IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 488 OF 2015

Puspasen C. Jhaveri ….. Petitioner
Vs.
Elder Pharmaceuticals Ltd. ….. Respondent

WITH
COMPANY PETITION NO. 58 OF 2014
WITH
COMPANY APPLICATION (L) NO. 515 OF 2014
WITH
COMPANY APPLICATION (L) NO.232 OF 2017
IN
COMPANY PETITION NO. 961 OF 2014
WITH
COMPANY PETITION NO. 557 OF 2014
WITH
COMPANY PETITION NO. 776 OF 2014
WITH
COMPANY PETITION NO.961 OF 2014
WITH
COMPANY PETITION NO.976 OF 2014
WITH
COMPANY PETITION NO.990 OF 2014
WITH
COMPANY PETITION NO.16 OF 2015
WITH
COMPANY PETITION NO.19 OF 2015
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COMPANY PETITION NO.20 OF 2015
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COMPANY PETITION NO.21 OF 2015
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COMPANY PETITION NO.22 OF 2015
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COMPANY PETITION NO.23 OF 2015
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COMPANY PETITION NO.24 OF 2015
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COMPANY PETITION NO.25 OF 2015
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COMPANY PETITION NO.26 OF 2015

WITH
COMPANY PETITION NO.39 OF 2015
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COMPANY PETITION NO.42 OF 2015
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COMPANY PETITION NO. 47 OF 2015
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COMPANY PETITION NO.112 OF 2015
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COMPANY PETITION NO.136 OF 2015
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COMPANY PETITION NO.156 OF 2015
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COMPANY PETITION NO.177 OF 2015
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COMPANY PETITION NO.178 OF 2015
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COMPANY PETITION NO.202 OF 2015
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COMPANY PETITION NO.235 OF 2015
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COMPANY PETITION NO.241 OF 2015
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COMPANY PETITION NO.275 OF 2015
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COMPANY PETITION NO.302 OF 2015
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COMPANY PETITION NO.312 OF 2015
WITH
COMPANY PETITION NO.378 OF 2015
WITH
COMPANY PETITION NO.424 OF 2015
WITH
COMPANY PETITION NO.504 OF 2015
WITH
COMPANY PETITION NO.512 OF 2015
WITH
COMPANY PETITION NO.589 OF 2015
WITH
COMPANY APPLICATION NO.626 OF 2015
IN
COMPANY PETITION NO.768 OF 2015

WITH
COMPANY PETITION NO.648 OF 2015
WITH
COMPANY PETITION NO.684 OF 2015
WITH
COMPANY PETITION NO.732 OF 2015
WITH
COMPANY PETITION NO.739 OF 2015
WITH
COMPANY PETITION NO.768 OF 2015
WITH
COMPANY PETITION NO.773 OF 2015
WITH
COMPANY PETITION NO.829 OF 2015
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COMPANY PETITION NO.853 OF 2015
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COMPANY PETITION NO.971 OF 2015
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COMPANY PETITION NO.575 OF 2016

WITH
COMPANY PETITION NO.583 OF 2016
WITH
COMPAY APPLICATION (L) NO.585 OF 2016
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COMPANY APPLICATION (L) NO.616 OF 2016
IN
COMPANY PETITION NO.976 OF 2014
WITH
COMPANY PETITION NO.666 OF 2016

WITH
COMPANY APPLICATION NO.731 OF 2016
WITH
COMPANY APPLICATION (L) NO.59 OF 2017
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COMPANY APPLICATION (L) NO.62 OF 2017
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COMPANY APPLICATION (L) NO.145 OF 2017
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COMPANY APPLICATION (L) NO.192 OF 2017
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COMPANY APPLICATION (L) NO.193 OF 2017
WITH
COMPANY APPLICATION (L) NO.194 OF 2017
WITH
COMPANY APPLICATION (L) NO.353 OF 2017
IN
COMPANY PETITION NO.488 OF 2015
WITH
COMPANY APPLICATION (L) NO.732 OF 2016
WITH
COMPANY APPLICATION (L) NO.733 OF 2016
WITH
COMPANY APPLICATION (L) NO.768 OF 2016
IN
COMPANY PETITION NO.990 OF 2015

Ms. Sheetal Prakash i/b. Jayesh Desai for petitioner in CP/488/2015.

