

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 742 (ND)/2021

IN THE MATTER OF:

SEEKRUIT HR TECHNOLOGIES PRIVATE LIMITED
HOUSE NO. 82-A, UPPER GROUND FLOOR,
BLK-H, KIRTI NAGAR,
NEW DELHI - 110015

....CORPORATE DEBTOR/CORPORATE APPLICANT

SECTION: U/S 10 of IBC, 2016

Order delivered on: 06.06.2022

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

Present-

For the Applicant: Adv. Swarnika Aggarwal and
Adv. Prabhjit Singh Soni

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition is filed under Section 10 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as the "Rules"), for initiation of Corporate Insolvency Resolution Process in respect of Seekruit HR Technologies Private Limited being the Corporate Applicant itself.

2. The facts mentioned in the application in brief are as follows:



- i. That the Corporate Applicant is engaged in the business services relating to activities of Employment Placement Agencies, Temporary Employment Agency and Human Resource Provision and Management of Human Resources Functions since 07.12.2017.
- ii. That the Corporate Applicant had entered into investor agreements including franchise agreements and partner agreements with various parties since the year 2020. As per the agreements the Corporate Applicant and the Operational Creditors are mutually agreed upon the consideration clause, which states that the investor agrees to deposit an interest free non-refundable franchise fee in lieu of agreed Return / Consideration.
- iii. That the Corporate Applicant has committed default in repayment of its debts for Rs. 2,23,70,000/- to the Operational Creditors. The details are as follows:

S. No.	Operational Creditor	Amt. (Rs.)
1	Operational Creditors	85,53,875
2	Employees	43,17,802
Total		2,23,70,000

- iv. That, in view of the above, various Legal Notices were issued to the Corporate Applicant for recovery of outstanding dues.

3. That, this Bench, on perusal of averments made in the application noticed, that the amount was shown as non-refundable deposit and vide order dt. 16.12.2021 asked the Corporate Applicant to convince that how it comes under the definition of debt, subsequently, the Corporate Applicant has filed an additional affidavit dt. 06.01.2022 and submitted:

- i. That the amount taken from the Operational Creditor is 'Interest Free Non-Refundable Franchisee Fees' as mentioned in the application.

- ii. That, as per the business strategy, the Franchisee shall give Franchise Fees in lieu of the agreed Return/consideration and the said fees shall be utilized for generating business and revenue from such work will be shared by the Franchisee. Hence, it is an Operational Debt as per Section 5(21) of the Code.
- iii. That, in respect of the total outstanding amount of Rs. 2,23,70,000, an entry was missed in the application and the corrected details of Operational Creditors are as follows:

S. No.	Operational Creditors	Amt.(Rs.)
1	FRANCHISEE	1,49,89,490
2	SUNDRY CREDITORS	6,61,423
3	EMPLOYEES	67,19,087
Total		2,23,70,000

4. We have heard the Ld. Counsel for the Applicant and perused the averments made in the application. Ld. Counsel for the Applicant by filing additional affidavit on 06.01.2022 submitted that the amount taken from the Operational Creditors though the interest free non-refundable franchise fees but as per business strategy, the Franchisee shall give Franchise Fees in lieu of the agreed Return/consideration and the said fees shall be utilized for generating business and revenue from such work will be shared by the Franchisee and on the basis of that, the Applicant has claimed that the amount comes under the definition of Operational Debt.

5. He further submitted that the apart from that, there are the employees who have also claimed their dues.



6. Before considering the submissions, at this juncture, we would like to refer to Section 5(21) of the IBC and same is reproduced below: “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the ⁵[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;

7. A bare perusal of the provision shows that the Operational Debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the dues arising under any law for the time being enforce and peruse to the Central Government or any State Government any law.

