

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

**OFFICIAL LIQUIDATOR'S REPORT NO. 100 OF 2024  
IN  
COMPANY PETITION NO. 488 OF 2015**

**Official Liquidator of Elder Pharmaceuticals Ltd. ...Petitioner**  
**V/s.**

**Puspasen C. Jhaveri ...Petitioner**

**WITH  
INTERIM APPLICATION (L) NO. 33160 OF 2024**

Ms. Jane Cox with Ms. Rohini Thyagarajan for the Noticee No.1 and for the Applicant in IAL 33160/24.

Ms. Payoja Gandhi for Noticee No.2-EPFO.

Ms. Akanshka Agrawal for Official Liquidator.

Mr. Chandan Kumar, Official Liquidator.

**CORAM : ABHAY AHUJA, J.**  
**DATE : 22<sup>nd</sup> NOVEMBER, 2024**

**P.C. :**

1. This Official Liquidator's Report seeks the following prayers:-

“(a) In view of para (10) above, whether this Hon'ble Court be pleased to permit the Official Liquidator to deposit the additional amount of Rs.68,01,777/- (Rs.67,64,015/- towards 21 workers/claimants + Rs.37,762/- towards EPFO, Bandra, Mumbai) in “Dividend Account” bearing Account Number 0062002100157116 with Punjab National Bank, Fort Branch, Mumbai. Further, be pleased to permit the Official Liquidator disbursed of Rs.1,78,29,611/- as the dividend @ 100 paise to 21 workers/claimants and Rs.37,762/- to EPFO, Bandra, Mumbai being the contribution of Employer and Employees towards 21 workers out of the funds available to the credit of the Company (In Liquidation);

b) In view of para (13) above, whether this Hon'ble Court be pleased to permit the Official Liquidator to deposit the

amount of Rs. 33,53,46,322/- (Rupees Thirty Three Crores Fifty Three Lakhs Forty Six Thousand Three Hundred and Twenty Two Only) in “Dividend Account” bearing Account Number 0062002100157116 with Punjab National Bank, Fort Branch, Mumbai and also permit the Official Liquidator to disburse of Rs. 31,46,70,466/- (Rupees Thirty One Crore Forty Six Lakhs Seventy Thousand Four Hundred and Sixty Six Only) to 483 workers/claimants and Rs. 2,06,75,856/- (Rupees Two Crore Six Lakhs Seventy Five Thousand Eight Hundred and Fifty Six Only) to EPFO, Bandra, Mumbai being the contribution of Employer and Employees towards 483 workers/claimants out of the fund available to the credit of the Company (In Liquidation).

(c) In view of para (14) above, in view of rule 176 of the Company (Court) Rule, 1959, whether this Hon’ble Court be pleased to expunge the said Admission Notice issued to 38 Medical representative/workers and allow the Official Liquidator to re-adjudicate the claims of those 38 medical representatives/workers of the Company (In Liquidation) as per Exhibit- “E” above.”

2. Ms. Agrawal, learned Counsel appears for the Official Liquidator and submits that as far as the prayer Clause (a) is concerned, the said prayer seeks permission to deposit an additional amount of Rs. 68,01,777/- in the Dividend Account mentioned therein as dividend and to disburse Rs. 1,78,29,611/- as dividend at the rate of 100 paise to 21 Workers/Claimants/ Sales Promotion Executives (SPEs)/Medical Representatives and Rs. 37,762/- to the EPFO being the contribution of employer and employees towards 21 workers out of the funds available to the credit of the company in liquidation.

3. Ms. Agrawal submits that earlier pursuant to the orders of this Court, 21 claims as above have been re-adjudicated with respect to the aspects of medical reimbursement, leave encashment and incentive dues payable to such workers under the Deed of Settlement dated 20<sup>th</sup> September, 2008, whereby the company in liquidation had agreed to pay such amounts to the workers. That, therefore, this Court allow prayer Clause (a).

4. Ms. Gandhi, learned Counsel appears for the EPFO and submits that although the EPFO has no objection to the amount of Rs. 68,01,777/- being deposited in the Dividend Account and Rs. 37,762/- in the EPFO account, however, the disbursement to the said 21 workers will be possible only after the information with respect to the said workers is provided in the format of the EPFO annexed to the reply of the EPFO to the Official Liquidator's Report at Exhibit-D (at page 101). Ms. Gandhi submits that she is willing to give technical assistance to the Official Liquidator, so that the required information can be placed in an appropriate format and monies can be thereafter, disbursed to the 21 workers.

