

1

**BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B) No. 91/9/NCLT/AHM/2017

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 07.09.2017**

Name of the Company: Aarti Industries Ltd.
V/s.
Khushbu Vinyl Pvt. Ltd.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Rashesh Parikh	Advocate	Petitioner	<u>Rashesh</u>
2.	HARMISH K. SHAH	Advocate	Respondent	<u>Harmish</u>

ORDER

Learned Advocate Mr. Rashesh Parikh present for Applicant/ Operational Creditor.
Learned Advocate Mr. Harmish Shah present for Respondent.

Heard arguments of Learned Counsel for Applicant and Learned Counsel for Respondent on the aspect of pendency of winding up proceedings vide CP 374/2016 on the file of Hon'ble High Court of Gujarat against Respondent Company.

Order pronounced in open Court. The matter is referred to larger bench vide separate order.

Application is disposed of accordingly.

B. Raveendra Babu 07.9.17
**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 7th day of September, 2017.

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 91/9/NCLT/AHM/2017

In the matter of:

Aarti Industries Limited
Plot No. 801/23
G.I.D.C. Estate, Phase III
Vapi-396195
Dist.Valsad
Gujarat.

: Applicant.
[Operational Creditor]

Versus

Khushbu Vinyl Pvt.Ltd.,
Block No.28, Village Ujeti
Baska-Ujeti Road
Halol-389350
Gujarat

: Respondent.
[Corporate Debtor]

Order delivered on 7th September, 2017.

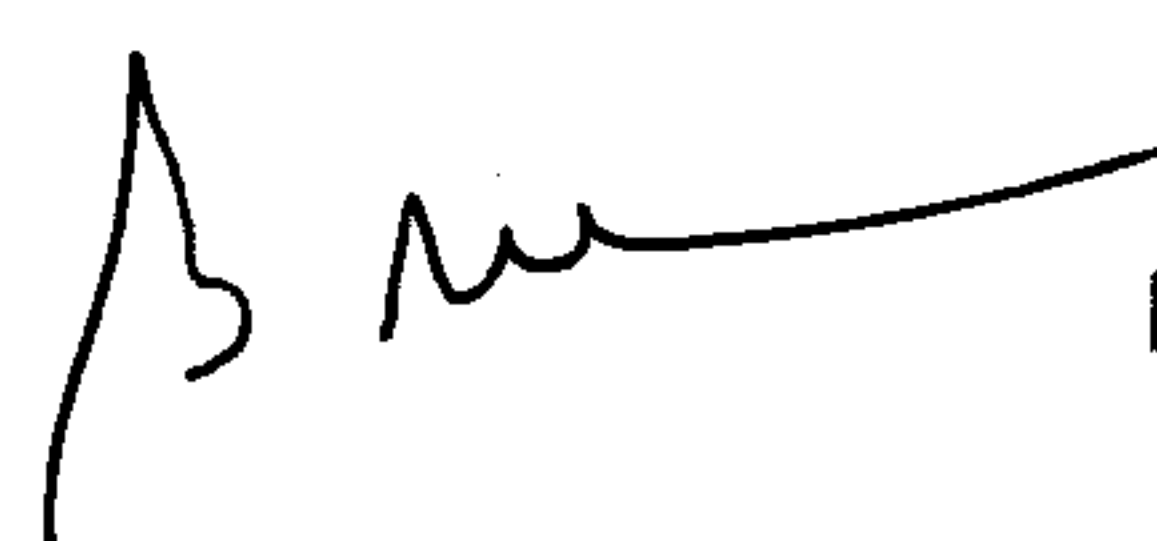
Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

Appearance:

Mr. Rashesh Parikh, learned Advocate for Applicant.
Mr. Harmish K. Shah, learned Advocate for Respondent.

ORDER

1. Aarti Industries Limited, styling itself as 'Operational Creditor', filed this Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ["IB Code" for short] read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("IB Rules" for short) in Form-5 with a request to initiate



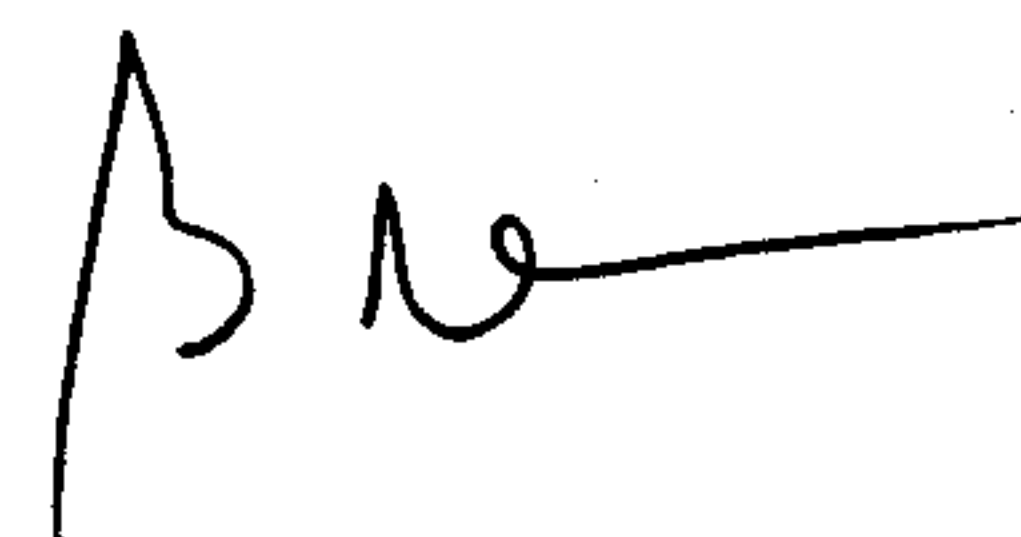
Corporate Insolvency Resolution Process against Khushbu Vinyl Private Limited, treating it as 'Corporate Debtor'.

