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

\+ CS(COMM) 366/2025

M/S US ADVERTISING AGENCY PRIVATE LIMITED & ANR.

.....Plaintiff

Through: Ms. Rashi Suri & Ms. Jasleen Kaur, Advs. (appeared through VC)

versus

M/S HASHBROWN SYSTEMS PRIVATE LIMITED & ORS.

.....Defendant

Through: Mr. Pranav Sarthi, Adv. (appeared through VC)

CORAM:
JOINT REGISTRAR (JUDICIAL) SH. SUMIT DALAL

<u>O R D E R</u>

% 30.05.2026

<u>I.A.No.1029/2026 (under Section 151 CPC filed on behalf of defendants seeking condonation of delay in refiling IA No.1028/2026)</u>

1. In view of the averments made in the captioned IA, the application is allowed and delay in filing application bearing IA No.1028/226 is condoned.
2. IA stands disposed of.

<u>I.A.No.1028/2026 (under Order I Rule 10 CPC filed on behalf of defendant no.2 to 4 seeking their deletion)</u>

3. By this order, I shall decide I.A. No. 1028/2026 filed on behalf of Defendant Nos. 2 to 4 under Order I Rule 10 of

the Code of Civil Procedure, 1908, seeking their deletion from the array of parties.

4. The present suit is a commercial suit for recovery of Rs. 6,47,50,513/-, along with pendente lite and future interest. The plaintiffs' claim arises out of payments allegedly made in relation to research, development, services, maintenance and functionality of applications/tools described in the plaint as Compass, Radar and Beacon, and also out of expenditure allegedly incurred in relation to KPMG audit/review. The plaintiffs allege that despite receipt of substantial amounts, the defendants failed to deliver complete applications, failed to hand over codes, data, control and management of the applications, uploaded certain applications in the name of Defendant No. 1, removed/disabled applications and cameras, and failed to refund the amounts demanded.

5. Defendant No. 1 is a company. Defendant Nos. 2 and 3 are stated in the plaint to be directors of Defendant No. 1. Defendant No. 4 is described as an officer/person concerned with discussion, execution, day-to-day monitoring and supervision of the project. The question in the present application is whether Defendant Nos. 2 to 4 are liable to be deleted at this stage.

<u>Background and earlier orders</u>

6. The suit came up before the Hon'ble Court on 23.04.2025. On that date, it was recorded that learned counsel for the plaintiffs fairly conceded that there was no privity of

contract with Defendant Nos. 2 to 4. It was further recorded that Defendant Nos. 2 to 4 had been impleaded in their capacity as directors/officers of Defendant No. 1, who had dealt with officers of the plaintiff company for the suit transaction, and that the claim of the plaintiffs was qua Defendant No. 1 only. In view thereof, the Hon'ble Court deleted Defendant Nos. 2 to 4 from the array of parties in exercise of jurisdiction under Order I Rule 10 CPC, holding them to be neither necessary nor proper parties.

7. Thereafter, the plaintiffs filed I.A. No. 18499/2025 seeking recall of the order dated 23.04.2025. The said application was considered by the Hon'ble Court on 01.08.2025. The Hon'ble Court noticed the plaintiffs' submission that Defendant Nos. 2 to 4 were not impleaded merely as directors of Defendant No. 1, but that substantial averments of misappropriation and siphoning of funds had been made against them. The Hon'ble Court also noticed that the plaintiffs claimed to have filed a complaint before the Economic Offences Wing alleging data theft, misappropriation of funds and fraud.

8. After hearing learned counsel for the plaintiffs and perusing the plaint, the Hon'ble Court held on 01.08.2025 that, in light of the averments made in the plaint, Defendant Nos. 2 to 4 could not be deleted at that stage of the suit as they were necessary to enable the Court to effectually and completely adjudicate the present suit. The earlier order dated 23.04.2025 was recalled to the extent it deleted Defendant Nos. 2 to 4. It was further directed that

Defendant Nos. 2 to 4 shall continue to remain parties to the suit and that summons be issued to them.

9. Defendant Nos. 2 to 4 have thereafter appeared and have filed the present application under Order I Rule 10 CPC seeking deletion from the array of parties.

<u>Submissions on behalf of Defendant Nos. 2 to 4</u>

10. Learned counsel for Defendant Nos. 2 to 4 submits that the suit is essentially a recovery suit arising out of alleged non-performance by Defendant No. 1 company. It is submitted that the plaintiffs' own case is that Defendant No. 1 was engaged for providing services of manufacturing, developing and researching applications, and that payments were made to Defendant No. 1.

11. It is submitted that Defendant No. 1 is a separate juristic entity and Defendant Nos. 2 to 4 are merely directors/employees/officers of Defendant No. 1. There is no privity of contract between the plaintiffs and Defendant Nos. 2 to 4. There is no personal guarantee, indemnity or personal undertaking executed by Defendant Nos. 2 to 4 in favour of the plaintiffs.