5. Accordingly, prayer Clause (a) is allowed, subject to furnishing all the required information in the required format of the EPFO and thereafter, the monies to be disbursed to the said 21 workmen, within a period of four weeks.

6. As far as prayer Clause (b) of the Official Liquidator's Report is concerned, Ms. Agrawal, learned Counsel for the Official Liquidator submits that the claim of 483 workmen including the SPEs/ Medical Representatives has been adjudicated and this Court permit the Official Liquidator to deposit Rs. 33,53,46,322/- into the Dividend Account as mentioned therein and also permit the Official Liquidator to disburse an amount of Rs. 31,46,70,446/- to the 483 workers and Rs. 2,06,75,856/- to the EPFO as being contribution of employer and employees towards those workmen out of the funds available to the credit of the company in liquidation.

7. Ms. Gandhi, learned Counsel appearing for the EPFO submits that while she has no objection as has been submitted with respect to the prayer Clause(a) to deposit the amounts, however, learned Counsel submits that until and unless the required information with respect to the 483 workers is furnished in the required format, the EPFO would

not be in a position to disburse the amount deposited by the Official Liquidator.

8. Accordingly, as far as the disbursement is concerned, let the Official Liquidator's office and the EPFO cooperate with each other as regards the information with respect to the 483 workers that is required to be furnished in the proper format, subject to which prayer Clause (b) is allowed.

9. Accordingly, prayer Clause (b) is allowed, subject to furnishing all the required information in the required format of the EPFO and thereafter, monies be disbursed to the workmen, within a period of four weeks.

10. Further, with respect to the prayer Clause (b), Ms. Cox, learned Counsel appearing for the Federation of Medical and Sales Representative Association of India and others ("FMRAI") submits that out of the 483 workers and in respect of whom the Official Liquidator has been granted permission to deposit monies into the Dividend Account and also to disburse the same as per prayer Clause (b), there are 109 medical/sales representatives, who have also filed an Interim

Application bearing (Lodging) No.33160 of 2024 through the FMRAI for re-adjudication in respect of claims pertaining to leave travel allowance, leave encashment, incentives, medical reimbursement and expenses / field allowances, as the claims with respect to those heads have been rejected by the Official Liquidator.

11. Ms. Cox has drawn the attention of this Court to page 86 of the said Interim Application with respect to leave encashment and submits that the said page exhibits a snapshot of the website information downloaded by one of the claimants. Ms. Cox would submit that the said information was earlier available on the website of the company and could be downloaded by the employees, however, as recorded in order dated 6<sup>th</sup> October, 2023, the said information cannot any more be accessed on the e-force database of the company.

12. Ms. Agrawal, learned Counsel appearing for the Official Liquidator also submits that despite best efforts, the Official Liquidator's office has also been unable to access the e-force database of the company in liquidation.

13. It is observed from paragraph 6 of the said order dated 6<sup>th</sup> October, 2023, that some of the workers were able to download the

data and therefore, information in respect of those workers is available and therefore, the Court on the earlier occasion in respect of the 21 workers had granted reliefs subject to the other terms and conditions as contained in the said order.

14. As far as, leave travel allowance, medical reimbursement and field allowance, are concerned, Ms. Cox has drawn the attention of this Court to Memorandum of Settlement under Section 2(p) read with Section 18 (1) of the Industrial Disputes, Act, 1947 between the company and the Welfare Committee, representing the sales promotion employees and submits that in view of the provisions of the said settlement, the leave travel allowance and medical as well as the field allowances are to be paid /reimbursed to the Applicants. The said Clauses of the settlement are usefully reproduced as under:-

“LTA & MEDICAL: All SPEs will be entitled for LTA and Medical reimbursement at the rate of one month Basic salary per annum. Those SPEs who have PP due to rationalization of Basic will get LTA & Medical on Basic + PP

FIELD ALLOWANCES: The existing Daily allowance. KM wise fare, Parking Telephone, VMA etc shall continue to be in force and will be revised through mutual discussion as agreed upon.”

