

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

IA/742/2023

In

C.P.(IB)/935(MB)/C-III-2020

(Under Section 19(1) and 19(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

Bhrugesh Amin

RP for Smaaash Entertainment Private Limited

Having office at: BDO India LLP, Level 9, the Ruby, North West Wing, Senapati Bapat Road, Dadar (W), Mumbai, Maharashtra- 400028.

... Applicant

Vs.

1. Shripal Sevantilal Morakhia

Having office at: 403, Udyog Mandir No. 2, Mogul Lane, Mahim (West), Mumbai, Maharashtra- 400016.

2. Kalpana Shripal Morakhia

Having office at: 403, Udyog Mandir No. 2, Mogul Lane, Mahim (West), Mumbai, Maharashtra- 400016.

3. Amit Ram Krishnan

Having office at: 403, Udyog Mandir No. 2, Mogul Lane, Mahim (West), Mumbai, Maharashtra- 400016.

4. Mayur Shah

Having office at: 403, Udyog Mandir No. 2, Mogul Lane, Mahim (West), Mumbai, Maharashtra- 400016.

5. Anand Subramaniam Krishnan

Having office at: 403, Udyog Mandir No. 2,
Mogul Lane, Mahim (West), Mumbai,
Maharashtra- 400016.

6. Vishakha Deep Sangoi

Having office at: 403, Udyog Mandir No. 2,
Mogul Lane, Mahim (West), Mumbai,
Maharashtra- 400016.

7. M/s. L.J. Kothari

3rd Floor, Gandhi Mansion, New Silk Bazar,
Opp. Kalbadevi Head P.O., Mumbai- 400002.

... Respondents

In the matter of

Edelweiss Asset Reconstruction Company

... Financial Creditor

Vs.

Smaaash Entertainment Private Limited

... Corporate Debtor

Order Pronounced on: 04.11.2025

Coram:

Sh. Hariharan Neelakanta Iyer
Member (*Technical*)

Ms. Lakshmi Gurung
Member (*Judicial*)

Appearances:

For Applicant/RP	:	Adv. Shyam Kapadia a/w Adv. Kunal Kaul, Adv. Virgil Braganza i/b JSA
For Respondents 1 & 2	:	Adv. Akshata Shah i/b Sujit Lahoti & Associates
For Respondent 4	:	Appeared but did not mark appearance

Per: Ms. Lakshmi Gurung, Member (*Judicial*)

1. The instant interlocutory application was filed by Mr. Bhrugesh Amin, Resolution Professional (**RP**) of Smaaash Entertainment Private Limited (**Corporate Debtor**) under Sections 19(1) and 19(2) of the Insolvency & Bankruptcy Code, 2016 (**IBC**) against suspended directors and others seeking direction to the Respondents to extend all assistance and co-operation from them. The prayers sought in the application are extracted below:
 - a. *Direct the Respondents to extend all assistance and cooperation to the Applicant as may be required by him in managing the affairs of the Corporate Debtor;*
 - b. *Direct the Respondents to comply with the instructions of the Applicant during CIRP;*
 - c. *Direct that the Respondents shall be responsible and liable for consequences (monetary or otherwise) of non-compliance of applicable law during CIRP arising out of reasons solely attributable to them;*
 - d. *Direct the Respondents provide all pending information/ documentation/ records/ correspondence prescribed in Annexure – “15” and any further information within specific timelines as may be required by the Applicant for conduct of CIRP;*
 - e. *Pass such other further order or orders as this Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.*
2. Respondents 1, 2, 3 and 5 are the ex-directors of the Corporate Debtor/CD. Respondent 4 was the erstwhile Deputy General Manager – Finance & Accounts of the CD, Respondent 6 was the erstwhile Legal Manager of the CD and Respondent 7 was the erstwhile Statutory Auditor of the CD.
3. Considering the affidavits-in-reply filed by the Respondents, wherein certain admissions of the Respondents emerged that they have not maintained the statutory records as required under the law, this Tribunal, vide order dated 31.07.2024, had issued notice to Respondents

No. 1, 2 and 4 under section 213(b) of the Companies Act, 2013 to ascertain the circumstances suggesting that the business of the company was being conducted with intent to defraud creditors and all information was not being given with respect to the affairs of the company. The relevant observations of this Tribunal are reproduced below:

“25. From the response of the Respondents, it can be seen that the Respondents have not provided the Minutes of the Board meetings and the register of contracts (required to be maintained under Companies Act, 2013) for the period from 01.04.2019 to 06.05.2022. Similarly, the Respondents have responded that the transfer pricing reports, Internal audit Report for the period from 01.04.2020 to 31.03.2022 and Tax Audit Report for FY 2019-20 to 2021-22 have not been prepared and do not exist.