2. The facts, that led to the filing of this Application, in brief, are as follows;

2.1. Applicant herein filed Company Petition (Stamp) No. 3022 of 2016 before the Hon'ble High Court of Gujarat at Ahmedabad under Section 433, 434 and 439 of the Companies Act, 1956 with a prayer to wind up the Respondent Company. The said Petition has been transferred to this Tribunal by the Hon'ble High Court of Gujarat in view of Rule 5 and 6 of the Companies (Transfer of Pending Proceeding) Rules, 2016 by its order dated 21.12.2016.

2.2. Thereafter, the Applicant issued Demand Notice in Form No. 3 and 4 to the Respondent. Thereafter, Applicant filed CP (IB) No. 59 of 2017 before this Authority on 15.6.2017. After appearance of the Respondent through learned Counsel and filing objections, learned Counsel for the Applicant sought permission to withdraw the Application in order to file fresh Application by showing the name and description of the Applicant correctly. This Adjudicating Authority by order dated 1.8.2017 permitted the Applicant to withdraw the said Application with liberty to file fresh Application provided it is not barred by limitation. Thereafter, on 2nd August, 2017 Applicant filed the present Application which came to be registered as 'CP (IB) No. 91 of 2017'.

3. In this Application, Respondent claimed Rs. 1,52,68,293.56 as the amount in default. Applicant served copy of the Application on the Respondent. Respondent appeared through Counsel and filed Objections. The following are the objections raised by the Respondent.



- (a) The dates of default mentioned in the Application are 3.12.2013 and 16.1.2013 and therefore the Application is barred by law of limitation;
- (b) After withdrawal of CP (IB) No. 59 of 2017 no notice of demand in Form 3 or 4 has been issued and without issuance of such demand notice this second Application CP (IB) No. 91 of 2017 is not maintainable;
- (c) Even in the earlier Demand Notice issued, no documents as required have been enclosed and therefore the Demand Notice issued prior to the filing of CP (IB) No. 59 of 2017 is not valid;
- (d) The Applicant did not comply with provisions of Section 9(3)(b) and 9(3)(c) of the Code;
- (e) The claim based on two Invoices, (i) No. 2829 dated 1.7.2014 for an amount of Rs. 28,704/-, and (ii) No.1757 dated 31.10.2014 for an amount of Rs. 1,123.79 are false and baseless;
- (f) Respondent pleaded that as per the ledger total amount of Rs. 32,58,876/- relating to Invoice No.1856 dated 3.12.2013 had already been paid to the Applicant Company on 25.2.2012;
- (g) Respondent has also raised dispute regarding the existence of debt, and ignoring it this Application is filed.
- (h) Respondent in the Objections filed in this Application and as well as in CP (IB) No. 59 of 2017, which is disposed of as withdrawn, raised the plea that Company Petition No. 374 of 2016 which is filed against the Respondent Company for winding-up is pending before the Hon'ble High Court of Gujarat and the matter is posted to 21.9.2017, and in view of the pendency of the said winding up proceeding before the Hon'ble High Court of Gujarat, this Application is not maintainable.



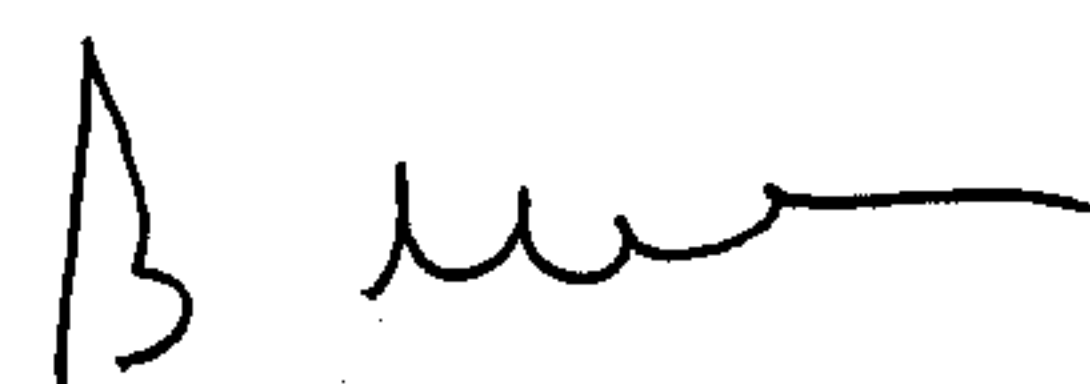
4. In this Application, following points emerge for consideration;

(i) Whether the Demand Notice issued prior to the filing of CP (IB) No. 59 of 2017 is sufficient compliance of Section 8 of the Code read with Rule 5 of the Rules for filing the present Application, CP (IB) No. 91 of 2017 without issuing a fresh Demand Notice.

