Ahmedabad Bench.

5. A brief background of facts is necessary.

6. The National Company Law Tribunal ("NCLT"), Ahmedabad Bench passed an order dated 12th September 2017 admitting an Application filed by the Punjab National Bank under Section 7 of the Insolvency and Bankruptcy Code ("IBC") against Siddhivinayak Logistics Ltd. ("Corporate Debtor") thereby initiating Corporate Insolvency Resolution Process ("CIRP"). By its order dated 19th November 2018, the NCLT ordered liquidation as regards the Corporate Debtor upon the unanimous resolution passed by the Committee of Creditors ("CoC") and appointed Respondent No. 4 as a liquidator under Section 34(1) of IBC. On 24th November 2018, Respondent No. 4 issued a public announcement in Form B under Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") calling for claims from creditors in liquidation. The public notices were given in newspapers of about 12 cities including Mumbai and Pune.

7. Several secured creditors (Banks and Financial Institutions) furnished their certificate for relinquishment of security interest under Section 52(1)(a) of IBC as regards immovable and movable assets of the Corporate Debtor which included the hypotheated subject Vehicles .

8. On 19th March 2019, 25th March 2019, 19th April 2019 and 23rd May 2019, Respondent No. 4 conducted auctions of many Vehicles including the 153 subject Vehicles belonging to the Corporate Debtor. The Petitioner participated in these auctions and purchased about 60 Vehicles . Apart from the Petitioner, M/s. JV Bhagwat also participated in the auction and purchased 30 Vehicles . Similarly, 3S Enterprises also participated in the auction held on 19th and 25th March 2019 and purchased about 63 Vehicles . Thereafter, the Petitioner purchased from M/s. JV Bhagwat and 3S Enterprises 93 Vehicles vide separate agreements dated 29th April 2019. M/s JV Bhagwat and 3S Enterprises designated the Petitioner as their nominee for the Sale Certificate to be issued in their favour by the liquidator in relation to the 93 Vehicles . Thus, the Petitioner is directly and indirectly claiming rights in respect of 153 Vehicles purchased at the auction held by Respondent No. 4. The Sale Certificate in relation to the auction held by Respondent No. 4 were issued in favour of the Petitioner as regards the 153 subject Vehicles . All the subject Vehicles were of the Maharashtra State Registration.

9. The Respondent No. 4 addressed undated letter to the Respondent No. 3

seeking transfer of ownership of the 153 subject Vehicles in the name of the Petitioner under Section 50 of the Motor Vehicles Act, 1988 ("M.V. Act"). Necessary Sale Certificate as well as RTO forms signed by the Respondent No. 4 were forwarded to Respondent No. 3 for transfer of the Vehicles in the name of the Petitioner.

10. On 18th June 2019, the Directorate of Enforcement issued a provisional attachment under Section 5(1) of the Prevention of Money Laundering Act, 2002 ("PML Act") in relation to all movable properties i.e. 6170 Vehicles of the Corporate Debtor. On 3rd December 2019 the Adjudicating Authority under the PML Act modified the provisional attachment by excluding 4826 Vehicles which had been taken over by Respondent No. 4 under the provisions of IBC out of which 2336 Vehicles had already been sold and amount of sale had been deposited in PNB.

11. Respondent No. 4 addressed a letter dated 26th December 2019 to the Respondent No. 3 seeking removal from the blacklist of about 2929 Vehicles registered with its office. Reference was made to the order of the Adjudicating Authority under PML Act permitting transfer of 4826 Vehicles and release of attachment in that regard. There was information from the Assistant Director, Directorate of Enforcement vide letter dated 26th February 2020 addressed to Respondent No. 3 informing the possession of 4826 Vehicles in the hands of Respondent No. 4. It had clarified in this communication that the Respondent No. 4 would be entitled to transfer or release of the said Vehicles.

12. Respondent No. 3 issued demand notice dated 16th June 2020 in the name of Respondent No. 4 seeking payment of tax under the Maharashtra Motor Vehicles Taxation Act, 1997 ("MMVT Act"). The tax demand was in respect of 161 Vehicles. Respondent No. 4 replied to the said demand notice dated 16th June 2020 and stated that the Respondent No. 4 had sold the Vehicles pursuant to the auction conducted as per Regulations 33 read with Schedule I of Liquidation Regulations. The dues of the statutory department which included Respondent No. 3 could only be paid/settled in accordance with Section 53(e)(i) and Section 53(f) of IBC. Respondent No. 4 also referred to Section 238 of IBC which provided that IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Thus, all payments and/or claims against the Corporate Debtor in liquidation could only be made under the waterfall mechanism prescribed under Section 53 of IBC. Respondent Nos. 2 and 3 were called upon to file their claims under the provisions of IBC and initiate the appropriate procedure for transfer of the subject Vehicles sold in liquidation in favour of the auction purchaser i.e. the Petitioner.

13. An Application for non user of the subject 153 Vehicles was filed by the Petitioner under Section 3(3) of the MMVT Act. Pursuant to the Application of the Petitioner, Respondent No. 3 carried out inspection in relation to 93 Vehicles on 17th June 2020.

14. Thereafter, Respondent No. 3 issued another demand notice on 19th June 2020 in relation to 161 Vehicles by which the claim was made against the Corporate Debtor for aggregate sum of Rs. 4,94,48,347/- under Section 9(3) of the MMVT Act read with Rule 24 of the Maharashtra Vehicles Taxation Rules. The tax was stated to be due on 1st December 2014 to 31st August 2020. Pursuant to the demand notice, Respondent Nos. 2 and 3 have blacklisted all 153 subject Vehicles purchased by the Petitioner.

