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**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-2081/(ND)/2019

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s MODERN CREDIT PVT. LTD.

Registered office at:
808, Manjusha Building,
57, Nehru Place,
New Delhi-110019

...Applicant

Versus

M/s TYBROS (INDIA) TOURS PVT. LTD.

Registered office at:
First Floor, 5/54, Main Shankar Road,
Old Rajinder Nagar, Central Delhi,
Delhi-110060

...Respondent



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M/s Modern Credit Pvt. Ltd. vs. M/s Tybros India Tours Pvt. Ltd.

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10/12/2019

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Coram:

SHRI ABNI RANJAN KUMAR SINHA
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: Mr. Dhruv Khanna



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ORDER

Date:04.12.2019

1. This is an application filed by the Applicant M/s. Modern Credit Pvt. Ltd. seeking to initiate corporate insolvency resolution process (“CIRP”) of the Respondent M/s. Tybros (India) Tours Private Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016 for the alleged default on the part of the Respondent in settling an amount of Rs. 32,99,426/- including the interest component lent by the Applicant. The details of the transactions leading to the filing of the application as avcrred by the Applicant are as follows:

- i. The Applicant is a non-banking financial company engaged inter-alia in the business of providing financial facility.
- ii. The Respondent is an entity engaged in organizing leisure holidays, adventure tours, corporate tours and MICE for travelers across the world to both domestic as well as international destinations.
- iii. Modern Credit was approached by Tybros India Tours through its representatives Mr. Vivek Tyagi, Mr. Vikas Tyagi and Mrs. Deepa Tyagi who submitted Application No. BL157 for the purpose of availing loan facilities of Rs. 70 lakhs for their business on 27.07.2018. Pursuant to discussion between the

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parties and based on the representation made, information provided, documents submitted and assurances given regarding timely repayment of all money due along with agreed interest by Tybros India Tours, Modern Credit agreed to sanction and disburse loan/financial facility of Rs. 30,00,000/- (Rupees Thirty Lakhs only) to Tybros India Tours and other Co-Applicants i.e., Mr. Vivek Tyagi, Mr. Vikas Tyagi and Mrs. Deepa Tyagi, and accordingly issued sanction letter dated 06.10.2018.

- iv. The Respondent executed Business Loan Agreement bearing No. BL/17-18/0234 dated 09.10.2018, along with other transitional documents for availing the above said loan/financial facilities. Subsequent to execution of aforesaid agreements, Rs.19,27,750/- was disbursed on 11.10.2018 and Rs.10,00,000/- was disbursed on 12.10.2018 through RTGS after deducting Rs. 7250 for processing fees and documentation charges.
- v. As per the terms and conditions of the Business Loan Agreement dated 09.10.2018 numbered BL/17-18/0234 and the sanction letter dated 06.10.2018, the loan of Rs. 30 Lakhs was granted for a period of 24 months at an interest rate of 20% per annum on reducing basis. The Respondent was required to

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repay the said loan in twenty-four equal monthly installments of Rs. 1,52,687/- which fell due on the 1st day of each calendar month starting from November 2018. As per the terms agreed to between the parties, the Respondent duly handed over 24 post-dated cheques/ECS/NACH/ACH Mandate to the financial facility towards the repayment of loan.

- vi. Subsequent to the disbursement of the loan facilities since inception of granting of financial facility by the Applicant, the Respondent failed to discharge its obligation towards the Applicant and the first EMI which fell due on 01.11.2018 was stopped by the Respondent and made repayment of the same on 15.11.2018. Afterwards, the EMI which fell due in December, January and February presented vide ACH got dishonored.
- vii. It was abundantly clear that the Respondent had mischievously and intentionally entered into the agreement and issued cheques/ECS/NACH with ulterior designs and the same showed the Respondent's intention to commit and perpetuate fraud. Hence in the circumstances the Applicant was constrained to issue demand notice dated 22.02.2019, demanding the Respondent to make payment of overdue amount of Rs. 4,85,312/- within 7 days. However, despite



repeated requests, the Respondent failed to regularize the loan account.

viii. Thereafter the Respondent through its representatives made assurances and representation to repay the outstanding amount whereas only made a payment of Rs. 1,52,687/- on 20.03.2019. Again, the EMIs of April and May, 2019 were not honored by the Respondent.

ix. By not making the payments as per the agreed repayment schedule, the Respondent wrongfully withheld the legitimate monies owed to the Applicant, thereby causing wrongful gain to itself and wrongful loss to the Applicant. The aforementioned acts of the Respondent constituted events of defaults as defined under the Clause No. 10 of Business Loan Agreements which inter-alia provided for demand of immediate repayment of loan dues, due to the conduct of Respondent, the Applicant was compelled to recall the entire loan amount sanctioned to the Respondent by issuing loan recall notices dated 09.05.2019 to the Respondent, demanding payment of Rs. 30,84,956 inclusive of overdue interest and any other charges.

x. On failure of the Respondent to repay the amounts due, the Applicant also initiated proceedings under Section 25 of the



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payment & Settlement System Act, 2007 read with Chapter XVII of the Negotiable and Instruments Act 1881, which are pending adjudication in Gurgaon, Haryana.

- xi. Arbitration proceedings against the Respondent is also initiated by the Applicant under Clause 18 of Business Loan Agreement.
- xii. After considering principle outstanding, payments received, overdue installments, interest on delayed payments and other charges as per the agreed terms and conditions under various transitional documents a sum of Rs. 32,99,426/- as on 10th July 2019 stands due.
- xiii. The non-payment by the Respondent of the Scheduled installments for repayment of amounts owed to the Applicant has resulted in default, and the total amounts outstanding by the Respondent is a financial debt, thereby making the Applicant a financial creditor under the provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC 2016"). The applicant is therefore entitled to file the present application for initiating corporate insolvency resolution process of Respondent under Section 7 thereof. The Applicant is further not barred in any manner from filing the present application.



2. The Tribunal issued notice to the Respondent on 02.09.2019. The Applicant filed the service affidavit on 19.09.2019 according to which the Applicant ensured service of the notice to the Respondent in its registered/corporate office through Speed Post as well as Dasti service. Despite service of notices to the Respondent, no one was present on behalf of the Respondent and they were proceeded ex parte on 16.10.2019.

3. We have perused the documents submitted by the Applicant and heard the arguments. From the details furnished by the Applicant it is very clear that the Applicant has established the existence of debt and default on the part of the Respondent. The Respondent has not opted to avail the opportunities given to rebut the arguments of the Applicant and this Tribunal comes to the conclusion that the Respondent has nothing to say by way reply and this amounts to admission of the default. In view of the above reasons this Tribunal initiates CIRP of the Respondent with immediate effect.

4. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(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;

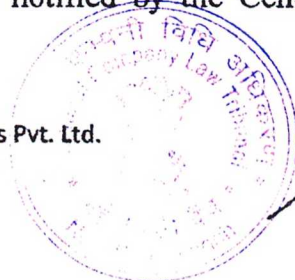
(b) transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

(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.

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

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central



Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

5. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Sunil Kumar Agrawal (Email – aggarwalsk21@yahoo.com) and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

- sd -

(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

Deepak

- sd -

(ABNI RANJAN KUMAR SINHA)
MEMBER (JUDICIAL)

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[Signature] 10.12.19
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003