RESERVED ON 24TH JUNE 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT APPEAL NO. 1602 OF 2026 (GM-TEN)

BETWEEN:

1. MANIPAL TECHNOLOGIES LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
UDAYAVANI BUILDING, PRESS CORNER
MANIPAL, UDUPI, KARNATAKA
INDIA - 576 104
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR. PRABHAKAR DAYANANDA KAMATH

2. JYOTHI G. NAYAK
DAUGHTER OF
LATE ANANTHARAYA R KAMATH
AGED 56 YEARS
A SHAREHOLDER OF APPELLANT NO. 1
HAVING HER ADDRESS AT
UDAYAVANI BUILDING, PRESS CORNER
MANIPAL, UDUPI, KARNATAKA
INDIA - 576 104

...APPELLANTS

(BY SRI K.G. RAGHAVAN, SENIOR ADVOCATE FOR
SRI RAGHURAM CADAMBI, ADVOCATE)

AND:

1. BANK OF BARODA
A BANKING COMPANY CONSTITUTED

UNDER THE BANKING COMPANIES
(ACQUISITION AND TRANSFER OF
UNDERTAKINGS) ACT, 1970
HAVING ITS REGISTERED OFFICE AT:
BARODA HOUSE, MANDVI
BARODA - 390 001
HAVING ITS BRANCH AT
NO. 332, DOUBLE ROAD, 1ST STAGE
NEAR CMH ROAD JUNCTION
INDIRANAGAR, BANGALORE - 560 038
REPRESENTED BY ITS MANAGER

2. SESHAASAI TECHNOLOGIES LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT,
9, LALWANI INDUSTRIAL ESTATE 14
KATRAK ROAD,
WADALA, MUMBAI, MAHARASHTRA-400031
REPRESENTED BY ITS DIRECTOR.

3. KL HI-TECH SECURE PRINT LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
PLOT NO.22-23, ANRICH INDUSTRIAL ESTATE
IDA, BOLLARAM, SANGAREDDY DISTRICT
TELANGANA, INDIA - 502 328
REPRESENTED BY ITS DIRECTOR

…RESPONDENTS

(SRI K. SHASHI KIRAN SHETY, ADVOCATE GENERAL/
SENIOR ADVOCATE A/W
SRI VIGNESH SHETTY, ADVOCAE FOR C/R-1 &
SMT. AMRUTHA B.R., ADVOCATE FOR R-3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO ALLOW THE PRESENT WRIT APPEAL AND SET ASIDE THE IMPUGNED ORDER DATED 08.06.2026 PASSED BY THE LEARNED SINGLE JUDGE IN W.P. No.16741 OF 2026 INSOFAR AS IT DECLINES THE INTERIM RELIEFS SOUGHT BY THE APPELLANTS & ETC.

THIS APPEAL, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

INTRODUCTION

1. The appellants have filed the present appeal impugning an interim order dated 08.06.2026 passed by the learned Single Judge in Writ Petition No.16741/2026 (GM-TEN) [**impugned order**]. In terms of the impugned order, the learned Single Judge has declined to grant any interim relief.

2. Appellant No.1 [**MTL**] had submitted its bid pursuant to the Request for Proposal for Empanelment of Vendors for Printing and Supply of Magnetic Strip and Variable QR code Printed Self-Service Passbook (SSPB) [**RFP**] issued by Respondent No.1 – Bank of Baroda [**BoB**]. However, MTL's bid was not evaluated because it did not meet the pre-qualification criteria under point No.14 of the tender conditions. The said disqualification was reflected on the Government eMarketplace portal [**GeM Portal**] on 26.05.2026 as under:

> "Reason for Technical Evaluation
>
> Reason
>
> Not meeting the eligibility criteria specified in Bid Clause as per details indicated in the comment
>
> Comment
>
> The bid submitted by the company is not considered for further processing as the company does not meet the requirements stipulated under Prequalification Criteria Point No.14."

