

Court No. - 6

Case :- WRIT - C No. - 41115 of 2023

Petitioner :- M/S Samyam Industries And 4 Others

Respondent :- Shivalik Small Finance Bank Ltd.

Counsel for Petitioner :- Pallavi Mishra

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Mr. Radhey Shyam Dwivedi, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. This writ petition has been filed by the petitioners with the following prayer:-

"a. To issue a writ in the nature of Certiorari for quashing the arbitration proceedings pending before Ld. Sole Arbitrator Ms. Zesshana Khan in the matter of Shivalik Small Finance Bank Ltd. V. Samyam Industries & Ors. bearing Case No. Arb-26/2023.

b. To award the cost of this present litigation to the petitioners; and

c. To pass/issue any other order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the case."

3. Learned counsel for the petitioners submits that petitioner no. 1 is the borrower and petitioner no. 2 to 5 are guaranters. A purely legal question has been raised by learned counsel for the petitioners stating therein that as per Section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as the Act), a notice invoking arbitration dated 26.06.2023 is to be issued by respondent to petitioners. However, no such notice has been received by the petitioners nor respondent has produced a proof of delivery of said notice at any point of time in the arbitration proceeding as per requirement of Section 21 of the Act. Unless otherwise agreed by the parties, the arbitral proceeding in respect to a particular dispute commences on the date of which a request for that dispute to be referred to arbitration is received by the respondent.

4. Placing the order laying emphasis on page no. 50 of the writ petition, wherein the order sheet dated 03.07.2023 has been placed, there is nothing to show that any such notice as required, before proceeding, has been received by the petitioners. In the order dated 03.07.2023, passed by the arbitral tribunal, it is also mentioned that notice under section 21 of the Act was issued to respondent

i.e. petitioner on 26.06.2023 but no objection and suggestion has been received from the respondent that goes to show that requirement of notice by the respondent that is the petitioner as required under section 21 of the Act for initiation of arbitration proceedings which is mandatory has not been served upon the petitioners.

5. A purely legal question has been raised. There is non fulfilment of the requirements of service of notice to the petitioners as required under section 21 before commencement of arbitration proceedings.

6. No purpose will be served in keeping the petition pending, by issuing notice to respondent no. 1 in view of order proposed to be passed.

7. In view of above, the entire arbitration proceedings pending before Ld. Sole Arbitrator Ms. Zesshana Khan in the matter of Shivalik Small Finance Bank Ltd. V. Samyam Industries & Ors. bearing Case No. Arb-26/2023, is hereby quashed.

8. However, it is open to the authorities concerned to issue fresh notice to the petitioners as required under section 21 of the Act and after serving the notice, the authority may proceed under the Act in accordance with law.

9. Accordingly, the writ petition is **allowed**.

Order Date :- 12.12.2023

Vibha

Court No. - 71

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Petitioner :- M/S Samyam Industries And 4 Others

Respondent :- Shivalik Small Finance Bank Ltd.

Counsel for Petitioner :- Pallavi Mishra

Hon'ble Mrs. Manju Rani Chauhan,J.

Ref.:-Civil Misc. Correction Application

Heard Ms. Pallavi Mishra, learned counsel for the petitioner and perused the records.

This application has been filed for seeking correction in the order dated 12.12.2023.

Learned counsel for the petitioner states that inadvertently, the first paragraph of the order dated 12.12.2023 has wrongly been transcribed. Therefore, the aforesaid mistakes occurring in the aforesaid order be corrected accordingly.

Prayer made for is *bona fide*. Accordingly, the same is **allowed**.

The first paragraph of the order dated 12.12.2023 is scored out today as the same has wrongly been transcribed. In place of first paragraph of the aforesaid order, following paragraph shall be read as under:-

"1. Heard Ms. Pallavi Mishra, learned counsel for the petitioner and perused the records."

The aforesaid corrections shall form part of the earlier order dated 12.12.2023.

With the aforesaid directions, the present correction application stands finally **disposed of**.

Order Date :- 12.1.2024

Jitendra/-