

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD
COURT 1**

CP(IB) No.454/9/NCLT/AHM/2018

**Coram: Hon'ble Ms. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 20.03.2020**

Name of the Company:

Modi Hitech India Ltd

V/s

Patel Heat Exchangers Pvt Ltd

Section:

Section 9 of the Insolvency & Bankruptcy Code
,2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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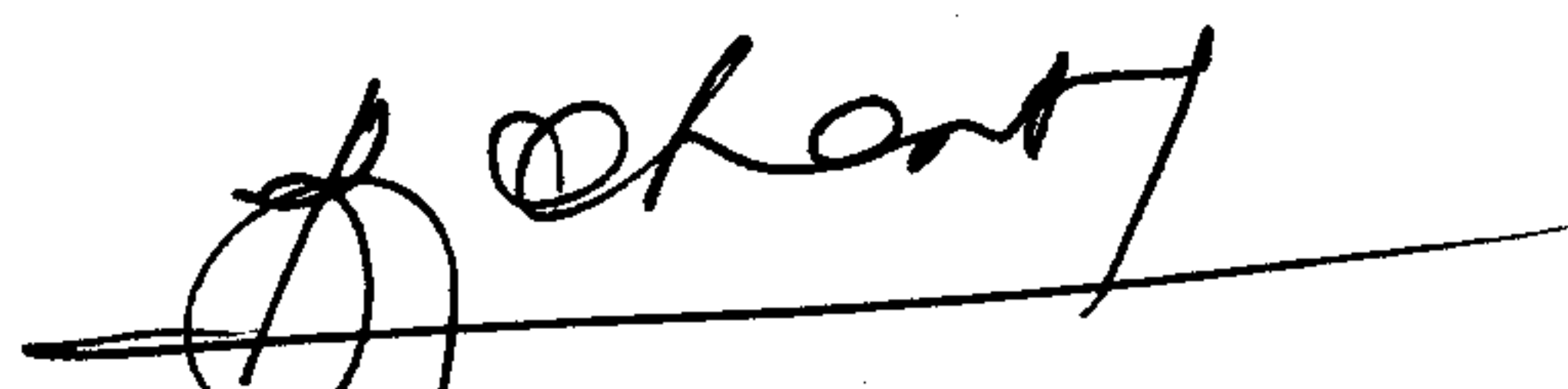
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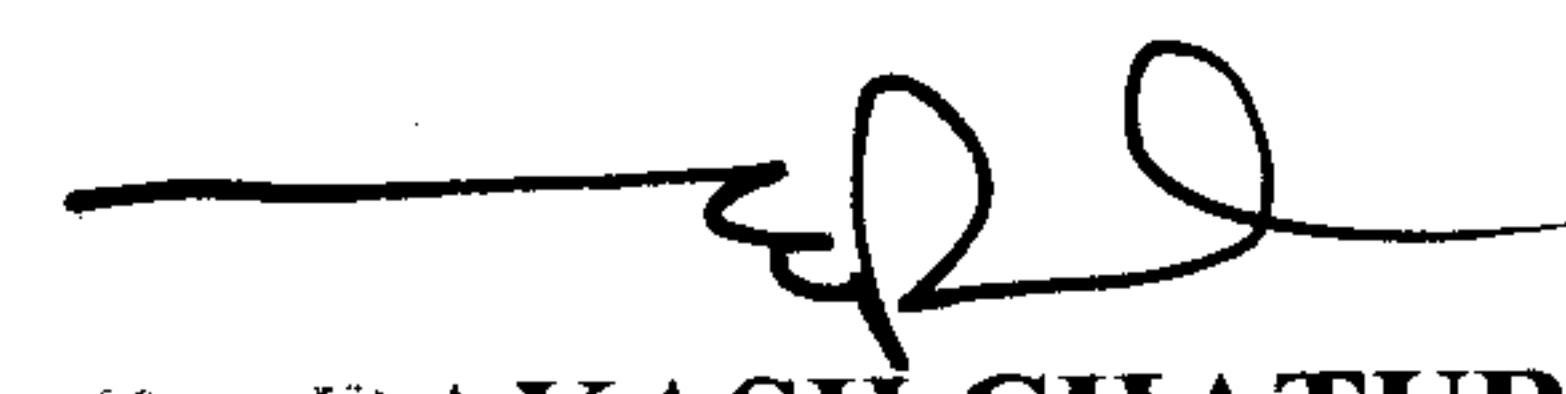
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ORI

The case is fixed for pronouncement of order

The Order is pronounced in the open court, v. Patel Heat Exchangers Pvt Ltd.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 20th day of March, 2020.

