



BEFORE THE COMPETITION COMMISSION OF INDIA  
(AUTHORITY UNDER SECTION 171 OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017)

Case No. : 07/2024  
Date of Institution : 31.01.2020  
Date of Order : 10.07.2024

**In the matter of:**

1. Shri Rahul Sharma, on behalf of M/s Local Circles India Pvt. Ltd., 4th Floor, Tower-2, Express Trade Towers-2, Sector-132, Noida-201301.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

**Versus**

M/s Cinema Ventures Pvt. Ltd., 'Pacific Bansal Ghaziabad'1, Pacific Mall, Dr Burman Road, Sahibabad Industrial Area Site 4, Sahibabad, Ghaziabad, Uttar Pradesh- 201010.

Respondent

**Coram:-**

1. Smt. Ravneet Kaur, Chairperson
2. Sh. Anil Agrawal, Member
3. Ms. Sweta Kakkad, Member
4. Sh. Deepak Anurag, Member

**Present:-**

1. None for the Applicant.
2. None for the Respondent.

## ORDER

1. The present Report dated 31.01.2020 has been received from the Director-General of Anti-Profiteering (**DGAP**) on 31.01.2020 after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (**CGST**) Rules, 2017. The brief facts of the case and findings of investigation conducted by the DGAP are as under:-
  - a) A reference had been received from the Standing Committee on Anti-profiteering on 02.05.2019, to conduct a detailed investigation in respect of an application filed by the Applicant under Rule 128 of the CGST Rules, 2017, alleging profiteering by the Respondent with respect to supply of "*Services by way of admission to exhibition of cinematograph films*" by not passing on the benefit of reduction in the GST rate on the aforesaid movie admission tickets from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 27/2018-Central tax(Rate) dated 31.12.2018 and instead, increased the base price to maintain the same cum-tax selling price.
  - b) The Applicant alleged that the Respondent had increased the base price from Rs. 390.63/- to Rs. 423.73/- and had maintained the same cum-tax price of Rs. 500/- for his 'Ebony Class' tickets. The Applicant has enclosed copies of tickets dated 08.12.2018 & 02.02.2019 along with his application form (APAF-1 form).
  - c) Accordingly, the DGAP decided to initiate an investigation and collect evidence necessary to determine whether the benefit of reduction in rate of tax had been passed on by the Respondent to the recipients in respect of supply of service by the Respondent.
  - d) The DGAP issued a Notice on 15.05.2019 under Rule 129 of the CGST Rules, 2017 to the Respondent calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in rate of tax had not been passed on to the recipients by way of commensurate reduction in prices and if so, to  *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as to furnish all supporting documents. Vide the said Notice, the Respondent was also given an

opportunity to inspect the non-confidential evidences/information during 22.05.2019 to 24.05.2019, which were furnished by the Applicant, which the Respondent availed on 25.09.2019.

Vide e-mail dated 06.01.2020, the Applicant was also afforded an opportunity to inspect the non-confidential documents/reply during 09.01.2020 to 10.01.2020, which were furnished by the Respondent. However, the Applicant did not avail.

- e) The period covered by the current investigation was from 01.01.2019 to 30.04.2019.
- f) The main issues to be looked into were:-
  - (i) whether the rate of GST on the *“Services by way of admission to exhibition of cinematography films where price of admission ticket was above one hundred rupees”* was reduced from 28% to 18% w.e.f. 01.01.2019 and *“Services by way of admission exhibition of cinematograph films where price of admission ticket was one hundred rupees or less”* was reduced from 18% to 12% w.e.f. 01.01.2019, if so,
  - (ii) whether the benefit of such reduction in the rate of GST was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017.
- g) The Respondent had different ticket prices for movies depending on the factors namely category of movies (Blockbuster & Regular), Movie Type (3D & Non-3D), Ticket type (Gold & Ebony), Weekdays (Monday to Thursday), Weekends (Friday to Sunday), Show timings (Morning, Day & Night) and locality of property. In this regard, the DGAP submitted that profiteering, if any, had been arrived at by comparing average selling prices for each of the ‘unique combination of the above factors’ such as “Blockbuster Non-3D EBONY Friday to Sunday Day Show” screened during the period 01.12.2018 to 31.12.2018 and the prices post 01.01.2019 for the movie tickets with the similar ‘unique combination of the above factors’ in each aspect.