I Now we consider the submission of the Applicant, in terms of the aforesaid definition. The Applicant in the course of hearing has referred to the clause III of the agreement, therefore, we would like to refer to the relevant portion of this clause and the scanned copy of the same is reproduced below:

II. SCOPE

1. The Investor shall make Investment in lieu of the agreed Return/consideration and the Company shall be supporting by generating business. Further the Investment amount shall be utilized towards the set-up of the Digital Employment Exchange (DEE) center.
2. The Company disclaims the making of and the Investor acknowledges that the Investor has received any warranty or guarantee, express or implied as to the potential volume, profits or success of the business venture contemplated by this Agreement.
3. It is agreed between the Parties that the location of the DEE centre shall be at the sole discretion of the Company. It is agreed that the location and brand selection is the sole expertise of the Company and it shall use its best efforts to establish the DEE centre as per the best market practice.
4. All assets relating to the DEE centre and capital expenditure shall be booked in the accounts of the Investor and the Company disclaims any ownership whether express or implied over the assets.

III. CONSIDERATION

1. Interest free non-refundable Franchise Fee: The Investor agrees to deposit an interest-free non-refundable Franchise Fee + software licensing fees of INR 200000(Two Lacs Only) out of which INR 50000(Fifty Thousand) shall be paid at the time of signing this agreement and INR 150000(One Lac Fifty Thousand) shall be paid through monthly revenue adjustment @10% revenue generated at th DEX.



8. On perusal of the clause III referred to supra, we observe that the investor agrees to deposit an interest free non-refundable franchise fees + Software Licencing Fee of INR 2 lakhs only, out of which INR 50,000/- salary be paid at the time of signing this agreement and INR 1,50,000/- paid through monthly revenue adjustment @ 10% revenue generated at the DEX.

9. Therefore, in terms of the clause III of the agreement, placed at page 157 of the paper book, the amount which has been deposited by the Franchise, these amounts are the non-refundable amount. Hence, we are unable to accept the contention of the Applicant that this amount comes under the definition of Operational Debt. We further notice, as per the averments made in the additional affidavit amount towards Franchisee Rs.1,49,89,490. Since we held it is an interest free deposit, therefore, this amounts do not come under the definition of Operational Debt, therefore, after excluding that amount total amount of default is Rs. $6,61,423+67,19,087= 7380510/$, which is the less than the minimum threshold as required u/s 4 of the IBC. Hence the petition is not maintainable.

10. Apart from that, at this juncture, we would also like to refer to the legal notices as enclosed by the Applicant from page no. 129 to 150 of the application and on perusal of that, we observe that these notices were received on 20th March, 2021 page-130, 5th January, 2021 page-132, 11th January, 2021 page-136, 12th March, 2021 pg-138, 16th March, 2021 page-150 & 18th June, 2021 pg-146. On perusal of these notices, we



observe that the amount which are claimed by sending the notices were due during the financial year 2020-21, therefore, at this juncture, we would like to refer to Section 10 A of the IBC and the same is reproduced below:

[10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

11. A bare perusal of the provision shows that no application for initiation of Corporate Insolvency Resolution Process of a Corporate Debtor shall be filed under Section 7, 9 & 10 for any default arising on or after 25.03.2020 for a period of 6 months or such further period not exceeding one year from such date as may be notified in this behalf. The proviso of Section 10A says that no application shall ever be filed for initiation of Corporate Insolvency Resolution Process of a Corporate Debtor for the said default occurring during the said period.

12. Since the defaulted amount as claimed by the Applicant is between the period of 25th March, 2020 to March, 2021, therefore, in terms of proviso Section 10 A of the IBC, in our considered view that the present application is not maintainable, as during such period initiation of CIRP under Section 7, 9 & 10 was suspended.



13. In sequel to the above we are of the considered view the present application is barred u/s 4 of the IBC as well as also in terms of the proviso of Section 10 A of the IBC.

14. Accordingly, the application is **dismissed**.

Sd/-

(HEMANT KUMAR SARANGI)

Member (T)

Sd/- 06/06/2022

(ABNI RANJAN KUMAR SINHA)

Member (J)