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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 685/2016

MEND SOLUTION PVT. LTD

..... Petitioner

Through: Mr. Shashank Deo Sudhi and Mr. D.K.
Chaubey, Advocates.

versus

THE JS & ECO, NATIONAL TRUST

..... Respondent

Through: Mr. Nitesh Jain, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

13.02.2017

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1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 ('Act') seeking the appointment of an Arbitrator to adjudicate the disputes between the parties.

2. In the counter-affidavit filed by the Respondent to the present petition, it is pointed that there is in fact no arbitration agreement between the parties. It is submitted that invitation for bids were issued pursuant to which certain monies were deposited in anticipation of the Award of the contract in its favour by the Respondent, National Trust. However, the bid was ultimately not accepted, and no contract was signed between the parties. Clause 4.14.9 as well as Clause 4.21 of the requisite proposal read as under:

4.14.9 Signing of contract

At the time as the National Trust notifies the successful bidder that its bid has been accepted, the bidder will send the National Trust the duly

signed Contract, incorporating all agreement between the parties. The National Trust shall, within 10 (ten) days of receipt of the Contract Form, shall sign and date the contract and inform to the successful bidder. Any incidental expenses of execution of agreement shall be borne by the successful bidder (s).

4.21 Arbitration

- a) All disputes, differences, claims and demands arising under the contract shall be referred to the JS & CEO, National Trust for final decision and the same shall be binding on all parties.
- b) Any other terms and conditions mutually agreed prior to finalization of the order/agreed prior to finalization of the order/agreement shall be binding on all parties.

3. It is plain from the above clauses that they are premised on the existence of a contract between the National Trust on the one hand and the successful bidder on the other. In the present case, admittedly, no such contract between the parties was ultimately signed.

4. Whether the Respondent was justified in rejecting the bid of the Petitioner is a matter which touches on the merits of the disputes. It by no means lead to an inference as to the existence of an arbitration agreement between the parties. In similar circumstances, in ***Tulip I.T. Services Limited v. Punjab National Bank 2004 (75) DRJ 624***, the Court declined to grant any relief under Section 9 of the Act as the existence of the arbitration agreement between the parties was unable to be demonstrated by the Petitioner.

5. Learned counsel for the Petitioner referred to the demand notice sent by the Petitioner to the Respondent seeking reference of the disputes to the arbitration and the fact that there was no reply to the said demand notice.

The Court is of the view that the mere absence of a reply to the said notice, again, will not automatically lead to an inference that there is an arbitration agreement in existence. For the Petitioner to succeed in the petition under Section 11 (6) of the Act, the foundational fact of the existence of the arbitration agreement between the parties has to be established.

6. The petition is dismissed leaving it open to the Petitioner to seek other appropriate remedies that are available to it in accordance with law.

S.MURALIDHAR, J

FEBRUARY 13, 2017

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