

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**  
**IN**  
**Company Petition No. (IB)-121/ND/2026**

**IN THE MATTER OF CP (IB)-121/ND/2026:**  
**(Under Section 9 of IBC, 2016)**

**Alphion India Private Limited**

Through its Director: Mr. M. Srinivasan  
Unit No. 912, 9th Floor,  
The Summit Business Bay,  
Near WEH, Gundavali Village,  
Andheri East, Mumbai-400093

**... Applicant/  
Operational Creditor**

**Versus**

**Presto Info Solutions Private Limited**

A-32, Mohan Co-operative  
Industrial Estate, Mathura Road,  
New Delhi – 110044

**... Respondent/  
Corporate Debtor**

**Order Delivered on: 30.06.2026**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Anupam Kishore Sinha, Adv. Pradeep K.  
Tiwari, Adv. Apporv Jha, Adv. Sahitya  
Srivastava

**For the Respondent** : Sr. Adv. Naresh Kaushik, Adv. Vardhman  
Kaushik, Adv. Dhruv Joshi, Adv. Arindam Sarjn,  
Adv. Naman Sharma

**ORDER**

**PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)**

The captioned petition has been preferred by **Alphion India Private Limited** (hereinafter referred to as the “Operational Creditor/Petitioner”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 against **M/s Presto Info Solutions Private Limited** (hereinafter referred to as the “Corporate Debtor/Respondent”) seeking initiation of Corporate Insolvency Resolution Process on account of alleged default in payment of operational debt amounting to ₹ 2,16,60,454/-. The liability is claimed to have been arisen from the breach of MOU dated 28.06.2020 and consortium agreement dated 29.06.2020 executed between the petitioner and the respondent.

- 2.** The facts as espoused by the OC in the present petition, reads thus:-
- I. Bharat Sanchar Nigam Limited (BSNL) floated Tender No. MM/BN-II/GPON/2-683/2020 dated 12.05.2020 for supply, installation, integration, commissioning and maintenance of GPON equipment, EMS and solar power equipment with VRLA batteries on turnkey basis. The Operational Creditor, being an Original Equipment Manufacturer (OEM) of GPON equipment engaged in the business of design, manufacture, supply and maintenance of telecom networks, entered into discussions with the Corporate Debtor, stated to be a system integrator, for jointly participating in the said tender through a consortium arrangement.

- II. Pursuant to the understanding between the parties, the Corporate Debtor was designated as the lead/front-end bidder while the Operational Creditor was responsible for end-to-end execution of the project including supply, installation, integration, validation, training and allied activities. The parties allegedly agreed that the project would be executed on a back-to-back basis and the Corporate Debtor would be entitled to a margin of 6% on the final bid value (net of taxes), whereas the remaining amount was to be payable to the Operational Creditor. The aforesaid understanding was reduced into writing by way of Memorandum of Understanding dated 28.06.2020 and Consortium Agreement dated 29.06.2020. It is the case of the Operational Creditor that the role of the Corporate Debtor was limited to acting as the lead bidder, receiving purchase orders from BSNL, issuing corresponding purchase orders to the Operational Creditor, raising invoices upon BSNL corresponding to works executed by the Operational Creditor and facilitating receipt and transfer of payments.
- III. The consortium emerged as successful L2 bidder and BSNL issued Advance Purchase Orders in favour of the Corporate Debtor, pursuant to which corresponding purchase orders were issued by the Corporate Debtor to the Operational Creditor. The Operational Creditor thereafter undertook execution of works in terms of the Tender and purchase orders and raised invoices upon completion of work, which were allegedly accepted by the Corporate Debtor without protest. It is stated that corresponding invoices were thereafter raised by the Corporate

Debtor upon BSNL and payments were to be made by BSNL upon completion of milestones under the project.

- IV. According to the Operational Creditor, in furtherance of the back-to-back payment arrangement, the parties opened an Escrow Account with Bank of India, Lajpat Nagar Branch, New Delhi and executed an Escrow Agreement dated 04.08.2021. The purpose of the escrow mechanism was to ensure transfer of payments received from BSNL in favour of the Operational Creditor after deduction of the agreed margin of the Corporate Debtor. The Operational Creditor asserts that the Corporate Debtor had no authority or discretion to withhold such payments once the amounts were received from BSNL and credited to the Escrow Account.
- V. Owing to delay in payments by BSNL and consequent GST implications faced by the Corporate Debtor, the parties executed an Addendum dated 19.05.2022 to the MoU, whereby the Operational Creditor allegedly permitted retention of an additional amount of Rs.1,50,67,100/- over and above the agreed margin towards GST liabilities and reversal of input tax credit. In return, it was allegedly agreed that the Corporate Debtor would authorise release of 100% of the amounts received from BSNL in favour of the Operational Creditor. Corporate Debtor acted in accordance with the said arrangement during the period from 08.09.2022 till 10.02.2025 and released all payments received in the Escrow Account to the Operational Creditor without objection.

- VI. The grievance of the Operational Creditor is that from April, 2025 onwards, despite receipt of payments from BSNL aggregating to Rs.1,02,44,252.36/- in the Escrow Account against works executed by the Operational Creditor, the Corporate Debtor failed to authorise release of the said amount. It is alleged that the Operational Creditor continued performance of its contractual obligations and no dispute was ever raised either by BSNL or by the Corporate Debtor with regard to quality, performance or completion of work. The Operational Creditor claims total outstanding dues of Rs.2,16,60,454/-, comprising principal amount of Rs.1,63,34,355/- and interest amounting to Rs.53,26,119/- calculated @18% per annum up to the date of issuance of demand notice. Out of the said amount, Rs.1,02,44,252.36/- is stated to be an admitted and undisputed amount already received from BSNL and lying in the Escrow Account.
- VII. Repeated requests were made for release of the aforesaid amount through various emails and meetings, including a meeting held on 16.04.2025 wherein the Corporate Debtor allegedly assured release of funds, however, no payment was made. It is also alleged that despite requests for reconciliation of accounts and furnishing proof regarding GST liabilities and penalties, the Corporate Debtor failed to provide the same, instead, the Corporate Debtor allegedly invoked and encashed Bank Guarantees amounting to Rs.1,83,53,000/- furnished by the Operational Creditor as back-to-back performance security.

