

29

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

C.P. (I.B) No. 35/9/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 20.07.2017**

Name of the Company: Beeta Kone Tools
V/s.
GEI Industrial Systems Ltd.

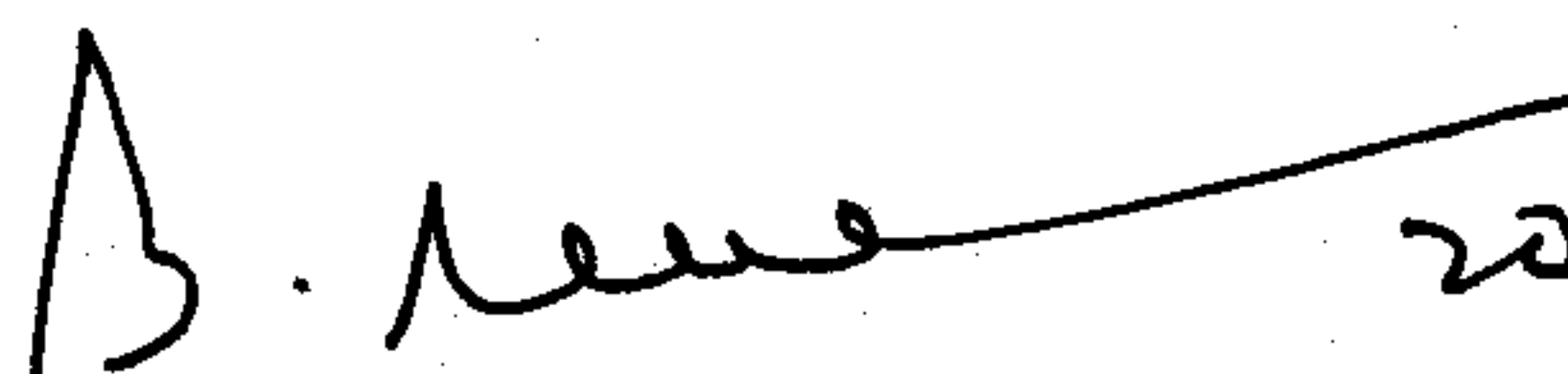
Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	RAJAN SHAH	ADV.	PETITIONER	<u>RJS</u>
2.				

ORDER

Learned Advocate Mr. Rajan Shah present for Operational Creditor/ Applicant.
None present for Respondent.

Order pronounced in open Court. Vide separate sheet.

 20/7/17
**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 20th day of July, 2017.

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

C.P. No.(I.B) 35/9/NCLT/AHM/2017

In the matter of:

M/s. Beeta Kone Tools
B-18, Flatted Factories (MIDC)
Mulund Check Naka
Wagle Industrial Estate
Thane-400 604

: Applicant.
[Operational Creditor]

Versus

GEI Industrial Systems Ltd.,
26/A, Industrial Area
Govindpura
Bhopal-462 023

: Respondent.
[Corporate Debtor]

Order delivered on 20th July, 2017.

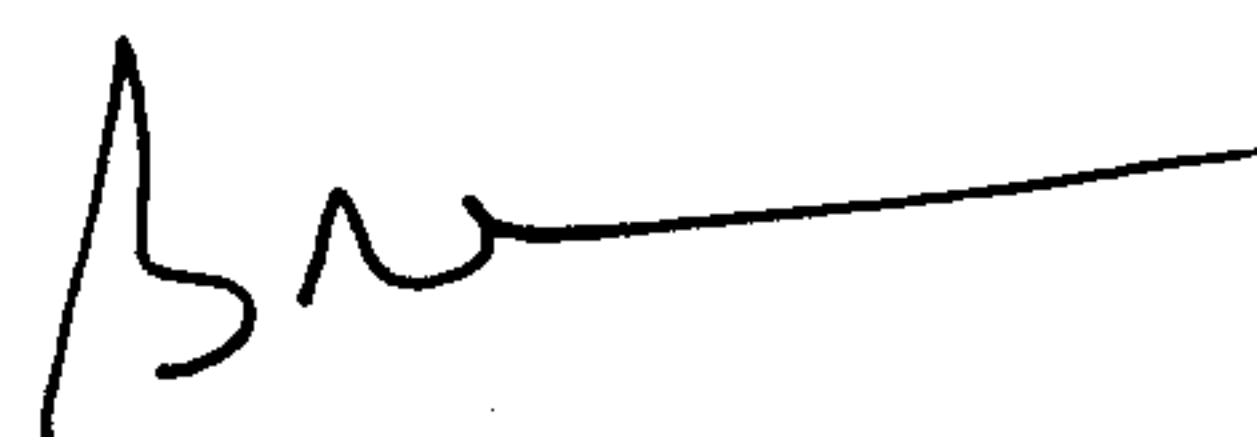
Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

