



2024/ADD/97 International Boxing Association v. Gitika Narwal

**ARBITRAL AWARD**

delivered by the

**ANTI-DOPING DIVISION  
OF THE COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

Sole Arbitrator: Mr Lachlan Gyles SC, Barrister at Law, Sydney, Australia

in the arbitration between

**International Boxing Association**, Switzerland

Represented by Mr Adam Klevinas, External Legal Counsel, International Testing Agency, Lausanne, Switzerland

**Claimant**

and

**Ms Gitika Narwal**, India

Represented by Mohammad Nizamuddin Pasha, Advocate, Delhi

**Respondent**

## **I. PARTIES**

1. The International Boxing Association (“IBA”) is the world governing body for boxing and is a signatory to the World Anti-Doping Code (the “WADC”) established by the World Anti-Doping Agency (“WADA”). In accordance with its obligations as a signatory to the WADC, the IBA has enacted the IBA Anti-Doping Rules (“IBA ADR”).
2. Ms Gitika Narwal (“the Athlete”) has been competing in International Events since at least 2021, including at the 2021 AIBA Youth World Boxing Championships, where she won the gold medal in the light flyweight category.

## **II. FACTUAL BACKGROUND**

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced in this proceeding. Additional facts and allegations found in the Parties’ written briefs and evidence may be set out, where relevant, in connection with the consideration of the merits that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceeding, he refers in the Award only to the submissions and evidence he considers necessary to explain his reasoning as it relates to the Athlete’s sanctions.
4. This proceeding concerns an allegation by IBA that the Athlete committed an Anti-Doping Rule Violation (“ADRV”) in contravention of Art 2.4 of the IBA ADR, being a whereabouts failure, by having committed the following alleged missed tests / filing failures:
  - a) Missed test on 25 September 2022;
  - b) Missed test on 20 November 2022;
  - c) Filing failure on 1 April 2023.
5. On 5 July 2022, the Athlete was notified of her inclusion in the IBA Registered Testing Program (“IBA RTP”), the obligations stemming from such inclusion and the consequences of any failure to comply with the whereabouts requirements as set forth in the IBA ADR.
6. By that notification the Athlete was informed that she was required to (a) file quarterly Whereabouts Filings before the beginning of each quarter; (b) update the whereabouts information when necessary; and (c) be available and accessible for unannounced Testing at the location indicated in her Whereabouts Filings at any time and at any place, including but not limited to during her indicated 60-minute time slot.
7. The Athlete was also informed by way of the notification that she would remain in the IBA RTP until she was otherwise informed by the IBA or if she duly notified the IBA of her retirement from the sport.
8. On 21 August 2022, Bhaskar Chandra Bhatt, the Head Coach of the Elite Women's National Team, returned a copy of the Athlete’s IBA RTP inclusion acknowledgement form dated 16 August 2022, duly filled out and signed by her, confirming that she understood (a) that she was

part of the IBA RTP, (b) her obligations as an IBA RTP athlete, and (c) the consequences of any failure to comply with the whereabouts requirements.

9. Over the course of the next year, the Athlete generally complied with her whereabouts obligations and provided the required information which enabled India's National Anti-Doping Agency to test the Athlete Out-of-Competition on 27 August 2022, and the International Testing Agency ("ITA"), on behalf of IBA, to test the Athlete Out-of-Competition 24 December 2022 and 12 February 2023, respectively.
10. However, IBA alleges that on three occasions, the Athlete failed to provide the compulsory whereabouts filings or to be available for Testing at the location provided for such purpose and this led to the recording of three Whereabouts Failures, as described below.

MISSED TEST- 25 SEPTEMBER 2022 ("FIRST WHEREABOUTS FAILURE")

11. On 25 September 2022, the Athlete failed to make herself available for Testing during the 60-minute time slot indicated in her Whereabouts Filings for that day.
12. The Doping Control Officer ("DCO") sets out in the Unsuccessful Attempt Report ("UAR"), that the Athlete could not be located at "Room No. 4, PT Usha Ladies Hostel, NSNIS, Moti Bogh, Patiala, Punjab, 147001, India" for an unannounced Out-of-Competition test ("OOC test") between 5:10am and 6:15am at the aforementioned address, which she had registered in the Anti-Doping Administration & Management System ("ADAMS") for 26 September 2022 for her 60-minute time slot between 5:00am and 6:00am.
13. Starting at 5:55am, the DCO says that he attempted to call the Athlete eight times but there was no response. The DCO left the Athlete a voicemail at 6:12am and, after missing the Athlete's return call at 10:53am, the DCO called her back at 11:51am. The Athlete told the DCO that she had to leave the above-mentioned address due to an emergency at home, and that she was unable to return to the camp. However, she said that she forgot to update her whereabouts information, which she said she would do in the future.
14. On 6 October 2022, the Athlete was notified of the unsuccessful attempt and that it constituted a potential Missed Test and was invited to provide her explanation.
15. The Athlete did not respond to the aforementioned notification, despite being sent a reminder on 25 October 2022, and this resulted in a Missed Test being recorded against her on 8 March 2023. The Athlete did not request an administrative review of the decision to record the Missed Test.

MISSED TEST- 20 NOVEMBER 2022 ("SECOND WHEREABOUTS FAILURE")

16. On 20 November 2022, the Athlete failed to make herself available for Testing during the 60-minute time slot indicated in her Whereabouts Filings for that day.
17. The UAR, on 20 November 2022 states that the Athlete could not be located at "NSNIS Hostel Room 4, Patiala, Haryana 147001, India" between 5:30am and 5:38am for an unannounced

OOB test. The Athlete's 60-minute time slot for this day was between 5:00- 6:00 am at the aforementioned address.

18. After entering the premises, the DCO and the Blood Control Officer ("BCO") were accompanied by the warden to the Athlete's room, but were told that all of the boxers, including the Athlete, had left the location a few days prior. The Athlete's door was locked and, since she was not present, the DCO terminated the attempt at 5:38am.
19. On 5 December 2022, the Athlete was notified of the unsuccessful attempt and that it constituted a potential Missed Test and was invited to provide her explanation.
20. The Athlete did not respond to the aforementioned notification, despite being sent a reminder on 4 January 2023, and this resulted in a Missed Test being recorded against her on 28 April 2023. It is noted that the Athlete did not request an administrative review of this decision.

FILING FAILURE- 1 APRIL 2023 ("THIRD WHEREABOUTS FAILURE")

21. On 14 April 2023, the Athlete was notified by the ITA of an apparent Filing Failure that occurred on 1 April 2023. Specifically, she was informed that she had failed to provide her whereabouts information for the second quarter of 2023.
22. The Athlete did not respond to the aforementioned notification, despite being sent a reminder on 18 September 2023, and this resulted in a Filing Failure being recorded against her on 25 October 2023.
23. It is noted that, although the Athlete contacted the ITA on 27 October 2023 and again on 25 November 2023 and 5 December 2023, she did not request an administrative review of this decision despite the ITA reminding her of her right to make such a request on 23 November 2023 and 5 December 2023.

THE RESULTS MANAGEMENT PROCEEDINGS

24. On 25 March 2024, the ITA notified the Athlete of an apparent ADRV under Article 2.4 of the IBA ADR as three Whereabouts Failures had been recorded against her within a 12-month period ("Notice of Apparent ADRV"). The Athlete was informed of her procedural rights, including her right to accept a voluntary Provisional Suspension, and was asked to provide explanations. She was also informed of the scope of Article B.3.5 of the International Standard for Results Management ("ISRM") and the possibility to file new evidence pertaining to each of her individual Whereabouts Failures.
25. On 27 March 2024, the Athlete provided her explanation, in which she indicated as follows:
  - For the First and Second Whereabouts Failures, she had planned to be at home, in Rohtak [on the days of the Missed Tests], but a close family member fell ill, and she had to leave her hometown urgently and she did not know how to update her whereabouts information or the consequences of not doing so; and

- For the 3<sup>rd</sup> Whereabouts Failure, she tried to upload and update her whereabouts information but could not access the whereabouts option [on ADAMS].
- 26. In her Athlete Rights Form, the Athlete indicated that she challenged the assertion of the ADRV by the ITA.
- 27. On 27 March 2024, the ITA acknowledged receipt of the Athlete's explanations and the Athlete Rights Form, and sought clarification regarding whether or not she was willing to accept a voluntary Provisional Suspension. However, no response was received from the Athlete.
- 28. On 23 April 2024, the ITA informed the Athlete that it remained satisfied that she had committed an ADRV and charged her with a violation of Article 2.4 of the IBA ADR ("Notice of Charge"). The ITA further informed the Athlete that, at this stage, she had failed to establish that no negligent behaviour caused or contributed to the First, Second and/or Third Whereabouts Failures and that there were no mitigating factors justifying a departure from the standard applicable period of Ineligibility of two years.
- 29. Pursuant to Article 8.3 of the IBA ADR, the ITA proposed an Agreement on Consequences to the Athlete pursuant to which she would serve a two-year period of Ineligibility, in addition to the Disqualification of her results. The ITA also informed her that the case would be referred to CAS ADD should the Athlete refuse to agree to the proposed Consequences of the ADRV.
- 30. On 4 May 2024, the Athlete's legal representative sent a response with her position regarding the Notice of Charge and her request for a hearing before the CAS ADD.
- 31. On 21 May 2024, the Athlete's legal representative resent the 4 May 2024 email to the ITA. The ITA responded, acknowledged receipt of the Athlete's position and indicated that it would proceed to refer the Athlete's case to the CAS ADD in due course.
- 32. The Athlete's legal representative responded thereafter and provided a copy of the 4 May 2024 letter sent to the ITA.
- 33. In that background the ITA has referred the proceedings to the CAS ADD to determine whether the Athlete has committed an ADRV and, if so, the Consequences to be imposed.

