

**BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY**

**UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017**

Order No. 18/2022  
Date of Institution 30.12.2020  
Date of Order 06.06.2022

**In the matter of:-**

1. Sh. Arbind Biswal, Karbala Road, Near Govt. Hospital, Birmitrapur, PS: Biramitrapur, Distt. Sundergarh, Odisha - 770 033.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Sahej Realcon Pvt. Ltd., 1<sup>st</sup> Floor, Nanda Bhawan, Main Road, Rourkela, PS  
Plantsite, Dist. Sundergarh, Odisha-769002.

Respondent

**Quorum:-**

1. Sh. Amand Shah, Technical Member & Chairman
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member

**Present:-**

1. None for the Applicants.
2. None for the Respondent.

**ORDER**

1. The present Report dated 30.12.2020 has been received in this Authority from the Applicant No. 2 i.e. the Director General of Anti-Profiteering Authority (DGAP) in response to the Authority's IO no. 13/2020 dated 19.03.2020 passed under Rule 133(4) of the Central Goods & Service Tax (CGST) Rules, 2017. The said order was passed to remand the DGAP's Report dated 20.09.2019 which was furnished by the DGAP after investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1 had filed an application dated 07.01.2019 under Rule 128 of the CGST Rules and alleged profiteering by the Respondent while he had purchased Duplex Row

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House-B3 in the Respondent's project "Sahej Valley", situated at Dandipalli, Rourkela. The Applicant No. 1 had also alleged that the Respondent had not passed on the benefit of ITC although he had charged GST @12% w.e.f. 01.07.2017 from the said Applicant. This application was forwarded to the Odisha State Screening Committee on Anti-Profiteering on 05.02.2019 and was considered by the Standing Committee on Anti-Profiteering in its meeting held on 11.03.2019, wherein, the Standing Committee referred the complaint to the DGAP for conducting detailed investigation on the allegations levelled by the Applicant No. 1.

2. The said application was examined by the Director General of Anti-Profiteering and the Investigation Report dated 20.09.2019 under Rule 129(6) of the Rules, was furnished to this Authority. Vide the said Report, it was concluded by the DGAP that the construction service was completed well before the introduction of GST, and any liability of GST of the Applicant No. 1 was only on account of the dues left on account of his booking of the unit prior to issue of Completion Certificate. The DGAP further reported that there was no additional accrual of Input Tax Credit to the Respondent as a result of introduction of GST as the construction service was completed prior to introduction of GST. In support of the said claim, the DGAP had emphasized on the Completion Certificate dated 31.03.2016, submitted by the Respondent to the DGAP. The DGAP also stated that the project had 14 flats, each with 1700 sq. ft. of super built up area, and out of the total, only two units were sold before completion, one of which was allotted to the Applicant No. 1. The DGAP, in his Report dated 20.09.2019, had established that the Applicant No. 1 had booked the Unit in the project on 23.10.2014, Agreement to sell was executed on 24.04.2016, and the tri-partite agreement between the Applicant No. 1, the Respondent and ICICI Bank, financier for the Applicant No. 1 was signed on 17.05.2016. Thus, the conclusion was that the provision of Section 171(1) of the CGST Act, 2017 had not been contravened.

3. However, this Authority, vide its Interim Order No. 13/2020 dated 19.03.2020, referred the matter back to the DGAP under Rule 133(4) of the Rules, and directed the DGAP to reinvestigate the matter and submit a comprehensive report under Rule 129(6) of the CGST Rules, 2017 specifically on the following grounds:-

- i. What was the basis of accepting the Completion Certificate issued by a private Architect?
- ii. Which is the Competent Authority to issue the Completion Certificate in the State of Odisha?
- iii. Whether the above Respondent has earned ITC on the above project during the period from July, 2017 till date?
- iv. Whether the above Respondent has utilised ITC during the period from July, 2017 till date for discharging his output GST liability in respect of the above project?
- v. Whether the Respondent has claimed transitional credit through the TRAN-1 statements filed in respect of the above project?

- vi. Whether the Respondent has availed benefit of additional ITC since July, 2017 till date and he is liable to pass on the same to his buyers?
- vii. Whether the above land owners have sold their share of the houses and, if so, whether they have passed on the benefit of ITC to the buyers of these houses?
- viii. Whether Applicant No. 1 is entitled to the benefit of ITC?
- ix. Whether rest of the 8 house buyers are eligible for the benefit of ITC?