VIII. Since the alleged outstanding remained unpaid, the Operational Creditor issued demand notice dated 11.09.2025 under Section 8 of the Code claiming payment of operational debt. The Corporate Debtor replied to the same on 29.09.2025 denying liability and asserting counter claims against the Operational Creditor. The Operational Creditor disputes such assertions and contends that the reply failed to establish any pre-existing dispute with regard to the amount already received from BSNL and lying in the Escrow Account.

IX. On the basis of the aforesaid facts, the Operational Creditor has alleged that the Corporate Debtor committed default in payment of operational debt and no dispute regarding quality of goods or services was raised prior to issuance of demand notice under Section 8 of the Code.

3. The Operational Creditor has furnished the details of the operational debt in Part IV of the petition. The relevant excerpt of Part IV, reads thus: -

<b>PARTICULARS OF OPERATIONAL DEBT</b>	
<p><b>TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE</b></p>	<p><b>(i) Amount claimed to be in default:-</b></p> <p>Total Amount of Rs. 2,16,60,454/- (Rupees Two Crore Sixteen Lakhs Sixty Thousand Four Hundred and Fifty Four Only) comprising of principal amount of Rs. 1,63,34,355/- (Rupees One Crore Sixty Three Lakhs Thirty Four Thousand Three Hundred and Fifty Five Only) and interest @ 18% p.a. amounting to Rs. 53,26,119/- (Rupees Fifty Three Lakhs Twenty Six Thousand One Hundred and Nineteen Only) till the date of the issuance of Demand Notice u/s 8 of IBC, 2016 dated 11.09.2025 towards invoice amount (inclusive of interest) outstanding and payable.</p> <p>Out of the above operational debt, a portion thereof,</p>

	<p>namely, an amount of <b><u>Rs.1,02,44,252.36/- (Rupees One Crore Two Lakhs Forty-Four Thousand Two Hundred and Fifty-Two and Paise Thirty-Six)</u></b>, lying in the Escrow Account is absolutely undisputed and ought to be released and paid from the Escrow Account by the Corporate Debtor without demur or protest, in terms of Clauses 5, 6, 7 &amp; 8 of the Addendum 2 dated 19.05.2022. However, the Corporate Debtor has failed and defaulted in paying the said undisputed operational debt.</p>
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<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p>	<p><b>Amount claimed to be in default:</b></p> <p>Principal Amount of Default – Rs. 1,63,34,355/-</p> <p>Interest @18% on the Principal Amount of Default - Rs. 53,26,119/-</p> <p><b>TOTAL – Rs. 2,16,60,454/-</b></p> <p>Out of the aforesaid amount, a sum of Rs. 1,02,44,252.36/- lying in the Escrow Account constitutes an undisputed and admitted operational debt which ought to have been paid by the Corporate Debtor to the Operational Creditor without any demur or protest, in terms of Addendum-2.</p> <p><b>Date on which default occurred:</b> 02.04.2025</p> <p>02.04.2025 for Rs. 28,10,034/-</p> <p>21.04.2025 for Rs. 71,15,602/-</p> <p>30.05.2025 for Rs. 3,18,664/-</p> <p>Computation / Working is attached herewith as <b>ANNEXURE V.</b></p>
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4. The Respondent/Corporate Debtor has filed its reply opposing the pleas raised in the present petition and sought dismissal thereof primarily on the

ground of pre-existing disputes between the parties. The pleas raised by Respondent are:-

- I. The financial relationship between the parties was always subject to continuous reconciliation, verification and mutual adjustments, as reflected from the Minutes of Meeting dated 28.05.2025, payment instructions, contemporaneous communications and the escrow arrangement governing the project. According to the Corporate Debtor, the accounts between the parties remained open, running and subject to verification, recalculation of GST liabilities, statutory deductions, margin allocation and determination of net payable amounts and therefore, the alleged liability was neither admitted nor crystallised.
- II. The claim raised by the Operational Creditor is intrinsically linked with escrow receipts, statutory deductions, GST liabilities, margin entitlement, payments already made and financial adjustments, all of which were under active reconciliation. The Corporate Debtor contends that the communications exchanged between the parties shows that the accounts were under constant review and adjustment and that even the Operational Creditor had acknowledged substantial reconciliation except for minor differences, thereby indicating that the dispute concerns reconciliation of accounts rather than existence of undisputed operational debt.
- III. Disputes existed regarding GST liabilities forming an integral component of the transaction structure. It is submitted that while execution of the project was undertaken by the Operational Creditor,

invoices were raised by the Corporate Debtor upon BSNL, thereby creating interdependence between execution, billing and tax compliance. According to the Corporate Debtor, delays in execution and certification of work affected billing and receipt of payments from BSNL, resulting in crystallisation of GST liabilities, reversal of input tax credit and consequential interest and penalty liabilities at its end. Reliance has been placed upon Section 16(2) of the CGST Act and Rule 37 of the CGST Rules, 2017 to contend that reversal of input tax credit became necessary on account of delayed payments and that such liabilities formed part of the financial adjustments between the parties. The Addendum dated 19.05.2022 itself was executed to address GST related issues and financial realignment and that the Operational Creditor had agreed to adjustment of GST liabilities, reversal of input tax credit and interest from escrow receipts.