Appearance:

Shri Rajan Shah, learned Advocate for Petitioner.
None present for Respondent.

ORDER

1. M/s. Beeta Kone Tools, through its Authorised Signatory, filed this Application with a prayer for initiation of corporate insolvency resolution process against GEI Industrial Systems Ltd., under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"].



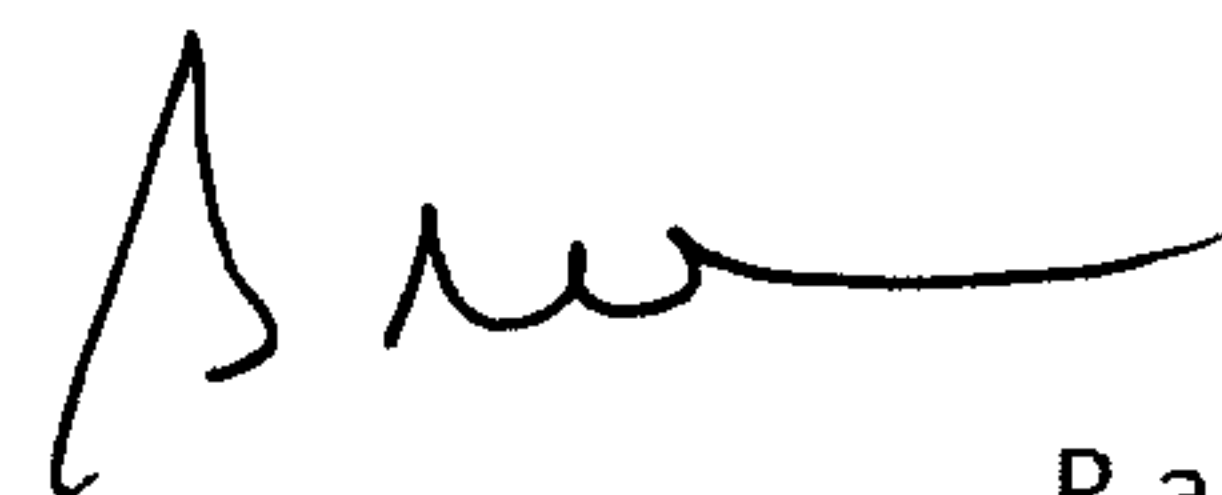
2. The claim of the Applicant is that it has supplied goods to the Respondent pursuant to purchase orders dated 12th July, 2011 and 8th October, 2011 as per the following Invoices;

<u>Invoice</u>	<u>Date</u>	<u>Amount Rs.</u>
BKT-00497	29 th December 2011	3,443.00
BKT-00498	29 th December 2011	221,915.00

Respondent acknowledged the receipt of goods. Respondent also accepted the liability to pay against the above said Invoices with interest time and again. Respondent by its letter dated 16th February, 2015 acknowledged its liability to pay the amount against the above said Invoices with accrued interest. Applicant claimed Rs. 2,25,358/- towards amounts mentioned in the Invoices and Rs. 2,12,713/- towards interest for delayed payment at the rate of 18% p.a. In all, Applicant claimed Rs. 4,38,071/-.