4. On receipt of the aforesaid Interim Order from this Authority, the DGAP re-examined the documents/information submitted by the Respondent and cross-verified them with his Investigation Report dated 20.09.2019. Further, letter dated 26.08.2020 followed by reminder letters dated 07.09.2020 & 30.09.2020 and summons dated 03.11.2020 & 09.12.2020 were issued to the Respondent by the DGAP, seeking clarifications. The DGAP also sent a letter dated 09.12.2020 to the jurisdictional office (State Jurisdiction) of the Respondent i.e. the Additional Commissioner (State Tax), CT & GST Territorial Range, Sundergarh, Rourkela, to collect the necessary documents. The State Jurisdiction Office submitted his reply to the DGAP vide e-mails dated 11.12.2020 & 22.12.2020.

5. On the basis of the above facts, the DGAP has re-investigated the matter and submitted his Investigation Report dated 30.12.2020 to this Authority, wherein, the DGAP has submitted as under:-

- (a) That as directed by this Authority in its I.O. No. 13/2020 dated 19.03.2020; all the nine issues as mentioned above, had all been duly covered in the report.
- (b) That the Respondent submitted his replies to the Notice issued by the DGAP, vide letters and e-mails dated 10.09.2020, 06.11.2020, 23.12.2020 & 29.12.2020.
- (c) At the time of submission of earlier investigation report dated 20.09.2019, the Respondent had submitted all the necessary information and data for the period covered under investigation. The main issues to be examined were the points raised by this Authority in its I.O. which were as: -

(i) What was the basis of accepting Completion Certificate issued by a private Architect?

*Reply of the DGAP*

That Section 66E (b) of the Finance Act 1994, provided for levy of Service Tax on declared services which provided as under:

*(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration was received after issuance of completion-certificate by the competent authority." "*

Explanation for the above clause provided that for the purpose of this clause provides that

(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely (A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or (B) chartered engineer registered with the Institution of Engineers (India); or (C) licensed surveyor of the respective local body of the city or town or village or development or planning authority,"

The DGAP further claimed that the above explanation made it clear that completion certificate was must to get benefit of non-chargeability of Service Tax or if there was no such local law requirement then any of the above three documents would fulfill law requirement for not charging Service Tax. Requirement of completion certificate varied from state to state. Above law requirement was further substantiated by Point 6.2.7 of Education Guide issued by CBIC dated 20.06.2012 which provides:

*"In terms of Explanation to clause (b) of section 66E in such cases the completion certificate issued by an architect or a chartered engineer or a licensed surveyor of the respective local body or development or planning authority would be treated as completion certificate for the purposes of determining chargeability of service tax."*

The DGAP has also stated that he had received an email dated 22.12.2020 from CT & GST Office, Rourkela-1, Circle- Jurisdiction office (State Administration) of the Respondent. The officer had forwarded the reply of Respondent to the DGAP. A copy of completion certificate issued by Ar. Arijit Sarkar bearing hand written note "Registration No. CA/2000/27049" Screenshot of verification from website was enclosed in the footnote of said certificate. From the said note & enclosed screenshot, the DGAP has claimed that the Architect Mr. Arijit Sarkar was registered with Council of Architecture having Registration No.CA/2000/27049. Accordingly, Completion Certificate was valid and accepted in the DGAP report. R

(ii) Which was the competent Authority to issue the completion certificate in the state of Odisha?

*Reply of the DGAP*

- The DGAP has also stated that Section 20 of The Orissa Development Authorities Act, 1982, provides for, the Competent Authority to issue the completion certificate. It reads as under:

*"20. Duration of permission.- Every permission granted under this Chapter shall remain valid up to three years during which period completion certificate from a registered architect or engineer or a person approved by the Authority in the forms prescribed by regulations shall be submitted and if this was not*

*done, the permission shall had to be revalidated before the expiration of this period on payment of such fee as might be prescribed under rules and such revalidation shall be subject to the rules and regulations then in force."*

That the above Act provides for same definition of Competent Authority to issue Completion Certificate, as under Section 66E (b) of the Finance Act 1994. Accordingly, the Completion Certificate issued by the empanelled architect of R.D.A, for the project was valid and had been considered.

