



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 350/MB /2024

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016.

In the matter of

Qlik Tech India Private Limited

CIN: [U72200KA2011FTC056720]

...Operational Creditor/Applicant

Versus

Inspira Enterprise India Limited.

CIN: [U40109MH2008PLC187215]

...Corporate Debtor/Respondent

Order Delivered on 22.08.2024

Coram:

Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).

Hon'ble Member (Judicial)

Appearances:


For the Operational Creditor : Mr. Shayam Kapadia, Adv

For the Corporate Debtor : Mr. Rohit Gupta, Adv

ORDER

Per: Virendrasingh G. Bisht, Member (Judicial)

1. The instant application is filed by M/s QlikTech India Private Limited. (hereinafter referred as '**Applicant**'/'**Operational Creditor**') on 22.03.2023 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**the Code/IBC**') with a prayer to initiate Corporate



Insolvency Resolution Process (“**CIRP**”) against M/s Inspira Enterprise India Limited (hereinafter referred as ‘**Respondent**’/‘**Corporate Debtor**’) for nonpayment of Operational Debt of Rs. **2,46,24,982** ((Indian Rupees Two crores forty-six lakhs twenty-two thousand, nine hundred and eighty two Only). The Date of default is **10.10.2023**.

2. The ‘Debt start date’ according to Record of Financial Information (Form-C) which is the default recorded with the information Utility is on 23.11.2022. The type of debt is operational debt according to the NeSL report.
3. The Corporate Debtor is incorporated on 01.10.2008, and the registered address is situated at 23, Level 2, Kalpataru Square, Kondivita Lane, Mumbai-Maharashtra-400059. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

Submissions made by the Petitioner:

4. The Operational Creditor submits that on 28.10.2022, Inspira Enterprises India Limited (Corporate Debtor) had requested for supply of certain software and cloud products from the Applicant Company for an initial support period of 12 months, followed by a renewal for annual maintenance support for a period of 3 years.
5. The Parties herein were in a business relationship wherein Operational Creditor supplied certain software and cloud products to the Corporate Debtor and raised invoices against the same.
6. The Operational Creditor submits that on 31.10.2022, Inspira Enterprise India Limited issued a Purchase Order for Qlik Products and Services both for the initial support period and the annual maintenance.
7. The quotation was provided vide Order Form with Quote No. Q-616133 and Q-144037, which was executed on 02.11.2022 ("Order



Form") between the parties. The Order Form together with the Operational Creditor's standard form license agreement, comprised of the "Agreement" between the parties. In terms of the Order Form, a total fee of INR 3,52,72,390/- (exclusive of taxes) was due and payable by the Corporate Debtor to the Operational Creditor, within 120 days from the date on which Operational Creditor issued the invoice.

8. On 23.11.2022, Operational Creditor issued an invoice on Corporate Debtor for an amount of INR 4,16,21,422/- (inclusive of taxes), which was payable within 120 days, i.e., by 23.03.2023. However, despite repeated reminders, Corporate Debtor did not remit the payment due to Operational Creditor.
9. The present Petition is filed on account of default of two invoices numbered dated 23.11.2022 and 31.08.2023. The debt under the Invoice numbered INVIND222300466 fell due on 23.11.2022 and Debt under invoice numbered INVIND232400258 fell due on 31.08.2023.
10. The Operational Creditor submits that Corporate Debtor failed to make the payment since 31.10.2022.
11. On 07.08.2023, Operational Creditor issued the 1st Demand Notice to Corporate Debtor seeking payment of the outstanding operational debt. Corporate Debtor responded to the 1st Demand Notice on 18.08.2023, however, Corporate Debtor failed to pay the outstanding dues. On 18.08.2023, the Corporate Debtor responded to the 1st Demand Notice, simply denying the contents of the 1st Demand Notice ("Reply to 1st Demand Notice"). While Corporate Debtor contested the termination of the Agreement, Corporate Debtor did not deny its liability to pay the invoice amount.



