

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 136 of 2024**

[Arising out of order dated 05.12.2023 passed by the Adjudicating Authority  
(National Company Law Tribunal, Mumbai Bench, Court – I), in C.P. (IB)  
No.435/2023]

**IN THE MATTER OF:**

**M/s C1 India Private Limited**

Having Registered Office at: 1502,  
Ambadeep Building, 14,  
KG Marg, New Delhi-110001  
Through Mr. A. Kundoo,  
AVP-Finance & Accounts  
Email: [mehtavikas@hotmail.com](mailto:mehtavikas@hotmail.com)

**...Appellant**

**Versus**

**M/s. Info Tech Corporation of Goa Limited**

Having Registered Office at:  
Capital House, 2nd Floor,  
Near Assembly Complex,  
Porvorim, Goa-403521.  
Also at 3rd Floor, IT Hub,  
Altinho, Panaji, Goa- 403001.  
Email – [vishwesh11@rediffmail.com](mailto:vishwesh11@rediffmail.com)

**...Respondent**

**Present:**

**For Appellant : Appearance not marked.**

**For Respondent : Mr. Surjendu Sankar Das, Advocate.**

**O R D E R**

**ASHOK BHUSHAN, J.**

This Appeal by an Operational Creditor has been filed, challenging an Order dated 05.12.2023 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court – I), by which Order Section 9 Application filed by the Appellant has been rejected. Aggrieved by the rejection of Section 9 Application, Appellant has filed this Appeal.

- 2.** Brief facts necessary to be noticed for deciding the Appeal are:
- i. Respondent No. 1, Info Tech Corporation of Goa Limited is a Government of Goa undertaking.
  - ii. On 09.08.2018, M/s. Infotech Corporation of Goa Limited, (hereinafter referred to as Corporation) has invited bids for selection of an implementing agency for creation and implementation of an e-Tendering and e-Auction solution in the State of Goa.
  - iii. The Appellant was issued a Letter of Intent (LoI) dated 27.12.2018 and work Order was issued on 09.01.2019, selecting it as an implementing agency for creation and implementation of e-Tendering and e-Auction solution, an Agreement dated 10.07.2019 was also executed between the Parties.
  - iv. The Agreement contained various conditions, including the mode and manner of the payment to the bidder.
  - v. Appellant issued several invoices over a period of time, which could not be verified by the Corporation for want of reports by Third-Party Auditor (TPA) in terms of the Agreement.
  - vi. There has been correspondence between the Parties. Letter dated 09.12.2020 was issued by the Appellant to the Corporation praying for payment of invoices.
  - vii. Department of Information Technology (DOIT), Government of Goa has issued Note to the Corporation to initiate exit management of the Appellant.

- viii. On 20.05.2021, communication was issued by the Corporation with respect to exit management.
- ix. Appellant issued a legal Notice dated 23.07.2021 to the Respondent questioning the initiation of exit management.
- x. Appellant filed a Writ Petition No. 1789/2021 before the High Court of Bombay at Goa challenging the initiation of exit management. In the Writ Petition, direction was also sought for payment of outstanding dues of Appellant amounting to ₹2,54,98,096/- as on 31.07.2021.
- xi. The Appellant issued a Demand Notice dated 27.01.2023, under Section 8 of the IBC claiming an amount of ₹2,90,67,407/- plus ₹76,40,425 as interest.
- xii. Letter dated 08.02.2023 and 28.02.2023, was written by Corporation to DOIT Goa seeking permission of Department of Information Technology, Electronics & Communication (DITEC) to release 75% of the outstanding amount to Appellant and set aside 25% amount to be paid later on after receipt of Report from TPA.
- xiii. Application under Section 9 was filed by the Appellant on 08.04.2023. The Writ Petition which was filed by the Appellant being Writ Petition No. 1789/2021 was withdrawn by the Appellant which Prayer was accepted by the Hon'ble High Court on 21.08.2023, with liberty to avail the alternate remedy.
- xiv. In the Section 9 Application Notices were issued to the Corporation but Corporation, neither appeared nor filed any Reply.

