IN THE NATIONAL COMPANY LAW TRIBUNAL COURT-V NEW DELHI BENCH COMPANY PETITION IB (IBC) NO. 14/ND/2024

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

DR. FIRDOSH ROHINTAN MAHUWALLA

Residing A 401, Shyamdarshan Apartment, Behind Ward Office No. 6, Akota, Vadodra- 390020

> ...Applicant/Financial Creditor Versus

M/S CELLUGEN BIOTECH PRIVATE LIMITED

Innov8 Coworking, Salcon Ras Vilas, LGF, Next to Select City Walk, Saket District Centre, Saket, Sector 6, Pushp Vihar, New-Delhi- 110017

...Respondent/Corporate Debtor

Order Delivered on: 11.09.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL) DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Ms. Aastha Mathur

For the Respondent: Mr. Abhinav Hansaria, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is a Company Application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Dr. Firdosh

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Rohintan Mahuwalla (hereinafter referred to as 'Financial Creditor'), seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s Cellugen Biotech Private Limited ("Corporate Debtor").

2. The Corporate Debtor was incorporated on 18.08.2008, having CIN: U85110DL2008PTC182124 under the Companies Act, 1956. Its registered office is at Innov8 Coworking, Salcon Ras Vilas, LGF, next to Select City Walk, Saket District Centre, Saket, Sector 6, Pushp Vihar, New Delhi- 110017. Therefore, this Bench has jurisdiction to deal with this petition. The Authorized Share Capital of the Corporate Debtor is Rs. 1,00,00,000/- (Rupees One Crore Only). The Paid-Up Capital of the Corporate Debtor is Rs. 1,00,00,000/- (Rupees One Crore Only)

3. The present application was filed on 20.12.2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 2,14,85,258/- (Rupees Two Crores Fourteen Lacs Eighty-Five Thousand Two Hundred and Fifty-Eight) as on 17.10.2022 (date of default).

Submissions of Learned Counsel appearing for the Applicant are as under: -

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:

a) That the Financial Creditor herein was a director of the Corporate Debtor and on account of funding requirements of the company, the Financial Creditor offered financial assistance by way of a loan to the Corporate Debtor. The Financial Creditor subsequently resigned from the post of the Director om 29.03.2019. During the period 2016 to 2019, an amount of Rs. 2,16,65,000/- was disbursed from the personal account of the Financial Creditor. Till 2019, the Corporate Debtor repaid a total-amount of Rs. 85,00,000/- on various dates, however Rs. 1,31,65,000/- remained due. The Financial Creditor sought the repayment of the said amount, however the same was not done.

b) Thereafter, at the board of the directors meeting of the Corporate Debtor held on 04.03,2019, the Corporate Debtor admitted to repay the entire outstanding amount along with interest @ 8% interest per annum from date of disbursement

of the loan and till such time the loan is repaid. Further, the Financial Creditor issued numerous letters dated 04.04.2019, 13.07.2020 and 21.09.2021 requesting Corporate Debtor and its directors to repay the entire loan amount along with interest. The Corporate Debtor responded to each letter and on each occasion and duly accepted its liability towards the Financial Creditor. The said letters are placed on record as Annexure D-I.

- c) The Financial Creditor issued a notice upon the Corporate Debtor on 17.10.2022 calling upon the Corporate Debtor to repay the entire amount of Rs. 1,31,65,000/- (Rupees One Crore Thirty-One Lacs Sixty-Five Thousand only) along with interest on such amount @ 8% per annum from the date of each disbursement and till the actual date of realization. However, the Financial Creditor did not receive any response to the notice dated 17.10.2022.
- d) The Corporate Debtor has repeatedly admitted the receipt of the amount from the Financial Creditor and accepted its liability by way of the letters dated 03.05.2019, 01.08.2020 and 12.12.2021 and thus in view of the same the default is unambiguous. Further, in terms of Section 7 (3)(a), the Financial Creditor has filed the record of default recorded with the NeSL and the same is placed on record as Annexure-L.

Submissions of Learned Counsel appearing for the Corporate Debtor are as under:

- 5. The details of the submissions made by the Corporate Debtor are as follows:
 - a) The Corporate Debtor was incorporated with the objective of providing technology solutions to life science business. That the Corporate Debtor initiated the first private umbilical cord pool banking concept in India and also establish family stem cell bank, for which it sought financial help from friends and acquaintances. Accordingly, the Financial Creditor herein, who was a director of the Corporate Debtor at the relevant time, gave a loan to the company to meet with funding requirements of the company.
 - b) In the year 2019, the Corporate Debtor entered into discussions with Polski Bank Komórek Maclerzystych S.A. (Famicord Group), having the largest European stem cell bank, for investing in the Corporate Debtor and accordingly a letter of

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intent dated 04.03.2019 was entered. Therefore, in view of the incoming source of funds, the board of directors of the Corporate Debtor decided to repay the loan given by the Financial Creditor herein along with interest at the meeting held on 04.03.2019. However, due to unavoidable circumstances, primarily being the Covid – 19 pandemic, the said agreement between the Corporate Debtor and the Famicord Group did not fructify and the source of funds for the Corporate Debtor was completely cut - off.