12. On 25.08.2023, Delhi Transport Infrastructure Development Corporation Limited ("DTIDC") (which was Corporate Debtor's customer, for whom the Operational Creditor's Products and Services were being used) issued a letter to Operational Creditor requesting reinstatement of licenses given to Corporate Debtor for four weeks. It was stated that in case Corporate debtor failed to pay within four weeks of license activation, Operational Creditor would be at liberty to terminate the licenses at will.
13. On 30.08.2023, Operational Creditor proposed a settlement offer which was accepted by the Corporate Debtor. Pursuant to the settlement, on 31.08.2023, Operational Creditor raised an invoice for INR 50,63,434 towards annual maintenance services provided to Corporate Debtor. The Terms of the settlement offers are as follows:
- a) That Corporate Debtor will pay Operational Creditor 50% of the outstanding license fee; and the full amount of late payment interest by 01.09.2023.
 - b) That Operational Creditor would issue a Temporary License to Corporate Debtor for 40 days from date of delivery for the Corporate Debtor to complete production of the products to be supplied to DTIDCL.
 - c) That Corporate Debtor would pay Operational Creditor prior to expiration of Temporary License i.e. the balance 50% of the outstanding license fee; and the Annual Maintenance Cost for the second year amounting to INR 42,91,045 (Indian Rupees Forty-two lakhs ninety-one thousand and forty-five)
 - d) That after receipt of the full amount set out in (a) and (c), Operational Creditor would issue a license key to DTIDC/the

Customer and discontinue winding up proceedings against Corporate Debtor.

- e) That subject to Corporate Debtor guaranteeing payment of the annual maintenance fees to Operational Creditor, the Petitioner would enter into a limited resale agreement to replace the terminated Agreement.


14. Pursuant to the Settlement Agreement, on 31.08.2023, Operational Creditor raised an invoice for a sum of INR 50,63,434 (Indian Rupees Fifty Lakh Sixty-Three Thousand Four Hundred and Thirty-Four Only) towards annual maintenance services provided to Corporate Debtor. The invoice was payable by 10.10.2023.
15. Further on 01.09.2023, Corporate Debtor repaid 50% of the value of invoice dated 23.11.2022 and late payment interest for the period from 23.03.2023 till 07.08.2023. However Corporate Debtor failed to complete the project within the stipulated deadline. The invoices were payable by 10.10.2023 and with accumulating interest.
16. On 13.12.2023, the Operational Creditor issued the 2nd Demand Notice. The Corporate Debtor merely denied the contents of the 2nd Demand Notice in its response dated 22.12.2022. Neither was any payment received after the 2nd Demand Notice nor any dispute raised. The Operational Creditor submits that the Corporate Debtor approached them inter alia requesting them to assess the situation and provide a fair quotation in respect of the charges which the Corporate Debtor would have to incur in case the Corporate Debtor opt to go ahead with the repairs and maintenance work.
17. However, in breach of the terms of the Settlement Agreement, the Corporate Debtor did not make balance payments as required under Clause 3 of the Settlement Agreement.

Submissions made by the Corporate Debtor:

18. Per contra, the Corporate Debtor through his reply submitted that all averments, statements, submissions, grounds, contentions or allegations made by the Applicant are baseless, misconceived and false, and hence, are denied in entirety.
19. The Respondent is a limited company providing IT related services including cyber security, data analytics cyber transformation and cyber operations to a host of industries globally such as banking, financial services and insurance, healthcare and Life Sciences, public sector and higher education, information technology enabled services, e-commerce and other IT services. The Respondent is a profitable company having more than 550 active clients across 10 countries and has employed more than 1500 employees globally.
20. On 29.06.2022, Delhi Transport Infrastructure Development Corporation Limited (hereinafter referred to as 'DTIDC'), an enterprise of Government of NCT, Delhi issued a Request for Proposal regarding selection of system integrator for Business Intelligence Tool for Analytics & Dash Board for Bus Operations in Delhi (hereinafter referred to as 'RFP'). The respondent was desirous of bidding for the said RFP and accordingly sought services for providing suitable perpetual software and professional services to DTIDC.
21. The Respondents submits that the Settlement Agreement entered between the Operational Creditor and Corporate Debtor altered the terms of the contract agreed between the parties and same was acted upon. The alleges dues arising out of non-payment or breach/violation of settlement agreement terms cannot be the cause for initiation CIRP against the Corporate Debtor.




