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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC011086802025

+ **O.M.P. (T) (COMM.) 5/2026**

M/S ROYAL ORCHIDS

.....Petitioner

Through: **Mr. Abhijit Mittal, Mr. Shaivya Singh and Ms. Ankit Bhattacharjee, Advs.**

versus

KULBIR SINGH KOHLI

AND ANR & ANR.

.....Respondents

Through: **Mr. Aniket Rajput, Mr. Piyush Gautam, Mr. Jasir Aftab, Ms. Samiksha Sharma, Ms. Akansha, Singh, Advs.**

CORAM:

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

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10.08.2026

I.A. 20384/2026 (for seeking condonation of delay in filing the present reply and seeking permission to place it on record).

1. This is an application seeking condonation of delay of 32 days in filing the present reply.
2. For the reasons stated in the application, the delay is condoned and the application stands allowed.
3. The application stands disposed of.

**O.M.P. (T) (COMM.) 5/2026**

4. The present petition has been filed under Section 14(1)(a) read with Section 15 of the Arbitration and Conciliation Act, 1996¹ seeking termination of the mandate of the learned Sole Arbitrator Hon'ble Justice K.G. Balakrishnan (Retd. CJI) and appointment of a substitute Arbitrator to adjudicate the disputes between the parties.

5. The disputes between the parties arise out of a memorandum of understanding² dated 03.03.2022 concerning the construction and development of property bearing No. K-1, Basaidarapur, Rajouri Garden, New Delhi of which Respondent Nos. 1 and 2 are stated to be co-owners.

6. Under the arrangement between the parties, the Petitioner was to undertake construction and development of the property, with the consideration contemplated under the arrangement being linked to the sale proceeds of the developed property.

7. Disputes subsequently arose between the parties concerning the performance of their respective obligations under the MOU.

8. The Petitioner invoked arbitration by notice dated 04.06.2024. It thereafter, approached this Court under Section 9 of the Act.

9. The said petition being OMP (I) (COMM) 192/2022 was

¹ "the Act" hereinafter

² "MOU" hereinafter



dismissed by the learned Single Judge on 23.08.2022. The Petitioner preferred an appeal under Section 37 of the Act.

10. *Vide* judgment dated 26.09.2022, the Division Bench appointed Hon'ble Justice K.G. Balakrishnan (Former CJI) as the sole arbitrator to adjudicate the disputes between the parties.

11. The Division Bench recorded that the disputes were arbitrable and with the consent / no objection of the parties appointed the learned Sole Arbitrator.

12. The learned Sole Arbitrator, thereafter, entered upon the reference, a preliminary hearing was held on 21.11.2022, in which timelines for filing of pleadings were prescribed.

13. The Petitioner filed its statement of claim on 28.12.2022. At the hearing held on 24.01.2023, the Respondent sought extension of time for filing their statement of defence and counter-claim, which was granted.

14. The statement of defence and counter-claim was, thereafter, filed on 27.02.2023. The Petitioner filed its rejoinder and reply to the counter-claim of 13.09.2023.

15. The Petitioner stated that thereafter, he as well as the Respondents made communications seeking fixation of the next date of hearing.



16. The Petitioner relies on communication dated 17.10.2023 and 28.11.2023, while the Respondents also address the communication dated 18.10.2023. According to the Petitioner, no date was fixed pursuant thereto.

17. The Petitioner, thereafter, addressed the formal communication dated 05.02.2024 to the learned Sole Arbitrator. The learned Sole Arbitrator responded on the same date, indicating that the hearing could be conducted in March 2024.

18. During this period, the parties commenced settlement discussions. The fact that settlement discussions were underway, was brought to the notice of learned Sole Arbitrator.

19. Further by, email dated 26.09.2024, the Petitioner requested the learned Sole Arbitrator not to fix the matter for hearing until the settlement formalities were completed.

20. The settlement discussions continued thereafter. On 04.07.2025, the learned Sole Arbitrator sought an update regarding the status of the settlement.

21. By communication dated 08.07.2025, the Petitioner informed the learned Sole Arbitrator that settlement discussions had failed and requested that the arbitral proceedings be proceeded with. Learned Counsel who had been representing the Respondent subsequently



withdrew their *vakalatnama*.

22. According to the Petitioner, it thereafter, addressed an email dated 04.08.2025 requesting the learned Sole Arbitrator to fix a date for further proceedings.

23. Learned Counsel for the Petitioner submit that the said communication remained unanswered and that its Counsel had also contacted the Secretary Office of the learned Sole Arbitrator on several occasions, however, no positive response was received.

24. The present petition consequently seeks termination of the mandate of the learned Sole Arbitrator and appointment of the substitute arbitrator.

25. The case of the Petitioner is that despite completion of the pleadings and repeated efforts to secure date for continuation of the arbitration, the proceedings have not progressed with reasonable expedition.

26. The Petitioner relies upon the period during which no effective hearing could be secured after the filing of the pleadings, the unsuccessful attempts to obtain dates in 2023-24, and, in particular, the alleged absence of any response after the settlement discussions failed in July 2025.

27. On this basis, the Petitioner contend that the learned Sole



Arbitrator has been unable to conduct the proceedings and has failed to act without undue delay attracting Section 14(1)(a) of the Act.

28. The Respondent opposes the present petition, their principal submissions is that the delay in the arbitral proceedings can't be attributed to the learned Sole Arbitrator. According to the Respondent after the hearing on 17.07.2024, the parties, themselves, commence settlement discussions and the proceedings were adjourned at their request.

