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

+ ARB.P. 341/2017

M/S JIA LAL KISHORI LAL PVT LTD. Petitioner
Through Mr.P.R.Chatterji, Advocate

versus

M/S FAKRUDDIN MEMORIAL COOPERATIVE GROUP
HOUSING SOCIETY & ANR. Respondents
Through Counsel for R-1 not given appearance

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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18.09.2017

1. This petition is filed under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.

1. The service report of respondent No.2 is that the notice was issued through speed post but no report has been received back.

2. The learned counsel for the petitioner submits that the address of respondent No.2 is the same address at which the petitioner had served a notice invoking the arbitration clause which is dated 05.08.2016, namely, M/s Krishna Construction, through Sh.S.K.Goel, D-17, First Floor, Pandav Nagar, Patparganj, Delhi- 110092. This notice was served on respondent No.2 and he also gave his reply dated 18.08.2016.

3. In view of the above, the notice has been sent at the correct address by speed post, Respondent No.2 is deemed to be served.

4. The learned counsel for the petitioner has relied upon the Memorandum of Settlement dated 28.03.2011, which contains an arbitration clause being clause No.7, which states that in the eventuality of disputes between the parties, the same shall be referred to a sole arbitrator.

5. The learned counsel for respondent No.1 has stated that the claim filed by the petitioner is barred by limitation in view of the fact that the petitioner withdrew from the works on 22.08.2013. He also relies upon the communication dated 19.01.2016 sent by the petitioner stating that he had to be discontinued for want of due payments.

6. It is settled legal position that the question of limitation is a mixed question of law and fact. These are the issues which have to be adjudicated upon by the learned arbitrator. In any case, Section 11(6A) of the Act as now amended by the Amendment of 2015, the court has to confine the issue to examination of the existence of an arbitration agreement. The agreement has not been denied by any of the parties. Even respondent No.2 in his communication dated 18.08.2016 did not deny the existence of the arbitration agreement.

7. Accordingly, I appoint Mr.Neeraj Malhotra (Mobile No.9811091991) as the sole arbitrator to adjudicate the dispute between the parties. The learned arbitrator will also file necessary declaration under section 12 of the Act. The learned arbitrator shall fix his fees in consultation with the learned counsel for the parties. A copy of this order be sent to the learned arbitrator.

8. The petition stands disposed of as above.

9. Needless to add that the present petition is disposed of without prejudice to the rights and contentions of the parties, and all the dispute shall

be referred to the sole arbitrator including counter claim, if any, of the respondents.

SEPTEMBER 18, 2017/v

JAYANT NATH, J.