### **III. PROCEEDINGS BEFORE THE COURT OF ARTIBRATION FOR SPORT**

- 34. On 29 May 2024, the IBA filed a Request for Arbitration with the CAS ADD. The request waived IBA's right to appoint a sole arbitrator by mutual agreement, and requested that a sole arbitrator be appointed by the President of the CAS ADD.
- 35. On 7 June 2024, the Managing Counsel of the CAS ADD informed Lachlan Gyles SC that he had been appointed by the President of the Division as sole arbitrator in the proceedings. Such appointment was confirmed and the parties were notified accordingly.
- 36. On 20 June 2024, the Athlete requested a 10-day extension of time to file her answer to the request for arbitration. There was no opposition to this request and an extension of time was granted. The Athlete's answer was filed with the CAS ADD on 3 July 2024 and distributed to the parties on 4 July 2024.

37. On 4 July 2024, the Athlete requested a hearing be held in the matter, by video conference.
38. On 2 August 2024, the matter was fixed for an audio-visual hearing on Monday, 23 September 2024 to commence at 10:30 am (Central European Time (CET)).
39. On 13 August 2024 the parties were provided with, and requested to sign and return, a copy of the Order of Procedure for the matter. The Order of procedure was duly signed and returned by the Athlete and a hearing scheduled for the audio-visual hearing of the matter was agreed between the parties and approved by the sole arbitrator.
40. On 23 September 2024 a video hearing was held. The sole arbitrator was assisted by the provision of secretarial duties by Mr Fabian Cagneux, the Managing Counsel of the CAS ADD. Mr Klevinas appeared for and participated in the hearing on behalf of the ITA/IBA, and the participants for the Athlete are listed below:

Mr Mohommed Nizamuddin Pasha  
Mr Moushtak Salim  
Mr Sachen Dubey  
Ms Awstika Das (Legal Counsel)  
Ms Gitika Narwal (the Athlete)  
Mr Bhaskar Chandra Bhatt  
Mr Sumya Jyoti Halder  
Mr Shubham Ahuja  
(Witnesses)  
Mr Syed Aamir Hussain (Interpreter)

41. During the hearing Counsel for the Athlete sought the opportunity to provide a short supplementary written submission in relation to some of the authorities referred to by Mr Klevinas during the hearing. That was not opposed, and leave was granted.
42. At the conclusion of the hearing the parties confirmed that their right to be heard had been fully and fairly respected.
43. On 1 October 2024 a Rejoinder to case law was filed by the Athlete in accordance with the leave provided.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **THE CLAIMANT**

##### **Out-of-Competition Testing and Whereabouts duties of RTP athletes**

44. IBA submits that no Advance Notice OOC Testing is a significant and fundamental element of the IBA anti-doping programme to combat the threat of doping to the integrity of boxing.
45. An effective Testing programme, it submits, cannot simply rely on In-Competition Sample Collection when there is a general expectation, and, therefore, predictability, that Testing may take place during a Competition.



46. Regardless of the risks of doping associated with a specific sport, OOC Testing must be carried out in order to "detect and deter doping practices".
47. As set forth by Article 4.8.1 of the International Standard for Testing and Investigations ("ISTI"): "[w]hereabouts information is not an end in itself, but rather a means to an end, namely the efficient and effective conduct of No Advance Notice Testing."
48. It is for this reason that athletes' whereabouts duties must be closely monitored and strictly enforced. Where athletes repeatedly fail to meet their whereabouts responsibilities, the appropriate Consequences must be imposed (regardless of whether there is evidence of the use of Prohibited Substances or Prohibited Methods). Otherwise, the whereabouts system will have no teeth and no deterrent force.
49. In the award *CAS 2020/A/7528 Christian Coleman v World Athletics*, the panel emphasised the following: "*[w]hile whereabouts requirements are onerous on Athletes they are necessary in order (1) to facilitate no advance notice out-of-competition testing, and (2) to allow Athletes to claim with credibility that they are subject to testing at any time so that the public can have confidence that the Athletes are clean.*"
50. The panel in *CAS 2020/A/7526 & 7559 WADA & World Athletics v Naser* stated that, "*while the Panel recognizes that said system may impose substantial demands upon athletes in terms of sacrifice of freedom or privacy, it is the price they all pay to reap the benefits of participation in what should be a drug-free sport. All athletes must thus be held accountable when they fail, for whatever reason, to abide by their whereabouts obligations, in order to maintain the system's credibility and integrity and to protect clean athletes. In fact, in a similar vein, a CAS panel has previously held that 'the anti-doping rules are necessarily strict in order to catch athletes that do cheat by using drugs and the rules therefore can sometimes produce outcomes that many may consider unfair. This case should serve as a warning to off athletes that the relevant authorities take the provision of Whereabouts Information extremely seriously as they are a vital part in the ongoing fight against drugs in the sport'* (*CAS 2006/A/1165 Christine Oburuogu v UKA & LAAF, para. 21*)."
51. To facilitate effective OOC Testing, athletes included in RTPs are required - per Articles 4.8.8.2 and 4.8.8.3 of the ISTI - to provide complete and accurate information about their whereabouts for every day in a forthcoming quarter, including for a daily 60-minute time slot where they will be accessible and available for Testing during that period.
52. After her inclusion on the IBA RTP in July 2022, the Athlete complied with her obligations and provided the IBA with her whereabouts information for the upcoming quarters. This allowed the India's National Anti-Doping Authority and the IBA to conduct unannounced anti-doping controls on the Athlete, including on 27 August 2022, 24 December 2022 and 12 February 2023.
53. However, after her inclusion in IBA RTP in July 2022, the Athlete committed three whereabouts failures within a twelve-month period.
54. Taking into consideration the circumstances and the Athlete's explanations, the three whereabouts failures were recorded against the Athlete as follows:
  - a) a Missed Test on 25 September 2022;
  - b) a Missed Test on 20 November 2022; and

c) a Filing Failure on 1 April 2023.

55. The ITA submits that all requirements set forth in Articles B.2.1 and Article B.2.4 of ISRM are met and that the ITA, on behalf of the IBA, correctly recorded the three whereabouts failures against the Athlete.

**The Three Whereabouts Failures**

**1) The Athlete was duly notified of her RTP inclusion (First requirement under Article 8.2.1 (a) and 8.2.4 (a) ISRM)**

56. To record any whereabouts failure, the first requirement is to prove that the athlete was duly notified: (i) that they had been designated for inclusion in an RTP; (ii) of the consequent requirement to make whereabouts filings; (iii) of the Consequences of any failure to comply with that requirement; and, (iv) to be found liable for a Missed Test, they were unavailable for Testing during the 60-minute time slot specified in their whereabouts information. This is provided for at Article B.2.1 (a) of the ISRM, as it relates to Filing Failures, and B.2.4 (a) of the ISRM, as it relates to Missed Tests.
57. As explained above, the Athlete was included in the IBA RTP on 5 July 2022. Moreover, as evidence of such inclusion, the Athlete signed the RTP inclusion form on 16 August 2022, which was provided to the ITA on 21 August 2022, and which indicated her acknowledgement that she understood (a) that she was part of the IBA RTP, (b) her obligations as a RTP athlete, and (c) the consequences of any failure to comply with the Whereabouts requirements.
58. In addition, and as further evidence of the Athlete's awareness of her whereabouts requirements, she complied with her obligations and provided the IBA with her whereabouts information for the upcoming quarters. This allowed the National Anti-Doping Organization of India and the IBA to conduct Out-of-Competition tests on the Athlete, including on 27 August 2022, 24 December 2022 and 12 February 2023.
59. For the sake of brevity, the ITA therefore submits that the requirement of Article B.2.1 (a) and Article B.2.4 (a) of the ISRM are met for the three whereabouts failures committed by the Athlete as she was duly informed of her inclusion in the IBA RTP and ensuing obligations and consequences. In the following section, each whereabouts failure is assessed against the respective criteria of the ISRM. The analysis will demonstrate that each Whereabouts Failures must be upheld.

