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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% ***Judgment reserved on: 17.09.2026***
Judgment pronounced on: 28.09.2026
Judgment uploaded on: 28.09.2026

\# **CNR No. DLHC010443252026**

\+ W.P.(C) 13665/2026, CM APPLs. 63830/2026 and 63831/2026
LICHFL CARE HOMES LIMITED. .....Petitioner
Through: Mr. Kishore Kunal, Ms. Runjhun Pare, Advs.

versus

DIRECTOR GENERAL OF ANTI-PROFITEERING, CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS & ORS. .....Respondents
Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.
Ms. Sharmila Upadhyay, Ms. Aditi Anup, Advs. for R-3.
Mr. Niranjan Swain, R-3 through VC.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present Writ Petition under Articles 226 and 227 of the Constitution of India has been filed by the Petitioner assailing the Order dated 23.03.2026 [hereinafter referred to as the 'Impugned Order'] passed by the Goods and Services Tax Appellate Tribunal,

Principal Bench, New Delhi [hereinafter referred to as 'GSTAT']. By the Impugned Order, GSTAT has upheld the determination made by the Directorate General of Anti-Profiteering [hereinafter referred to as 'DGAP'] under Section 171 of the Central Goods and Services Tax Act, 2017 [hereinafter referred to as the 'CGST Act'], holding that the Petitioner had profiteered to the extent of Rs.2,07,08,131/- and, after adding GST at the rate of 12%, directing payment of an aggregate amount of Rs.2,31,93,107/- to the homebuyers, together with interest at the rate of 18%.

2. The controversy arises in the context of the Petitioner's residential project known as "Jeewan Anand" at Bhubaneswar, Odisha. The proceedings under Section 171 of the CGST Act had earlier culminated in an order of the erstwhile National Anti-Profiteering Authority [hereinafter referred to as 'NAPA'] dated 20.06.2022, whereby profiteering of Rs.1,85,70,263/- had been determined against the Petitioner. The said order was challenged before this Court in W.P.(C) 12533/2022.

3. During the pendency of the aforesaid proceedings, this Court, in a batch of petitions including the Petitioner's case, rendered its judgment dated 29.01.2024 in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India***[1], wherein the methodology generally adopted by the anti-profiteering authorities for the real estate sector, based upon comparison of the ratio of ITC to turnover in the pre-GST and post-GST periods, was found to be flawed. This Court observed that in the

[1] 2024 (82) G.S.T.L. 344 (Del.)

real estate sector there is no direct correlation between turnover and ITC availed during a particular period and directed that the total savings on account of introduction of GST for each project be calculated and thereafter divided by the total area so as to arrive at the per square feet benefit to be passed on to the flat buyers.

4. Pursuant to the order dated 25.04.2024 passed in the Petitioner's case, the matter was remanded to the Competition Commission of India ('CCI') for fresh determination. The DGAP thereafter undertook a fresh investigation and submitted its Report dated 04.04.2025 [hereinafter referred to as the 'Impugned DGAP Report']. The said Report forms the basis of the Impugned Order passed by GSTAT.

5. The principal issue which arises for consideration is whether the DGAP, while undertaking the exercise pursuant to the aforesaid remand, adopted a methodology which is contrary to the directions contained in ***Reckitt Benckiser*** *(supra)*, and whether GSTAT committed an error of law in upholding the determination of profiteering made on the basis of the said methodology.

FACTUAL MATRIX:

6. In order to appreciate the controversy involved in the present Writ Petition, the relevant facts are required to be noticed.

7. The Petitioner, LICHFL Care Homes Ltd., undertook development of a residential project known as "Jeewan Anand" at Bhubaneswar, Odisha. The project was commenced in the year 2011

and was completed in November, 2019. The project comprises residential flats and covered parking and has a total area of approximately 2,70,048 square feet as taken into consideration in the Impugned DGAP Report.