15. The Petitioner addressed a Representation on 16th October 2020 to the Respondent No. 3 seeking transfer of the subject Vehicles after referring to the facts leading to the purchase of the subject Vehicles by the Petitioner under the IBC. It was mentioned in the Representation that the subject Vehicles were not in use. Thereafter, on 4th November 2020, Respondent No. 1 issued a notification exempting payment of road tax under MMVT Act for a period on and from 1st April 2020 until 30th September 2020 i.e. during the pandemic.

16. Being aggrieved by the action of Respondent Nos. 1 to 3 of not transferring ownership of the subject Vehicles purchased by the Petitioner in the auction by Respondent No. 4 and the issuance of the tax demand notices dated 16th June 2020 and 19th June 2020 ("the impugned demand notice"), the Petitioner has filed the present Petition.

17. Mr. Khandeparkar learned Counsel appearing for the Petitioner has submitted that the Respondent Nos. 2 and 3 had issued the impugned demand notices dated 16th June, 2020 and 19th June, 2020 in the name of Respondent No. 4 in relation to payment of tax in respect of the subject Vehicles under Section 9 (3) of the MMVT Act read with Rule 24 of the Maharashtra Motor Vehicles Taxation Rules, 1998. However, by the time the impugned demand notices had been issued, the NCLT had passed order of liquidation as regards the corporate debtor against whom the claim has been raised in the impugned demand notices and in respect of which Respondent No. 4 had been appointed as Resolution Professional / liquidator under Section 34(1) of IBC. He has submitted that upon Respondent No. 4 being appointed as liquidator in respect of corporate debtor, all claims arising against the corporate debtor would necessarily have to be lodged with the Respondent No. 4. This has been made clear by Section 38 of the IBC which provides for consolidation of claims which Respondent No. 4 is entitled to admit or reject in terms of Section 40 of the IBC. There is an Appeal provision under Section 42 of the IBC and a person aggrieved from the decision of the liquidator under Section 40 of IBC is entitled to an Appeal. The dues of the statutory department which would include Respondent No. 3 is regarded as 'operational debt' in terms of Section 5(21) of the IBC Act and accordingly a person to whom the operational debt is owed is regarded as an 'operational creditor'. He has relied upon a decision of the NCLT in Pr Director General of Income Tax (Admn. & TPS) Vs. M/s. Synergies Dooray Automotive Ltd & Ors. Company Appeal (AT) (Insolvency) No. 205 of 2017 decided on 20th March, 2019. The NCLT by the said decision has held that all statutory dues including Income Tax come within the meaning of

'Operational Debt'.

18. Learned Counsel appearing for the Petitioner has submitted that under Section 53 of IBC, waterfall mechanism has been provided for payment and / or distribution of the proceeds from the sale of the liquidation assets. The dues of the Central and State Government including that of the Respondent No.3 in the present case would necessarily fall within sub clause (e) (f) of Section 53 of IBC which provides for distribution of dues to the Central and State Government. In terms of the waterfall mechanism, the dues of Respondent No.3 come much lower in priority and in sub clause (e) (i) and thereafter sub Clause (f) which provides for any remaining debt and dues. Thus it is clear that any claim in relation to an asset belonging to the corporate debtor shall have to be realized under the waterfall mechanism together with all creditors and in this regard the expression used in Section 53 to the effect that the 'distribution of proceeds from the sale of the liquidation assets' is relevant. In the present case, the subject Vehicles which had been taken custody of by the Respondent No.4 as liquidator in accordance with Section 35 of IBC, had been sold in auction as per Regulation 33 read with schedule 1 of liquidation regulations. The dues in respect of the subject Vehicles which are statutory dues could only be paid or settled in accordance with Section 53(e) (i) of IBC. It is to be noted that the only exception to the waterfall mechanism was in the case of secured creditor. However, in the present case the secured creditor had already relinquished their security interest under Section 52 of the IBC qua assets of the corporate debtor. In any case Respondent Nos.2 and 3 are not secured creditors qua the subject Vehicles .

19. Learned Counsel for the Petitioner has further relied upon Section 238 of the IBC to contend that the IBC has a overriding effect over any other law in time being in force which includes MMVT Act. Upon the corporate debtor being sent to CIRP or liquidation, it is the procedure prescribed under IBC which triggers and binds all encompassing for the purpose of realization of all dues and debts by creditors or any other stakeholders from the Corporate Debtor. In this context he has relied upon the decision of the Supreme Court in the case of Principal Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd. (2018) 18 SCC 786 which has held that the provisions of IBC would override anything inconsistent as regards recovery of all own debts and dues. He has also relied upon the decision of the Supreme Court in the case of Dunias Industries Ltd. Vs. AJ Agrochem (2019) 9 SCC 725 which has also held that the IBC shall have an overriding effect over the Tea Act, 1953. He has further submitted that similar to the IBC was the case under the erstwhile regime of Companies Act, 1956 in context of claims for municipal taxes made against the Company in Liquidation. In this context he has relied upon the decision of the Supreme Court in Al Champdany Industries Ltd. Vs. Official Liquidator and Anr. (2009) 4 SCC 486 and in particular paragraphs 15, 25 to 30 of this decision. The Supreme Court in the context of claim of municipal taxes has held that the municipality was an unsecured creditor in the course of winding up and was required to stand in queue with all similarly situated for the purpose of realization of their dues from the sale

proceeds of assets sold in liquidation.

20. Learned Counsel for the Petitioner has submitted that in the event the claims in respect of statutory dues are not submitted or not accepted or dealt with by the Resolution Professional and in the resolution plan submitted by the Resolution Professional then those claims would stand extinguished. In this context he has relied on the decision of the Supreme Court in the case of Essar Steel India Ltd Committee of Creditors V. Satish Kumar Gupta (2020) 8 SCC 531 and in particular paragraph 107 of this decision. He has submitted that in the present case the claims raised by the Respondent No.3 in the impugned demand notices against corporate debtor, were not submitted to the Respondent No.4 as Resolution Professional and thus these claims would in the light of the decision of the Supreme Court stand extinguished.