29. The Respondents relying in particular upon the Petitioner by sole communication dated 26.09.2024 requesting that no date be fixed until the settlement formalities had been completed.

30. The Respondent further submits that the settlement discussions continued until July 2025 and that when the learned Sole Arbitrator sought update regarding the settlement, the Petitioner informed him on 08.07.2025 and the settlement had failed.

31. The Respondents said that their erstwhile Counsel withdrew their *Vakalatnama* on 19.07.2025 and that the Petitioner subsequent communication to the learned Sole Arbitrator was made only on 04.08.2025.

32. It is accordingly submitted that the period during which the proceedings remain in abeyance was substantially occasioned by the parties' own attempts at settlement and can't be treated as a failure on the part of the learned Sole Arbitrator.



33. The Respondent also pointed out that the pleadings already stand completed and submit that the evidence stage could commence before the existing Arbitrator, without requiring the parties to incur the expense of appointing a substitute arbitrator.

34. The Respondents further submit that both sides have already paid 2 lakh towards the arbitral fees and that requiring them to bear another set of arbitral fees would cause hardship

35. Having considered the submission and the material on record, the question before the Court is whether the learned Sole Arbitrator has within the meaning of Section 14(1)(a) of the Act failed to act without any delay so as to warrant termination of his mandate and appointment of a substitute Arbitrator under Section 15 of the Act.

36. The expression used in Section 14(1)(a) is a “undue delay and not a mere delay”, the Court is therefore, required to consider the circumstances in which the proceedings remained pending including the conduct of the parties and the conduct of the learned Arbitrator.

37. In the present case, the Court is unable to attribute the entire period of pendency to the learned Sole Arbitrator.

38. The record shows that the pleadings were completed by September 2023 and that thereafter, efforts were made for fixation of the matter, a hearing was ultimately conducted on 17.07.2024,



thereafter, the parties themselves entered into the settlement discussions and significantly the Petitioner by email dated 26.09.2024 requested that the matter not be fixed until the settlement formalities were completed.

39. Especially, the period during which the parties were pursuing settlement, therefore, can't be treated as an undue delay attributable to the learned Sole Arbitrator.

40. The position, however, change once the settlement negotiations failed. Learned Sole Arbitrator sought an update on 04.07.2025 and was informed on 08.07.2025 that the settlement had failed whereafter, the Petitioner requested that the arbitration may proceed.

41. The Petitioner thereafter, again sought fixation of the date on 04.08.2025. Accordingly, to the material placed before the Court, no effective hearing has taken place thereafter.

42. In *International Engineers & Project Consultants Ltd. V. Union Of India*, 2017 scc online del 13042, this court held that where an arbitrator fails to proceed with the arbitration and fails to act without undue delay, termination of the mandate under section 14(1)(a) may be warranted. similarly, in *Extramarks Education India Pvt. Ltd. V. Saraswati Shishu Mandir*, 2024 Scc Online Del 3710, this court recognised that where, despite the earlier circumstances which had interrupted the proceedings having ceased, the arbitrator is unable to effectively resume the reference, termination of the mandate



and appointment of a substitute arbitrator may be directed.

43. Applying the aforesaid principles, the court is satisfied that the present case cannot be decided merely by counting the total period of pendency. The period of settlement negotiations has rightly to be excluded from consideration.

44. However, after the settlement failed in July 2025 and the learned sole arbitrator was requested to resume the proceedings, the arbitral proceedings has again remained without effective progress.

45. Considering that the pleadings had already been completed and that the arbitration has remained pending since 2022, this Court is of the view that continuation of the present mandate would not advance the proceedings with the expedition contemplated by the act.

46. In view of the aforesaid facts and circumstances, and having regard to the fact that the settlement negotiations between the parties had admittedly failed in July 2025 and that, despite the subsequent request made by the petitioner for resumption of the arbitral proceedings, no effective progress has taken place, this court is of the view that the learned sole arbitrator has failed to act without undue delay within the meaning of section 14(1)(a) of the Act.

47. Accordingly, the mandate of the learned Sole Arbitrator is liable to be terminated.



48. Accordingly, Mr. Attau Rahman Masoodi, (Retd. Judge, Allahabad High Court) (Mob. No. 9918888857) is appointed as the substitute Sole Arbitrator to adjudicate the disputes arisen between the parties. The learned Sole Arbitrator shall enter upon the reference within three weeks from today.

49. The learned Sole Arbitrator will proceed to the arbitration proceedings subject to furnishing requisite disclosures as required under Section 12(2) of the Act within three weeks of entering reference.

50. The arbitration proceedings shall continue from the stage at which the learned erstwhile arbitrator had stopped the proceedings.

51. The arbitration shall be carried under the rules and aegis of Delhi International Arbitration Centre (“DIAC”). The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

52. It shall be open to the parties to raise all pleas, including objection as to arbitrability and jurisdiction, before the learned Sole Arbitrator who shall decide the same in accordance with law.

53. It is clarified that the observations made herein are only for the purpose of deciding the present petition under Section 11(6) of the Act. The learned Sole Arbitrator shall adjudicate the disputes with claims and counter claims independently and on their own merits,



uninfluenced by any observations contained in the present order.

54. The Registry is directed to send a receipt of this order to Mr. Attau Rahman Masoodi (Former Judge, Allahabad High Court), learned Arbitrator through all permissible modes including email.

55. Accordingly, the present petitions are disposed of in the above terms.

OM PRAKASH SHUKLA, J

AUGUST 10, 2026/at