8. The original proceedings under Section 171 of the CGST Act arose out of a complaint made by a homebuyer alleging that the benefit of ITC available upon introduction of GST had not been passed on to the homebuyers by way of commensurate reduction in prices. The matter was referred to the DGAP, which submitted its first Report dated 28.01.2021, determining profiteering of Rs.1,85,70,263/- for the period from July, 2017 to September, 2020. The said Report was accepted by the erstwhile NAPA *vide* order dated 20.06.2022.

9. The Petitioner challenged the aforesaid determination before this Court. The said challenge was considered along with the batch of petitions culminating in the judgment dated 29.01.2024 in ***Reckitt Benckiser*** *(supra)*. This Court held that no fixed or uniform mathematical formula could be prescribed for determination of profiteering and that the methodology had to take into account the peculiar facts of each case. In relation to the real estate sector, this Court specifically found that the methodology based upon the difference between the ratio of ITC to turnover during the pre-GST and post-GST periods was flawed and directed that the total savings on account of introduction of GST for each project be calculated and divided by the total area to arrive at the per square feet benefit.

10. By order dated 25.04.2024 passed in the Petitioner’s case, the

matter was remanded for determination in accordance with the aforesaid judgment. The Competition Commission of India, *vide* communication dated 07.05.2024, consequently directed the DGAP to reinvestigate the matter.

11. The DGAP issued a notice dated 28.05.2024 seeking information from the Petitioner in relation to the project. The Petitioner furnished information and documents *vide* communications dated 13.06.2024, 26.07.2024, 06.09.2024, 30.09.2024 and 12.02.2025. The Petitioner, *inter alia*, furnished details of the year-wise purchase value of goods and services and the completion status of the project. The Petitioner maintained that there was no profiteering and, alternatively, contended that if any benefit on account of ITC on goods was to be considered, the same could not exceed approximately Rs.13,49,003/-, which already stands passed on.

12. The DGAP thereafter submitted its report dated 04.04.2025, pursuant to the aforesaid remand, recalculating the profiteering for the period from July, 2017 to November, 2019 at Rs.2,31,93,107/-, including GST.

13. For the purpose of such recalculation, the DGAP considered the ITC availed during the pre-GST and post-GST periods *vis-à-vis* the purchase value of goods and services. The DGAP found that, whereas the ratio of ITC to the purchase value during the pre-GST period was NIL, the corresponding ratio during the post-GST period was 17.99%. On this basis, the increase in ITC attributable to the post-GST period was taken at 17.99%. Applying the said percentage to the post-GST

purchase value of goods and services, excluding taxes and duties, of Rs.11,54,27,648/-, the DGAP determined the total savings on account of the additional ITC benefit at Rs.2,07,65,434/-. The aforesaid amount of Rs.2,07,65,434/- was thereafter apportioned over the total project area of 2,70,048 square feet, resulting in a saving of Rs.76.895 per square foot. The said figure was applied to the total sold area of 2,69,304 square feet, resulting in a profiteered amount of Rs.2,07,08,131/-. GST at the effective rate of 12%, amounting to Rs.24,84,976/-, was thereafter added to the aforesaid amount, resulting in a total amount of Rs.2,31,93,107/-.

14. The Petitioner contested the Impugned DGAP Report before GSTAT. It was contended that the entire construction work had been outsourced to contractors and that, under the pre-GST regime, the Petitioner was not entitled to ITC on construction materials. It was further contended that CENVAT credit in respect of service tax paid on input services was legally available to the Petitioner under the pre-GST regime, though the same was not actually availed due to an inadvertent error.

15. The Petitioner placed on record that it had paid service tax of Rs.1,79,44,457/- during the pre-GST period. It further contended that, based upon the services procured for construction, CENVAT credit of approximately Rs.2,38,25,609/- would have been available under the applicable law, but was not actually availed. The Petitioner consequently contended that the post-GST ITC on input services could not be treated as an additional benefit merely because such

credit had not been availed during the pre-GST period.