21. Learned Counsel for the Petitioner has submitted that unlike a vessel in admiralty jurisdiction, the subject vehicle which is a truck is not a juristic entity and hence it cannot be intended that the Respondent Nos.2 and 3 are entitled to follow the subject vehicle or truck. There is no provision which creates a charge or lien on the subject vehicle as regards the amount claimed. The medium for recovery of any amount due from the corporate debtor in liquidation, is not in terms of Section 8 and / or 12 of the MMVT Act, but under the liquidation regulations and IBC.

22. Learned Counsel for the Petitioner has further submitted that under Section 50 of the MV Act, 1988, an application is to be made for transfer of ownership by the transferor which in the present case is Respondent No.4 (Liquidator). No part of Section 50 provides for payment of outstanding tax as a condition precedent to transfer of vehicle. He has thus submitted that the attempt on the part of Respondent Nos.2 and 3 to read Section 8 of the MMVT Act into Section 50 of the MV Act is not only misconceived but also contrary to plain language thereof.

23. Learned Counsel for the Petitioner has submitted that the Petitioner has filed an application under Section 3(3) of MMVT Act seeking exemption from payment of tax on account of non-use. He has submitted that the application has been filed primarily on three aspects:-

(i) The fitness certificates in relation to the subject Vehicles in question were valid only until 2015 and 2016 (except 7 trucks) and accordingly the subject Vehicles have not been in use or been able to ply.

(ii) The Corporate Debtor has been CIRP since 12th September, 2017 and upon the Liquidator's own showing that the subject Vehicles have not been in use therefrom.

(iii) Even after their purchase by the Petitioner sometime in May 2019, the subject Vehicles have been stationed at Ahmedabad without any fitness certificates. In fact, about 93 of the subject Vehicles have already been inspected by Respondent No.3 in context of non-user application.

24. Learned Counsel for the Petitioner has submitted that taxes are levied on Vehicles using the road and not on Vehicles which did not use on the road at all. What is material and relevant is the use of roads by the Vehicles for levy of taxes. In this context he relies upon the decision of the Supreme Court in the case of State of Gujarat & Ors. Vs. Kaushikbhai K. Patel & Anr. (2005) SCC 615 and in particular paragraph 8 of the decision. He has submitted that it flows from sub-Section (2) of Section 3 that where a motor vehicle is not using the road, no tax is levied thereon. He has also placed reliance upon the decision of this Court in the case of Tata Motors Ltd. Vs. Deputy Regional Transport Office (2010) 3 Mh.L.J. 758, wherein in paragraph 24, it has been held that the expression 'used or kept for use in the state' finding its place in Section 3(2) of the MMVT Act would be of no avail if such vehicle has not used the public roads of the State. In the present case, the subject Vehicles purchased by the Petitioner have not been used in the State of Maharashtra since at least 2017, which is the period from which CIRP commenced and thus no tax is leviable thereon. He has accordingly submitted that the Writ Petition deserves to be allowed in terms of the prayer clauses (a) and (b).

25. Mr. Panikar, learned AGP appearing on behalf of Respondent Nos.1 to 3 - State has submitted that under Section 14 of the MV Act, 1988, there is an efficacious remedy provided and hence the Petition is not maintainable. Section 14 of the MV Act provides that "Any person who is aggrieved by any order of the Tax Authority, may file an Appeal before such person or authority, in such manner within such time and on payment of such fees as may be prescribed". It is further submitted that the Petitioner has already applied under Section 3(3) of the MV Act for invoking non-user clause and the Application of the Petitioner is pending. He has accordingly submitted that the Petitioner should exhaust that remedy before applying herein and hence in view of these preliminary objections, this Petition is not maintainable.

26. Learned AGP has further submitted that it is a cardinal principle of the MV Act, that tax goes along with vehicle which means that at the time of purchase of the Vehicles and application for registration, the previous tax has to be cleared by the purchaser. Hence, the purchaser will have to pay the entire tax of the vehicle at the time of registration of the vehicle. He has submitted that the total tax due in respect of the subject Vehicles is Rs.5,36,56,918/- from the year 2013-14 to 2020-21. He has submitted that the Petitioner would have to clear the tax at the time of applying for transfer of the subject Vehicles. The Government Circular dated 7th January, 2020 regarding tax exemption only provides for the vehicle which have cleared the tax arrears till 31st March, 2021, in view of exemption under the said Government Circular.

27. Learned AGP has submitted that under Section 8 of the MMVT Act, if the tax leviable in respect of any motor vehicle remains unpaid by any person liable for payment thereof, the person who has possession or control of said Vehicles shall also be liable to pay the tax and interest due to the taxation department. He has submitted that the Petitioner has incorrectly placed reliance on the provisions of

IBC in respect of their intention that Section 8 of the MMVT Act will not apply and that the claims in respect of the statutory dues will have to be lodged with the Resolution Professional. He has submitted that in the context of the liquidation proceedings, the Respondent No.4 as Resolution Professional had failed to give notice of liquidation in the State of Maharashtra where the subject Vehicles of the corporate debtor was registered. The Respondent No.4 had only given notice of liquidation in the State of Gujarat. It was incumbent upon the Respondent No.4 (Liquidator) to give notice or at least sent a letter to the registering authority in Maharashtra - Thane about the liquidation process.