(iii) Whether the above Respondent had earned ITC on the above project during the period from July, 2017 till date?

*Reply of the DGAP*

- The DGAP has submitted that the Respondent had earned ITC during the period from July, 2017 till the date of Investigation Report, but the same was for providing repair and maintenance service, and not for construction service. The Respondent vide letter dated 05.09.2019, had submitted that CENVAT Credit availed in his Service Tax Returns during the period April, 2016 to June, 2017, was not related to the project Sahej Valley. Further, vide his email dated 23.12.2020, the Respondent had submitted that for the project during the period from 01.07.2017 to 31.03.2019, period covered in investigation, ITC was Rs. 1,62,361/- only. However, this credit was towards finishing and repair and maintenance of the building, rather than for any construction work. Accordingly, there was no benefit of ITC towards Construction service for the impugned project in the relevant period. Hence, the DGAP has claimed that the same was irrelevant for profiteering calculation, and had not been considered.

(iv) Whether the above Respondent had utilized the ITC during the period from July, 2017 till date for discharging his output GST liability in respect of the above project?

*Reply of the DGAP*

- That the Respondent vide letter dated 05.09.2019 has submitted that he had availed and utilized ITC during the period from July, 2017 till date of Investigation Report for discharging his output GST liability in respect of the Repair and Maintenance Service. The Respondent had not availed any GST Credit towards supply of construction service.

(v) Whether the Respondent had claimed transitional credit through the TRAN-1 statement filed in respect of the above project?

*Reply of the DGAP*

- That the Respondent had claimed total transitional ITC of Rs.16,35,851/- through the TRAN-1 statement filed. Further, vide email dated 29.12.2020, the

Respondent had submitted that total transitional ITC of Rs.16,35,851/- was not related to the above project.

(vi) Whether the Respondent had availed benefit of additional ITC since July, 2017 till date and he was liable to pass on the same to his buyers?

*Reply of the DGAP*

- That, the Respondent hadn't availed benefit of additional ITC since July, 2017 till date towards construction service and he was not liable to pass on the same to his buyers.

(vii) Whether the above land owners had sold their shares of the houses and, if so, whether they had passed on the benefit of ITC to the buyers of these houses?

*Reply of the DGAP*

- That vide email dated 29.12.2020, the Respondent had submitted that he had transferred possession of the land-owner's share of units in the project "Sahej Valley" on 05.05.2016 and he did not have any detail about his status of possession after that.
- That, since, the project was completed and completion certificate received on 31.03.2016, there was no profiteering in this case both with regard to the developer or the landowners.

(viii) Whether Applicant No. 1 was entitled to the benefit of ITC?

*Reply of the DGAP*

- That, in the instant case, the construction service was completed well before the introduction of GST, and any liability of GST on the Applicant No. 1 was only on account of the dues left on account of his booking of the unit prior to issue of Completion Certificate. There was no additional accrual of ITC to the Respondent as a result of introduction of GST as the construction service was completed prior to GST introduction. Section 171(1) of CGST Act, 2017 comes into play in the event there was a reduction in the rate of tax or increase in the input tax credit, but neither of them appeared to be the attracted in the case.

(ix) Whether rest of the 8 house buyers were eligible for the benefit of ITC?

*Reply of the DGAP*

- That the Respondent had submitted sale deed and payment details for other units in the project sold post receipt of completion certificate in March, 2016, viz. one in October, 2017, to establish that no Service Tax or GST was charged on such units sold post completion. As the project had been

completed prior to GST Implementation itself, neither the buyers who had bought after receipt of Completion Certificate have any tax liability, nor there was any additional benefit of ITC available which was required to be passed on.

(d) The DGAP has concluded that the Section 171(1) of the CGST Act, 2017, relating to profiteering, did not appear to be attracted in the instant case and the allegation of profiteering against the Respondent did not appear to be sustainable.

6. After submitting the above Investigation Report dated 30.12.2020, the DGAP, vide his letter dated 15.01.2021, also submitted the reply of verification sent by CT & GST Office, Rourkela-I, Circle, jurisdictional office (State Administration), wherein, the State Administration had further submitted the following documents by email dated 11.01.2021 to the DGAP:

- (a) Certificate of Registration of Sh. Arijit Sarkar in Rourkela Development Authority.
- (b) Certificate of Registration of Sh. Arijit Sarkar in Council of Architecture.