16. The Petitioner also contended that the output tax incidence had increased after introduction of GST and that the higher ITC arising from the increased tax incidence could not, in its entirety, be treated as a benefit under Section 171 of the CGST Act. It was further contended that the ITC availed on inward goods was only Rs.14,52,570/- whereas the balance ITC of Rs.1,93,28,564/- related to input services.

17. The DGAP, in its clarification dated 21.11.2025, disputed the aforesaid submissions. It pointed out that the ST-3 returns filed by the Petitioner for the relevant pre-GST period reflected NIL CENVAT credit actually availed. According to the DGAP, the service tax paid on input services therefore constituted a cost to the Petitioner during the pre-GST period, whereas, after introduction of GST, the corresponding GST paid on input services was actually availed as ITC. The DGAP consequently maintained that the additional ITC benefit was required to be passed on to the homebuyers.

18. During the proceedings before GSTAT, the Petitioner also relied upon the alternative computation furnished in its earlier proceedings, wherein, without prejudice to its principal contention, it had submitted that if the benefit arising from increased ITC were to be considered, the profiteering could only be computed at Rs.1,39,93,358/-. The said submission was predicated, *inter alia*, upon the contention that the additional 3% tax incidence on services in the GST regime could not itself constitute a benefit under Section 171.

19. GSTAT, after affording the parties several opportunities of hearing and written submissions, proceeded to examine the methodology adopted in the Impugned DGAP Report. GSTAT held that ***Reckitt Benckiser*** *(supra)* required the total savings on account of introduction of GST to be calculated for the project and thereafter divided by the total area so as to determine the per square feet benefit.

20. GSTAT found that the DGAP had considered the entire pre-GST period up to June, 2017 and the post-GST period from July, 2017 to November, 2019. It noted that the total purchase value of goods and services was Rs.46,03,72,534/- and that the pre-GST ITC was NIL, whereas the post-GST ITC availed was Rs.2,07,76,653/-. On this basis, the post-GST ITC to purchase value ratio was found to be 17.99%.

21. GSTAT further held that the use of the project area and sold area for determining the benefit was consistent with the direction in ***Reckitt Benckiser*** *(supra)*. It consequently upheld the determination of Rs.2,07,08,131/- as the profiteered amount and, following the principle contained in Paragraph No.157 of ***Reckitt Benckiser***, directed addition of GST at 12%, resulting in an aggregate amount of Rs.2,31,93,107/-. Interest at the rate of 18% was also directed to be paid to the homebuyers.

22. Aggrieved by the aforesaid determination, the Petitioner has approached this Court under Articles 226 and 227 of the Constitution of India.

CONTENTIONS OF THE PARTIES:

23. Heard learned counsel representing the parties and, with their able assistance, perused the material placed on record.

24. Learned counsel representing the Petitioner has made the following submissions:

i. The Impugned DGAP Report and the Impugned Order are contrary to the judgment of this Court in ***Reckitt Benckiser*** *(supra)*. Although this Court had rejected the methodology based upon comparison of ITC to turnover, the DGAP has merely substituted "purchase value" for "turnover" and has once again compared the pre-GST and post-GST ITC ratios.

ii. The direction in ***Reckitt Benckiser*** *(supra)* required determination of the actual total savings arising on account of introduction of GST. Mere availability of ITC after introduction of GST cannot, by itself, establish the quantum of benefit required to be passed on under Section 171 of the CGST Act.

iii. The Petitioner was legally entitled to CENVAT credit of service tax paid on input services during the pre-GST period. The fact that such credit was not actually availed due to an inadvertent error cannot result in the post-GST ITC on input services being treated as an additional benefit.

iv. The Petitioner had paid service tax of Rs.1,79,44,457/- during the pre-GST period and, on the basis of the input services procured, was eligible for CENVAT credit of approximately Rs.2,38,25,609/-. The Impugned Order erroneously proceeds solely on the basis of the fact that the Petitioner had not actually availed such credit.