- IV. In the Addendum dated 19.05.2022, the Operational Creditor authorised release and appropriation of payments from the Escrow Account in such manner as deemed appropriate by the Corporate Debtor and therefore, release of funds was not automatic or unconditional but remained subject to reconciliation, allocation and appropriation against invoices. According to the Corporate Debtor, the escrow arrangement constituted the core financial mechanism between the parties and payments were to be disbursed only upon issuance of joint instructions after verification and reconciliation.

- V. The Corporate Debtor has relied upon the Minutes of Meeting dated 28.05.2025 and payment instructions to contend that the financial position remained under reconciliation. It is stated that total receipts in the Escrow Account stood at Rs. 28,22,56,188/-, out of which the Corporate Debtor's 6% margin was computed at Rs. 1,69,35,371/- and GST penalties already discharged were recorded at Rs. 64,39,700/-, thereby making the total amount payable to the Corporate Debtor Rs. 2,33,75,071/-. Payments already made to the Corporate Debtor amounted to Rs. 1,93,70,225/- left in a net payable amount of Rs. 40,04,846/- and out of the funds lying in the Escrow Account amounting to Rs. 99,25,638/-, only Rs. 59,20,791/- was allocable to the Operational Creditor. On this basis, it has been argued that entitlement of the Operational Creditor remained conditional and dependent upon determination of margins, GST liabilities, statutory deductions and other financial adjustments.
- VI. The Corporate Debtor has also contended that execution of the project including supply, installation, commissioning and maintenance activities was exclusively within the domain of the Operational Creditor as OEM supplier and the Corporate Debtor had no role in field execution. It is alleged that delays and deficiencies in execution affected certification of work by BSNL, disrupted the payment cycle and delayed release of funds. It has been submitted that sign-off and closure of the project remained delayed, resulted in levy of liquidated damages, penalties and delayed release of payments by BSNL and that such

liabilities, in terms of the contractual arrangement, were to be borne by the Operational Creditor.

VII. The relationship between the parties constituted a running and mutual account involving multiple transactions across different project locations, staggered receipts from BSNL, escrow-based disbursements and continuous reconciliation and adjustment of accounts. It is submitted that substantial payments had already been made to the Operational Creditor and the outstanding position itself remained subject to further adjustments and reconciliation. The invoices relied upon by the Operational Creditor, including invoices dated 21.08.2025, have been disputed on the ground that the same were linked with milestone completion, certification of work and corresponding billing to BSNL and could not be treated as independent or immediately payable liabilities. Reliance has also been placed upon communications dated 20.08.2025, 22.08.2025 and 25.08.2025 to contend that such invoices were provisional and subject to confirmation and alignment with BSNL billing.

VIII. The contractual framework including the MoU and subsequent agreements contains an arbitration clause and the disputes raised pertain to contractual interpretation, performance obligations, reconciliation of accounts, financial adjustments and allocation of liabilities require detailed adjudication. According to the Corporate Debtor, the present Petition is an attempt to invoke the Insolvency and Bankruptcy Code as a recovery mechanism in respect of a disputed and

unascertained claim arising from a complex commercial arrangement involving multiple contractual documents, escrow mechanisms, statutory liabilities and adjustments.

**5.** The Petitioner filed a rejoinder to the reply submitted by the Respondent, denied the averments and objections raised in the reply and reiterated the case set up in the Petition. The facts espoused therein reads thus:-

I. BSNL remitted amounts aggregating to Rs. 1,02,44,252.36/- into the Escrow Account in three tranches on 02.04.2025, 21.04.2025 and 30.05.2025 and the Corporate Debtor itself admitted receipt of the said amounts in its Reply. According to the Operational Creditor, the said amount formed part of the operational debt and was required to be released in its favour under the contractual arrangement between the parties and therefore, withholding thereof constitutes default.

II. The Operational Creditor has relied upon escrow disbursement communications dated 13.09.2025 and proposed release instructions dated 15.09.2025 to contend that the parties were dealing with actual funds lying in the Escrow Account. A proposal was made whereby Rs. 50,00,000/- was proposed to be released to the Corporate Debtor as an advance and the balance amount of Rs. 52,44,228.76/- to the Operational Creditor, subject to furnishing of GST analysis by the Corporate Debtor. According to the Operational Creditor, the said condition was never fulfilled and the proposal remained unacted upon.

The Corporate Debtor cannot rely upon the said communication to deny

entitlement of the Operational Creditor and under the Addendum dated 19.05.2022, the entire amount lying in the Escrow Account was liable to be released in its favour.

- III. The Addendum dated 19.05.2022 was executed to address issues arising out of delayed payments by BSNL and GST implications and the parties had thereby settled the position relating to GST reversal and release of payments. Reliance has been placed upon the clause providing that until GST reversal amounts were paid, the Corporate Debtor could authorise release of the entire funds received from BSNL in favour of the Operational Creditor. According to the Operational Creditor, issues relating to GST liabilities and delay in payments stood addressed under the Addendum and cannot now be revived as grounds to withhold payments.
- IV. The Operational Creditor has relied upon Minutes of Meeting dated 28.05.2025 and contended that the same acknowledged allocation of funds in favour of the Operational Creditor and contemplated release of future receipts after retention of the Corporate Debtor's margin. It is submitted that the proposed disbursement instruction dated 15.09.2025 and subsequent reconciliation dated 22.09.2025 recognised availability of approximately Rs. 1.02 crore in the Escrow Account and contemplated release thereof.
- V. The Operational Creditor has denied the allegations of delays, deficiencies, execution failures, pending sign-off, penalties and

liquidated damages attributed to it and characterised the same as unsupported by contemporaneous material. No notices of breach, deficiency communications, technical complaints, cure notices, rejection records or quality disputes were ever raised by the Corporate Debtor and that such allegations were also absent in the reply to the statutory demand notice. Reliance has been placed upon Minutes of Meeting dated 28.05.2025 to contend that discussions therein related only to allocation of escrow funds, GST liabilities, deductions, expected receipts and payment arrangements and did not record any issue relating to defective execution or performance deficiency.

