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


IA 374 of 2019 in/with CP(IB) 21 of 2017

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

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON : 18.12.2019

Name of the Company: Premraj Ramratan Laddha Liquidator of New  
Forge and Foundry Ltd  
V/s.  
State Bank of India & Ors

Section of the Companies Act: Section 54 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Kamya A. Shah i/b Navavati Associates	Adv.	Liquidator	
2.				

**ORDER**

The Liquidator is represented through respective Counsel.

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 18th day of December, 2019.

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

I.A.No.374/NCLT/AHM/2019  
Application under Section 54 of IBC 2016  
Dissolution of Corporate Debtor  
In  
C.P. (I.B.) No. 21/10/NCLT/AHM/2017

**In the matter of:**

PREMRAJ RAMRATAN LADDHA  
Liquidator of M/s.New Tech Forge  
And Foundry Limited  
Having its office at : 207, Ajanta  
Commercial Complex, Opposite  
Bombay Hotel, Gondal Road,  
Rajkot.

.....Applicant

Versus

1. STATE BANK OF INDIA  
Having its office at: Stressed  
Assets Management Branch,  
2<sup>nd</sup> Floor, Paramsidhi  
Complex, Opp.V.S.Hospital,  
Near Ellisbridge, Ahmedabad.
2. ORIENTAL BANK OF  
COMMERCE  
Having its office at: AUM  
Planet, Ground Floor, Opp.  
Nirmala Convent School,  
Rajkot - 360007
3. CORPORATION BANK  
Stressed Asset Management  
Branch  
Having its office at : 1<sup>st</sup> Floor  
Rangolee Complex, Opposite  
V.S.Hospital, Ashram Road,  
Ahmedabad.
4. STATE BANK OF HYDERABAD

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(Merged into State Bank of  
India)

Having its office at: Stressed  
Assets Management Branch,  
2<sup>nd</sup> Floor, Paramsidhi  
Complex, Opp.V.S.Hospital,  
Near Ellisbridge, Ahmedabad.

5. INTERNATIONAL ASSETS  
MANAGEMENT CO. LTD.,  
(Assignee of HDFC Bank)

Having its Office at:  
A/601/602/605, 215 Atrium  
Kanakia Spaces, Andheri Kurla  
Road, Andheri(E), Mumbai.

.....Respondents

Order delivered on 18<sup>th</sup> December, 2019

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

Appearance:

Ms.Kamya Shah, Advocate on behalf of M/s.Nanavati Associates for  
Applicant(Liquidator)  
Mr.Rajesh Bohra, Advocate for Respondent

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

1. The present Interlocutory Application No.374 of 2019 filed by Mr.Premraj Ramratan Laddha, Liquidator of New Tech Forge And Foundry Limited under Section 54(2) of Insolvency and Bankruptcy Code, 2016 in CP (IB) No. 21/10/NCLT/AHM/2017 on 24/4/2019 against the Financial Creditors, State Bank of India, Oriental Bank of Commerce, Corporation Bank, State Bank of Hyderabad

and International Assets Management Co. Ltd., praying for the following reliefs –

“A. This Hon’ble Tribunal may be pleased to pass appropriate orders/directions to Order **dissolution of the Corporate Debtor i.e. M/s.New Tech Forge & Foundry Limited under Section 54(2) of the Code;**

B. This Hon’ble Tribunal may be pleased to release the closing balance in liquidation bank account and fixed Deposit Account to stakeholders/Liquidation expenses as per Section 53 of the Code.

C. The Hon’ble Tribunal be pleased to discharge the Liquidator (Mr.Premraj Laddha) from his duty as Liquidator of the Corporate Debtor.”

2. At the outset, it is gathered from the records that New Tech Forge & Foundry Limited (Corporate Applicant) had filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 for initiation of Resolution Process before the Adjudicating Authority, wherein as per the orders dated 29.05.2017 of this Adjudicating Authority, Corporate Insolvency Resolution Process was initiated against the Corporate Debtor, moratorium declared and Mr.Arun Kumar Malani was appointed as Interim Resolution Professional.

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3. The Interim Resolution Professional convened the first meeting of the Committee of Creditors on 28/06/2017 and in the second meeting held on 17/08/2017, it was resolved that the Interim Resolution Professional be replaced by Mr.Premraj Ramratan Laddha as a Resolution Professional. Accordingly, this Adjudicating Authority vide orders dated 06/10/2017 in IA no.256 of 2017 appointed Mr.Premraj Ramratan Laddha as a Resolution Professional. In the third meeting of the CoC held on 09/11/2017, it was resolved that "*Para 8. Members of CoC voted 100% in favour of decision to liquidate the Corporate Debtor under Section 33(2) of Insolvency and Bankruptcy Code, 2016 and confirmed that RP will continue as Liquidator.*" Subsequently, the Resolution Professional preferred IA no.381 of 2017 and this Adjudicating Authority vide orders dated 12/12/2017, directed the Corporate Debtor to be liquidated and appointed Resolution Professional as Liquidator of the Corporate Debtor under Section 34(1) of Insolvency and Bankruptcy Code, 2016.
4. Thereafter, as per the Liquidation Process, the Liquidator undertook the following steps –
- a) As per the directions of the Hon'ble Adjudicating Authority, the Liquidator published the public announcement in Form B on 16/12/2017 in two

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daily newspapers under Regulation 12 of the Insolvency and Bankruptcy Board of India, inviting proof of claims of all stakeholders and also announcing that the Corporate Debtor was under Liquidation.