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
INDORE BENCH AT
AHMEDABAD**

C.P. (I.B.) No.454/9/NCLT/AHM/2018

In the matter of:

MODI HITECH INDIA LTD.
Having its Registered Office at:
1400, Modi Tower, 98, Nehru Place,
New Delhi – 110 019.

..... Petitioner

Versus

PATEL HEAT EXCHANGERS PVT. LTD.
Having its Registered Office at:
Plot No.102 A/1, Sector-H, Industrial Area,
Govindpura Bhopal, Madhya Pradesh.

..... Respondent

Order delivered on **29.05.2020**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Mr. Mehul A. Surti, Advocate for the Petitioner/Operational Creditor.

Mr. Aman Shankar Advocate for the Respondent/Corporate Debtor.

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor, Modi Hitech India Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) against the Corporate Debtor

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Company namely, Patel Heat Exchangers Private Limited.

2. The Petitioner/Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) – U51109DL1983PLC015250. The registered office of the Petitioner is situated at 1400, Modi Tower, 98, Nehru Place, New Delhi-110019. The present Petition is filed through Authorised Person Shri Vijay Pal Singh, having address: 1400, Modi Tower, 98, Nehru Place, New Delhi-110019.
3. The Respondent Corporate Debtor, namely Patel Heat Exchangers Private Limited was incorporated on 01.09.2009 with CIN: U29199MP2009PTC022345. The authorised capital of the company is INR.10,00,000.00 (Rupees Ten Lakh Only) and the paid-up capital is INR.10,00,000.00 (Rupees Ten Lakh Only). The registered office of the Corporate Debtor Company is situated at: Plot No.102 A/1, Sector-H, Industrial Area, Govindpura, Bhopal, Madhya Pradesh.
4. The present petition has been preferred by the Operational Creditor Modi Hitech India Ltd. It is submitted by the Petitioner that the Respondent Corporate Debtor is indebted to the Petitioner for **INR.2,91,000.00** (Rupees Two Lakh Ninety One Thousand Only) being the Principal Amount due to the

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Petitioner along **with an interest @ 18% per annum** since 22.09.2015 to till today the outstanding amount. It is submitted that the Petitioner is engaged in the business of manufacturing and selling of welding consumables ranging from welding electrodes to welding wires.

5. It is submitted that the Petitioner came into the contact by way of the sales executive and as per their requirements the petitioner has supplied the goods on credit of the company and the outstanding amount was not paid regularly by the Respondent Company. In this regard, various invoices/bills were raised by the Operational Creditor in proportion to the work carried on by the Operational Creditor and the same were duly accepted by the Corporate Debtor as per the details given below:

SR.NO.	Date	V. no.	Ref. No.	Amount(INR.)
1	22.09.2015	SIN S221	WE15-1463	2,34,180.00
2	22.09.2015	SIN S222	WE15-1464	2,82,791.00
	TOTAL			5,16,971.00

6. It is submitted by the Petitioner that the Company has failed and neglected to make the payment of INR.5,16,971.00 (Rupees Five Lakhs Sixteen Thousand and Nine Hundred and Seventy One Only) to the Petitioner being the Principal amount and interest at the rate of 18%

per annum since 22.09.2015. **It is the case of the Petitioner that, the petitioner preferred Company Petition before this Adjudicating Authority in C.P (I.B)122/9/NCLT/AHM/2017 dated 04.10.2017 which came to be withdrawn by way of consent terms and which came to be breach by the Respondent Company as failed and neglected to pay the remaining amount to the Petitioner is INR.1,91,000.00 and INR.1,00,000.00 towards cost and total amount is of INR.2,91,000.00. Date on which the first Default occurred is 22.09.2015.**

7. It is submitted that as per the consent terms the Respondent Company had paid the instalment Cheques amount on the regular basis and during **the last instalment the Respondent fail to make the remaining** amount and the respective Cheques was dishonoured by the respective bank and after several reminders the Company is not responding in proper manner.
8. It is submitted that the Form No.3 demand notice was issued by the operational creditor on 16.07.2018 which was duly served to registered office of the Corporate Debtor under the provisions of Insolvency and Bankruptcy Code, 2016.
9. The case was taken up by this Adjudicating Authority on 19.09.2018 on the request of the Petitioner's Counsel. The matter was heard on 12.11.2018, 18.12.2018, 11.02.2019,



04.04.2019, 21.06.2019, 06.08.2019, 30.08.2019,
11.09.2019, 24.10.2019, 15.11.2019, 21.11.2019,
05.12.2019 and 06.12.2019. Arguments of the counsels of
the Operational Creditor and Respondent were heard.