12. It is further submitted that no independent relief is claimed against Defendant Nos. 2 to 4. According to the applicants, the plaint does not disclose any independent cause of action against them. The averments in the plaint, at best, refer to Defendant Nos. 2 to 4 in their official capacity as persons associated with Defendant No. 1.

13. It is argued that directors or employees of a company cannot be made personally liable for contractual obligations of the company merely because they were involved in communication, coordination, supervision or management of the project. The applicants contend that the plaintiffs are attempting to fasten personal liability on them only because they held managerial positions in Defendant No. 1 company.

14. It is also submitted that there are no sufficient pleadings to pierce or lift the corporate veil. According to Defendant Nos. 2 to 4, bald allegations of fraud, misappropriation or siphoning cannot defeat the principle of separate corporate personality. It is submitted that the suit is based on alleged failure to hand over fully developed applications and, therefore, Defendant Nos. 2 to 4 are neither necessary nor proper parties.

<u>Submissions on behalf of the plaintiffs</u>

15. Learned counsel for the plaintiffs opposes the application. It is submitted that the present application is, in substance, an attempt to re-agitate an issue already considered by the Hon'ble Court while passing the order dated 01.08.2025. According to the plaintiffs, the Hon'ble Court, after perusing the plaint, has already held that Defendant Nos. 2 to 4 cannot be deleted at this stage and are necessary for complete and effectual adjudication.

16. Learned counsel for the plaintiffs submits that Defendant Nos. 2 to 4 were not impleaded merely because they are

directors/officers of Defendant No. 1. They were impleaded because the plaint attributes active participation, supervision, representation, concealment, control and dishonest conduct to them. It is submitted that the plaint contains allegations of misappropriation, siphoning of funds, data theft, wrongful retention of source code/data/control, disabling/removal of applications, non-refund of money, misrepresentation, cheating and wrongful gain.

17. It is further submitted that at the stage of Order I Rule 10 CPC, the Court is not required to conduct a mini-trial or finally decide whether the allegations are true or false. If the plaint, read as a whole, discloses that the presence of a party is necessary or proper for complete adjudication, deletion should not be ordered.

18. Learned counsel submits that absence of privity of contract is not conclusive where the plaint also pleads fraud, misrepresentation, wrongful gain, misappropriation and personal participation. It is argued that if Defendant Nos. 2 to 4 are deleted at this stage, the plaintiffs may be compelled to initiate separate proceedings, which would fragment the dispute and may result in multiplicity of proceedings and inconsistent findings.

Points for determination

19. The following points arise for determination:

   a. Whether this application under Order I Rule 10 CPC is maintainable before the Joint Registrar (Judicial) in view of the powers conferred under the Delhi High Court (Original Side) Rules, 2018;

b. Whether, in view of the order dated 01.08.2025 passed by the Hon'ble Court, this forum can reconsider and take a view contrary to the view already taken by the Hon'ble Court that Defendant Nos. 2 to 4 cannot be deleted at this stage;

c. Whether, independently and for the limited purpose of Order I Rule 10 CPC, the plaint contains sufficient averments to retain Defendant Nos. 2 to 4 as parties at this stage;

d. Whether absence of privity of contract or personal guarantee is, by itself, sufficient to delete Defendant Nos. 2 to 4 where the plaint contains allegations of personal involvement, misrepresentation, fraud, misappropriation, siphoning and wrongful retention/control of data/codes/applications;

e. Relief.

Legal position

20. Order I Rule 10(2) CPC empowers the Court, at any stage of the proceedings, either upon or without application of either party, to strike out the name of any party improperly joined and to add any person who ought to have been joined or whose presence before the Court may be necessary to enable it effectually and completely to adjudicate upon and settle all questions involved in the suit.

21.In ***Razia Begum v. Sahebzadi Anwar Begum, AIR 1958 SC 886***, the Hon'ble Supreme Court held that addition of parties under Order I Rule 10 is a matter of judicial discretion. The Court also emphasised that, depending upon the nature of the suit, the Court may consider whether the presence of a party would place the Court in a better position to effectually and completely adjudicate the controversy.

22.In ***Kasturi v. Iyyamperumal, (2005) 6 SCC 733***, the Hon'ble Supreme Court explained that necessary parties are those in whose absence no decree can be passed, or against whom there must be a right to some relief in respect of the controversy involved. Proper parties are those whose presence is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit, even if no relief is claimed against them.

23.In ***Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd., (2010) 7 SCC 417***, the Hon'ble Supreme Court explained the distinction between necessary and proper parties. A necessary party is one in whose absence no effective decree can be passed. A proper party is one whose presence enables the Court to completely, effectively and adequately adjudicate upon all matters in dispute, though such person need not necessarily be a person in favour of or against whom the decree is to be made. The Hon'ble Supreme Court also held that Order

I Rule 10(2) CPC confers judicial discretion, which has to be exercised on settled principles and not arbitrarily.

