GSTAT

Single Bench Court No. Court III

NAPA/237/PB/2025

DGAP, DG ANTI PROFITEERING, DIRECTOR GENERAL OF ANTI-PROFITEERING .....**Appellant**

Versus

BELHEKAR & KALE ASSOCIATES .....**Respondent**

Counsel for Appellant Counsel for Respondent

Coram: -

Hon'ble Sh. Anil Kumar Gupta, Member (Technical)

ORDER

1. The present Interlocutory Application ("**I.A.**") has been filed on 29.06.2026 by the Applicant, Mumbai Port Authority ("**MbPA**"), under Rule 21 of the Principal Bench, GSTAT (Anti-Profiteering) Methodology and Procedure Rules, 2025 ("**the Methodology Rules**"), seeking recall and setting aside the ex-parte Order dated 05.05.2026 passed by this Tribunal in NAPA/237/PB/2025, and restoration of the proceedings along with the condonation of delay application seeking to condone the delay of 24 days in filing the application under Rule 22 of the Methodology Rules.

2. The facts of the case are that the Applicant had filed an application under Rule 128 of the CGST Rules, 2017, alleging violation of Section 171 of the CGST Act, 2017 by the Respondent, M/s Belhekar & Kale Associates, in respect of the works contract for "Modernization of MICT". The DGAP

submitted its Investigation Report dated 21.01.2026, concluding that no contravention of Section 171 was found.

3. The matter was listed for hearing before this Tribunal on three dates, i.e., on 24.02.2026, 02.04.2026, and 29.04.2026. Despite giving multiple notices and opportunities, the Applicant remained absent and failed to file any written submissions or objections to the DGAP Report. Consequently, this Tribunal proceeded ex-parte and passed the Order dated 05.05.2026, accepting the DGAP Report and closing the proceedings.

4. Aggrieved by the said ex-parte order, the Applicant has filed the present application seeking restoration of the proceedings.

Submissions of the Applicant

5. The Applicant filed the Interlocutory Application on 29.06.2026 seeking recall of the order dated 05.05.2026 and restoration of proceedings in NAPA/237/PB/2025 and made the following submissions:

5.1 The Applicant submits that their non-appearance before this Tribunal was neither deliberate nor intentional. They were prevented from participating in the proceedings on account of non-receipt of the notice of hearing and the DGAP Investigation Report within a reasonable time.

5.2 The Applicant contends that the first hearing was scheduled for 24.02.2026, however, they did not receive the notice of hearing prior to the said date and were consequently unaware of the proceedings listed before this Tribunal.

5.3 It is submitted that the notice was sent to the email address ce@mbptmail.com, which was not an accessible or functional email address of the Applicant due to a change in the domain from mbptmail.com to mumbaiport.gov.in back in 2019. The Applicant had provided their official email address as fa@mumbaiport.gov.in for all correspondence, however, no communication in relation to the present proceedings was sent to the said official email address.

5.4 As per the tracking details available on the website of the Department of Posts, the communication containing the notice of hearing and the DGAP Investigation Report was booked for dispatch on 06.04.2026, and was returned to the sender on 15.04.2026 with the remark "Insufficient Address". The documents were ultimately received by the Applicant only on 17.04.2026, long after the first hearing had already taken place.

5.5 The Applicant first became aware of the Order dated 05.05.2026 only upon receipt of a copy from the Respondent on 08.05.2026. Thereafter, being a statutory public authority, the matter had to be processed through various departments before a decision could be taken regarding further course of action.

5.6 The Applicant has demonstrated a *bona fide* case on merits and seeks an opportunity to place its objections to the DGAP Report on record. It is submitted that no prejudice would be caused to the Respondent if the delay is condoned and the matter is decided on merits.

6. The matter was taken up for the hearing on the restoration application on 06.08.2026 in which:

6.1 The learned Advocate on behalf of the Applicant submitted that they have filed an application dated 29.06.2026 for recall of the ex parte order dated 05.05.2026 along with a condonation of 24 days' delay in filing the application. The learned Advocate also explained the reasons as to why they could not participate in the proceedings before this Tribunal.

