

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V**

(IB) 1932/(ND)/2019

In the matter of:

Profisor Services Private Limited

Having its Registered office at:

109, Wing-1, Hans Bhawan

Bahadurshah Zafar Marg

New Delhi-110002

...Corporate Applicant/Corporate Debtor

**SECTION: U/S 10 of IBC, 2016 R/W RULE 7 OF THE INSOLVENCY AND
BANKRUPTCY (Application to Adjudicating Authority), Rules, 2016**

Order Reserved on: 02.11.2021

Order Delivered on: 29.11.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. AVINASH K. SRIVASTAVA (TECHNICAL)

PRESENT:

For the Corporate Applicant : Mr. Anuj Aggarwal and Mr Kanishk Rana,
Advocates for Corporate Applicant

For the Respondent :

ORDER

PER MR. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. The present application is being preferred by Mr. Rahul Arora,
Authorized Representative on behalf of the Corporate Debtor i.e.



Profisor Services Private Limited (hereinafter referred to as "Corporate Applicant") under Section 10 r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016 to initiate a Corporate Insolvency Resolution Process in respect of the Corporate Applicant.

2. Brief Facts of the Application filed by Corporate Applicant in short are as follows:

- i. Corporate Debtor/ Corporate Applicant is a Company Registered and incorporated on 08.12.2015 under the Companies Act, 2013. CIN No. is U74999DL2015PTC288231. The authorized share capital of the Corporate Applicant is Rs.10,00,000/- (1,00,000 Equity shares of Rs. 10/- each). Issued Share capital is Rs. 1,00,000/- (10,000 Equity shares of Rs. 10/- each).
- ii. Corporate Applicant in its application submits that, it has no Financial Creditors, therefore, no financial debt is incurred by Corporate Applicant. As far as Operational Debt is concerned, it has incurred for the first time in January 2019 when the salaries of employees of the Corporate Applicant got delayed due to financial distress. It is further submitted by Corporate Applicant that the Operational Debt is continuing in Nature. Provisional financial statement of the Corporate Applicant as on 20.07.2019 and List of Corporate Applicant's assets and liabilities as on 30.07.2019 is placed on record (**Annexure CA-11 and CA-12**).
- iii. Few of the Employees of Corporate Applicant have replied to the application made under Section 10 of IBC, 2016 wherein it is contended by them that the present Section 10 Application has been filed with malafide intention. They alleged that the liability towards them is wrongly stated by the Corporate Applicant in its application and Corporate Applicant has deliberately reduced the operational debt due to them.



- iv. One of the averment of the employees is that there is a very great possibility that Mr Rahul Arora might have siphoned large amount of money from this company to his other companies. Though, Corporate applicant submitted earlier that two of his other companies already stand dissolved and bank accounts of the same stand closed long ago. Considering the contention, no such evidence is led to substantiate the same. We donot think appropriate to comment on this allegation of the employees. However, it might be possible that Corporate Applicant owes much more than what he has shown in his financials.
- v. These employees have contended that Corporate Applicant has blatantly suppressed the true quantum of operational debt due and payable to the employees. Thus, Corporate Applicant has violated the provisions of Section 77 of the IBC, 2016 **“Punishment for providing false information in Application made by Corporate Debtor”**. It is further submitted by them that one of the Employee named Nikita Sabherwal has sent a Demand Notice dated 29.07.2019 under Section 8 of IBC, 2016, for which Corporate Applicant did not reply.
- vi. It is further contended that he is in financial difficulty and decided to engage professionals to initiate petition under Section 10 of the IBC, 2016. It is alleged that Corporate Applicant was initiating Section 10 Application just to ensure that no Operational creditor could file petition under section 9 of IBC, 2016 and get an Interim Resolution Professional appointed of their choice. It is submitted by the employees that instead of replying to the Demand Notice, on 08.08.2019 Corporate Applicant filed application before Adjudicating Authority under Section 10 of IBC, 2016.
- vii. Alongwith other contentions, it has been pointed out by these employees of th Corporate Applicant, that Corporate applicant has not come with clean hands rather has misrepresented all the true facts



and it always kept its employees in dark regarding the deteriorating financial condition of the Corporate Applicant.

3. On perusal of the averments by Corporate Applicant and reply by its employees, it is clear that Corporate Applicant is in financial distress since January 2019. It has been reflected in the provisional financial of the Corporate applicant as well.
4. To admit the Application under Section 10 of the IBC, 2016, the important ingredients/essential elements to be fulfilled are:
 - a. *Corporate Debtor has committed a default*
 - b. *Application to be filed in accordance with FORM 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority); Rules; 2016*
 - c. *Furnishing of Books of Accounts under Section 9(3)(a), proposing the name of IRP under Section 9(3)(b), special resolution passed by shareholders of the Corporate Applicant, approving the filing of Application*

If an application is complete in accordance to the above mentioned elements and no disciplinary proceedings are pending against the proposed resolution professional, the Adjudicating Authority shall admit the Application.

5. Special Resolution passed in extra ordinary general meeting of he board of directors dated 20.07.2019 has been placed on record. **(Annexure CA-5).**
6. Consent form received from the proposed interim resolution professional is annexed as **Annexure CA-14.**
7. However, this bench via order dated 1.10.2021, directed the Corporate applicant to file their Financial as on 31.03.2021 within 2 weeks from

the date of order which they have failed to do so. Considering the distressed situation of the Company and the fact that company is not making substantial profits since its inception, as also the fact that the company filed the Application u/s 10 of IBC, 2016 on 08.08.2019, we find it appropriate to place reliance on the available financial (Balance sheet , P& L Account and List of Assets and Liabilities) of July 2019.
Annexure CA-11/CA-12.

8. Considering the case in hand, we find that the application is complete and there is an existence of default on the part of Corporate Applicant. Corporate Applicant's business is actually in very downfall condition since inception. Corporate Applicant is unable to pay off his debts and that's why he came before us to initiate CIRP against it. There is no disciplinary proceedings pending against the RP. Therefore, we have no option but to admit the application under Section 10(4)(a) of the IBC, 2016.

9. Accordingly, this petition is ADMITTED.

(i) A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

- a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- c. 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 Act, 2002;



d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(ii) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(iii) The provisions of (1)(a), (b), (c), (d) shall not apply to:

- i. such transactions as may be notified by the Central Government in consultation with any financial regulator.
- ii. A surety in contract of guarantee to a corporate debtor

(iv) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

10. The Corporate Applicant has proposed the name of **Mr. Saumya Kumar Singh R/o G-3, Lajpat Nagar-1, New Delhi-110024 having Email:sksingh2046@gmail.com and Registration No.: IBBI/IPA-002/IP-N00398/2017-18/11173**, duly empanelled with the IBBI as the IRP. The Consent of IRP has been annexed as **Annexure CA-14**. Therefore, he is appointed as IRP in this matter and directed to



take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

11. The Corporate Applicant is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accounted for by the IRP and shall be reimbursed by the CoC and will form part of the CIRP costs.
12. Copy of the order be sent to both the parties as well as to the IRP.
13. To come up on for further consideration.

Sd/-

AVINASH K. SRIVASTAVA

Member (T)

Sd/-

ABNI RANJAN KUMAR SINHA

Member (J)