26. From their own admission by Respondents 1 and 2, it is clear that either they have committed offences under various provisions of the Companies Act, 2013 as well as Income Tax Act, 1961 or are concealing the material records of the Corporate Debtor.

27. As far as Respondent No 4 is concerned, we observe that number of emails were addressed to him. Being DGM, Finance and Accounts, he was holding an important position in the Corporate Debtor since 2018 till he resigned on 09.03.2023. Being the officer of the Corporate Debtor, under section 70 of IBC, he is required to disclose to the RP all information as the resolution professional may require failing which he is liable for consequence.

28. As far as Respondent no. 3 and 5 are concerned, we accept their submission that since they were nominee directors, they were not involved in the day-to-day functioning and management of the Corporate Debtor. That is why the applicant has not addressed any communication to them for any information/documentation.

29. As far as Respondent no. 6 is concerned, we accept her submission that she had joined the Corporate Debtor as Management Trainee and later appointed as Manager Legal and had resigned on 10.03.2023, therefore does not have access to any of the documents/data sought by the Applicant.

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31. Under the above circumstances and holistic view of the matter, we are of prima-facia, view that the Respondents are concealing important information pertaining to Corporate Debtor.

32. Now we refer to section 213 of the Companies Act, 2013 which is reproduced below for ease of reference:

“213. Investigation into company's affairs in other cases

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33. Sub section (2) of 213 states, on an application made to it by any person **or otherwise**, if it is satisfied that there are such circumstances where the affairs of the company ought to be investigated then the Tribunal can order investigation, after giving a reasonable opportunity of being heard to the parties concerned. Therefore, we are of considered view that even if there is no prayer for investigation, this Tribunal is not powerless to order investigation if it is satisfied that circumstances so suggest. The only requirement is to give a reasonable opportunity of being heard to the parties concerned. Considering the conspectus of the present case, **we issue notice to Respondent no.1, 2 and 4 under Section 213(b) of the Companies Act, 2013.**

34. Respondent No. 1, 2 and 4 to file reply within three weeks from today, failing which it would be presumed that they have nothing to say in the matter and matter would proceed further.

35. List this matter on 06.09.2024.”

4. In response to the above Show Cause Notice, the Respondents No. 1 and 2 have filed common reply and Respondent 4 has filed a separate reply.

Submissions of the Parties

5. Submissions of Respondents 1 & 2

The joint reply filed on behalf of R1 and R2 contains, *inter alia*, the following submissions:

- i. A chart containing 36 items seeking information was tendered by the RP for which the Respondents have given point-wise response.

Basis this, the RP had invited expressions of interest, resolution plans were received and resolution plan has already been approved by this Tribunal.

- ii. The Respondents No. 1 and 2 have already submitted all available documents to the RP but certain information is not in the possession of the Respondents.
- iii. Due to the COVID-19 pandemic, the company faced challenges in providing the details asked by the RP. The pandemic has caused financial and operational strain, leading to the critical layoff of our Company Secretary (CS) due to inability to sustain employment costs. The company was unable to appoint a new CS during this period due to severe financial constraints. Thereafter, the company was admitted to CIRP.
- iv. During the CIRP period, the RP exercises control over the affairs of the Corporate Debtor, and has a fiduciary and statutory duty to ensure that the Corporate Debtor's affairs are operated and managed in a manner that ensures maximization of value for its Creditors. It appears that a CS has still not been appointed. Further, the RP made no efforts to independently obtain the relevant information about the Corporate Debtor despite a large part of the same being publicly available.
- v. A large part of the information has already been provided to the RP or is available through other sources (such as the concerned financial creditor to whom the same relates). It is submitted in IA/ 2430/2023, the RP sought information and documents and by way of additional affidavit dated 09.01.2024, the Respondents affirmed that they had provided all information and documents in their possession and have no further details to provide.
- vi. It is requested that the Tribunal shall take into consideration the hardships that the Respondents have endured and the inherent difficulties in fulfilling some of the information requests.