24. In ***Vidur Impex and Traders Pvt. Ltd. v. Tosh Apartments Pvt. Ltd., (2012) 8 SCC 384***, the Hon'ble Supreme Court summarised the broad principles governing impleadment. It was held that the Court may, at any stage, direct impleadment of a person who ought to have been joined or whose presence is necessary for effective and complete adjudication. A necessary party is one without whom an effective decree cannot be passed, and a proper party is one whose presence enables complete, effective and proper adjudication of all matters and issues, though no decree may be passed in his favour or against him.

25. The legal position concerning personal liability of directors is also well settled. A company is a separate juristic person. A director or officer is not personally liable for the contractual liability of the company merely because he is a director or officer. In ***Tristar Consultants v. Vcustomer Services India Pvt. Ltd., 2007 SCC OnLine Del 359 : AIR 2007 Del 157***, the Hon'ble Delhi High Court held that in a suit for recovery of money, only such persons can be impleaded as defendants against whom averments are made which, if proved, would entitle the plaintiff to a decree. It was also held that a company acts through human agency, but an individual director has no power to act on behalf of the company unless authorised. Ordinarily, directors are not personally liable for company contracts,

except where they have made themselves personally liable by guarantee, indemnity or otherwise.

26. However, ***Tristar Consultants (supra)*** also recognises an important distinction. The liability of directors, though ordinarily not contractual, may arise where they have personally committed tortious acts, misfeasance, malfeasance, fraudulent misrepresentation, inducement or other wrongful acts causing loss to third parties. Thus, where the plaint alleges personal participation in fraud, misrepresentation or tortious conduct, the matter cannot be approached merely as a case of vicarious liability arising from directorship.

27. In ***Neeraj Kainth v. Campuseai India (P) Ltd., 2024 SCC OnLine Del 9008***, the Hon'ble Delhi High Court reiterated that directors/officers cannot be held personally liable for breach of contract by the company in the absence of personal guarantees or sufficient allegations of fraud/misrepresentation/personal liability. However, the judgment also reiterates the exception recognised in ***Tristar Consultants (supra)***, namely that personal liability may arise where the pleadings disclose tortious conduct, misrepresentation or personal wrongdoing. The said judgment, therefore, does not lay down that a director or officer must be deleted in every recovery suit; rather, the Court must examine the plaint to see whether a cause of action is pleaded against the individual defendants.

28. The doctrine of separate corporate personality is fundamental. However, it is not absolute. In ***LIC v. Escorts***

Ltd., (1986) 1 SCC 264, the Hon'ble Supreme Court held that the corporate veil may be lifted where the statute contemplates such lifting, where fraud or improper conduct is intended to be prevented, where taxing or beneficent statutes are sought to be evaded, or where associated companies are inextricably connected so as to be, in reality, part of one concern. The Hon'ble Supreme Court also cautioned that the categories cannot be exhaustively enumerated and must depend upon the facts, statutory context, conduct, public interest and effect on parties.

29. In ***Delhi Development Authority v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622***, the Hon'ble Supreme Court held that though a company is ordinarily a separate legal person, the Court may lift the corporate veil where corporate personality is used as a cloak for fraud or improper conduct. The Hon'ble Court observed that corporate personality is intended to encourage trade and commerce and not to enable illegality or fraud.

30. In State of ***Rajasthan v. Gotan Lime Stone Khanij Udyog Pvt. Ltd., (2016) 4 SCC 469***, the Hon'ble Supreme Court held that the Court is entitled to look at the substance and not merely the form of a transaction, and the doctrine of lifting the corporate veil may be applied where the corporate structure is used as a device to evade legal obligations or conceal the real transaction.

31. Thus, while the corporate veil cannot be lifted merely on asking and directors cannot be made personally liable merely because they are directors, the Court is equally

required to see whether the plaint alleges independent personal involvement, fraud, misrepresentation, wrongful gain, siphoning, misappropriation or other conduct which, if proved, may justify personal liability or at least render the presence of such persons necessary or proper for complete adjudication.

32. On the question of earlier orders in the same proceeding, the principle of finality at interlocutory stages is also relevant. In ***Satyadhyan Ghosal v. Deorajin Debi, AIR 1960 SC 941***, the Hon'ble Supreme Court held that the principle of res judicata is founded on the need of giving finality to judicial decisions and applies, to an extent, even between two stages of the same litigation. A Court which has, at an earlier stage, decided a matter in one way, will not ordinarily allow the parties to re-agitate the matter at a subsequent stage of the same proceeding.

33. In ***Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993***, the Hon'ble Supreme Court further explained that even where strict res judicata may not apply to all interlocutory orders, repeated applications based on the same facts and seeking substantially the same relief may be rejected; the nature of the proceeding, the scope of the enquiry and the nature of the earlier order are relevant.

