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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of decision: 16<sup>th</sup> May, 2018*

+ ARB.P. 122/2018

PNR REALTORS PVT. LTD ..... Petitioner  
Through: Mr.Manish Sharma & Mr.Ninad  
Dogra, Advs.  
Mr.Gagan Malhotra, AR of petitioner.

versus

BRAHMA CITY PVT.LTD. & ORS. .... Respondents  
Through: Mr.Davesh Bhatia & Mr.Ritu Raj,  
Advs. for R-1.  
Mr.Abhay Anand Jena, Adv. for R-2  
to R-4.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (Oral)**

**I.A. No.6058/2018 (Delay)**

This is an application filed by the respondent no.1 seeking condonation of delay in filing of the reply.

For the reasons stated in the application, the delay is condoned and application stands allowed.

**ARB.P. 122/2018**

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Agreement dated

09.03.2011 executed between the petitioner (which at that time was named and styled as M/s Aalishan Investment & Marketing Pvt. Ltd.) and the respondent no. 1 as also the Addendum thereto executed on 14.05.2011 between the petitioner and the respondents.

2. The Agreement dated 09.03.2011 contains an Arbitration Agreement in form of Clause 15 thereof, which is reproduced hereinunder:-

*“All disputes and differences arising between the parties hereto, out of or regarding interpretation of this Agreement shall be first tried to be resolved across the table. If the same still remains unresolved, it will be referred to arbitration of a Sole Arbitrator to be mutually acceptable to the parties failing which to an arbitrator to be nominated by the High Court of Delhi at New Delhi whose decision shall be final and binding on the parties. The Arbitration proceedings shall be conducted as per the provisions of Arbitration & Conciliation Act, 1996, or any statutory amendments/modifications thereto for the time being in force. The venue of arbitration shall be at Delhi.”*

3. The disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement by way of its notice dated 05.12.2017. As it did not receive any reply from the respondents, the present petition was filed by the petitioner.

4. Counsel for the respondent no. 1 submits that there are no disputes between the petitioner and respondent no. 1 as all liabilities under the Agreement have been transferred to respondent nos. 2 to 4. He, however, is not in position to show any specific documents by which the petitioner has discharged respondent no. 1 from its obligations under the Agreement. On the other hand, he places reliance on various correspondences and other documents to show that the petitioner had agreed to such a discharge. He further submits that even part of the consideration under the Agreement has

been paid by the petitioner only to respondent nos. 2 to 4 and not the respondent no.1. On the other hand, counsel for the petitioner, relying upon the different clauses of the Agreement and the Addendum, submits that the respondent no.1 has never been discharged of its obligations. He submits that a part of the consideration has been received by the respondent no.1.

5. In my view, the defence raised by the respondent no.1 is a defence on facts, which can be better appreciated only by an Arbitrator upon receiving appropriate pleadings and evidence from the parties. However, at this stage, appointment of an Arbitrator cannot be denied on the basis of such assertion.

6. As far as respondent nos. 2 to 4 are concerned, they submit that they were not a party to the Agreement dated 09.03.2011. The counsel for the respondent nos. 2 to 4 submits that respondent nos. 2 to 4 are parties only to the Addendum dated 14.05.2011, which does not contain an Arbitration Agreement.

7. The counsel for the respondent nos. 2 to 4 submits that in terms of Section 7(5) of the Act, mere reference to the Agreement dated 09.03.2011 would not be sufficient to conclude the existence of an Arbitration Agreement between the petitioner and respondent nos. 2 to 4. In this regard he places reliance upon the judgments of the Supreme Court in ***M.R. Engineers and Contractors Privated Limited v. Som Datt Builders Limited***, (2009) 7 SCC 696 and ***Inox Wind Limited v. Thermocables Limited***, (2018) 2 SCC 519.

8. On the other hand, the counsel for the petitioner draws my attention to Clause 6 of the Addendum dated 14.05.2011 which is reproduced hereinunder:-

*“6. That **the Third Party, the Fourth Party and the Fifth Party to the Addendum** do hereby covenant that they have noted contents of **the Said Agreement** dated 09<sup>th</sup> March, 2011 between **the First Party and the Second Party** and undertake to abide by the same.”*

9. The counsel for the petitioner further submits that to give effect to the said Agreement dated 09.03.2011, Addendum dated 14.05.2011 was executed between the petitioner and the respondents. He submits that the heading of the Addendum itself states that it is the Addendum to the Agreement dated 09.03.2011 and therefore, is to be read alongwith the same. It is only those terms which are varied in the Addendum, which stand discharged from performance. He further draws my attention to various recitals in the Addendum.

10. I have considered the submissions made by the counsels for the parties. As noted, the Addendum dated 14.05.2011 does not only contain mere reference to the Agreement dated 09.03.2011, but also contains an undertaking of respondent nos. 2 to 4 to abide by the terms thereof.

11. The Addendum is in a manner appended to the Agreement dated 09.03.2011. It contains an undertaking of the respondent nos. 2 to 4 to abide by terms of the Agreement dated 09.03.2011. In my view, this would necessarily include the Arbitration Agreement between the parties. This is not a case of simple reference to another Agreement but a continuation of the previous Agreement where more parties are added and certain other additional terms are agreed between them, particularly to give effect to the main Agreement. If the intention of the parties was that the Arbitration Agreement in the main Agreement would not bind the respondent nos. 2 to 4, they would have expressly provided for the same. On the other hand, the respondent nos. 2 to 4 undertook to comply with all the terms and conditions

of the Agreement dated 09.03.2011. This undertaking was offered taking note of the contents of the Agreement dated 09.03.2011, which contains the Arbitration Agreement as well.

12. In view of the above, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Agreement dated 09.03.2011 and Addendum dated 14.05.2011. I appoint Justice M.C. Garg, Retired Judge of this Court (R/o C-113, East of Kailash, New Delhi-110048, Mobile: 9899337979) as a Sole Arbitrator. He shall submit his disclosure in terms of Section 12 of the Act before entering upon the reference. The arbitration shall be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and the procedure and the fee shall be governed by the DIAC rules.

13. The petition is allowed in the above terms, with no order as to cost.

**NAVIN CHAWLA, J**

**MAY 16, 2018/rv**