

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 677 OF 2016
IN
CONTEMPT PETITION NO. 504 OF 2015
WITH
NOTICE OF MOTION (L) NO. 2948 OF 2016
IN
APPEAL NO. 677 OF 2016**

Elder Pharmaceuticals Limited .. Appellant
versus
Premier Ferro Alloys & Securities Ltd. . Respondents

Mr. Kaushal Parsekar i/b. M/s. Jay Legal Consultants for Appellant.
Mr. S. D. Patil – Assistant Official Liquidator present.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 21 DECEMBER 2016

P.C.:

1] The appellant appeals order dated 19 September 2016, the operative portion of which reads thus :

“8. In the circumstances, I pass the following order.

i) The Petition is admitted and made returnable after six weeks.

ii) The Petition shall be advertised by the Petitioner in the daily edition of two local newspapers namely 'Free Press Journal' (in English), 'Nav-Shakti' (in Marathi) and in the Maharashtra Government Gazette.

iii) The Petitioner shall, within a period of two weeks from today, deposit an amount of Rs.10,000/- (Rupees Ten Thousand only) with the Prothonotary & Senior Master of this Court towards publication charges with intimation to the Company Registrar, failing which the Company Petition shall stand dismissed for non-prosecution.

iv) Pending the hearing and final disposal of the Company Petition, the Official Liquidator, High Court, Bombay, is appointed as Provisional Liquidator of the Respondent Company. The Provisional Liquidator shall forthwith take charge of the assets / properties and records of the Respondent Company without awaiting any notification.

v) The Liquidator shall act on an ordinary copy of this Order duly authenticated by the Associate of this Court.

vi) The Advocates for the Petitioner shall forthwith forward a copy of this order to the Company at its registered office."

2] Mr. Kaushal Parsekar, learned counsel for the appellant submits that there is an investor who seeks to make some investments in the appellant company and therefore, it is necessary that such opportunity is afforded for revival of the appellant company. Without prejudice, Mr. Parsekar submits that the various letters on the basis of which the respondent claims that the debt in question is admitted, were in fact, letters addressed by employees who were never authorized to address the same. Mr. Parsekar submits that the appellant is a running concern, which has about 950 employees. The appellant had faced some genuine difficulties as set out in the response to the winding up petition. He submits that the impugned order which has been made without taking into consideration all these aspects, therefore, warrants interference.

3] We have considered the submissions made by learned counsel for the appellant, perused the record as well as the impugned order. We are satisfied that in the facts and circumstances of the present case, the impugned order warrants no interference.

4] It is necessary to note that at the behest of yet another petitioning creditor, the Company Court, has already admitted another petition seeking winding up of the appellant. In pursuance of the orders made therein, the said petition has already been advertised. Learned counsel for the appellant has stated that the said order was not appealed against. If this is so, there is no reason to interfere with the impugned order, at this stage, now that the winding up process has commenced.

5] The appellant's contention with regard to afford of opportunity to some investor etc. can always be taken into consideration at the stage of final hearing of the company petition, which is still pending. There is also no substance in the contention of the appellant that there was any serious dispute with regard to the debt claimed by the respondent. This is a case where the appellant has received an Inter Corporate Deposit which is not and which cannot be disputed. Thereafter, the material on record, clearly establishes the liability as well as the quantum of the debt. The so-called defence raised by the appellant can neither be said to be *bona fide* nor one of substance. Accordingly, we cannot fault the impugned order.

6] For the aforesaid reasons, this appeal is dismissed. There shall be no order as to costs.

7] In view of dismissal of the appeal, notice of motion does not survive and is disposed of accordingly.

CHIEF JUSTICE

(M. S. SONAK, J.)