

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No. 4487/MB-IV/2019**

Under Section 9 of the I&B Code, 2016

In the matter of:

**Trans Global Logistics Private Limited**

[CIN: U63090MH1999PTC216708]

...Operational Creditor/Applicant

V/s

**Celogen Pharma Private Limited**

[CIN: U24230MH2005PTC152619]

...Corporate Debtor/Respondent

Order Dated: 28.04.2023

*Coram:*

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Aaqib Kazi i/b Siddiquee and Associates, Advocate.

For the Respondent(s) : None Present

**ORDER**

*Per: Kishore Vemulapalli, Member (Judicial)*

1. This is an Application being C.P. (IB) No. 4487/MB/C-IV/2019 filed on 11.12.2019 by Mr. Vivek Venkatachalam, Executive Director of Trans Global Logistics Private Limited, the Operational

Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Celogen Pharma Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Operational Creditor has filed Board Resolution dated 15.11.2019 in support of authorization in favour of signatory of this Application authorising him to file the present company application on behalf of the Operational Creditor.
3. The total amount claimed by the Operational Creditor in the Part 4 of the Company Petition is Rs. 71,05,987.45/-, inclusive of 15% p.a. interest. The first date of default is 14<sup>th</sup> October, 2016 as the first invoice was raised on 14<sup>th</sup> September, 2016 which fell due on 14<sup>th</sup> October, 2016 and consequently various monthly invoices went unpaid and hence are due and payable.
  - 3.1 The Operational Creditor states that Corporate Debtor had approached the Operational Creditor for obtaining the services of the Operational Creditor including but not limited to Freight Forwarding, Customs brokerage, Transportation etc. Accordingly, it rendered its services to the Corporate Debtor, pursuant to which, the Operational Creditor raised various invoices to the Operational Debtor from time to time amounting to Rs. 64,0000/- (Rupees Sixty-Four Lakh Only).
  - 3.2 The Corporate Debtor defaulted in paying the agreed consideration and the amount that is actually paid to the Operational Creditor till date is as Rs. 14,00,000/- (Rupees Fourteen Lakh Rupees Only) instead of the promised amount of Rs. 64,00,000/- (Rupees Sixty-Four Lakh Only). The

Operational Creditor states that the amount of Rs. 99,319/- (Rupees Ninety-Nine Thousand Three Hundred and Nineteen Only) has been adjusted towards TDS.

3.3 None of the monthly invoices raised for the services provided by the Operational Creditor were paid by the Corporate Debtor in time and many invoices still remain unpaid.

3.4 The Operational Creditor states that the Corporate Debtor, in discharge of its liabilities issued 5 (five) cheques in December 2018 aggregating to a total of Rs. 60,00,000/-, to the name and benefit of the Operational Creditor. The Operational Creditor further states that, the cheques issued by the Corporate Debtor were not in discharge of its complete liability and that this act itself of the Corporate Debtor prima facie shows that they had issued the said cheques against their liabilities with full knowledge towards the Operational Creditor and the same were duly issued for a consideration against the services rendered by the Operational Creditor.

3.5 The Operational Creditor further states that, the said cheques were dated 31<sup>st</sup> December, 2018 and the same were presented to the bank on 01<sup>st</sup> January, 2019 and the same was returned by the Bank on 02<sup>nd</sup> January, 2019 stating reason "Funds Insufficient". The Operational Creditor further states that it received a letter dated 2<sup>nd</sup> January, 2019 from the Corporate Debtor therein mischievously claiming that the said cheques were issued as "security cheques" based on the understanding that the Corporate Debtor will clear 40-50 lakhs in the month of December, 2018. The Operational Creditor states that the said cheques were not issued as "security cheques" but were

rather issued in discharge of the Operational Debtors' liabilities towards the Operational Creditor. The Operational Creditor states that pursuant to the above, the Operational Creditor duly sent a letter dated 28<sup>th</sup> January, 2019 to the Corporate Debtor, wherein the Operational Creditor had duly communicated its intention to redeposit the said cheques and consequently it re-deposited the said cheques to its bank on 5<sup>th</sup> February, 2019, and the same got dishonoured with the reason - "Payment stopped by the Drawer", on 6<sup>th</sup> February, 2019.

