

OD-23

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
(Via Video Conference)

AP/382/2020

FERTILIZER CORPORATION OF INDIA LIMITED
VERSUS
BALMER LAWRIE AND CO. LTD.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 2nd March, 2021.

Appearance:
Mr. C. Gupta, Adv.
Ms. B. Mandal, Adv.
Mr. A. Dhar, Adv.
Mr. s. Bhattacharyya, Adv.
...for the petitioner

Mr. Debrup Bhattacharjee, Adv.
Mr. Ritesh Kr. Ganguly, Adv.
...for the respondent

The Court :- In this application under Section 9 of the Arbitration and Conciliation Act, 1996, the petitioner seeks discharge of the Advocate Receiver to be replaced with party Receiver.

The facts are startling. Apparently, the respondent lodged a claim against the petitioner in 2006. Since both the parties to the proceeding are public sector undertakings, an earlier application under Section 9 of the Arbitration and Conciliation Act, 1996 being A.P. No. 341 of 2005 at the behest of the respondent was disposed of by appointing an Advocate Receiver and directing the respondent

herein to refer the principal dispute between the parties before the High Power Committee set up pursuant to the order passed by the Hon'ble Supreme Court. The respondent herein made such reference. The High Power Committee by its order dated February 20, 2007 directed the Asset Sale Committee to look into the claim. The Court is informed that the Asset Sale Committee submitted a memorandum dated June 12, 2015 which the respondent claims to become aware of subsequent to the order dated February 24, 2020 passed in another Section 9 petition. The Asset Sale Committee did not deal with the claim of the respondent at all in its memorandum dated June 12, 2015. The respondent did not take any steps with regard to its claims since then. It did not challenge the memorandum dated June 12, 2015 also.

On a query from a Court as to whether, the claim of the respondent is still alive or not, the respondent takes shelter under Section 21 of the Act of 1996 read with Section 43 thereof.

As noted above, the claim of the respondent was referred to the High Power Committee by the order of the High Court dated August 2, 2006. The High Power Committee by its order referred the claim to the Asset Sale Committee. The Asset Sale Committee did not speak on the claim of the respondent. Such report of the Asset Sale Committee is dated June 12, 2015. It is plausible in the facts of the present case to draw an inference that, the office memorandum dated June 12, 2015 is an award of the Asset Sale Committee so far as the claim of the respondent is concerned. The respondent admittedly became aware of such

award at least on February 24, 2020. The respondent did not take any steps with regard thereto.

As on date, the claim of the respondent cannot be said to be live. Since the claim of the respondent is not live, it would be appropriate to discharge the Receiver appointed by the Court. Mr. Amitabha Ghosh, Advocate is discharged as a Receiver. The learned Receiver will hand over all goods and materials that he is in possession of to the person from whom the learned Receiver took possession thereof initially.

A.P. No. 382 of 2020 is disposed of accordingly.

(DEBANGSU BASAK, J.)