7. The above Report was received by this Authority from the DGAP on 31.12.2020 and was considered in its sitting held on 05.01.2021 and it was decided to issue Notice to the Applicant No. 1 to file his written submissions and any specific request for hearing, if required, by 20.01.2021. In response to the Notice, the Applicant No. 1 had filed his written submissions on 25.03.2021, wherein, he had made the following submissions:

- (i) That the reply submitted by the Respondent was concocted, fabricated, baseless and vexatious.
- (ii) That the Respondent had partially admitted earning of ITC for providing repair and maintenance service only and has clandestinely avoided to admit availment of CENVAT credit in Service Tax Returns during the period from April, 2016 to June, 2017 which was related to the project "Sahej Valley". The Applicant No. 1 further stated that the said constructed buildings of the project were not handed over to their buyers within stipulated period and under what circumstances the newly constructed buildings were confined for repair and maintenance?
- (iii) That the Respondent had not received the Completion Certificate of the project. The Applicant No. 1 had also claimed that no physical possession of the house premises was ever handed over to him inspite of his regular instalments of bank payment.
- (iv) That the Respondent had charged GST @12% from the Applicant No. 1.

8. The above submissions filed by the Applicant No. 1 were forwarded to the DGAP to file his clarifications under Rule 133(2A) of the CGST Rules, 2017. In response the DGAP filed his clarifications vide his letter dated 22.06.2021, wherein, the DGAP has claimed that the investigation had been carried on the basis of the information/data submitted by the

Respondent and is correct. The DGAP further re-iterated his report dated 30.12.2020 that the Respondent had earned ITC during the period from July, 2017 till the date of investigation, but the same was for providing repair and maintenance service and not construction service. Moreover, the DGAP has claimed that the Respondent had received the Completion Certificate on 31.03.2016 and issue of the Respondent not handing over the physical possession of the house till 2018 in spite of regular payment of instalment made by the Applicant No. 1, is not within the purview of Anti-Profiteering. The DGAP also claimed that the Respondent had transferred possession of the land owner's share of units in his project "Sahej Valley" on 05.05.2016, and he did not have details about the status of possession after that.

9. Since, the quorum of the Authority of minimum three Members, as provided under Rule 134 was not available till 23.02.2022, the matter was not decided. With the joining of two new Technical Members in February 2022, the quorum of the Authority was restored from 23.2.2022, and a copy of the above clarifications dated 22.06.2021 was supplied to the Applicant No. 1 and personal hearing was scheduled on 07.04.2022. The hearing was held on 07.04.2022, wherein, the Applicant No. 1 was present in person. The Applicant No. 1 re-iterated his previous submissions dated 25.03.2021 and filed his submissions vide his e-mail dated 07.04.2021, wherein, he had enclosed the money receipt, allotment letter, Agreement for Sale, Bank Tri-party agreement and letter from the builder for GST & Registration.

The Applicant No. 1 has also enclosed a paper which he has alleged reflected the Service Tax and also GST amount demanded by builder, however, the same was not on any letter head and just a printout of account maintained by him.

10. This Authority has carefully examined the DGAP's Reports and various submissions placed on record. The issues to be decided by the Authority are as under:-
- (i) Whether there is benefit of additional ITC available to the Respondent which has not been passed on by him to the Applicant No. 1. If yes, then what was the quantum of profiteering?
  - (ii) Whether there is any violation of the provisions of Section 171 (1) of the CGST Act, 2017 by the Respondent?

11. Perusal of the record reveals that the complaint of profiteering is in respect of purchase of a Duplex Row House-B3 in the Respondent's project "Sahej Valley", Dandipalli, Rourkela, Odisha by the Applicant No. 1. The Applicant No. 1 has provided the copy of Allotment letter dated 23.10.2014, money receipts dated 20.12.2014, 29.05.2015, 07.11.2015 and 25.05.2016, Agreement to Sell dated 24.04.2016 and Tri-Partite Agreement dated 17.05.2016. In reply to the complaint submitted by the Applicant No. 1, the Respondent has submitted a copy of the Completion Certificate dated 31.03.2016



issued by Sh. Arijit Sarkar, Empanelled Architect of Rourkela Development Authority, to claim that his project was completed well before the inception of the GST regime and he was not liable to pass on the benefit of ITC to the Applicant No. 1. The chronology of above events shows that the service rendered by the Respondent by way of construction and development of the project was completed during the pre-GST regime itself.