3. Aggrieved by being held ineligible, the appellants had filed the writ petition, *inter alia,* challenging the aforesaid disqualification [**impugned disqualification**]. Additionally, the appellants had challenged point No.14 of the pre-qualification criteria for submission of bids, which formed a part of the RFP [**the impugned clause**]. In the aforesaid context, the appellants sought interim relief, praying for a stay of the impugned disqualification. Further, they sought directions to BoB to permit MTL to participate in the tender process and to restrain BoB from finalising the tender process pursuant to the RFP. The learned Single Judge did not accede to the *ad interim* prayers, and this has led the appellants to file the present appeal. Respondent Nos.2 and 3, being the bidders whose bids have been ranked L-1 and L-2 respectively in the tender process, were impleaded as parties to the present appeal by an order dated 24.06.2026 passed on I.A No.2 of 2026.

4. On 10.04.2026, BoB issued the RFP for the "Empanelment of Vendors for the Printing and Supply of Magnetic Strip and Variable QR Code-Printed Self-Service Passbook (SSPB) for 3 years".

5. Before proceeding further, it would be relevant to refer to the impugned clause which is set out below:

S.N.	Eligibility Criteria	Documents to be submitted in support of Eligibility Criteria	Whether Complied (Yes/No)
14	The vendor company and/or any of its Promoters Directors should not be 1. Defaulter/willful defaulter to any tax/Govt. Authorities/ statutory dues etc. 2. Not having any credit facilities classified as non-performing accounts as on the date of issuance of RFP either in their individual capacity or as Partner/ Director/Trustee/Guarantor etc. 3. Related to any present employee/Director/Board members of the bank. 4. Bidder or sister concerns should not be a NPA holder in any Bank/Financial Institution	Bidder should submit an undertaking on their letterhead along with copy of PAN card and authority to check CIBL/CRIF reports	

6. On 08.05.2026, MTL submitted its bid on the GeM Portal along with supporting documents. MTL's bid was not considered for

the technical evaluation because it was found ineligible on account of the impugned clause. This was reflected on the GeM portal on 26.05.2026. MTL immediately filed a representation on 26.05.2026 contesting the impugned disqualification. It claimed that the reasons for the impugned disqualification were vague as it did not disclose any basis for such disqualification. Thereafter, the appellants filed the writ petition.

7. The appellants contended that MTL had been rendering similar services to BoB and other banks and institutions for several years without any complaint. They also submitted that the impugned disqualification was not based on any deficiencies attributed to MTL but to one of the Directors (Sri T. Gautham Pai). The appellants contend that Sri T. Gautham Pai ceased to be a Promoter Director and, therefore, MTL could not be disqualified on the ground that its Promoter Director was a defaulter.

8. The appellants also challenged the impugned clause on the ground that it was arbitrary and exclusionary, and that it had no nexus with the object of the RFP, which was to invite competitive bids from entities engaged in the business of such supplies. It was contended that the impugned clause had the effect of excluding

technically competent entities from providing the required supplies if it was found that one of the Promoter Directors or any Director of the entity had defaulted in payment of its dues. It was further contended that such a default did not affect the tenderer's ability to execute the contract. BoB disputes this contention and claims that the impugned clause is relevant and material, as it ensures that the tendering entity is financially sound and creditworthy. It is argued that the financial stress of the promoter would invariably translate into the entities under the control of such persons being in default, and thus BoB did not consider it expedient to enter into contracts with such entities.

9. In the aforesaid background, two questions that fall for consideration are:

(i) whether the impugned clause is invalid as being manifestly arbitrary and violative of Article 14 of the Constitution of India; and

(ii) whether the involvement of Sri T.Gautham Pai in MTL renders it ineligible in terms of the impugned clause.

PREFATORY FACTS

10. Briefly stated, the relevant facts necessary to address the said controversy are as follows.

11. MTL was incorporated on 13.01.2000 under the Companies Act, 1956. At the time of incorporation, it was known as Manipal Press Private Limited. Thereafter, it was converted into a public company, and its name was changed to Manipal Press Limited. On 23.05.2011, its name was once again changed to its current name – Manipal Technologies Limited. Prior to its incorporation, the subject business was carried on in the name and style of a partnership firm M/s. Manipal Power Press. Sri T. Gautham Pai was one of the constituent partners of the said firm.