Mr. Tejas Luniya i/b. Thodur Law Associates for petitioner in CP/58/2014.
Ms. Pooja P. Batra for petitioner in CP/776/2014, CP/47/2015.
Mr. Tushar Kadam i/b. MDP and Partners for petitioner in CP/961/2014 and applicant in CAL/515/2014.
Mr. Aziz Khan i/b. Divya Shah Associates for petitioner in CP/976/2014, CP/16/2015, CP/19/2015, CP/20/2015, CP/21/2015, CP/22/2015, CP/23/2015, CP/24/2015, CP/25/2015, CP/26/2015, CP/424/2015, CP/589/2015, CP/739/2015, CP/773/2015, CP/971/2015, CP/380/2016.
Ms. Mansi Jain i/b. MZD Legal Consultancy for petitioner in CP/39/2015, CP/42/2015.
Ms. Annapoorna Seshadri i/b. Narayanan and Narayanan for petitioner in CP/136/2015, CP/378/2015.
Mr. D.J. Kakalia i/b. M/s. Mulla and Mulla and CBC for petitioner in CP/235/2015, CP/154/2016.
Mr. Hemant Sethi for petitioner in CP/302/2015.
Mr. Gireesh U. G. Menon for petitioner in CP/504/2015, CP/990/2015.
Mr. Rajendra Jain i/b. M/s. Thakore Jariwala and Associates for petitioner in CP/1209/2015, CP/1210/2015, CP/1211/2015, CP/1212/2015.
Mr. Aditya Shiralkar a/w. Mr. Shailesh Shukla and Mr. Pratik Pawar i/b. J. Sagar Associates for petitioner in CP/1267/2015.
Ms. Chitra Sundar i/b. W.S. Kane and Co. for petitioner in CP/1270/2015.
Mr. S.G. Bhandari i/b. Bhandary and Bhandary for petitioner in CP/98/2016.
Mr. Smit H. Shah i/b. Srivastav and Co. for petitioner in CP/147/2016.
Mr. Jaydeep Raut i/b. Dalal and Co. for petitioner in CP/426/2016, CP/428/2016, CP/430/2016, CP/431/2016, CP/477/2016.
Mr. Sumit Raghani i/b. Agrud Partners for petitioner in CP/583/2016.
Mr. Vedakkemadon L. Subramanianrajam for applicant in CAL/585/2016, CAL/586/2016, CAL/587/2016, CAL/589/2016, CAL/593/2016, CAL/594/2016, CAL/595/2016, CAL/596/2016, CAL/597/2016, CAL/598/2016, CAL/599/2016, CAL/600/2016, CAL/601/2016, CAL/602/2016, CAL/603/2016, CAL/612/2016, CAL/613/2016, CAL/616/2016, CAL/59/2017, CAL/62/2017, CAL/64/2017, CAL/65/2017, CAL/67/2017, CAL/68/2017, CAL/70/2017, CAL/96/2017, CAL/111/2017, CAL/145/2017, CAL/192/2017, CAL/193/2017.
Mr. Kunal Chheda i/b. M/s. M.V. Kini and Co. for applicant in CAL/232/2017.
Ms. Jane Cox for workmen.
Mr. Vivek Menon a/w. Mr. Rajit Hingu i/b. L.H. Hingu and Co. for respondent company.
Mr. Naushad Engineer for Official Liquidator.
Mr. Rajiv Mehta, intervener present in person.

Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator present.