- VI. The Operational Creditor has referred to correspondence concerning service invoices to show that the communications only reflected routine billing coordination and did not disclose any dispute concerning execution, quality or performance.
- VII. The Operational Creditor has disputed reliance placed by the Corporate Debtor upon BSNL communications dated 30.05.2025 and 30.06.2025 relating to AMC closure. According to the Operational Creditor, the said communications merely related to closure of existing AMC arrangements with effect from 30.06.2025 and did not affect accrued rights, pending receivables, certified milestones or billing rights arising from work already completed. Reliance has been placed upon the Minutes of Meeting dated 28.05.2025 to contend that service billing and AMC execution were treated as separate matters. Further reliance has been placed upon BSNL communication dated 06.11.2025 concerning

service claims under Purchase Order No. CT/PO/04/2021-22 to contend that the issue identified by BSNL pertained only to GSTIN mismatch and correction of invoices and not to AMC closure, certification issues or performance disputes.

- VIII. Non-execution of AMC arrangements resulted from inaction attributable to the Corporate Debtor despite approvals issued by BSNL through communications dated 04.01.2024 and 04.10.2024 and despite follow-up communications and draft agreements forwarded by the Operational Creditor. Absence of a formal AMC agreement had no bearing upon already accrued operational debt or receivables allegedly payable from amounts lying in the Escrow Account.
- IX. The disputes raised by the Corporate Debtor are inconsistent inasmuch as while alleging execution failures, GST burdens, contingent liabilities, AMC related consequences and unresolved adjustments, the Corporate Debtor's own records acknowledge allocation of funds to the Operational Creditor, proposed release of escrow amounts and billing coordination.
- X. The Operational Creditor has also referred to notice invoking arbitration dated 09.05.2026 issued by the Corporate Debtor claiming Rs. 6.78 crores and contended that the same was initiated only during pendency of the present proceedings and was not preceded by any earlier action. Reference has also been made to proceedings allegedly initiated by other operational creditors against the Corporate Debtor and settlements

entered into therein. On the aforesaid basis, the Operational Creditor has reiterated that the objections raised by the Corporate Debtor do not constitute bona fide pre-existing disputes and that the operational debt, particularly to the extent of amounts received in the Escrow Account, stands established.

**6.** We have heard the Ld. Counsels appearing for the parties and perused the material available on record. The case of the Operational Creditor is that Bharat Sanchar Nigam Limited (BSNL) floated Tender No. MM/BN-II/GPON/2-683/2020 dated 12.05.2020 for supply, installation, integration, commissioning and maintenance of GPON equipment, EMS and solar power equipment with VRLA batteries on turnkey basis. The Operational Creditor, being an Original Equipment Manufacturer (OEM) engaged in the business of designing, manufacturing, supplying and maintaining telecommunication equipment and networks entered into a consortium arrangement with the Corporate Debtor, stated to be a system integrator, for participation in the said tender. Pursuant thereto, the parties executed a Memorandum of Understanding dated 28.06.2020 and Consortium Agreement dated 29.06.2020 for jointly participating in the tender process floated by BSNL.

**7.** It is the case of the Operational Creditor that under the contractual arrangement between the parties, the Corporate Debtor was to act as the lead bidder and was responsible for submission of bids, receipt of purchase orders from BSNL, issuance of corresponding purchase orders upon the Operational Creditor, raising invoices upon BSNL corresponding to works executed by the Operational Creditor and facilitating receipt and transfer of payments.

According to the Operational Creditor, the execution of the project, including supply, installation, integration and allied activities was undertaken by the Operational Creditor, while the payments released by BSNL were to be distributed in accordance with the agreed arrangement between the parties.

**8.** It is borne out from the records that after the consortium of parties emerged as successful L2 bidder, BSNL issued Advance Purchase Orders in favour of the Corporate Debtor, pursuant to which corresponding purchase orders were issued upon the Operational Creditor. The parties opened an Escrow Account with Bank of India, Lajpat Nagar Branch, New Delhi and executed an Escrow Agreement dated 04.08.2021. The case of the Operational Creditor is that the escrow mechanism was introduced for receipt and onward transfer of payments released by BSNL in respect of works executed under the project after accounting of the agreed entitlement of the Corporate Debtor.

**9.** The grievance raised by the Operational Creditor pertains to the alleged non-release of amounts received from BSNL in the Escrow Account. According to the Operational Creditor, during the period commencing from April, 2025, BSNL released amounts aggregating to Rs. 1,02,44,252.36/- into the Escrow Account against works executed by the Operational Creditor, however, the Corporate Debtor failed to release the said amount despite repeated requests. It is the specific case of the Operational Creditor that the aforesaid amount formed part of the operational debt due and the withholding thereof constituted default under the provisions of the Insolvency and Bankruptcy Code, 2016.

10. The Operational Creditor has primarily relied upon the Memorandum of Understanding dated 28.06.2020 and Consortium Agreement dated 29.06.2020. A perusal of Clause 3 of the MoU shows that the objective of the arrangement was for the parties to jointly participate as a consortium in Tender No. MM/BN-II/GPON/T-683/2020 dated 12.05.2020 floated by BSNL and to execute the project in the event the consortium bid submitted by PISPL, as Lead Bidder, became successful. Clause 4 of the MoU further stipulates the respective obligations and responsibilities of the parties. The relevant excerpt of the MOU dated 28.06.2020 reads thus:-

**3. OBJECTIVES OF THE PARTIES**

- 3.1 **Objectives:** The objective of the Parties in entering into this AGREEMENT is to have a mutually beneficial relationship and:
- (a) Bring in respective competency to jointly address the current opportunity while sharing the businesses between the parties in accordance with this AGREEMENT; and
  - (b) to jointly participate in consortium in the **Tender No. TE No. MM/BN-II/GPON/T-683/2020 issued on 12.05.2020 for Turnkey Project for Supply, Installation, Integration, Commissioning and Maintenance of GPON Equipment, EMS and Solar Power Equipment with VRLA Batteries.**
  - (c) To execute the contract in the event the Bid submitted, in consortium, by Partner (as Lead Bidder) become successful resulting in award of contract by Authority.