- xv. Adjudicating Authority, heard the Application and by Order dated 05.12.2023 rejected Section 9 Application holding that TPA Report having not yet been prepared the debt of Appellant has not become due and payable in accordance with the terms and conditions of RFP.
- xvi. It was also noticed that there exist controversy regarding initiation of exit management by the Corporate Debtor in accordance with the circular of DOIT. With the above observations, the Application was rejected.

**3.** Learned Counsel for the Appellant challenging the Impugned Order submits that there being already Letters of the Respondent admitting payment of 75% of debt dues of the Appellant, debt was admitted and Adjudicating Authority committed an error in holding that debt has not become due. Learned Counsel for the Appellant has referred to the Letter dated 08.02.2023 and 28.02.2023 of the Corporation to DITEC. The Corporation has not made the payment in spite of invoices issued. The Corporate Debtor has collected Revenue from Tender Processing Fee and Registration Fee and the Appellant was liable to be paid its share of 54.30%. Present is a case where there has been no denial of the dues by the Corporation and the mere fact that TPA was not appointed by the DITEC cannot be a ground for refusal of payment. It is submitted that the Corporation itself having written letter to DITEC seeking permission to release the payment, the dues are admitted. Adjudicating Authority, misinterpreted Clause 4.7(19) of RFP to wrongly hold that debt has not become due and payable.

**4.** Learned Counsel for the Respondent refuting the submission contend that under Clause 4.7(19) of RFP, payment to the implementing agency was to be made subject to Report submitted by TPA. It was further submitted that the Agreement also stipulated that payment would be released to Appellant subject to certification by the TPA. TPA, having not certified the payment to the Appellant, no default has been committed by the Corporation. It is further submitted that the Letter written to the DOIT, Government of Goa to permit payment of 75% was recommendation made by the Corporation, which has never been accepted. Corporation could not have made any payment, hence, no default has been committed by the Corporation as per the RFP Clauses and Agreement between the Parties. Adjudicating Authority did not commit any error in rejecting the Section 9 Application filed by the Appellant. Present is not a case where Insolvency could have been commenced. It is submitted that the Appellant has already filed the Writ Petition before the High Court of Bombay being Writ Petition No. 1789/2021, where outstanding payment was also prayed for. The dispute regarding payment was thus very much there due to which the Writ Petition was filed. Appellant chose to withdraw the Writ Petition at his risk. Present is not a case for initiation of any Insolvency Process.

**5.** We have considered the submission of Counsel for the Parties and perused the record.

**6.** There is no dispute between the Parties regarding the acceptance of bid of the Appellant for providing for e-Auction solutions. The Clause 4.7(19) which is relevant for the present case and has also been relied by the Adjudicating Authority is as follows:

*“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.”*

**7.** There is no dispute between the Parties that Government of Goa has not appointed a TPA.

**8.** Learned Counsel for the Respondent has referred to Agreement dated 10.07.2019 between the Parties. Clause 3 of Agreement between the Parties is as follows:

*“3. In consideration of the payments to be made to Implementing Agency for the services to be provided by him, Implementing Agency shall duly provide, execute and complete site work on or before the completion date mentioned in the tender document and perform all such acts and things in the agreement mentioned or described or which are to be implied there from or may be reasonably necessary for the completion of the services mentioned in the Agreement. The payment shall be released on quarterly basis and on certification by TPA as mentioned in the RFP.”*

**9.** Learned Counsel for the Appellant has placed much reliance on the Letter which was written by Corporation to the DITEC. Letter dated 08.02.2023 was written by Corporation on the subject *“Regarding release of payments to M/s. C1 India Private Limited towards Implementation of Goa e-Nivida E-Tendering Solution (<https://goaenivida.gov.in>) for the State of Goa”*.