**Missed Test of 25 September 2022**

60. Article B.2.4 (b) of the ISRM requires that a DCO must have attempted to test the Athlete on a given day in the quarter, during the 60-minute time slot specified in the Athlete's whereabouts filing for that day, by visiting the location specified for that time slot.
61. On 25 September 2022, the Athlete indicated her 60-minute time slot at "Room No. 4, PT Usha Ladies Hostel, NSNIS, Moti Bagh, Patiala, Punjab, 147001, India" between 5:00 and 6:00. It was at this location and during this time that the DCO unsuccessfully tried to locate the Athlete. As such, the requirement in Article B.2.4 (b) of the ISRM has been met.



62. The next condition is that during the 60-minute period, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Athlete, short of giving the Athlete any advance notice of the test. This is provided for at Article B.2.4 (c) of the ISRM.
63. As indicated in the UAR, the DCO stayed at the aforementioned location for just over an hour (from 5:10-6:15am), and, at 5:55am, tried to call the Athlete on the phone number indicated in her whereabouts information no less than eight times before leaving her a voicemail at 6:12am.
64. It was only at 11:51am, when the Athlete and DCO spoke, that the Athlete explained that she had to leave her location due to an emergency at home, preventing her from being able to return to the location, and that she had forgotten to update her whereabouts information.
65. In light of the above, the ITA considers that the DCO did what was reasonable to locate the Athlete in the circumstances. The DCO waited for the Athlete for over an hour and made several phone calls to her in the last five minutes of her 60-minute time slot, only to learn that the Athlete was not in the location specified in her whereabouts information because she had forgotten to update the information.
66. It is noted that the requirement of prior notice of a previous Missed Test as provided at Article B.2.4. d) of the ISRM is not applicable with respect to the 25 September 2022 Missed Test because it was the Athlete's first Whereabouts Failure.
67. Finally, Article B.2.4 (e) of the ISRM requires the Athlete's failure to be "at least negligent". For these purposes, the above-mentioned rule provides that:

*The Athlete's non-availability for Testing at the specified location during the specified 60-minute time slot was at least negligent. For these purposes, the Athlete will be presumed to have been negligent upon proof of the matters set out at sub-Articles*

*B.2.4 (a) to (d) That presumption may only be rebutted by the Athlete establishing that no negligent behaviour on their part caused or contributed to their failure (i) to be available for Testing at such location during such time slot, and (ii) to update their most recent Whereabouts Filing to give notice of a different location where they would instead be available for Testing during a specified 60-minute time slot on the relevant day.*

68. Over the course of the Results Management of the individual whereabouts failure and during these proceedings, the Athlete provided somewhat conflicting versions of accounts.
69. In the UAR, the Athlete informed the DCO that she had forgotten to update her whereabouts information after returning home for an emergency; however, in her 27 March 2024 explanations, she said she did not know how to update her whereabouts information or the consequences for not doing so.
70. However, the ITA notes that the Athlete was informed, in her IBA RTP inclusion letter, that she was required to provide updated and accurate whereabouts filings, and that she must update her whereabouts information as soon as she became aware of a change in her schedule or location. She was also informed that changes should be filed directly in ADAMS, either online or via the ADAMS mobile phone app or, exceptionally, via the SMS function. The IBA RTP inclusion letter also set out the sanctions if the Athlete was non-compliant with her IBA RTP obligations.

71. Moreover, the Athlete never contacted the ITA for assistance with filing or updating her whereabouts information.
72. Finally, the ITA notes that the Athlete did not request the administrative review of the ITA's decision to record the Missed test of 25 September 2022.
73. Irrespective of whether the Athlete forgot to update her whereabouts information or her claim that she did not know how to update her whereabouts information or the consequences for not doing so (which the ITA considers does not discharge the Athlete's burden of establishing that there was no negligent behaviour on her part that caused or contributed to the First Whereabouts Failure), the ITA submits that the first Missed Test should be upheld.

**2) Missed Test of 20 November 2022**

74. Article B.2.4 (b) of the ISRM requires that a DCO must have attempted to test the Athlete on a given day in the quarter, during the 60-minute time slot specified in the Athlete's whereabouts filing for that day, by visiting the location specified for that time slot.
75. On 20 November 2022, the Athlete indicated her 60-minute time slot at "NSNIS Hostel Room 4, Patiala, Haryana 147001, India" between 5:00 and 6:00. It was at this location and during this time that the DCO unsuccessfully tried to locate the Athlete. As such, the requirement in Article B.2.4 (b) of the ISRM has been met.
76. The next condition is that during the 60-minute period, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Athlete, short of giving the Athlete any advance notice of the test. This is provided for at Article B.2.4 (c) of the ISRM.
77. As indicated in the UAR, the DCO and BCO stayed at the aforementioned location from 5:30-5:38am, but did not stay for the full hour after being informed by the warden that the Athlete had departed for home a few days earlier.
78. In light of the above, the ITA considers that the DCO and BCO did what was reasonable to locate the Athlete in the circumstances. After receiving confirmation that the Athlete was not present at her designated location, and had not been for a few days, and that she was not in the city, there was no reason for the DCO and BCO to remain on site for the remainder of the Athlete's 60-minute time slot. Moreover, the Athlete never suggested that she was in the immediate vicinity of her designated location at this time.
79. It is noted that the requirement of prior notice of a previous Missed Test as provided at Article B.2.4 (d) of the ISRM is satisfied in relation to the Second Whereabouts Failure. The Athlete was notified of her 25 September 2022 Missed Test on 6 October 2022, prior to the occurrence of the 20 November 2022 Missed Test.
80. Finally, Article B.2.4 (e) of the ISRM requires the Athlete's failure to be "at least negligent". For these purposes, the aforementioned article provides that:

*The Athlete's non-availability for Testing at the specified location during the specified 60-minute time slot was at least negligent. For these purposes, the Athlete will be presumed to have been negligent upon proof of the matters set out at sub-Articles*

*B.2.4 (a) to (d). That presumption may only be rebutted by the Athlete establishing that no negligent behaviour on their part caused or contributed to their failure (i) to be available for Testing at such location during such time slot, and (ii) to update their most recent Whereabouts Filing to give notice of a different location where they would instead be available for Testing during a specified 60-minute time slot on the relevant day.*

81. As with the First Whereabouts Failure, the Athlete has alleged in her 27 March 2024 explanation that she did not know how to update her whereabouts information or the consequences for not doing so.
82. However, as mentioned above, the Athlete was informed, in her IBA RTP inclusion letter, that she was required to provide updated and accurate whereabouts filings, and that she must update her whereabouts information as soon as she became aware of a change in her schedule or location. She was also informed that changes should be filed directly in ADAMS, either online or via the ADAMS mobile phone app or, exceptionally, via the SMS function. The IBA RTP inclusion letter also set out the sanctions if the Athlete was non-compliant with her RTP obligations.
83. The Athlete never contacted the ITA for assistance with filing or updating her whereabouts information.
84. Finally, the ITA notes that the Athlete did not request the administrative review of the ITA's decision to record the Missed test of 20 November 2022.
85. In light of the circumstances, the ITA reiterates that, irrespective of whether the Athlete forgot to update her whereabouts information or her claim that did not know how to update her whereabouts information or the consequences for not doing so (which the ITA considers does not discharge the Athlete's burden of establishing that there was no negligent behaviour on her part that caused or contributed to the Second Whereabouts Failure), the second Missed Test should be upheld.

### **3) Filing Failure of 1 April 2023**

86. In order to record a Filing Failure, Article B.2.1 (b) of the ISRM requires that the Athlete failed to comply with the requirement to make a whereabouts filing by the applicable deadline. The comment to Article B.2.1 (b) of the ISRM further specifies that such failure is notably confirmed where an athlete fails to update the filing as required by Article 4.8.8.6 of the ISTI.
87. In the case at hand, and as explained above, the Athlete failed to submit her Whereabouts Information for the second quarter of 2023, despite receiving four reminders to do so.
88. The ITA acknowledges that, although the Athlete filed her whereabouts information on 9 March 2023, she did not submit her whereabouts information until 15 April 2023, after she received the notification of an apparent Filing Failure on 14 April 2023. It is the ITA's position, based on the relevant case law, that an athlete's failure to submit their whereabouts information, even if it has been filed (or entered) in ADAMS, constitutes a failure to comply with the requirement found in Article B.2.1 (b) of the ISRM.