v. The GSTAT failed to appreciate that the ITC of Rs.1,93,28,564/- relating to input services was not an incremental benefit, since corresponding credit was legally available under the pre-GST regime. At the highest, the ITC of Rs.14,52,570/- relating to inward goods could have been considered.

vi. The output tax liability also increased after introduction of GST. The additional ITC arising from the higher rate of tax on input services could not be treated as an economic benefit without examining the corresponding increase in tax incidence.

vii. The Petitioner had also incurred substantial expenditure towards installation of a sub-station and allied electrical infrastructure and had absorbed expenditure which could otherwise have been recovered from the homebuyers. The said circumstance demonstrated that the Petitioner had, in substance, passed on the benefit and should have been given credit for the same.

viii. GSTAT further erred in treating the Petitioner’s earlier without-prejudice alternative computation of Rs.1,39,93,358/- as a conclusive admission of profiteering. The said submission was expressly made without prejudice and was advanced only as an alternative computation assuming that the principal contention of the Petitioner was not accepted.

25. *Per contra*, learned counsel representing the Respondents has supported the Impugned Order and the Impugned DGAP Report. It has been submitted that:

i. The DGAP has duly acted in accordance with the directions contained in ***Reckitt Benckiser*** *(supra)*, since it has not adopted the earlier ITC-to-turnover methodology. Instead, it has determined the additional ITC benefit by reference to the purchase value and thereafter divided the total saving by the total project area to arrive at the per square feet benefit.

ii. The record establishes that the Petitioner actually availed post-GST ITC of Rs.2,07,76,653/-, whereas no CENVAT or VAT credit was actually availed during the pre-GST period. The difference represents the additional credit which became available to the Petitioner upon introduction of GST.

iii. The Petitioner's assertion that it was legally entitled to CENVAT credit in the pre-GST period cannot substitute actual availment of such credit. The ST-3 returns demonstrate that the Petitioner had actually availed NIL CENVAT credit. Consequently, the service tax paid on input services remained a cost to the Petitioner during the pre-GST period.

iv. The benefit under Section 171 of the CGST Act extends to ITC on goods as well as services. There is no basis for restricting the benefit to Rs.14,52,570/- merely because that amount represents the ITC on inward goods.

v. The GSTAT has considered the Petitioner's submissions, including the contention regarding the service tax paid during the pre-GST period and the alternative computation of Rs.1,39,93,358/-. The finding that the Petitioner had made an admission of profiteering is supported by the Petitioner's own written submissions before the erstwhile NAPA and this Court.

26. No other submissions have been made by the learned counsel representing the parties.

ANALYSIS AND FINDINGS:

27. The Court has carefully considered the submissions advanced on behalf of the learned counsel representing the parties and perused the material placed on record.

28. At the outset, it is necessary to delineate the scope of the present proceedings. The challenge before this Court is directed against an order passed by GSTAT after the matter had already undergone an earlier round of adjudication and had been remanded for reconsideration in accordance with the judgment of this Court in ***Reckitt Benckiser*** *(supra)*. The present proceedings are, therefore, not an appeal against the quantum determined by GSTAT. The jurisdiction under Articles 226 and 227 of the Constitution may undoubtedly be exercised where the statutory authority or Tribunal has acted contrary to the governing law, exceeded its jurisdiction or failed

to give effect to a binding direction of this Court. However, the jurisdiction is not intended to substitute the Court's own assessment of factual material for that of the specialised adjudicatory authority.