- b) In compliance with Regulation 31 of the Insolvency and Bankruptcy Board of India Regulations, 2016 a category wise list of stakeholders along with the details of each stakeholder, whether secured or unsecured was prepared and filed before the Hon'ble Adjudicating Authority on 29/01/2018.
- c) Further, during the quarter ending on 31/12/2017 and from the date of commencement of liquidation i.e. 12/12/2017 there was no receipt and payment of any other amount except the cost for public announcement for liquidation process published in newspaper amounting to Rs.28,173/-.
- d) A bank account in the name of 'New Tech Forge & Foundry Limited, in Liquidation' bearing No.37457053630 was opened with State Bank of India, Commercial Branch, Ahmedabad. The balance in the said account as on 20.04.2019 is Rs.2,07,197.00 and Rs.18,00,000.00 lying in Fixed Term Deposit Account No.0038395753054 with the said bank.

- e) Further, the Liquidator, under Regulation 15 of the Insolvency and Bankruptcy Board of India Regulations, prepared and 1<sup>st</sup> progress report dated 15/01/2018 and a Preliminary Report within 75 days was submitted before the Adjudicating Authority on 26/02/2018. An Asset Memorandum within 75 days from the liquidation commencement was prepared and submitted before the Adjudicating Authority on 26/02/2018.
- f) The Liquidator had appointed the following professionals in accordance with the regulation of Insolvency and Bankruptcy Board of India Regulations, 2016 –
- i. HSVJ & Co., - A firm of Chartered Accountants were appointed for audit of accounts of liquidator's receipt & payment for the financial year 2017-2018.
  - ii. C.C.Gandhi & Co., Advocates – Law Firm
  - iii. E-Procurement Technology Private Limited – for advertisement and auction service provider.
  - iv. Mr.P.R.Sathwara- Advocate was appointed for search of Revenue Records.
- g) Thereafter the **Liquidator had made a public announcement on 13/02/2018 in two newspapers as per the Regulation 31 of Insolvency and Bankruptcy Board of India**

**Regulations, informing the list of stakeholders filed before the NCLT, Ahmedabad Bench. Accordingly, on 10/02/2018, the Liquidator published an e-auction sale notice in two daily newspapers and invited bids for the factory premises including land and building and plant and machineries lying in the premises of the Corporate Debtor. Further, the Liquidator had categorically also informed the public that the assets of the company were attached by the State Tax Office in the e-auction sale notice, wherein it was decided that the State Bank of India and Corporation Bank will monitor the sale proceeds on behalf of other stakeholders.**

- h) The State Bank of India, being the lead bank of the secured lenders was in possession of the assets of the Corporate Debtor pursuant to the various proceedings initiated under the SARFAESI Act and all the lenders relinquished their security interest in the assets of the Corporate Debtor under Section 52 of the Code.**
- i) In the e-auction sale conducted, two bids were received by the liquidator, wherein the bid of highest bidder, M/s.Haq Steel & Metallik Private Ltd., erstwhile M/s.Haq Enterprises Pvt. Ltd., was accepted for the sale of the properties. Thereafter,

full consideration of sale price for Rs.35,70,00,000.00 was received from the highest bidder on 26/03/2018. Further, the liquidator executed sale deed for the property being Land(factory premises) in favour of the purchaser and also registered the same before the office of Sub-Registrar at Bachhau(Kutch) and Sale Certificate for the plant and machineries was also executed in favour of the purchaser.

- j) Out of the balance of Rs.35.92 Crores lying in the Liquidation Bank Account, following amount was distributed by the Liquidator to the stakeholders in accordance to Section 53 of the Insolvency and Bankruptcy Code, 2016 -

Sr. No.	Secured Creditor	Amount(Rs.)
1.	State Bank of India	17,85,35,000/-
2.	Oriental Bank of Commerce	6,22,65,000/-
3.	Corporation Bank	6,37,00,000/-
4.	International Asset Reconstruction Company	4,55,00,000/-
	Total	35,00,00,000/-

- k) Further, Rs.92.00 Lakhs is kept in reserve to meet the cost of liquidation, fee of liquidator, refund of TDS, if any deducted and paid by purchaser, fee of auditors, Valuer, Advertisement agency, consultants, advocates and any other contingent expenses. Liquidation expenses amounting to Rs.55,630/- were

paid by the liquidator during the quarter ending on 31/03/2018. Further, an amount of Rs.3,93,640.00 was paid for the quarter ending on 30/06/2018 and during the same quarter the liquidator has received Rs.28,412.00 from the transfer of bank accounts of Corporate Debtor.