- h) The methodology adopted could be explained by illustrating the calculation in respect of a specific 'unique combination of the above factors', by deriving an average base price (after discount) for each specific 'unique combination of the above factors' by taking the total collection during the period 01.12.2018 to 31.12.2018 (pre-GST rate reduction) for the unique category divided by the number of tickets sold during the period for that unique category. The average base price of the tickets was compared with the actual selling price of the tickets similar in each aspect sold during post-GST rate reduction i.e. on or after 01.01.2019 as illustrated in the table-'A' below:-

**Table-'A' (Amount in Rupees)**

Sl. No.	Description	Factors	Pre Rate Reduction (01.12.2018 to 31.12.2018)	Post Rate Reduction (From 01.01.2019)
1.	Multiplex Name	A	'Pacific Bansal Ghaziabad'	
2.	Unique Category	B	'Blockbuster Non-3D EBONY Friday to Sunday Day Show'	
3.	Total No. of tickets sold	C	505	
4.	Total taxable value (after Discount, if any)	D	1,97,263/-	
5.	Average base price (without GST)	$E=(D/C)$	390.62/-	
6.	GST Rate	F	28%	18%
7.	Actual Selling price (post rate reduction) (including GST)	$G=128\%$ of E	500/-	
8.	Commensurate Selling price (post Rate reduction) (including GST)	$H=118\%$ of E		460.93/-
9.	Post Reduction Session ID & date	I		102688 dated 06.01.2019
10.	Total No. of Tickets sold in above Session ID	J		32
11.	Total Tickets Value (including GST)	K		16,000
12.	Actual Selling price (post rate reduction) (including GST)	$L=K/J$		500/-
13.	Excess amount charged of Profiteering	$M=L-H$		39.07/-
14.	Total Profiteering	$N= J*M$		<b>1,250/-</b>

From the above table 'A', it is clear that in the said instance, the Respondent did not reduce the selling price commensurately for the 'Movie Tickets', when the GST rate was reduced from 28% to

18% w.e.f. 01.01.2019, vide Notification No.27/2018 Central Tax (Rate) dated 31.12.2018 and hence profiteered an amount of Rs.39.07/- per ticket and thus the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017. On the basis of above calculation as illustrated in table 'A' above, profiteering in case of all the categories of tickets of the Respondent has also been arrived in similar way. The details of the unique combinations formed by the DGAP on the basis of various categories of movie tickets submitted by the Respondent is provided in Annexure-'A'.

- i) From the session wise sale register made available by the Respondent it appeared that the Respondent increased the base prices of the tickets when the rate of GST was reduced from 28% to 18% and from 18% to 12% w.e.f. 01.01.2019, so that the commensurate benefit of GST rate reduction was not passed on to the recipients. On the basis of aforesaid pre and post-reduction GST rates and the details of outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the service by way of admission to exhibition of cinematograph films during the period 01.01.2019 to 30.04.2019, as furnished by the Respondent the amount of net higher sales realization due to increase in the base prices of the impacted service, despite the reduction in the GST rate or in other words, the profiteered amount comes to Rs. 54,44,642/-.
- j) The said profiteered amount has been arrived at by comparing the average of the base prices of the tickets having 'unique combination of the various factors' sold during the period 01.12.2018 to 31.12.2018 with the actual prices of the tickets similar in each aspect (Irrespective of the name of Movie screened) sold during the period 01.01.2019 to 30.04.2019. The excess GST so collected from the recipients, is also included in the aforesaid profiteered amount as the excess price collected from the recipients also included the GST charged on the increased base price.