CORAM : K.R.SHRIRAM, J.
DATE : 4th DECEMBER, 2017

P.C.:

1 There are many petitions filed against respondent company - Elder Pharmaceuticals Limited for winding up of the company. The petition that was taken up for hearing was company petition no.488 of 2015 (the said petition). It would save time if paragraphs 1 to 5 of the order dated 19th September, 2016 admitting the said petition are reproduced and the same read as under :

> *1. This is a Petition seeking winding up of the Respondent Company for enabling to pay debts. Their debts as and when arise in the usual course of business. It is the Petitioner's case that the Company vide Resolution dated 24th October 2009 resolved to accept the deposits from various parties. A copy of the resolution is annexed at Exh.A to the Petition. The Company in pursuance of the said resolution, accepted the deposit of sum of Rs.25,00,000/- for a period of 90 days from 20th March 2013 to 18th June 2013 and also executed a Promissory Note copy of which is annexed at Exh.D. The Company waived notice of presentment, protest and dishonour in the said Promissory Note. It is the Petitioner's case that by way of repayment of the said deposit amount and interest thereon, the Respondent Company issued a cheque for Rs.23,87,500/-, however since the deposit was agreed to be rolled over the cheque was not encashed. Thereafter the company issued fresh cheques, one for the principal amount of Rs. 25,00,000/- and the second cheque for Rs.1,12,500/- towards interest. Both were dishonoured upon presentation on or about 17th June 2014. As a result of which, a statutory notice dated 30th July 2014 came to be issued calling upon the Respondent Company to pay Rs.26,12,500/-. The Company responded through their Advocate's letter dated 19th August 2014 while denying the Petitioner's was entitlement to encash the cheques sought time to obtain detailed instructions after which a reply on merits could be sent. No such detailed Reply on merits was sent. As a result, the Petition came to be presented on 4th February 2015 and was accepted on 9th June 2015.*
>
> *2. An Affidavit in Reply has been filed to oppose the admission of the Petition. The deponent, Managing Director of the Respondent Company, has contended that due to temporary mismatch of funds, the company*

was going through a financial crisis. However, the company has every intention to pay monies has taken as business loan. It is contended that since many employees had left, especially who has handling financial matters, the present "management" is not aware of the transactions forming subject matter of the Petition and for these reasons, the claim has been denied.

3. The Affidavit in Reply does not in any manner dispute the resolution dated 24th October 2009 pursuant to which the deposit was accepted or the fact that cheques had been issued. A further affidavit of the same deponent dated 10th August 2015 has been filed wherein the Respondent Company has stated that the Petitioner is a Karta of an HUF which has offered a business loan and that there is no provision in law under which an HUF can offer a business loan. It is also alleged that the Petitioner is a licensed money lender and on that basis the admission of the Petition has been opposed.

4. The learned counsel appearing for the Petitioner submitted that the company has no defence to the claim especially since cheques had been issued and which were dishonoured. He denied that the petitioner was a money lender. On behalf of the respondent the learned counsel urged the contents of the affidavits in reply and submitted that the petitioner was a money lender without a license and therefore, the present Petition is not maintainable. On behalf of the petitioner the contentions in the petition were reiterated.

5. Having considered the pleading, documents and submissions of counsel, I am of the view that there is no substance in the defence. The statutory notice was met with virtually no reply on merits. There is no explanation as to why the cheques were issued. The defence that the Petitioner is a money lender was not been established since counsel was unable to point out evidence of habitual lending or even one other instance of lending. The defences are moonshine.

2 From time to time, various applications were being made by the company praying to the Court for not winding up the company. Since various allegations were made by various parties, Official Liquidator, who was appointed as Provisional Liquidator, pursuant to leave granted by this Court, appointed one M/s. T.R. Chadha and Company, Chartered Accountants as Court Commissioner to scrutinize the accounts of the company, verify the various assets forming the undertaking of the company

and prepare a report with a view to ascertain whether it is economically and technically viable to allow the business of Elder Pharmaceuticals Limited (in Provisional Liquidation) to continue or whether carrying on of such business would result in further losses. M/s. T.R. Chadha and Company has submitted an extensive report on 28th April, 2017 with the office of the Official Liquidator and copies have been provided to everybody.

3 On 27th November, 2017 when the petitions were listed for final hearing, counsel appearing for one Mr. Anuj Jagdish Saxena, Ex-chief Operating Officer of respondent company, informed the Court that they have been able to find a strategic investor who is ready to infuse funds and revive the company. The matter was, therefore, stood over to today.