34. Under Chapter II Rule 3 of the Delhi High Court (Original Side) Rules, 2018, the Registrar is empowered to exercise the powers of the Court in respect of, inter alia, applications under Order I Rules 2, 3A, 6 and 10 CPC. Under Rule 6, such powers may be delegated or assigned

to the Joint Registrar, and as a general proposition, an application under Order I Rule 10 CPC is within the class of applications which may be dealt with by the Registrar/Joint Registrar. However, such power cannot be exercised in a manner contrary to, or in review of, a specific order passed by the Hon’ble Court in the same proceeding.

<u>Application of law to the facts</u>

35. The first aspect is the effect of the order dated 01.08.2025. The Hon’ble Court did not merely pass an administrative or mechanical order restoring Defendant Nos. 2 to 4. The Hon’ble Court expressly noticed the plaintiffs’ contention that Defendant Nos. 2 to 4 were not impleaded merely as directors, but because substantial averments of misappropriation and siphoning of funds had been made against them. The Hon’ble Court also noticed the EOW complaint alleging data theft, misappropriation of funds and fraud. Thereafter, upon perusing the plaint, the Hon’ble Court held that Defendant Nos. 2 to 4 could not be deleted at that stage and that they were necessary to enable the Court to effectually and completely adjudicate the suit.

36. The present application, though filed after appearance of Defendant Nos. 2 to 4, seeks substantially the same relief which stood declined by necessary implication by the Hon’ble Court on 01.08.2025, namely deletion of Defendant Nos. 2 to 4 at this stage. The grounds urged in the application, namely absence of privity, separate

corporate personality, absence of personal guarantee, and assertion that Defendant Nos. 2 to 4 are only directors/officers/employees, are substantially the very grounds which were considered in the backdrop of the plaint while recalling the earlier deletion.

37. It is true that the order dated 01.08.2025 records that Defendant Nos. 2 to 4 were yet to appear and the application was decided without notice to them. However, that fact does not render the order non-existent or open to reconsideration by the Joint Registrar (Judicial). If Defendant Nos. 2 to 4 are aggrieved by the order dated 01.08.2025 on the ground that it was passed without hearing them, their remedy would be to seek appropriate relief, clarification, modification or recall before the Hon’ble Court, in accordance with law. This forum cannot sit in appeal over, review, vary or neutralise the said order.

38. Accordingly, though this forum has general power to deal with applications under Order I Rule 10 CPC, the present application, to the extent it seeks reconsideration of an issue already considered by the Hon’ble Court in its order dated 01.08.2025, is substantially not entertainable before the Joint Registrar (Judicial) in a manner contrary to the said order.

39. Even otherwise, and independently of the aforesaid, the application does not merit acceptance at this stage.

40. The plaint, read as a whole, does not merely state that Defendant Nos. 2 to 4 are directors/officers of Defendant No. 1. In paragraph 5, the plaintiffs plead that Defendant

Nos. 2 and 3 are directors of Defendant No. 1 and that Defendant Nos. 2 to 4 were in charge of, involved in day-to-day affairs and responsible for the actions of Defendant No. 1. In paragraph 6, Defendant No. 4 is specifically described as the officer responsible for discussion, execution, day-to-day monitoring and supervision of the project.

41. The plaint further alleges that Defendant No. 1, through Defendant No. 3, provided links and communications concerning the project. It is pleaded that communications concerning the Radar initiative were sent by Defendant No. 1 through Defendant No. 3. It is also pleaded that the plaintiffs had discussions with the defendants regarding KPMG audit and that the plaintiffs proceeded on the basis of assurances given by the defendants.

42. The plaint alleges that the beta versions of applications were uploaded on platforms in the name of Defendant No. 1 and not in the name of the plaintiffs, contrary to the mutual understanding allegedly arrived at between the plaintiffs and Defendant Nos. 1 to 4. It is further pleaded that when the plaintiffs raised the issue, Defendant Nos. 1 to 4 assured the plaintiffs that the applications were still under development and, once fully developed and tested, all codes, data, management and control would be handed over to the plaintiffs.

43. The plaint also pleads that despite receiving substantial payments, the defendants allegedly failed to provide completed applications, codes, data, control and

management. It is further pleaded that the applications were disabled/removed from Google Play Store and Apple Store and that data connected through the applications was illegally and unlawfully retained by Defendant Nos. 1 to 4. The plaintiffs also allege removal of cameras from various locations.

44. More significantly, the plaint contains allegations that the conduct of Defendant Nos. 1 to 4 indicates mala fides; that they misled the plaintiffs; that they were not competent to complete the project; that they agreed to the project only to fleece money; that the money received was misappropriated and siphoned for other purposes by Defendant Nos. 1 to 4; and that retaining data, codes and control and not releasing the same amounts to cheating, misrepresentation, fraud and inducement.

45. The plaint further refers to a legal notice dated 26.04.2023 allegedly served upon the defendants, and to a complaint before the Economic Offences Wing against the defendants for criminal breach of trust, misappropriation of funds, data theft, cheating and fraud.

