IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-4132/MB/2019

Under Section 7 of the IBC, 2016

In the matter of

Godavari Corporation Private Limited

…Financial Creditor

v/s.

Birladp Carpets Private Limited

…Corporate Debtor

Order Pronounced on: 17.02.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: Mr. Nishit Tanna, Advocate.

For the Respondent: Mr. Umang Mehta, Advocate.

O R D E R

Per: Suchitra Kanuparthi, Member (Judicial)

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by **Godavari Corporation Private Limited** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Birladp Carpets Private Limited** ("the Corporate Debtor"), [CIN: U17222MH2006PTC163226].

2. The Corporate Debtor is a company incorporated on 21.07.2006 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at 1st Floor, Dalamal House, J.B. Marg, Nariman Point, Mumbai – 400 021. Therefore, this Bench has jurisdiction to deal with the present petition.

Brief Facts of the Petition

3. The Petitioner is engaged in the business of investment and trading. The Corporate Debtor is engaged in the business of manufacturing and distribution of carpets. In January 2007, the Corporate Debtor through its directors approached the petitioner company for financing to set up a manufacturing unit at Secunderabad. On 08.02.2007, the parties executed a Loan Agreement and an amount of Rs. 14,00,000/- was lent to the Corporate Debtor.

4. On 09.02.2012, the petitioner sought for repayment of the loan, The Corporate Debtor replied to the said letter on 15.02.2012. The petitioner again on 10.7.13 requested for repayment of the said loan, the Corporate Debtor replied on 25.07.2013. The petitioner once again reminded the Corporate Debtor on 20.01.2015. However, the said letter was acknowledged by the Corporate Debtor on 05.02.2015.

5. The petitioner finally sent a legal notice on 10.01.2017. The Corporate Debtor replied to the legal notice on 07.02.2017 and informed that the production in the factory at Secunderabad has not started due to various reasons.

6. Thereafter, the petitioner and Corporate Debtor had several meetings to settle the issue amicably. However, there was no positive outcome. Therefore, the petitioner sent another legal notice on 14.06.2019 The Corporate Debtor failed to pay the amount due under the loan agreement.

7. The document annexed to the petition are as below:

1.	*Loan Agreement entered between the parties dated 08.02.2007.*
2.	*Bank Statements reflecting disbursement of loan amount by Financial Creditor.*
3.	*Ledger Account of Financial Creditor.*
4.	*Letter dated 09.02.2012 of the Financial Creditor and reply of the Corporate Debtor dated 15.02.2012.*
5.	*Letter dated 190.07.2013 of the Financial Creditor and reply of the Corporate Debtor dated 25.07.2013.*
6.	*Letter dated 20.01.2015 as well as 05.02.2015 of the Financial Creditor.*

8. The petitioner has also produced statement of bank accounts which shows disbursement of monies to the Corporate Debtor and has also produced ledger accounts showing outstanding dues payable by the Corporate Debtor. The petitioner has also produced NESL certificate which has recorded the default of loan. The particulars of claim is as under:

Particulars of Claim

Unpaid Loan amount from the Corporate Debtor	*Rs.*	*14,00,000/-*
Plus: Interest @8% p.a. from 03.02.2007 to 14.09.2019	*Rs.*	*14,13,655/-*
Total	*Rs.*	*28,13,655/-*

9. The petitioner has produced the Ledger Account of the Corporate Debtor in its books of accounts wherein they have charged interest as per loan agreement for the Financial Year 2020-21.

10. The Counsel for the Corporate Debtor was present during the course of hearing held on 16.09.2021 and submitted that reply has not been filed. However, they admitted the liability and also submitted that they were unable to pay the monies due to the Petitioner.

<u>FINDINGS:</u>

11. The only issue for consideration which arises is whether there is nonpayment of monies/default by the Corporate Debtor.

12. The Petitioner has produced loan documents dated 08.02.2007, copy of bank statement reflecting disbursement of loan amount and copy of ledger account of the petitioner which shows that an amount of Rs.14,00,000/- is due towards principal and an amount of Rs.14,13,655/- towards interest is due and payable as per the ledger account for the year 2020-21.

13. The Corporate Debtor has acknowledged the liability as on 15.02.2012, 25.07.2013, 05.02.2015 and on 07.02.2017.

14. Despite acknowledgment of liability and promises to repay the said amount, the Corporate Debtor failed to repay the entire outstanding under loan account. The letter dated 07.02.2017 is reproduced below:

"To
Godavari Corporation Private Limited
5th Floor, Industry House,
159, Churchgate Reclamation,
Churchgate, Mumbai – 400 020

Sub: Re: Reply to your notice dated 10th January, 2017.

Dear Sir,

With reference to your Legal notice dated 10th January, 2017 which was received by us on 16th January, 2017 we would like to state as under:-

1. *With reference to your Legal notice dated 10th January, 2017 (hereinafter referred to as "the notice under reply') we would like to state that as you are aware that the production of our Company at our factory situated at Secunderabad had not yet started therefore, inspite of all our sincere efforts we could not start your repayment. Please note that since, the factory has not yet started therefore, we are trying to do some trading by purchasing the carpets from outside/manufacturers and trying to resale the same to the retailers/actual users however, by doing so we are not in the position to manage the monthly expenditure of the Company and since, we are also in the process to approach the Bank/Financial Institution for Loan, the moment the Loan will be advanced to us our production will stat and at that point of time we will be in a position to make the repayment to your Company. In the meantime, please bear with us.*

2. *We, unconditionally tender our apologies for not keeping our promises and the assurances which we have been giving you from time to time but please trust us that all these are the scenarios and the same are not in our control.*

   We, once again thank you for the cooperation provided from your end and hope that you will extend the same co-operation in the future also.

   Thanking you,

   For Birladp Carpets Pvt. Ltd.
   Sd/-
   Authorised Signatory."

15. In view of the acknowledgement of the liability of the Corporate Debtor as on 07.02.2017, there is an extension of limitation u/s 18 and 19 of the Limitation Act and hence the Petition is well within the three years of the limitation period as described by the Statute.

16. This Bench therefore, is the opinion that there has been disbursal of amount under the Loan Agreement dated 08.02.2007 and there is a default of payment of said money which was acknowledged by the Corporate Debtor as on 07.02.2017. The Counsel for the Corporate Debtor was present during the final hearing and has admitted the entire liability due and payable to the Petitioner. Thus, the essential ingredient of the financial debt u/s 5(8) of the Code is satisfied and there is a clear default of non-payment of dues under the said debt by the Corporate Debtor. Therefore, the Petition is fit for admission**.**

17. The Financial Creditor has proposed Mr. Ravi Bagri as Interim Resolution Professional (IRP) in the matter.

18. It is, accordingly, hereby ordered as follows: -

This Application bearing **C.P.(IB)-4132/MB/2019** filed under Section 7 of I&B Code, 2016, presented by **Godavari Corporation Private Limited,** Financial Creditor/Petitioner against **Birladp Carpets Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 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 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 possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Ravi Bagri, a registered Insolvency Resolution Professional having Registration Number IBBI/IPA-001/IP-P00789/2017-2018/11344, having address at Octacrest Complex, Wing-E, Flat No. 1401, Lokhandwala Township, Kandivali (E), Mumbai – 400 063, as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

19. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

20. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-	Sd/-
Rajesh Sharma	**Suchitra Kanuparthi**
Member (Technical)	**Member (Judicial)**

18.02.2022