- k) The above profiteering amount did not include amount in respect of the Applicant as he had specifically submitted in his APAF-1 form that the complaint was received on his social media platform and he himself was not the recipient of the impugned service in which profiteering had been determined.
2. The above Report of the DGAP dated 31.01.2020 was considered by the erstwhile NAA and it was decided to allow the Respondent and the Applicant to file their consolidated written submissions in respect of the above Report of the DGAP. Notice dated 10.02.2020 was also issued to the Respondent directing him to explain why the above Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the Act should not be fixed. The Respondent vide his letter dated 28.01.2021 has filed his written submissions against the DGAP's Report dated 31.01.2020 as under:-
- a) The Applicant has no *locus standi* to make the application alleging profiteering by the Respondent under Section 171 of CGST Act, 2017.
- b) The Respondent has abided the provision of Section 171 in passing on to the recipient by way of commensurate reduction in prices.
- c) The price of movie ticket are market driven and are controlled dynamically on certain factor i.e. class of ticket, rating of movie, location, movie type, weekdays/weekends, statutory regulations applicable to such business. Further, total number of movies which were being screened were 17 in numbers. Out of which 11 nos. were discontinued projection in January 01.01.2019. Therefore, only 6 nos. were being continued for screening.
- From 01.01.2019 onwards 13 nos. of new films were being screened. The price of these 13 films were being screened were as per market driven dynamics. So, the collection made on account of these films should not be considered while calculating profiteering under Section 171 of the CGST Act.
- d) The Respondent reduced tax being charged from 28% to 18% w.e.f. 01.01.2019. The ticket which was purchased by the Applicant No. 1, clearly spelt out the net ticket price as well as

GST (CGST as well as SGST) of 18% being charged on the net price.

- e) The Respondent was incurring loss for an amount of Rs. 199.97 or while in operation for the F.Y. 2017-18 and similarly, in the F.Y. 2018-2019 it was again in loss to a similar tune. Therefore, w.e.f. 01.01.2019 when taxes were reduced, the Respondent had to increase his base price on tickets from Rs. 390.63/- to Rs. 423.73/- as per market dynamics.
  - f) If the Respondent would had not increased the base price of the ticket and charges tax at the reduced rate of 18% for one week and would thereafter increase the base price and charged tax @ 18% on the said price then it would not had amounted to evasion.
  - g) The inward price of the cinematographic film was also increased by the distributor in the instant case therefore as the inward price increased the outward supply price also increased during the instant period.
  - h) Penalty cannot be imposed upon the Respondent as decided in the judgment passed by erstwhile NAA in the matter of M/s. Sattva Developers Pvt Ltd. Case No 71/2020 dated 05.11.2020.
3. A supplementary Report was sought from the DGAP on the above submissions of the Respondent under Rule 133(2A) of the Rules. The DGAP filed his clarifications vide letter dated 24.05.2022, wherein, it was stated that:-
- a) For the Contention raised by the Respondent that he has abided the provision of Section 171 in passing on to the recipient by way of commensurate reduction in prices the DGAP clarified that he has conducted a thorough investigation in terms of Section 171 on the basis of documents and information submitted by the Respondent and submitted the report dated 31.01.2020 under Rule 129(6) of the CGST Rules, 2017, wherein it was concluded that Respondent has realised an additional amount i.e. profiteering to the tune of Rs. 54,44,642/-.
  - b) For the contention raised by the Respondent that the price of movie ticket are market driven and are controlled dynamically on

certain factor i.e. class of ticket, rating of movie, location, movie type, weekdays/weekends, statutory regulations applicable to such business. The DGAP stated that the above objection raised by the Respondent had been covered in para-14 of its report dated 31.01.2020 which is reproduced below:-

*"14. Respondent had submitted that he had different ticket prices for the movies depending on the factors namely Category of Movies (Blockbuster & Regular), Movie Type (3D & Non-3D), Ticket type (GOLD & EBONY), Weekdays (Monday to Thursday), Weekends (Friday to Sunday), Show timings (Morning, Day & Night) and locality of Property. In this regard it is submitted that the profiteering, if any, has been arrived at by comparing average selling prices for each of the 'unique combination of the above factors' such as "Blockbuster Non-3D EBONY Friday to Sunday Day Show" screened during the period 01.12.2018 to 31.12.2018 (latest month), and the prices post 01.01.2019 for the movies ticket with the similar 'unique combination of the above factors' in each aspect."*

- c) For the averment made by the Respondent that he has reduced tax being charged from 28% to 18% w.e.f. 01.01.2019. The ticket which was purchased by the Applicant, clearly spelt out the net ticket price as well as GST (CGST as well as SGST) of 18% being charged on the net price the DGAP stated that as per Section 171 of the Act, benefit of GST rate reduction shall be passed on to the recipient of service by way of commensurate reduction in prices and such reduction can obviously be in money terms only, so that the final price payable by a consumer gets reduced. Keeping the same selling price by increasing the base price and charging the reduced rate of tax cannot be termed as complying with the provisions of Section 171 of the Act.
- d) For the contention raised by the Respondent that they are a loss making company and that the Respondent had to increase his base price from Rs. 390.63 to Rs. 423.73 as per market dynamics. The DGAP has submitted that in terms of Section 171 of CGST Act, 2017 which governs the anti-profiteering provisions under GST reads as *"Any reduction in rate of tax on any supply of*



goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices". Thus, the legal requirement is that in the event of a benefit of ITC or reduction in rate of tax, there must be a commensurate reduction in prices of the goods or services. Such reduction could obviously be in money terms only, so that the final price payable by a consumer gets reduced. This is the legally prescribed mechanism for passing on the benefit of ITC or reduction in rate of tax under the GST regime to the consumers. Moreover, it is clear that the said Section 171 simply does not provide a supplier of the goods or services any other means of passing on the benefit of ITC or reduction in rate of tax to the consumers. Thus, the legal position is unambiguous and could be summed up as follows:-

- i. A supplier of goods or services must pass on the benefit of ITC or reduction in rate of tax to the recipients by commensurate reduction the prices.
- ii. The law does not offer a supplier of goods and services any flexibility to *suo moto* decide on any other modality to pass on the benefit of ITC or reduction in rate of tax to the recipients.

Therefore, computation of the gain/loss as per financial statements could not be considered in the light of above statutory provisions.

Further, the Respondent had himself admitted in this para that he had to increase his base price from Rs. 390.63/- to Rs. 423.73/- and because of such increase in base price, the price of ticket also got increased.

- e) For the contention raised by the Respondent that inward price of the cinematographic film was also increased by the distributor in the instant case therefore as the inward price increased the outward supply price also increased during the instant period, the DGAP stated that the Increase in the cost is a factor for determination of price but this factor is independent of the output GST rate. It could not be asserted that the elements of cost unrelated to GST were affected by the change in the output GST

rates. Therefore, in terms of Section 171 of the CGST Act, 2017, the claim made by the Respondent of increase in the inward price of cinematographic films could not be considered being extraneous to the passing on of the benefit. It could not be said that input costs went up on the same day on which the GST rates were reduced. There was no reason to increase the base prices of the ticket on the eve of the tax reduction and hence the above contention of the Respondent is frivolous and not bonafide which had been made with the ulterior motive of appropriating the benefit of tax reduction.

4. The Respondent vide his letter dated 12.05.2024 filed his additional written submissions. The Respondent also reiterated its earlier submissions made on 28.01.2021. A summary of the additional submissions has been provided as under:-

a) Wrong computation of alleged profiteered amount :-

that the DGAP has erred in calculating the amount profiteered, in the instant case, by considering the all the films screened influenced with different screening timings, cost of inputs, fame earned, ratings, etc. external factors at the same level. It is common practice of the industry which had different prices based on different classes of tickets, ratings/ categories of movies, location of the property, movie type, weekdays/weekends, screening hours, cost of inputs, etc., whose each unique combinations results into a new product being supplied altogether which is totally different from the similar ones. Hence a movie "X" influenced with aforesaid factors could never stand into comparison with movie "Y" influenced with same factors but at different amplitudes.

b) That the calculation of profiteered amount did not take into account the fact that the prices charged in respect of tickets included cost of distributors which varied from 25% to 70% and which was paid to them.

c) No machinery provision for determining the impact of benefit of reduction in rate of tax on supply of goods or services:-

that no machinery provision or computational provision either in the Act or in the rules made there under or in the 'Procedure and Methodology' notified by this Authority under Rule 126 to determine the impact of benefit of reduction in rate of tax on any supply of goods or services on the prices of the products being supplied. The method adopted by DGAP in this regard was not laid down anywhere and was based on certain assumptions that the amount of tax calculated on the value of tickets for pre-rate reduction period would be the same for post rate reduction period and in case of multiple combination of screening, would be the same for each combination.

d) No machinery provision for determining whether there is any profiteering amount:-

i. How the cases of profiteering were to be identified and for this purpose, how the increase in base prices due to genuine reasons like increase in the cost of inputs, increase in the demand for the product, etc. was to be distinguished from increase with the objective of pocketing the tax concession;

ii. How the impact of reduction in rate of tax on the price of a product was to be calculated; and

iii. Once the profiteering was established, how the period of price reduction for which the profited amount was to be calculated, was to be determined.

e) Every increase in base price cannot be presumed to be on account of profiteering:-

In the case of Shri Kumar Gandharv v. KRBL Ltd., 2018-TIOL-2-NAA-GST, this Authority has held that an increase in MRP of packed and branded rice on account of an increase in the purchase price of loose rice was justified. In this case, the Department had merely proceeded on the presumption that any increase in base price was on account of profiteering without ascertaining as to whether there were any other genuine factors for increase in the price, which was not correct.