(ii) Whether the Respondent has raised any dispute regarding the existence of amount of debt.

(iii) Whether this Application is maintainable in view of the pendency of winding up proceedings vide Company Petition No. 374 of 2016 before the Hon'ble High Court of Gujarat which is listed for hearing before admission on 21.9.2017.

5. It is brought to the notice of this Adjudicating Authority that in view of the order dated 21st August, 2017 passed by the Special Bench of National Company Law Appellate Tribunal, New Delhi, the Hon'ble President of the National Company Law Tribunal, New Delhi, was pleased to constitute a Larger Bench for considering the points raised in the matters, namely, IB-190(PB)/2017 between Union Bank of India vs. Era Infra Engineering Ltd., and No. IB-110(PB)/2017 between Alchemist Asset Reconstruction Co.Ltd., Vs. Tirupati Buildings & Offices Pvt.Ltd., which include about the maintainability of the Applications under the Insolvency Code, during the pendency of winding up proceedings. As can be seen from the Website of National Company Law Tribunal, a Special Larger Bench has been constituted by the Hon'ble President to deal with the point whether Applications under the Insolvency Act are maintainable during the pendency of winding up proceedings or not and the Special Larger Bench is going to hear the above said matters on 22nd September, 2017.



6. In this case also, one of the points involved is whether this Application is maintainable before this Adjudicating Authority in view of the pendency of Company Petition No. 374 of 2016 against Respondent Company before the Hon'ble High Court of Gujarat.

6.1. Different Benches have taken different views on the aspect whether Applications under Section 7, 9 and 10 are maintainable or nor in the light of the pendency of winding up proceedings before various Hon'ble High Courts. Therefore, the Special Bench of the NCLT, New Delhi referred the said point to a Larger Bench for decision.

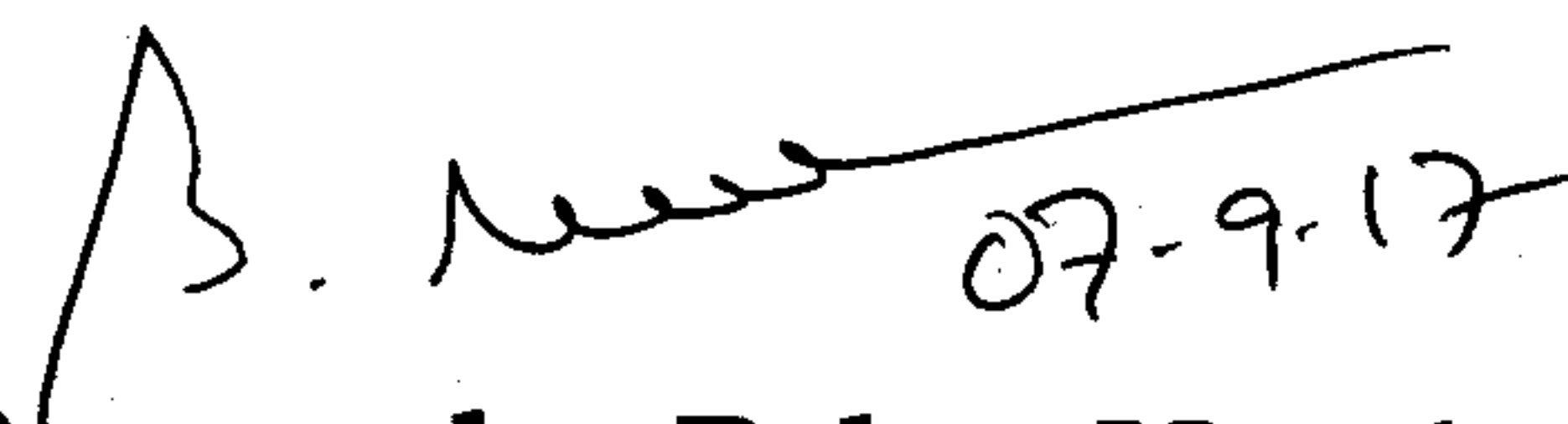
7. Therefore, this Adjudicating Authority is also of the considered view to refer this matter to a Larger Bench for consideration and decision, on the following point;

Whether CP (IB) No. 91 of 2017 is maintainable in view of the pendency of winding up proceedings, vide Company Petition No. 374 of 2016 on the file of Hon'ble High Court of Gujarat against Khushbu Vinyl Private Limited (Respondent herein).

8. Hence, the Registry of this Bench is directed to send the entire file along with the copy of this order to the Registrar, National Company Law Tribunal, New Delhi, for placing the same before the Honourable President, National Company Law Tribunal, for referring the matter to the Larger Bench which has already been constituted.

9. The Application stand disposed of accordingly.

Signature:



**Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.**