

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
09-10-2026 After Court-II**

**IA (IBC) 119/2026 in
CP(IB) No. 91/9/HDB/2018
U/s 9 of IBC**

IN THE MATTER OF:

M/s. VK Global

...Petitioner/s

Vs.

M/s. Smaat India Pvt Ltd

...Respondent/s

C O R A M:

**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA (IBC) 119/2026

Orders pronounced, recorded vide separate sheets.

In the result, IA (IBC) 119/2026 is dismissed.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

Appearance:

For Applicant: Mr. Manjeet Bucha, PCS and Mr Aditya Bucha, Advocate
For R-1 Mr. Shaik Gouse, Advocate
For R-2 Ms. Bokaro Sapna Reddy, Advocate for IT
Department/Respondent

ORDER

1. This Application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following directions: -
 - (a) Direction to the erstwhile Liquidator (Respondent No.1) to forthwith hand over and/or furnish all necessary documents, records, financial statements, Auditor's Reports and Valuation Reports pertaining to the claimed losses for the relevant assessment years to the Applicant and/or the Income Tax Authority for verification of the claim relating to carry forward losses and unabsorbed depreciation.
 - (b) Declaration that the benefit of carry forward losses and unabsorbed depreciation of M/s Smaat India Private Limited constitutes an asset acquired by the Applicant as part of the Going Concern Sale and that the Applicant is legally entitled to such benefit.

- (c) Direction for exclusion/tolling of time while computing the 8-year period for carry forward and set-off of business losses under Section 79 of the Income-tax Act, 1961, namely from 25.02.2020 (approval of the Going Concern Sale) until the actual handover of financial records and documents by Respondent No.1, so that the Applicant is not prejudiced by the delay of the Liquidator.
- (d) Direction to Respondent No.2 (Income Tax Department) to set aside the rejection order passed under Section 119(2) of the Income-tax Act and re-adjudicate the Applicant's claim for carry forward losses and unabsorbed depreciation on merits, after giving effect to the exclusion/tolling of time sought by the Applicant.
- (e) Such further orders as this Hon'ble Tribunal may deem fit and proper to protect the interests of the Applicant and shareholders.

Case of the Applicant

2. That the CIRP of M/s Smaat India Private Limited commenced on 03.08.2018 and, upon failure of resolution, liquidation was ordered on 06.06.2019. Thereafter, the Corporate Debtor was sold as a Going Concern through e-auction and the Applicant herein was declared as the Successful Bidder. The sale was approved by this Tribunal vide order dated 25.02.2020 in IA No.155 of 2020.

3. While allowing closure of liquidation proceedings vide order dated 13.08.2020, this Tribunal directed the Liquidator to hand over all books of accounts, records, files and documents of the Corporate Debtor to the Successful Purchaser.
4. It is the specific case of the Applicant that pursuant to the approval of the Going Concern Sale, it sought to avail the benefit of Section 79 of the Income Tax Act, 1961. For the purpose of verification of such claim, the Income Tax Authorities sought production of various records including financial statements, audit reports, valuation reports and other supporting documents pertaining to the relevant assessment year vide communications dated 10.02.2023 and 29.02.2024. According to the Applicant, despite repeated requests made to the erstwhile Liquidator, the said records were not made available, thereby preventing the Applicant from effectively pursuing its claim before the tax authorities.
5. The Applicant further states that the Principal Commissioner of Income Tax had also addressed communications to the Liquidator/Respondent No.1, seeking the relevant records and documents for verification of the Applicant's claim. However, the erstwhile Liquidator's vide communication dated 29.03.2024 replied that upon closure of liquidation proceedings, he was not obliged to furnish such records unless specifically directed by this Tribunal. Further vide email dated 14.01.2024, the Applicant was informed by the erstwhile Liquidator/Respondent No.1 that he has

to approach the Secured Financial Creditors, namely, Union Bank of India and NABARD for any documentary assistance.

6. The grievance of the Applicant is that despite the order passed by this Tribunal in IA 562/2020 dated 13.08.2020, the records required for substantiating its claim before the Income Tax Authorities were not furnished by Respondent No.1 by the Liquidator. Consequently, Respondent No.2 rejected the Applicant's request under Section 119(2) of the Income Tax Act, 1961 vide order dated 23.04.2024 on the ground that requisite documents were not available for verification.
7. The Applicant contends that the inability to produce documents before Respondent No.2 was solely due to the failure of Respondent No.1 to hand over the records despite repeated requests and despite communications addressed by the Income Tax Department. It is submitted that denial of the tax benefit has materially affected the value and viability of the Going Concern sale approved by this Tribunal.
8. According to the Applicant, the benefit of carry forward of business losses and unabsorbed depreciation formed part of the overall value of the Corporate Debtor which has been purchased by him as a Going Concern. Further, at the time of bid consideration, the Applicant had taken into consideration all assets, rights and benefits available to the Corporate Debtor under law. It is contended that denial of an

opportunity to avail such benefits, due to non-availability of records, adversely affected the value of the Going Concern Sale approved by this Tribunal and caused prejudice to the Applicant.