5. The Commission granted hearing to the parties on 04.04.2024 and 27.06.2024. However, the Respondent vide reply emails dated 02.04.2024, 06.06.2024 and 25.06.2024 stated that vide order dated 14.07.2023, the National Company Law Tribunal (NCLT), Mumbai has ordered commencement of Corporate Insolvency Resolution Process (CIRP) against the Respondent by appointing Interim Resolution Professional (IRP) and also stated that *"in view of suspended powers of the Board of Directors of the Company, you are requested to approach the Resolution Professional (Sh. Ashok Kumar Gulla) regarding any claim against the Company"*.
6. This Commission has carefully perused all the submissions and the documents placed on record, and the arguments advanced by the Respondent. The Commission needs to determine as to whether there was any reduction in the GST rate and whether the benefit of reduction in the rate of tax was passed on or not to the recipients as provided under Section 171 of the CGST Act, 2017.

Section 171 of the CGST Act provides as under:-

*"(1). Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices."*

*(2). The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether ITC availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.*

*(3). The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.*

*(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten percent of the amount so profiteered:*

*PROVIDED that no penalty shall be leviable if the profiteered amount*

is deposited within thirty days of the date of passing of the Order by the Authority.

*Explanation:- For the purpose of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services of both."*

7. This Commission further finds that the Central and the State Governments had reduced the rates of GST on "Services by way of admission to exhibition of cinematograph films where the price of admission ticket was above one hundred rupees" from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018, the benefit of which was required to be passed on to the recipients by the Respondent as per the provisions of Section 171 of the above Act.
8. The Commission finds that, one of the contentions of the Respondent was that the Applicant has no *locus standi* to make the application alleging profiteering by the Respondent under Section 171 of CGST Act, 2017. In this regard, the Commission holds that it has been entrusted with the task of ensuring that the benefit of reduction in rate of tax or availability of ITC must be passed on by a registered supplier to his recipients. The Authority finds that, under Rule 129 (2) of the above Rules, the DGAP is required to investigate a complaint filed by an interested party/person whether a registered person has passed on the benefit of tax reduction or ITC to the recipients or not and hence during the course of investigation, if it comes to the notice that the benefit has not been passed on to any recipient, including those who had not filed complaint against the registered person, the DGAP is legally bound to investigate the same and bring the facts before this Commission for determination of those benefits to the eligible recipients.

It is also clear that the above benefit has accrued to the Respondent due to the concession given by the Government out of the public exchequer, therefore, the DGAP is bound to investigate to ascertain

whether the Respondent has misappropriated the benefit of rate reduction which he was required to pass on to the buyers. The DGAP cannot overlook commission of an offence which has occurred under Section 171 (1) of the above Act once it has come to its notice during the course of the investigation and hence the above contentions of the Respondent are not correct.

9. The Respondent further contended that he has abided by the provisions of Section 171 in passing on the benefit of rate reduction to the recipients by way of commensurate reduction in prices. In this regard, the Commission finds that the DGAP has conducted a thorough investigation in terms of Section 171 of the Act on the basis of documents and information submitted by the Respondent and submitted its report dated 31.01.2020 under Rule 129(6) of the CGST Rules, 2017, wherein it was concluded by the DGAP that Respondent has realised an additional amount i.e. profiteering to the tune of Rs. 54,44,642/-.
10. The Respondent also averred that the price of movie tickets are market driven and are controlled dynamically on certain factors i.e. class of ticket, rating of movie, location, movie type, weekdays/weekends, statutory regulations applicable to such business. In this regard, the Commission find that there is basically one class of tickets in the Respondent's Multiplex, namely, 'Platinum'. Upon perusal of table 'A' of the DGAP's report it is clear that the Respondent did not reduce the selling price commensurately of the movie tickets when the GST rate was reduced from 28% to 18% w.e.f. 01.01.2019, vide Notification No.27/2018 Central Tax (Rate) dated 31.12.2018 and hence profiteered an amount of Rs.39.07/- per ticket. Thus the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017.
11. The Respondent also contended that he had reduced tax being charged from 28% to 18% w.e.f. 01.01.2019 and that the ticket which was purchased by the Applicant, clearly spelt out the net ticket price as well as GST (CGST as well as SGST) of 18% being charged on the net price. In this regard the Commission finds that as per Section 171 of the Act, benefit of GST rate reduction shall be passed on to the

