# IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

## CP(IB)/88(CHE)2022

*(filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

*In the matter of* ***M/s. Malola Management Consulting Services Private Limited***

**M/s. Malola Management Consulting Services Private Limited,**
**Rep. by its Director Mr. Mathivanan Kasi**
CIN: U74999TN2015PTC10300
Having its Registered Office at
No.262 / 441, P.H. Road,
Aminjikarai,
Chennai-600 029 ... *Corporate Applicant*

*Order Pronounced on* ***20th June, 2023***

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)**
**SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Applicant : Mr. B. Dhanaraj, Advocate*
*Ms. Deepa Mariappan, Advocate*
*Mr. Mohammed Umar K, Advocate*

## ORDER

(Hearing conducted through VC)

**Per: SANJIV JAIN, MEMBER (JUDICIAL)**

This application under Section 10 of the Insolvency & Bankruptcy Code, 2016 ("**IBC, 2016**") read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **M/s. Malola Management Consulting Services Private Limited** (hereinafter referred to as

"**Corporate Applicant**") for initiating Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor.

2. Part-I of the application contains the particulars of the Corporate Applicant as per which, the Company was incorporated on 08.07.2015 with CIN No. U74999TN2015PTC101300. Its Authorized Share Capital is Rs.5,00,000/- and Paid-Up Capital is Rs.1,00,000/- divided into 10,000 Equity Shares of Rs.10/- each. The Registered Office of the Company is at No. 262/441, P.H. Road, Aminjikarai, Chennai-600 029 within the territorial jurisdiction of this Tribunal.

3. Part-II of the application contains the particulars of Interim Resolution Professional viz., S. Dehaleesan. Part-III of the application contains particulars of the Financial/Operational Creditors. As per the details, there are dues of GST to the tune of Rs.5,74,69,714/- (Rupees Five Crore Seventy Four Lakhs Sixty Nine Lakhs Seven Hundred and Fourteen only) and that of Service Tax Department to the tune of Rs.1,03,63,950/- (Rupees One Crore Three Lakhs Sixty Three Thousand Nine Hundred and Fifty only) as on 26.03.2022. Part-III also contains list of documents attached with the application showing the existence of financial/operational debt and amount in default. The Applicant has also attached Record of Financial Information i.e., Form-C

issued by the National E-Governance Services Limited showing the outstanding amount.

4. The Applicant has filed the Audited Financial Statement for the year ended 31.03.2022 by way of Additional Affidavit vide S.R. No.3981 dated 01.07.2022 as per which, the Corporate Debtor had made turnover of Rs.2 Lakhs under the head "Other Income", the Trade Receivables Rs.98.87 Lakhs and GST dues Rs.5.75 Crores and Service Tax dues Rs.1.03 Crores with a loss of Rs.5.20 Crores. The Applicant has also filed Additional Affidavit vide S.R. No. 708 dated 14.02.2023 enclosing the Audited Financial Statements of the Corporate Debtor for the Assessment Years from 2016-17 to 2022-23 along with Tally Backup etc., GST Annual Returns, Notices, Correspondence exchanged with the GST Departments, Notices issued by the Service Tax Department along with details of Service Tax, Writ Petition filed by the Applicant against the Principal Commissioner of Income-Tax and Others, Bank Statement of the Applicant maintained in Union Bank of India, State Bank of India and ICICI Bank, Documents filed before the Office of the Registrar of Companies and Details of Provident Fund Organization (EPFO) and Employees State Insurance Corporation (ESIC) along with payment challans.

5. It is stated that the Corporate Debtor, due to continuous business loss for the past Financial Years and following with sudden

COVID-19 period, is unable to clear its statutory dues and it has become commercially insolvent rendering itself to be proceeded in terms of the provisions of IBC.

6. We have heard Ld. Counsel Mr. B. Dhanaraj for the Applicant and perused the record.

7. In the instant case, on the submissions of the Counsel for the Applicant vide proceedings dated 17.10.2022 that GST Department and Service Tax department are the only Creditors and there are no other Unsecured Financial Creditors, Notices were issued to both the departments and other Stakeholders, however none appeared on their behalf despite service, in respect of which, Affidavit of Service was filed by the Applicant vide S.R. No.6032 dated 14.11.2022.

8. A perusal of record reveals that the Corporate Debtor was in the business of providing manpower and consulting to its Corporate Vendors since the year 2016. It used to manage the laborers payments by cash either monthly/weekly/daily. It had a turnover of Rs.41.90 Lakhs with trade receivable as Rs.34.33 Lakhs during the Financial Year 2015-16 and paid the service tax. Its turnover increased but it started facing the losses as a result, it could not fully pay to the statutory authorities like GST and Service Tax etc. The Applicant has filed the Audited Financial Statement which shows that during the year 2019-20, it made a turnover of

Rs.10.39 Crores where the trade receivables were Rs.1.09 Crores and accumulated GST dues and service tax dues were Rs.5.75 Crores and 1.03 Crores respectively with a loss of Rs.2.43 Crores. Audited financial statement for the year ended 2020-21 shows that it made a turnover of meger amount due to COVID-19 pandemic. The trade receivables were Rs.99 Lakhs with a loss Rs.49 Lakhs. Record shows that it could not pay the GST and Service Tax dues and continuously sustained losses. It however paid the salaries to its workers/employees.

9. Looking into the Balance Sheet and the submissions made by the Applicant, we find that the Corporate Debtor suffered continuous business losses for the last Financial Years and sudden COVID-19 period. It could not clear the dues of the statutory authorities and thus became commercial insolvent. The status of the Corporate Debtor is also reflected on the MCA website.

10. Section 10 of IBC provides that where a corporate Debtor has committed a default, a corporate applicant thereof may file an application for initiating CIRP with the Tribunal giving the particulars i.e. information relating to its books of accounts, the Resolution Professional proposed to be appointed and the Special Resolution passed by the shareholders of the corporate debtor or the resolution passed by the partners of the corporate debtor as the case may be.

11. In the present case, the Corporate Applicant has filed a Resolution at Page-131 passed in the Minutes of the Meeting held on 04.03.2022 whereby it was resolved by the members to initiate Corporate Insolvency Resolution Process under Section 10 of IBC. The Applicant being the director was authorized to file the above application.

12. For the aforesaid discussions, we allow the application initiating the CIRP process against the Applicant/Corporate Debtor viz., Malola Management Consulting Services Private Limited and approve the name of **Mr. S. Dehaleesan having Registration No. IBBI/IPA-001/IP-P-01807/2019-2020/12907** as proposed by the Corporate Applicant as the Interim Resolution Professional ("IRP") who has also filed his written consent in Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 which is placed at page 15 to 16 of the typed set filed along with the Application.

13. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the

Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

13. As a consequence of the Application being admitted in terms of Section 10 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b. Transferring, encumbering, alienating or disposing of by the respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

14. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

15. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

> (4) 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.

16. Based on the above terms, the Petition stands **admitted** in terms of Section 10 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional

above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

**SAMEER KAKAR**
MEMBER (TECHNICAL)

-Sd-

**SANJIV JAIN**
MEMBER (JUDICIAL)

*Suguna*