

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

CP IB NO. 236/(ND)/2023

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

**M/S TRANSLINE TECHNOLOGIES LIMITED
(THROUGH ITS AUTHORIZED REPRESENTATIVE)**

23A, 3rd Floor, Shivaji Marg,
New Delhi-110015

...Operational Creditor

VERSUS

EXPERIO TECH PRIVATE LIMITED

Shiv Sakti Apartment, Ground Floor,
Village Bagdola, Opp. Community Centre,
Sector-8, Dwarka, South West Delhi-110077

...Corporate Debtor

Order Delivered on: 08.01.2025

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Amit Kr. Singh, Adv.

For the Respondent : Mr. Anurag Ojha, Mr. Deepak Somani, Mr. Vipul Kumar, Advs.

O R D E R

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Munish Kumar Goyal, Authorized Representative of **M/s Transline Technologies Limited ('Operational Creditor')**, duly authorized vide Board Resolution dated 24.01.2023 for initiation of Corporate Insolvency Resolution Process (**'CIRP'**) against **M/s Experio Tech Private Limited ('Corporate Debtor')**.
2. **M/s Transline Technologies Limited** (Operational Creditor) is a company registered under the provisions of the Companies Act, 1956, having its registered office at 23A, 3rd Floor, Shivaji Marg, New Delhi-110015. **M/s Experio Tech Private Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN: U93000DL2013PTC254434], having its registered office at Shiv Sakti Apartment, Ground Floor, Village Bagdola, Opp. Community Centre, Sector-8, Dwarka, South West Delhi-110077. The Corporate Debtor has Authorized Share Capital of Rs. 1,00,000 (Rupees One Lakh) and Paid-Up Share Capital of Rs. 1,00,000 (Rupees One Lakh).
3. The present Petition was filed on 08.03.2023 before this Adjudicating Authority by M/s Transline Technologies Limited (Operational Creditor), through its Authorized Representative Mr. Munish Kumar Goyal, duly authorized vide Board Resolution dated 24.01.2023 to initiate Corporate Insolvency Resolution Process (**"CIRP"**) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**"Code"**). The total amount due as claimed is Rs. 3,87,90,800/- (Rupees Three Crore Eighty-Seven Lakhs Ninety Thousand Eight Hundred). The date of default is stated to be 30 days from the date of the respective invoices. The latest date of default is 11.01.2022.

4. Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.

- a) The Operational Creditor deals in electronic items, biometric equipments, its peripherals and IT related business solutions and renders services in ICT/Biometric system related projects across the country.
- b) The Corporate Debtor approached the Operational Creditor for purchase of electronic equipment and as per the agreed terms of business, Transline supplied IT related electronics equipment to Experio Tech Private Limited and raised 5 invoices in this regard.
- c) The Operational Creditor raised 5 invoices dated 23.10.2021, 16.11.2021, 16.11.2021, 03.12.2021 and 10.12.2021, respectively totally amounting to Rs. 5,34,92,510/- (Rupees Five Crores Thirty-Four Lacs Ninety-Two Thousand Five Hundred and Ten) and as per the agreed terms, the Corporate Debtor had to make the payment within 30 days from the date of invoice.
- d) The Corporate Debtor had also taken financial assistance of Rs. 20,98,290/- from the Operational Creditor on 22.09.2021.
- e) Despite several reminders by the Operational Creditor, the Corporate Debtor made a part-payment of Rs. 1,68,00,000/- (Rupees One Crore Sixty-Eight Lacs) on 01.06.2022 in respect of invoices, against which the aforesaid financial assistance of Rs. 20,98,290/- was adjusted.
- f) After adjusting the payment made by the Corporate Debtor, an amount worth Rs. 3,87,90,800/- (Rupees Three Crore Eighty-Seven Lacs Ninety Thousand Eight Hundred) is still outstanding qua the supply of the products and is due and payable by the Corporate Debtor to the Operational Creditor.
- g) Despite repeated reminders by the Operational Creditor, the Corporate Debtor had failed to release the payment of the outstanding amount. Therefore, the Operational Creditor had issued a Demand Notice dated 12.01.2023 upon the Corporate Debtor under Section 8 of the Code and the Corporate Debtor had replied to such Demand Notice vide its reply dated 23.01.2023. Hence, the present petition has been filed.