22. Admittedly there was a pre-existing dispute amongst the parties prior to the settlement agreement and the Operational Creditor failed invoke the arbitration proceeding.
25. The Partner Order Form included a customer agreement by the Petitioner, specifying termination rights with a 30-day notice for breach, arbitration as the method of dispute resolution according to clauses 7.2, 8.8, 14.8, and 9.4 of the agreement.
26. On or around 03.11.2022, the initial license was provided by the Petitioner to DTIDC. The licenses were essential to configure Petitioner's application/ software which were utilized to prepare the dashboards and reports for DTIDC as per the Scope of Work under the RFP.
27. During the initial review and testing of the software, DTIDC rejected the dashboard on the grounds of poor wireframe. design, rudimentary analysis and data inaccuracy issues. DTIDC raised several deficiencies and concerns regarding the software and services provided by the Petitioner.
28. Following previous agreements, DTIDC notified the Respondent on 03.01.2023, regarding dissatisfaction with the dashboard's quality, provided by the Petitioner as technical partner, and requested a detailed implementation plan from the Respondent.
29. Following initial dissatisfaction with the dashboard, subsequent revisions in the product by the Petitioner to the software were also deemed inadequate and did not meet DTIDC's requirements, indicating that the Petitioner was aware of the service deficiencies throughout.
30. The Corporate Debtor submits that, on 14.03.2023, the Respondent sent emails to the Petitioner, inter-alia, raising concerns as to the



project being stuck due to Petitioner issues with DTIDC and once again recorded that the payments were contingent after receipt of monies from end customer.

31. Despite having notice and knowledge about the issues and deficiencies in the software, on 23.03.2023 the Operational Creditor allegedly sent a tax invoice billed to the respondent and in reference to the DITDC work of an amount of Rs.4,16,21,422/-.
32. The exchanges of emails in March/April 2023 between a Petitioner and Respondent regarding issues with the Petitioner's services and delayed payments from DTIDC. The Petitioner was informed about payment contingencies related to DTIDC and offered support to expedite these payments in emails dated 20.04.2023 and 25.04.2023.
33. The Settlement Agreement between the Petitioner and the Respondent changed the terms of their original contract. It resolved disputes that had arisen between them regarding the services provided by the Petitioner as a technical partner. As part of this agreement, on September 1, 2023, the Respondent paid the Petitioner Rs. 2,22,49,007, which was 50% of the total amount calculated under the Settlement Agreement, including interest charges. Despite receiving this payment, the Petitioner did not activate the license key promptly, which was a part of their agreement. The Settlement Agreement not only altered the financial terms but also changed the contractual obligations originally agreed upon.
34. The Petitioner filed this Petition claiming defaults under the Settlement Agreement dated August 30, 2023, specifically citing October 10, 2023, as the default date when the temporary license allegedly expired. However, the Petitioner falsely asserts in the Petition that debts fell due under invoices dated November 23, 2022, and August 31, 2023. This contradicts the facts as Annexure A of the Settlement Agreement, attached to the Demand Notice



and Petition, shows. Therefore, the second demand notice is legally flawed, and the Petition should be dismissed. The amount claimed in the Petition from the Settlement Agreement is essentially a settlement amount, disputed in nature, and doesn't fit the definition of operational debt under Section 5(21) of the Code.

35. The Respondent asserts that according to the Insolvency and Bankruptcy Code (IBC) and relevant judicial precedents, if there are existing disputes between parties, the provisions of the Code cannot be invoked. Prior to entering into the Settlement Agreement, there were indeed disputes between the Petitioner and the Respondent. These arose because the Petitioner provided inadequate services and failed to address grievances raised by DTIDC. Additionally, the Petitioner unilaterally attempted to terminate the agreement in July 2023, causing significant harm to the Respondent's project with DTIDC.
36. Both parties have alleged claims / counter claims against each other in relation to the services being rendered by the Respondent under RFP to DTIDC. Hence, the said Petition is not maintainable as parties had agreed to resolve their disputes mandatorily through Arbitration.
37. The Corporate Debtor submits that the Operational Creditor didn't act according to the terms which was mutually decided. The petition is filed with the sole motive to settle personal vendetta and exert pressure on the Respondent to settle on the terms of disputed monies, as is evident from the conduct of the Petitioner entering into settlement terms immediately after issuance of the first demand notice. Hence the Corporate Debtor submits that the said Petition is an abuse of the IBC machinery and should be dismissed with exemplary costs.