15. Ms. Cox would submit that the workers have submitted medical bills in support of the medical reimbursement and as and by way of illustration refers to pages 110 to 112 which contain the bills of medical store in respect of some of the claimants.

16. Ms. Cox once again draws the attention of this Court to order dated 6<sup>th</sup> October, 2023 and submits that in respect of similar claims of the leave travel allowance, leave encashment, incentives, medical reimbursement and expenses/field allowances, this Court had directed the Official Liquidator to re-adjudicate the claims of 21 of the workers on the basis of the material that the individual workers would place before the Official Liquidator and that this Court also consider similar course of action with respect to the 109 claimants represented by the FMRAI in the Interim Application.

17. With regard to the incentives, Ms. Cox submits that under Section 2 (rr) of the Industrial Disputes Act, 1947 incentives is also included in the definition of the word “wages” at Section 2 (iv). For the sake of convenience Section 2 (rr) (iv) is usefully quoted as under:-

“2(rr) “wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable

to a workman in respect of his employment, or of work done in such employment, and includes-

(iv) any commission payable on the promotion of sales or business or both".

(emphasis supplied)

18. Ms. Cox submits that in view of the above provision, the earlier order dated 6<sup>th</sup> October, 2023, had also directed the Official Liquidator to re-adjudicate the incentives and that, therefore, this Court also adopt the same course of action.

19. Ms. Cox draws the attention of this Court to page 114 of the Interim Application and submits that the same is a sample of how the incentives were calculated in respect of one of the workers.

20. As an illustration for payment of field allowances, Ms. Cox has drawn the attention of this Court to page 102 of the Interim Application and submits that the same is a monthly expense statement of the employee, which had been earlier submitted to the company in liquidation and although it has not been certified by anyone, such supporting documents could be certified by the President, Secretary and Treasurer of the Union of the Applicant-FMRAI.

21. Ms. Agrawal, learned Counsel appearing for the Official Liquidator submits that the Official Liquidator would have no objection

to re-adjudicate the claim of the 109 claimants on the basis of the order dated 6<sup>th</sup> October, 2023, which was passed in the case of 21 medical representatives.

22. Accordingly, having heard the learned Counsel for the Interim Applicant representing 109 SPEs/medical representatives as well as the learned Counsel for the Official Liquidator and also having perused the order dated 6<sup>th</sup> October, 2023, this Court is of the view that the Official Liquidator re-adjudicate the claim of the workers listed at Exhibit-D to the Interim Application on the basis of the material furnished by each of them, duly certified by the President, General Secretary and Treasurer of the Applicant-FMRAI on the basis of the aforesaid discussion and in particular order dated 6<sup>th</sup> October, 2023, however any disbursement be made subject to an affidavit and an indemnity bond to the satisfaction of the Official Liquidator.

23. It is made clear that the Official Liquidator is at liberty to call for any further material from the Applicant-FMRAI for the proper adjudication and that the FMRAI as well as the claimants listed in Exhibit-B to fully cooperate with the Official Liquidator.

24. Ms. Cox submits that the Applicant is not pressing for prayer Clause (i) in the light of the paragraph 11 of the Official Liquidator reply. Ordered accordingly.

25. Let the process of re-adjudication be completed within a period of 12 weeks. The Interim Application stands allowed as above.

26. As far as prayer Clause (c) in the Official Liquidator's report is concerned, it has been submitted by Ms. Agrawal that the claims of 38 workers / medical representatives have not been properly adjudicated and adjudication amount is less than the other workers, as the admission of proof issued by them has been improperly admitted and that, therefore, this Court pass appropriate orders directing the Official Liquidator to re-adjudicate these claims.

27. Ms. Cox, learned Counsel appearing for the Applicant-FMRAI has no objection if such an order is passed.

28. Accordingly, having heard the learned Counsel with respect to the prayer Clause (c), this Court is of the view that the adjudication orders in respect of the workers/ claimants listed at Exhibit-E at pages

65 to 68 of the Official Liquidator's Report are hereby set aside with liberty to re-adjudicate the same as per law.

29. Let the re-adjudication process be completed in respect of the said workers within a period of eight weeks. The Official Liquidator's Report as well as the Interim Application accordingly stand allowed and disposed as above.

**(ABHAY AHUJA, J.)**

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