29. At this stage, it would be apposite to extract the relevant observations of this Court in ***Reckitt Benckiser*** *(supra)*, which govern the methodology for determination of profiteering in the real estate sector, for ready reference:

> *"124. This Court is of the view that no fixed/uniform method or mathematical formula can be laid down for determining profiteering as the facts of each case and each industry may be different. The determination of the profiteered amount has to be computed by taking into account the relevant and peculiar facts of each case. There is 'no one size that fits all' formula or method that can be prescribed in the present batch of matters. Consequently, NAA has to determine the appropriate methodology on a case to case basis keeping in view the peculiar facts and circumstances of each case.*
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> *129. However, this Court finds that the methodology adopted by NAA and DGAP to arrive at the profiteering amount of the real estate industry was generally based on the difference between the ratio of Input Tax Credit to turnover under the pre-Goods and Services and Tax and post- Goods and Services and Tax period. This Court is in agreement with the contention of the learned counsel for the petitioners representing the real estate companies that the methodology adopted by NAA is flawed as in the real estate sector, there is no direct correlation between the turnover and the Input Tax Credit availed for a particular period. The expenses in a real estate project are not uniform throughout the life cycle of the project and the eligibility of credit depends on the nature of the construction activity undertaken during the particular period. As it is an admitted position that neither the advances received nor the construction activity is uniform throughout the life cycle of the project, the accrual of Input Tax Credit is not related to the amount collected from the buyers. This Court is in agreement with learned counsel of the petitioners that one needs to calculate the total savings on account of introduction of Goods and Services and Tax for each project and then divide the same by total area to arrive at the per square feet benefit to be passed on to each flat buyer. This would ensure that flat-buyers with equal square feet area received equal benefit. The Court, while hearing the present*

batch of matters on merits, shall take the aforesaid direction/interpretation into account.

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157. Both the Central as well as the State Government had no intent of collecting additional Goods and Services Tax on the higher price as they had sacrificed their revenue in favour of the buyer. By compelling the buyers to pay the additional Goods and Services Tax on a higher price, the supplier has not only defeated the intent of the Governments but has also acted against the interest of the consumer and therefore, the Goods and Services Tax collected by him on the additional realization has rightly been included in the profiteered amount."

30. The principal contention of the Petitioner is that the remand pursuant to ***Reckitt Benckiser*** *(supra)* was not properly complied with. According to the Petitioner, the DGAP has merely replaced the expression "turnover" with "purchase value" and has thereby continued to apply the very methodology which this Court had rejected.

31. The contention, however, proceeds on an incomplete reading of Paragraph No.129 of ***Reckitt Benckiser*** *(supra)*. This Court did not hold that every comparison between the pre-GST and post-GST period was impermissible. What was found to be flawed was the methodology which sought to determine the benefit in the real estate sector merely by comparing the ratio of ITC to turnover, on the premise that ITC accrual and turnover move in a corresponding manner. The reason for rejecting that methodology was that expenses and construction activity are not uniform throughout the life cycle of a real estate project and the accrual of ITC is not necessarily related to the amounts collected from buyers. The Court consequently directed that the total savings on account of introduction of GST for the project be determined and divided by the total area.

32. In the present case, the DGAP did not apply the earlier ITC-to-turnover ratio to determine the benefit. The revised exercise was undertaken by examining the purchase value of goods and services, determining the ITC actually availed during the post-GST period, calculating the resultant additional ITC benefit and thereafter dividing the project-level saving by the total project area. The calculation ultimately adopted was Rs.2,07,65,434/- as the total saving, Rs.76.895 per square foot as the corresponding project-level saving and Rs.2,07,08,131/- as the amount relatable to the sold area.

33. The distinction is significant. The purchase value has not been used as a proxy for turnover for the purpose of determining a benefit relatable to the amounts realised from individual buyers. It has been used as the denominator for quantifying the proportion of ITC available against the project expenditure during the relevant period. The resulting saving has thereafter been converted into a project-wide per square foot figure, precisely so that the benefit is distributed with reference to the area of the flats. This is materially different from the methodology considered and rejected by this Court in ***Reckitt Benckiser*** *(supra)*.

