

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No. 760/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 30.03.2021**

Name of the Company: Dev Hi Tec Systems
V/s
Rajvi Procon Pvt Ltd

Section 9 of the Insolvency and Bankruptcy
Code,2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

(through video conferencing/physical)

None appeared on behalf of parties.

The order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 30th day of March, 2021



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 760/9/NCLT/AHM/2019

In the matter of:

M/s. Dev Hi Tec Systems
380/1, Sola Timber Mart
Behind Punjab Auto
Near Sola Bridge, Sola
Ahmedabad 380 060

:

Petitioner
Operational Creditor

Versus

Rajvi Procon Private Limited
A-FF-11 Ramrath Owner's Association
Smita Apartments, Times of India Press Road
Opp. Hari Om Complex
Vejalpur
Ahmedabad 380 051

:

Respondent
[Corporate Debtor]

GUJARAT STATE

Order delivered on 30th March, 2021

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**


Appearance:

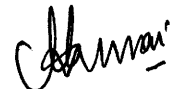
Petitioner : Mr. Vikramjeet Singh, Advocate
Respondent : Mr. Mandeep Singh, Advocate

ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Bhagwandas Vithalbai Patel, authorised signatory of **M/s. Dev Hi Tec Systems** filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.





2. The applicant/operational creditor is a partnership firm having PAN AAJFD5029R and having its place of business at Sola, Ahmedabad is engaged in the business of UPVC windows, casement door, casement window etc.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 12.01.2015 and having identification No. U74140GJ2015PTC081843 and having registered office at Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 1,00,000/- and paid up share capital is Rs. 1,00,000/-.
4. The applicant/operational creditor has stated that in the month of January, 2015, the operational creditor raised quotation for supply of UPVC Windows, sliding windows, casement door, casement window, fix window and window glass with commitment to deliver the products within 21-28 days of undertaking final measurement in order to manufacture the required products, on payment terms of 50% mobilisation advance against the order, 40% after delivery of the products and balance 10% after completion of the work i.e. installation of the products at site. Accordingly, the corporate debtor made payment of Rs. 1,00,000/- (Rupees one lac only) by way of cheque dated 20.01.2015 and another Rs. 1,00,000/- by cheque dated 06.02.2015.
5. The petitioner has further stated that thereafter, the operational creditor visited the site at Ahmedabad, delivered the required products at the site and raised invoice dated 27.02.2015 for Rs. 6,42,111/-. That, upon the promise received from the corporate debtor to make the balance payment upon completion of the installation, the applicant completed installation of the said products at the site by the

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last week of March, 2015. That, on the basis of assurance received from the respondent to make payment of collective amount, the applicant supplied additional material worth Rs. 74,537/- on 01.05.2015 and completed the work by middle of May, 2015.

6. The applicant has further stated that despite repeated follow up having failed to receive any positive response from the corporate debtor, the applicant was compelled to issue demand notice dated 22.09.2018 (page 38 -42) in form 3 under Section 8 of the Insolvency & Bankruptcy Code calling upon the respondent to clear collective outstanding debt of **Rs. 5,16,648.64 (Rupees five lacs sixteen thousand six hundred forty-eight and sixty-four only).**
7. The applicant has further stated that the corporate debtor made payment of Rs. 10,000/- on 27th November, 2018 by directly depositing the cheque into the account of the operational creditor.
8. The applicant has further stated that on 12th April, 2019 the applicant again issued a demand notice demanding payment of outstanding invoice along with interest @ 12% per annum which amounts to Rs. 7,55,257.31.
9. In support of its claim, the operational creditor has annexed to the application documents like; computation of dues, bank statement showing the payment made by corporate debtor, general affidavit, copy of quotation, copy of invoice, copy of demand notice etc.
10. The respondent/corporate debtor filed affidavit in reply inter alia raising various objections.

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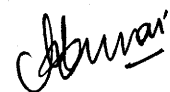
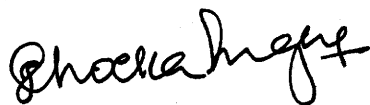
Findings:

11. Heard the learned counsels appearing for both the sides and perused the documents annexed to the petition/reply.

12. Before discussing and deciding the petition on merits, the Adjudicating Authority is required to see that the petition conform the IB Code. The instant petition is signed by one Mr. Bhagwandas Vitthalbhai Patel, special power attorney holder of the applicant partnership firm. On perusal of the record it is found that the said special power of attorney (page 66 – 73) is not signed by the power of attorney holder Mr. Bhagwandas Patel. In this context, it is desirable to refer to relevant provisions of the Power of Attorney Act, 1882. Power of attorney is a legal instrument that empowering any specific person to act for and in the name of the person executing such instrument. Power of attorney is created for matters relating to property, tax payments, banking and legal proceedings etc. etc. The person who is executing such power of attorney or who grants such power is called as the donor and the person to whom such power is granted is called as attorney / agent / done.

Power of attorney is created by persons who cannot do certain transactions due to their physical unavailability. They may not be present within the country, or due to their old age they could not perform certain functions or they would have certain reasons which would render them impossible to perform certain duties.

13. In Kasthuri Radhakrishnan and ors V. M. Chinnaiyan the Hon'ble Supreme Court has stated that the law relating to the power of attorney must be governed by the provisions of the Power of Attorney Act, 1882.



Types of Power of Attorney:

- **General Power of Attorney:** When a donor gives his complete right or power to act lawfully with respect to his property is called general power of attorney.
- **Specific Power of Attorney:** A special power of attorney is to be made by a person when a specific act is said to be done. Once such act is accomplished, the power of attorney comes to an end.

Power of attorney deed:

The power of attorney must include the following:

- Agent: Any person can be appointed as an agent when the principal trusts such person with his properties.
- Principal: The person who executes the power of attorney to the agent.
- The Power of Attorney must grant any general or specific authority to the agent that is required to be administered by him by the principal.
- The date from which the instrument becomes effective
- **The signatures of the principal and the agent must be affixed to the instrument.**

14. On perusal of the records it is found that the Special Power of Attorney executed on 27th June, 2019 is not signed by Mr. Bhagwandas Patel. Moreover, photograph of the Agent – Mr. Bhagwandas Patel is not affixed in the document, a such the power of attorney itself is bad in the eye of law and cannot be relied upon.

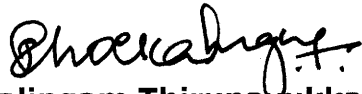
15. Notwithstanding above, the applicant has not filed copy of the purchase order delivery challan to substantiate its claim.

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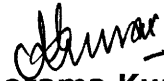
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The applicant has also not put on record a copy of the partnership firm.

16. Under the facts and circumstances and as discussed above the petition is not maintainable and deserves to be dismissed in view of the above grounds. In the result, company petition No. CP (IB) 760 of 2019 stands dismissed and disposed of without cost.
17. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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