

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO.357 OF 2015
IN
COMPANY PETITION NO.776 OF 2014

Elder Pharmaceuticals Limited	...Appellant
versus	
Silver Quest (India) Pvt. Ltd.	...Respondent

AND
APPEAL (L) NO.362 OF 2015
IN
COMPANY PETITION NO.178 OF 2015

Elder Pharmaceuticals Limited	...Appellant
versus	
M/s.APM Industries Limited	...Respondent

AND
APPEAL (L) NO.363 OF 2015
IN
COMPANY PETITION NO.47 OF 2015

Elder Pharmaceuticals Limited	...Appellant
versus	
Sumit Resorts and Farms Pvt.Ltd.	...Respondent

AND
APPEAL (L) NO.365 OF 2015
IN
COMPANY PETITION NO.39 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
F.C.Properties and Developers Pvt.Ltd.	Respondent

AND
APPEAL (L) NO.366 OF 2015
IN
COMPAY PETITION NO.136 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
Mak Ampoules Pvt.Ltd.	Respondent

AND
APPEAL (L) NO.367 OF 2015
IN
COMPANY PETITION NO.21 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
Krian Properties LLP	Respondent

AND
APPEAL (L) NO.368 OF 2015
IN
COMPANY PETITION NO.976 OF 2014

Elder Pharmaceuticals Limited	Appellant
versus	
R B Financial Services	Respondent

AND
APPEAL (L) NO.369 OF 2015
IN
COMPANY PETITION NO.24 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
Rakesh Singh	Respondent

AND

APPEAL (L) NO.370 OF 2015
IN
COMPANY PETITION NO.16 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
SP Shah HUF	Respondent

AND

APPEAL (L) NO.371 OF 2015
IN
COMPANY PETITION NO.23 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
Pioneer Enterprises	Respondent

AND

APPEAL (L) NO.372 OF 2015
IN
COMPANY PETITION NO.990 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
Sunchan Finance Limited	Respondent

AND

APPEAL (L) NO.373 OF 2015
IN
COMPANY PETITION NO.112 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
Western Logistics Pvt.Ltd.	Respondent

AND

APPEAL (L) NO.374 OF 2015
IN
COMPANY PETITION NO.42 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
Kaveri Impex Private Limited	Respondent

AND
APPEAL (L) NO.376 OF 2015
IN
COMPANY PETITION NO.20 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
Ground Control Properties Pvt.Ltd.	Respondent

AND
APPEAL (L) NO.377 OF 2015
IN
COMPANY PETITION NO.26 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
Jagruti K. Bavishi	Respondent

AND
APPEAL (L) NO.378 OF 2015
IN
COMPANY PETITION NO.19 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
Fairtex International	Respondent

AND
APPEAL (L) NO.379 OF 2015
IN

COMPANY PETITION NO.25 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
Jyoti Sodhani	Respondent

AND

APPEAL (L) NO.380 OF 2015

IN

COMPANY PETITION NO.177 OF 2015

Elder Pharmaceuticals Limited	Appellant
versus	
M/s.Rajgaria Leasing & Financial Services Private Limited	Respondent

Mr.Niranjin Pandit with Ms.Tripty M.Kapadia, Mrs.Nidhi Singh and Ms.Pooja Shetty i/by Joy Legal Consultants for Appellant.
Mr.Simil Purohit with Aziz Khan, V.Pereira, Swarup Patil, Gautami Manjrekar i/by Divya Shah & Associates for Respondents (In Company Petition Nos.976/2014, 16/2014, 19/2015, 20/2015, 21/2015, 23/2015, 24/2015, 26/2015).

Mr.Darshan R. Mehta i/by M/s.Dhruve Liladhar & Co. for Respondent.

Mr.Sham Kapadia for Respondent in Appeal (I) No.357 of 2015.

Ms.Deepthi Panda i/by Narayanan & Narayanan for Respondent (For Petitioner in C.P.No.136 of 2015).