34. The final step adopted by the DGAP is, in fact, directly aligned with the direction contained in Paragraph No.129 of ***Reckitt Benckiser*** *(supra)*. The total saving is first determined at the project level and is thereafter divided by the total area. The benefit relatable to each recipient is then determined by applying the per square foot figure to the area sold to that recipient. GSTAT specifically considered this

aspect and found that the methodology adopted by the DGAP took into account the total area and the total sold area for determining the benefit.

35. It is, therefore, not possible to accept the submission that the DGAP has simply resurrected the earlier methodology by changing the denominator from “turnover” to “purchase value”. The exercise undertaken after remand has a different operative basis. The question is not whether the methodology is the only possible methodology, but whether it is a fair and reasonable methodology consistent with the specific direction issued by this Court. The material placed on record does not establish that the methodology adopted is contrary to the said direction.

36. The next and more substantial contention concerns the treatment of pre-GST CENVAT credit. The Petitioner asserts that CENVAT credit of approximately Rs.2,38,25,609/- was legally available in respect of service tax paid on input services, although the same was not actually availed. The Petitioner consequently submits that the post-GST ITC on input services cannot be regarded as an additional benefit.

37. The distinction between eligibility and actual availment is material in the facts of the present case. The DGAP did not proceed on the assumption that the Petitioner could never have claimed CENVAT credit under the pre-GST regime. Its finding was based upon the actual statutory returns maintained by the Petitioner. As noticed by GSTAT, the ST-3 returns for the relevant pre-GST period reflected

NIL CENVAT credit actually availed. In contrast, the Petitioner admittedly availed GST ITC of Rs.2,07,76,653/- during the post-GST period.

38. Section 171 of the CGST Act is concerned with the benefit of ITC actually accruing to the supplier and its consequential passing on to the recipient. The question before the authorities was, therefore, not whether the Petitioner could theoretically have availed a particular credit had it acted differently during the pre-GST period. The relevant factual question was whether the Petitioner had, in fact, enjoyed the benefit of such credit during the pre-GST period. The record demonstrates that it had not.

39. The Petitioner's own affidavit before GSTAT records that, although it considered itself eligible for CENVAT credit of Rs.2,38,25,609/-, it had not claimed the same due to an alleged human error and had paid the service tax in cash. The factual position that emerges, therefore, is that the credit was not availed and was not utilised by the Petitioner during the pre-GST period.

40. The consequence is that the Petitioner cannot, for the purposes of determining the benefit actually available to it upon introduction of GST, notionally treat an unavailed credit as though it had already reduced its pre-GST tax incidence. Such an exercise would amount to comparing actual post-GST benefit with a hypothetical pre-GST benefit. The anti-profiteering determination, however, has to proceed on the economic benefit which actually accrued under the respective tax regimes.

41. The submission that the post-GST ITC relating to services must nevertheless be excluded because CENVAT credit was legally available under the earlier regime also overlooks the specific factual finding that the Petitioner had not availed such credit. The DGAP expressly relied upon the ST-3 returns and treated the service tax paid on input services as a cost during the pre-GST period. GSTAT accepted this factual position. There is no material before this Court demonstrating that the finding regarding NIL actual CENVAT availment is factually incorrect.

42. The contention that only ITC of Rs.14,52,570/- on inward goods can constitute the benefit is consequently not sustainable. The distinction between goods and services is not determinative where the question is the total additional ITC actually availed by the supplier after introduction of GST. The material placed before GSTAT demonstrated that the post-GST ITC comprised Rs.14,52,570/- on inward goods and Rs.1,93,28,564/- on inward services. GSTAT considered the contention of the Petitioner but found no basis to exclude the latter merely because the Petitioner asserted that CENVAT credit could have been availed under the earlier regime.