3. Applicant issued legal notice dated 22nd August, 2016 to the Respondent claiming the amount. Again, Applicant issued another legal notice dated 8th September, 2016 claiming the amount as stated above. Applicant issued another legal notice dated 8th December, 2016 claiming the amount as aforesaid. On 16.2.2015, Respondent wrote a letter to Chief Executive Officer of M/s. Beeta Kone Tools acknowledging the liability and seeking time to pay the amount.

4. On 30th March, 2017, Applicant issued a demand notice to the Respondent in Form 3 and Form 4 as required by Section 8 of the Code read with Rule 5 of the Adjudication Rules. The said demand notice was received by the Respondent on 3.4.2017. Applicant filed an Affidavit stating that no payment has been made by the Respondent and no dispute has been raised.



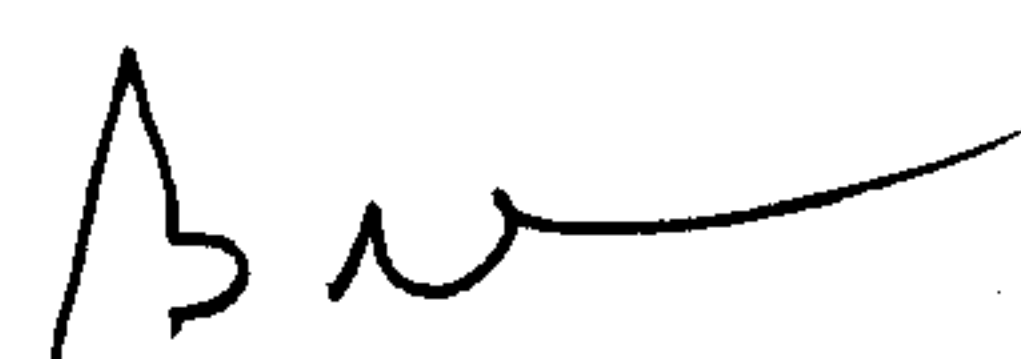
5. This Application has been filed on 29th May, 2017. This Application was listed before this Authority for the first time on 5.7.2017. This Authority directed the Applicant to issue notice to the Respondent informing the date of hearing along with the copy of the order and to file proof of service and posted the matter to 10.7.2017. Applicant filed proof of service of date of hearing on Respondent. But none appeared for the Respondent inspite of service of notice.

6. Heard the arguments of the learned counsel appearing for the Applicant.

7. Copies of the purchase orders dated 12th July, 2011 and 8th October, 2011 clearly show that Respondent placed an order for supply of goods with the Applicant. Perusal of the copies of the Invoices dated 29th December, 2011 clearly show that goods were supplied to the Respondent. Applicant also issued legal notices dated 22nd August, 2016, 8th September, 2016 and 8th December, 2016 to the Respondent demanding the due amounts under the above said Invoices. Respondent by its letter dated 16th February, 2015 acknowledged the liability. But Respondent did not choose to repay the amount due to the Applicant in respect of the goods supplied by the Applicant to the Respondent. Ultimately, Applicant issued demand notice dated 30th March, 2017 in Form 3 as well as in Form 4 attaching the copies of the Invoices to Respondent as required by Section 8 of the Code read with Rule 5 of the Adjudication Rules. The said notice was received by the Respondent on 3rd April, 2017. Applicant filed Affidavit stating that no notice of defence was sent by the Respondent.

8. Applicant also filed copies of Invoices and copies of the Bank statements.

9. The amount due to the Applicant from the Respondent is in respect of supply of goods. The claim made by the Applicant is in respect of provision of goods. Therefore, the amount claimed by the



Applicant from the Respondent is operational debt within the meaning of Section 5, sub-section (21) of the Code. The operational debt is due to the Applicant. Therefore, Applicant is an Operational Creditor within the meaning of sub-section (5) of Section 20 of the Code.