28. Learned AGP has further submitted that from the auction sale notice it is clear that Respondent No.4 put the Vehicles for auction on the condition of 'as it where it basis'. In this context he has relied upon decision of the Supreme Court in the case of United Bank of India Vs. Official Liquidator and Ors (1994) 1 SCC 575. He has submitted that the Supreme Court in this decision has held that it is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable property that he proposes to purchase when the sale of the property and assets are on the condition of 'as it where it basis'. He has submitted that the Supreme Court held that the purchaser of the property on such terms cannot claim diminution in the price on the grounds of defect in the title or description of the property. The case of liquidator selling the property of the company in liquidation under the orders of the Court, is all together different from the case of individual selling immovable property belonging to himself. He has submitted that it is clear from the decision of the Supreme Court that where the Petitioner participated in auction proceedings as in the present case conducted by Respondent No.4 under the IBC and where Respondent No.4 admittedly issued the auction notice with a specific condition of sale of the subject Vehicles on 'as it where it basis', it was for the Petitioner to verify the encumbrance and then to participate in the auction proceedings.

29. Learned AGP for the State has relied upon decision of the Supreme Court in the case of Telangana State Southern Power Distribution Company Ltd. Vs. Srigdhaa Beverages (2020) 6 SCC 404. It has been held that as an auction purchaser, where the bidding is on 'as is where is whatever there is and without recourse basis' the purchaser would have to inspect the premises and make enquiries about the dues in all respects. He has submitted that in this decision, the Supreme Court has observed that the purchaser would necessarily be put to notice on the dues of the various accounts including the electricity dues.

30. Learned AGP for the State has also placed reliance upon the decision of the Supreme Court in the case of Municipal Corporation of Delhi Vs. Trigaon Investment and Trading Pvt. Ltd (1996) 3 SCC 630., which held that even after the transfer of immovable property the liability to pay unpaid property tax prior to transfer would be attracted and the transferee is bound to pay said tax after the transfer as per the provisions of the Delhi Municipal Corporation.

31. Learned AGP has submitted that the Petitioner is aware that the subject

Vehicles are commercial Vehicles and thus he was under an obligation to make necessary enquiries pertaining to the statutory dues in respect of the subject Vehicles. In view of the decisions of the Supreme Court, it is for the purchaser to make the necessary enquiries and then decide to participate in auction proceedings and now cannot rely from payment of statutory dues in respect of which he would have made the necessary enquiries.

32. Learned AGP has submitted that under Regulation 12 of the IBC, the liquidator had to publish a public announcement calling upon stakeholders of the corporate debtor M/s. Siddhivinayak Logistics Ltd. to submit proof of their claims. Regulation 12 (3) further postulates that the said announcement should be published in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and in any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations. He has submitted that in the present case, public announcement was not published in the regional language of the State of Maharashtra but was published in the Gujarathi newspaper. There was no record filed by the Petitioner or by the liquidator to demonstrate that the public announcement had been published in English newspapers mandated by Regulation 12 of the IBC. Thus there has been violation of Regulation 12 (3) of the IBC, and due to which the Respondent Nos.2 and 3 could not register their claim within the time frame as provided under the Ait.

33. Learned AGP has submitted that the provisions of Section 53 (a) (i) of the IBC cannot be applicable to the facts and circumstances of the present case. He has submitted that the tax has been levied on the subject Vehicles and therefore, the said tax goes with the ownership of the subject Vehicles and / or the possession of the subject Vehicles. He has submitted that in view of Section 8 of the MMVT Act, the tax is connected with the subject Vehicles and cannot be treated at par with any other liability such as Sales Tax, VAT and Income Tax Ait for that purpose which is being referred to as own debt. He has submitted that merely because the subject Vehicles have been published for auction under IBC, that would not override the provisions of Section 8 of the MMVT Ait. He has relied upon Section 139 of the MMC Act, 1949 which provides that the actual occupier of the immovable property / premises is bound to pay the property taxes and the definition of the occupier can be seen under Section 2 (44) of the said Ait. This would include the new purchaser to whom the property is transferred under registered instrument of sale deed who would have to clear the unpaid tax on the said property if not paid by the previous owner. He has submitted that similar provision is there under Section 8 of the MMVT Ait. It would thus be for the Petitioner as purchaser to pay the tax in respect of the subject Vehicles as the tax on the subject Vehicles goes with the subject Vehicles under Section 8 of the MMVT Ait. He has submitted that the Respondent No.1 authority cannot transfer the vehicle in the name of the Petitioner till the whole tax is paid upto date by the Petitioner.

He has drawn analogy to the case of a fat seller where the fat is sold to the purchaser and while purchasing the fat, the purchaser tells the society that he will only pay the tax or dues of the society from the date of the purchase deed, the society would never give no objection to such transaction.

34. Learned AGP has submitted that the decisions of the Supreme Court and this Court relied upon by the learned Counsel for the Petitioner are not applicable in the facts of the present case. He has submitted that in the present case this Court is not dealing with the issue of priority of dues between secured creditors and the Respondent Nos.2 and 3. Thus there is no question of the Respondent Nos.2 and 3 standing in queue as unsecured creditors and / or that since their claims were not lodged with the Resolution Professional, their claims stand extinguished. He has submitted that the first decision relied upon by the Petitioner in the case of Pr Director General (Supra) is a decision of the NCLT and this decision would therefore, have no binding force. He has submitted that with regard to the decisions in Kaushikbhai Patel (Supra) and Tata Motors Ltd.(Supra) these decisions of the Supreme Court are in relation to the Vehicles which are not using the roads and thus the taxes are not leviable. Whether the subject Vehicles were not using roads or not in the present case are disputed questions of facts and required adjudication before the competent authority in the first instance and this issue cannot be decided in a writ jurisdiction for the first time. He has accordingly submitted that there is no merit in the Writ Petition which requires to be dismissed.