89. Article B.2.1 (c) of the ISRM requires that, in the case of a second or third Filing Failure, the athlete is given notice of the previous Filing Failure, while Article B.2.3 ISRM requires that where an unsuccessful attempt has been made to test an Athlete during one of the 60 minute time slots specified in their Whereabouts Filing, any subsequent unsuccessful attempt to test that Athlete (by the same or any other Anti-Doping Organization) during one of the 60 minute time slots specified in their whereabouts filing may only be counted as a Missed Test (or, if the unsuccessful attempt was because the information filed was insufficient to find the Athlete during the time slot, as a Filing Failure) against that Athlete if that subsequent attempt takes place after the Athlete has received notice, in accordance with Article B.3.2 (d) of the ISRM, of the original unsuccessful attempt.
90. In the case at hand, as the Athlete was given notice of the 25 September 2022 and 20 November 2022 Missed Tests on 6 October 2022 and 5 December 2022 respectively, prior committing the 1 April 2023 Filing Failure, this prior notice requirement is satisfied.
91. Regarding the negligence criterion set forth by Article B.2.1 (d) of the ISRM, the Athlete explained that she tried to upload and update her whereabouts information but could not access the whereabouts option in ADAMS. Considering that the Athlete was able to successfully submit whereabouts information for the last two quarters of 2022, and the first quarter of 2023, and there is no evidence that the Athlete sought assistance from the ITA or any other organization after she allegedly faced difficulties uploading her whereabouts information for the second quarter of 2023, the ITA submits that the Athlete is unable to demonstrate that she bears no negligence with regards to the 1 April 2023 Filing Failure.
92. The ITA therefore submits that all the requirements to record the 1 April 2022 Filing Failure against Ms Narwal are met.
93. In light of the foregoing, all the elements for recording the three Whereabouts Failures are satisfied and this constitutes an ADRV pursuant to Article 2.4 of the IBA ADR. Accordingly, ITA, on behalf of IBA concluded as follows:
1. *The present request is admissible.*
  2. *Ms Gitika Narwal is found to have committed an anti-doping rule violation pursuant to Article 2.4 of the IBA Anti-Doping Rules.*
  3. *Ms Gitika Narwal is sanctioned with a period of Ineligibility of two years.*
  4. *The period of Ineligibility shall start on the date on which the CAS ADD award enters into force.*
  5. *All competitive results of Ms Gitika Narwal from 1 April 2023 are Disqualified with all resulting Consequences, including forfeiture of any medals, points and prizes.*
  6. *The costs of the proceedings, if any, shall be borne by Ms Gitika Narwal.*
  7. *The ITA is granted an award for its legal and other costs pursuant to Article 10.12.1 of the IBA Anti-Doping Rules.*
  8. *Any other prayer for relief that the Hearing Panel deems fit in the facts and circumstances of the present case.*

**THE ATHLETE**

94. The Athlete in her submissions denies having committed an ADRV and in the alternative says that if she has, the sanction which has been imposed is grossly disproportionate and should not stand.
95. By way of background, the Athlete submits that she is from the remote village of Rithal in Haryana India. She has received her entire education with Hindi as the medium of instruction and whilst she did study English as a third language, her comprehension is limited to reading simple words and it is submitted that she struggles with even slightly complex words and sentences in that language. Her evidence is that the IBA RTP acknowledgement form which she filled in and signed on 16 August 2022 was essentially done with the guidance, and on the instructions of, Mr Bhatt, her Head Coach. The Athlete asserts that despite having signed the form, she did not comprehend her obligations as an RTP Athlete, nor the consequences of non-compliance with the relevant Anti-Doping Regulations. In respect of ADAMS, which was installed on the Athletes mobile device, she says this was done by Mr Bhatt and did not include an option in Hindi as the operating language. She says that when it came to enter the relevant whereabouts information, that Mr Bhatt assisted her to do that in respect of the filings which were due for August 2022, and again for the October / December 2022 quarter.
96. She says that she thereafter sought the assistance of her physiotherapist, Mr Halder who had obtained her user ID and password from Mr Bhatt for this purpose. The Athlete says that from that time she would inform Mr Halder of her whereabouts for the upcoming quarter, or any changes to her whereabouts for a particular period, and he would remotely submit the information into the ADAMS App. It is said that this arrangement continued from December 2022 until December 2023, with the exception of March 2023 when Mr Halder was unavailable. It is her evidence that she was not able to use the ADAMS App to update her whereabouts information on her own until after March 2024 when the interface changed making it easier to operate.
97. The Athlete submits having regard to such matters that it should be found that she made reasonable best efforts to comply with the requirements of the IBA ADR, to the extent that she understood them, and despite the challenges that she faced. It is said that the instances of compliance demonstrate her good faith in that endeavour. The breaches are also said to be merely technical violations and that she was doing her best.
98. In relation to the first alleged whereabouts failure on 25 September 2022, the Athletes position is relatively straight forward. She says that she was not at the hostel which had been notified as the location that she would be because she had been called to her hometown owing to a family emergency, and did not have the time or capacity to update the Schedule.
99. In relation to the second alleged whereabouts failure on 20 November 2022, the Athlete submits that the attempt to conduct the test was terminated after 8 minutes and that no attempt was made to contact her on the phone, and that she had returned to her village but neither understood the whereabouts requirements or knew how to update her whereabouts on the ADAMS portal.
100. In relation to the failure to enter her whereabouts details in March 2023, the Athlete says that Mr Halder had left her with her log in details and briefly explained how to enter the whereabouts information which she says she believed she had entered in advance of the relevant date but, to her shock, was subsequently told that the information had not uploaded.

101. She said in a statement that *“it appears that the whereabouts information that I had filed on the ADAMS portal had not been successfully submitted on the ADAMS server leading to a filing failure.”*
102. In her answer to request for arbitration document under the hearing Defences, refers to the following:
- (a) her limited English proficiency;
  - (b) the fact that her native language is not supported by ADAMS, despite it supporting 33 different world languages;
  - (c) the lack of anti-doping education and guidance provided to her to enable her to understand her obligations and assist in complying with them;
  - (d) her socio-economic background, the lack of assistance of local authorities to her;
  - (e) the first failure being due to a Force Majeure event.
  - (f) the violation of the guidelines in respect of the second alleged failure by the DCO in that the attempt was terminated after 8 minutes and there was no attempt to contact the Athlete by telephone; and
  - (g) the initiation by the ITAL proceedings beyond the 30 day period mandated by the regulations.
103. The Athlete submits that these matters support a conclusion that her non-availability for the two tests and the failure to lodge the whereabouts scheduled were not her fault and it could not be said that she was “at least negligent” in respect of such breaches. It is therefore submitted that the ITA has not established the relevant breaches.

## V. JURISDICTION

104. As per the Introduction of the IBA ADR ("Scope of These Anti-Doping Rules"), the IBA ADR applies, *inter alia*, to all athletes who are members of any National Federation or participate in IBA events<sup>38</sup>. Accordingly, anyone who is a member of an IBA Member National Federation or participates in IBA events shall be bound by the IBA ADR.
105. At the time of the occurrence of the ADRV, the Athlete was a member of the Indian Boxing Federation, had participated in International IBA events and was part of the IBA's Registered Testing Pool ("RTP"), rendering her subject to the IBA ADR. It is therefore undisputed that the Athlete was (and still is) bound by the provisions of the IBA ADR when she committed her ADRV.
106. In addition, and according to Articles 7.1.1 and 7.1.4 of the IBA ADR and Article 7.1.6 of Code, the responsibility for conducting Results Management in relation to Article 2.4 ADRVs involving IBA athletes' rests with the IBA. The IBA is therefore the Results Management Authority ("RMA") for the present case under the IBA ADR.



107. The IBA has appointed the CAS ADD to act as its first instance hearing panel and, more precisely, Articles 8.1.1 and 24.7.7 of the IBA ADR provide that the CAS ADD shall have jurisdiction over:

*Any case where the notice asserting an anti-doping rule violation has been served to an Athlete or other Person after the Effective Date, even if the asserted violation occurred before the Effective Date.*

108. Moreover, Article A2 of the CAS ADD Rules provides that the CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to the CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.
109. In any event, the Athlete expressly requested and agreed to have her case referred to CAS ADD on 4 May 2024.
110. In light of the foregoing, and given the signing by both Parties of the Order of Procedure, the CAS ADD has jurisdiction to hear the present matter and to rule on whether the Athlete has committed an ADRV and, if so, on the relevant Consequences to be imposed.

## **VI. APPLICABLE LAW**

111. The following section sets out the key regulations for the resolution of the Athlete's case.
112. The asserted ADRV occurred in 2023 and shall therefore be governed by the 2021 IBA ADR ("IBA ADR").
113. The IBA being seated in Switzerland, Swiss law subsidiarily applies to the present dispute.

