

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

**CP(IB)No.4716/NCLT/MB/2018**

Under Section 7 of the I&B Code, 2016  
In the matter of

**Phoenix Arc Private Limited**

...Financial Creditor/ Petitioner

v/s

**Genrx Pharmaceuticals Private Limited**

...Corporate Debtor

**Order Dated 22 .01.2020**

**Coram:**

**Hon'ble Member (Judicial): Mr. Bhaskara Pantula Mohan**  
**Hon'ble Member (Technical): Mr. Rajesh Sharma**

**For the Petitioner** : Adv. Hafeez Pathanwala;

**For the Respondent:** Vishram Narayan Panchpor;

*Per: Rajesh Sharma, Member (Technical)*

**ORDER**

1. This is an Application, being CP 4716(IB)/MB/2018 filed by **Phoenix ARC Private Limited**, an Asset Reconstruction Company being the assignee of the original Financial Creditor, Janata Sahakari Bank Limited ("Assignor Bank") or Petitioner, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Genrx Pharmaceuticals Pvt Ltd**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) claiming a total default of financial debt of ₹22,63,15,080 /- including interest (Rupees Twenty Two Crore Sixty Three Lakh Fifteen Thousand Eighty only) as on 12.12.2018.
2. The Application is filed by Ms. Pallavi Chavan, duly authorised by the Board Resolution of the Applicant Company dated 30.01.2018, copy of which is annexed to the petition. Copy of the Assignment Agreement dated 26.03.2018 authorising the Applicant as assignee is annexed to the Application.
3. The Assignor of the Applicant extended financial facilities to the Corporate Debtor under Term Loan I for a sum of ₹6 crore as per Loan Agreement dated 29.12.2011, Term Loan II for a sum of 1.5 Crore as per Loan Agreement dated 28.03.2018, Term Loan



III for a sum of ₹8.5 Crore over 3 financial heads vide sanction letter dated 12.10.2013, which include Vehicle Loan for sum of ₹17 lakh, ₹ 5.83 Crore for Loan for purchasing machinery, and cash credit facilities for ₹2.5 Crore. The total financial assistance extended by the Assignor Bank being a sum of ₹16 Crore only. Copies of the Sanction Letters, Loan Agreements and other related documents in relation to the Financial Facilities are annexed to the Application.

4. It is submitted by the Applicant that post expiry of the term of cash credit agreement, at request of Corporate Debtor, the Assignor Bank extended the cash credit facilities for one year vide Supplementary Agreement dated 30.03.2015. Copy of the Supplementary Agreement dated 30.03.2015 is annexed to the Application.
5. The Applicant submits that the Corporate Debtor executed several Demand Promissory Notes in favour of the Assignor Bank, copies of promissory note dated 29.12.2011 for ₹6 Crore, Demand Promissory Note dated 28.03.2013 for ₹1.5 Crore, Demand Promissory Note dated 31.10.2013 for ₹17 Lakh, Demand Promissory Note dated 31.10.2013 for ₹5.83 Crore, Demand Promissory Note dated 29.11.2013 for ₹2.5 Crore.
6. The Applicant submits that the Directors of the Corporate Debtor have also furnished letter of guarantees to the Assignor Bank. Copies of the letters of Guarantees dated 29.12.2011, 29.11.2013 and 05.03.2015 are annexed to the Application.
7. The Assignor Bank, Janakalyan Sahakari Bank Limited and Thane Bharat Sahakari Bank Limited entered into Consortium Loan Agreement dated 05.03.2015 with the Corporate Debtor. Copy of said Agreement is annexed to the Application.
8. The Applicant has annexed copy of Certificate of Registration of Charge dated 26.03.2018 to establish the security held by the Assignor Bank. The statement of accounts of the Corporate Debtor maintained by the Assignor Bank along with certificate under the Bankers' Book Evidence Act, 1891 is also annexed to the Application.