12. The Applicant No. 1 had been vehemently claiming that he had been denied the benefit of ITC by the Respondent and the Respondent had resorted to profiteering in violation of the provisions of Section 171 (1) of the above Act. He also submitted that the Respondent had raised demand of Service Tax and GST, but the Applicant No. 1 has failed to produce any documentary evidence in support of his claim and the slip produced by him is merely a Table on a plain paper and the same cannot be considered to be substantial evidence. Further, the Applicant No. 1 has alleged that the Respondent had not obtained any Completion Certificate till the date of institution of the case. However, the Respondent has produced the Completion Certificate dated 31.03.2016 issued by Sh. Arijit Sarkar, Empanelled Architect of Rourkela Development Authority and the same was verified by the CT & GST Office, Rourkela-I, Circle, Jurisdictional Office (State Administration). In this regard, Section 66 E(b) of the Finance Act, 1994 provides for levy of Service Tax on declared services as under:

*(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration was received after issuance of completion-certificate by the competent authority." "*

Explanation attached to the above clause provides that

*(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely (A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or (B) chartered engineer registered with the Institution of Engineers (India); or (C) licensed surveyor of the respective local body of the city or town or village or development or planning authority,"*

From the above explanation, it is apparent that Completion Certificate is mandatory to get the benefit of non-chargeability of Service Tax or if there is no such local law requirement then any of the above three documents will fulfil the requirement for not charging Service Tax. Above law requirement is further substantiated by Point 6.2.7 of Education Guide issued dated 20.06.2012 by CBIC which provides:

*"In terms of Explanation to clause (b) of section 66E in such cases the completion certificate issued by an architect or a chartered engineer or a licensed surveyor of the respective local body or development or planning authority would be treated as completion certificate for the purposes of determining chargeability of service tax."*

Further, Section 20 of the Orissa Development Authorities Act, 1982, provides as under:-

**“20. Duration of permissions-** Every permission granted under this Chapter shall remain valid up to three years during which period completion certificate from a registered architect or engineer or a person approved by the Authority in the forms prescribed by regulations shall be submitted and if this is not done, the permission shall have to be revalidated before the expiration of this period on payment of such fee as may be prescribed under rules and such revalidation shall be subject to the rules and regulations then in force.”

It is clear from the above provisions that the Completion Certificate can be issued by a registered Architect in the State of Orissa. The CT & GST Office, Rourkela-1, Circle-Jurisdiction office (State Administration) of the Respondent vide its email dated 22.12.2020 addressed to the DGAP has provided a copy of each of the Certificate of Registration of Sh. Arijit Sarkar with Rourkela Development Authority, Certificate of Registration of Sh. Arijit Sarkar in Council of Architecture and the Completion Certificate issued by Ar. Arijit Sarkar bearing hand written note "Registration No. CA/2000/27049" with its screenshot. From the said note & enclosed screenshot, it is established that the architect Sh. Arijit Sarkar was registered with Council of Architecture having registration No.CA/2000/27049. Accordingly, Completion Certificate has been validly issued by him.


In view of the above, since, the Completion Certificate has been issued on 31.03.2016 regarding the project - "Sahej Valley" of the Respondent, therefore, the provisions of section 171 which came in to effect w.e.f. 01.07.2017 are not applicable in the present case.

13. The Applicant No. 1 has further alleged that the Respondent has availed CENVAT credit on the Service Tax paid from April, 2016 to June, 2017 and also earned ITC during the period from July, 2017 till the date of investigation. He further alleged that the Respondent's claim that such CENVAT that had been carried forward in the TRAN-I, did not belong to the project "Sahej Valley" and the ITC earned during the above mentioned period was for providing repair and maintenance service only instead of the construction service, was false. With regard to the above contention of the Applicant No. 1, it would be pertinent to mention that the Applicant No. 1 has not provided any evidence in support of his allegation. Upon perusal of the DGAP Report dated 30.12.2020, it is clear that the Respondent has not charged any Service Tax or GST to the buyer who has bought the unit post receipt of the Completion Certificate viz one in October, 2017. Further, the Respondent has submitted project wise details of CENVAT/ITC availed for the said period and claimed that he had already obtained the Completion Certificate for the project "Sahej Valley" well before the said period, hence, the question of availing CENVAT/ITC on the construction service did not arise at all. In view of the above facts, it is apparent that the Respondent had obtained his Completion Certificate on 31.03.2016 from the Architect registered under the Rourkela Development Authority, who is a competent authority to issue a Completion Certificate and the same has been confirmed