12. Sri T. Gautham Pai is a signatory to the Memorandum of Association [**MOA**] and the Articles of Association [**AOA**] of MTL. Section 2.26 of the AOA reflects Sri T. Goutam Pai as a Promoter. Sections 2.26 and 2.27 of the AOA of MTL are reproduced below:

> "Section 2.26 Promoters means (1) Mr.T. Satish U.Pai (2) Mr.T.Gautham S.Pai and (3) Manipal Media Network Limited a company incorporated under the Companies Act 1956 having its registered office at Udayavani Building Manipal – 576 104 Karnataka India and includes their respective successors and permitted assigns.

> Section 2.27 Related Party means (a) each Promoter who is an individual (b) any parent grandparent or great-grandparent of any individual described in sub-clause (a) (c) any lineal descendant of any individual described in sub-clause (a) or sub-clause (b) above (d) any spouse or former spouse of any individual described in sub-clause (a) sub-clause (b) or sub-clause (c) above or (e) any entity in which any individual described in sub-clause (a) sub-clause (b) sub-clause (c) or sub-clause (d) has a direct or indirect interest. For this purpose any individual who was adopted shall be treated the same as any individual who was not adopted. For example a stepparent and step-child shall be treated as a parent and child respectively."

13. BoB had also prduced a copy of the list of Directors furnished by MTL along with its bid, which reflected Sri T. Gautham Pai as the Managing Director of MTL, holding the said office since 29.07.2003. The updated draft red herring prospectus dated 10.11.2025 of one of MTL’s group companies, Manipal Payment and Identity Solutions Limited, sets out the profile of the promoters and the promoter group. It reflects Sri T. Gautham Pai and his parents, Sri T. Satish U. Pai and Smt. Sandhya S. Pai, as individual promoters. The corporate promoters of the said company includes MTL. In the said prospectus, Sri T. Gautham Pai is reflected as Executive Chairman and whole-time Director of MTL.

14. Sri T. Gautham Pai was also a Director of M/s. MVP Group International Inc., whose credit facilities have been classified as a Non-Performing Accounts [**NPA**]. An application under Section 95 of the Insolvency and Bankruptcy Code, 2016 [**IBC**] has also been filed before the National Company Law Tribunal, Bengaluru against Sri. T. Gautham Pai in relation to the same. The said action is a subject matter of challenge in another proceeding instituted in this court.

15. Undisputedly, the returns filed by MTL with the Registrar of Companies [**RoC**], till 08.05.2026 reflected Sri T. Gautham Pai as a Promoter Director. On 08.05.2026, MTL filed Form DIR-12 with the RoC regarding the change in the designation of Sri T. Gautham Pai from a Promoter Director to a Professional Director. The form indicates that the said change took effect from 21.01.2026.

16. It is contended on behalf of BoB before this court that Sri T. Gautham Pai has defaulted in his guarantee obligations in relation to the financial assistance availed by M/s. MVP Group International Inc.

RIVAL CONTENTIONS

17. Mr K.G. Raghavan, learned Senior Counsel appearing for the appellants, contended that the impugned clause is an exclusionary

clause and must be interpreted strictly. He submitted that although the tendering entity may have wide discretion in determining the technical specifications, the exclusionary clause that debars participation in tenders must be construed strictly. He submitted that the impugned clause is an exclusionary clause and, therefore, it was necessary to test its relevance with the object of the tender. He submitted that MTL was well established in the business of printing and supply of magnetic strips and QR code passbooks. More importantly, its credentials are well established, as it currently supplies the said products to BoB and other banks.

18. He submitted that, even assuming that one of the Directors of MTL was a defaulter or associated with another defaulting entity, the same would not affect MTL's ability to supply magnetic strips and QR-code-printed passbooks.