- c) Further, the Corporate Debtor herein took on lease a plot of land bearing No. 62, located in Udyog Vihar, Phase I, Gurugram in order to set up a state of the art lab facility and also bought specialized lab equipment/machinery for the same worth approximately Rs. 4,00,00,000/-. However, on account of non payment of the lease money, the landlord of the said plot filed an eviction suit and an eviction order dated 03.11.2022 was passed against the Corporate Debtor. The Landlord thereafter filed an execution petition for execution of the order dated 03.11.2022 bearing EXE No. 307/2022 and warrant of possession was issued vide order dated 17.01.2023 by the Executing Court. That vide order dated 06.02.2023, it was recorded that while the possession of the said plot was handed over to the landlord, however the machinery was still kept at the said plot and accordingly notice was issued to the Corporate Debtor. On 28.03.2023, the Executing Court decided that the auction of the said machinery will take place on 29.04.2023.
- d) Thereafter, the Corporate Debtor moved an application on 11.04.2023 seeking extension of time to remove the machinery of the Corporate Debtor from the said plot. However, without even deciding the said application, the Executing Court permitted the auction of the said machinery to take place and as is evident from the order dated 09.05.2023, the entire machinery belonging to the Corporate Debtor, which was worth approximately Rs. 4,00,00,000/- was sold in the Court auction for only an amount of Rs. 36,50,000/-. The Corporate Debtor moved another application on 18.05.2023 against the auction process and prayed for status quo ante, however the same was dismissed by the Executing Court. A copy of the order dated 18.05.2023 is placed on record as Annexure-B.

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e) The Corporate Debtor herein filed a civil revision petition before the High Court of Punjab and Haryana against the auction process which was prima facie illegal, invalid and against the order dated 18.05.2023 being CR No. 3683 of 2023. That the said petition came up for hearing on 03.07.2023 and an interim order was passed by the Hon'ble High Court directing status quo in respect of the auctioned properties. A copy of the order dated 03.07.2023 is placed on record as Annexure-C.

Since, the said proceedings are pending adjudication and the Corporate Debtor is hopeful to obtain a favorable order in the said proceedings, which would in turn mean that the Corporate Debtor would have enough assets to clear the outstanding amount due to the financial creditor herein. It is further stated that the Corporate Debtor herein was working towards developing a first private umbilical cord pool banking concept in India and establish family stem cell bank, which help cure various life-threatening diseases, therefore, the Corporate Debtor submits that this Adjudicating Authority may consider the impact of the CIRP of the Corporate Debtor.

Analysis and Findings

6. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and written submission. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.

7. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a "debt" owed to the Financial Creditor and whether there is a "default" with respect to such debt.

8. In the present case, the Financial Creditor herein was a Director of the Corporate Debtor and on account of funding requirements of the company, the Financial Creditor offered financial assistance by way of a loan to the Corporate Debtor. During CP IB 14/ND/2024

the period 2016 to 2019, an amount of Rs. 2,16,65,000/- was disbursed from the personal account of the Financial Creditor to the Corporate Debtor. Further, the said debt amount also carried interest @ 8% per annum. The debt amount provided by the Financial Creditor herein is also admitted by the Corporate Debtor in its Board Meeting held on 04.03.2019. Therefore, one essential ingredient with respect to Section 7, that there has been a "debt", stands substantiated.

- 9. Further, the Corporate Debtor repaid a total amount of Rs. 85,00,000/-, however an amount of Rs. 1,31,65,000/- remained due. As per the Corporate Debtor's resolution in its Board Meeting held on 04.03.2019, the Corporate Debtor was required to make an endeavor to repay the loan amount, however, no action regarding the same was taken by the Corporate Debtor. Thereafter, the Financial Creditor issued numerous letters dated 04.04.2019, 13.07.2020 and 21.09 2021 to the Corporate Debtor requesting to repay the loan amount. The Corporate Debtor responded to each letter and had duly acknowledged its liability and sort for more time. Further, the Financial Creditor issued a notice upon the Corporate Debtor on 17.10.2022 recalling to repay the entire amount of Rs. 1,31,65,000/- along with 8% interest per annum, within a period of 15 days. However, the Financial Creditor did not receive any reply to the said notice and also did not receive any repayment of the loan amount from the Corporate Debtor. Hence, there is a default on the part of the Corporate Debtor. Also, in terms of Section 7 (3) (a), the Financial Creditor has placed on record the record of default recorded with the NeSL as Annexure L. Therefore, another major essential ingredient of Section 7 i.e., "default" with respect to the debt stand substantiated.
- 10. Further, all the other contentions by the Corporate Debtor with respect to the loss suffered by the Corporate Debtor, or the eviction suit going against the Corporate Debtor, or a civil revision petition pending before the High Court of Punjab and Haryana against the auction process, are irrelevant for the adjudication of the present matter, as there is a debt and default, which is evident from the facts of the instant case. The Hon'ble Supreme Court in the judgement of "Innoventive Industries Limited v. ICICI Bank and Another" held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to

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refuse admission of the Application under Section 7 of I & B Code, 2016. The relevant

extract of the said judgment is reproduced hereunder as:

"30. On the other hand, as we have seen, in the case of a corporate debtor

who commits a default of a financial debt, the adjudicating authority has

merely to see the records of the information utility or other evidence

produced by the financial creditor to satisfy itself that a default has

occurred. It is of no matter that the debt is disputed so long as the debt is

"due" i.e. payable unless interdicted by some law or has not yet become due

in the sense that it is payable at some future date. It is only when this is

proved to the satisfaction of the adjudicating authority that the adjudicating

authority may reject an application and not otherwise."