35. Learned Counsel for the Petitioner in Affidavit of Rejoinder has dealt with the preliminary issue raised by the learned AGP as to the maintainability of this Petition. He has submitted that under Section 14 of the MV Act,1958 which has been relied upon by the learned AGP to contend that an efficacious remedy is provided would not be applicable in the present case as the Petitioner is 'not a person aggrieved', of the demand for payment of road taxes. He has submitted that neither of the impugned demand notices were issued to the Petitioner and in fact the impugned demand notices were addressed to the Respondent No.4, (Liquidator). In any event he has submitted that the Respondent No.3 lacks inherent jurisdiction to issue the demand notices against the company which is in liquidation. He has submitted that the claims made in the impugned demand notices would necessarily have to be lodged with the liquidator as the corporate debtor against whom such claims are made is in liquidation. However, the Respondent Nos.2 and 3 would only be entitled for payment as per the waterfall mechanism under Section 53 of the IBC. He has further submitted that the impugned demand notices are issued in violation of the principles of natural justice and without hearing the Petitioner. He has submitted that the overriding effect as provided under Section 238 read with Section 53 of IBC will prevail over a demand under Section 8 of MMVT Act,1958. He has submitted that the Petitioner would have no objection, if there is a direction for transfer of ownership of Vehicles without quashing any claim of road tax with liberty being granted to Respondent Nos.2 and 3 to lodge a claim of the said amounts with the liquidator

under IBC.

36. Learned Counsel for the Petitioner has then dealt with the intention of the learned AGP for Respondent Nos.2 and 3 that the publication as prescribed in the Regulation 12 (3) (a) was not done. He has submitted that Respondent No.4 published a public announcement for inviting claims in the Gujarathi paper of Sandesh on 24th November, 2018 in Mumbai, Ahmedabad, Surat, Baroda, Bhuj, Bhavnagar and Rajkot and in English newspaper Business Standard on 24th November, 2018 in Mumbai, Ahmedabad, Surat, Delhi, Kolkata, Bangalore, Chandigarh, Lucknow, Pune, Chennai, Bhubaneswar and Kohi. Thus there is no substance in this intention of the learned AGP.

37. The learned Counsel for the Petitioner has further submitted that in the context of non user of the subject Vehicles on the roads in Maharashtra, the Petitioner has filed application under Section 3(3) of the MMVT Act which the Respondent No.2 would have to consider in accordance with law. The recovery under Section 80 of the MMVT Act and registration and transfer under Section 50 of the MMVT Act are two separate and independent functions and as such they cannot be interlinked. In any event, the statutory dues can only be recovered in the manner prescribed under the provisions of IBC and that Section 8 of the MMVT Act cannot be relied upon to intend that the tax can be recovered from the purchaser, particularly when the sale was by the liquidator under the IBC.

38. Having considered the rival submissions, it would be appropriate to note that the subject Vehicles were sold in an auction conducted by the Respondent No.4 as liquidator who had taken custody and control of the subject Vehicles under Section 35 of the IBC. The impugned Demand Notices were thereafter issued in the name of Respondent No.4 seeking payment of tax under MMVT Act in respect of the subject Vehicles. The second impugned demand notice dated 19th June, 2020 claimed the sum of Rs.4,94,48,347/- under Section 9(3) of the MMVT Act read with Rule 24 of the Maharashtra Motor Vehicles Taxation Rules. It is observed that Rule 24 of the Maharashtra Motor Vehicles Taxation Rules has in fact been deleted and thus a wrong provision has been invoked in the second impugned demand notice dated 19th June, 2020. Further, the impugned Demand Notices were not issued to the Petitioner. The tax dues were stated to be recoverable from the corporate debtor in respect of whom an order of liquidation had been passed by the NCLT on 19th November, 2018. The Respondent No.4 had been appointed as liquidator under Section 34 (1) of the IBC. Thus it is clear that the provisions of the IBC were to apply.

39. It would be necessary to refer to the relevant provisions of the IBC. These are as under:-

"5 (21) "Operational debt" means a claim in respect of the provisions of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority"

35. Power and duties of liquidator

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:-

- (a) to verify claims of all the creditors;
- (b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;
- (c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;
- (d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;
- (e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;
- (f) subject to Section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;
- (g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;
- (h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;
- (i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;
- (j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
- (k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;
- (l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;
- (m) to take all such actions, steps, or to sign, execute and verify any paper, deed,

receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o) to perform such other functions as may be specified by the Board.

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under Section 53:

Section 38: Consolidation of claims.

38. (1) The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.

2) A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility:

Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor under sub-Section (3).

(3) An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.

(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-Section (2) and to the extent of his operational debt under sub-Section (3).

(5) A creditor may withdraw or vary his claim under this Section within fourteen days of its submission.

40. Admission or rejection of claims. -

(1) The liquidator may, after verification of claims under Section 39, either admit or reject the claim, in whole or in part, as the case may be:

Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

42. Appeal against the decision of liquidator. - A creditor may appeal to the

Appointing Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision.

53. Distribution of assets.

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :-

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following :-

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in Section 52;

(i) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:-

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-Section (1) with equal ranking, if disrupting the order of priority under that sub-Section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-Section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation. - For the purpose of this Section -

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect

of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(ii) the term "workmen's dues" shall have the same meaning as assigned to it in Section 326 of the Companies Act, 2013 (18 of 2013).