**4. OBLIGATIONS OF THE PARTIES**

- 4.1 The Parties acknowledge and agree that Partner shall be the Front End bidder/Lead Bidder for the Project and submit quote.
- 4.2 Partner and AIPL shall submit all relevant eligibility documents as applicable to the front end bidder/Lead Bidder.
- 4.3 The Parties shall be bound with their respective scope of work. However AIPL shall be solely responsible towards the Customer for the performance of the works in accordance with the terms and conditions of the BID document, and Contract.
- 4.4 AIPL shall submit all the required and authentic/valid Eligibility Criteria documents and the technical specification documents to Partner
- 4.5 AIPL & PARTNER will not withdraw the Bid until the Bid Bond Validity as per Tender (or any other extension, the parties mutually agree to extend upon request of customer) is expired. In case any of the Parties withdraw the Bid before the validity as above, which results in forfeiture of EMD BG by Customer, then the Party which has withdrawn shall indemnify Partner for EMD.
- 4.6 AIPL shall be responsible for providing all items and services of SOR as per tender requirement. AIPL shall take a complete ownership of delivery and execution of the project.
- 4.7 Partner will place APO (Advance Purchase Order) on AIPL, all within 3 working days of receiving an Advance Purchase Order from the Purchaser.

- 4.8 If the Customer cancels the order on the Lead Bidder/Purchaser, then it is deemed accepted that the APO /PO from Purchaser to AIPL stands cancelled unconditionally. However AIPL shall be entitled for the payment for the work completed (under QA process) and material supplied up to the date of cancellation, subject to payment being released by end customer for the material and services delivered. The payment would be split between the parties as per the already agreed percentage and terms.
- 4.9 AIPL shall start supplying the necessary equipment and services to Purchaser as per the Implementation schedule specified by the Customer in the Tender Document
- AIPL shall deliver material well before the above Installation schedule, keeping in mind the Installation time required as per the Industry practice.
- 4.10 For any delays in supply of material, to meet the project timelines, if the Customer Levy's LD on Purchaser, same shall be borne back to back by AIPL as per the scope of work.
- 4.11 It will be the responsibility of AIPL to meet the Criteria of Domestic Manufacturer as per the PMA guidelines issued by Govt. of India.
- 4.12 AIPL will be responsible for compliance and performance of their respective supplied equipment as per the GRs/Tender specifications.
- 4.13 AIPL will give clause-wise compliance of the sections related to Products, Features, Specifications, Validation, Integration, Acceptance Testing, spares, warranty and AMC of the Authority Tender to front end bidders. Front end bidder will submit onward compliance to customer as per Tender Format.
- 4.14 AIPL will provide Training to Authority personnel as per the Tender requirement as per the rates quoted by AIPL to Front End Bidder.
- 4.15 With regard to Support and Repair centre, AIPL will establish repair/support centres once the PO is issued by the Customer as per the requirements of the Tender.
- 4.16 AIPL shall provide all Technical assistance/Compliances/documents to Partner in fulfilling the technical obligations as per the tender document,
- 4.17 AIPL shall be responsible for integration and validation of the EMS with the NMS in the time frame to be agreed in line with Project. Partner will issue a separate Service Work order to AIPL for this activity.
- 4.18 In the event Partner obtains an AMC in relation to the Project, shall promptly be transferred by Partner to AIPL, as per the offer quoted.
- 4.19 The Parties will execute any other agreement, as may be deemed necessary, in connection with AGREEMENT and undertake any other act as required in connection with this AGREEMENT.
- 4.20 Except as otherwise expressly stated in this AGREEMENT and the scope of work as per Annexure, parties will bear their own expenses in carrying out its duties and obligations under this AGREEMENT.
- 4.21 AIPL will be responsible for manufacturing GPON equipment either directly or through their contractor manufacturers meeting the specification and certification as per the Tender. AIPL shall also be responsible for installation services, first line maintenance and AMC of the equipment including EMS and NMS integration.
- 4.22 All prices and information conveyed by the parties are subject to confidentiality agreement. AGREEMENT shall not be disclosed without the consent of parties unless required for statutory compliance.
- 4.23 The financial currency for the contract will be Indian Rupees
- 4.24 AIPL will supply the equipment to Partner on mutually agreed terms. Partial shipments and transhipments allowed, only up to the extender of delivery schedule defined in the Tender document.

- 4.25 AIPL shall advise the final price to Partner and Partner shall upload the same price as bid submission. Partner shall be entitled to contribution of **6.00%** on the final price quoted in bid, net of taxes (taxes are to be excluded), on all aspects, i.e., equipment, services, first line maintenance and AMC.
- 4.26 After the Tender is submitted by Partner as Front End Bidder, if it is disclosed that the said Bid is not L1, and if AIPL decides to match the L1 price to execute the project, Partner shall support the execution of the project. Partner shall be entitled to contribution of **6.00%** of the total purchase order value, net of taxes (taxes are to be excluded), on all aspects, i.e., equipment, services, first line maintenance and AMC.
- 4.27 In case any penalty is imposed by the Customer or Authority or any Government agency on Partner for the reasons attributable to AIPL, then Partner shall advise AIPL the reason for penalty and Partner shall release the due payment to AIPL after adjusting the Penalty in absolute terms. Partner shall raise the debit note in case outstanding is less than the penalty and AIPL shall transfer the relevant amount to Partner's account.
- 4.28 In the event liquidated damages become payable under the Project, the same shall be borne by the Party on account of whose default the liquidated damages became payable. If LD is applicable on account of delayed supplies by AIPL, then PARTNER shall deduct such LD, on absolute terms of AIPL and make the payment.
- 4.29 Partner shall submit the EMD as required. AIPL shall provide the Performance Bank Guarantee to Customer, as per the percentage & duration mentioned in Tender requirement.
- 4.30 The payment terms shall be made by Partner on back to back basis through an escrow account to be opened for this purpose. The Customer shall be advised to make all payments to the escrow account. Partner may be executing one or more projects independently of AIPL with the Customer. Partner's liability on any other project with the Customer shall not impact the payment to AIPL for this project. "Impact", in this clause, is defined as any actions or non-actions by Partner that results in payment to AIPL being delayed, reduced, cancelled or otherwise limited. If the payment to AIPL impacted, Partner shall compensate AIPL immediately.