In the Letter, Corporation proposed following:

*“...In view of all above, it is once again proposed that Department of Information Technology Electronics & Communication (DITEC) may grant permission to ITG to release the 75% of the total outstanding payments to M/s. C1 India Private Limited and set aside 25% of payment wherein, in case of any penalty levied by*

*TPA, the penalty from the amount set aside can be deducted.”*

**10.** The Corporation has after Letter dated 08.02.2023 has again sent a same request to the Department on 14.02.2023 and 28.02.2023. From the above, it is clear that on basis of RFP between the Parties and Clause 3 of the Agreement Certification by the TPA was required for release of the quarterly bill. The Corporation on account of non-receipt of any Report or any Certification from TPA did not make any payment. The present is not a case where Corporation has defaulted in making payment to the Appellant. However, the payment could not be made in accordance with the RFP and Agreement between the Parties where payment was to be released after certification by TPA. The above indicates that there may be lapse of the Government of Goa in not appointing TPA so that TPA can verify the release of the quarterly payments to Appellant, but that cannot be a reason for put the Corporate Debtor in Insolvency by admitting Section 9 Application filed by the Appellant. In the Reply, which has been filed by the Corporation, reference of Writ Petition No. 1789/2021, and one of the Prayers in the Writ Petition has also been referred to in Para 14 of the Reply. Para 14 of the Reply is as follows:

*“14. The Appellant filed Writ Petition No. 1789 of 2021 before the Hon’ble High Court of Bombay at Goa against the Respondent and the DOIT challenging initiation of Exit Management and for recovery of sums due. The Appellant in the Writ Petition inter alia specifically prayed for:*

*“...d. Direct Respondent No. 2 to remit the outstanding dues of the Petitioner under the Contract and the MSME Act amounting to Rs. 2,54,98,096.00 as of 31.07.2021;”.*

*True copy of amended Writ Petition No. 1789 of 2021 dated 20 August 2021 (without annexures) filed by the Appellant and the Reply dated 22 September 2021*

*filed by the Respondent (without annexures) before the Hon'ble High Court of Bombay at Goa are annexed hereto and marked as Annexure R/4 (Colly.)."*

**11.** The Writ Petition was filed by the Appellant in the Year 2021, where one of the directions was sought to payment of outstanding dues. It was the Appellant who withdrew the Writ Petition on 21.08.2023. Copy of the Order passed by the Hon'ble High Court of Bombay at Goa has been filed as an Annexure R-5 to the Reply of the Corporation. Appellant withdraw the Writ Petition with liberty to the Petitioner to avail of the alternate remedy. Alternate remedy for availing which remedy the Writ Petition withdrawn can obviously not be Insolvency Proceeding. The RFP as has been brought on the record clearly contemplate a dispute Resolution Process under Clause 19, which is as follows:

***"19 ARBITRATION***

***Informal Dispute Resolution:***

*The parties agree to attempt to resolve all disputes arising under the Agreement, equitably, in good faith and using their best endeavors. To this end, the parties agree to provide frank, candid and timely disclosure of all relevant fact, information and documents to facilitate discussion between them/their representation or senior officers."*

**12.** On account of the lapse of Government of Goa in appointing TPA and non-payment of the dues of the Corporate Debtor, Appellant was free to avail the Clause 19 of the Agreement, but in the facts of the present case, when in spite of recommendation by Corporation to the DOIT to permit payment of 75% of the amount it is not the case that any sanction was granted by Department to pay the Appellant. We agree with the finding of the Adjudicating Authority that no default can be said to have been committed by the Corporation so as to put it into Insolvency. When the RFP and Agreement



provides a particular mode and manner of payment, non-payment by Appellant is a plausible contention raised by the Respondent in opposing Section 9 Application.

**13.** We do not find any ground in the Appeal to interfere with the Order of the Adjudicating Authority rejecting Section 9 Application. We however, observe that present is a case which shows that Appellant has been put to prejudice on account of inaction in terms of the RFP and Agreement between the Parties. Appellant is still free to avail his remedy for payment of its outstanding dues in accordance with the Agreement between the Parties. We make it clear that any observation made by the Adjudicating Authority in the Impugned Order or any observation in the present Appeal may not come into way of the Appellant while prosecuting an appropriate remedy for its outstanding dues in accordance with law.

Subject to above observation, the Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**06<sup>th</sup> November, 2024**

*himanshu*