recipient of service by way of commensurate reduction in prices and such reduction can obviously be in monetary terms only, so that the final price payable by a consumer gets reduced. Keeping the same selling price by increasing the base price and charging the reduced rate of tax cannot be termed as complying with the provisions of Section 171 of the Act. Therefore, the contention raised by the Respondent is not tenable and denied.

12. The Respondent averred that he was incurring loss during F.Y. 2017-18 and F.Y. 2018-2019. Therefore, w.e.f. 01.01.2019 when taxes were reduced, the Respondent had to increase its base price from Rs. 390.63/- to Rs. 423.73/-. In this regard, the Commission finds that the contention of the Respondent that they are a loss making company cannot form the basis for not passing on the benefit of subsequent GST rate reduction w.e.f. 01.01.2019. Further, the Respondent in his submissions himself has admitted that he has increased the base price of his movie tickets from Rs. 390.63/- to Rs. 423.73/- and has not passed the benefit of rate reduction to the ticket buyers and thus contravened the provisions of Section 171 of the Act. Therefore, the contention of the Respondent is not tenable.

13. The Respondent also contended that movie "X" influenced by factors such as category of movies (Blockbuster & Regular), movie type (3D & Non-3D), ticket type (GOLD & EBONY), weekdays (Monday to Thursday), weekends (Friday to Sunday), show timings (Morning, Day & Night) etc. could never stand to compare with movie "Y" influenced with same factors but at different amplitudes. In this regard, the Commission finds that the profiteering, has been arrived at by the DGAP by comparing average selling prices for each of the 'unique combination of the above factors' such as "Blockbuster Non-3D EBONY Friday to Sunday Day Show" screened during the period 01.12.2018 to 31.12.2018 (latest month), and the prices post 01.01.2019 for the movie tickets with the similar 'unique combination of the above factors' in each aspect. The details of the computation of the profiteering amount based on the above factors for various combinations of movie tickets sold by the Respondent is given in Annexure-'A' attached with this order.

14. That Respondent contended that the calculation of profiteered amount did not take into account the fact that the prices charged in respect of tickets included cost of distributors which varied from 25% to 70% and which was paid to them. In this regard, the Commission finds that the provisions of Section 171 of the CGST, 2017 require a registered person under GST to pass on the benefit of additional ITC or reduction in the rate of tax by way of commensurate reduction in the prices of goods or services supplied by him. Hence, it was the responsibility of the Respondent to comply with the provisions of Section 171 of the CGST Act, 2017. Therefore, the submission of the Respondent was untenable.

15. The Respondent has also averred that every increase in base price cannot be presumed to be on account of profiteering. The Respondent relied upon the case of Shri Kumar Gandharv v. KRBL Ltd., 2018-TIOL-2-NAA-GST, vide which erstwhile NAA held that *“an increase in MRP of packed and branded rice on account of an increase in the purchase price of loose rice was justified”*. In this regard, the Commission holds that the judgment cited by the Respondent is different from the instant case as in the earlier case, the pre-GST rate was nil and for the first time a tax of 5% was imposed on the impugned product after implementation of GST w.e.f. 01.07.2017. Therefore, the above contention of Respondent is not tenable.

16. The Respondent vide his email dated 02.04.2024 has stated that *“moratorium on proceedings is imposed vide NCLT order dated 14.07.2023”*. The Commission notes that Section 14 of the Insolvency and Bankruptcy Code (IBC) *inter alia* provides as under:-

**Section 14. Moratorium**

*“(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

xxx

xxx

xxx



(4) *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*"

The Hon'ble Supreme Court in case of **S.V Kondaskar vs. VM Deshpande and Anr. (1972) 1 SCC 438**, *inter alia* has held that:-

*"we have not been shown any principle on which the liquidation court should be vested with the power to stop assessment proceedings for determining the amount of tax payable by the company which is being wound up"*

Further, the Hon'ble Supreme Court in the case of **Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes (2023) 1 SCC 472**, *inter alia* has held that:-

*"48. From the above discussion, we hold that the respondent could only initiate assessment or reassessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 or 33(5) of the IBC."*

In view of the aforesaid settled position of law and the moratorium under Section 14 of IBC, 2016 imposed by the NCLT, the Commission finds that there is no bar on initiating proceedings or proceeding to assess the amount payable by the Respondent for violation of Section 171(1), CGST Act, 2017. However, the proceedings to recover any amount from the Respondent cannot be initiated.