Section 238: Provisions of this Code to override other laws:

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

40. These provisions of the IBC make it clear that statutory dues which come within the meaning of 'operational debt' can be claimed against the corporate debtor in liquidation only be under the provisions of IBC. These claims are necessarily to be lodged with the liquidator and payable under the waterfall mechanism provided in Section 53 of IBC. Section 238 of IBC provides that the provisions of IBC have an overriding effect over all other laws. The Respondent Nos.2 and 3 have issued the impugned demand notices claiming payment of taxes in respect of the subject Vehicles against the corporate debtor in liquidation. The Respondent Nos.2 and 3 are not secured creditors qua the subject Vehicles. Thus, the only exception to the waterfall mechanism being in the case of secured creditors would not apply to these Respondents. In the present case all secured creditors have relinquished their security interest under Section 52 of the IBC Ait qua the assets of the corporate debtor. It is clear from the decisions relied upon by the learned Counsel for the Petitioner that the IBC shall have overriding effect over anything inconsistent as regards recovery of all known debts and dues. In the case of Principal Commissioner of Income Tax (Supra) and Dunians Industries Ltd. (Supra), the Supreme Court has held that the IBC shall have overriding effect over the Tea Act, 1953. Paragraph 7.4 of this decision reads thus:-

"7.4 Section 16G(1)(i) refers to the proceeding for winding up of such company or for the appointment of receiver in respect thereof. Therefore, as such, the proceedings under Section 9 of the IBC shall not be limited and/or restricted to winding up and/or appointment of receiver only. The winding up/liquidation of the company shall be the last resort and only on an eventuality when the corporate insolvency resolution process fails. As observed by this Court in Swiss Ribbons Pvt. Ltd. (supra), referred to hereinabove, the primary focus of the legislation while enacting the IBC is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate debt by liquidation and such corporate insolvency resolution process is to be completed in a time bound manner. Therefore, the entire "corporate insolvency resolution process" as such cannot be equated with "winding up proceedings". Therefore, considering Section 238 of the IBC, which is a subsequent Ait to the Tea Act, 1953, shall be applicable and the provisions of the IBC shall have an overriding effect over the Tea Act, 1953. Any other view would frustrate the object

and purpose of the IBC. If the submission on behalf of the appellant that before initiation of proceedings under Section 9 of the IBC, the consent of the Central Government as provided under Section 16G(1)(i) of the Tea Act is to be obtained, in that case, the main object and purpose of the IBC, namely, to complete the "insolvency resolution process" in a time bound manner, shall be frustrated. The sum and substance of the above discussion would be that the provisions of the IBC would have an overriding effect over the Tea Act, 1953 and that no prior consent of the Central Government before initiation of the proceedings under Section 7 or Section 9 of the IBC would be required and even without such consent of the Central Government, the insolvency proceedings under Section 7 or Section 9 of the IBC initiated by the operational creditor shall be maintainable."

41. In a recent decision of the Supreme Court in *Indus Biotech Private Ltd. Vs. Kotak India Venture (Offshore) Fund* (earlier known as *Kotak India Venture Limited*) & Ors.¹¹, the Supreme Court considered the decision of the NCLT, Bombay Bench-IV which had through its order dated 9th June, 2020 by noting the rival intentions of the parties allowed the application filed by the petitioner therein under Section 8 of the Arbitration and Conciliation Act, 1996. As a consequence, the Petition filed by the respondent No.2 therein under Section 7 of the IBC was dismissed. The Supreme Court, after considering the objection raised by the Respondent therein relating to the Petition having already been instituted before the NCLT under Section 7 of the IBC and also keeping in perspective the order dated 9th June, 2020 passed by the NCLT disposing of the application filed under Section 8 of the Act, 1996, was of the view that the matter required deeper consideration on this aspect. The Supreme Court has at paragraph 27 held thus:-

27. Therefore, to sum up the procedure, it is clarified that in any proceeding which is pending before the Adjudicating Authority under Section 7 of IB Code, if such petition is admitted upon the Adjudicating Authority recording the satisfaction with regard to the 11 Arbitration Petition (Civil) No.48 of 2019 with Civil Appeal No.1070 of 2021 @ SLP (C) No.8120 of 2020 decided on 26th March, 2021. default and the debt being due from the corporate debtor, any application under Section 8 of the Act, 1996 made thereafter will not be maintainable. In a situation where the petition under Section 7 of IB Code is yet to be admitted and, in such proceedings, if an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority is duty bound to first decide the application under Section 7 of the IB Code by recording a satisfaction with regard to there being default or not, even if the application under Section 8 of Act, 1996 is kept along for consideration. In such event, the natural consequence of the consideration made therein on Section 7 of IB Code application would befall on the application under Section 8 on the application under Section 8 of the Act, 1996.

The Supreme Court has accordingly held that where a Petition is admitted under Section 7 of the IBC recording satisfaction with regard to the default and the debt being due from the Corporate Debtor, then the application under Section 8 of the

Arbitration and Conciliation Act, 1996 is not maintainable. The provisions of IBC has thus been held to have overriding effect over the provisions of the Arbitration and Conciliation Act, 1996.

42. Another decision of the Supreme Court relied upon by the Petitioner is *Al Champdany Industries Ltd.* (Supra) concerning the erstwhile regime of the Companies Act, 1956 and in context of claim of municipal taxes made against the Company in Liquidation. In paragraphs 14 and 16, the Supreme Court held thus:-

"14. If the property tax was merely a statutory dues without creating any encumbrance on the property which had cast a duty upon all the auction-purchasers to make an investigation, it would mean that they must try to find out all the liabilities of the company in liquidation in their entirety.

16. The Companies Act or any other law does not impose any additional obligation upon the purchaser to make an enquiry with regard to the liabilities of the companies other than those which would impede their value."

43. It is thus clear from this decision that there is no additional obligation upon the auction purchaser to make investigations to find out the statutory dues of the Company in Liquidation and / or liabilities of the Company in Liquidation other than those which would impede their value.

44. Further, in *Essar Steel India Ltd Committee of Creditors* (Supra), the Supreme Court at paragraph 107 held thus:-

"107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count."