5. Submission by the Learned Counsel appearing on behalf of the Corporate Debtor

- a) The Corporate Debtor is engaged in software and hardware related to IT and electronics, supply and installation, etc.
- b) In 2021, there were two directors in the Corporate Debtor's company namely Sh. Rakesh Yadav and Sh. Niraj Kumar Gupta. Sh. Niraj Kumar Gupta has without due process or specific authorization from board of Experio, entered into an agreement dated 03.09.2021 with the Transline and the fact of entering into of Agreement dated 03.09.2021 has been concealed by the Petitioner.
- c) The Respondent submits that the said agreement is one-sided, however, the same reflects the traces of part of the business understanding between the parties. The MOU dated 03.09.2021 and transaction with Transline thereafter, are without authority exercised by said Sh. Niraj Kumar Gupta.
- d) As per the terms of the Agreement dated 03.09.2021, the Transline is conferred with the monopoly to carry out supplies to Experiotech, according to which, all the supplies made by Experiotech to any party are to be through Transline only.
- e) As per the agreement terms, instead of, usual transactions of debtor and creditor, the common pool of resources was contemplated. Further, the profit had to be distributed equally between both the parties and also, the Transline had to bear the losses attributable to it.
- f) In September 2021, the Transline was placed with the Purchase Order dated 07.09.2021, according to which, the Experiotech had to supply the material to two entities i.e. Gujarat Transport and Gujarat Police, and to effectuate such supply, the Transline had to provide ten items to the Experiotech on immediate basis.
- g) The Respondent submits that the Transline had failed to supply two items i.e. breath analyzer and TFT monitors, on immediate basis, due to which, the Gujarat police had cancelled the Experio's tender in the December 2021 and

further forfeited the EMD of Rs. 16,47,475/-, thereby, causing the Experiotech to suffer losses on account of delayed supply by Transline.

- h) The Respondent further submits that Debit Notes worth Rs. 2,27,98,393 were issued for returned goods, however, the same has not been adjusted by the Petitioner.

Analysis & Findings

6. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition, reply filed by the Corporate Debtor and written submissions presented by both the Operational Creditor and the Corporate Debtor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.
7. It is to be noted that the 'Operational Creditor' had sent a Demand Notice dated 12.01.2023 to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of principal outstanding dues worth Rs. 3,87,90,800/- (Rupees Three Crore Eighty-Seven Lacs Ninety Thousand Eight Hundred) excluding the interest to be calculated @ 24% from the date of default. Therefore, the present petition meets the threshold limit of Rs. 1 crore, as required by Section 4 of the Code.
8. In order to determine the admissibility of petition for initiating CIRP under Section 9 of the Code, the judgment of the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:

- a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
 - b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
 - c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?
9. In the first instance, to determine as to whether the said amount claimed by the Operational Creditor would fall under the ambit of 'Operational Debt', it is pertinent to analyze the definition of 'Operational Debt' as stipulated under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under the said Section, the 'Operational Debt' is defined as: *"A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority"*.
10. While analyzing the present facts in the light of said definition under Section 5(21), it is observed that the Operational Creditor is engaged in the business of electronic items, biometric equipments, its peripherals and IT related business solutions and renders services in ICT/Biometric system related projects across the country, whereas, the Corporate Debtor is engaged in software and hardware related to IT and electronics, supply and installation, etc. It is observed that the Applicant supplied IT related electronics equipments to Experio Tech Private Limited and in this regard raised 5 invoices dated 23.10.2021, 16.11.2021, 16.11.2021, 03.12.2021 and 10.12.2021, respectively totally amounting to Rs. 5,34,92,510/-.
11. In the instant case, it is observed that the Corporate Debtor has neither disputed the receipt of goods nor the receipt of invoices on behalf of the Corporate Debtor. However, the Corporate Debtor disputes the relation of the parties to be that of

the Operational Creditor and the Corporate Debtor. Therefore, the issue that needs to be adjudicated upon by this Adjudicating Authority is:

Issue: Whether the instant Applicant would fall under the definition of ‘Operational Creditor’ within the meaning of Section 5(20) of the IB Code, 2016?

12. On the perusal of the documents placed on record, it is observed that an agreement in the form of MoU dated 03.09.2021 was entered into between the Applicant and the Corporate Debtor through its ex-director Mr. Niraj Kumar Gupta. The said fact with regard to the existence of the MoU dated 03.09.2021 has been admitted by the Operational Creditor as well. Referring to the terms contained in the Agreement dated 03.09.2021, it is observed that the Applicant herein, i.e. M/s Transline Technologies Limited and Corporate Debtor i.e. M/s Experio Tech Private Limited entered into an exclusive arrangement, whereby, the Experiotech had to carry out its sale to the third parties by procuring raw materials and other required commodities from the Transline only, which implies that the Transline was conferred with the monopoly to carry out supplies to Experiotech.
13. It is further observed that the Transline and the Experiotech together undertook to make supplies to the third parties by their joint efforts, which denotes that the nature of the business entered into between the Applicant and the Corporate Debtor appears to be that of an integrated business unit. Furthermore, in order to carry out its sale, the Corporate Debtor had to promptly give authorization, provide documentation, signatures and co-operate in every manner as and when required by Transline for any tender, which denotes that both the Applicant and the Corporate Debtor had their joint responsibilities in order to carry out the accomplishment of the sale of the final products by the Experiotech.
14. Additionally, it is observed that the nature of transactions entered into between the Applicant and the Corporate Debtor were not that of the debtor and the