43. The contention relating to the increase in the rate of tax also does not advance the Petitioner's case. The Petitioner has relied upon the fact that the tax incidence on services increased under the GST regime and submits that the corresponding increase in ITC cannot, by itself, be treated as a benefit. This submission, however, does not demonstrate any error in the particular computation undertaken in the

present case. The DGAP has not treated the entire post-GST ITC as an arbitrary windfall. It has quantified the additional ITC against the purchase value during the post-GST period and thereafter determined the project-level saving and the per square foot benefit.

44. More importantly, the Petitioner's contention regarding the higher tax incidence was itself considered in the earlier proceedings and was incorporated in the alternative computation furnished by the Petitioner. The GSTAT noticed that the Petitioner had, without prejudice, itself worked out an alternative profiteering figure of Rs.1,39,93,358/- on the assumption that the increase in ITC attributable to the higher tax incidence was excluded.

45. The aforesaid alternative computation, however, cannot be treated as determinative of the actual liability under Section 171. At the same time, the fact that the Petitioner had furnished such a computation is relevant to demonstrate that the issue was not ignored by the adjudicatory authorities. GSTAT examined the alternative computation and thereafter proceeded to determine the quantum on the basis of the methodology which it found to be consistent with ***Reckitt Benckiser*** *(supra)*.

46. The Court is also unable to accept the submission that GSTAT's finding regarding admission, by itself, vitiates the Impugned Order. It is true that a submission expressly made "without prejudice" must be read in the context in which it was made and cannot mechanically be treated as an unconditional admission of liability. However, the Impugned Order does not rest solely upon the alleged admission.

GSTAT independently examined the DGAP's computation, the project purchase value, the ITC actually availed, the project area and the sold area, and thereafter upheld the determination of Rs.2,07,08,131/-.

47. Thus, even assuming that the Petitioner's alternative submission should not have been described as a conclusive admission, the same would not undermine the substantive basis upon which the Impugned Order rests. The determination of profiteering is independently supported by the computation undertaken by the DGAP and considered by GSTAT.

48. The Petitioner has further relied upon the expenditure incurred towards installation of a sub-station and allied electrical infrastructure and has contended that the said expenditure was ultimately borne by the Petitioner and was not recovered from the homebuyers. The Petitioner seeks to rely upon the aforesaid expenditure as a factor which, according to it, should be taken into consideration while determining the benefit, if any, required to be passed on.

49. This Court does not consider it necessary to express any view on the aforesaid aspect in the present proceedings. The question as to whether such expenditure is liable to be recovered from the homebuyers or not will depend upon the agreements and other documents executed into between the parties. If permissible in law, the Petitioner may avail such remedy in accordance with law. This Court makes it clear that it has not examined or adjudicated upon the aforesaid issue. The controversy before this Court is principally

confined to the methodology adopted for determination of the benefit arising on account of additional ITC.

50. It is also relevant that the methodology mandated in ***Reckitt Benckiser*** *(supra)* does not contemplate a broad balancing of every commercial expense incurred by a developer against the ITC benefit. The direction was to determine the total savings arising from introduction of GST and thereafter distribute that benefit on a per square foot basis. The exercise cannot be converted into an unrestricted enquiry into every commercial cost or expenditure of the project.

51. The central factual position in the present case remains undisputed: the Petitioner availed NIL CENVAT/VAT credit during the pre-GST period, whereas it availed GST ITC of Rs.2,07,76,653/- during the post-GST period. The DGAP then quantified the additional benefit against the post-GST purchase value and distributed the resulting project-level saving over the total area. GSTAT has examined and accepted the said exercise.

52. The Court is conscious that Paragraph No.124 of ***Reckitt Benckiser*** *(supra)* holds that no fixed or uniform mathematical formula can be prescribed for determination of profiteering and that the methodology must take into account the peculiar facts of each case. This principle, however, does not mean that every methodology adopted by the authorities is impermissible merely because it involves a mathematical computation. What is required is that the methodology be fair, reasonable and responsive to the peculiarities of the particular

project.