46. Therefore, for the limited purpose of Order I Rule 10 CPC, it cannot be said that the plaint contains no averments against Defendant Nos. 2 to 4. Whether those averments are true, whether they are adequately supported by documents, whether Defendant Nos. 2 to 4 personally participated in the alleged acts, whether their acts were only as authorised representatives of Defendant No. 1, and whether any personal liability can ultimately be fastened

upon them are all matters requiring trial or adjudication on merits at the appropriate stage.

47. The applicants are correct in submitting that directors/officers of a company cannot be held personally liable merely because they are directors/officers. They are also correct in submitting that separate corporate personality is a settled principle. However, the present stage is not one where the Court is finally deciding personal liability. The question is only whether Defendant Nos. 2 to 4 are so wholly unnecessary or improperly joined that their names must be struck out at the threshold.

48. The answer to that question, on the averments in the plaint and in view of the order dated 01.08.2025, has to be in the negative.

49. The submission of absence of privity of contract is not, by itself, conclusive. If the suit were based solely on a contract with Defendant No. 1 and if the plaint contained no allegations of independent personal involvement, fraudulent inducement, misrepresentation, tortious conduct, misappropriation, siphoning, concealment or wrongful retention against Defendant Nos. 2 to 4, the applicants' contention would have carried considerable force. However, the plaint, as noticed above, contains allegations which go beyond mere directorship or employment.

50. The Court is not expressing any final opinion on whether such allegations will be proved. The Court is only holding that these allegations cannot be rejected at the stage of

Order I Rule 10 CPC by treating the suit as a simple contractual recovery claim against Defendant No. 1 alone.

51. The prayer clauses also require consideration. It is correct that the opening portion of the prayer uses the expression "against the Defendant" in singular, and prayer clause D also uses the expression "Defendant". However, paragraphs 51 and 52 of the plaint expressly state that the plaintiffs seek to call upon Defendant Nos. 1 to 4 to refund the amounts of Rs. 2,49,85,886/- and Rs. 3,97,64,627/-. Prayer clause C also states that the amounts shall be paid to the plaintiffs by "the Defendants" along with interest. Thus, on a holistic reading of the plaint, the drafting ambiguity in the prayer clause cannot be construed, at this stage, as an unequivocal abandonment of relief against Defendant Nos. 2 to 4.

52. The contention that the plaintiffs are attempting to lift the corporate veil without basis also cannot be finally decided at this stage. Lifting of corporate veil is not to be routinely permitted. At the same time, where the plaint alleges fraud, misappropriation, siphoning, wrongful gain, and personal involvement of those in charge of the affairs of the company, the Court cannot summarily hold, at the stage of Order I Rule 10 CPC, that the corporate veil can never be examined. Whether the facts ultimately justify piercing the corporate veil or fastening of personal liability is a matter to be decided after pleadings, issues and evidence, or at any other legally permissible stage.

53. Deletion of Defendant Nos. 2 to 4 at this stage may also impair complete and effective adjudication. The issues likely to arise include who made the alleged representations, who supervised the project, who controlled the codes/data/applications, who authorised upload/removal/disabling of the applications, whether the plaintiffs were assured that codes/data/control would be handed over, whether the funds were used for the stated purposes, and whether the acts complained of were merely acts of Defendant No. 1 company or acts involving personal participation of Defendant Nos. 2 to 4. In these circumstances, their presence would assist in complete and effectual adjudication of the controversy.

54. The application of Defendant Nos. 2 to 4, if allowed at this stage, may also lead to multiplicity of proceedings. If later the plaintiffs are compelled to sue or proceed separately against Defendant Nos. 2 to 4 in respect of the same transaction, there may be overlapping evidence and the possibility of inconsistent findings. Order I Rule 10 CPC is intended to avoid such fragmentation where the party's presence is necessary or proper for complete adjudication of the issues involved in the suit.

55. It is again clarified that retaining Defendant Nos. 2 to 4 as parties does not mean that the plaintiffs' allegations are accepted as true. It also does not mean that Defendant Nos. 2 to 4 are personally liable. It only means that, on the plaint as it stands and in view of the nature of allegations, they cannot be deleted at this threshold stage.

Effect of the order dated 01.08.2025

56. The order dated 01.08.2025 is of particular significance. The Hon'ble Court has already considered the plaint averments and has held that Defendant Nos. 2 to 4 cannot be deleted at this stage. Judicial discipline requires that the said order be given due effect. The present forum cannot take a view that would directly or indirectly undo the effect of the said order.

57. The fact that Defendant Nos. 2 to 4 were not heard before the order dated 01.08.2025 was passed has been considered. However, that circumstance only means that Defendant Nos. 2 to 4 may, if so advised, avail such remedy as may be permissible in law before the Hon'ble Court. It does not confer jurisdiction upon this forum to sit in review over the order dated 01.08.2025.