- vii. It is submitted that the order dated 31.07.2024 does not specify which of the provision under section 213(b) i.e. (i), (ii) or (iii) is allegedly applicable in the instant case to satisfy the requirement of natural justice. As per the well-established position of law penal provisions (such as Section 213 of the Companies Act) are to be construed strictly and literally. The cardinal principle of interpreting statutes, especially penal provisions, dictates that they must be read exactly as they are written. No additions or omissions are allowed in the interpretation of penal provisions. Therefore, in terms of the present case, while reading Section 213 of the Companies Act strict interpretation has to be used. Accordingly, on this basis, it is submitted that no circumstances exist for exercise of powers under Section 213 of the Companies Act, 2013.

6. **Submissions of Respondent 4**

- i. It is submitted that the Respondent 4 (R-4) was the Deputy General Manager – Accounts and Finance (DGM – A&F) and continued to act as such after the Corporate Debtor was admitted to CIRP. However, on 09.03.2023, the RP terminated the employment without giving any opportunity to be heard. Aggrieved by the conduct of the RP, the R-4 filed IA/3641/2023 but subsequently withdrew it on 05.01.2024. At present, R-4 is not employed with the Corporate Debtor and therefore, does not have access to any of the details/documents/ data sought by the RP.
- ii. It is submitted that the RP sent emails dated 22.08.2022 and 03.11.2022, both requesting documents under the subject “**SEPL| TA- Requirement list (Transactional Auditor Requirements)**” and the requested documents were provided vide emails dated 04.10.2022, 19.10.2022, 09.11.2022 and 12.11.2022. Further, the RP sent email dated 06.10.2022 with subject “**SEPL| OP – FDD queries (Financial Due Diligence Requirements)**” in response to which R-4 had personally ensured that all the relevant and available

documents were provided vide email dated 07.10.2022, 15.10.2022 and 19.10.2022. Thereafter, additional details were sought by the RP vide emails dated 27.01.2023 and 02.02.2023 which were respectively responded to by R-4 on 01.02.2023, 02.02.2023 and 06.02.2023.

- iii. It is submitted that since R-4 does not have access to the emails, they could not be produced as evidence, however, all the aforementioned emails are officially recorded and the RP has access to them.

7. Submissions of the RP

The RP has filed separate responses, to the submissions of Respondents 1 & 2 and to the submissions of Respondent 4. The submissions of the RP are briefly put as forth:

With regard to Respondents 1 & 2

- i. The submission of R-1 & R-2 as to difficulty due to Covid-19 pandemic and removal of CS is untenable since the order dated 31.07.2024 clearly records that information was not provided for the period from April 2019 onwards, which is much before the Covid-19 pandemic commenced in March, 2020.
- ii. Many of the documents sought, such as board minutes, financial statements, etc. would have been readily available in electronic form and could have been easily shared remotely, even for the lockdown period. Further, even after the initial Covid-19 wave subsided by late 2020, the Respondent Nos. 1 and 2 continued to withhold crucial information that was requested, despite the easing of restrictions.
- iii. Considering the past conduct of the Respondents, it appears that the intention for not sharing information is to siphon off crucial data and documents of the Corporate Debtor. This is evident from the selective sharing of some documents by the Respondents while withholding others without proper justification. Further, the Articles of Association of the Corporate Debtor contains several restrictions

on transfer/ alienation of assets. Any such transfer / alienation would have required prior board/ shareholders' approval and necessary filings with the RoC. By not placing these documents, the Respondent Nos. 1 and 2, denying the due diligence which ought to be done in the day-to-day affair of the Corporate Debtor.

- iv. One such instance relates to the assignment of the brand “SMAAASH” in favour of Fun Gateway Arena Private Limited which was declared as fraudulent by this Tribunal vide order dated 22.11.2023 in IA/2115/2022. However, it is submitted that no board resolution was provided despite repeated requests which demonstrates that no proper approval was obtained for the purported assignment.
- v. The Respondents are claiming that certain documents do not exist when such documents are statutorily required to be maintained by the Corporate Debtor under applicable laws.
- vi. Due to non-cooperation of the Respondents, the Transaction Auditor was unable to obtain necessary documents as a result of which several potential preferential and fraudulent transactions had to be classified in Transaction Review Report submitted on 23.01.2023 and thereafter on 20.02.2023 which has hampered the CIRP of the Corporate Debtor.
- vii. The contentions of Respondents 1 and 2 have been already considered and conclusively decided by this Court in its order dated 31.07.2024 and therefore, the doctrine of *res judicata* applies in this case and the Respondents cannot re-agitate or re-open the issues. The order dated 31.07.2024 has attained finality as the limitation period for preferring appeal under section 61 of the Code has expired, but no appeal has been filed by the Respondents.
- viii. As far as the contentions of Respondents regarding the section 213 notice is concerned, it is submitted that the Respondents are attempting to seek review of the order dated 31.07.2023 which is

impermissible in law as section 420 (2) of the Companies Act, 2013 which deals with powers of NCLT, does not confer any power of review upon the Tribunal.

