

(2023) 12 NCLT CK 0017

In the National Company Law Tribunal

Case No : CP (IB) NO. 435 Of 2023

C 1 India Private Limited Vs Info Tech Corporation of Goa Limited ?

Date of Decision : 05-12-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 8, 9
Micro, Small and Medium Enterprises Development Act, 2006 — Section 15, 16, 17
Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 5, 6(1)

Citation : (2023) 12 NCLT CK 0017

Hon'ble Judges : Virendrasingh G. Bisht, Member (J); Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Aditya Malhotra, Aadisha Malhotra, Sumit Khanna

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code") by C 1 India Private Limited ("Operational Creditor /Petitioner"), seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against Info tech Corporation of Goa Limited ("Corporate Debtor/ Respondent").

2. The Respondent was incorporated on 18.04.1990 under the Companies Act, 1956. Its Corporate Identity Number ("CIN") is U32209GA1990SGC001043. Its registered office is at Capital House, 2nd Floor, near Assembly Complex, Porvorim Goa-403521 and also at 3rd Floor, IT Hub, Altinho, Panaji, Goa 403001.

3. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

Brief Facts of the case:

4. The Corporate Debtor, Info Tech Corporation of Goa Limited is a Government of Goa undertaking and the Operational Creditor is an ISO9001:2015, ISO 27001:2013 certified and CMMI Level 5 company and is also registered under the

MSME Act, 2006 vide its registration certificate dated 03.07.2020.

5. The Petitioner submits that on 09.08.2018, the Corporate Debtor invited bids for selection of an Implementation Agency for creation and implementation of an e-Tendering and e-Auction solution in the State of Goa vide RFP no ITG-IT/RFP/ETENFERING/01 ("RFP") dated 09.08.2018, with the purpose of automating the entire procurement process for the Government of Goa.

6. Through a Letter of Intent dated 27.12.2018, the Corporate Debtor informed the Operational creditor that its bid of 45.70% sharing with the Corporate Debtor of the tender processing fee and the registration fee received from undertaking the work as per the RFP for the scope of work of "Supply, installation and implementation of the e-Tendering and e-Auction solution on State Data Centre ("SDC") with the deployment users and the bidders". Pursuant to the same, the Operational Creditor furnished a Performance Bank Guarantee dated 26.09.2019 for a sum of Rs. 10,00,000/- (Rupees Ten Thousand Only) to the Corporate Debtor. The said Bank Guarantee is placed on record as 'Annexure A-14' of the Petition

7. Consequently, the Corporate Debtor placed a work order dated 09.01.2019 on the Petitioner and the Petitioner accepted it vide Letter of Acceptance dated 16.01.2019. The Work Order states that the period of contract shall be five years from the date of issue of the Work Order. The Corporate Debtor and the Petitioner then entered into an Agreement dated 10.07.2019 outlining the terms of the arrangement.

8. The Petitioner submits that as per the terms of payment in the Agreement and the RFP, the Corporate Debtor was required to release payments to the Petitioner on a quarterly basis on production of bill by the Petitioner.

9. The Petitioner submits that the Operational Creditor provided services to the Respondent and between October, 2019 and January 31, 2022, the Corporate debtor has successfully floated more than 7,500 tenders on the Goa e-Nivida Portal, the e-solution provided by the Petitioner and collected approximately Rs. 5,35,31,136/-(Rupees Five Crores, Thirty Five Lakhs, Thirty One Thousand, One Hundred and Thirty Six Only) for the work done by the Petitioner.

10. Accordingly, the Petitioner raised 9 invoices from March, 2020 till the date of this Petition for its share of 54.30% of the revenue collected by the Corporate Debtor, amounting to Rs. 2,90,67,407/- (Rupees Two Crores, Ninety Lakhs, Sixty Seven Thousand, Four Hundred and Seven Only), exclusive of interest. The invoices are placed on record as 'Annexure A-11' of the Petition. However, the Respondent has failed to pay the outstanding amount in terms of the invoices.

11. The Petitioner submits that the total amount of debt claimed to be default is Rs.3,71,01,692/- (Rupees Three Crores, Seventy One Lakhs, One Thousand, Six Hundred and Ninety Two Only) out of which Rs. 2,90,54,143/- (Rupees Two Crores, Ninety Lakhs, Fifty Four Thousand, One Hundred and Forty Three Only) is

the principal amount and Rs. 80,47,549/- (Rupees Eighty Lakhs, Forty Seven Thousand, Five Hundred and Forty Nine Only) is the interest calculated as per Section 15, 16 and 17 of The Micro, Small and Medium Enterprises Development Act, 2006. The Particulars of Claim are placed on record as 'Annexure A-20' of the Petition.

12. The Petitioner submits that the services were provided to the Respondent and the said services were utilised by the Respondent without raising any dispute or demur and neither has the Respondent raised any grievance about the services rendered in that regard to the Petitioner.

