

29.11.2024
SI No.8
Court No.12
(sg)

**FMAT (ARBAWARD) 29 of 2024
CAN 1 of 2024**

**Krishna Traders (New) (Merchant) & Anr.
Vs.
Neogrowth Credit Private Limited**

Mr. Pijush Kanti Khanra,
Mr. Somnath Khanra,
Mr. Arpayan Mukherjee
...for the Appellant/Petitioner.

1. We have perused the revised report.
2. In spite of service, the respondent is not represented.

Even on the earlier occasion, that is, 2nd September, 2024, the respondent in spite of service did not appear.
3. On 2nd September, 2024, a Coordinate Bench on prima facie view of the impugned order stayed the operation of the impugned order as it was found to be too drastic for an order to be passed ex parte at the initial stage.
4. It appears from the affidavit-of-service filed in Court today that appropriate notice was served upon the respondent on 9th September, 2024. Since the respondent is not representing in spite of notice, we have decided to hear the appeal and the application in absence of the respondent.
5. We have heard the learned Counsel for the petitioner.

An ex parte order was obtained under Section 17 of the Arbitration and Conciliation Act, 1996 on an allegation that till 19th June, 2024 a sum of Rs.20,26,610.58/- was due and payable under the loan agreement.

6. The learned Counsel for the petitioner submits that there have been few defaults in the payment of instalments and the petitioner is willing to pay such instalments, however, no notice of the arbitration proceeding has been served upon the appellants. It is further submitted that notice under Section 21 was not served upon the respondent prior to the commencement of the arbitration proceeding. Although the respondent had the opportunity to appear and contest the proceeding and to bring full facts before this Court, the respondent has chosen not to participate in the proceeding and as a result whereof we are left with no other option but to accept the averments made in paragraphs 5 and 6 of the petition.
7. Under such circumstances, we set aside the impugned order and direct the learned Arbitrator to decide the matter following the appropriate procedure laid down in the Arbitration and Conciliation Act, 1996.
8. It would be open for the appellants to file an appropriate application under Section 16 of the Arbitration and Conciliation Act in view of the averments made in paragraphs 5 and 6 of the petition.
9. It further appears that procedure under Section 12(5) read with VII Schedule has not been followed. However, we do not propose to decide the said issue with regard to the eligibility of the Arbitrator at this stage. The views expressed are prima facie.
10. The appeal succeeds.
11. However, there shall be no order as to costs.

12. This order shall be immediately communicated by the learned Advocate-on-record of the appellants to the claimant-respondent by Speed Post with A.D. and also to the learned Arbitrator.
13. The affidavit-of-service filed in Court is taken on record.
14. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)