



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

No. 207

(January 20, 2025)

M/S Transline Technologies Ltd. (Through Its Authorized Representative) Vs. Experio Tech Pvt. Ltd.
CP IB NO. 236/(ND)/2023
Date of NCLT Judgement: January 08, 2025

Facts of the Case

The petition was filed by M/s Transline Technologies Limited in the capacity of Operational Creditor (OC) through its authorized representative Mr. Munish Kumar Goyal (hereinafter referred as 'Applicant') against M/s Experio Tech Private Limited/CD (hereinafter referred as 'Respondent') under u/s 9 of the IBC, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 wherein the Applicant sought initiation of CIRP against the CD for recovery of outstanding dues amounting to ₹3,87,90,800/-.

The CD engaged in software and hardware-related IT and electronics manufacturing, had entered into an agreement (MoU) dated 03.09.2021 with the Applicant/OC, through its ex-director, Mr. Niraj Kumar Gupta. Under this agreement, the CD was obligated to procure raw materials and sell all finished products exclusively through the Applicant/OC. Thus, transline was conferred with the monopoly to carry out supplies to Experio Tech. The terms also included a profit-sharing arrangement between the parties. Disputes arose when the Applicant/OC claimed outstanding dues from the CD for electronic items supplied under five invoices. The CD however, denied the claims, stating that the parties were not in a debtor-creditor relationship but joint business partners sharing profits and losses.

The primary issue before the AA was to determine:

- (i) Whether there is an operational debt exceeding ₹ 1 crore as defined u/s 4 of the IBC?
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
- (iii) 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?



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NCLT's observations:

The AA noted that the relationship between the parties, as evidenced by the MoU dated 03.09.2021, reflected integrated business operations rather than a debtor-creditor relationship.

The OC and CD agreed to share profits equally, and their transactions involved joint responsibilities for sales and distribution, which is not covered under the definition of "Operational Debt" as per Section 5(21) of the IBC. The terms of the MoU granted monopoly rights to the Operational Creditor for supplies to the CD, obligating the CD to procure raw materials and sell finished products exclusively through the Operational Creditor. These provisions indicated a joint business arrangement rather than a simple goods-and-services relationship. The AA emphasized that profit-sharing agreements disqualify Transline Technologies from being considered as "Operational Creditor" within the meaning of Section 5 (20) of the IBC due to the deviation from a typical creditor-debtor structure.

Relying on *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018)*, the AA held that it must ascertain the existence of an operational debt and its payable status. The profit-sharing clauses in this case prevented the establishment of a straightforward operational debt. The AA also referred to *Prashanth Shekara Shetty v. Alcuris Healthcare Pvt. Ltd. (2022)*, whereby the Hon'ble NCLAT held that joint business arrangements with shared profits and liabilities lack the characteristics of operational debt.

The AA considered the CD's contention regarding the Purchase Order dated 07.09.2021, where delays in supplies by the Operational Creditor led to tender cancellations by Gujarat Police, forfeiture of ₹16,47,475/- as Earnest Money Deposit (EMD), and additional disputes over debit notes worth ₹2,27,98,393/- for returned goods. These disputes rendered the claim untenable under Section 9.

Order/Judgement: The AA concluded that the application failed to meet the criteria for initiating CIRP under Section 9 of the IBC, as the applicant could not establish its status as an Operational Creditor under Section 5(20) of IBC. AA observed that the relationship between the parties was that of joint suppliers and not one of debtor and creditor.

Case Review: The CIRP application *dismissed*.