19. Next, he submitted that even if it is assumed that the impugned clause is valid, MTL had not incurred any such disqualification. He further submitted that Sri T. Gautham Pai was no longer the Promoter Director and was now a Professional Director on the Board of MTL. He submitted that his designation had changed with effect from 21.01.2026, even though Form DIR-12

was filed subsequently on 08.05.2026. He submitted that the term "Promoter" is defined under Section 2(69) of the Companies Act, 2013 [**Companies Act**], which requires that the person be specifically named in the prospectus or identified in the company's annual returns referred to in Section 92 of the Companies Act. He submitted that, therefore, Sri T. Gautham Pai could not be considered a Promoter of MTL.

20. Mr. K. Shashikiran Shetty, learned Senior Counsel appearing for BoB, countered the aforesaid submissions. First, he submitted that it was not open for MTL to challenge the impugned clause after having participated in the tender process. Second, he submitted that the impugned clause has a direct nexus with the object of ensuring that the tendering entity is financially stable and has a credible track record. He submitted that the Promoters of a corporate entity in default cannot exploit the corporate structure to conceal their credit status. He submitted that BoB could not be expected to enter into contracts with entities whose promoters had defaulted on their financial obligations.

21. Next, he submitted that the documents accompanying the bid listed Sri T. Gautham Pai as a Promoter, and the list of Directors

also listed him as MTL's Managing Director. He submitted that Sri T. Gautham Pai was in control of MTL and, therefore, was clearly its Promoter. He submitted that MTL had filed Form DIR-12 with the RoC, showing a change in the status of Sri T. Gautham Pai from Promoter Director to Professional Director, on the same date as the filing of the bid, that is, on 08.05.2026. He further submitted that this was clearly done with a view to escaping the ineligibility under the impugned clause. He also pointed out that, by a resolution of the Board of Directors of MTL dated 13.03.2026, Sri T. Gautham Pai had been re-appointed as the Executive Chairman of MTL for a period of three years with effect from 28.05.2026. He also referred to the decision of the Supreme Court in **Arcelormittal India Private Limited vs. Satish Kumar Gupta and Others**[1] and, on the strength of that decision, contended that the controlling authority would mean de facto control.

REASONS AND CONCLUSIONS

22. At the outset, we may note that the impugned order is an *ad interim* order. However, the counsel had advanced arguments and invited a ruling on the merits of the controversy. During the course of the arguments, we had also put the learned counsel for the

[1] (2019) 2 SCC 1

parties on notice that any view expressed on the contentions advanced may be dispositive of the controversy. Mr. Raghavan, learned Senior Counsel appearing for the appellants, fairly acknowledged the same.

23. The first question to be addressed is whether the impugned clause is invalid on the ground of manifest arbitrariness. The effect of the impugned clause is to exclude entities or companies that are defaulters or whose credit facilities have been classified as NPAs. It also explicitly bars entities whose Promoter Directors are defaulters or whose credit facilities have been declared NPAs. The sole purpose of the clause is to ensure that bidders possess strong financial standing and are creditworthy. Clearly, a default in financial obligations by the promoters or persons in control would directly undermine the company's standing and creditworthiness.

24. A company is not a natural person capable of directing its own affairs; its affairs are managed and controlled by its directors, and their standing and credibility are thus relevant in assessing the company's credentials. Whilst, in the legal sense, a company has an identity separate from its shareholders and directors, it is well accepted that, in the commercial sense, corporatisation is only a

method of carrying on a commercial enterprise. The commercial identity of a closely held company is no different from its shareholders and the persons in control of the company. This principle was clearly recognised by the Supreme Court in **New Horizons Ltd. vs. Union of India**[2]. In the aforesaid case, the Supreme Court had considered a situation in which one of the tenderers was not considered on the ground that it lacked the requisite past experience. The tenderer (New Horizons Ltd.) was a company in the nature of a joint venture, and its shareholders had the necessary experience. The High Court did not accept the shareholders' experience as the company's. The High Court held that it was one thing for the shareholders of the company to have experience and quite another for the company to have such experience. However, the Supreme Court did not concur with the said view. The Supreme Court held that the terms and conditions of such documents must be construed from the standpoint of a prudent businessman, and when a businessman enters into a contract, he seeks to assure himself about the credentials of the person who is entrusted with the work, and such credentials must be examined from a commercial point of view, which would not only include the