- l) Thereafter, in the meeting of stakeholders held on 20/09/2018, it was decided to distribute an amount of Rs.60.00 Lakhs in following manner –

Sr. No.	Secured Creditor	Amount(Rs.)
1.	State Bank of India	30,60,600/-
2.	Oriental Bank of Commerce	10,67,400/-
3.	Corporation Bank	10,92,000/-
4.	International Asset Reconstruction Company	7,80,000/-
	Total	60,00,000/-

Further, the balance amount was to be kept in the liquidation bank account for liquidation expenses and contingent liability.

- m) List of Stakeholders on the basis of claims received and paid

Secured Financial Creditor	Amount claimed	Amount admitted	Amount Paid	Percentage of admitted claim paid
SBI, OBC, Corp. Bank, IARC	510,77,57,770/-	139,60,32,395/-	35,60,00,000/-	25.5%
Operational Creditor unsecured	Amount claimed	Amount admitted	Amount Paid	Percentage
Darci Logistics Ltd., Paschim Gujarat Vij Company Ltd., Newtech Fitting Pvt. Limited, State Tax Deptt., Income Tax Deptt., Tulsan Resouces Ltd.,	84,17,14,981/-	3,08,39,134/-	Nil	Nil

- n) For the quarter ending on 30/09/2018, the liquidator had paid liquidation expenses amount to Rs.4,23,298/- and received interest income of Rs.1,58,976/-. Further, in the meeting of stakeholders held on 20/09/2018, the liquidator informed that the **Transaction Audit Report** has been submitted by the Auditor i.e. M/s.ACM & Associates observing no adverse transaction are found during the transaction audit for two years i.e. 01/04/2015 to 29/05/2017 before the date of commencement of CIRP. Further, for the quarter ending on 31/12/2018, the liquidator had paid liquidation expenses amounting to Rs.5,25,980/-.
- o) In the 6<sup>th</sup> progress report for the quarter ending on 31/03/2019, the liquidator has appointed following professionals –
- i. M/s.HSVJ & Co., Ahmedabad (CA) – for audit of the liquidator's account for the year ended on 31/03/2019 and filing Income Tax returns for AY 2019-2020.
  - ii. M/s.Nanavati Associates (Advocates) – for preparing, filing and final disposal of the dissolution application.
  - iii. Mr.Hiren J. Trivedi(Advocate) – for representing the liquidator in applications filed by the State

Tax Office and Buyer of Property, M/s.Haq Steel  
& Metaliks Private Limited.

5. Further, the following are the pending matters in relation to this Corporate Debtor –
- i. Appeal bearing no.591080 preferred by the Corporate Debtor before CIT, Rajkot against the assessment order for AY 2009-2010 under Section 143(3) read with 147 of Income Tax Act.
  - ii. Appeal bearing no.334911 preferred by the Corporate Debtor before CIT, Rajkot against the assessment order for AY 2012-2013 under Section 143(3) read with 147 of Income Tax Act.
  - iii. IA 128 of 2018 in CP(IB) 21 of 2017 before this Adjudicating Authority filed by Rasikbhai G. Patel (Personal Guarantor of Corporate Debtor) V/s. Premraj Ramratan Laddha & Ors.
  - iv. Appeal no.2 of 2019 in CP(IB) 21 of 2017 before this Adjudicating Authority filed by State Tax Officer V/s. Premraj Ramratan Laddha & Ors.
  - v. Appeal no.3 of 2019 in CP(IB) 21 of 2017 before this Adjudicating Authority filed by State Tax Officer V/s. Premraj Ramratan Laddha & Ors.
  - vi. IA 106 of 2019 in CP(IB) 21 of 2017 before this Adjudicating Authority filed by State Tax Officer V/s. Premraj Ramratan Laddha & Ors.

- vii. IA 107 of 2019 in CP(IB) 21 of 2017 before this Adjudicating Authority filed by State Tax Officer V/s. Premraj Ramratan Laddha & Ors.
- viii. IA 143 of 2019 in CP(IB) 21 of 2017 before this Adjudicating Authority filed by Haq Steel and Metalik Pvt. Ltd., V/s. New-Tech Forge and Foundry Ltd.

6. Before proceeding further, the liquidator has taken up the pending IAs consecutively -

6.1 IA 128 of 2018 in CP(IB) 21 of 2017 - The said Interlocutory Application has been filed by Mr. Rasikbhai G. Patel and 5 Ors being Personal Guarantors of Corporate Debtor against the Liquidator, submitting that since the Corporate Debtor is passing through liquidation, the personal guarantors are also unable to discharge any obligation qua the loans given by the Financial Creditors to the Corporate Debtor and as such the Applicants are willing to proceed further for initiation for their own insolvency, so as to get discharged by due process of law and to have a fresh start.