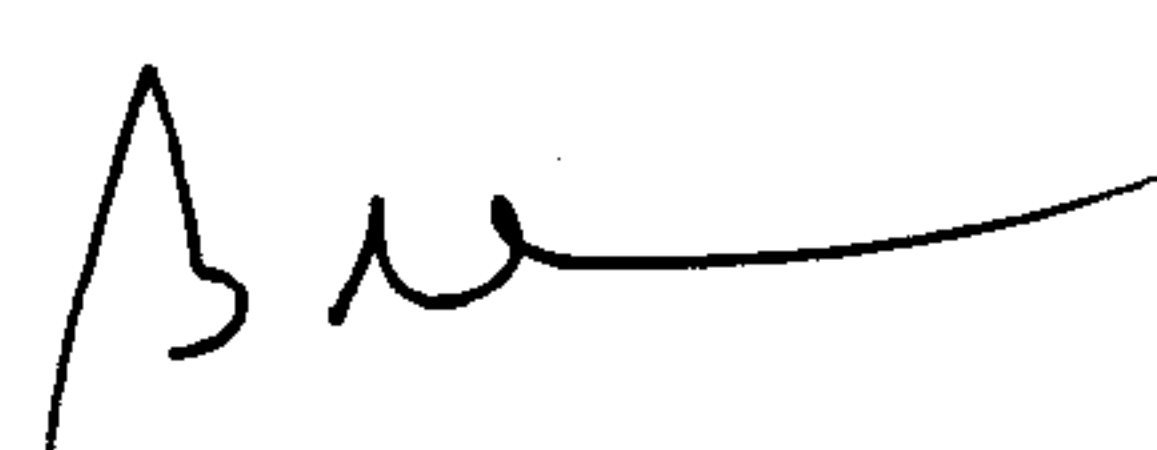
10. The amount is due from the Respondent to the Applicant. Respondent is a Company registered under the Companies Act. Therefore, Respondent is a Corporate Debtor within the meaning of sub-section (8) of Section 3 of the Code.

11. The Application filed by the Applicant is complete. In spite of service of notice, Respondent did not choose to appear before this Authority. No notice of dispute has been given by the Respondent to the Applicant even after receipt of demand notice from the Applicant.

12. Applicant did not name the Interim Insolvency Resolution Professional in the Application. Applicant made a request to refer the matter to the Insolvency Board under Section 16 of the Code. Therefore, there is no need to file the Written Communication of the Interim Resolution Professional.

13. From the above discussion and on the basis of the material available on record, it is held that it is a fit case to initiate insolvency resolution process by admitting the Application under Section 9(5)(1) of the Code.

14. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Resolution Professional. In the case on hand, simultaneous



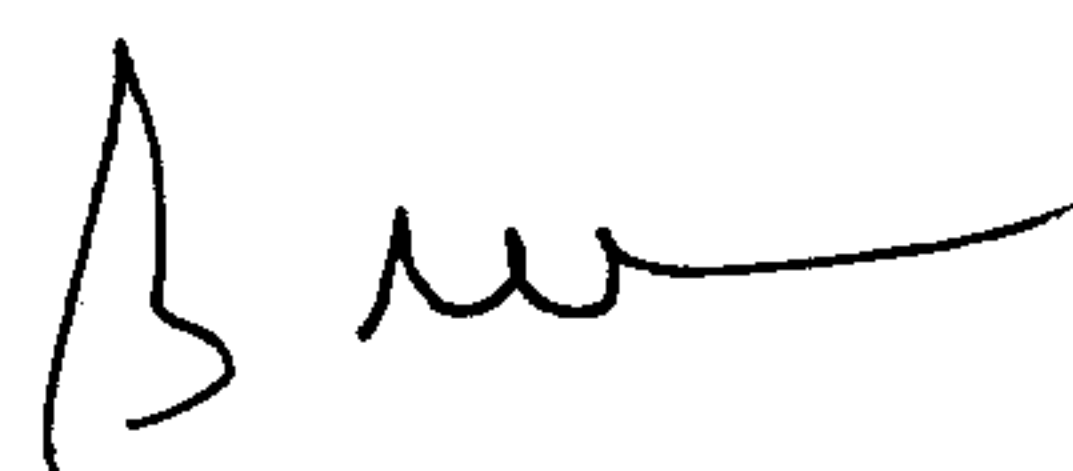
with the admission order, this Adjudicating Authority is not going to appoint Interim Resolution Professional because the Applicant did not propose the name of Interim Resolution Professional. But, this Adjudicating Authority is going to appoint Interim Resolution Professional after the same is recommended by the Insolvency and Bankruptcy Board of India under Section 16(4) of the Code. The Registry is directed to address a letter to the Insolvency and Bankruptcy Board of India, New Delhi to recommend the name of Interim Insolvency Resolution Professional to this Authority, against whom no disciplinary proceedings are pending, within 10 days of receipt of the letter.