6.2 The Tribunal directed the Applicant to file a chronological chart of the communication made by this Bench as well as by the DGAP and the Respondent, if any, with them explaining their position for restoration of the application within 15 days, with an advance copy to the DGAP as well as to the Respondent. The Respondent was directed to file a brief synopsis as to their objections to the application of the Applicant for restoration of their appeal, along with any documentary evidence as to the communication, if any, made by them with the Applicant within 15 days, with a copy to the Applicant and the DGAP. The DGAP was directed to file their clarification on both the submissions made by the Applicant and the Respondent within 7 days thereafter. The matter was listed on 03.09.2026.

7. The Applicant filed an Additional Affidavit dated 21.08.2026 in compliance with the order dated 06.08.2026, placing on record the chronology of communications, reiterating the previous submissions and raising new submissions which are as follows:

7.1 The Applicant submitted that it had provided its official email address, being fa@mumbaiport.gov.in, for all correspondence and the

communications sent to the said official email address were duly received and acted upon by the Applicant.

7.2 The Anti-Profiteering Application Form (APAF-1) submitted by the Applicant specifically records the email address pt.jori@mumbaiport.gov.in at Serial No. A(6) under the heading "General Information about the Applicant." However, no communication, notice, or the Investigation Report was served or communicated by the DGAP at the said email address.

7.3 The DGAP had itself sent communication dated 06.03.2025 to fa@mumbaiport.gov.in, and the same was duly replied to by the Applicant vide its reply dated 17.03.2025. Thereafter, DGAP also used the same email address for issuing its communication dated 22.12.2025. Accordingly, fa@mumbaiport.gov.in was an official email address which was operative and available with DGAP, and official communications were being sent and received on the said email address.

7.4 It was only on 17.04.2026 that the Applicant received the notice dated 13.02.2026, by which time the hearing fixed for 24.02.2026 had already taken place. The communication received also contained the order dated 02.04.2026, whereby the next date of hearing was fixed for 29.04.2026. However, the Applicant had not been effectively served with the final DGAP Investigation Report to enable it to formulate its substantive response.

7.5 Upon receipt of the communication, the Applicant being a statutory/public authority, was required to process the matter through its prescribed administrative hierarchy, examine the order and the

underlying record, obtain the necessary instructions from the concerned departments and secure the requisite approvals for taking further legal action. The time taken in completing the said process and filing the application dated 29.06.2026 was bona fide.

Submissions of the Respondent

8. The Respondent, M/s Belhekar & Kale Associates, has filed a detailed Reply-cum-Objections on 02.09.2026 in response to the I.A., opposing the restoration of proceedings and has made the following submissions:

8.1 It is contended that the Application is barred by limitation under Rule 22 of the Methodology Rules, as it has been filed beyond the prescribed period of 30 days from the date of the Order dated 05.05.2026. The Respondent submits that even if limitation is computed from the date of knowledge, i.e., 08.05.2026, the Application filed on 29.06.2026 is still delayed by 21 days.

8.2 The Respondent submits that the Applicant was well aware of the proceedings. On 17.02.2026, a copy of the Notice of hearing dated 13.02.2026 was sent by the partner of the Respondent to Mr. Sachin Parab, the authorized representative of the Applicant in the pending arbitral proceedings, on WhatsApp. The recipient acknowledged the same by responding "ok".

8.3 It is submitted that the Applicant received the notice of hearing and the DGAP Report on 17.04.2026, i.e., twelve clear days before the hearing on 29.04.2026, yet chose neither to appear nor to seek an adjournment. The Applicant also failed to check the status of its own

case on the GSTAT website (www.gstat.gov.in), where cause lists and orders are available in the public domain.