The Respondent no.2, State Bank of India filed affidavit in reply to the said application and submitted that the personal guarantor of Corporate Debtor cannot invoke Section 94 of the Code and is not eligible to make the present application.

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Subsequently, the Applicants filed rejoinder and reiterated that this Adjudicating Authority has jurisdiction to deal with the application of the personal guarantors and also cited various judgements of Hon'ble Apex Court to support their prayer.

6.2 Appeal no.2 of 2019 in CP(IB) 21 of 2017 - The said application is filed by the State Tax Officer(3), Applicant herein seeking condonation of delay of 220 days in preferring the appeal under Section 42 of IBC Code challenging the order dtd:26.06.2018 passed by the Liquidator under Section 40 whereby, the claim of the **appellant has been accepted** but, **announcing the received amount of claim as Nil.**

It is submitted that in light of the order dtd:12.12.2017, whereby this Tribunal ordered the liquidation of the Corporate Debtor and appointment of liquidator, the claim can be submitted as per the **Limitation Act, Article 137 within a period of three years.** It is also submitted that Applicant has filed the captioned appeal challenging the order dated 26.06.2018 passed by the liquidator under Section 40 whereby, the claim of the Applicant has been accepted but, announcing the received amount of claim as Nil, due to undervaluation of assets by Liquidator.

The Liquidator, in his reply, submitted that the last date of submission of claim before the IRP was **14.06.2017**, whereas the claim was lodged by the present applicant on **25.01.2018** i.e. after the date of order of liquidation passed by this Tribunal. Hence, the Applicant **does not have any locus to approach** this Tribunal after the order of liquidation. Further, in compliance of Regulation 31 of IBBI, a **category wise list of stakeholders, secured or unsecured, was prepared and filed before this Adjudicating Authority on 29.01.2018**. Further, with regard to the **undervaluation of the properties, it is submitted that the valuation of the properties was valued by two independent valuers empanelled and approved by the State Bank of India and the average valuation was adopted. Hence, the liquidator cannot accept the claim after the time mentioned in the public announcement for liquidation. Thus, the application is time barred.**

- 6.3 Appeal no.3 of 2019 in CP(IB) 21 of 2017 – The said appeal is filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 by the State Tax Officer(3), Applicant herein **to oppose the distribution from sale of liquidation by Respondent no.1 – Liquidator for M/s.New Tech Forge and Foundry**

**Ltd.**, praying to set aside the order of the Respondent no.1 dated 26.06.2018 and to consider the unpaid dues of the Applicant as secured dues towards Government outstanding. It is submitted that the **appeal is preferred against the reply of Respondent no.1 dated 26.06.2018, wherein it is informed that the State Tax Officer(3), Applicant herein will be received nil** amount in liquidation process. It is submitted that since the outstanding dues are protected by provision of Section 48 of Gujarat Value Added Tax Act, 2003 and further Government dues override other dues and the Applicant also possess charge on the immovable assets of the Respondent no.2, M/s.New Tech Forge and Foundry Ltd., for securing government dues, the Applicant presumably falls within the category of secured creditor as per the interpretation of Section 3(30) & 3(31) of the Insolvency and Bankruptcy Code, 2016.

The Liquidator has filed the affidavit in reply to the appeal filed by the Applicant on 26.03.2018, wherein it is submitted that the last date of submission of claim before IRP was **14.06.2017**, whereas the **Applicant has lodged the claim on 25.01.2018 and the liquidator cannot accept the claim filed after the time mentioned in the public announcement for**

liquidation. Further, it is submitted that Section 47 is not applicable in this case, **as no undervalued transaction has taken place, as the provisions of Section 47 are only application to categories of transactions which are mentioned in sub-section (2) of Section 45 undertaken by Corporate Debtor.**

- 6.4 IA 106 of 2019 in CP(IB) 21 of 2017 - The said application is filed by the State Tax Officer(3), Applicant herein praying to set aside the order dtd:26.06.2018 and to **consider the unpaid dues of the Applicant as secured dues of the Government, against which the Respondent no.1** has filed its reply on 26.03.2019, wherein it is submitted that the claim are required to be filed in **Form C as per the Code and moreover the Central Govt. and State Govt. claims will be 6<sup>th</sup> in rank priority of the order for distribution of assets.** It is further submitted that the claim was lodged on 25.01.2018, whereas the last date of submission of claim before the IRP was on 14.06.2017.
- 6.5 IA 107 of 2019 in CP(IB) 21 of 2017 - The said application is filed by the State Tax Officer(3), Applicant herein is praying to **condone the delay of 220 days in preferring the appeal,** against which the Respondent no.1 has filed its reply on **26.03.2019.**