58. Therefore, on this ground also, the application is liable to be dismissed.

Conclusion

59. In view of the above discussion, this Court holds as under:

   a. The Joint Registrar (Judicial) has general power to deal with applications under Order I Rule 10 CPC under the Delhi High Court (Original Side) Rules, 2018, but such power cannot be exercised in a manner contrary to or in review of an order passed by the Hon'ble Court in the same proceedings.

b. The order dated 01.0[illegible].2025 passed by the Hon'ble Court has already considered the plaint averments and held that Defendant Nos. 2 to 4 cannot be deleted at this stage and are necessary for complete and effectual adjudication.

c. The present application substantially seeks reconsideration of the same issue before the Joint Registrar (Judicial), which is impermissible.

d. Even otherwise, on a holistic reading of the plaint, there are sufficient averments, for the limited purpose of Order I Rule 10 CPC, against Defendant Nos. 2 to 4 relating to their alleged role in representations, supervision, project execution, control over data/codes/applications, alleged misappropriation, siphoning, data theft, fraud, misrepresentation and wrongful gain.

e. Absence of privity of contract or personal guarantee is not, by itself, sufficient for deletion at this stage where the plaint contains allegations of personal involvement and tortious/fraudulent conduct. Whether such allegations are true and whether any personal liability can be fastened upon Defendant Nos. 2 to 4 are matters to be decided on merits.

60. Accordingly, I.A. No. 1028/2026 filed by Defendant Nos. 2 to 4 under Order I Rule 10 CPC seeking deletion from the array of parties is dismissed.

61. It is clarified that all observations made herein are only for the purpose of deciding the present application under

Order I Rule 10 CPC. Nothing stated herein shall be construed as an expression of final opinion on the merits of the plaintiffs' claim or on the personal liability, if any, of Defendant Nos. 2 to 4.

62. Defendant Nos. 2 to 4 shall be at liberty to raise all pleas and defences available to them in law, including pleas relating to absence of privity, separate corporate personality, absence of personal guarantee, absence of personal involvement, non-maintainability of claims against them, and non-applicability of the doctrine of lifting/piercing of corporate veil, at the appropriate stage.

63. No order as to costs.

I.A.No.1030/2026 (under Section 15 1 CPC filed on behalf of defendants seeking condonation of delay in refiling the written statement) &

I.A.No.1031/2026 (under Section 15 1 CPC filed on behalf of defendants seeking condonation of delay in refiling the written statement)

64. By this common order, I shall decide I.A. No. 1030/2026 filed by the defendants under Order VIII Rule 1 CPC seeking condonation of delay in filing the written statement and I.A. No. 1031/2026 filed under Section 151 CPC seeking condonation of delay in re-filing the said application.

65. Since both applications arise from the defendants' request that their written statement be taken on record, both are being dealt with together. However, for convenience, I.A.

No. 1031/2026, which pertains to delay in re-filing, is considered first.

Submissions in I.A. No. 1030/2026

66. The defendants/applicants state that the present suit has been filed seeking recovery of alleged dues and that the averments in the plaint are denied. It is submitted that the defendants have a substantial defence and have filed their written statement.

67. It is pleaded that there is a delay of 81 days in filing the written statement. In paragraph 2 of the application, the defendants state that they were served on 13.08.2025. However, in paragraph 4, it is stated that the defendants were served on 21.08.2025. The application, therefore, contains two different dates of service.

68. The principal explanation offered by the defendants is that immediately after service, they contacted their counsel, but the mother of the counsel was hospitalised from 14.08.2025 to 03.09.2025 and unfortunately passed away on 03.09.2025. It is further stated that she had been suffering from cancer and was under treatment for more than a year. The defendants have not filed medical documents on record, stating that the same have not been filed to avoid unnecessary bulking of the record, but can be produced if so directed.

69. It is further submitted that counsel resumed work in the first week of October, 2025 and, thereafter, due to court holidays, the written statement could not be prepared

immediately. It is also stated that the matter is technical in nature, involving the alleged manufacture and delivery of applications/products, and that the defendants were required to examine and collect records in order to appropriately respond to the plaint. Defendant No. 3, being Director/Authorised Representative of Defendant No. 1, is also stated to have visited Delhi for consultation before finalisation of the written statement.

70. The defendants submit that the written statement has been filed within the maximum permissible period of 120 days from the date of service of summons and that the delay is neither intentional nor deliberate. It is argued that if the written statement is not taken on record, grave prejudice would be caused to the defendants, whereas the plaintiffs can be compensated by costs.

<u>Plaintiffs' reply to I.A. No. 1030/2026</u>

71. The plaintiffs oppose the application. It is submitted that the application is misconceived, unsupported by sufficient cause and liable to be dismissed. According to the plaintiffs, the defendants have deliberately failed to comply with the statutory timelines applicable to commercial suits.