**11.** The Consortium Agreement dated 29.06.2020 records the commercial understanding, roles and responsibilities inter se the parties in relation to participation in the BSNL project. The consortium agreement dated 29.06.2020 reads thus:-

**CONSORTIUM AGREEMENT**

In response to RFP Reference no. MM/BN-II/GPON/T-683/2020 Dated 12/05/2020, for Turnkey Project for Supply, Installation, Integration, Commissioning and Maintenance of GPON Equipment, EMS and Solar Power Equipment with VRLA Batteries. (RFP) issued by BHARAT SANCHAALAN LIMITED (BSNL), a consortium has been formed on 29<sup>th</sup> Jun, 2020 between M/s Presto Info

**Solutions Private Limited**, a company incorporated in India under the provisions of the Companies Act, 1956 and having its registered office at A-32, Mohan Co-Operative Industrial Estate, Mathura Road, New Delhi – 110044 (**Presto**) and **M/s Alphon India Private Limited**, a company incorporated in India under the provisions of the Companies Act, 1956 and having its registered office at 302, Bonanza, "A" Wing, Sahar Plaza Complex, J.B. Nagar, Andheri Kurla Road, Andheri (E), Mumbai 400059 (**AIPL**) to meet various eligibility conditions and experience criteria specified in the RFP under reference.

It has been agreed among bidder Presto and the AIPL (Consortium Partner) that :-

- A. Consortium party (**Presto & AIPL**) shall jointly participate in RFP's techno-commercial bid.
- B. Consortium party (**Presto & AIPL**) shall be mutually exclusive to each other for RFP.
- C. **Presto** shall submit techno-commercial and Financial Bids to **BSNL** for this RFP on behalf of this consortium and henceforth called as "**Lead Bidder**". It is also confirmed that both members of the said consortium shall together meet the eligibility conditions as specified in the above referred RFP.
- D. **Presto** as **Lead Bidder** shall interact with **BSNL** for all obligations.
- E. The commercial terms between the consortium partners are "back to back" basis.
- F. The **Lead bidder (Presto)** and its **Consortium Partner (AIPL)** shall be jointly & severally liable for due performance of the contract.
- G. Detailed matrix clearly specifying the stake/role of **Consortium Partner** and their responsibilities is enclosed at Annexure-1.

The details of **Lead Bidder** and **Consortium Partner** are as under:-

**BIDDER**

M/s Presto Info Solutions Private Limited

Registered Office: A-32, Mohan Co-Operative Industrial Estate, Mathura Road, New Delhi

- 110044

**CONSORTIUM PARTNER**

M/s Alphon India Private Limited

Registered Address: 302, Bonanza, "A" Wing, Sahar Plaza Complex, J.B. Nagar, Andheri Kurla

Road, Andheri (E), Mumbai 400059

IN WITNESS WHEREOF the parties have caused this AGREEMENT to be executed by their duly authorized officers as of the day first above written



12. Upon consideration of the pleadings, documents and agreements placed on record, the primary issue which arises for determination is whether under the MoU dated 28.06.2020 and Consortium Agreement dated 29.06.2020, the relationship between the parties can be construed as that of an Operational Creditor and Corporate Debtor within the meaning of the

Insolvency and Bankruptcy Code, 2016 and whether the claim sought to be enforced qualifies as an operational debt under Section 5(21) of the Code.

**13.** In this regard, Sections 5(20) and 5(21) of the Insolvency and Bankruptcy Code, 2016 assume relevance, which reads thus:

**“Section 5(20):** *“Operational Creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.”*

**Section 5(21):** *“Operational Debt means a claim in respect of provision of goods or services including employment or a debt in respect of 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.”*

**14.** A plain reading of Section 5(21) shows that operational debt must arise from provision of goods, rendering of services, employment related obligations or statutory dues. Therefore, the nature of the relationship between the parties and the source from which the alleged liability arises becomes relevant for determining maintainability of the present petition.

**15.** Upon perusal of the MoU dated 28.06.2020 and Consortium Agreement dated 29.06.2020, it is observed that the parties came together for the purpose of jointly participating in the tender floated by BSNL and to execute the project upon successful award of contract. The agreements primarily regulated allocation of responsibilities, execution mechanism, commercial understanding, sharing arrangement and inter se obligations between the parties. The MoU created a mutually beneficial commercial arrangement for

participation in the BSNL project whereas the Consortium Agreement elaborated the commercial terms in execution thereof.

**16.** We do not find any material in the said agreements indicating existence of an independent contract whereby the Operational Creditor was engaged by the Corporate Debtor for supply of goods or rendering of services in the ordinary course so as to create an Operational Creditor–Corporate Debtor relationship under the Code, rather, the relationship emerging from the agreements appears to be that of consortium partners acting together for execution of a project of BSNL. Consequently, the claim appears to arise from inter se commercial arrangements and contractual obligations between consortium participants and not from provision of goods supplied or services rendered by one party to another in the nature contemplated under Section 5(21) of the Code.

