

**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH,
COURT – III**

**I.A. 35 OF 2022
IN
CP No. - 1222/I&B/2019**

Under Section 114 of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

Filed by

Mr. Jitendra Kumar Jain

Resolution Professional for:

Mr. Bhausahab A. Rupnar

...Applicant

In the matter of

Bank of Maharashtra

Lok Mangar, 1501, Shivaji Nagar,

Pune - 411005

..... Applicant / Creditor

Versus

Fabtech Projects & Engineers Limited

J – 504, MIDC, Bhosari, Pune - 411026

.... Respondent / Personal Guarantor

Order dated: 04.05.2022

Coram:

Hon'ble Shri H. V. Subbarao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the Applicant: Mr. Amir Arsiwala, Advocate

For the Respondent: None Appeared

Resolution Professional: Mr. Jitendra Kumar Jain

Per: Shri Chandra Bhan Singh, Member (Technical)

ORDER

1. The above application I.A. No. 35/2022 is filed by Resolution Professional, Mr. Jitendra Kumar Jain (hereinafter referred to as the “Applicant”) seeking closure of Insolvency Resolution Professional against the Personal Guarantor of Mr. Bhausahab A. Rupnar (hereinafter referred to as the “Personal Guarantor”) under Section 114 of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter called as “the Code”), praying for following reliefs:

- a. This Hon’ble Tribunal may be pleased to admit and allow the present Application.*
- b. To pass an order as per section 114 and 115 of the IBC to close the insolvency resolution process of the Personal Guarantor.*
- c. To condone the delays, if any, in following the timelines prescribed under the IBC with respect to insolvency resolution process of the Personal Guarantor caused by COVID-19 and other unavoidable reasons.*
- d. To pass such other orders/directions as deemed fit and necessary by this Hon’ble Tribunal in the interest of justice and equity.*

2. The brief facts of the application are as follows:

- A. This is an Interlocutory Application filed by Mr. Jitendra Kumar Jain, (“the Applicant”), under Section 114 of the Insolvency & Bankruptcy Code, 2016 (“**The Code**”) read with Rule 11 of the National Company Law Tribunal Rules,

2016 seeking to initiate Personal Insolvency Resolution Process (PIRP) against **Mr. Bhausaheb A. Rupnar** (“the Personal Guarantor”).

- B. This Bench vide its order dated 24.09.2019 admitted Company Petition No. 1222 of 2019 filed by Bank of Maharashtra (“Financial Creditor”) of Fabtech Projects and Engineers Limited (“Corporate Debtor”) under Section 7 of the Code and an Interim Resolution Professional was appointed for the Corporate Debtor.
- C. An Interlocutory Application No. 1762 of 2020, the State Bank of India filed the Application for initiating the Insolvency Resolution Process against the Personal Guarantor.
- D. This Bench vide its order dated 22.02.2021 initiated the Insolvency Resolution Process against the Personal Guarantor, appointing Resolution Professional Mr. Jitendra Kumar Jain (“Applicant”) as the Resolution Professional. On 25.02.2021 a public announcement was made by the Applicant inviting claims from the Creditors of the Personal Guarantor in the Free Press Journal (English Newspaper), Navshakti (Marathi) in Mumbai and on 26.02.2021 in Indian Express (English) and Loksatta (Marathi) in Pune.
- E. On 27.02.2021 the Applicant along with Advocate Manoj Mishra who is Resolution Professional for Mr. Ameet Rupnar and Mrs. Neelvarnar Rupnar called a meeting with four guarantor, the whole process under the Code was explained to all the Personal Guarantors, but instead of sharing the information, the Personal Guarantors chose to

file the Writ Petition (ST.) No. 5956 of 2021 which was respectively dismissed by the Hon'ble Bombay High Court vide its order dated 30.03.2021. Further, the Personal Guarantors then approached the Hon'ble Supreme Court through Writ Petition (Civil) 473/2021 which was dismissed on 23.04.2021.

F. On 24.09.2021, the Personal Guarantor submitted his Repayment Plan to the Applicant. On 10.10.2021, the Applicant sent the final list of Creditors incorporating the claims of all the Creditors of the Personal Guarantor.

G. On 13.10.2021, the Personal Guarantor submitted its final Repayment Plan, which was put for the approval of the Personal Guarantor's – COC (PG-COC) through the e-voting which was concluded on 25.11.2021. Further, the Repayment Plan of the Personal Guarantor has been disapproved by the PG-COC as 94.71% members of the PG-COC voted against the Repayment Plan of the Personal Guarantor. The Applicant thereafter submitted his report to this Tribunal under section 112 of the Code.

H. The PG-COC has rejected/disapproved the Repayment Plan of the Personal Guarantor with 94.71%, this Bench under Section 114 of the Code is closing the Insolvency Resolution Plan against the Personal Guarantor.

3. For the purpose of Closure of a Personal Insolvency Resolution Process of the Personal Guarantor Section 114 of The Insolvency and Bankruptcy Code, 2016 reads as under :-

“114. Order of Adjudicating Authority on Repayment Plan.

(1) The Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the resolution professional under section 112:

Provided that where a meeting of creditors is not summoned, the Adjudicating Authority shall pass an order on the basis of the report prepared by the resolution professional under section 106.

(2) The order of the Adjudicating Authority approving the repayment plan may also provide for directions for implementing the repayment plan.

(3) Where the Adjudicating Authority is of the opinion that the repayment plan requires modification, it may direct the resolution professional to re-convene a meeting of the creditors for reconsidering the repayment plan.”

4. For the purpose of Rejection of Repayment Plan of the Personal Guarantor Section 115(2) of The Insolvency and Bankruptcy Code, 2016 reads as under :-

“115. Effect of order of Adjudicating Authority on repayment plan.

(2) Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.”

5. As a consequence, through this Order it is hereby declared that the Personal Insolvency Resolution Process of the Personal Guarantor is hereby closed.

6. Further, the Bankruptcy proceeding can be initiated against the Personal Guarantor under Section 121 of the Code (Chapter IV of the Code as mentioned in Section 115(2) of the Code) within a period of 3 months of the date of the order passed by this Bench.

7. Accordingly, IA No. 35 of 2022 is hereby allowed and disposed of.

SD/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

SD/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)