

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT 3, MUMBAI BENCH**

IA 2373/2020 in
C.P.(IB)-4348(MB)/2018

Under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016

In the matter of

Dena Bank

..... Petitioner/
Financial Creditor

V/s

Man Tubinox Ltd

..... Respondent/
Corporate Debtor

IA 2373/2020

Mr. Vikas Gupta,
(RP of Corporate Debtor)

..... Applicant

Vs.

MTL Pipes India Ltd.

... Respondent

Order delivered on: 20.06.2022

Coram:

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

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

For the Applicant: Mr. Shyam Kapadia a/w Mr. Manoj Mishra,
Counsel, Mr. Vikas Gupta.

For the Respondent: Ms Priyanka Sinha, Counsel, Mr Amir
Arsiwala, Counsel, Mr. Gauraj Shah,
Counsel.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. IA 2373/2020 has been filed by the Resolution Professional of Man Tubinox Ltd, the Corporate Debtor in CP (IB)-4348(MB)/2018 for the forfeiture of the Earnest Money Deposit (“EMD”) for furnishing misleading and incorrect information furnished on Affidavit by the Respondent M/s MTL Pipes India Ltd.
2. The Bench notes that the Respondent had submitted an Expression of Interest and along with it had deposited an EMD of Rs.2 crores. The Respondent had submitted an Affidavit that it does not suffer from any disqualification u/s 29A of the IBC and therefore, is eligible to submit a Resolution Plan. The Clause (b) of the Affidavit given by the Respondent is as under:-

“The prospective Resolution Applicant does not suffer from any ineligibility under section 29A of the Code (to the extent applicable), relevant information and records to enable an assessment of our ineligibility are enclosed herewith as Annexure-D”

3. Further, in Clause (d) of the Affidavit given by the Respondent reads as under:-

“All the information and records provided in EOI is true and correct and discovery of any false information or record at any time will render the prospective Resolution Applicant ineligible to submit resolution plan, forfeit any refundable deposit and attract penal action under the code.”

4. The Bench notes that it also has been submitted by the Respondent that “***we further undertake and confirm that the EOI submitted by us is unconditional.***”
5. In its communication vide letter dated 22.10.2020, the Resolution Professional had made it clear to the Prospective Resolution Applicant, *inter alia*, that “It should be noted that any wrong declaration by any prospective resolution Applicant shall attract the punishment for perjury including forfeiture of earnest money deposit.” The Resolution Professional after complete investigation and verification of documents by an independent Body based on document checks and information collected had come to the conclusion that the Prospective Resolution Applicant viz. MTL Pipes India Ltd is ineligible u/s 29A(j) of the IBC, 2016.
6. The Respondent in its reply submitted that it is not ineligible u/s 29A of the IBC and only the relationship between the Respondent and the Corporate Debtor is that one of the Promoter Directors of the Corporate Debtor is the Father-in-Law of the Promoter Director of the Respondent, i.e., the Prospective Resolution Applicant.

FINDINGS

7. The Bench notes that Clause (j) of Section 29A of the IBC, 2016 stipulates one of the ineligibility criteria for any Prospective Resolution Applicant as the ‘connected person’ as under:-

“(i) Any person who is the promoter or in the management or control of the Resolution Applicant.

- (ii) Any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan.**
- (iii) The holding company, subsidiary company, associate company or related party of the person referred in clause (i) and (ii)."**

8. The Bench notes that the Promoter of the MTL Pipes India Ltd is Mr. Jatin Ishwar Manik who is the Son-in-law of the Promoter of the Corporate Debtor Company, i.e., M/s Man Tubinox Ltd. Further, the Father-in-law Mr. Jagdish Mansukhani was Director of M/s Man Tubinox Ltd, the Corporate Debtor, from 04.06.2014 to 01.01.2018 and was also Director of M/s MTL Pipes India Ltd, a Company which belongs to the Prospective Resolution Applicant for a period from 15.03.2019 to 03.01.2020. The Father-in-law of Mr Jatin Manik, i.e., Mr. Jagdish Mansukhani was also the Director of M/s MTL Pipes India Ltd on the CIRP commencement date i.e., 12.06.2019 and was also on the Board of MTL Pipes India Ltd when EOI was issued in Form 'G' under the CIRP.
9. The Bench is of the view that Son-in-law, i.e., spouse of the daughter of the Director of the Corporate Debtor, is a relative in the terms of Section 5(24A), Explanation (a) (vii) read with explanation (b) thereto. Mr. Jatin Ishwar Manik was Director in MTL Pipes India Limited and as such MTL Pipes India Limited is to be considered as a related party in the terms of Section 5(24)(c). In this regard, in the *Swiss Ribbon v. Union of India*, the Hon'ble Supreme Court has opined that the relative has to be connected with the business entity. The Bench notes that whether the person is connected with the

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business activity of the Resolution Applicant or not can only be made while considering the eligibility of a person to be a Prospective Resolution Applicant u/s 29A.

10. In view of the above the Bench has no hesitation in coming to the conclusion that the Prospective Resolution Applicant viz. M/s MTL Pipes India Ltd is ineligible u/s 29A(j) of IBC, 2016 on the date of submission of the Resolution Plan. That being the case, as the Respondent (Prospective Resolution Applicant) has made wrong declaration in Affidavit that it does not suffer from ineligibility u/s 29A of the Code. Therefore, the Resolution Professional as per the terms and conditions of the Expression of Interest has all the power to retain and forfeit the amount deposited by the Respondent as Earnest Money Deposit (EMD). Hence this Bench finds no irregularity or illegality committed by the RP in forfeiting the EMD.
11. **IA 2373/2020** filed in CP(IB)-4348/(MB)/2018 is disposed of on the above terms.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
H V Subba Rao
Member (Judicial)