8.4 The Respondent further contends that the Application is an attempt to seek a review on merits, which is impermissible under Rule 21 of the Methodology Rules. The Respondent submits that the Applicant has not demonstrated sufficient cause for its non-appearance and the Application is liable to be dismissed.

9. The matter was taken up for final hearing on 03.09.2026 in which:

9.1 The Applicant advanced their submissions, which were made in the Additional Affidavit filed on 21.08.2026. Further, the Respondent also advanced their submission that were made in the reply-cum-objection filed on 02.09.2026.

9.2 Both the Applicant's and Respondent's submissions were subsequently taken on record by this Tribunal.

Submissions of the DGAP

10. The Director General of Anti-Profiteering ("**DGAP**"), during the course of the hearing, has made the following submissions:

10.1 The DGAP submits that the Applicant never informed the DGAP about the change in their email ID from ce@mbptmail.com to fa@mumbaiport.gov.in. Consequently, all communications during the investigation were sent to the email address available in the DGAP records, i.e., ce@mbptmail.com.

10.2 The DGAP has placed on record its position that the Investigation Report dated 21.01.2026 was submitted after a detailed investigation and the conclusions drawn therein were based on the facts and legal position as applicable. Further, the DGAP submits that they stands by their Investigation Report dated 21.01.2026.

Discussion and Findings

11. I have carefully considered the submissions of the Applicant, the Respondent and the DGAP and the documents available on record. The primary issue for consideration is whether the Applicant has shown "sufficient cause" for its non-appearance and for the delay in filing the present Application under Rule 22 of the Methodology Rules.

12. It is pertinent to note that the lapses in the present case have been on all sides. The Applicant failed to ensure that its correct and functional email address was on record and accessible for receiving communications. The Copy of the order was claimed to have been received on 08.05.2026 by the Applicant. Upon receipt of the same, the Applicant ought to have informed this Tribunal and made sincere efforts to file the restoration application within the prescribed period of 30 days or, at the very least, informed the Court about their inability to do so. The failure to take any such steps constitutes a lapse on the part of the Applicant. The DGAP and the Registry of this Tribunal, despite having the Applicant's other email address fa@mumbaiport.gov.in on record, sent communications to what is claimed to be a non-functional email address ce@mbptmail.com.

13. On perusal of the record, it is found that both the email addresses, i.e., ce@mbptmail.com and fa@mumbaiport.gov.in, were available in the

records of the DGAP. The DGAP has also sent communications to both email addresses during the investigation, which were received by the Applicant. However, it is pertinent to note that the final Investigation Report dated 21.01.2026 was not sent to the email address fa@mumbaiport.gov.in, which was claimed to be the functional and correct email address of the Applicant. Despite having the correct email address on record and having successfully communicated with the Applicant at the said email address during the investigation, the DGAP failed to apprise the Registry of this Tribunal about the Applicant's functional email address. The Registry, acting based on the records provided by the DGAP and being unaware of the change in the Applicant's email address, proceeded to send the final Investigation Report and all subsequent communications to the non-functional email address ce@mbptmail.com. The Applicant, who had duly provided its correct email address in its original Application and had received communications from the DGAP on the said address during the investigation, was never served with the final Investigation Report or the notices of hearing through its functional email address by the Registry. As a direct consequence of this omission, the Applicant remained unaware of the proceedings before this Tribunal and was deprived of the opportunity to participate in the hearings. This omission on the part of the DGAP & Registry contributed to the Applicant's inability to participate in the proceedings before this Tribunal.

14. We are of the view that while the Applicant cannot be absolved of all responsibility, the failure of the Registry and the DGAP to communicate through the correct email address provided by the Applicant also contributed to the situation. The responsibility for ensuring effective service of notice rests with the Tribunal and the authorities initiating the proceedings, particularly when the correct email address is available on record.