9. In support of the above submission, reliance has been placed on the decision of this Adjudicating Authority in *Madala Srinivasu v. Sri Rajesh Chillale, Liquidator of Ind-Barath Power Gencom Limited*, in CP(IB) No. 187/7/HDB/2019 dated 26.05.2023. In the said case, the Tribunal observed that, for ensuring the financial viability and successful revival of the Corporate Debtor, the reconstituted company should be allowed to carry forward and set off the accumulated business losses and unabsorbed depreciation. The Tribunal also observed that non-compliances or delays in filing relating to the period prior to acquisition should not deprive the Successful Bidder of such benefits. The Applicant submits that it has also acquired the Corporate Debtor through a similar e-auction process and, therefore, the same benefit and protection should be extended to it. According to the Applicant, denial of such benefit would adversely affect the revival and value maximisation of the Corporate Debtor.
10. The Applicant highlights that the rejection order dated 23.04.2024 passed by the Income Tax Authority was primarily on account of non-production of documents required for verification of the claim and not on the adjudication of the merits of the claim itself.

11. According to the Applicant, the Liquidator, being an officer of this Tribunal, is expected to ensure due compliance with the directions issued by this Adjudicating Authority. If any records pertaining to the Corporate Debtor continue to remain in his possession, custody or control, the same are required to be made available to the Successful Purchaser for legitimate statutory and regulatory compliances.
12. The Applicant has also relied on the judgment of the Hon'ble Gujarat High Court in *Sysco Industries Ltd. v. Chairman, Central Board of Direct Taxes*. In that case, the Court observed that the powers under Section 119(2)(b) of the Income-tax Act are meant to provide relief in cases of genuine hardship and that genuine claims arising during CIRP and failure of the insolvency professionals, should not be rejected merely on technical grounds without considering their merits. The Applicant submits that the present case is a stronger case, as the non-availability of the records is stated to be due to the failure of the erstwhile Liquidator to hand over the documents despite the directions of this Tribunal. Therefore, the Applicant contends that the principles laid down in the said judgment are applicable to the facts of the present case.
13. Thus, the Applicant approached this Adjudicating Authority seeking appropriate directions to the Liquidator for removal of impediments arising due to non-availability of records essential for statutory compliance.

Case of Respondent No.1/Erstwhile Liquidator

14. Respondent No.1 opposed the Application contending that the present Application is misconceived and not maintainable against Respondent No.1. According to him, the same has been filed after an inordinate and unexplained delay, without any contemporaneous grievance regarding non-furnishing of records, and after the Applicant's claims before the Income Tax Authorities were not accepted.
15. It is submitted that the Corporate Debtor was sold as a going concern and the Applicant emerged as the Successful Bidder. The Applicant, being the erstwhile promoter and suspended director, was aware of the affairs and records of the Corporate Debtor and that the rejection of its claims by the Income Tax Authorities cannot be attributed to Respondent No.1.
16. It is stated that, upon completion of the liquidation process, Respondent No.1 stood discharged by this Tribunal and all records available in his possession and control were handed over to the Successful Bidder/Applicant. It was further contended that the prayer for financial statements, audit reports, valuation reports and other records is not clear, as the Applicant has not specified which particular documents were not provided. It is further submitted that the Liquidator is required to maintain records relating to the liquidation process and is not responsible for preparing or certifying old financial records or providing documents for tax claims after completion of the liquidation. The Liquidator further contended that the documents such as valuation reports prepared during

the CIRP are process-confidential and are not intended for general dissemination.

17. Further, according to Respondent No.1, the main reliefs relate to tax proceedings before the Income Tax Authorities and that no separate cause of action is made out against him. The case of the erstwhile Liquidator/Respondent No.1 is that, in the absence of any specific document shown to have been withheld by him, no enforceable direction can be issued against him. Hence, dismissal of the Application qua Respondent No.1 is prayed for.

Case of Respondent No.2/Income Tax Department

18. The Respondent primarily contends that this Tribunal lacks jurisdiction to adjudicate issues governed exclusively by the Income-tax Act, 1961 and that the questions relating to carry forward of losses under Section 79, condonation of delay under Section 119(2), and revision under Section 264 fall within the jurisdiction of the Income Tax Authorities. The Applicant, therefore, cannot seek directions from the Tribunal to grant any statutory benefit contrary to the provisions of the Income-tax Act.
19. It is further contended that the application is premature, as the order dated 23.04.2024 specifically granted liberty to the Applicant to avail the remedy of revision under Section 264 of the Income-tax Act. The Applicant has not exhausted the said statutory remedy.