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Findings:

38. Heard learned Counsel for both the parties and have duly perused the documents on record.
39. We note that the instant application is filed by M/s QlikTech India Private Limited on 22.03.2023 under Section 9 of the Insolvency and Bankruptcy Code, 2016 with a prayer to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against M/s Inspira Enterprise India Limited for nonpayment of Operational Debt of Rs. **2,46,24,982** (Indian Rupees Two crores forty-six lakhs twenty-two thousand, nine hundred and eighty two Only). The Date of default is **10.10.2023**.
40. Working for computation of default in a tabular form:

Sr.No.	Particulars	Amount (INR)
01.	Principal amount due under the invoice dated 23.11.2023 (inclusive of tax)	1,86,12,724/-
02.	Interest on overdue amount at contractual rate of 9% p.a. (applied from 08.08.2023 till 31.01.2024)	8,07,741/-
03.	Principal amount due under the invoice dated 31 August 2023	50,63,434/-

04.	Interest on overdue amount at contractual rate of 9% p.a applied from 10 .10.2023 to 31 .01.2024	1,41,083/-
	Total	2,46,24,982/-

41. The terms of payment stated in purchase order (INS-PO-005103) dated 31.10.2022 issued by the Inspira Enterprise India Limited reads as follows:

“Inspira will pay valid invoices within agreed terms of days from date of invoice for properly received or delivered Products or service or based on any existing payment terms agreed to between the parties, Inspira shall if applicable, deduct the tax at source /withholding taxes as per the prevailing tax rate and issue certificate confirming such deduction within 90 days. Invoices will be issued upon the delivery of the product or services. Invoices issued prior to delivery of product or services shall be void unless otherwise authorized in writing by INSPIRA. Inspira will notify supplier of any disputed Invoice and will act in good faith to remedy such dispute with supplier. No payment is due on disputed invoice until resolved to the reasonable stratification of INSPIRA”.

42. It is clear from the Partner Order Form that the Corporate Debtor is identified as a partner of the Operational Creditor, while DTIDCL is identified as the customer of the Corporate Debtor. In the General Terms contained therein, the following services were agreed for provision:-

“ 3. Consulting and Education services. Services below are subject to the term and conditions in the APPENDIX A .



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a. Services scope. Qlik to provide the professional services scope on prepaid time& materials basis with the following activities: -


Senior Consultant -1.5 months (30 man-days) remote

- 1. Business Requirement gathering*
- 2. Solution Design & Architect*
- 3. Data Model Design*
- 4. Data Architecture Design*
- 5. Dashboard Design, etc.”*

43. Section 3.8 of the general terms to Qlik Standard Form License Agreement clearly states that “*If Customer fails to make any payment when due, Qlik may, without limiting its other rights and remedies, temporarily suspend Customers account or access to Qlik Products. **Customer will remain responsible for all fees incurred before and during any suspension.** Use of Qlik Products is subject to usage or quantity limits("Quantities"). If Customer's use exceeds purchased Quantities, Customer will be invoiced and shall pay for such additional Quantities monthly in arrears at the fees which may be set forth in the Order Form”.*


44. On 03.01.2023, DTIDC communicated their dissatisfaction with the quality of the dashboard provided by the Corporate Debtor and requested a comprehensive implementation plan to address the issues. DTIDC articulated their concerns as follows:

“This is with respect to the Dashboard being prepared by your team for the aforesaid project. Subsequent to the award of work vide letter No. F.1(28)/A/DTIDC/2022-23/889 dated 26th Oct 2022 and agreement No. referred above, a presentation was made by your team on the first dashboard