17. Therefore, the Commission finds that, as per the details and calculations in table 'A' above, the Respondent had been profiteering by way of increasing the base prices of the tickets (Services) and by not reducing the selling price of the tickets (Services) commensurately, despite reduction in GST rate on "Services by way of admission to exhibition of cinematograph films" where price of ticket was one hundred rupees or above, from 28% to 18% w.e.f. 01.01.2019. The

base prices of the admission tickets were indeed increased, as a result of which the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in prices charged. The total amount of profiteering covering the period of 01.01.2019 to 30.04.2019 is Rs. 54,44,642/-.

18. This Commission, based on the facts discussed above, finds that the Respondent had resorted to profiteering by way of either increasing the base price of the service while maintaining the same selling price or by way of not reducing the selling price of the service commensurately, despite a reduction in GST rate, on "*Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees*" from 28% to 18% w.e.f. 01.01.2019 upto 30.04.2019. On this account, the Respondent profited to the tune of **Rs. 54,44,642/- (including GST)** was received from the recipients. Thus the profited amount is determined as **Rs. 54,44,642/-** as per the provisions of Rule 133 (1) of the CGST Rules, 2017.

19. Further, as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, the Respondent is directed to reduce the prices of cinema tickets, keeping in view the reduction in the rate of tax so that the benefit would be passed on to the recipients. The Respondent is also directed to deposit the profited amount of **Rs. 54,44,642/-** along with the interest, which is to be calculated @ 18% from the date, when the above amount was collected by him, from the recipients, till the above amount is deposited. Since the recipients, in this case, are not identifiable, the Respondent is directed to deposit the amount of profiteering in two equal parts, of Rs. 27,22,321/- in the Central Consumer Welfare Fund and Rs. 27,22,321/- in the Uttar Pradesh State Consumer Welfare Fund as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with interest @18%.

20. It is also evident from the above narration of facts that the Respondent has denied benefit of rate reduction to his customers/recipients in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has committed an offence under Section 171 (3A) of the above Act. However, perusal of the provisions of Section 171 (3A), under which liability for penalty arises for the above violation, shows that it has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide

Section 112 of the Finance Act, 2019 and it was not in operation during the period from 01.07.2017 to 30.04.2019 when the Respondent had committed the above violation. Hence, the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively for the said period.

21. As the case is under insolvency proceedings under IBC, the Commission directs the DGAP to file its claim in the matter for necessary recovery and realization.
22. Further, the Commission, as per Rule 136 of the CGST Rules 2017, directs the jurisdictional Commissioners of CGST/SGST Telangana to monitor this Order under the supervision of the DGAP.
23. A copy of this order be supplied to all the interested parties free of cost and file of the case be consigned after completion.


S/d  
(Deepak Anurag)  
Member

S/d  
(Sweta Kakkad)  
Member

S/d  
(Anil Agrawal)  
Member

S/d  
(Ravneet Kaur)  
Chairperson

Certified copy

  
(Secretary, CCI) 10/7/2024

File No. 22011/137/Cinema Ventures/2020 /592-97

Date: 10.07.2024

Copy To:-

1. M/s Cinema Ventures Pvt. Ltd., 'Pacific Bansal Ghaziabad'1, Pacific Mall, Dr Burman Road, Sahibabad Industrial Area Site 4, Sahibabad, Ghaziabad, Uttar Pradesh- 201010.
2. Shri Rahul Sharma, on behalf of M/s Local Circles India Pvt. Ltd., 4th Floor, Tower-2, Express Trade Towers-2, Sector-132, Noida-201301.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.

4. Commissioner of Commercial Taxes, Office Of The Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow-226010 (U.P).
5. Chief Commissioner of Central Goods & Services Tax, Meerut Zone Opp. Ccs University, Mangal Pandey Nagar, Meerut-250004.
6. Guard File.

