

COMPANY LAW BOARD
NEW DELHI BENCH
NEW DELHI

C. P. NO. 14 & 22(MB)2015
CA. NO.

PRESENT: B.S.V. PRAKASH KUMAR,
HON'BLE MEMBER

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF
THE COMPANY LAW BOARD ON 25.04.2016 AT 02.30 P.M**

NAME OF THE COMPANY: M/s Elder Pharmaceuticals Ltd.

SECTION OF THE COMPANIES ACT: 74 (2) & 58A(9)

| S.NO. | NAME | DESIGNATION | REPRESENTATION | SIGNATURE |
|--------------|----------------|--------------------|-----------------------|------------------|
| 1. | ABHISHEK ANAND | ADVOCATE | COMPANY | <i>Abhishek</i> |

Order

The applicant company today sought extension of time on the ground stay has been granted in the appeal over winding up proceedings at Hon'ble High Court of Bombay.

2. It appears that these appeals were dismissed leaving some stay over the notification and not to proceed with winding up proceedings, clarifying that this company shall clear its dues with creditors on or before 04-08-2016.

3. This Bench passed an order on 22-01-2016 mentioning the past story as to how this company failed to comply with various orders passed by the CLB.

4. However, when Managing Director gave an undertaking by filing an affidavit on 22-01-2016 stating that he would repay ₹1Crores by first week of March, 2016, ₹2Crores by first week of April, 2016 and the balance interest amounting to ₹13-14Crores by May, 2016 against ₹155Crores towards depositors' dues outstanding against the company, the CLB ordered on 22-1-2016 hoping that at least some money could come to the depositors. With that hope alone, this application for extension stood over in pursuance of the undertaking given by MD.

5. Now, we are in the month of April, 2016. It is clear that this MD has paid neither March 2016 installment nor payment in the first week of April, 2016. Now he has come up with an

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excuse saying he could not make this payment for an amount of ₹45Crores of the company being frozen on various dates.

6. When this Bench asked on what dates the accounts of the company being frozen, the counsel appearing on behalf of the company candidly admitted that the accounts have been frozen prior to passing this order on 22-01-2016.

7. Having known to this MD that his accounts were frozen far before he has given an undertaking before this Bench i.e. on 22-01-2016, how could now he come before this Bench with an excuse for not complying with this order on the ground accounts were frozen? If so, why did he give such an affidavit of undertaking that he would pay the money as mentioned in the order dated 22-01-2016?

8. He would have given that undertaking hoping that he would generate money from other source to comply with this order or he would have given that affidavit knowing full well that he could flout this order taking this excuse before this Bench.

9. Besides this, it appears that the proceedings are pending against this company under The Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999; the same is admitted by the counsel appearing on behalf of the company. For that Act has overriding effect on any other proceeding pending under any other law, I fear this Bench will not be in a position to pass any order in conflict with the orders under the afore said Act.

10. In view of non compliance of the order passed on 22-1-2016; the excuse, the company played at this Bench; looking at other proceedings pending before other courts and the history of failures in abiding the orders passed under section 58(A) of the Companies Act 1956, I do not find any merit in keeping this application pending any more.

11. It is needless to say that the relief u/s 74(2) of the Companies Act, 2013 is purely a discretion that has to be invoked depending on the likelihood of the party paying money to the depositors. If it is obvious on record that the party is unlikely to clear the dues of the depositors despite obtaining order u/s 74(2) of the Act 2013, if any further extensions are given, then it will tantamount to abuse of discretion conferred on this Bench u/s 74(2) of the Companies Act, 2013.

12. For this applicant company being entangled in various litigations, in case any further orders are passed in this case for extension, I fear it will become hindrance in prosecuting this company for realization of these dues under other provisions of law.

13. In view of the reasons above mentioned, these CPs No. 14 & 22(MB)/2015 and other applications, if pending, are hereby dismissed.

Sdt

(B.S.V. PRAKASH KUMAR)
Member (Judicial)