



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

**I.A. 2877 OF 2021**

Under Section 33 of Insolvency &  
Bankruptcy Code, 2016

**Mr. Rajesh Kumar Mittal**

Resolution Professional/  
...Applicant

In the matter of

**C.P.(IB) No. 4716/MB/2018**

Phoenix ARC Private Limited  
..... Financial Creditor

Vs.

Genrx Pharmaceuticals Private Limited  
[CIN: U33119MH2009PTC198122]  
..... Corporate Debtor

Order delivered on: **28.04.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Applicant/RP

:

Mr. Aniruth  
Purusothamanan, Ld.  
Authorised Representative  
a/w Mr. Rajesh Kumar  
Mittal, RP in person.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is an Application filed by the Resolution Professional, Mr. Rajesh Kumar Mittal (hereinafter referred to as the "Applicant") seeking liquidation of Genrx Pharmaceuticals Private Limited (hereinafter referred to as the "Corporate



Debtor”) under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”).

**The brief facts of the Application are as follows:**

2. That this Tribunal vide an Order dated 22.01.2020 in C.P.(IB)4716(MB)/2018 admitted the Petition under section 7 of the Code, filed by Phoenix ARC Private Limited (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (CIRP) was initiated against Genrx Pharmaceuticals Private Limited, (hereinafter called as the “Corporate Debtor”). The Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal and subsequently was confirmed as Resolution Professional.
3. The Applicant submitted that the Form-G was published on several times i.e. 14.08.2020, 11.09.2020, 11.03.2021 and 03.08.2021 for inviting the Expression of Interest (EOI).
4. The Applicant submits that the 16<sup>th</sup> CoC meeting was held on 21.10.2021 and at the request of the CoC members the same was put for E-voting, where it was not approved by the majority of the CoC member, which requires 66% voting percentage by the CoC members. The various Resolutions put up before the 16<sup>th</sup> meeting of CoC for approval of Resolution Plan or approval of Liquidation of the Corporate Debtor and their results of voting by the CoC members are as under :-
  - a. The Resolution Plan was put for the vote and 49.95% voted in favour and 50.05% voted against the Plan, so the Resolution Plan could not be approved.



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- b. The Resolution for liquidation was voted by 50.05% of CoC member, whereas it requires approval from 66% of its members.
- c. The appointment of Liquidator was approved by the CoC with 50.05% voting which require 66% voting.
- d. The liquidation cost estimated Rs. 19,74,509/-, not approved by the CoC.
5. The Resolution Applicant filed an Application i.e. IA-590/2023 which was dismissed on 28.02.2023 by this Bench noting that “the proposal of the applicant has been considered in three meetings by the CoC and in the last meeting COC has of the view that their proposal of the Applicant is not acceptable. Though, the applicant sought another opportunity, Ld. Counsel for the RP submits that they had already been given three opportunities earlier including the offer to improvise the offer. It is nothing but delaying tactics on their part”. We note that a meeting of CoC was called on 10th March, 2023 pursuant to order dated 28.02.2023 of this Bench for consideration of Resolution Plan from M/s KP Manish Global Ingredients Private Limited. On perusal of minutes it is noticed that Phoenix ARC Private Limited (49.95% votes share) rejected the proposal in absence of demonstration of RA’s ability to fund the proposal. Jan Kalyan Saharaki Bank Limited (28.70% vote share) put certain condition i.e. compliance with the eligibility criteria; deposit of 10% of offer amount within 30 days; and payment of interest @ 6% for defer payment beyond 180 days, for consideration of the proposal. Thane Bharat Sahakari Bank Limited (21.35% vote share) insisted



that eligibility criteria may not be insisted, however, it also put conditions i.e. deposit of 10% of offer amount within 30 days; and payment of interest @ 6% for defer payment beyond 180 days.

6. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, this Bench is of the considered view that the Corporate Debtor is required to be liquidated in the manner as laid down in the IBC 2016 in view of the fact the erstwhile management of the Corporate Debtor had three opportunities to submit the plan and the Resolution Plan, submitted by them on all occasions, couldn't seek approval of CoC; and in case, the erstwhile management are serious to resolve the default, they can do so in liquidation process, which prioritise sale of corporate debtor as going concern and also arrangement with its creditors.

**ORDER**

7. The above I.A. No. 2877/2021 is allowed and the Corporate Debtor i.e. Genrx Pharmaceuticals Private Limited is ordered to be liquidated as a going concern in the manner specified under the Insolvency and Bankruptcy Board of India (Liquidation Process Regulations) Regulations, 2016.
  - a. **Mr. Rajesh Kumar Mittal**, having Registration No. No IBBI/IPA-002/IP-N00083/2017-18/10224 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
  - b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in



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Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. The Liquidator appointed under section 34(1) of the Code. All powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- h. This liquidation order u/s 33(7) shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of



IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT IV

I.A./2877/2021  
IN  
CP (IB) 4716/C-IV/MB/2018

the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

- i. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.
8. With the above directions, the I.A. No. 2877/2021 filed u/s 33(1) by the applicant is hereby **allowed** and **disposed of**.

**Sd/-**

**PRABHAT KUMAR**  
**Member (Technical)**

**Sd/-**

**Kishore Vemulapalli**  
**Member (Judicial)**