10. The matter was finally heard on 06.12.2019. During the arguments, the Learned Counsel for the Operational Creditor asked for adjournment. This Adjudicating Authority observed on last occasion that the Petitioner Counsel was not present when the matter was called out **and matter came to be dismissed in default**. Later on the same **dated 21.11.2019**, Learned Counsel appeared and requested time for final hearing. This Adjudicating Authority observed that as the matter pertains to year 2018, further chance cannot be given.
11. The matter was finally heard on 06.12.2019. During the arguments, the Learned Counsel for the Operational Creditor submitted that the Petition may be admitted and an Interim Resolution Professional appointed in accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is submitted that the Corporate Insolvency Resolution Process be initiated as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period may also be declared.
12. Further, the Operational Creditor **has not suggested the** name of an Interim Resolution Professional ("IRP" for

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short). If, this I.B. Petition is admitted, an IRP needs to be appointed.

OBESRVATIONS

13. The Petitioner had filed another application earlier and the matter was heard in the Court No.2 of Ahmedabad Bench dated 04.10.2017. This Adjudicating Authority allowed the matter to be withdrawn as the Applicant had filed a Petition seeking permission to withdraw the Application for initiation of CIRP against the Corporate Debtor **in view of the settlement arrived between the Applicant and the Corporate Debtor.**

Now the petitioner submitted that the Respondent has made part payment of **INR.1,00,000.00** out of **INR.5,16,971.00** and for the remaining amount, the Respondent has given four post-dated Cheques issued in favour of the Applicant which were reportedly bounced.

The Petitioner now has again filed this application reportedly for recovery of the amount of Rs.1,91,000.00 for the supply of goods made in September, 2015. It is clear that the intention of the Applicant is not to go for CIRP but for recovery of its own dues as and when the petitioner has failed to recover some defaulted amount from the Corporate Debtor.

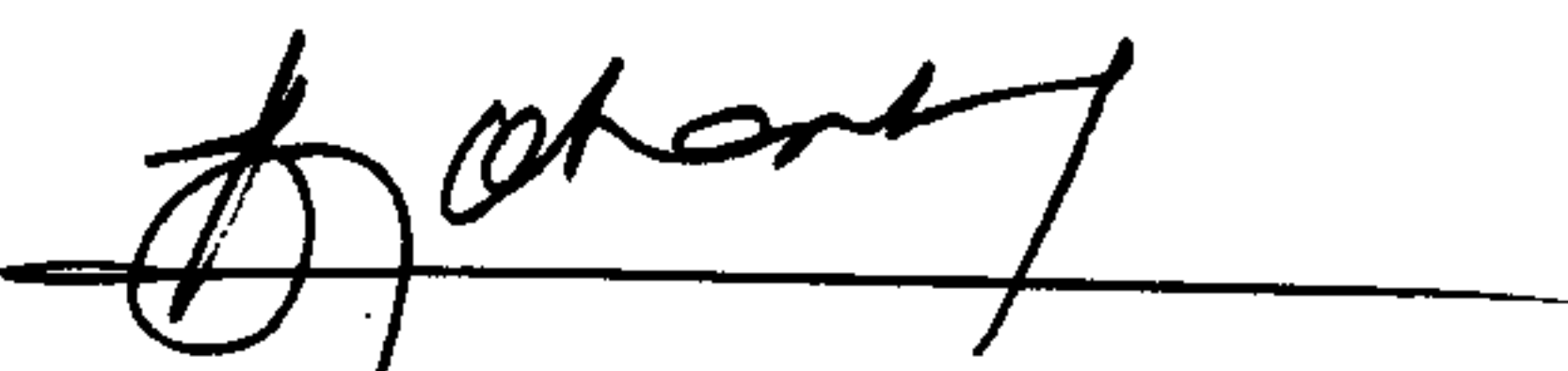
ORDER


13. Considering the material, papers filed by the Petitioner on record, the arguments of the Counsels from both sides and the facts mentioned above, this Adjudicating Authority

rejected the Application on the ground that the Petitioner has made attempt to use this Adjudicating Authority for recovery of its reported dues of Rs.1,91,000.00 for the supply of goods made on 22.09.2015 with malicious intent for any purpose other than for the resolution of Insolvency of the Corporate Debtor.

Though we do not impose any pendency for malicious intent of the Applicant but the conduct of the Applicant is taken on record.

The Registry is directed to communicate the authenticated copy of this order to the Parties concerned through Speed Post/Registered Post at the earliest.


**(Prasanta Kumar Mohanty),
Adjudicating Authority
/Member (T)**


**(Harihar Prakash Chaturvedi),
Adjudicating Authority
Member (J)**