- 3.6 The Operational Creditor states that, post the dishonour of the cheques, the Corporate Debtor deposited an amount of Rs. 14,00,000/- (Rupees Twelve Lakh Rupees Only) in instalments, the last instalment being on the 24<sup>th</sup> June, 2019 of Rs. 2,00,000/- (Rupees Two Lakh Only).
- 3.7 The Operational Creditor states that, the Corporate Debtor has in all deposited a part payment of Rs. 14,000,00/- (Rupees Fourteen Lakh Rupees Only) in installations till date. The Operational Creditor has further annexed the copy of the invoice which was raised on 24<sup>th</sup> September, 2019 showing the outstanding amount till date which is Rs. 49,08,566.91 (Rupees Forty-Nine Lakhs Eight Thousand Five Hundred Sixty-Six And Ninety- One Paise Only).
- 3.8 The Operational Creditor states that it made multiple follow-ups and sent reminders to the Corporate Debtor, but no payments were received from the latter.
- 3.9 The Operational Creditor had addressed two Demand Notices under Rule 5 of the Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 on the 12<sup>th</sup> August, 2019 and 25<sup>th</sup> September, 2019 calling upon the Corporate Debtor to pay the outstanding amounts of Rs. 51,08,566.91/- (Rupees Fifty Nine Lakh Eight Thousand Five Hundred and Sixty Six Rupees Only) and Rs. 49,08,566.91 (Rupees Forty-Nine Lakhs Eight Thousand Five Hundred Sixty-Six And Ninety- One Paise Only) respectively.

- 3.10 The Operational debtor post receiving a demand notice notices u/r 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), made a part payment of Rs. 2,00,000/- (Rupees Two Lakh Only).
4. The Operational Creditor has neither received any reply from the Corporate Debtor nor has it received payment of the debt due. The Corporate Debtor has also not raised any dispute with respect to this debt. The Corporate Debtor was set ex-parte vide order dated 19.12.2022 for non-appearance and failure to file reply.
5. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.
6. We find that the Corporate Debtor has issued invoices amounting to Rs. 64,00,000/- against the Corporate Debtor for various services rendered by it to the Corporate Debtor pursuant to agreement between them and hence the debt due and payable by the Corporate Debtor falls within the definition of Operational Debt u/s. 5(21) of the Insolvency and Bankruptcy Code, 2016. The Operational debt is defined u/s 5(21) of the Code to mean “*a claim in respect of provision of goods or services including employment or a debt in respect of the repayment of*”

*dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.*

Further, the Corporate Debtor has issued cheques to the Operational Creditor in discharge of its liability, which are claimed to be security cheques vide email dated 2<sup>nd</sup> January, 2019, which also contains the statement that those cheques were issued on an understanding to clear Rs.40-50 lakhs against the outstanding in December,2018. Hence, there is a clear admission of its liability subsisting in December, 2018.

7. On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to more than Rs.1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant as the required threshold limit to file a petition u/s 9 of the Insolvency and Bankruptcy Code, 2016 and there is default by the Corporate Debtor in payment of debt amount. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 9(5)(i) of the Insolvency And Bankruptcy Code, 2016.
8. The Applicant has not proposed the name of any Registered Insolvency Resolution Professional u/s 9 (4) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016 and has filed a memo u/s 16(3)(a) of the Code to this effect.

### **ORDER**

This Application being C.P. (IB) No. 4487/NCLT/MB/C-IV/2019 filed under Section 9 of I&B Code, 2016, filed by Trans Global Logistics Private Limited, Operational Creditor/ Applicant against Celogen Pharma Private Limited, Corporate Debtor for initiating Corporate

Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
  - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench hereby appoints Mr. Anil Jitendra Jhumkhawala, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00423/2019-2020/12689], Email Id.- [anil.jhumkhawala@gmail.com](mailto:anil.jhumkhawala@gmail.com) and Mobile No.- 9820341106; as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- e) The Operational Creditor shall deposit a sum of Rs. 5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing Public Notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar  
Member (Technical)  
/LRA Akshata/

Sd/-

Kishore Vemulapalli  
Member (Judicial)