6.6 I.A. No. 143 of 2019 in CP(IB) No.21 of 2017 – The said **application is filed by M/s.Haq Steels & Metaliks Limited**, the buyer of the property sold by the Liquidator, under **Section 60(5) of the Code with a prayer to give necessary directions to remove the attachment/charge on the properties of the Corporate Debtor from the Register maintained by the Mamlatdar, Revenue Dept. of Gujarat Govt., as the same were purchased by the Applicant from the e-auction sale conducted by the Liquidator.**

The description of the immovable properties is are under –

*“All those pieces or parcels of freehold Non-Agricultural land situate lying and being at National Highway No.8-A, Samakhiyali, Taluka Bhachau, Dist.Kutch bearing Revenue Survey No.529/1, 529/2, 530, 531, 532/1, 532/2, 533, 534, 538/1/Paiki admeasuring collectively 1,76,207.00 sq.mtrs plus Green Belt area of 34,635.00 sq.mtrs i.e. aggregating to 2,10,842.00 sq.mtrs of mouje Piparapati of Bhachau Taluka in the Registration District Kutch and Sub-district of Bhachau together with buildings and structures approximate admeasuring 5100.00 sq.mtrs or thereabouts and the said lands and buildings are bounded as follows:*

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1. Survey Nos.529/1, 529/2, 530, 531

On North	:	Cart Track
On South	:	National Highway
On East	:	Survey Nos.535/1, 532/2
On West	:	Cart Track

2. Survey Nos.532/1, 532/2, 533, 534

On North	:	National Highway
On South	:	Agriculture land of others
On East	:	Hotel Ashirvad
On West	:	Hotel Royal

The State Tax Officer(3), Respondent no.2 herein, has filed its reply on 13.03.2019, submitting to dismiss the application filed by the Applicant and **praying this Adjudicating Authority to direct the Liquidator to compensate for payment of dues towards Respondent no.2 as secured creditor and for contravention of rights as provided by Section 52 of the Code.**

7. On 22.07.2019, the Director of the suspended Board of Corporate Debtor, Shri Rasiklal Ghusabhai Patel has filed his reply to the said IA, **wherein he submitted his no objections to the dissolution applicant filed by the Applicant.**

8. The liquidator has filed its final report dated **20/04/2019** in consultation with **stakeholders dated 12/04/2019** **along with this dissolution application in pursuance to**

**Section 54 of the Code read with Regulation 45 of Insolvency and Bankruptcy Board of India Regulations regarding the liquidation process and liquidation of assets of Corporate Debtor.**

9. It is submitted that assets of the Corporate Debtor have **been liquidated and there is being no further assets to be utilized for recovery of the dues** of the creditors/stakeholders and the **assets sale monitoring Committee has confirmed** that the Liquidator may **proceed for dissolution of the Corporate Debtor. Accordingly, the said application has been preferred** for appropriate directions under Section 54 of the code. It is pointed out that the balance in Liquidation Bank Account with State Bank of India as on 20.04.2019 is Rs.2,07,197/- and Rs.18,00,000/- is lying in Fixed Term Deposit Account no.0038395753054 with the said Bank.
10. The Petitioner/Liquidator, in his **Preliminary Report** dated **22.02.2018** has already stated that the operation of the Corporate Debtor **has been closed since the year 2010 and company is not a going concern and the liquidator** has not yet come across any information which requires further inquiry. Further, following observations were recorded –

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10.1 Issued, subscribed and paid up share capital of the Corporate Debtor was Rs.160000000/- . Reserve and surplus was minus Rs.1264871869/- and Debt Capital (Secured) was Rs.1720685573/-.

10.2 Estimated Assets and liabilities on bases of books of accounts of Corporate Debtor, as on date of liquidation commencement date (12.12.2017) reflects as under:-

Liabilities	Book Value	Estimated Value	Assets	Book Value	Estimated Value
Share Capital	160000000	160000000	Fixed Assets and Stock	904251311	356500000
Reserve & Surplus	-1264871869	-1264871869	Loans & Advance	100753890	0
Secured Loan	1720685573	1720685573	Sundry Debtors	3904018	0
Statutory Liabilities	7172932	7172932	Bank Accounts	3499200	2310000
Provision	835433	835433			
Sundry Creditors	305290750	305290750			
Deferred Tax Liability	83295602	83295602			
Total	1012408421	1012408421		1012408419	358810000

10.3 It is further stated in the report that the estimated time of sale of liquidation estate will be two months through e-auction process and the estimated liquidation cost was Rs.20.00 Lakhs.

11. As per the bank book maintained by the liquidator and Bank statement account period commencing from the date of liquidation upto 20.04.2019 shows that balance in Liquidation Bank Account with State Bank of India as on 20.04.2019 is Rs.2,07,197/-. Further, the bank statements also furnish details/particulars of payment made towards liquidation fees, legal charges, various cost

incurred during the liquidation process, payment to various creditors and Income Tax liabilities of the company.