15. (a) In view of the above discussion, the Petition is admitted.

(b) This Adjudicating Authority hereby order reference to Insolvency and Bankruptcy Board of India to recommend the name of Insolvency Professional to act as an Interim Resolution Professional against whom no disciplinary proceedings are pending to this Authority within 10 (Ten) days from the date of receipt of reference.

(c) This Adjudicating Authority hereby declares moratorium under Section 13(1)(a) prohibiting the following as laid down in Section 14 of the Code;

- (i) 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;
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;



- (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(d) However, the supply of goods and essential services to the corporate debtor shall not be terminated or suspended or interrupted during moratorium period. The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.

16. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14. This Adjudicating Authority shall give separate order for public announcement at the time of appointment of an Interim Resolution Professional after the proposal is received from the Insolvency and Bankruptcy Board of India.

17. The Application is disposed of accordingly with no order as to costs.

18. Communicate a copy of this order to Operational Creditor and Corporate Debtor. List the matter after receipt of proposal from the Insolvency and Bankruptcy Board of India.

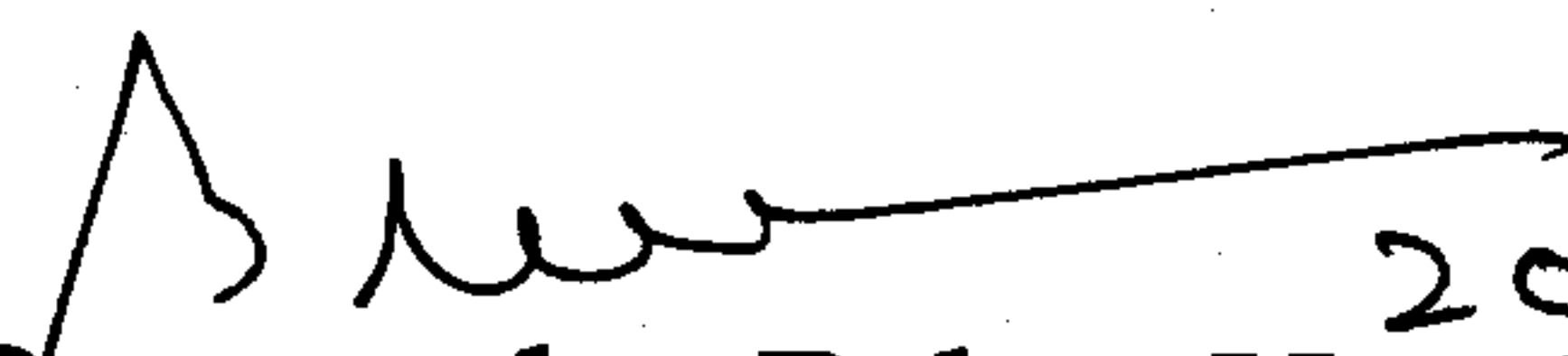
19. After the order is made ready on 20th July, 2017, Affidavit is filed by one person, by name Pradip Kumar Verma, Son of Shri Lakshman Prasad styling himself as 'Authorised Signatory' of

 Page 6 | 7

Respondent Company, without filing any Resolution of the Company or Authorisation Letter from the Company stating that GEI Industrial Systems Limited is ready to make payment to the Applicant and for that purpose directions may be given to make payment within the period as deemed appropriate by this Tribunal.

20. The said Affidavit filed cannot be taken into consideration at this stage even without serving a copy of it on the Applicant.

Signature:

 20.7.17
Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.