

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

116. I.A. 507/2021
I.A. 362/2021
I.A. 139/2021
I.A. 2454/2020
I.A. 2373/2020
I.A. 1240/2020
I.A. 1663/2020
M.A. 208/2020

IN

C.P.(IB)-4348(MB)/2018

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)

SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **22.10.2021**

NAME OF THE PARTIES: Dena Bank.

V/s

Man Tubinox Ltd

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Applicant, Mr. Rajat Lohia, Counsel for the Resolution Professional, Mr. Shyam Kapadia, counsel for the Respondent, Mr. Gauraj Shah and counsel for the Ex-promotor/Director, Mr. Atul Singh are present through virtual hearing.

M.A. 208/2020

The above application is disposed of as infructuous in view of passing order in I.A. 1235/2020 and accordingly, the above M.A is disposed of as infructuous.

I.A. 362/2021

The above application is filed for liquidation of the Corporate Debtor Company with required 100 percent voting. The above I.A. is allowed. Detailed order will follow.

List M.A. 573/2020 along with other pending applications on 21.12.2021.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)

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

I.A. 362 OF 2021

Under Section 33(1) of Insolvency &
Bankruptcy Code, 2016

Filed by
Vikas Prakash Gupta
3rd Floor, Plot No. 16B, Padhmanabh
Apartment, Tilak Nagar, Nagpur-
440010

Resolution Professional/
...Applicant

In the matter of
C.P. No. 4348 of 2018

Bank of Baroda (Erstwhile Dena Bank)
Petitioner

Vs.

Man Tubinox Ltd.
Respondent

Order delivered on: 22.10.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the Resolution Professional: Mr. Shyam Kapadia, advocate

1. The above application is filed by Resolution Professional, Mr. Vikas Prakash Gupta seeking liquidation of Man Tubinox Ltd., (hereinafter referred as Corporate Debtor) under Section 33(1) (a) and 34 (1) of

Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:

- a. To approve the liquidation of the Corporate Debtor in terms of section 33(10) of the Insolvency and Bankruptcy Code, 2016 by appointing the Resolution Professional Mr. Vikash Prakash Gupta, the Applicant with registration No. IBBI/IPA-007/IP-P00501/2017-18/10889 as the Liquidation of the Corporate Debtor.*
- b. To pass such other or further order, as this Hon’ble Tribunal may deem fit in the facts and circumstances of the case.*

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

- A. That this Tribunal vide an order dated 12.06.2019 in Company Petition No. 4348 of 2018 admitted the petition under Section 7 of the Code, filed by Bank of Baroda (Erstwhile Dena Bank) (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (CIRP) was initiated against Man Tubinox Ltd, (hereinafter called as the “Corporate Debtor”). The applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal vide this Order. The applicant was confirmed as Resolution Professional in the meeting of Committee of Creditors held on 15.07.2019.
- B. The applicant submits that the claim from the stakeholders of the Corporate Debtor issued an advertisement for invitation of claim. The applicant further submits that on the basis of receipt of claim, the applicant formed the Committee of Creditor consisting of Bank of Baroda and other members.

Further, the applicant issued Expression of Interest for the Resolution of the Corporate Debtor. The Applicant had in accordance with the approval of Committee of Creditors had issued Expression of Interest in Form G on 26.08.2019, 28.09.2019, 21.12.2019 and 28.01.2020.

- C. The applicant further submits that in response to the abovesaid Expression of Interest in form G, Man Tubes Ltd. had submitted its Expression of Interest but failed to comply with the terms of the requirement of deposit of Earnest Money Deposit. In the meantime, the last date was expired for expression of interest. Further, with effect from 25.03.2020 the nationwide lockdown was imposed and entire process got stopped in view of Covid and Lockdown.
- D. The applicant submits that in order to give it a final chance for the Resolution of the Corporate Debtor, the Applicant with the approval of Committee of Creditor issued a fresh invitation for the expression of interest on 05.10.2020. In response to the Expression of Interest, two prospective Resolution Applicant (1) MTL Pipes Ltd. and (2) Man Industries (India) Ltd. came forward wishing to put up their Resolution Plan for the Company. Further, the said two prospective Resolution Applicant miserably failed to comply with the terms of the Request for Resolution Plan (RFRP) for disclosure under Section 29A and requested for withdrawal of the expression of interest. In view of the withdrawal of expression of interest from both the Resolution Applicant, the Resolution Professional called up a meeting dated 01.01.2021 to consider the future course of action by the members of COC and the

COC considered following three Resolutions in the 16th COC meeting.

Item No. 1: To make an application to Hon'ble NCLT for liquidation of the Corporate Debtor.

“RESOLVED THAT in pursuance of Section 33(2), of the Code, approval of the Committee of Creditors to make an application to the Hon'ble NCLT, for liquidation of the Corporate Debtor as a going concerned under Regulation 32(e) of IBBI Liquidation Regulations where an order for liquidation is passed is further put for e-voting at item No. 1 in the voting items enclosed in these minutes.”

“RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to submit an application before the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto.

Item No. 2: To ratify budget for appointment of Shanil Jain & Associates, Chartered Accountants to conduct Investigation of the Capital work in progress as appearing in the books of Corporate Debtor at a fee of Rs. 50,000/- (Excluding OPE).

“RESOLVED THAT consent of members of Committee of Creditors be and is hereby accorded to ratify the budget for appointment of Shanil Jain & Associates, Chartered Accountants, to conduct investigation of the Capital Work in Progress as appearing in the books of Corporate Debtor.”

Item No. 3: To approve appointment of RP as liquidator upon order of Hon'ble NCLT and fees of liquidator and estimate the liquidation cost.

“RESOLVED THAT in pursuance of section 5(16) & 34 of the code read with Regulation 39B & 39D of the IBBI (CIRP) Regulations 2016 and Regulation 2A of IBBI (Liquidation) Regulations, 2016, consent of the Committee of Creditors be and is hereby accorded for appointment of RP to act as a liquidator upon order of Hon'ble NCLT and Liquidator fees along with an estimate of liquidation cost as Annexure-1 including contribution to any shortfall in meeting such Liquidation Cost.”

- E. The applicant further submits that the Agenda 1 and 2 were voted with 100% votes, whereas Agenda no. 3 was voted with 76.47% of vote. Accordingly, all above three resolutions were passed as voted by the members of the Committee of Creditors.
- F. Heard the arguments of the counsel appearing for the Applicant and perused the material available on record. It is observed from the minutes of the 16th COC meeting dated 01.01.2021 that the COC has, with 100% majority, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the COC, we hereby allow this Interlocutory Application Number 362 of 2021 by passing the following:

ORDER

- a. I.A. 362/2021 is allowed and liquidation order is passed against the Corporate Debtor Man Tubinox Ltd.

- b. **Mr. Vikash Prakash Gupta**, having Registration No. IBBI/IPA-007/IP-P00501/2017-18/10889 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d. 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.
- e. The Liquidator appointed under section 34(1) of the Code. Will have 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.
- f. 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.
- g. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- h. 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.
- i. 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.

- j. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. I.A. No. 362 of 2021 is hereby allowed and disposed of.

SD/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

SD/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**