4 Today, Mr. Menon, counsel appearing for the said Mr. Anuj Jagdish Saxena tenders an additional affidavit dated 4th December, 2017 stating that the earlier scheme given by Elder Pharmaceuticals Limited has not materialized but he wants another four weeks time for a strategic investor to deposit about Rs.350 Crores in this Court. To the affidavit is annexed a photocopy of a letter dated 30th November, 2017 from one Cefurbo Corporate Services Private Limited, Chennai. I have considered the said affidavit. I am not inclined to grant any further time.

5 First of all, the so called strategic investor has not been identified. Secondly, Rs.350 Crores is only a drop in the ocean. Mr. Engineer, counsel appearing for Official Liquidator pointed out to the Court that the total claim of all petitioners in the 84-85 petitions before the Court today will be in excess of Rs.1150 Crores. Ofcourse, the company may not agree with each of the claim as a debt in its favour. But the fact that there are so many winding up petitions filed itself is an indicator that the company is insolvent. Mr. Engineer also pointed out the observations of M/s. T.R. Chadha and Company at page 36 of the report and the same reads as under :

> *"It may be noted that the company had total liabilities of Rs.1430 Crores when the Torrent deal had happened and an amount of Rs.1804 Crores (net of tax) was received against the same. Accordingly, this entire liability of Rs.1430 Crores could have been paid out of the amount received from Torrent deal in June 2014. However, as on 30.06.2014, liability still stands at Rs.1150.19 Crores as the company. Further, the company has written off loans and advances receivable of Rs.1031 Crores and trade receivables of Rs.322.71 Crores without any documented basis. This also creates doubt over its future economic viability due to unusual transactions referred above."*

6 Mr. Engineer also brought to the attention of the Court the conclusion of M/s. T.R. Chadha and Company and it will be useful to reproduce the same as well and the same reads as under :

> *"Conclusion :*
>
> *It may be noted that the company has not provided us the projected balance sheet and cash flow statement for the future years. Hence, the techno economic study relating to the same could not be carried out by us. The company has also not shared any plan as how the fund required to re-start the operations and to repay critical amount due to vendors, government agencies and hard pressing lenders would be ensured.*

Instead, we have been informed that the company is handicapped right now by lack of funds.

It may be further noted, that the company has not provided various documents and information to assess the technical viability of the company as such we could not be able to complete the technical viability aspect.

The company has estimated Year 1 Revenue at Rs.260.29 Crores and also estimated the future Compounded Annual Growth Rate (CAGR) at 31% approx as against last five year industry average of mid-size pharmaceutical companies of 12% approx. Further, as per Indian Brand Equity Foundation Sectoral Report on Pharmaceuticals Industry dated 31st March, 2017, it has been reported that India's Pharmaceutical Industry is expected to expand at a CAGR of 12.89% over years 2015-20. Thus, projections of CAGR of 31% for next six years is not feasible especially considering that no amounts are considered to be spent towards capex/capacity expansion. Besides, the first year revenue considered by the company also seems on higher side as the same was more than 70% of average sales turnover of the remaining products for the year period ended on June 30, 2013 and June 30, 2014, when the present circumstances were not there. Thus, in our opinion, projected EBIDTA of Rs.511.86 Crores for next six years seems unachievable. If we consider the growth as per industry standards and the Cost of Goods Sold (COGS) and other expenses as estimated by the company it works out at negative Rs.17.79 Crores only, which would not be able to serve the present obligation.

Besides, the market share of the company's products and even the flagship product "Eldervit" is showing negative trend whereas the market of these products for other companies has been showing growing trend in the same period. Key employees of the company has left the organization, the availability of the same and related cost involved to get them would be additional cost to the company. The Medical Representative Association has written a letter to us with regard to the significant dues of medical representatives. The company has explained that the stockists would be ready when their credit notes dues would be settled.

The company has explained that the non-compete clause for the certain products sold to Torrent Pharmaceuticals would be limited upto June, 2017 only and the company would be able to manufacture those products with different brand name. However, no plan in this regard has been shared and the same were also not considered in the future projected profit and loss as such we cannot comment on the same.