### **A. Jurisdiction of the Panel**

114. The IBA ADR is applicable to "all Athletes ... who are members of IBA, or of any National Federation, or of any member or affiliate organization of any National Federation (including any clubs, teams, associations, or leagues)".
115. Article 8.1.1 of the IBA ADR provides that CAS ADD has jurisdiction to adjudicate matters concerning the assertion of ADRVs under the IBA ADR:

*IBA has delegated its Article 8 responsibilities {first instance hearings, waiver of hearings and decisions} to the CAS ADD as an appropriate independent forum. The procedural rules of the arbitration shall be governed by the rules of the CAS ADD in force on the day of referral of the case to the CAS ADD.<sup>37</sup> The CAS ADD will always ensure that the Athlete or other Person is provided with a fair hearing within a reasonable time by a fair, impartial and Operationally Independent hearing panel in compliance with the Code and the International Standard for Results Management.*

116. Article 8.1.2.1 of the IBA ADR also provides that:

*When IBA sends a notice to an Athlete or other Person notifying them of a potential anti-doping rule violation, and the Athlete or other Person does not waive a hearing in accordance with Article 8.3. 1 or Article 8.3.2, then the case shall be referred to the CAS ADD for hearing and adjudication, which shall be conducted in accordance with the principles described in Articles 8 and 9 of the International Standard for Results Management.*

117. Article A2 of the CAS ADD Rules set forth the following:

*CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any WADC signatory which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.*

118. By the signing of the Order of Procedure for the Arbitration, the Athlete does not contest the jurisdiction of the CAS ADD to deal with the proceedings.

**B. The Anti-Doping Rule Violation**

119. Article 2.4 of the IBA ADR provides that:

***2.4 Whereabouts Failures by an Athlete***

*Any combination of three (3) missed tests and/or filing failures, as defined in the International Standard for Results Management, within a twelve (12) month period by an Athlete in a Registered Testing Pool.*

120. A Missed Test is defined in the ISRM as follows:

*Missed Test: A failure by the Athlete to be available for Testing at the location and time specified in the 60-minute time slot identified in their Whereabouts Filing for the day in question, in accordance with Article 4.8 of the International Standard for Testing and Investigations and Annex B.2 of the International Standard for Results Management.*

121. A Filing Failure is defined in the ISRM as follows:

*Filing Failure: A failure by the Athlete (or by a third party to whom the Athlete has delegated the task) to make an accurate and complete Whereabouts Filing that enables the Athlete to be located for Testing at the times and locations set out in the Whereabouts Filing or to update that Whereabouts Filing where necessary to ensure that it remains accurate and complete, all in accordance with Article 4.8 of the International Standard for Testing and Investigations and Annex B.2 of the International Standard for Results Management.*

122. With regard to the date on which the Missed Test is deemed to have occurred, Article B.1.3(b) of the ISRM provides that:

*A Missed Test will be deemed to have occurred on the date that the Sample collection was unsuccessfully attempted.*

123. With regard to the date on which the Filing Failure is deemed to have occurred, Article B.1 .3 (a) of the ISRM provides that:

*A Filing Failure will be deemed to have occurred (i) where the Athlete fails to provide complete information in due time in advance of an upcoming quarter, on the first day of that quarter, and (ii) where any information provided by the Athlete (whether in advance of the quarter or by way of update) transpires to be inaccurate, on the (first) date on which such information can be shown to be inaccurate.*

124. Article B.2.1 of the ISRM requires the following conditions to be met for a Results Management Authority to declare that an athlete has committed a Filing Failure:

- a) The athlete was duly notified: (i) that they had been designated for inclusion in an RTP; (ii) of the consequent requirement to make Whereabouts Filing; and (iii) of the Consequences of any Failure to Comply with that requirement (Article B.2.1 (a) ISRM).
- b) The Athlete failed to comply with this requirement by the applicable deadline (Article B.2.1 (b) ISRM).
- c) In the case of a second or third Filing Failure that the athlete was given notice, in accordance with Article B.3.2(d), of the previous Filing Failure (Article B.2.1 (c) ISRM).
- d) The athlete's failure to file was at least negligent. For these purposes, the Athlete will be presumed to have committed the failure negligently upon proof that they were notified of the requirements yet did not comply with them. That presumption may only be rebutted by the Athlete establishing that no negligent behavior on their part caused or contributed to the failure. (Article B.2.1 (d) ISRM).

125. In addition, the comment to Article B.2.1 (b) of the ISRM further provides that athletes shall be considered having committed a failure to comply with the requirement to make Whereabouts Filing:

- i. *where they do not make any such filing, or where they fail to update the filing as required by Article 4.8.8.6 of the International Standard for Testing and Investigations; or*
- ii. *where they make the filing or update but do not include all of the required information in that filing or update [...]; or*
- iii. *where they include information in the original filing or the update that is inaccurate (e.g., an address that does not exist) or insufficient to enable the Anti-Doping Organization to locate them for Testing (e.g., "running in the Black Forest")"*

126. Article B.2.4 of the ISRM requires the following conditions to be met for a Results Management Authority to declare that an athlete has committed a Missed Test:

- a) The athlete was duly notified: (i) that they had been designated for inclusion in an RTP; (ii) they were advised that they would be liable for a Missed Test if they were unavailable for Testing during the 60-minute time slot specified in their Whereabouts Filing at the location specified for that time slot (Article B.2.4 (a) ISRM).
- b) That a DCO attempted to test the Athlete on a given day in the quarter, during the 60-minute time slot specified in the Athlete's Whereabouts Filing for that day, by visiting the location specified for that time slot (Article B.2.4 (b) ISRM).
- c) That during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Athlete, short of giving the Athlete any advance notice of the test (Article B.2.4 (c) ISRM).
- d) That Article B.2.3 does not apply or (if it applies) was complied with (Article B.2.4(d) ISRM).
- e) That the Athlete's non-availability for Testing at the specified location during the specified 60-minute time slot was at least negligent. For these purposes, the Athlete will be presumed to have been negligent upon proof of the matters set out at sub- Articles B.2.4 (a) to (d). That presumption may only be rebutted by the Athlete establishing that no negligent behavior on their part caused or contributed to their failure: (i) to be available for Testing at such location during such time slot, and (ii) to update their most recent Whereabouts Filing to give notice of a different location where they would instead be available for Testing during a specified 60- minute time slot on the relevant day (Article B.2.4 (e) ISRM).

### C. Burden and Standards of Proof

127. Pursuant to Article 3.1 of the IBA ADR, the burden of proof is on the IBA to establish the ADRV to the comfortable satisfaction of the Panel. This is explained as follows:

#### ***3.1 Burdens and Standards of Proof***

*IBA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether IBA has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.*

*[Comment to Article 3.1: This standard of proof required to be met by IBA is comparable to the standard which is applied in most countries to cases involving professional misconduct.]*

128. Once an ADRV has been established, the burden of proof then shifts to the Athlete to prove that the ADRV should not be considered as such, or that the applicable period of Ineligibility should be reduced on the grounds provided for in the IBA ADR. The Athlete's evidentiary threshold is on the balance of probabilities.

**D. Applicable Consequences**

*i. Period of Ineligibility*

129. Pursuant to Article 10.3.2 of the IBA ADR, the period of Ineligibility imposed for a violation of Article 2.4 is two years subject to a reduction down to a minimum of one year depending on the Athlete's degree of Fault (emphasis added):

For violations of Article 2.4, the period of Ineligibility shall be two (2) years, subject to reduction down to a minimum of one (1) / year, depending on the Athlete's degree of Fault. The flexibility between two (2) years and one (1) year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing.

(emphasis added by the Sole Arbitrator)

130. Fault is defined in the IBA ADR as follows:

Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.

[Comment to Fault: The criterion for assessing an Athlete's degree of Fault is the same under all Articles where Fault is to be considered. However, under Article 10.6.2, no reduction of sanction is appropriate unless, when the degree of Fault is assessed, the conclusion is that No Significant Fault or Negligence on the part of the Athlete or other Person was involved]

*ii. Commencement of Ineligibility Period*

131. As per Article 10.13 of the IBA ADR, the period of Ineligibility starts on the day of the final hearing decision, as follows:

**10.10 Commencement of Ineligibility Period**

*Where an Athlete is already serving a period of Ineligibility for an anti-doping rule violation, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served. Otherwise, except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.*

*iii. Disqualification of Results*

132. Article 10.10 of the IBA ADR is applicable to the Disqualification of results subsequent to the commission of the ADRV and reads as follows:

**10.10 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation**

*In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected {whether In-Competition or Out-of-Competition}, or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.*

133. Pursuant to Article B.3.6 of the ISRM, for the purpose of Article 10.10, an Article 2.4 ADRV is deemed to have occurred on the date of the third whereabouts failure occurred.

*iv. Financial Consequences*

134. Article 10.12 of the IBA ADR provides that the following financial consequences may be imposed for the commission of an ADRV:

*10.12.1 Where an Athlete or other Person commits an anti-doping rule violation, IBA may, in its discretion and subject to the principle of proportionality, elect to (a) recover from the Athlete or other Person costs associated with the anti-doping rule violation, regardless of the period of Ineligibility imposed and/or (b) fine the Athlete or other Person in an amount up to 10'000 Swiss Francs, on/in cases where the maximum period of Ineligibility otherwise applicable has already been imposed.*

*10.12.2 The imposition of a financial sanction or the IBA's recovery of costs shall not be considered a basis for reducing the Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules.*

**VII. MERITS**

**Failure to Notify Athlete within Prescribed Time Limit**

135. The Athlete submits that the IBA failed to comply with the following Articles in relation to:
- (a) the first missed test within 14 days in violation of Article B.3.2 of the ISRM; and



- (b) bringing a violation of Article 2.4 of the IBA ADR beyond the 30 day period set out in B.3.4 of the ISRM.