creditor. Alternately, both the Applicant and the Corporate Debtor had agreed to share the profits in equal proportion out of the profits made from the sale of the supplies made by the Experiotech which again indicates that the Applicant and the Corporate Debtor jointly undertook the assignment of carrying out supplies to the third parties. In this regard, reliance is placed upon the decision of the Hon'ble NCLAT in the matter of **Prashanth Shekara Shetty Designated Partner of Abmay Health Ventures LLP Vs. Alcuris Healthcare Private Limited [Company Appeal (AT) (Ins.) No. 359 of 2022]**, whereby, the Hon'ble NCLAT has held as under:

*“28. In the present matter, the clauses of the agreement entered between the two parties, who are described as “general profit-sharing partners” therein, furnish the key to the minds of the makers of this agreement. The clauses of the agreement disclose an intent that both parties shall exercise joint control over the SRV Heart Centre and will be accountable to each other for their respective acts with reference to the functioning of the Cathlab. We also note that both the parties also combined their investments, property, efforts, resources, skill and knowledge in this unit. There are unmistakeable signs of reciprocal rights and obligations contained in the agreement besides evidence of common participation/joint control in the management as well as sharing of profits and losses. When shared control of interest or enterprise and shared liability for profit and losses is so clearly manifested, it cannot be denied that both parties are implicit partners and co-adventurers in the Cathlab venture rather than one being a consumer and the other a service provider. From the material on record, facts and circumstances there arises no clear or unambiguous jural relationship between the two parties as one of Corporate Debtor and Operational Creditor. Rather both the Corporate Debtor and Respondent No. 1 are like the principal as well as the agent of the other party. This spirit is not only captured in the body of the agreement but also demonstrated in the actions and conduct of both parties in their role as “general profit-sharing partners”. Thus, for the above reasons, we are not inclined to agree with the contention of the Respondent No. 1 that the outstanding amount so claimed constitutes an operational debt under the IBC. **As we hold that the claim is not in the nature of Operational debt, we need not go further to examine whether there was any***

default in respect of a debt which had become due and payable and whether it was laced with preexisting dispute.”

15. It is further observed that the Corporate Debtor in its reply to Section 8 notice has stated that no outstanding amount was due from the Corporate Debtor and the full and final settlement took place on 01.06.2022, thereafter, the Operational Creditor had taken back the material supplied on the loss rate from the Corporate Debtor.
16. Pertaining to the aforesaid terms of the Agreement dated 03.09.2021, it is observed that the Transline and the Experiotech jointly undertook to carry out the supplies being made to the third parties through Experiotech. The Transline would supply the raw material to the Experiotech. The Experiotech shall manufacture all equipments by sourcing all parts exclusively from Transline. Similarly, Experiotech shall supply/sell all finished products whether inside the country or outside the country, exclusively through Transline. Further, the Transline and the Experiotech agreed to share the profits out of the sale in the equal proportion. It is further observed that had there been the relation of the Operational Creditor and the Corporate Debtor between the parties, there would have been no provision for the ‘profit sharing’ amongst them, as the same is not contemplated as per the definition of the ‘Operational Debt’ as laid down under Section 5(21) of the Code. Therefore, in view of the observations made hereinbefore, we are of the view that the nature of relation entered into between the Applicant and the Corporate Debtor is that of the ‘joint suppliers’ and the Applicant herein, does not qualify to be considered as the ‘Operational Creditor’ within the meaning of Section 5(20) of the Code.
17. It is further observed that as per the terms of the Agreement dated 03.09.2021, the Applicant had to supply the goods to the Corporate Debtor on immediate basis. Accordingly, the Applicant was placed with a purchase order dated 07.09.2021, whereby, the Applicant had to made available to Experiotech certain supplies in order to effectuate the supplies being made to Gujarat Transport and

Gujarat Police. However, the Applicant admittedly, delayed in providing the supply of the products, which indicates that the Applicant itself had failed to perform its part of the agreement.

18. In the light of the above observations and the decision of the Hon'ble NCLAT in the matter of **Prashanth Shekara Shetty (supra)**, we are of the view that the basic ingredient of the Section 9 of the Code that the Applicant must qualify to be termed as the 'Operational Creditor' in terms of the Section 5(20) of the Code is not met with. Therefore, instant application filed by the Applicant is liable to be dismissed.
19. Accordingly, the instant application bearing **CP (IB) No. 236/ND/2023** filed by, **M/s Transline Technologies Limited**, (Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Experio Tech Private Limited** (Corporate Debtor) stands **dismissed**.
20. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)