72. The plaintiffs state that the defendants were duly served with summons on 13.08.2025 and the written statement was filed only on 11.12.2025, i.e. on the 120th day from the date of service. It is further stated that the written

statement was filed directly on the High Court portal without providing any advance copy to the plaintiffs.

73. The plaintiffs contend that the defendants have failed to disclose any cogent or sufficient cause. It is urged that the application suffers from a material contradiction regarding the date of service, inasmuch as one part of the application mentions 13.08.2025 whereas another part mentions 21.08.2025. According to the plaintiffs, the date of service is not a mere clerical detail, but the determinative date for computing limitation.

74. It is further submitted that the alleged personal difficulty of counsel and the alleged technical nature of the suit cannot constitute sufficient cause for such inordinate delay. The plaintiffs also submit that no medical document or other proof has been filed and there is no explanation as to why the defendants could not engage another counsel or seek timely extension.

75. The plaintiffs have also relied upon the object of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018, contending that strict timelines in commercial suits cannot be diluted as a matter of routine. It is argued that allowing the application would defeat the object of expeditious disposal of commercial disputes.

<u>Submissions in I.A. No. 1031/2026</u>

76. By way of I.A. No. 1031/2026, the defendants seek condonation of 23 days' delay in re-filing the application

under Order VIII Rule [illegible] CPC. Though in certain paragraphs the application uses the expression “Plaintiffs”, the application is signed by counsel for the defendants and is clearly intended to be an application on behalf of the defendants. The said error is, therefore, treated as a typographical/clerical error.

77. The defendants state that the accompanying application was filed on 11.12.2025 and defects were communicated on 12.12.2025. It is further stated that the Court closed for winter vacations on 24.12.2025 and reopened on 05.01.2026. The application is stated to have been re-filed on 12.01.2026, resulting in delay of 23 days in re-filing. The defendants state that the delay was neither intentional nor deliberate.

<u>Plaintiffs’ reply to I.A. No. 1031/2026</u>

78. The plaintiffs oppose this application as well. It is submitted that the defendants are attempting to create a misleading narrative. According to the plaintiffs, after filing on 11.12.2025, there was no filing, re-filing, defect-curing or registry movement reflected on 12.12.2025. It is stated that the record would show that the defendants remained inactive till 13.01.2026, when the present applications came to be filed for the first time.

79. The plaintiffs further submit that the explanation is vague and unsupported by any proof. It is contended that merely stating that there were defects and winter vacations does not constitute sufficient cause. The plaintiffs also point out

that even according to the defendants, the Court reopened on 05.01.2026, whereas the application was re-filed only on 12.01.2026.

Legal position

80. The suit is a commercial suit. Therefore, the provisions of the CPC as amended by the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018 are applicable.

81. Order VIII Rule 1 CPC, as applicable to commercial disputes, requires the defendant to file the written statement within 30 days from the date of service of summons. If the written statement is not filed within 30 days, the Court may, for reasons to be recorded in writing and on payment of costs, permit filing on such other day as may be specified, but not later than 120 days from the date of service of summons. Upon expiry of 120 days, the defendant forfeits the right to file the written statement and the Court shall not allow the written statement to be taken on record.

82. In ***SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd., (2019) 12 SCC 210***, the Hon'ble Supreme Court has held that in a commercial suit the 120-day period is mandatory and that the Court has no power to permit the written statement to be taken on record after expiry of 120 days from service of summons.

83. Chapter VII Rule 2 of the Delhi High Court (Original Side) Rules, 2018 provides that where summons are for

appearance and filing of written statement, the written statement shall not be taken on record unless filed within 30 days or within the time provided by the Rules, the Code or the Commercial Courts Act, as applicable. It further contemplates advance service of the written statement and documents upon the plaintiff.

84. Chapter VII Rule 4 of the said Rules provides that if the Court is satisfied that the defendant was prevented by sufficient cause for exceptional and unavoidable reasons from filing the written statement within 30 days, the time may be extended by a further period not exceeding 90 days, but not thereafter. The Rule further provides that the party in delay shall be burdened with costs and that the written statement shall not be taken on record unless such costs are paid/deposited.

85. The legal position, therefore, is clear. The Court cannot extend time beyond 120 days in a commercial suit. However, where the written statement has been filed within the outer limit of 120 days, the Court retains jurisdiction to consider whether sufficient cause has been shown for extension beyond the initial period of 30 days, subject to reasons and costs.

86. As regards defects and re-filing, Chapter IV Rule 3 of the Delhi High Court (Original Side) Rules, 2018 permits removal of defects within a time not exceeding 7 days at a time and 30 days in aggregate. The question whether a filing is non est or whether defects are curable depends upon the nature of the defect. In ***Cosco (India) Ltd. v.***

Paramsukh Nirman Pvt. Ltd., 2019 SCC OnLine Del 9633, it has been held that there is a distinction between filing of a written statement and bringing the same on record, and curable defects in a written statement filed within the prescribed period may be removed in accordance with the Rules. At the same time, procedural defects cannot be used to defeat mandatory statutory timelines.