136. The IBA accepted that there was a breach of the ISRM in these respects but contends that they do not operate as a bar to prosecuting the relevant ADRVs. It submits that the time limit is intended to do no more than trigger appeal rights under Article 13.2 of the WADA Code, by deeming that there has been a decision that no violation was committed. It is contended that one would not interpret the ISRM as intending to create a bar to prosecuting claims unless that was clearly stated, and the IBA relies upon *World Athletics v Wilson Kipsang Kiprotich* [Dive Tribunal SR/009/2020] in support of this submission.
137. The Athlete contends that the breaches do provide a complete defence to the ADRVs and that the time limits operate as a statute of limitations. She contends that *Kiprotich* is dealing with different wording, and is not binding on CAS in any event.
138. Whilst the Sole Arbitrator has not been referred to any CAS authority directly on this point, the issue can be shortly dealt with by reference to the wording of ISRM and the World Anti-Doping Code. The introduction and scope of the ISRM includes the following at Clause 1.0:

*“... Notwithstanding the mandatory nature of this international standard and the possibility that departures by anti-doping organisations may give rise to compliance consequences under the international standard for code compliance by signatories, departures from this international standard shall not invalidate analytical results or other evidence of an anti-doping rule violation and shall not constitute a defence to an anti-doping rule violation except as expressly provided for under code article 3.2.3.”*

139. Article 3.2.3 of the World Anti-Doping Code states that departures from any international standard or other anti-doping rule or policy shall not constitute a defence to an anti-doping rule violation subject to the proviso that if the athlete establishes that the departure could reasonably have caused an anti-doping rule violation based upon an adverse analytical finding or whereabouts failure, then the anti-doping organisation shall have the burden to establish that such departure did not cause the adverse analytical finding or whereabouts failure, then the anti-doping organisation shall have the burden to establish that such departure did not cause the adverse analytical finding or whereabouts failure.
140. As a matter of construction in seeking to discern the intent of the Code, the Sole Arbitrator would not be satisfied that a breach of the notification requirements under the ISRM would provide a complete defence to the ADRV allegations unless this was expressly provided for in the Code. To the contrary, the code mandates that, in substance, a breach of the ISRM will only provide a defence where the breach itself has been the cause of the ADRV. In the present case there is no relevant connection between a subsequent failure to notify within the prescribed period with the acts or omissions which gave rise to the relevant ADRVs.
141. Finally, Article 17 of the Code provides for a ten (10) year limitation on the bringing of actions after an ADRV. To find a shorter period would be inconsistent with this clear and unambiguous intention of the Code.
142. The Sole Arbitrator therefore accepts the argument that the notification requirements in the ISRM do not operate as a statute of limitations and rejects the argument that such breaches of the

notification requirements arising after the ADRV was allegedly committed constitute a complete defence to the proceedings.

### **The Evidence**

143. Oral evidence was given at the hearing by the Athlete, by Sumya Halder, physiotherapist, Dr Ahujar one of the Doctors for the Indian Boxing Team and Mr Bhatt, one of her coaches. Each of them gave evidence frankly and the Sole Arbitrator accepts that they were doing their best to tell the truth.
144. The Athlete gave evidence through an interpreter, and plainly had difficulties with the English language. This was consistent with the evidence of Mr Halder, Mr Bhatt and Dr Ahujar, who each said that she struggled to understand the Whereabouts information and obligations. Mr Bhatt agreed that the Athlete did not seek guidance from him as to her obligations as part of the program, or how to update her filing information.
145. By letter of 5 July 2022 the Athlete was notified of her inclusion in the IBA Registered Testing Pool and notified in writing of her specific obligations and of the consequences of any failure to comply with them. The letter included a notification that she was required to:
  - (a) file quarterly whereabouts filings before the beginning of each quarter;
  - (b) update the whereabouts information where necessary; and
  - (c) be available and accessible for unannounced testing at the location indicated in her whereabouts filings at any time and at any place, including but not limited to during her indicated 60 minute time slot.
146. The following facts are found as to the state of mind of the Athlete at the time that she received the letter and entered the program, and the manner in which she sought to comply with her obligations under it:
  - (a) the Athlete could not read English and had only a very basic understanding of some words in English but very little by way of comprehension of the language – she gave evidence in the proceedings with the assistance of a translator;
  - (b) the IBA letter of 5 July 2022 was not translated in writing into her native language, which was Hindi;
  - (c) her understanding of the letter therefore must have depended upon an oral explanation being provided;
  - (d) the circumstances in which she signed the acknowledgment were that she was at a training camp in Haryana and was informed by Mr Bhaskar Bhatt that she had been included in the IBA RTP and that she was required to sign an acknowledgment form;
  - (e) Mr Bhatt pointed out those parts of the form where she was required to enter her name and details and directed her to where she had to sign at the bottom of the form;
  - (f) Mr Bhatt he did not explain in any detail the contents of the letter to her in Hindi;

- (g) there is no suggestion that any other person explained in detail the contents of the 5 July 2022 letter to the Athlete;
- (h) Mr Bhatt informed the Athlete that the Anti-Doping Administration and Management System (“ADAMS”) application had to be installed onto her mobile phone;
- (i) the Athlete then requested Mr Bhatt to install the application on her phone, registered her and created a user ID and password;
- (j) the ADAMS portal was not available in Hindi and the Athlete was unable to navigate and use the portal to upload the necessary information and she requested Mr Bhatt to enter that for her;
- (k) in relation to subsequent whereabouts filings, the Athlete obtained the assistance of a physio Mr Sumya Halder who in turn obtained her user ID and password from Mr Bhatt and provided the necessary whereabouts filings for the following quarter. He initially tried to explain to the Athlete how to enter her whereabouts information herself however it became evident that she had difficulties in understanding and in following the instructions on the application due to her limited proficiency in English;
- (l) over the next quarter the Athlete would, where necessary, ring or text her location and designated timeslot to Mr Halder who would make the corresponding entries for the ADAMS application;
- (m) Mr Halder was not available in March 2023 and told the Athlete that she would need to do the filing herself and did his best to explain to her how to enter the information into the system on her own. On 9 March the Athlete went on to the ADAMS system and filed her whereabouts information for the next quarter, which was due to be submitted by 1 April 2023. The Athlete uploaded the relevant information but did not press the submit button, although she believed she had done all that was necessary to comply with her obligation to provide such information by the 1 April 2023 deadline;
- (n) On 14 April 2023, the Athlete was informed by a BFI Official that an email had been received from the ITA claiming that the Athlete had failed to provide the necessary whereabouts information by the stipulated deadline of 1 April 2023, which constituted a filing failure;
- (o) On that day, the Athlete informed Mr Halder of the alleged filing failure at which time he logged onto her ADAMS account and saw that she had filed the requisite information prior to that day but that the “submit” button had not been pressed. He submitted the information which had been filed by her on 15 April 2023; and
- (p) although the ADAMS application is not operable in the Hindi language its interface has since become simpler and more user friendly and the Athlete has become proficient in operating the system and can now file the necessary information herself.

147. Having regard to the oral evidence given in the arbitration by the Athlete, Mr Bhatt, Mr Halder and Dr Ahujer, the Sole Arbitrator is satisfied that at the time of the three alleged ADRV’s that the Athlete had only a basic understanding of her obligations as an Athlete under the IBA RTP. Although Mr Bhatt gave evidence that he did not explain the contents of the 5 July 2022 letter to

the Athlete, the Sole Arbitrator is satisfied that he would at a minimum have told her that she was part of a random drug testing program and that she would be required to provide quarterly filings as to her whereabouts, which it was necessary to update to the extent that her locations changed from those which had been specified for testing, and that there would be serious consequences if she did not. Such knowledge is consistent with her conduct in that she asked Mr Bhatt and then Mr Halder to upload her whereabouts information for her, and says that from time to time she would inform Mr Halder to the extent that further information as to her location was required to be uploaded into the system.