by the DGAP. Since, no Service Tax or GST has been charged from the buyers post receipt of the Completion Certificate dated 31.03.2016, no benefit of ITC/CENVAT credit towards Construction service for the impugned project in the relevant period was availed by the Respondent.

14. A perusal of Section 171 of the CGST Act shows that it 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.”*

It is clear from a plain reading of Section 171(1) mentioned above that it deals with two situations- one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the said issues, it is apparent from the DGAP's Report and the available record that the Completion Certificate for the project "Sahej Valley" was issued on 31.03.2016, i.e. prior to the date of introduction of GST through which the provisions of Anti-Profiteering were introduced. In support of the claim, the Respondent has also produced a copy of sale deed for other units sold post completion in October, 2017, to establish that the project was completed in March, 2016 and that no Service Tax/GST was charged on such units sold post completion. Since, the Completion Certificate was obtained for the subject project before the introduction of GST and also there has not been any reduction of GST rate in the instant case, the provisions of Section 171 dealing with Anti-profiteering cannot be made applicable to the said project in the view of the fact that there was no additional ITC which had been utilized by the Respondent, which was relevant for establishing allegation of profiteering. Further, no fresh demand has been raised by the Respondent upon Applicant No.1 in the post-GST regime, only a reminder for previous demand was issued. Launching of the project, Agreement to sell and Completion Certificate of the project had taken place in the pre-GST regime and hence, there was no post-GST tax rate or ITC structure which could be compared with the pre-GST tax rate and ITC and also the anti-profiteering provisions related to Section 171 were not in existence at that time. Accordingly, it is clear that the Respondent had neither benefited from additional ITC nor had there been a reduction in the tax rate in the post-GST period and therefore it does not qualify to be a case of profiteering. 

15. We find no reason to differ from the Report of the DGAP and we therefore agree with his findings that the provisions of Section 171 of the CGST Act 2017 have not been contravened in this case.

16. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since, the present Report has been received by this Authority on 31.12.2020 the order was to be passed on or before

30.05.2021. However, due to prevalent pandemic of COVID-19 in the Country this order could not be passed on or before the above date. In this regard it would be relevant to mention that the Hon'ble Supreme Court in Miscellaneous Application No 21 of 2022 in MA 665 of 2021 in Suo Moto Writ Petition (C) no. 3/2020, vide its Order dated 10.1.2022 has directed that:-

*" I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

*II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*

*III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, the longer period shall apply.*

*IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*

17. In view of above findings, we conclude that the instant case does not fall under the ambit of Anti-Profiteering provisions of Section 171 of the CGST Act, 2017. Therefore, the allegation that the Respondent has not passed on the benefit of ITC in this case is not found sustainable. Accordingly, the application filed by Applicant No. 1, requesting action against the Respondent for alleged violation of the provisions of Section 171 of the CGST Act is dismissed being not maintainable.

18. A copy of this order be sent to the Applicants and the Respondent free of cost.

Sd/-  
(Amand Shah)  
Technical Member & Chairman

Sd/-  
(Pramod Kumar Singh)  
Technical Member

Sd/-  
(Hitesh Shah)  
Technical Member

Certified Copy

*[Handwritten signature]*

*[Handwritten signature]*

(Dinesh Meena)  
Secretary, NAA



F. No. 22011/NAA/81/Sahej/2019

Copy To:-

1. M/s Sahej Realcon Pvt. Ltd., 1st Floor, Nanda Bhawan, Main Road, Rourkela, PS Plantsite, Dist. Sundergarh, Odisha-769002.

2. Shri Arbind Biswal, Karbala Road, Near Govt. Hospital, Birmitrapur-770033.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File.