53. The submission that the authorities were required to determine some further or different measure of "actual economic benefit" essentially invites this Court to undertake a fresh factual exercise and substitute its own computation for that undertaken by the DGAP and affirmed by GSTAT. Such an exercise would, in the facts of the present case, amount to exercising appellate jurisdiction over the findings of GSTAT, which is not the scope of the present proceedings under Articles 226 and 227 of the Constitution.

54. It is also significant that the Impugned Order was passed after the Petitioner had been afforded repeated opportunities of hearing. The GSTAT proceedings commenced on 26.09.2025 and hearings were thereafter held on several dates, including 13.10.2025, 17.12.2025, 06.01.2026, 29.01.2026, 11.02.2026 and 02.03.2026. The Petitioner filed written submissions and was specifically directed to place on record material regarding the rate of service tax applicable during the pre-GST period. The Petitioner thereafter filed its affidavit dated 09.02.2026.

55. The grievance of the Petitioner is thus not that it was denied an opportunity to present its case. On the contrary, the record demonstrates that its principal submissions regarding the applicability of ***Reckitt Benckiser*** *(supra)*, pre-GST CENVAT credit, the distinction between goods and services, the increased tax incidence, the alternative computation and the project expenditure were placed before GSTAT. The disagreement is with the conclusions reached by

GSTAT upon consideration of those submissions.

56. A distinction must be maintained between a case where the Tribunal fails to consider a material contention altogether and a case where the contention is considered but rejected. The former may, in an appropriate case, warrant judicial review. The latter ordinarily does not, unless the conclusion suffers from a manifest error of law or is such that no reasonable adjudicatory authority could have arrived at it.

57. The addition of GST at the rate of 12% to the profiteered amount also does not warrant interference. GSTAT has relied upon Paragraph No.157 of ***Reckitt Benckiser*** *(supra)*, wherein this Court considered the consequence of GST being collected on the additional realisation and held that such GST was liable to be included in the profiteered amount. The Impugned Order has accordingly added Rs.24,84,976/- to the principal profiteered amount of Rs.2,07,08,131/-.

58. Likewise, the direction for payment of interest at the rate of 18% follows from the statutory scheme and has been specifically recorded by GSTAT while directing payment of the amount to the individual homebuyers. The Petitioner has not demonstrated any independent jurisdictional infirmity in the said direction.

59. On an overall consideration of the matter, therefore, this Court finds that the Impugned DGAP Report cannot be said to have ignored the judgment in ***Reckitt Benckiser*** *(supra)*. The methodology adopted after remand is materially different from the earlier ITC-to-turnover

methodology which had been rejected by this Court. The use of purchase value for quantifying the additional ITC and the subsequent division of the project-level saving by the total area is not, by itself, contrary to Paragraph No.129 of the judgment.

60. The further challenge to the treatment of pre-GST CENVAT credit also cannot be accepted. The Petitioner may have been legally entitled to claim such credit. However, the authorities were justified in examining the actual ITC availed during the respective periods rather than introducing a hypothetical credit into the pre-GST computation.

61. The Court also finds no basis to hold that GSTAT acted beyond the scope of the remand or failed to consider the material placed before it. The Impugned Order may not accord with the interpretation of the Petitioner, but a mere disagreement with the appreciation of the material or with the methodology adopted, when the methodology is within the parameters laid down by this Court, does not constitute a ground for interference under writ jurisdiction.

62. The present case, therefore, does not disclose any patent jurisdictional error, manifest illegality or failure to comply with the binding directions issued by this Court in ***Reckitt Benckiser*** *(supra)*.

CONCLUSION:

63. In view of the foregoing discussion, this Court is of the considered view that the Petitioner has failed to establish any ground warranting interference with the Impugned Order dated 23.03.2026 passed by GSTAT.

64. Accordingly, the present Writ Petition, along with the pending applications, is dismissed.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 28, 2026
s.godara/shah