### **Notification Requirements**

148. The IBA accepts that in order to establish a filing failure pursuant to Article B21 of the ISRM, it was necessary for the Athlete to have been notified of such requirements and of the consequences of any failure to comply. The IBA contends in this Arbitration that this obligation was discharged by the sending of the 5 July 2022 letter to the Athlete, which was duly signed and returned by her, acknowledging her understanding of the contents thereof. It contends that by such acknowledgment the Athlete in effect admits that she understands the matters set out in the letter and submits that it need not go behind that admission and that it is reasonable to rely upon it.
149. Athlete contends that the notice requirements were not met because she was not able to read or properly understand the contents of the letter.
150. The Sole Arbitrator is satisfied that the Athlete by the letter of 5 July 2022 was notified of her inclusion in the IBA RTP and that she would be liable for a missed-test if she was unavailable for testing during the 60-minute time slot specified in the whereabouts filing. The fact that the Athlete may not have understood, or fully understood, the contents of the letter does not mean the obligation to notify was not satisfied.
151. The Sole Arbitrator notes the comments of the Panel in CAS 2021/A/8529 to the effect that compliance with the notification requirements does not include an obligation to find out what language the new RTP entrant is proficient in and to issue the required notice in that language. The Panel found that such an additional obligation, with its manifest difficulties in compliance, would require clear language (see paragraph 191).

### **Missed Test of 25 September 2022**

152. Firstly, the Sole Arbitration is satisfied that the Notice Requirement was met, for the reasons stated above.
153. Secondly, the Sole Arbitrator is satisfied that the DCO did what was reasonable in the circumstances to try to locate the Athlete having attended the location which had been notified by her, staying at the location for just over a full hour and trying to call her on a number of occasions before leaving a voicemail.
154. Thirdly, the Sole Arbitrator is satisfied that the Athlete's failure was "at least negligent", that is the Sole Arbitrator is not satisfied that the Athlete is able to rebut the presumption that no negligent behaviour on her part caused or contributed to the failure. The evidence was that the Athlete left that location on 21 September 2022, three days prior to the relevant testing window. Even with her basic working knowledge of the testing regime, she should have known of the date and location of

the test as set out in her whereabouts filing and should have taken steps to ensure that the location was amended when she knew she had been called to her home for the medical emergency. There is no evidence of such steps being taken.

155. The Athlete submits that it was sufficient for her to tell her coach that she was leaving the camp and to assume that he would update her whereabouts information, however there is no evidence that the Athlete asked him to do so or checked that he had. Whilst such a failure may be consistent with a lack of understanding of the importance of updating such material, the Sole Arbitrator considers that the Athlete could have taken greater care in ensuring that her whereabouts information as lodged was accurate, whether by seeking assistance to operate the ADAMS application herself or if not by making sure that it was updated by someone who was capable of doing so.
156. The Sole Arbitrator is therefore satisfied that the first ADVR is made out.

**Missed Test of 20 November 2022**

157. The same reasoning would apply in respect of the second missed test, however there is a potential distinguishing feature of the 20 November 2022 missed test. There is no issue that the Athlete had left the camp sometime before 20 November 2022 and had not updated her whereabouts information to her current location on that day, which was between two and four hours' drive away depending upon the mode of transport. However, rather than spending over an hour at the location during the relevant period, and attempting to telephone the Athlete on numerous occasions, on 20 November 2022, those responsible for testing the Athlete arrived at 5:30 am at the location and left at 5:38 am. This was, they say, because the warden informed them that the Athlete had departed for home a few days earlier. This statement appears to have been taken at face value and no confirmation of the same was sought from the Athlete.
158. The question therefore arises as to whether those persons did what was reasonable to locate the Athlete in the circumstances. The IBA submits that having been given the information they had by the warden, it was reasonable for the testers to leave immediately and not to attempt to contact the Athlete which it submits would have been pointless in any event because she could not have got back for testing within the specified window.
159. The Unsuccessful Attempt Form (UAF) refers to the following conversation with the warden which took place at the Athlete's room "... she then told me that all boxers have left NSNIS a few days back and Gitika also left for her home a couple of days back. Her room was locked and it was confirmed that she is not present in the city. We left the premises at 5:38 pm" They were there for a total of 8 minutes. It is unclear how the testers confirmed that she was not in the city, but there is no evidence that they sought to contact her to confirm this.
160. As events happened, the Athlete was not in the city, but that does not necessarily mean that reasonable efforts were made to locate her.
161. The Sole Arbitrator in this regard notes that the comment to Article B.2.4(c) the ISRM states as follows:

*"Due to the fact that the making of a telephone call is discretionary rather than mandatory, and it is left entirely to the absolute discretion of the sample collection authority, the proof that a telephone call*

*was made is not a requisite element of a missed test, and the lack of a telephone call does not give the Athlete a defence to the assertion of a missed test.”*

162. The Sole Arbitrator also notes that in CAS 2020/A/7528, the Court found that there is no requirement on the part of a DCO to place a telephone call and that because the test had to be without notice, a decision not to contact the Athlete was perfectly permissible under the relevant rules. The panel hence found that the DCO had done what was reasonable in the circumstances despite the failure to seek to contact the Athlete by telephone.
163. The Sole Arbitrator accepts the submission of the Athlete that CAS 2015/A/4210 is distinguishable from the present case and will approach the question as one of substance having regard to the practical objectives of the rules.
164. Ultimately, in circumstances where the testers were at the location and the door was locked with no sign of the Athlete present, the Sole Arbitrator is satisfied that it was reasonable to accept the information provided by the warden and to rely upon it. That is, it was reasonable to leave the location at that time.
165. Further, the fact that the Athlete was some hours from the location at the time also supports a finding that waiting for the full period would have made no difference, and such that reasonable steps were taken, on the authorities. An ADVR in respect of the second Missed Test is therefore made out.
166. If this is wrong, the Sole Arbitrator notes that the same circumstances could have supported an ADRV being a failure to update the Athlete’s whereabouts information, as there does not appear to be a reasonable excuse for not doing that, for the same reasons as are set out above in relation to the First Missed Test.

#### **Filing failure of 1 April 2023**

167. The Sole Arbitrator is again satisfied that the IBA made the relevant notifications to the Athlete and is not in contest that there was a breach of the Article B.2.1(b) of the IRSM in respect of a whereabouts filing, so long as the failure to do so was at least negligent on the part of the Athlete. Whilst the Athlete does not contest the other elements of the breach, she describes it as a ‘technical’ breach only.
168. The IBA’s position is that it was at least negligent of the Athlete to fail to lodge the relevant information because in circumstances where she was unable to properly operate the ADAMS application herself, she should have sought assistance of the IBA or others to enable her to discharge her obligations. Mr Bhatt agreed when giving evidence that the Athlete had not sought information or instructions from him as to how to operate the ADAMS application, however the evidence of Mr Halder was that when he realised that he would be unable to lodge the whereabouts filing for her before 1 April 2023, that she had sought his assistance and he tried to explain to her how the application worked. He then left her to undertake the filing on her own.
169. The Athlete herself seems to have believed that she had entered the relevant information and had discharged her whereabouts obligations. She says that she was shocked when she was told that the



information had not been lodged, and she plainly believed that it had. There was no challenge to the evidence.

170. The Athlete argues that in circumstances where she cannot read English and where the ADAMS App was not available in her native language of Hindi, and where she had received no formal training or education concerning the way in which the ADAMS App should be operated, that all she could reasonably and practicably do was to seek the assistance of others to try to help her to navigate the App and to lodge the information which was required. On the evidence she sought the help of Mr Halder and he provided it as best he could. The Sole Arbitrator accepts that both Mr Halder and the Athlete made genuine efforts to enable her to lodge the filing in accordance with her obligations.
171. However, the relevant question is not whether the Athlete acted in good faith or tried to comply with her obligations, she rather needs to rebut the presumption that her negligence caused the whereabouts filing failure. In substance, she must establish that the failure did not arise from a lack of care being exercised by her.
172. In considering the issue, it is important to remember that it is the Athlete's ultimate responsibility for accurate and up to date whereabouts information being available on the ADAMS system. That is a personal responsibility which cannot be delegated. It is also important to recognise that the whereabouts regime is a fundamental means to detect doping practices in sport, as it enables the location of athletes for unannounced out of competition testing, which are crucial in the fight against doping (cf. CAS 2014/A/2 *Drug Free Sport New Zealand v Kris Gemmell*, para 21.)
173. With respect, the Sole Arbitrator agrees with the comments of the panel in CAS 2021/A/8529 as follows:
- "Therefore, while the panel recognises that said system may impose substantial demands upon athletes in terms of sacrifice of freedom or privacy, it is the price they all pay to reap the benefits of participation in what should be a drug free sport. All athletes must be held accountable when they fail, for whatever reason, to abide by their whereabouts obligations, in order to maintain the systems credibility and integrity and to protect clean athletes. In fact, in a similar vein, a CAS panel has previously held that "the anti-doping rules are necessarily strict in order to catch athletes that do cheat by using drugs and the rules therefore can sometimes produce outcomes that many may consider unfair. This case should serve as a warning to all athletes that the relevant authorities take the provision of whereabouts information extremely seriously as they are a vital part in the ongoing fight against drugs in the sport (CAS 2006/A/1165 Christine Oburuogu v UKA and IAAF, para 21).*
174. Consistently with these authorities and with the ultimate responsibility of the athlete for whereabouts information to be accurately provided in a timely way, the Sole Arbitrator is not satisfied that the Athlete has rebutted the presumption that her negligence or lack of care was not a contributing cause to the failure. Once she was an athlete who was part of the testing program, it was incumbent upon her to seek whatever training or instruction was necessary in order for her to understand the process and to discharge her obligations under it.
175. It is a difficult task for an Athlete to meet the burden of shifting the presumption that negligence on their part contributed to a whereabouts filing failure. One could likely do so where the failure arose from an event for which they had no responsibility and which was beyond their control, such as a serious medical issue, an accident or a power or computer outage, which rendered compliance

impossible. However, where there are no such factors, and compliance was *possible*, the bar is very high for the Athlete.