11. From the perusal of aforesaid facts, it is clear that the applicants are Financial

Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt,

and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8)

of the IBC which are as follows:

Section 3(12) of IBC defines Default. "Default means non-payment of debt

when whole or any part or installment of the amount of debt has become due

and payable and is not repaid by the debtor or the corporate debtor, as the

case may be."

Section 5(7) of IBC defines Financial Creditor: "Financial Creditor means any

person to whom a financial debt is owed and includes a person to whom such

debt has been legally assigned or transferred to."

Section 5(8) of IBC defines Financial Debt. "Financial Debt means a debt along

with interest, if any, which is disbursed against the consideration for the time

value of money and includes-

(a) Money borrowed against the payment of interest;

(b) Any amount raised by acceptance under any acceptance credit facility or

its de-materialised equivalent;

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- (c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) The amount of any liability is respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as maybe prescribed;
- (e) Receivables sold or discounted other than any receivables sold on non-recourse basis;
- (f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
- (g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause."
- 12. The present petition made by the Financial Creditor is complete is all respects as required by law. The Petition established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 20.12.2023, and even admittedly the debt owed to the Financial Creditor is an amount of Rs. 2,14,85,258/-(Rupees Two Crores Fourteen Lacs Eighty-Five Thousand Two Hundred and Fifty-Eight) which meets the threshold of Rs. One Crore.
- 13. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/14 (ND) 2024** filed by M/s Firdosh Rohintan Mahuwalla, the Financial Creditor, under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Cellugen Biotech Private Limited, the Corporate Debtor, stands **admitted** and CIRP of M/s Cellugen Biotech Private Limited is initiated.

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- 14. That the petitioner in part-III of the petition has proposed the name of Ms. Preeti Chauhan, as Interim Resolution Professional, having Registration Number IBBI/IPA-002/IP-N01273/2023-2024/14331 and E-mail Id cspreetichauhan@gmail.com, is hereby appointed as an Interim Resolution Professional (IRP) for Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that IRP has a valid AFA.
- 15. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
 - (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 interestcreated by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial 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 the possession of the corporate debtor.
 - (e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

16. It is made clear that the provisions of moratorium shall not apply to transactions

which might be notified by the Central Government and the supply of the essential

goods or services to the Corporate Debtor as may be specified, are not to be

terminated or suspended or interrupted during the moratorium period. In addition,

as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come

into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the

surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)

(b) of the Code.

17. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall

be made by the Interim Resolution Professional immediately (within 3 days) as

prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with

regard to admission of this application under Section 7 of the Insolvency &

Bankruptcy Code, 2016.

18. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh

Rupees) with the Interim Resolution Professional namely Ms. Preeti Chauhan to

meet out the expenses to perform the initial functions assigned to him in accordance

with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Person) Regulations, 2016. The needful shall be

done within three days from the date of receipt of this order by the Financial

Creditor. The said amount, however, is subject to adjustment towards Resolution

Process cost as per applicable rules.

19. The Interim Resolution Professional shall perform all his functions as contemplated,

inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings

with utmost dedication, honesty and strictly in accordance with the provisions of

the Code, Rules and Regulations.

20. It is further made clear that all the personnel connected with the Corporate Debtor,

its promoters or any other person associated with the Management of the Corporate

Debtor are under legal obligation under Section 19 of the Code to extend every

assistance and cooperation to the Interim Resolution Professional as may be

required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case

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there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority

with a prayer for passing appropriate orders.

21. The Interim Resolution Professional shall be under duty to protect and preserve the

value of the property of the 'Corporate Debtor' as a part of his obligation imposed by

Section 20 of the Code and perform all his functions strictly in accordance with the

provisions of the Code, Rules and Regulations.

22. A copy of the order shall be communicated to the applicant, Corporate Debtor and

IRP above named, by the Registry. In addition, a copy of the order shall also be

forwarded to IBBI for its records. Applicant is also directed to provide a copy of the

complete paper book to the IRP. A copy of this order is also sent to the ROC for

updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

23. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing

C.P. I.B./14 (ND)/2024 stands admitted.

24. A certified copy of this order may be issued, if applied for, upon compliance with all

requisite formalities.

Sd/-(DR. SANJEEV RANJAN) MEMBER (TECHNICAL) Sd/-(MAHENDRA KHANDELWAL) MEMBER (JUDICIAL)

Order Delivered on: 11.09.2024

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