

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.13632 OF 2021

IN

COMPANY PETITION NO.103 OF 2012

Edelweiss Asset Reconstruction

Company Limited

...Applicant

In the matter between:

Canbank Factors Limited

...Petitioner

Vs.

The Official Liquidator, High Court,

Bombay being the Liquidator of Ankur

Drugs and Pharma Limited (In Liqn.)

...Respondent

WITH

COMPANY APPLICATION NO.210 OF 2019

IN

COMPANY PETITION NO.103 OF 2012

Althea Unilife LLP

...Applicant

In the matter between:

Canbank Factors Limited

...Petitioner

Vs.

The Official Liquidator, High Court,

Bombay being the Liquidator of Ankur

Drugs and Pharma Limited (In Liqn.)

...Respondent

WITH

COMPANY APPLICATION (L) NO.247 OF 2019

IN

COMPANY PETITION NO.103 OF 2012

Kamla Biochem

...Applicant

In the matter between:

Canbank Factors Limited

...Petitioner

Vs.

The Official Liquidator, High Court,
Bombay being the Liquidator of Ankur
Drugs and Pharma Limited (In Liqn.)

...Respondent

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Mr. Nikhil Rajani i/b V. Deshpande & Co. for the Applicant in IA 2247/21.

Mr. Sanjay Debey i/b Omay Khaiyam Shaikh for the Applicant in CAL
247/19.

Mr. Mahendhar Aithe Company Prosecutor.

Mr. Aditya Pimple for O.L.

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CORAM :- B.P.COLABAWALLA, J.

DATE :- DECEMBER 02, 2021.

1. By an Order dated 15th September 2021 passed in Interim Application (L) No.13632 of 2021, *inter-alia*, the Official Liquidator was directed to handover physical possession of the mortgaged properties (more particularly described in the schedule to the above Application), to the authorized officer of the Applicant in Interim Application (L) No.13632 of 2021 (*'Edelweiss'*) within a period of four weeks of the said Order. The above Interim Application was disposed off in terms of the said Order.

2. Pursuant to the said order, the possession of the mortgaged properties situated in Himachal Pradesh, as more

particularly described in the schedule to the above Application, was handed over to Edelweiss by the Official Liquidator. However, because possession of the mortgaged properties situated at Daman was not handed over by the Official Liquidator as directed by the Order dated 15th September, 2021, Edelweiss moved a praceipe in the disposed off the Interim Application (L) No.13632 of 2021.

3. When the said Application came up before the Court on 24th November 2021, it was informed by the learned Advocate appearing for the Official Liquidator that the possession of the mortgaged properties situated at Daman had not yet been handed over to Edelweiss as there were certain Company Applications, being Company Application No.210 of 2019 and Company Application (L) No.247 of 2019, which were currently pending before the Court wherein the Applicants in the said Company Applications had sought possession of certain finished/unfinished products and raw material lying in Daman property. It was informed that these products were currently lying in the said property and on account of the pendency of the abovementioned Company Applications, possession of the Daman premises could not be handed over by the Official Liquidator to Edelweiss. As Company Application No.210 of 2019 and Company Application (L) No.247 of 2019 were not on board on 24th November 2021, the said Applications were placed on Board today along with Interim Application (L) No.13632 of 2021.

4. I have perused Company Application No.210 of 2019 and Company Application (L) No.247 of 2019 and the Orders passed therein from time to time.

5. By an Order dated 23rd January, 2020, pursuant to an undertaking to pay whatever charges incurred for the purposes of identification of the finished and unfinished goods and raw material given by the Applicants in Company Application No.210 of 2019 and Company Application (L) No.247 of 2019, the Official Liquidator was directed to appoint a technical person to identify the nature of the goods and the ownership thereof by identifying invoices and other vouchers.

6. Thereafter, by an Order dated 5th March, 2020, Daman Research and Testing Centre was appointed as the technical person.

7. On 12th March, 2020, the Court perused the Compliance Report dated 11th March 2020 filed by the Official Liquidator and the minutes recorded at the time of the identification of the products. It was noted in the Order that the report did not indicate that the material belonged to any of the Applicants in Company Application No.210 of 2019 and Company Application (L) No.247 of 2019. In this light, the Applicants in Company Application No.210 of 2019 and Company Application (L) No.247 of 2019 stated that they shall file a

Further Affidavit satisfying the Court that the material identified could be handed over to the Applicants.

8. Pursuant to the said Order, nothing happened for a period of almost a year and eventually the matter came up before the Court on 9th February 2021 which noted that though the Further Affidavit which was to be filed was affirmed on 17th March 2020, nothing was done thereafter, and the same was not even served on the Official Liquidator. It was also noted that for the last one year, the goods were lying in the premises and the status thereof was not known. The Court again directed the representative of the Official Liquidator to be deputed along with the representatives of the Applicants in Company Application No.210 of 2019 and Company Application (L) No.247 of 2019 and the technical expert to enable the handing over of the products to the Applicants in Company Application No.210 of 2019 and Company Application (L) No.247 of 2019.

9. Accordingly, on 5th March 2021, the technical expert visited the said premises for the said purpose. Minutes of the said visit were also drawn up.

10. Thereafter, the matter came up on 16th March 2021 and 6th April 2021, and nothing has happened since then.

11. On account of the pendency of Company Application No.210 of 2019 and Company Application (L) No.247 of 2019, the Official Liquidator has not been able to handover possession of the Daman Property to Edelweiss in compliance with the Order passed on 15th September 2021. The Applicants in Company Application No.210 of 2019 and Company Application (L) No.247 of 2019 on the other hand have shown little or no urgency or inclination to seriously prosecute the said Applications and have till date failed to take possession of the Products, the ownership of which they claim.

12. It is therefore directed that, within a period of 3 weeks from today, the Official Liquidator shall depute a representative to visit the Daman properties, along with the technical person as appointed under the earlier orders passed in Company Application No.210 of 2019 and Company Application (L) No.247 of 2019. The technical person shall identify the Raw Material/ finished/semi-finished material belonging to the Applicants and after such identification, the Official Liquidator shall handover the same to the Applicants. The Applicants in Company Application No.210 of 2019 and Company Application (L) No.247 of 2019 have given an undertaking in the further Affidavit dated 17th March, 2020 that they shall indemnify the Official Liquidator in case of any claims arising from any other entity in respect of the said products. The said undertaking is accepted by the Court.

13. The professional fees of the technical person, as well the charges payable to the technical person shall be borne by the Applicants in Company Application No.210 of 2019 and Company Application (L) No.247 of 2019 within one week from the receipt of the invoices in that regard.

14. Edelweiss, through an Authorized Officer shall also remain present on the said date. Immediately upon the Applicants in Company Application No.210 of 2019 and Company Application (L) No.247 of 2019 taking possession of the products/unfinished products/raw materials, the Official Liquidator shall handover possession of the said Daman property to Edelweiss on the same date.

15. The above-captioned the Company Applications are disposed off in terms of the present Order.

16. Liberty to apply.

17. No order as to costs.

18. All parties to act on an authenticated copy of this order digitally signed by the Personal Assistant/Private Secretary/Associate of this Court.

(B. P. COLABAWALLA, J.)