176. It follows from her failure to complete the filing procedures under the ADAMS application when she had intended to do so, that she did not fully understand the process and did not put herself into a position where she had a proper understanding of how to operate the filing application. Her failure to submit the forms is consistent with a lack of care, and further her failure to seek such guidance and instruction, whether from the IBA or the IBF or from the officials with whom she dealt, illustrates that there were further steps which she could have taken which would have equipped her with a better understanding of the system and to enable her to comply with her whereabouts obligations, as she now says that she can. Hence the Sole Arbitrator is satisfied that she cannot rebut the presumption that she was at least negligent in respect of the whereabouts filing failure.
177. This finding is consistent with the authorities in respect of whereabouts obligations and with the intention of the code that the athletes themselves have ultimate responsibility for compliance, accepting that compliance for some athletes will be practically more difficult than for others. It would also be wrong to create an incentive for an athlete to refrain from obtaining a full and proper understanding of the purpose and effect of the testing regime and of the means necessary to ensure compliance with it, and to then rely upon that if a breach subsequently was to occur.
178. The Sole Arbitrator is therefore satisfied that the third whereabouts failure has been made out and that this constitutes an ADRV pursuant to Article 2.4 of the IBA ADR.

#### **The Consequences to be imposed on the Athlete**

179. The Sole Arbitrator must in the circumstances determine the consequences should be imposed upon the Athlete by reason of the ADRV. That raises the following issues:
- (a) the length of the ineligibility period to be imposed upon the Athlete;
  - (b) the starting date of the said period;
  - (c) the disqualification of the Athlete's results.
180. In respect of the length of the ineligibility period, Article 10.3.2 of the IBA IDR, the period of ineligibility imposed for a violation is two (2) years subject to a possible reduction to a minimum of one (1) year depending on the Athlete's degree of fault.
181. The IBA ADR defines fault as:

*“Any breach of duty or any lack of care appropriate to a particular situation. Fact is to be taken into consideration in assessing an athlete's or other person's degree of fault include, for example, the athlete's or other person's experience, whether the athlete or other person is a protected person, special considerations such as impairment, the degree of risk that should have been perceived by the athlete and the level of care and investigation exercised by the athlete in relation to what should have been the perceived level of risk. In assessing the athlete's or other person's degree of fault, the circumstances considered must be specific and relevant to explain the athlete's or other person's departure from the expected standard of behaviour.”*

182. The IBA submits that the Article 2.4 violation is based upon three distinct whereabouts failures, all of which must be taken into account when considering fault on the part of the Athlete. It submits that the Athlete's fault in respect of each of the failures is significant and that the case demands the imposition of the standard two-year period of ineligibility. It relies upon two cases which in support of the imposition of the two-year period being CAS 2020/A/7526 and 7559, and CAS 2022/A/8809.
183. The Athlete submits that she has demonstrated a consistent good faith effort to comply with her whereabouts obligations and that she had no intent to subvert the anti-doping system. She points to having successful tests during the period which demonstrate good faith on her part and to systemic deficiencies in her education and training, and in the fact that she was not able to read English as being mitigating circumstances together with her socio-economically disadvantaged background and limited access to resources.
184. The panel in CAS 2012/A/2822 in considering imposing a sanction of 15 months in respect of an ADRV included reference to the following circumstances:
- "The panel is prepared, however, to take into account the fact that Albania is a non-compliance state with practical no anti-doping education and information for its athletes. In doing so, the panel does not ignore that the respondent has a legitimate interest in creating a level playing field for all its athletes worldwide. No level playing field would exist if the governing regulations would not apply to every participant to the same extent. ... The mere fact that some countries – due to lack of financial resources – cannot provide for adequate anti-doping education / information does, therefore, not give athletes from these countries a license to be oblivious and negligent in anti-doping matters. Moreover, every athlete who wants to compete at international level has to abide by the regulations governing these competitions and therefore has to make sure that they are aware of their contents. On the other hand, Article 10.4 refers to the length of the sanction to the athletes 'personal fault'. The degree of this personal fault is, however, determined by the circumstances of the individual case."*
185. Ultimately the panel in that case reduced the sanction for reasons which included that the athlete had never received any education or information in anti-doping matters by his federation or the anti-doping agency of his country.
186. That reasoning is apposite to the present case where, on the evidence before the Sole Arbitrator, the Athlete was let down in terms of education, including at the critical time that she entered the program. It would also be consistent with authorities such as CAS 2013/A/3327 and CAS 2013/A/3335 that in determining the subjective fault of the athlete in this case that her youth and inexperience, language difficulties, lack of anti-doping education and otherwise good faith attempts to discharge her obligations particularly in respect of the filing failure, be taken into account in her favour.
187. The Sole Arbitrator considers the fault in respect of the filing failure to be at the lower level and that the whereabouts failures carried less culpability than would have been the case for an Athlete who was educated, and was able to read and understand the relevant rules and policies and capable of operating the ADAMS whereabouts application.
188. In the circumstances, and taking all three of the failures into account, and having regard to issues of Athlete's degree of fault, the Sole Arbitrator imposes a period of ineligibility of 12 months. This is consistent with fault being in the lower range of low, as compared to medium or high (see *Cilić*). The

good faith attempt of the Athlete to comply with her whereabouts filing obligation within time, and the lack of training and education she received to that end, is the primary reason for the reduction, taken with the impressive manner in which she gave evidence in the Arbitration.

189. In respect of the starting date of the ineligible period, the Athlete was notified of the third whereabouts failure on 14 April 2023 which was recorded against her on 25 October 2023, six months after the notification had been given. The Athlete then corresponded with the ITA through to December 2023 although not requesting an administrative review of the decision and on 25 March 2024 the ITA notified the Athlete of the ADVR under Article 2.4 which in turn led to correspondence between the parties and ultimately the referral of the matter to CAS in May 2024.
190. The period of ineligibility will in the ordinary course run from the date of this decision. The qualification to that is if there was a substantial delay in the process which was not the fault of the Athlete. The Athlete did not submit that the commencement of the period of ineligibility should be backdated and, in any event, the Sole Arbitrator is not satisfied that there was a substantial delay in the process having regard to the chronology set out above.
191. The Sole Arbitrator is therefore satisfied that the period of ineligibility should run from the date of the notification of this award.
192. In respect of the disqualification or the possible disqualification of the Athlete's results, this will follow unless "fairness requires otherwise".
193. The default position being that results are disqualified, the Athlete carries the onus of providing that there are facts or circumstances which make this outcome unfair. No submissions were put separately on the issue by the Athlete going beyond the submissions on breach but having regard to those and in circumstances where some fault has been found on her part, the Sole Arbitrator does not consider that she has discharged this onus, and her results after 1 April 2023 shall be disqualified.

## VIII. COSTS

194. (...).
195. (...).
196. (...).

## IX. APPEAL

197. Article 8 of the 2019 IBU ADR provides:

- 8.3 *At the end of the hearing, or on a timely basis thereafter, the CAS panel will issue a written decision that includes the full reasons for the decision and for any period of Ineligibility imposed, including (if applicable) a justification for why the greatest potential Consequences were not imposed.*
- 8.4 *The decision may be appealed to the CAS as provided in Article 13. Copies of the decision will be provided to the Athlete or other Person and to other Anti-Doping Organisations with a right to appeal under Article 13.*

198. Pursuant to Article A21 of the ADD Rules, this award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final award with reasons in accordance with Articles R47 *et seq.* of the CAS Code of Sports-Related Arbitration, applicable to appeals procedures.

\*\*\*\*\*

## **ON THESE GROUNDS**

**The Court of Arbitration for Sport rules that:**

1. The Request for Arbitration filed on 29 May 2024 by the International Testing Agency, on behalf of the International Boxing Association, is partly upheld.
2. Ms Gitika Narwal has committed an Anti-Doping Rule Violation pursuant to Article 2.4 of the IBA Anti-Doping Rules and shall serve a period of ineligibility of twelve (12) months starting from the date of notification of this Award.
3. All competitive results of Ms. Gitika Narwal from 1 April 2023 are disqualified with all resulting Consequences, including forfeiture of any medals, points and prizes.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 26 February 2025

**THE ANTI-DOPING DIVISION  
OF THE COURT OF ARBITRATION FOR SPORT**

Lachlan Gyles SC  
Sole Arbitrator