Mr.D.Banerji i/by Zohair & Co. for Respondent (in CP No.112/2015).

Ms.Namrata Shah, for the Respondent (In CP No.990/2014).

Mr.Jitendra Ranawat i/b. Mr.Suresh Jain, for the Respondent (in CP no.178/15 & CP no.177/15.)

Mr.Sunil Zalmi i/b. MZD Letgal Consultancy, for the Respondent in Appeal(L) nos.374/15 and 365/15.

Mr.Shreyas Patel with Mr.Gaurang Pujara & Mr.Meit Sampat i/b. Little & Co., for Respondent no.1 in CP no.976/14.

Mr.Simil Purohit, Mr.Aziz Khan, Mr.Swapnil Patil, & Adv. Bisrai i/b. Divay Shah Associates, for the Respondent in APP(L) no.377, 371, 368, 376, 379, 369, 378, 367 of 2015.

CORAM : MOHIT S. SHAH, C.J. AND
G.S.KULKARNI, J.

DATE : 7 MAY 2015

PC :

1. All these appeals were directed against the orders which were not uploaded but according to the appellants the learned Company Judge had passed the orders on 13 April 2015 and 15 April 2015 admitting the winding up petitions and for advertising those petitions. It was submitted that the orders were not uploaded but once uploaded, the petitioning creditors would rush to advertise the petitions and that would cause irreparable damages to the appellant – company.

2. In view of the above submissions, this Court had put a specific query to the learned Counsel for the respondents (petitioning creditors) and many of them had stated before us

that the learned Company Judge had pronounced the order admitting the winding up petitions and the learned Counsel for only one respondent (petitioning creditor) stated that according to his impression, the petitions were reserved for orders and no orders were pronounced 13 April 2015 and 15 April 2015.

3. In view of the above, this Court, considering the prejudice likely to be suffered by the appellant in case of advertisement of winding up petitions against the petitioners and after considering the submissions on behalf of the appellants, granted ad-interim stay of the orders dated 13 April 2015 and 15 April 2015. This Court also called upon the Managing Director of the Appellant Company to file affidavit giving explanation with reference to the remarks of the Independent Auditors in the report on Consolidated Financial Statements for the year 2013-14.

4. Now the learned Counsel for the respondents have placed before us the order dated 20 April 2015 of the learned Company Judge which indicates that the learned Judge had not actually passed the orders but the learned Judge was considering passing the orders for admission of the winding up petitions. We do not wish to say anything further on this aspect. In view of the fact that no orders have actually been passed by the learned Company judge on 13 April 2015 or 15 April 2015 or thereafter for admission of winding up petitions, we dispose of these

appeals as infructuous. It will be open to the Company Court to proceed with the hearing of the Company Petitions after summer vacation.

5. At this stage, the learned Counsel for the appellants submits that the strictures passed by the learned Company Judge against the appellant -Company and its attorney were not warranted and deserve to be expunged. Since the matters are already before the Company Court which is going to consider the explanation which may be hereinafter offered to the remarks of the independent Auditors of the company, we do not propose to make any further observations, but leave the matter for the Company Court to be decided without being influenced by the observations made in the order dated 20 April 2015.

6. The appellant-Company will be at liberty to file further affidavits for giving explanation to the aforesaid comments in the report of the Independent Auditor of the company. In our view, the test of pudding would be in eating it and therefore, the question about bonafides of the appellants-Company may be better determined after considering whether the appellant - Company is able to make arrangements for repayment of dues of petitioning creditors. The learned counsel for the appellants states that the appellant has submitted before the Company Court repayment schedules for clearing the dues of the petitioning creditors. The Company Court will consider

the same after the summer vacation and particularly in the light of the orders which the Court may pass in and on the outcome of Appeal (Lodg) No.260 of 2015.

7. In case any adverse orders are passed against the appellant-company, it will be open to the learned Advocate for the appellant to make a request for stay for some time to enable the appellant to file intra-court appeals.

(CHIEF JUSTICE)

(G.S.KULKARNI, J.)