[2] (1995) 1 SCC 478

background of the company but also the persons who are in control of the company. We may refer to the following extract of the said decision:

> "23. Even if it be assumed that the requirement regarding experience as set out in the advertisement dated 22-4-1993 inviting tenders is a condition about eligibility for consideration of the tender, though we find no basis for the same, the said requirement regarding experience cannot be construed to mean that the said experience should be of the tenderer in his name only. It is possible to visualise a situation where a person having past experience has entered into a partnership and the tender has been submitted in the name of the partnership firm which may not have any past experience in its own name. That does not mean that the earlier experience of one of the partners of the firm cannot be taken into consideration. Similarly, a company incorporated under the Companies Act having past experience may undergo reorganisation as a result of merger or amalgamation with another company which may have no such past experience and the tender is submitted in the name of the reorganised company. It could not be the purport of the requirement about experience that the experience of the company which has merged into the reorganised company cannot be taken into consideration because the tender has not been submitted in its name and has been submitted in the name of the reorganised company which does not have experience in its name. Conversely there may be a split in a company and persons looking after a particular field of the business of the company form a new company after leaving it. The new company, though having persons with experience in the field, has no experience in its name while the original company having experience in its name lacks persons with experience. The requirement regarding experience does not mean that the offer of the original company must be considered because it has

experience in its name though it does not have experienced persons with it and ignore the offer of the new company because it does not have experience in its name though it has persons having experience in the field. While considering the requirement regarding experience it has to be borne in mind that the said requirement is contained in a document inviting offers for a commercial transaction. The terms and conditions of such a document have to be construed from the standpoint of a prudent businessman. When a businessman enters into a contract whereunder some work is to be performed he seeks to assure himself about the credentials of the person who is to be entrusted with the performance of the work. Such credentials are to be examined from a commercial point of view which means that if the contract is to be entered with a company he will look into the background of the company and the persons who are in control of the same and their capacity to execute the work. He would go not by the name of the company but by the persons behind the company. While keeping in view the past experience he would also take note of the present state of affairs and the equipment and resources at the disposal of the company. The same has to be the approach of the authorities while considering a tender received in response to the advertisement issued on 22-4-1993. This would require that first the terms of the offer must be examined and if they are found satisfactory the next step would be to consider the credentials of the tenderer and his ability to perform the work to be entrusted. For judging the credentials past experience will have to be considered along with the present state of equipment and resources available with the tenderer. Past experience may not be of much help if the machinery and equipment is outdated. Conversely lack of experience may be made good by improved technology and better equipment. The advertisement dated 22-4-1993 when read with the notice for inviting tenders dated 26-4-1993 does not preclude adoption of this course of action. If the Tender Evaluation Committee had adopted this approach and had examined the

> tender of NHL in this perspective it would have found that NHL, being a joint venture, has access to the benefit of the resources and strength of its parent/owning companies as well as to the experience in database management, sales and publishing of its parent group companies because after reorganisation of the Company in 1992 60% of the share capital of NHL is owned by Indian group of companies namely, TPI, LMI, WML, etc. and Mr Aroon Purie and 40% of the share capital is owned by IIPL a wholly-owned subsidiary of Singapore Telecom which was established in 1967 and is having long experience in publishing the Singapore telephone directory with yellow pages and other directories. Moreover in the tender it was specifically stated that IIPL will be providing its unique integrated directory management system along with the expertise of its managers and that the managers will be actively involved in the project both out of Singapore and resident in India."
>
> [emphasis supplied]

25. In the present case, the impugned clause is intended to ensure that eligible bidders possess the necessary credentials. From a commercial point of view, the credentials of the promoters and persons in control of the company cannot be excluded from the scope of such consideration.