45. Thus claims made against a Company in Liquidation and for whom a Resolution Professional is appointed in CIRP, must be submitted to and decided by the Resolution Professional so that the prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This, the successful resolution applicant does on a fresh slate. The decision of the NCLT in the case of *Santosh Wasantrao Walok*

Vs. Vijay Kumar V. Iyer¹² follows the decision of the Supreme Court in Essar Steel India Ltd Committee of Creditors (Supra) and holds that the claims which have not been submitted or accepted or dealt with by the Resolution Professional and in the resolution plan submitted by the Resolution Professional, would stand extinguished.

46. The claims raised in the impugned Demand Notices would necessarily have to be lodged before the Respondent No.4 as liquidator and can only be then decided by the liquidator and where claims are not lodged, they appear to stand extinguished. Considering that in the present case, the CIRP proceedings in liquidation have not been completed, it would be open for the Respondent Nos.2 and 3 to even at this stage lodge their claims before the Respondent No.4 as Liquidator and their claims can only be satisfied under waterfall mechanism for payment as provided for in Section 53 of the IBC.

47. We find no substance in the submission of the 12 Company Appeal (AT) (Insolvency) No.871-872 of 2019. Learned AGP for Respondent Nos.1 to 3 that the statutory dues of Respondent Nos.2 and 3, which are in respect of the subject Vehicles would follow the subject Vehicles and the Respondent Nos.2 and 3 can claim their statutory dues from the purchaser of the subject Vehicles. The medium for recovery of the amounts due from the corporate debtor in liquidation considering that these are statutory dues in respect of the subject Vehicles which were sold by the Resolution Professional and which subject Vehicles belong to the corporate debtor in liquidation, would not be in terms of Section 8 and / or 12 of the MMC Act, but would necessarily have to be under the Liquidation Regulations and provisions of IBC. Thus the dues relating to the subject Vehicles belonging to the corporate debtor can only be recovered under the provisions of IBC viz. waterfall mechanism under Section 53 of the IBC and not from the Petitioner as purchaser.

48. The decision in United Bank of India (Supra) relied upon by the learned AGP was in respect of the erstwhile regime of Companies Act, 1956 and was a case where the Court is concerned with the sale of property and assets of the Company in liquidation by the Official Liquidator and for such sale it was held that the Official Liquidator does not hold any guarantee or warranty in respect thereof. The Supreme Court held that it would be for the intending purchaser to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable property that he proposes to purchase. He cannot after purchasing the property on such terms claim diminution in the price on the ground of defect in the title or description of the property. Thus the Supreme Court held that the Official Liquidator selling the property of the company in liquidation under the orders of the Court, is all together different from the case of an individual selling immovable property belonging to himself. This decision would have no relevance to the facts of the present case which relates to the recovery of statutory dues from the corporate debtor in liquidation and where under Section 238, the provisions of IBC would override any other inconsistent law. The decision of

the Supreme Court in Telangana State Southern Power Distribution Company Ltd. (Supra) was relied upon by the learned AGP. This was a case where the auction purchaser was bidding on 'as is where is whatever there is and without recourse basis' and where it was held that it was for the purchaser to satisfy himself by inspecting premises and making necessary enquiries about dues in all respects. This would also include electricity dues. It was further held that in this case where as in cases of e-auction notice, the existence of the electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale was on "as is where is whatever there is and without recourse basis" there can be no doubt that the liability to pay the electricity dues exists on the purchaser. The facts of this case is entirely different from the present case and thus would not be applicable to the statutory dues of the Respondent Nos.2 and 3 which are clearly recoverable from the corporate debtor in liquidation under the provisions of the IBC. The decision of the Supreme Court in Municipal Corporation of Delhi (Supra) relied upon by the learned AGP would also not be applicable in the present case. This was not case of a sale by the corporate debtor in liquidation conducted by the Resolution Professional and where the statutory dues are recoverable from the corporate debtor in liquidation under the IBC but was a case of transfer of immovable property, where the liability to pay unpaid property tax prior to transfer would be attracted and the transferee is bound to pay the tax after transfer as per the provisions of the Delhi Municipal Corporation Act. It was further held in the said decision that the said tax constitutes the first charge upon the land and buildings and that while the liability to pay tax lies upon the transferor, the transferee is not freed from the said liability on that account.

49. We further find no substance in the preliminary issue raised by the learned AGP for the State as to the maintainability of this Petition. Section 14 of the MV Act, 1958 provides "any person who is aggrieved by any order of the Tax Authority, may file an Appeal before such person or authority, in such manner within such time and on payment of such fees as may be prescribed". In the present case the Petitioner is not a person aggrieved as the impugned demand notices had been issued in the name of Respondent No.4 as liquidator in respect of the subject Vehicles. Thus there is no demand for payment of tax made against the Petitioner. In any event, the Petitioner has challenged the jurisdiction of Respondent No.3 to issue the impugned demand notices against the corporate debtor which is in liquidation. It is the Petitioner's case that the Respondent No.3 has no jurisdiction to issue the impugned demand notices against corporate debtor in liquidation contrary to the mandate of the IBC and Liquidation Regulations. Respondent No.3 is compulsorily required to lodge its claim with Respondent No.4, the liquidator after which the liquidator would verify the same and either admit or reject the claim in full or part. Respondent Nos.2 and 3 would thus be entitled to payment as per the waterfall mechanism under Section 53 of the IBC. Thus it is the case of the Petitioner that the impugned demand notices could not have been issued by placing reliance on the MMVT Act. The IBC has overriding effect under Section 238 read with Section 53 thereof which will prevail over any demand

made under Section 8 of the MMVT Ait.

50. The learned AGP for the Respondent Nos.1 to 3 has also intended that there is a violation of Regulation 12(3) (a) of the Liquidation Regulations which provides for publishing of public announcement for inviting claims. It is apparent from the documents on record that the Respondent No.4 had published the notice and invited claims not only in Gujarati in the State of Gujarat as intended by the learned AGP but also in Mumbai as well as published the public announcement in English in the Business Standard in various cities in India including Mumbai. Thus there has been no violation of Regulation 12(3) (a) of the Liquidation Regulations.