12. The Final Report dated **20.04.2019** (page 217 to 219 of the paper book) has been annexed as Annexure ZB on the liquidation accounts of the company, shows receipts and payments pertaining to liquidation since **liquidation commencement date** i.e. **12.12.2017** till **20.04.2019**. It is further recorded in the auditor's Final Report that:

12.1 It is stated that **old bank** accounts of the Corporate Debtor maintained were closed and new account in the name of 'New-tech forge and Foundry Ltd in liquidation' **was opened on 05.01.2018** at SBI Commercial Branch, Ahmedabad and all the balances of old bank account were transferred into the new account.

12.2 It is stated that the factory premises of the Corporate Debtor including land building plant & machinery has been sold through e-auction process held on **08.03.2018** and **sale deed/sale certificate was executed on 28.03.2018** to handover the possession of the said properties to buyer. It is stated that the Corporate Debtor had closed business operation since last several years and other assets have no realisable value.

12.3 The accounts of the liquidation of Corporate Debtor, showing receipts and payments for the period from date of commencement of liquidation to **20.04.2019** is duly audited by **HSVJ & Co.**, (Chartered Accountant).

12.4 It is submitted that the Corporate Debtors has filed the annual accounts/annual return to Registrar of Companies upto the year 2013-14 and filed the income tax return for the financial year 2015-16. It is further submitted that the liquidator has filed the income tax return and TDS return with PAN and TIN of the Corporate Debtor for the **financial year 2017-18 offering no capital gain tax liability on transfer of assets during liquidation process after taking opinion from tax expert.** Further, GST(Goods and Service Tax) registration for Corporate Debtor **was issued on 26/09/2018** thereafter the **GST on sale of assets was paid and GST returns** were filed by the liquidator.

13. Thus the final report states that, **now the liquidation process has been conducted, and is complete and the assets of the company were disposed of from 12.12.2017 to 20.04.2019.** All the assets of the Corporate Debtor have been liquidated and there are no

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further assets to be utilized for recovery of dues of the creditors/stakeholders.

14. The Liquidator has also submitted a bank statement issued by **State Bank of India, Commercial Branch, Ahmedabad** showing the account holder's name as **Newtech Forge and Foundry Ltd in Liquidation**. Further, the Applicant has also provided the copy of Bank Book, wherein the closing balance is shown as Rs.207197.24Ps (page 75 7 76 i.e. Annexure J of the paper book).
15. Thus, the Applicant/Liquidator now submits that he has completed all the statutory procedures as envisaged by the IBC to be completed for the process of **Liquidation** and thereafter filed the present petition seeking for **Dissolution** of the company.
16. **Appeal bearing no.591080** preferred by the Corporate Debtor before CIT, Rajkot against the assessment order for AY 2009-2010 under Section 143(3) read with 147 of Income Tax Act. **Claim was submitted by the Income Tax Deptt. against the Corporate Debtor for assessment year 2009-10.**

17. **Appeal bearing no.334911** preferred by the Corporate Debtor before CIT, Rajkot against the assessment order for AY 2012-2013 under Section 143(3) read with 147 of Income Tax Act. **Claim submitted by the Income Tax Dept. to the Liquidator for the assessment year 2012-13.**
18. **Appeal no.2 of 2019 in CP(IB) 21 of 2017** before this Adjudicating Authority filed by **State Tax Officer V/s. Premraj Ramratan Laddha & Ors.** The said application is filed by the State Tax Officer(3), Applicant herein **seeking condonation of delay of 220 days in preferring the appeal** under Section 42 of IBC Code challenging the order dtd:26.06.2018 passed by the Liquidator under Section 40 whereby, the claim of the appellant has been **accepted but, announcing the received amount of claim as Nil.**
19. **Appeal no.3 of 2019 in CP(IB) 21 of 2017** before this Adjudicating Authority filed by State Tax Officer V/s. Premraj Ramratan Laddha & Ors. The said appeal is filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 by the State Tax Officer(3), **Applicant herein to oppose the distribution from sale of liquidation by Respondent no.1 – Liquidator for M/s.New Tech Forge and Foundry Ltd., praying to set aside the order of the**

**Respondent no.1 dated 26.06.2018** and to consider the unpaid dues of the Applicant as secured dues towards Government outstanding. It is submitted that the appeal is preferred against the reply of Respondent no.1 dated 26.06.2018, wherein it is informed that the **State Tax Officer(3), Applicant herein will be received nil amount in liquidation process.**

20. **IA 106 of 2019 in CP(IB) 21 of 2017** before this Adjudicating Authority filed by State Tax Officer V/s. Premraj Ramratan Laddha & Ors. The said application is filed by the State Tax Officer(3), Applicant herein praying **to set aside the order dtd:26.06.2018** and to consider the unpaid dues of the Applicant as secured dues of towards the Government.

21. **IA 107 of 2019 in CP(IB) 21 of 2017** before this Adjudicating Authority filed by State Tax Officer V/s. Premraj Ramratan Laddha & Ors. The said application is filed by the State Tax Officer(3), **Applicant herein praying to condone the delay of 220 days in preferring the appeal,** against which the Respondent no.1 has filed its reply on 26.03.2019.