Thus looking to the circumstances, facts and our analysis on the information produced before us, we are of the opinion that it is prima facie not economically and technically viable to operate the business of M/s. Elder Pharmaceuticals Limited (In Provisional Liquidation) in present circumstances or else they would result in further losses. The same may be considered only if there is proper detailed plan (which shall need to be reviewed) and there is significant capital infusion by *promoters/investors."*

7 It does appear that almost Rs.1300 Crores has been siphoned out of the company which also gives a feeling to the Court that the attempt is only to drag on the inevitable. Mr. Menon, at this stage, interrupted and stated that his client has not been given a chance to deal with the report of M/s. T.R. Chadha and Company but does not dispute the fact that his client received a copy of this report. In any event, this report was always available with the office of the Official Liquidator. It should also be noted that this report has been referred to in the order dated 25th January, 2017, 10th February, 2017, 9th March, 2017 and finally in the order dated 27th April, 2017. In the order dated 27th April, 2017 paragraphs 7 and 8 read as under :

> "*7. Official Liquidator is directed to furnish copy of the said report to any of the parties who apply for obtaining such copy on payment of photocopy charges at the earliest. The Directors of the respondent shall pay the balance amount of fees of M/s. T.R. Chada and Company, Chartered Accountants within one week from today.*
>
> *8. If any of the parties want to file any objection to the said report, the same to be filed on or before 15th May, 2017 and shall serve copy thereof upon the Official Liquidator as well as on the other contesting parties."*

8 Despite that the ex-directors of the company and I would include Mr. Anuj Jagdish Saxena, Ex-chief Operating Officer also in that, chose not to file any affidavit objecting to the report. Therefore, for Mr. Menon to state today that his client has not been given a chance to deal with the report, in my view, is nothing but a desperate and dishonest

attempt of his client to delay the inevitable.

9 In several of the petitions including petition no.488 of 2015 respondent has admitted its liability. I see no reason, particularly, in view of the report of M/s. T.R. Chadha and Company, in keeping the process going on. There is an affidavit of service of one Sandesh Panchal affirmed on 14th December, 2016 confirming publication in the two newspapers and also in the Maharashtra Government Gazette. The notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived at the time of admission of petition no.488 of 2015.

10 85 petitions for winding up the company have been filed alleging the company is unable to pay its debt. I am also satisfied that the company is unable to pay its debts, is commercially insolvent and deserves to be wound up. There is no scope of any revival if one considers the report of M/s. T.R. Chadha and Company. Therefore, the said company petition is allowed in terms of prayer clauses – (a) and (b), which read as under :

> (a) This Hon'ble Court be pleased to direct that the Company, Elder Pharmaceuticals Limited, having its registered office at “Elder House”, Plot No.C-9, Dalia Industrial Estate, Off Veera Desai Road, Andheri (W), Mumbai 400 053 be wound up by the Hon'ble Court under the provisions of the Companies Act, 2013;
>
> (b) This Hon'ble Court be pleased to direct that the Official Liquidator, attached to this Hon'ble Court, be appointed as Liquidator of all the assets and properties, income and books of accounts of the Company, viz., Elder Pharmaceuticals Limited, with all powers under the provisions of Companies Act, 2013.

11 Official Liquidator shall forthwith act on the authenticated copy of this order without awaiting for any notification.

12 Petition no.488 of 2015 accordingly stands disposed.

13 So far as other company petitions are concerned, in view of the company being ordered to be wound up in company petition no.488 of 2015, these petitions also stand disposed. Petitioners are at liberty to apply to Official Liquidator for adjudicating their claims.

14 If the order in company petition no.488 of 2015 of winding up of this respondent company – Elder Pharmaceuticals Limited is set aside in appeal, liberty is given to other petitioners to revive their petitions and move once again for necessary orders including winding up of respondent company. All pending applications, except company application (lodging) no.232 of 2017 in company petition no.961 of 2014, accordingly stand disposed.

COMPANY APPLICATION NO.646 OF 2017
IN
COMPANY PETITION NO.776 OF 2014

1 This application is for change of name of petitioner. Heard the counsel for petitioner.

2 Application is allowed and accordingly disposed in terms of prayer clause – (a).

3 Amendment to be carried out within two weeks from today.

COMPANY APPLICATION (L) NO.232 OF 2017
IN
COMPANY PETITION NO.961 OF 2014

This application to be listed in due course.

(K.R. SHRIRAM, J.)