51. We further find no merit in the submission of the learned AGP that since the Petitioner had applied under Section 3(3) of the MMVT Act, for invoking non-user clause and such application is pending, it would be necessary for the Petitioner to finish that remedy before moving this Petition. In fact, learned Counsel for the Petitioner has submitted that the Petitioner had no objection if there is a direction for transfer of ownership of the subject Vehicles without quashing any claim of road tax.

52. We further find no substance in the submissions of learned AGP that the subject Vehicles cannot be transferred under Section 50 of the MMVT Act, 1988 till the statutory dues in respect of the subject Vehicles are discharged. The recovery under Section 8 of the MMVT Ait and registration and transfer under Section 50 of the MMVT Ait are two separate and independent functions and as such they cannot be interlinked. In the present case it is clear from the facts on record as well as the provisions of the IBC that it would be necessary for Respondent Nos.2 and 3 to lodge their claims before the Respondent No.4 as liquidator of the corporate debtor. We find no impediment in transferring ownership of the subject Vehicles in favour of the Petitioner. The claims made in the impugned demand notices issued by the Respondent Nos.2 and 3 with respect to the subject Vehicles can be lodged with the liquidator, Respondent No.4 to be satisfied under the waterfall mechanism as provided in sub-clause (e) (i) of Section 53 of the IBC.

53. With regard to the claim of statutory dues from the Petitioner, the learned Counsel for the Petitioner has intended that since the motor Vehicles are not using the roads, no tax can be leviable thereon. It appears that the fitness certificates in relation to the subject Vehicles were valid only until 2015 and 2016 (except 7 trucks) and accordingly these trucks have not been in use or been able to ply. The Corporate Debtor has been in CIRP since 12th September, 2017 and upon the Liquidator's own showing, the subject Vehicles have not been in use therefrom. This is the case even after their purchase by the Petitioner sometime in May 2019. The subject Vehicles have been stationed at Ahmedabad without any fitness certificate. Thus the Petitioner has filed an Application under Section 3(3) of the MMVT Ait seeking exemption from payment of tax on account of non-use. These facts will have to be determined by the Respondent Nos.2 to 3 in the Application under Section 3(3) of the MMVT Ait.

54. The decisions of the Supreme Court relied upon by the learned Counsel for the Petitioner viz. State of Gujarat (Supra) and Tata Motors (Supra) have held that for tax to be levied the subject Vehicles would necessarily have to use the public roads of the State. The subject Vehicles as intended by the learned counsel for the Petitioner are not using the public roads and hence no tax is leviable thereon. This follows from sub Section 2(3) of the MMVT Act. However, since the application under Section 3 (3) of the MMVT Act is pending for consideration before Respondent Nos.2 and 3, we consider it appropriate not to give any finding thereon. Hence, we leave it to Respondent Nos.2 and 3 to decide the Application under Section 3(3) of the MMVT Act. However, since the statutory dues in respect of the subject Vehicles are claimed by the Respondent Nos.2 and 3 after the purchase of the subject Vehicles in May, 2019, it would be appropriate to direct the Petitioner to make payment of the statutory dues from the date of purchase of the subject Vehicles. This would be subject to the outcome of the Application under Section 3 (3) of the MMVT Act. In so far as the issue as to whether the impugned demand notices claiming statutory dues against the Corporate Debtor in liquidation in respect of the subject Vehicles prior to their date of their purchase can at all be claimed against the Petitioner as purchaser of the subject Vehicles under the provisions of the MMVT Act, we hold that it cannot be claimed against the Petitioner. The impugned demand notices which seek payment of the tax dues under the MMVT Act would also require to be quashed and set aside. Hence the following order:-

a) Rule is made absolute in terms of prayer clauses (a) and (b), which read thus:-

(a) That by Writ of Mandamus and or by appropriate Writ, Direction and Order of similar nature, Your Lordships be pleased to direct the Respondents to transfer the ownership of the 153 Vehicles (List annexed at Exhibit "H") in favour or in name of Petitioner and further pleased to quash and set aside the impugned tax demand notices dated 16th June, 2020 & 19th June, 2020 issued by the Respondent No.3.

(b) That by Writ of Mandamus and or by appropriate Writ, Direction and Order of similar nature, Your Lordships be pleased to direct the Respondents to allow Petitioner to approach local RTO office within whose jurisdiction the Vehicles are at a standstill for, physical verification, fitting of trolley wherever necessary and issuance of renewal of fitness certificate under Rule 62(1) of Central Motor Vehicles Rule and submit form No.38(A) in the office of Respondent No.3.

b) The Petitioner shall pay the Respondent Nos.1 to 3 - State, the 50% of statutory dues in respect of the subject Vehicles purchased by the Petitioner from the date of their purchase. This will be subject to the outcome of the Application made by the Petitioner for non-use of the subject Vehicles under Section 3 (3) of the MMVT Act which is pending determination before Respondent Nos.2 and 3.

i) Respondent Nos.1 to 3 - State is directed to inform the Petitioner in writing the statutory dues in respect of the subject Vehicles purchased by the Petitioner from

the date of their purchase, on or before 17th April, 2021.

d) If dues are informed in writing on or before 17th April, 2021, in that case Petitioner to make payment of 50% within two weeks from the date of communication.

e) Respondent Nos.2 and 3 shall complete the hearing of the Application of the Petitioner under Section 3 (3) of the MMVT Act and communicate the order to the Petitioner within four weeks from the date of this order.

f) Liberty granted to the Respondent Nos.1 to 3 - State to move before Respondent No.4 for their dues by making appropriate application as required by law.

g) The Writ Petition is accordingly disposed of in the above terms with no order as to costs.