**ORDER**

22. In this context, it is required to refer to the Section 53 of the Insolvency and Bankruptcy Code, 2016 on distribution of assets on liquidation which read as under-

*“Distribution of assets : Section 53. (1) **Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:— (a) the insolvency resolution process costs and the liquidation costs paid in full; (b) the following debts which shall rank equally between and among the following :— (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52; (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date; (d) financial debts owed to unsecured creditors; (e) the following dues shall rank equally between and among the following:— (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date; (ii) debts owed to***

*R*

*[Signature]*

***a secured creditor for any amount unpaid following the enforcement of security interest; .....***”

Further, the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.*, Civil Appeal No. 8766-67 of 2019 held a view with regard to the **priorities of claims and the position of the Secured Financial Creditors, Operational Creditors etc., in distribution of assets of the Corporate Debtor.**

The dues of the Government are **not considered as a secured debt under Section 3(31) of the Code, do not get precedence over secured creditors under Section 53 and do not fall in Clause(b) of Section 53, but fall under Clause(e) of Section 53.**

Hence, **it is clear that amount dues to the Central Govt. and State Govt. shall be paid after the dues of the financial secured creditors are paid.** In this case, the admitted dues of the **secured creditor were Rs.139.60 Crores, whereas the liquidation proceeds of Rs.35.60 crores could only satisfy 25.5% of the secured financial creditor's admitted dues.** Hence, there is no **assets available for payment of dues of the Income Tax Deptt., Govt. of India and State Tax Deptt., Govt. of Gujarat.**

23. Hence, the **claims of the Income Tax Dept for the assessment for the year 2009-2010 and 2012-13 are not paid as there is no liquidation assets left over for payment to the Income Tax Deptt. Matter is accordingly, hereby disposed of.**
24. **Appeal No.2 of 2019 & 3 of 2019 of State Tax Deptt., Govt. of Gujarat are allowed only to the extent of condonation of the delay, but no payment is made to the State Tax Dept., as there is no liquidation assets left over to satisfy the claim of State Tax Dept. Hence the Appeal No.2 of 2019 & 3 of 2019 and I.A. No. 106 of 2019 & 107 of 2019 are hereby disposed of as mentioned above.**
25. IA 128 of 2018 in CP(IB) 21 of 2017 – The said Interlocutory Application has been filed by Mr.Rasikbhai G. Patel and 5 Ors being Personal Guarantors of Corporate Debtor against the Liquidator, submitting that since the Corporate Debtor is passing through liquidation, the personal guarantors are also unable to discharge any obligation qua the loans given by the Financial Creditors to the Corporate Debtor and as such the Applicants are willing to proceed further for initiation for their own insolvency, so as to get discharge by due process of law and to have a fresh start. The Respondent no.2, State

Bank of India filed affidavit in reply to the said application and submitted that the personal guarantor of Corporate Debtor cannot invoke Section 94 of the Code and is not eligible to make the present application.

26. Further, it is submitted that IA No.128 of 2018 filed by Rasikbhai G. Patel & Ors., under Section 60 of the Code is pending before this Adjudicating Authority for adjudication, wherein the liquidator has filed its reply stating that the said application is not maintainable. **However, on 04.12.2019, the Learned Lawyer for the Applicant, in I.A. No. 128 of 2018, had filed one Withdrawal purshish, seeking withdrawal of his application and sought liberty to file fresh application before this Adjudicating Authority.** The said purshish was accepted by this Adjudicating Authority and the I.A. No. 128 of 2018 **is dismissed as withdrawn.**
27. The prayer of the State Tax Officer to direct the liquidator to compensate the payment of dues towards State Tax **Officer is not allowed as there is no assets available to fully satisfy the secured financial creditor's admitted claim amount.**
28. **M/s.Haq Steel & Metallik Private Ltd.,** erstwhile M/s.Haq Enterprises Pvt. Ltd., bought the property being

Land(factory premises) through e-auction as the highest bidder and paid Rs.35.70 Crores. The State Bank of India, being the lead bank of the secured lenders was in possession of the assets of the Corporate Debtor pursuant to the various proceedings initiated under the SARFAESI Act and all the lenders relinquished their security interest in the assets of the Corporate Debtor under Section 52 of the Code. The said e-auction was being monitored by the Financial Creditor, SBI and Corporation Bank on behalf of all stakeholders. The proceeds have been distributed as per Section 53 of Insolvency and Bankruptcy Code, 2016 and the liquidator has already executed sale deed of the property in favour of the buyer, M/s.Haq Steel & Metallik Private Ltd.

