

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

CP (IB) No. 763 of 2021

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with Rule
6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority)
Rules, 2016

In the matter of

Utkarsh Biotech,

308, Shilpa Building, Golibar Road,
Jagdusha Nagar, Ghatkopar West,
Mumbai- 400086.

..... Operational Creditor

Vs

Celogen Generics Private Limited,

(CIN No.: U24233MH2014PTC258452)

Opp B-106, Techno City, PL X-4/1, X-
4/2, TTC Area, MIDC, Mahape Navi
Mumbai, Thane-400701.

..... Corporate Debtor

Order Pronounced On: 02.05.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri. Prabhat Kumar, Member (Technical)

Appearances (via Videoconferencing)

For the Operational Creditor: Mr. Kashyap Padia, Advocate

For the Corporate Debtor: None

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. This Company Petition is filed by Utkarsh Biotech, (hereinafter called as the "**Operational Creditor**"), seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Celogen Generics Private Limited, (hereinafter referred to as the "**Corporate Debtor**") by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 1,38,19,215/- which includes Rs. 71,99,314/- towards principal outstanding and Interest Rs. 66,19,901/- as calculated upto 08.02.2021.

FACTS OF THE CASE

2. The Corporate Debtor required Pharmaceutical raw products like Simvastatin, Levofloxacin Hemidrate IP/USP, Clopidogrel Bisulphate USP, Sodium Lauryl Sulphate, Colloidal Silicon Dioxide-BP, etc. for which the Corporate Debtor placed various Purchase Order periodically between 22.01.2018 to 02.06.2018.
3. The Operational Creditor supplied the materials as per the specification and requirement as mentioned in the Purchase Order issued by the Corporate

Debtor. The Operational Creditor issued Invoices from time to time against the supply of material to the Corporate Debtor.

4. After delivery of all the materials, the Corporate Debtor has not made any payments thereof. The Operational Creditor has sent an email dated 07.12.2020 to the Corporate Debtor for the payment of the outstanding amount in the invoices. The Date of Default under Part IV of the petition has been mentioned as 22.12.2020.
5. On failure of the Corporate Debtor to make the payment, the Operational Creditor issued a Demand Notice dated 08.02.2021 in Form 3 of the Code through Registered Postal AD and Email.
6. Despite receiving the Demand Notice served by the Operational Creditor, the Corporate Debtor has not made the payment of the outstanding amount. This necessitated the filing of the present petition.

REPLY FILED BY THE CORPORATE DEBTOR

7. At the outset, The Corporate Debtor has denied all the contentions, averments and submissions made by the Operational Creditor.
8. The Corporate Debtor has submitted that the present petition is barred by law of limitation. It has been stated that the petition is based on the invoices raised from 05.03.2018 to 29.06.2018 but the petition was filed on 03.08.2021 well after the expiry of 3 years from the last invoice raised by Operational Creditor.
9. The Corporate Debtor has further submitted that the Applicant is not authorized to file the present petition and the petition is filed without proper authority.
10. The Corporate Debtor has further submitted that the petition is filed without necessary court fees that is required to be paid under Section 9 of the Code.

11. The Corporate Debtor has submitted that this Tribunal lacks the territorial Jurisdiction to adjudicate the present case.

FINDINGS

12. We have heard the Ld. Counsels for the parties and perused the records.
13. The present petition has been filed by the Operational Creditor rendering the default committed by the Corporate Debtor for an outstanding amount aggregating to Rs. 1,38,19,215/- which includes Rs. 71,99,314/- towards principal outstanding and Rs. 66,19,901/- as interest calculated till the date of serving of the Demand Notice under Section 8 of the Code, i.e. 08.02.2021.
14. The Ld. Counsel for the Corporate Debtor has raised the contention that the Petition is barred by law of limitation as it was filed on 03.08.2021 for the invoices raised between 05.03.2018 to 29.06.2018. Here, it is significant to note that as per the conditions mentioned on the Invoices, the payment of each invoice was to be made within 60 days from the receipt of the invoice. The details of the Invoices and their due dates which are as under:

Sr. No.	Invoice No.	Date of Invoice	Amount of Invoice	Due date of payment	Pending amount with interest
1	UB/445	05.03.2018	50,48,040/-	05.05.2018	12,40,632/-
2	UB/035	23.04.2018	7,95,025/-	23.06.2018	15,36,032/-
3	UB/036	23.04.2018	1,13,575/-	23.06.2018	2,19,433/-
4	UB/057	12.05.2018	50,15,472/-	10.07.2018	96,06,072/-
5	UB/068	21.05.2018	81,420/-	21.07.2018	1,55,059/-
6	UB/084	07.06.2018	1,42,485/-	07.08.2018	2,69,106/-

7	UB/111	28.06.2018	91,332/-	28.08.2018	1,70,604/-
8	UB/112	28.06.2018	1,47,382/-	28.08.2018	2,75,303/-
9	UB/115	29.06.2018	1,85,850/-	29.08.2018	3,46,974/-

15. It has been pointed out by the Counsel for the Corporate Debtor that in the above-mentioned table, in respect of the Invoices issued between 05.03.2018 to 21.05.2018 **bearing number UB/445, UB/035, UB/036, UB/057 and UB/068** respectively, the claim could have been filed within the period of 3 years i.e. till 21.07.2021. Since the present petition was filed on 03.08.2021 i.e. after 27.07.2021, the claim with regard to the Invoices are clearly time barred. However, the contention raised on behalf of the Corporate Debtor cannot be said to be correct. Here it is worth mentioning that as per the Hon'ble Supreme Court order passed in suo moto writ petition (c) No. 3 of 2020, it has been held that where the limitation would have expired the during the period between 15.03.2020 till 18.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2020. In the light of the judgment of the Hon'ble Supreme Court, it cannot be said that the Invoices issued upto 21.05.2018 are barred by time. Therefore, it cannot be said that the instant petition is barred by time.
16. It has further been argued by the Counsel for the Corporate Debtor that the present petition is barred by Section 10A of the Code. In this regard, it has been pointed out that in the Petition itself the Petitioner/Operational Creditor has mentioned the date of default in part IV of the petition as 22.12.2020 which is covered under the provisions of Section 10A of the Code and therefore, the Petition is liable to be dismissed on this ground alone.
17. The above contention raised by the Counsel for the Petitioner appears to be correct. It has been noticed that in Part IV of the Petition, the Petitioner has mentioned the date of default as 22.12.2020 which is clearly covered under

the excluded period of Section 10A of the Code. Therefore, the Petition is liable to be dismissed on this ground alone.

18. As a corollary to the above discussion the Company Petition bearing no. 763 of 2021 under Section 9 is hereby **‘dismissed’**.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kuldip Kumar Kareer,
Member (Judicial)