26. It is also necessary to bear in mind that the scope of judicial review in tender matters is narrow. In **Tata Cellular vs. Union of India**[3], the Supreme Court had referred to the earlier decisions and distilled the scope of judicial review in contractual matters as under:

[3] (1994) 6 SCC 651

"94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

27. The terms of invitation of the tender are in the realm of a contract, and it is necessary that the State or the State authorities have full freedom of contract and sufficient fair play in the joints. The scope of judicial review is largely confined to examining whether the administrative decisions fail the Wednesbury Principle[4]. The said principle, as set out in The Supreme Court Practice, 1993 (Volume I, Pages 849-850) and noticed in **Tata Cellular** (*supra*), reads as under:

> "4. *Wednesbury principle*.— A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* [(1948) 1 KB 223 : (1947) 2 All ER 680] , per Lord Greene, M.R.)"

28. In **Raunaq International Ltd. vs. I.V.R. Construction Ltd.**[5], the Supreme Court emphasized that in arriving at a commercial decision, certain commercial considerations are paramount, which would include the financial ability of a tenderer to fulfil the requirements of a job. We may also refer to the following

[4] Wednesbury Principle – the principle of reasonableness as articulated by Lord Greene, M.R. in Associated Provincial Picture Houses Ltd. vs. Wednesbusy Corpn: (1947) 2 All ER 680

[5] (1999) 1 SCC 492

observations made by the Supreme Court in **Municipal Corporation, Ujjain vs. BVG India Ltd.**[6]:

> "14. The judicial review of administrative action is intended to prevent arbitrariness. The purpose of judicial review of administrative action is to check whether the choice or decision is made lawfully and not to check whether the choice or decision is sound. If the process adopted or decision made by the authority is not mala fide and not intended to favour someone; if the process adopted or decision made is neither so arbitrary nor irrational that under the facts of the case it can be concluded that no responsible authority acting reasonably and in accordance with relevant law could have reached such a decision; and if the public interest is not affected, there should be no interference under Article 226."

29. In **Silppi Constructions Contractors vs. Union of India**[7], the Supreme Court referred to its earlier decisions and observed as under:

> "19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to

[6] (2018) 5 SCC 462
[7] (2020) 16 SCC 489

scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."

30. In the present case, it is not alleged that the impugned clause was introduced *mala fide* or for any ulterior purpose. Bearing the aforesaid principles in mind, we are unable to accept that the impugned clause is required to be set aside on the ground that it is manifestly arbitrary or falls foul of Article 14 of the Constitution of India.

31. MTL had participated in the pre-bid meeting held on 18.04.2026 without raising any objection to the impugned clause and had, along with its bid, furnished an undertaking dated 08.05.2026 affirming its compliance with the said clause. We find merit in the contention that MTL had participated in the tender unreservedly and could not now be heard to challenge the tender conditions after having been held as disqualified on the basis of the said conditions. The Supreme Court in **National High Speed Rail Corpn. Ltd. v. Montecarlo Ltd.**[8] held that where the conditions of a tender were within the knowledge of a bidder at the time of participating in the tender process, it is not open to the bidder, having accepted the terms and conditions of the tender with full knowledge thereof and having participated in the process, to

[8] (2022) 6 SCC 401

thereafter make a grievance in respect of such conditions. The said observation reads as under:

> "44. …once the original writ petitioner participated having knowledge of the aforesaid clauses in ITB, thereafter it was not open for the original writ petitioner to challenge the same. … If the original writ petitioner was aggrieved either it would not have participated and/or ought to have challenged such clauses before participating in the tender process. "

32. The second question to be addressed is whether the impugned disqualification is arbitrary and contrary to the impugned clause. The principal controversy concerns whether Sri T. Gautham Pai is a Promoter Director. As noted above, Mr. Raghavan had earnestly contended on behalf of the appellants that Sri T.Gautham Pai's status as a Promoter has to be ascertained with reference to the Annual Returns under Section 92 of the Companies Act. He also referred to MTL's annual returns, which reflect that there are two promoters: one is a body corporate and the other is Tridevita Family Trust. Whereas the body corporate owns 80.93% of MTL's equity share capital, Tridevita Family Trust owns 2.98%. The appellants argue that since Sri T. Gautham Pai is not reflected as Promoter Director of MTL, it could not be held as ineligible by virtue of the impugned clause. It is also pointed out that, with effect from

21.01.2026, Sri T. Gautham Pai is reflected as a whole-time Director in the category of a 'professional' and not a 'promoter'.