Hence, the prayer made by the buyer in I.A. No. 143 of 2019 is admitted to the extent that the concerned Dept. of the State Government is directed to remove the attachment/charge on the properties of the Corporate Debtor already sold on 26.03.2018 under e-auction by the liquidator from the Register maintained by the Mamlatdar, Revenue Deptt., Govt. of Gujarat. The peaceful possession of the said property be handed over to the buyer, M/s.Haq Steel & Metallik Private Ltd.



29. Appeals bearing no.591080 & 334911 have been preferred by the **Corporate Debtor** earlier before CIT, Rajkot against the assessment order for AY 2009-2010 under Section 143(3) read with 147 of Income Tax Act and the assessment order for AY 2012-2013 under Section 143(3) read with 147 of Income Tax Act respectively. **Since, the Corporate Debtor is now being dissolved, the Appeals bearing no.591080 & 334911 filed by the Corporate Debtor** against the orders of the assessing officer under Section 143 read with Section 147 of the Income Tax Act, 1961 for the assessment year 2009-10 and 2012-13 **now stand withdrawn/become infructuous.**

30. In view of the facts given above and circumstances of the present case, **we examined the relevant provisions of Section 54 of the I.B. Code, 2016** which reads as under:

*“Section 54. Dissolution of corporate debtor.*

*(1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.*

*(2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.*

✓



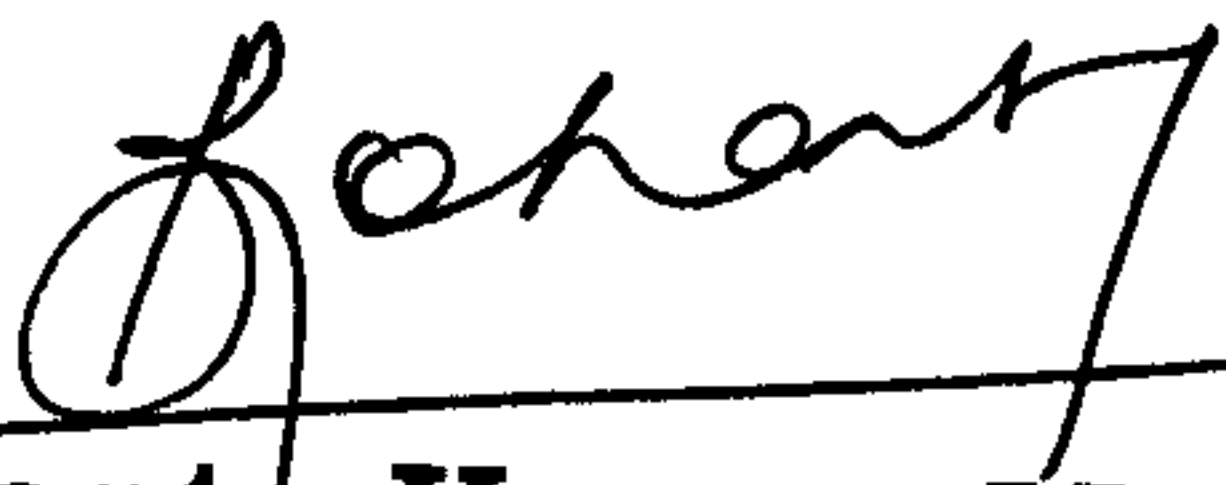
*(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.”*


31. Having heard the submissions of Learned Lawyers for the Liquidator, Respondents, IAs and gone through **the documents annexed with the present petition, we find that the petitioner Liquidator has duly complied with the prescribed procedure seeking for liquidation and dissolution of the petitioner company.** It is also found that affairs of the company are completely **closed down** and the **assets of the company have been completely liquidated.**
32. Therefore, the Petitioner Company **deserves to be dissolved.** Accordingly, this Adjudicating Authority hereby order that **the company shall stand dissolved** with effect from the date of this order i.e. **18.12.2019.**
33. If any amount has been received as interest or other receipt/refund, subsequent to 21.04.2019, the said amount is to be distributed as per Section 53 of IBC, 2016.
34. The liquidator is directed to **prepare a report** in the form of an affidavit, giving details of the cost incurred in the entire Liquidation process including fees of auditors,

advocates and **liquidator** from 12.12.2017 till 17.12.2019.  
**The said report is to be filed with the Registry within 7 days of this order and the Liquidator Shri Premraj Ramratan Laddha will be discharged automatically from his duty as Liquidator of the Corporate Debtor on filing the report with the Registry.**

35. The **Applicant/Liquidator** is further directed to serve an authentic copy of this order to the concerned Registrar of Companies, within fourteen (14) days from the date of receipt of this order. **The Registrar of Company, Gujarat is directed to take necessary action in respect of dissolved company as per law upon receipt of a copy of this order.**

36. Accordingly, the present I.A. No. 374 of 2019 **is admitted on 18.12.2019** and stands disposed of with the above observations and directions.

  
(Prasanta Kumar Mohanty)  
Adjudicating Authority &  
Member(T)

  
(Harihar Prakash Chaturvedi)  
Adjudicating Authority &  
Member(J)