**17.** The MoU dated 28.06.2020 and Consortium Agreement dated 29.06.2020 merely recorded the contractual understanding entered into between the parties for jointly participating in the BSNL tender and regulating their respective rights and obligations in the event the consortium bid was accepted. The grievance raised by the Operational Creditor pertains to alleged non release of amounts lying in the Escrow Account, however, the liability sought to be enforced emanates from the contractual arrangement embodied in the MoU, Consortium Agreement and related arrangements between the parties. Such claim arises out of enforcement of contractual rights and obligations inter se the consortium partners and do not, by itself, partake the

character of operational debt as contemplated under Section 5(21) of the Code.

**18.** The agreements in question constitute independent commercial arrangements intended to govern the relationship between the parties and were to be enforced in accordance with their own terms and conditions. In the event of alleged breach, non-performance or withholding of amounts under such arrangements, the parties would have recourse to appropriate remedies available under law before the competent forum. The dispute involved in the present proceedings essentially concerns enforcement of contractual obligations arising from the MoU and Consortium Agreement falls within the realm of civil dispute.

**19.** At this juncture, reference may be made to the judgment of Hon'ble NCLAT in ***Ansal Properties & Infrastructure Ltd. v. MGF Developments Ltd., (2020) ibclaw.in 188 NCLAT***, wherein the Hon'ble NCLAT held that where parties are acting under a joint arrangement and where there is no independent relationship of service provider and recipient of services, the claim cannot be treated as operational debt and no relationship of Operational Creditor and Corporate Debtor would arise under the Code. The *ratio decidendi* laid down therein is applicable to the present case inasmuch as the relationship between the parties emanates from a consortium arrangement for execution of the BSNL project and not from an independent transaction involving supply of goods or rendering of services by the Petitioner to the Respondent. The Judgement reads thus:-

The Appellant – ‘Ansal Properties & Infrastructure Ltd.’ filed this appeal against the order passed by Adjudicating Authority (National Company Law Tribunal) Bench III, New Delhi on 17.07.2019 thereby dismissed the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in brief I&B Code, 2016).

2. The brief facts of case are that the appellant – ‘Ansal Properties & Infrastructure Ltd.’ and respondent entered into a Memorandum of Agreement dated 08.07.2004 whereby they decided to jointly bid for tender, pending to property development at Netaji Subhash Place (Wazirpur) Metro Station, Delhi. Both the parties agreed that they will contribute in the ratio of 50-50 and shall be entitled the same ratio of share i.e. 50-50 in the generated revenues. The Concession Agreement dated 02.09.2004 was executed between Delhi Metro Rail Corporation (in brief DMRC), Appellant and Respondent for leasing the land to the Appellant and the Respondent at Netaji Subhash Place Metro Station Delhi for a period of 12 years to develop and sub-let the shops/ available space to the third party. As per agreement dated 22.06.2005 an escrow account in the name of Respondent opened and Respondent had to manage the revenue and transfer 50% of shares from the generated revenues to the Appellant.

3. The Appellant provided services to the Respondent by carrying out construction and development with the property. As per the agreement Respondent made payment to the Appellant till 09.12.2016, thereafter, Respondent failed to make any further payment to the Appellant. Despite receipt of legal notices, the Respondent failed to discharge its admitted liability towards the Appellant. The Appellant sent the demand notices dated 24.08.2018 under Section 8 of the I&B Code to Respondent. The Respondent sent its reply dated 12.09.2018 to the said demand notice and raised frivolous dispute, for the first time in order to evade from its admitted liability. Thereafter, the Appellant preferred the application under Section 9 before the Adjudicating Authority, Delhi.

4. Respondent opposes the application on the various grounds that the Appellant has not provided any service or goods to Respondent. Therefore, there is no relationship as Operational Creditor and Corporate Debtor. There was pre-existing dispute with DMRC which is substantiated by the letter dated 20.08.2018, this letter was received before the issuance of demand notice dated 24.08.2018 issued by the Appellant. It is also stated that the petition is barred by limitation as filed beyond statutory period of 3 years.

5. After considering the submissions of the parties, the Adjudicating Authority held that the Appellant has failed to establish the relationship between Appellant and Respondent as ‘Operational Creditor’ and ‘Corporate Debtor’, there is no operational debt as defined under Section 5 (21) of I&B Code, 2016. Apart from this there is a pre-existing dispute, hence, dismissed the petition as not maintainable.

6. Being aggrieved with this order, Appellant has filed this appeal.

7. Learned counsel for the appellant submits that the Adjudicating Authority failed to appreciate that the Appellant provides its services to the Respondent by carrying out construction and development at the property and it was only therefore the Respondent offered the shops in the property for lease/license. The Appellant has provided services to the Respondent, therefore, the Appellant is liable to get 50% of the revenue generated. The Respondent has admitted dues to the tune of Rs. 3,81,19,346.84 towards the appellant. However, he has raised false and frivolous dispute in order to escape its liability to pay rightful dues to the appellant.

8. On the other hand learned counsel for the Respondent supported the Impugned order and submits that Appellant and Respondent have entered into an agreement dated 08.07.2004, whereby both the parties decided to jointly bid for tender pertaining to property development at Netaji Subhash Place, Metro Station, Delhi and pursuant to this agreement Appellant and Respondent together entered into Concession Agreement dated 02.09.2004 with DMRC. The appellant has not provided any services to the Respondent, hence, the Adjudicating Authority has rightly held that there is no relationship between Appellant and Respondent as 'Operational Creditor' and 'Corporate Debtor'.