*in a meeting held on 26th December 2022 under the Chairmanship of Commissioner of Transport, GNCTD. **The presented dashboard was found to be lacking and not meeting out various objectives as per RFP.** The same is not accepted by the authority. It was communicated to your team in the meeting itself that the dashboard development has not been done in a proper manner as required by the department”.*

45. It is not in dispute that the professional service received from the Petitioner, were intended for the consumption of DTIDC and this fact was in the knowledge of the Petitioner. We further note that the payment terms between the Petitioner and Corporate Debtor did not stipulate releasing of payment to the petitioner, only upon receipt of payment from DTIDC, however the respondent has pleaded that payment terms between the Petitioner and Corporate Debtor are to be inferred in this manner from the complete understanding between the parties.
46. We note that upon the termination of contract by the Petitioner and consequent suspension of the license, the DTIDC had requested the Petitioner by letter dated 25.08.2023 to allow the usage of the license for the period of another 30 days and terminate the license thereafter in case the payment issue is not resolved the Corporate Debtor. Consequent to the request the parties came to the understanding whereby the 50% of the payment was released by the Corporate Debtor and Petitioner agreed to allow the usage of license for another 40 days and continuing usage thereof provided the balance payment is cleared by the Corporate Debtor. It is pertinent to note that this understanding was the de hors of any receipt of payment from DTIDC. Accordingly, we have no hesitation to say that the remaining amount due as per last settlement constitutes an undisputed Operational Debt. The Corporate debtor has raised a dispute to the payment obligation in relation to the remaining amount contending that license key became operational from 05.09.2022 and not from 01.9.2022 within 48 hours of receipt of the



payment and accordingly was not operational till 40 days in terms of the understanding. On the consideration of the factual matrix of the case we have considered view that even if there is dispute as to the date when the license was again allowed to be used and when the 40 days period terminates, this does not authorise the Corporate Debtor to hold back the remaining Payment of the Petitioner. It is pertaining to note that the terms of settlement clearly stipulated balance payment prior to the expiry of 40 days and continuance of license was dependent on such payment. The terms cannot be read to mean that the balance was only payable if the license remained available for usage for 40 days. Accordingly, we find the dispute raised by the Corporate Debtor is no more a moonshine defense and deserve to be ignored.

49. On 07.08.2023, Operational Creditor issued the 1st Demand Notice to Corporate Debtor seeking payment of the outstanding operational debt. Corporate Debtor responded to the 1st Demand Notice on 18.08.2023, however, Corporate Debtor failed to pay the outstanding dues. On 18.08.2023, the Corporate Debtor responded to the 1st Demand Notice, simply denying the contents of the 1st Demand Notice ("Reply to 1st Demand Notice"). While Corporate Debtor contested the termination of the Agreement, but the Corporate Debtor did not deny its liability to pay the invoice amount. On 13.12.2023, the Operational Creditor issued the 2nd Demand Notice.
47. The application made by the Applicant is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority

admits this Petition and orders initiation of CIRP against the Corporate Debtor.

Order

- a. In the above circumstances the petition bearing **CP(IB) 350/MB/C-I/2024** filed by **Qliktech 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 **M/S Inspira Enterprise India Limited**, the Corporate Debtor, is **Admitted**.
- b. This Bench hereby appoints Mr.Alok Kumar Murarka, Registration No: IBBI/IPA-001/IP-P-01934/2019-2020/13006 as the Interim Resolution Professional having email: ipalok.murarka@gmail.com; Mobile Number :- 9029007232; Address at B-503, Unique Estate, Beverly Park, Kanakia, Near V Power Gym/Cinemax, Mira Road-East ,Thane,Maharashtra ,401107 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. There shall be a moratorium under section 14 of the IBC, in regard to the following:
- i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

d. Notwithstanding the above, during the period of moratorium: -

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

e. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Sub-Section (1) of Section 31 of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

f. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

g. The Operational Creditor shall deposit an amount of **Rs. Three Lakhs** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- h. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- i. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- j. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
PRABHAT KUMAR
Member (Technical)

Sd/-
JUSTICE V.G BISHT
Member (Judicial)