9. The Corporate Debtor's loan account was classified as Non-Performing Asset on 28.10.2015 and the same is mentioned as date of default in the Application. The Assignor Bank issued notice dated 12.11.2016 under section 13(2) of the SARFAESI Act, 2002 being the Consortium lead Bank demanding payment of ₹32,45,83,452.80 (Rupees Thirty Two Crore Forty Five Lakh Eighty Three Thousand Four Hundred Fifty Two and Paise Eighty only).
10. The Applicant submits that the Corporate Debtor has admitted its liability to repay the debt amount in its letter dated 29.03.2017 wherein Corporate Debtor highlights the financial crisis due to which the Corporate Debtor is unable to make payments. Letter dated 04.05.2018 issued by the Corporate Debtor to the Applicant, the Corporate Debtor has requested for meeting in respect of the loan facilities availed from the Assignor. Copies of the abovementioned letters are annexed to the written submissions filed by the Applicant.
11. The Practicing Company Secretary appearing on behalf of the Corporate Debtor has neither filed any Reply nor has any oral submissions putting forward the case of the Corporate Debtor have been made.
12. We have heard the parties and perused the records.
13. On perusal of the documents, it is observed that this application is filed by one Ms. Pallavi Chavan, duly authorised by Board Resolution dated 30.01.2018 of the Applicant Company. The Applicant is assignee of the Financial Creditor and has been assigned the right to take necessary legal action against the Corporate Debtor. Copy of the Assignment Deed is perused by us.
14. The Applicant has annexed to the Application, copies of various sanction letters issued to the Corporate Debtor for the loan facilities granted to the Corporate Debtor. Copies of the Loan Agreements are annexed to the Application establishing the financial debt.



15. The Corporate Debtor has issued several Demand Promissory Notes in favour of the Assignor Bank against the loan facilities received. Copies of the demand promissory notes listed supra have been perused by us. Further, on perusal of the certificate of registration of charge in favour of the Assignor Bank, Letter dated 29.03.2017 issued by the Corporate Debtor to the Assignor Bank and other members of the Consortium of Banks, it is established that there is an admission of liability.
16. On perusal of the Notice dated 12.11.2016 issued by the Assignor Bank to the Corporate Debtor under section 13(2) of the SARFAESI Act, 2002, it is seen that the Corporate Debtor was declared NPA on 28.10.2015, a sum of ₹32,45,83,452.80 was demanded. However, the same remained unpaid and Assignor Bank issued Notice dated 08.02.2017 under section 13(4) of the SARFAESI Act, 2002. The Statement of Accounts of the Corporate Debtor also establish that the Applicant has not received the debt amount. The date of default as per the application is the date of loan being classified as non-performing asset i.e 28.10.2015. The Corporate Debtor has defaulted in repaying an amount higher than Rupees One Lakh.
17. On perusal of the Application and the documents, the existence of financial debt and its default by the Corporate Debtor for an amount higher than rupees One Lakh is established.
18. The application filed by the Applicant is on proper form 1, as prescribed under the Adjudicating Authority Rules and application is complete.
19. The Petitioner has proposed the name of **Mr. Rajesh Kumar Mittal**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-N00083/2017-18/10224]** as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code, and given his declaration; no disciplinary proceedings are pending against him.
20. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the



Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

**ORDER**

This application is filed under Section 7 of I&B Code, 2016, by **Phoenix ARC Private Limited**, Applicant/ Assignee of the Financial Creditor against **Genrx Pharmaceuticals Private Limited**, Corporate Debtor seeking initiation of corporate insolvency resolution process. This Application 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 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 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 financial 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 at this moment appoints **Mr. Rajesh Kumar Mittal**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-N00083/2017-18/10224]** 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.

21. The Registry is at this moment directed to immediately communicate this order to the Financial 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/-  
**RAJESH SHARMA**  
Member (Technical)

Sd/-  
**BHASKARA PANTULA MOHAN**  
Member (Judicial)

22.01.2020



Certified True Copy  
Copy Issued "free of cost"  
On 23.01.2020  
  
Assistant Registrar  
National Company Law Tribunal Mumbai Bench