20. The Respondent further submits that the rejection of the condonation application was due to the Applicant's failure to furnish the required documents, despite opportunities and communications dated 10.02.2023 and 29.02.2024. In the absence of financial statements, audit reports and valuation records, the claim could not be verified and thus relief was not granted under Section 119(2).
21. The Respondent also contends that acquisition of a Corporate Debtor as a going concern through liquidation does not, by itself, confer any vested right to carry forward its past losses. It is contended that carry forward of losses is governed strictly by Section 79 of the Income-tax Act and cannot be claimed as an automatic consequence of the insolvency or liquidation process. According to Respondent No.2, it is a statutory concession subject to fulfilment of conditions under Section 79.
22. The Respondent No.2 contends that the Applicant's reliance on *Madala Srinivasu v. Rajesh Chillale* is misplaced, as the facts and circumstances of the said case are distinguishable from the present matter. The eligibility to carry forward and set off business losses under Section 79 of the Income-tax Act, 1961, is subject to the statutory conditions and has to be examined on the facts of each case.

23. Respondent No.2 further contended that judicial orders cannot override the statutory provisions of the Income-tax Act and tax benefits cannot be granted without verification. In the present case, the Applicant failed to furnish the necessary documents to establish compliance with the conditions under Section 79. Hence, the reliance placed on the aforesaid decision is misplaced. Thus, Respondent No.2 prayed for dismissal of the present Application.

FINDINGS

24. We have heard Mr. Manjeet Bucha, PCS for the Applicant, Ms. Gayathri Haripriya, Ld. Counsel for Respondent No.1/Erstwhile Liquidator and Ms. Rakshitha, Ld. Counsel for IT Department/Respondent No.2 and perused the material available on record.
25. It is not in dispute that the Corporate Debtor was admitted into CIRP on 03.08.2018 and, upon failure of the resolution process, was ordered to be liquidated on 06.06.2019. Thereafter, the Corporate Debtor was sold as a Going Concern through e-auction and the Applicant was declared as the Successful Bidder. The sale was approved by this Tribunal vide order dated 25.02.2020 in IA No.155 of 2020. Subsequently, vide order dated 13.08.2020 in IA No.562/2020, this Tribunal permitted closure of the liquidation proceedings and directed the Liquidator to hand over the books of

accounts, records, files and documents of the Corporate Debtor to the Successful Purchaser.

26. The grievance of the Applicant is that certain records required for pursuing his claim before the Income Tax Authorities were not made available to him by the Liquidator, despite direction dated 13.08.2020 in IA No. 155/2020. For want of such records, the application under Section 119(2) of the Income-tax Act, 1961 came to be rejected by Respondent No.2 vide order dated 23.04.2024.
27. The Applicant seeks to claim the set-off of brought-forward losses under Section 79 of the Income Tax Act, 1961, on the basis of documents sought from the Liquidator. However, the relevant period for this purpose is the period during which the Corporate Debtor was under the control of its erstwhile management, of which the Applicant himself was a part as a promoter-director. Therefore, the documents are supposed to be in his knowledge or possession.
28. Even otherwise, this Tribunal cannot direct Respondent No.2 to grant the benefit claimed by the Applicant or to modify or set aside the order dated 23.04.2024. The decisions relied upon by the Applicant in *Madala Srinivasu v. Sri Rajesh Chillale, Liquidator of Ind-Barath Power Gencom Limited* (IA No. 252 of 2023 in CP(IB) NO. 187/7/HDB/2019 dated 26.05.2023 of this Bench) and Hon'ble Gujarat High Court judgement in *Sysco Industries Ltd. v. Chairman, Central Board of Direct Taxes* (2025) 179 Taxmann.com 611 (Gujarat)

do not confer such jurisdiction on this Tribunal. The Applicant's entitlement under the Income-tax Act has to be considered by the competent Income-tax Authority.

29. Further, the Applicant has also filed the present application after a significant and unexplained delay of nearly two years from the date of the order passed by the Income Tax Department on 23.04.2024. The Applicant has failed to place any record to show that, within a reasonable period after the dissolution order dated 13.08.2020, he had requested these documents from Respondent No. 1 or raised any grievance regarding their alleged non-availability. The correspondence relied upon by the Applicant pertains to the proceedings before the Income Tax Authorities and was initiated long after the closure of the liquidation proceedings. Respondent No. 1 has categorically denied withholding any of the documents sought by the Applicant. Moreover, upon the passing of the dissolution order dated 13.08.2020, the Liquidator became *functus officio*, and the Corporate Debtor ceased to remain under his control or management.
30. In view of the above, we find that the Applicant has neither established any default on the part of Respondent No.1 in complying with the order dated 13.08.2020 nor made out any ground for issuance of the directions sought against the Respondents. The prayers seeking declaration of entitlement to carry forward losses and unabsorbed depreciation, exclusion/tolling of the statutory

period, and setting aside or reconsideration of the order dated 23.04.2024 are beyond the jurisdiction of this Adjudicating Authority in the present proceedings. However, the order dated 23.04.2024 provides for the statutory remedy available to the Applicant under the Income-tax Act. Therefore, the Applicant is at liberty to avail such remedy in accordance with law.

31. Accordingly, the prayers made in the present Application cannot be granted. The Application is, therefore, dismissed. No order as to costs.

This IA is accordingly disposed of. No order as to costs.

SD/-

(Sanjay Puri)
Member (Technical)

SD/-

(Rajeev Bhardwaj)
Member (Judicial)

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