

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB) 178/MB/2023

Under section 10 of the Insolvency and
Bankruptcy Code, 2016

(Application to Adjudicating Authority)
Rules, 2016

In the matter of

Rytus Therapeutics Limited

CIN No. :- U24100MH2011PLC213828

Having its registered office at: Flat 1601, 16th
Floor, Willowcrest Building, One
Hiranandani Park, Ghodbunder Road,
Thane – 400607.

...Corporate Applicant

Order Delivered on :-15.05.2024

Coram:

Mr. Anil Raj Chellan Mr. Kuldip Kumar Kareer
Member (Technical) Member (Judicial)

Appearances:

**For the Corporate Applicant:- Adv. Aman Kacheria a/w Siddharth
Shankar**

ORDER

Per:- Coram

1. The present Company Petition is filed by Rytus Therapeutics Limited (hereinafter referred to as “Corporate Applicant”) under Section 10 of

the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") seeking to initiate Corporate Insolvency Resolution Process (CIRP) as the Corporate Applicant has committed the default in paying the debt of Rs. 8,93,94,621/- (Rupees Eight Crore Ninety-Three Lakhs Ninety-Four Thousand Six Hundred and Twenty-One Only). The date on which the amount was in default is 30.09.2022.

2. The averments made by the Corporate Applicant are summarised as under :-

- i. The Corporate Applicant is a Limited Company incorporated on 21.02.2011 bearing CIN: U24100MH2011PLC213828 and the Registered Office of the Corporate Applicant is Flat No. 1601, 16th Floor, Willowerest Building, One Hiranandani Park, Ghodbunder Road, Thane - 400607.
- ii. The Corporate Applicant defaulted in paying an amount of Rs. 8,93,94,621/- (Rupees Eight Crore Ninety-Three Lakhs Ninety-Four Thousand Six Hundred and Twenty-One Only) to the Creditors. The details of Creditors along with the respective amounts due and payable by the Corporate Applicant are as under :-

Sr. No.	Name	Amount (Rs.)
	Financial Creditors	
1.	Abhinna Mohanty	2,66,90,478
2.	Anand Mohanty	18,10,201
3.	Kamal Mohanty	11,52,163
4.	Padma Mohanty	11,52,694

5.	Supriya Mohanty	1,08,83,311
	Total	4,16,88,846
	Others	
6.	AS Mohanty (Marksana Pharma)	3,88,05,566
7.	Genrx Pharma	2,22,636
8.	Nityasha	5,22,636
9.	Prasanta Swain	72,32,300
10.	Rajesh Desai	5,22,636
11.	Soma Pattnaik	4,00,000
	Total	4,77,05,774
	Grand Total	8,93,94,621

- iii. The Corporate Applicant has placed on record the Special Resolution passed by the members of the Corporate Applicant in the General Meeting dated 06.12.2022 to file an Application under Section 10 of the Code.
- iv. The Board of Directors of the Corporate Applicant in its meeting held on 25.11.2022 passed a Resolution authorizing Mr. Abhinna Mohanty, the Director of the Corporate Applicant to represent the Company in all the legal proceedings initiated by and against the Company.
- v. The Corporate Applicant has placed on record Audited Balance Sheet for the Financial Year 2020-2021 and 2021-2022 reflecting the default of payment to the tune of Rs. 8,93,94,620.64/- as Long Term Borrowings.

FINDINGS

4. We have heard the counsel appearing for the Corporate Applicant and perused the documents placed on record.
5. This Bench vide Order dated 03.03.2023 directed the Registry as well as the Corporate Applicant to serve notice to the Financial Creditors of the Corporate Applicant and directed to file Affidavit of Service before the adjourned date. The Corporate Applicant has complied with the same and has filed Affidavit of Service thereby enclosing therewith proof of service. In spite of issuance of notices and intimations, none of the Financial Creditors has filed any submissions to oppose the present Petition.
6. Further, as per Section 10(4) of the Code, the Adjudicating Authority can admit the Petition under Section 10 of the Code if the same is complete and no disciplinary proceedings are pending against the proposed Resolution Professional. Further, in the matter of *M/s Unigreen Global Private Limited Vs. Punjab National Bank & 3 Ors. In Company Appeal (AT) (Insolvency) No. 81 of 2017 dated 01.12.2017* Hon'ble NCLAT has observed that :

“...20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. sub-section (4) of Section 7 is similar to that of sub -section (4) of Section 10. Therefore we, hold that the law laid down by the Hon'ble Supreme Court in “Innoventive Industries Ltd. (Supra) is applicable for Section 10 also, wherein the Hon'ble Supreme Court observed as “The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority”.”

22. Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the information as required to be submitted in Form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 subject to ineligibility prescribed under section 11. If all information as provided by an Applicant as required under Section 10 and Form 6 and if the Corporate Applicant is otherwise not ineligible under Section 11, the Adjudicating Authority is bound to admit the application and cannot reject the application on any other ground.

7. The Petition shows that the Corporate Applicant is in default of debt as is also evidenced by the Books of account. It is also seen from the Audited Financial Statements for the year ended 2022-2023 that the Corporate Applicant has no income and is also having substantial losses. The Corporate Applicant vide its Additional Affidavit has filed an undertaking to pay all costs to the Creditors with regards to the CIRP. There are no pending litigations against the Corporate Applicant.

8. We have perused the financial statements, the list of Creditors. We have also perused the special resolution passed by the members wherein it was resolved that the Corporate Applicant is not in a position to repay the debts and therefore the Corporate Insolvency Resolution Process under Section 10 of the IBC needs to be initiated. We are satisfied that the Corporate Applicant has made a case for initiation of the CIRP under Section 10 of the IBC. The Corporate Applicant has proposed the name of **Mr. Atul Laxmichand Gala, Registration No: IBBI/IPA-001/IP-P-01974/2020-21/13130**. The Corporate Applicant has placed on record the written consent of the IRP in Form-2 along with the registration certificate

9. In view of the above facts and circumstances of the case, and the settled position of law and by exercising the powers conferred on this Adjudicating Authority under Section 10(4) (a) of the Code, we hereby Admit CP 178 of 2023 by initiating Corporate Insolvency Resolution Process (CIRP) against Rytus Therapeutics Limited.
10. It is ordered in following terms:

ORDER

- a. **The above Company Petition No. (IB) 178 (MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Rytus Therapeutics Limited.**
- b. This Bench hereby **appoints Mr. Atul Laxmichand Gala, Registration No: IBBI/IPA-001/IP-P-01974/2020-21/13130 having email id as atulgala.cirp@gmail.com as the Interim Resolution Professional** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Corporate Applicant shall deposit an amount of Rs. Five Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Applicant including execution of

any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Applicant in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Applicant.

e. That the supply of essential goods or services to the Corporate Applicant, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate applicant under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Applicant will vest in the IRP/RP. The suspended directors and employees of the Corporate Applicant shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Applicant.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**