IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

I. A. No.1760 of 2020
IN
C. P. No. 1222/I&B/2019

Under Section 95(1) of IBC, 2016.

IN THE MATTER OF BETWEEN
Bank of Maharashtra
......Operational Creditor
Vs
Fabtech Project and Engineers Ltd.
.......Corporate Debtor

I.A. No.1760 of 2020

State of India,
Stressed Assets Recovery Branch-II Mumbai Raheja Chambers, Ground Floor, Wing-B, Free Press Journal Marg, Nariman Point, Mumbai- 400021
.....Applicant

Vs.

Shri Rajabhau Rupnar
R/o Prem Geet Apartment, Ajmera, Masulkar Colony, Pimpri, Pune 411018
...Respondent

Order delivered on: 22.02.2021

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

For the Applicant: Ms. Nimisha Kukesh Rathod
For the Respondent: Rishabh Gandhi and advocates
Per: *Shri H.V. Subba Rao, Member (Judicial)*

ORDER

1. The above Interlocutory Application No. 1760 of 2020 is filed by the State Bank of India against Shri Rajabhau Rupnar who is the Personal Guarantor of the Corporate Debtor M/s Fabtech Project and Engineers

Ltd. for initiating Insolvency Resolution Process against the respondent/guarantor.

2. Heard the counsels appearing on both sides and perused the record. The Respondent/Personal Guarantor filed reply and also made oral submissions merely mentioning his financial difficulties and the financial difficulties of the Corporate Debtor. The respondent did not deny the existence of debt or default nor his guaranteeship for repayment of the facilities availed by the Corporate Debtor. The only contention of the respondent is that simultaneous CIRP process cannot be initiated against the corporate debtor and the personal guarantor. In support of the above contention, he has relied upon the judgement of the Hon'ble Allahabad High Court in *Writ C Nos. 30285 and 30033 of 2017 in the matter of Sanjeev Shriya and Ors. Vs. State Bank of India and Ors.* The Hon'ble Allahabad High Court rendered the above judgment while dealing with the recovery proceeding simultaneously initiated against the personal guarantor when the moratorium against the corporate debtor is in force. That is not the situation in the present case on hand. In the present case, the Financial Creditor is seeking for simultaneous initiation of CIRP process against the personal guarantor of the corporate debtor before the same NCLT which is permissible as per the recent notification issued by the Government of India. Thus, the case law relied upon by the respondent is distinguishable from the facts and circumstances of this case on hand and is not applicable. Thus, the above contention of the respondent that simultaneous CIRP cannot be ordered against the Corporate Debtor and the respondent is not legally sustainable as per the law laid down in various judgments also and is liable to be rejected.
3. As stated above the respondent did not deny either his personal guarantee or the existence of debt and default. The main Company Petition against the Corporate Debtor was admitted by this Tribunal vide its order dated 24.09.2019 by appointing Mr. Vijay Pitamber Lulla as IRP and the same is under process. The present application is filed against the personal guarantor in prescribed format and is complete in all respects. The financial creditor also suggested the name of the RP along with his consent letter in this application. Since the respondent did not raise any serious legal issues or infirmities in admitting the above Interlocutory Application, we are of the considered opinion that

the above Interlocutory Application is liable to be allowed and accordingly, we pass the following:

ORDER

1. The above Interlocutory Application bearing no. -1760 of 2020 is hereby allowed directing simultaneous initiation of Resolution Process against the respondent, Shri Rajabhau Rupnar.
2. This Bench hereby appoints **Mr. Jitendra Kumar Jain,** Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00033/2016-17/10070 having office at ARCINDO Law, Advocates Level 8, Vibgyor Towers, G. Block, C-62, Bandra Kurla Complex, Mumbai 400098 Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

3. The Financial Creditor shall deposit an amount of Rs.2 Lakh 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.

4. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against Shri Rajabhau Rupnar 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 any of his assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by him in respect of his properties 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 Shri Rajabhau Rupnar.
5. 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.

6. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the insolvency resolution process.
7. That the public announcement of the Insolvency Resolution Process against Shri Rajabhau Rupnar shall be made immediately as specified under section 13 of the Code.
8. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of Shri Rajabhau Rupnar.

Accordingly, the above application is allowed.

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

Sd/-	Sd/-
SHYAM BABU GAUTAM	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**