15. It is an admitted fact on record that the Applicant had received the notice of hearing and the DGAP Investigation Report on 17.04.2026. The next date of hearing was scheduled on 29.04.2026. Thus, there was a gap of 12 clear days between the date of receipt of notice and the date of hearing. Despite having sufficient time to respond or, at the very least, inform the Tribunal about its inability to file a reply or to appear before the Tribunal, the Applicant failed to take any action. This delay of 12 days between receipt of notice and the date of hearing is a significant factor that weighs against the Applicant. However, this failure must be viewed in the context of the overall facts and circumstances of the case. The Applicant has also submitted that the delay of 24 days in filing the present application was caused on account of inter-departmental processing, which was *bona fide* and unavoidable in the facts and circumstances of the case.

16. The principles of natural justice are the bedrock of any adjudicatory process. The maxim *audi alteram partem* (no one shall be condemned unheard) is a fundamental tenet of justice. The Hon'ble Supreme Court in ***G.P. Srivastava v. R.K. Raizada & Ors. [(2000) 3 SCC 54]*** has laid down the following principles regarding the interpretation of "sufficient cause" under Order IX Rule 13 of the CPC, which are equally applicable to proceedings before this Tribunal:

> *"7. ...The words 'was prevented by any sufficient cause from appearing' must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9, Rule 13 has to be construed as an elastic expression for which no hard and*

fast guidelines can be prescribed. The courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case..."

17. Applying the principles laid down in ***G.P. Srivastava (supra)***, we find that:

17.1 The Applicant's non-appearance was not *mala fide* or intentional. The Applicant had provided its correct email address, but the communications were sent to a non-functional email address.

17.2 The Applicant approached this Tribunal immediately upon becoming aware of the ex-parte order. The delay of 24 days in filing the Application was on account of inter-departmental processing, which is not uncommon for a statutory public authority.

17.3 The Respondent has not demonstrated any prejudice that would be caused if the proceedings are restored. On the contrary, denying restoration would cause grave prejudice to the Applicant, who would be deprived of an opportunity to place its objections to the DGAP Report on record.

18. It is a well-settled principle of law that procedural laws are intended to advance justice and not to defeat it. The courts and tribunals should adopt a liberal approach in restoring matters, particularly where a party has been prevented from participating in proceedings due to circumstances beyond its control. The Hon'ble Supreme Court in ***G.P. Srivastava (supra)*** further observed that technical objections should not be allowed to defeat the cause

of justice, and that matters should ordinarily be decided on merits rather than on technical defaults.

19. We find that the Applicant was deprived of a reasonable opportunity of being heard. The non-appearance was not deliberate or wilful, but occasioned by circumstances beyond its control. The principles of natural justice require that the Applicant be afforded an opportunity to place its case on record.

20. The Respondent's contention regarding limitation is noted. However, the proviso to Rule 22 empowers this Tribunal to entertain a time-barred application if it is satisfied that the applicant was prevented by sufficient cause from filing the application in time. The Applicant has explained the delay on account of inter-departmental processing and receipt of the order only on 08.05.2026. The delay is neither inordinate nor unexplained.

21. This Tribunal is satisfied that the Applicant has shown sufficient cause for its non-appearance and for the delay in filing the present Application. Denying restoration would cause grave prejudice to the Applicant, whereas restoration would enable adjudication on merits without causing any prejudice to the Respondent.

22. Hence, in view of the above discussion, we pass the following order:

    22.1 The I.A. is hereby allowed by condoning the delay.

    22.2 The ex-parte Order dated 05.05.2026 passed in NAPA/237/PB/2025 by this Tribunal is hereby recalled and set aside.

    22.3 The proceedings in NAPA/237/PB/2025 are hereby restored.

23. The Registry is directed to supply a copy of this Order to the Applicant, Respondent, DGAP, as well as to the jurisdictional CGST/SGST Commissioner concerned for information and necessary action.

24. This Order is pronounced in the open court on 10.09.2026.

25. List the matter on **23.09.2026**

(Sh. Anil Kumar Gupta)

Date - 10.09.2026