9. It is further submitted that in identical facts, this Tribunal in the case of Company Appeal (AT) (Ins.) No. 515 of 2019 – *M/s Sree Sankeshwara Foundation and Investments v/s M/s Dugar Housing Ltd.* decided on 25.11.2019 held that the Appellant along with Respondent had executed joint development agreement for construction of structure and allotment to allottees, both of them being parties to a joint venture project. Therefore, the Appellant cannot claim to be 'Operational Creditor' as it does not relating to supply of goods and services rendered by the Appellant in such situation the appeal be dismissed.

10. Having considered the submissions for learned counsel for the parties we have gone through the record.

11. Appellant and Respondent entered into Memorandum of Agreement dated 08.07.2004, we would like to reproduce the relevant portion of the agreement which is as under:-

*“AND WHEREAS the First Party alongwith Second Party have decided to put the tender for the above-mentioned site as a consortium to bid jointly for the project. The percentage of the consortium member shall be as follows:*

- |   |            |
|---|------------|
| <i>a) MGF Developments Ltd.,</i>                  | <i>50%</i> |
| <i>b) Ansal Properties &amp; Industries Ltd.,</i> | <i>50%</i> |

*NOW THESE PRESENTS WITNESS and it is hereby agreed declare and covenanted and recorded by and between the parties as under:*

- 1. THAT M/s MGF Developments Ltd. is nominated as a lead member in the consortium and is authorized to represent and put the tender for development of DMRC site.*
- 2. THAT the First Party is a Real Estate Developer and is having vast experience in developing Shopping Malls, Family entertainment centre, commercial buildings etc., “and is having requisite expertise in Developing large projects and as such will be the lead member in the consortium.*
- 3. THAT the Second Party is also a Real Estate Developer having developed various commercial properties and having holdings of various sites for future developments of projects. The Second Party will act as a member of the Consortium.*
- 4. THAT the parties hereto have agreed and undertaken to perform their part of this agreement with due diligence and mutual cooperation*

*keeping in view the interest of each other and execute and to do all other acts, deeds, matters and things whatsoever as may be necessary for implementing or giving effects to the terms of this agreement.*

5. *THAT this memorandum of Agreement shall always be deemed to be subject to the usual force majeure clause.*

*IN WITNESS WHEREOF the parties hereto have executed this Memorandum of Agreement at the day, month and year first mentioned here.”*

12. After this agreement the Appellant and Respondent jointly entered into a Concession Agreement with DMRC dated 02.09.2004. In this joint agreement the Appellant and Respondent collectively referred to as “Concessionaire” and in this agreement both the parties are jointly bound by the terms and conditions of this Concession Agreement.

13. There is nothing in these agreements that the Appellant has to provide services to Respondent by carrying out construction and development at the property whereas this is a joint venture of the Appellant and Respondent. We have also seen that in the application under Section 9 of the I&B Code, it is no where mention that the Appellant has provided services or goods to the Respondent. The Adjudicating Authority has rightly held that there is no relationship between the Appellant and Respondent as ‘Operational Creditor’ and ‘Corporate Debtor’. There is no existence of an operational debt as defined under Section 5 (21) of I&B code, 2016.

14. In similar facts this Appellate Tribunal in the case of *M/s Sree Sankeshwara Foundation and Investments (supra)* held that:

*“The Appellant along with Respondent (“Corporate Debtor”) had executed Joint Development Agreement in the year 2012 for construction of structure and allotment to allottees. Both of them being parties to a joint venture project, we hold that the Appellant cannot claim to be ‘Operational Creditor’ as it does not relate to supply of goods nor service rendered by the Appellant. If joint venture under any service to the allottees and for that to pay service tax it does not mean that the parties of the joint venture will render service to each other.”*

15. With the above discussion we are of the view that Adjudicating Authority has rightly rejected the application under Section 9 of the I&B code, as not maintainable.

Accordingly, the Appeal is dismissed. However, no order as to cost.

**20.** We are also conscious of the settled legal position that the Insolvency and Bankruptcy Code, 2016 is not intended to operate as a mechanism for recovery of contractual dues or enforcement of inter se commercial arrangements between parties. The primary object of the Code is resolution of insolvency and revival of the Corporate Debtor as a going concern and not mere recovery of money. In this regard, reference may be made to the

judgment of the Hon'ble Supreme Court in ***Dhanlaxmi Bank Ltd. v. Mohammed Javed Sultan and Ors., (2026) ibclaw.in 244 SC***, wherein it was observed as follow: -

“[...]

*The scheme of the Code is to ensure that when a debt becomes due and is not paid, the Insolvency Resolution Process begins. The Code operates as a collective insolvency resolution mechanism and not as a forum for the adjudication of individual contractual claims. This Court has underscored that where object behind the invocation of Code is to compel payment rather than to address genuine financial distress, such invocation would amount to an abuse of process. The Code must not be used as a tool for coercion and debt recovery by individual creditors.”*

**21.** In the present matter, the claim of the Operational Creditor arises from alleged non release of amounts from the Escrow Account and enforcement of obligations flowing from the MoU dated 28.06.2020, Consortium Agreement dated 29.06.2020 and allied contractual arrangements. Thus, the dispute between the parties relates to enforcement of contractual rights and obligations arising from the consortium arrangement and not from supply of goods or rendering of services by the Petitioner to the Respondent as contemplated under Section 5(21) of the Code.

**22.** In view of the foregoing discussion and for the reasons recorded hereinabove, we are of the considered opinion that the relationship between the parties emanates from a consortium/joint commercial arrangement entered into for execution of the BSNL project and not from an independent transaction creating the relationship of Operational Creditor and Corporate

Debtor under the Insolvency and Bankruptcy Code, 2016. The claim sought to be enforced arises from breach of contractual obligations and sharing arrangements under the MoU and Consortium Agreement and therefore, does not qualify as an “operational debt” within the meaning of Section 5(21) of the Code. **Accordingly, the present Company Petition is found devoid of merit and is dismissed. No order as to costs.**

**Sd/-  
(ATUL CHATURVEDI)  
MEMBER (T)**

**Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**