33. The expression "Promoter Director" used in the impugned clause does not refer to a "Promoter" as defined under the Companies Act. Therefore, it would be erroneous to proceed on the basis that the scope of the expression "Promoter Director" is confined to the definition of "Promoter" under Section 2(69) of the Companies Act. The expression "Promoter" is derived from the word "promote," and in ordinary parlance, a promoter is a person who promotes, supports, and publicises. The expression "promote" is defined in the Shorter Oxford English Dictionary, 3rd Edition, Volume II, *inter alia* as, "support or actively encourage (a cause, venture, etc.); further the progress of ....".

34. Having stated the above, we may now refer to the meaning of the "Promoter" as defined under Section 2(69) of the Companies Act. The same is set out below:

> "(69) "promoter" means a person –
>
> (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

> (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
>
> (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:
>
> Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity."

35. It is apparent from the above that the term "promoter" is not confined to a person named in the prospectus or identified in the annual return; it would also include a person who has control over the affairs of a company, either directly or indirectly, whether a shareholder, a director, or otherwise. Thus, the key question is whether there is material on record for BoB to conclude that Sri T. Gautham Pai is a Promoter Director of MTL.

36. At this stage, it would also be relevant to note that MTL is a closely held company. MTL was incorporated, *inter alia*, by Sri T. Gautham Pai, who is also a signatory to MTL's MOA and AOA. The AOA of MTL, furnished along with the bid, also lists Sri T. Gautham Pai as a Promoter. The list of shareholders of MTL as on 07.04.2026, as produced by the appellants, indicates that there are 23 (twenty three) shareholders, and 71.46% of the equity share

capital is held by Smt. Sandhya S. Pai on behalf of Tridevita Family Trust.

37. A copy of the trust deed of Tridevita Family Trust – 2017 has also been produced, which indicates that Sri. T. Satish U. Pai, the father of Sri Gautham Pai, is the settlor in the said Trust, and that Smt. Sandhya S. Pai (Sri T. Gautham Pai's mother) and Tridevitha Consultancy Services Private Limited are trustees. The primary beneficiaries of the said Trust are Smt.Sandhya S. Pai – herself one of the trustees – and the two granddaughters of the settlor (Ms.Trisha G Pai and Ms.Devina G Pai); the secondary beneficiaries include the settlor’s daughter-in-law, Mrs.Vanita G. Pai (Sri T. Gautham Pai's wife). The terms of the trust deed indicate that the trustees have the power to add, remove or re-classify the beneficiaries. However, the said power is confined to the legally wedded spouses of the lineal descendants of Sri T. Gautham Pai, the widow/widower of the lineal descendants of Sri T. Gautham Pai and any trust established for the benefit of the beneficiaries. The majority of the shares of Manipal Media Network Limited (52.79%) are held by Smt. Sandhya S. Pai on behalf of the Tridevita Family Trust, which, as noted above, is predominantly for the benefit of the family of Sri Satish Pai.

38. The updated draft red herring prospectus of M/s Manipal Payment and Identity Solutions Limited indicates that as on the date of the said prospectus (10.11.2025), 14.01% of the shares of Manipal Media Network Limited were held by MTL.

39. The status of Sri T. Gautham Pai in MTL must be considered, bearing in mind that MTL is a closely held company of the family of Sri Gautham Pai. Undisputedly, Sri T. Gautham Pai was the promoter of MTL and continues to be the whole-time Director of MTL. The annual return filed indicates that Sri T. Gautham Pai has been the Managing Director of MTL from 29.07.2003.

40. Concededly, till the filing of Form DIR-12 on 08.05.2026, Sri T. Gautham Pai was also reflected as a Promoter of MTL in the annual returns. It is stated that his status changed from Promoter Director to Professional Director, with effect from 21.01.2026. There is some controversy about whether the change in status occurred on the date as reflected in Form DIR-12 as the same was filed on 08.05.2026, which is the date of submission of the bid by MTL. However, in our view, that may not be material. This is because the re-categorization of Sri T. Gautham Pai as a Professional Director in place of a Promoter Director in the said records, brought about no

change on the ground. He continued to be a whole-time Director exercising the executive powers of MTL. He remained in the management of MTL, and the change in his categorisation had no effect whatsoever on his powers or functioning in that role.