S.No	Unique Combinations
1	Blockbuster 3D EBONY Friday to Sunday Day Show
2	Blockbuster 3D EBONY Friday to Sunday Night Show
3	Blockbuster 3D EBONY Monday to Thursday Day Show
4	Blockbuster 3D EBONY Monday to Thursday Night Show
5	Blockbuster 3D GOLD COMPLIMENTARY Friday to Sunday Day Show
6	Blockbuster 3D GOLD COMPLIMENTARY Friday to Sunday Night Show
7	Blockbuster 3D GOLD COMPLIMENTARY Monday to Thursday Day Show
8	Blockbuster 3D GOLD COMPLIMENTARY Monday to Thursday Night Show
9	Blockbuster 3D GOLD Friday to Sunday Day Show
10	Blockbuster 3D GOLD Friday to Sunday Morning Show
11	Blockbuster 3D GOLD Friday to Sunday Night Show
12	Blockbuster 3D GOLD Monday to Thursday Day Show
13	Blockbuster 3D GOLD Monday to Thursday Morning Show
14	Blockbuster Non-3D EBONY Friday to Sunday Morning Show
15	Blockbuster Non-3D EBONY Friday to Sunday Night Show
16	Blockbuster 3D GOLD Monday to Thursday Night Show
17	Blockbuster Non-3D EBONY Friday to Sunday Day Show
18	Blockbuster Non-3D EBONY Monday to Thursday Day Show
19	Blockbuster Non-3D EBONY Monday to Thursday Morning Show
20	Blockbuster Non-3D EBONY Monday to Thursday Night Show
21	Blockbuster Non-3D GOLD COMPLIMENTARY Friday to Sunday Day Show
22	Blockbuster Non-3D GOLD COMPLIMENTARY Friday to Sunday Night Show
23	Blockbuster Non-3D GOLD COMPLIMENTARY Monday to Thursday Day Show
24	Blockbuster Non-3D GOLD COMPLIMENTARY Monday to Thursday Morning Show
25	Blockbuster Non-3D GOLD COMPLIMENTARY Monday to Thursday Night Show
26	Blockbuster Non-3D GOLD Friday to Sunday Day Show
27	Blockbuster Non-3D GOLD Friday to Sunday Morning Show
28	Blockbuster Non-3D GOLD Friday to Sunday Night Show
29	Blockbuster Non-3D GOLD Monday to Thursday Day Show
30	Blockbuster Non-3D GOLD Monday to Thursday Morning Show
31	Blockbuster Non-3D GOLD Monday to Thursday Night Show
32	Regular 3D GOLD COMPLIMENTARY Friday to Sunday Day Show
33	Regular 3D GOLD COMPLIMENTARY Friday to Sunday Night Show
34	Regular 3D GOLD Friday to Sunday Day Show
35	Regular 3D GOLD Friday to Sunday Morning Show
36	Regular 3D GOLD Friday to Sunday Night Show
37	Regular 3D GOLD Monday to Thursday Day Show
38	Regular 3D GOLD Monday to Thursday Morning Show
39	Regular 3D GOLD Monday to Thursday Night Show
40	Regular Non-3D EBONY Friday to Sunday Day Show
41	Regular Non-3D EBONY Friday to Sunday Morning Show
42	Regular Non-3D EBONY Friday to Sunday Night Show
43	Regular Non-3D EBONY Monday to Thursday Day Show
44	Regular Non-3D EBONY Monday to Thursday Morning Show
45	Regular Non-3D EBONY Monday to Thursday Night Show
46	Regular Non-3D GOLD COMPLIMENTARY Friday to Sunday Day Show
47	Regular Non-3D GOLD COMPLIMENTARY Friday to Sunday Night Show
48	Regular Non-3D GOLD COMPLIMENTARY Monday to Thursday Day Show
49	Regular Non-3D GOLD COMPLIMENTARY Monday to Thursday Night Show
50	Regular Non-3D GOLD Friday to Sunday Day Show
51	Regular Non-3D GOLD Friday to Sunday Morning Show
52	Regular Non-3D GOLD Friday to Sunday Night Show
53	Regular Non-3D GOLD Monday to Thursday Day Show
54	Regular Non-3D GOLD Monday to Thursday Morning Show
55	Regular Non-3D GOLD Monday to Thursday Night Show