Analysis and findings

87. The first question is whether this Court has jurisdiction to consider the application under Order VIII Rule 1 CPC. The defendants themselves state in paragraph 2 of I.A. No. 1030/2026 that they were served on 13.08.2025. The plaintiffs also rely upon the said date. Though the defendants have mentioned 21.08.2025 in another paragraph, the earlier admission of 13.08.2025 and the plaintiffs' stand make it appropriate to proceed on the basis of service dated 13.08.2025.

88. Computed from 13.08.2025, the written statement filed on 11.12.2025 is at the outer edge of the permissible period of 120 days. The filing is admittedly beyond the initial period of 30 days. Thus, the defendants are required to show sufficient cause for extension of time and the written statement can be taken on record only on payment of appropriate costs.

89. The plaintiffs are correct in contending that the application is not happily drafted. The application mentions two

different dates of service. It also does not file medical documents in support of the illness and demise of counsel's mother. Further, the explanation after the first week of October, 2025 is somewhat general in nature, being based upon court holidays, technical nature of the matter and internal consultations.

90. However, the Court must also take into account that the written statement was filed within the absolute outer limit of 120 days. This is not a case where the written statement has been filed after forfeiture of the right. The Court, therefore, is not powerless to consider the explanation. The illness, hospitalisation and demise of counsel's mother is a circumstance which cannot be brushed aside lightly. Even though supporting medical documents have not been filed, the explanation does disclose a personal impediment of a serious nature. Further, the dispute appears to involve commercial/technical issues concerning alleged development and delivery of applications/products, for which some consultation and examination of records may have been required.

91. The explanation is not of the kind which would justify casual delay in a commercial suit as a matter of course. Equally, it cannot be said that no cause whatsoever has been shown. The defendants have approached the Court before expiry of the outer limit of 120 days. The delay can be compensated by costs and by ensuring that no further prejudice is caused to the plaintiffs.

92. The objection of the plaintiffs that no advance copy of the written statement was served is also serious. Chapter VII Rule 2 of the Delhi High Court (Original Side) Rules, 2018 requires advance service of the written statement and documents. Non-service of an advance copy deprives the plaintiff of timely opportunity to consider the defence and to take steps for replication/admission-denial. However, in the facts of the present case, such non-service, by itself, would not justify shutting out the defence when the written statement has been filed within the 120-day period. The prejudice can be cured by directing immediate service of the complete set and by granting the plaintiffs their full time under the Rules from the date of receipt of the complete paper-book.

93. As regards I.A. No. 1031/2026, the delay pertains to re-filing of the application seeking condonation of delay. The plaintiffs dispute the defendants' filing chronology and contend that there was no registry movement on 12.12.2025. Even assuming that the defendants were not as prompt as they ought to have been, the delay in re-filing the condonation application is procedural in nature. Since the substantive written statement was filed within the 120-day outer limit and since I.A. No. 1030/2026 is being considered on merits, dismissal of I.A. No. 1031/2026 solely on the ground of re-filing delay would be disproportionate. However, the vague explanation and lack of complete particulars warrant imposition of costs.

94. Commercial suits are intended to proceed with expedition. The present order should not be understood as diluting the strict timelines applicable to commercial suits. The defendants are being granted indulgence only because the written statement was filed within 120 days and because the cause shown, though not fully satisfactory, is not wholly absent. The indulgence must be balanced by costs and by strict future compliance.

<u>Order</u>

95. In view of the above discussion, I.A. No. 1031/2026 is allowed. The delay in re-filing I.A. No. 1030/2026 is condoned.

96. I.A. No. 1030/2026 is also allowed. The delay in filing the written statement is condoned and the written statement is directed to be taken on record, subject to the defendants paying costs of Rs. 10,000/- to the plaintiffs within four weeks.

97. The written statement shall not be treated as taken on record unless the aforesaid costs are paid within the time granted. Proof of payment shall be filed before the next date.

98. The defendants shall, within three days, serve upon learned counsel for the plaintiffs the complete set of the written statement, affidavit of admission/denial of documents and all documents filed along with the written statement, if the same has not already been served. The defendants shall also file proof of such service.

99. The plaintiffs shall be entitled to file replication, if any, along with affidavit of admission/denial of the defendants' documents within the period prescribed under the Delhi High Court (Original Side) Rules, 2018, computed from the date of receipt of the complete set of written statement/documents and payment of costs, whichever is later.

100. Both applications stand disposed of in the above terms.

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101. Vide order passed in IA No.1030/2026 & I.A.No.1031/2026, delay in filing written statement by the defendant has been condoned.

102. Let the pleadings be completed as per law.

103. List for completion of pleadings and admission/denial of documents on **14.10.2026.**

SUMIT DALAL
JOINT REGISTRAR (JUDICIAL)

MAY 30, 2026/*nk*