41. BoB has also produced a certified copy of the resolution of the Board of MTL at a meeting held on 13.03.2026, whereby it is resolved to reappoint Sri T. Gautham Pai as Executive Chairman of the company for a period of three years with effect from 28.05.2026. The nature of his duties as set out in the said resolution is reproduced below:

> "**(A) Nature of Duties**
>
> **(a) Strategic Leadership**
>
> - Set the overall vision, mission, and long-term strategic direction of the organization
> - Drive strategic initiatives and organizational transformation
> - Lead the process of planning for the succession of the CEO and other senior management roles.
>
> **(b) Board Oversight & Corporate Governance**
>
> - Chair all Board and shareholder meetings
> - Facilitate productive Board discussions and decision-making
> - Recruit, evaluate, and, when necessary, replace board members and senior executives

- Ensure the Board fulfills its fiduciary responsibilities

- Ensure the company adheres to legal, ethical, and regulatory standards

- Oversee risk management frameworks and internal controls

- Establish and uphold the Company's culture and values

(b) Executive Management

- Oversee operations of the Company by providing guidance to the CEOs

- Provide guidance and mentorship to the executive leadership team

- Align operational activities with the company's strategic goals

- Drive a high-performance culture by setting measurable targets for senior leaders and holding them accountable for delivering against organizational goals.

(c) Stakeholder Relations

- Serve as the primary ambassador of the organization to major stakeholders

- Maintain relationships with key investors and stakeholders

- Lead high-stakes negotiations and major business development opportunities

(d) Financial Oversight

- Oversee financial health and capital allocation

- Approve budgets, investments, mergers, and acquisitions

- Drive shareholder value creation"

42. The expression "control" is defined under Section 2(27) of the Companies Act as under:

> "(27) “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner"

43. As it is apparent, the term "control" has been defined expansively and would include any person who controls the management of policy decision. In **Arcelormittal India Private Limited** (*supra*), the Supreme Court had considered the import of the word "control" as defined under Section 2(27) of the Companies Act and observed as under:

> “46. The expression “control” is defined in Section 2(27) of the Companies Act, 2013 as follows:-
>
> “(27) “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;”
>
> 47. The expression “control” is therefore defined in two parts. The first part refers to de jure control, which includes the right to appoint a majority of the directors of a company. The second part refers to de facto control. So long as a person or persons acting in concert, directly or indirectly, can

> positively influence, in any manner, management or policy decisions, they could be said to be "in control". A management decision is a decision to be taken as to how the corporate body is to be run in its day to day affairs. A policy decision would be a decision that would be beyond running day to day affairs, i.e., long-term decisions. So long as 76 management or policy decisions can be, or are in fact, taken by virtue of shareholding, management rights, shareholders agreements, voting agreements or otherwise, control can be said to exist."

44. In the present case, Sri T. Gautham Pai, as a whole-time director and Executive Chairman of MTL, excercises control over its management and policy decisions. He is thus, in view of the matter, in de facto control of the company.

45. Given Sri Gautham Pai's long-standing position at MTL and his executive role in the company, it is clear that he was and continues to be firmly in control of MTL. Thus, Sri T. Gautham Pai would be a promoter of MTL not only in common parlance but also within the meaning of Section 2(69) of the Companies Act. The second question, is accordingly answered.

46. It is also contended that neither Sri T. Gautham Pai nor any entity in which he is a Director has defaulted. However, the material facts in this regard have not been placed on record. Thus, we do not consider it apposite to render any opinion on this question. The

parties are not precluded from agitating the same in the pending writ petition.

CONCLUSION

47. We find no ground to interfere with the impugned order. The appeal is dismissed with the aforesaid observations.

48. The pending interlocutory application/s also stand disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

AHB