13. The Operational Creditor sent several letters and reminders to the Corporate Debtor to release the outstanding payments for services provided pertaining to e-tendering and e-auction solution for the State of Goa, but the Corporate Debtor only expressed inability to process the invoices due to non-appointment of Third Party Auditor ("TPA") by the Government of Goa.

14. Subsequently, the Corporate Debtor vide letter dated 20.05.2021, stated that they intended to initiate "Exit Management" of the Corporate Debtor from the project in accordance with the RFP. It stated that the said act is based upon the letter dated 26.04.2021, issued to the Corporate Debtor by the Department of Information Technology, Goa ("DOIT") directing migration of e-tendering and e-procurement services from the e-solution set up in 2019 to the Platform of the National Informatics Centre, a Government of India office attached to the Ministry of Electronics and Information Technology.

15. On 19.07.2021, the Petitioner came cross an email sent by the Corporate Debtor to several stakeholders across the state of Goa, stating that it has been directed to inform them that the DOIT, Goa has decided to discontinue the services of the Petitioner and to migrate to GePNIC and referred to kicking off of the said migration process.

16. On 23.07.2021, the Petitioner issued a representation/notice to the Corporate Debtor for such conduct of the Corporate Debtor and the DOIT, when the contract with the Petitioner was still valid and subsisting. However, no response was given to the Petitioner.

17. The Operational Creditor filed a Writ Petition bearing No. 1789 of 2021 before the High Court of Bombay at Goa against the Corporate Debtor for the recovery of sums due, against the initiation of Exit Management and further reliefs, claiming that the acts of the of the Corporate Debtor were violative of the Petitioner's rights under Article 19 of the Indian Constitution as they disabled the Petitioner from performance of their contract.

18. The Petitioner on realising that Respondent was unable/incapable of paying to the Petitioner, served upon the Respondent Demand Notice dated 27.01.2023 in Form 3 under section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which was duly

received by e-mail and speed post by the Respondent.

19. The date of default is continuous wherein, the date of the first invoice raised by the Petitioner is 31.03.2020 and the date of the last invoice raised by the Petitioner on the Respondent is 31.01.2022.

20. The Petitioner in support of its claim has placed on record the following documents:-

i. RFP dated 09.08.2018

ii. Letter of Intent dated 27.12.2018

iii. Work Order dated 09.01.2019

iv. Agreement dated 10.07.2019

v. Invoices raised between March, 2020 and January 31, 2022

vi. Certificate of non-payment issued by Bank of Operational Creditor dated 28.03.2023

vii. Letters dated 08.02.2023 and 28.02.2023 by the Corporate Debtor

Findings

21. We have heard the submissions of the Petitioner and perused the records.

22. This Tribunal, vide Order dated 10.07.2023 directed the Corporate Debtor to file and place on record Affidavit in Reply. The Corporate Debtor failed to file their reply and hence this Tribunal, vide order dated 05.09.2023 granted a final opportunity to the Corporate Debtor to file their reply. The Corporate Debtor did not file any reply and chose not to appear before the Bench and hence, the Bench has proceeded to decide the matter on the basis of the material on record and verbal arguments.

23. It can be seen from the documents placed on record that Clause 4.7 SECURITY of the RFP provides –

xix. The Government of Goa shall appoint the Third Party Auditor (TPA) to audit the functionality, data security, audit logs, VA& PT and the availability of the application to the User. The payments to the bidder shall be subjected to the reports submitted by the TPA. All the necessary SLA calculation will be done by the TPA. The Bidder shall provide all the support required by the TPA in a time bound manner.

24. The Corporate Debtor, vide letter dated 08.02.2023 addressed to the DOIT, has stated that on receiving the invoices from the Petitioner, they have forwarded the same to the DOIT and through various letters requested the DOIT to expedite the matters related to the appointment of TPA. The DOIT, vide work order dated 16.11.2021, appointed M/s. Software Technology Parks of India ("STPI"), Pune for providing services as the TPA for the project of e-tendering

and e-auction solution for the state of Goa. The Corporate Debtor has stated that even after providing all the necessary assistance to the STPI, they have not received any TPA Report yet. The Corporate debtor has also proposed in its letter that the DOIT may grant permission to the Corporate Debtor to release 75% of the total outstanding payments to the Petitioner and withhold 25% of payment wherein, in case any penalty is levied by the TPA, the penalty amount can be deducted from the amount so withheld.

25. In light of the above, we are of the view that since the TPA Report has not yet been prepared and submitted, the debt of the Petitioner has not become due and payable in accordance with the terms and conditions of the RFP.

26. Further, from the records available, it appears that there exists controversy regarding initiation of Exit Management by the Corporate Debtor in accordance with circular issued by the DOIT.

27. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The Petitioner is at liberty to seek remedy under the other applicable laws and the rights of the Petitioner shall not be prejudiced on the grounds of dismissal of the present Petition.

28. In the above circumstances, the Petition bearing CP(IB) No. 435 of 2023 filed by C 1 India Private Limited, the Operational Creditor, under section 9 of the IBC read with Rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Info Tech Corporation of Goa Limited, the Corporate Debtor, stands rejected.