With regard to Respondent 4

- ix. Respondent 4 was terminated on 09.03.2023 on account of misconduct, wilful non-cooperation and deliberate obstruction of the CIRP of the Corporate Debtor. Despite being the Deputy General Manager – Accounts and Finance, the Respondent 4 failed to supply majority of data related to subsidiaries thereby hampering the CIR process. Respondent 4 gave information which was vague, lacking in detail and not supported by proper documentation.

Discussions

8. We have heard the Ld. Counsel for the parties and have thoughtfully considered the material placed on record.
9. Section 213 of the Companies Act, 2013 is extracted below:

“213. Investigation into company's affairs in other cases

The Tribunal may, —

(a) on an application made by—

- (i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or*
- (ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or*

*(b) on an application made to it by any other person or **otherwise**, if it is satisfied that there are circumstances suggesting that—*

- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive*

to any of its members or that the company was formed for any fraudulent or unlawful purpose;

- (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or*
- (iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct*

Provided that if after investigation it is proved that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.”

10. This Bench noted that the words “... **or otherwise**” provided in clause (b) of Section 213 indicated that if the circumstances suggested that an investigation be conducted on the affairs of a company, then this Tribunal has the power to order for investigation after providing reasonable opportunity to the parties concerned. Accordingly, after taking into consideration the conduct of the Respondents No. 1, 2 and 4 in not providing statutory records, in particular the Minutes Books of the meetings of the Board of Directors and shareholders to the RP during the

insolvency resolution process of the Corporate Debtor, the Bench deemed it fit to issue notice under section 213(b) of the Companies Act, 2013 directing the Respondents 1, 2 and 4 to show cause as to why order for investigation of the affairs of the Corporate debtor should not be passed.

11. The Respondents 1, 2 and 4 have filed their respective replies. Perusal of the replies show that the Respondents have reiterated that they had extended cooperation to the RP and had handed over all the documents/information available with them. Non-supply of information/documents was either due to external circumstances like Covid-19 pandemic, absence of a company secretary and non-unavailability of the documents.
12. We have already noticed that the Respondents have not provided the Minutes of the Board meetings and the register of contracts (required to be maintained under Companies Act, 2013) for the period from 01.04.2019 to 06.05.2022. Similarly, the Respondents have responded that the transfer pricing reports, Internal audit Report for the period from 01.04.2020 to 31.03.2022 and Tax Audit Report for FY 2019-20 to 2021-22 have not been prepared and do not exist. The above submissions of Respondents indicate non-compliance of the provisions of Companies Act and other laws like Income Tax Act, etc.
13. **Section 118** of the Companies Act, 2013 provides:

118. Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot:

(1) Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within 30 days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.

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(11) If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

(12) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

14. Section 189 of Companies Act, 2013

189. Registry of contracts or arrangements in which directors are interested

(1) Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.

(2) Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (1) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.

(3) The register referred to in sub-section (1) shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and extracts may be taken therefrom, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fees as may be prescribed.

(4) The register to be kept under this section shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

(5) Nothing contained in sub-section (1) shall apply to any contract or arrangement—

(a) for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any year; or

(b) by a banking company for the collection of bills in the ordinary course of its business.

(6) Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.

15. The conduct of the Respondent No. 1 & 2 clearly shows that as directors of the company, they have failed to comply with the statutory requirements under section 118 and section 189 of the Companies Act, 2013 and other applicable laws like Income Tax Act by not providing the Tax Audit reports. Respondent No. 4 who was the DGM – Accounts & Finance of the Corporate Debtor at the relevant time and, being the officer of the Company is liable for the defaults in complying with the provisions of Companies Act, 2013 and other applicable laws.
16. As far as the submissions regarding Covid-19 pandemic is concerned, we observe that the order dated 31.07.2024 records that the information/documents not provided to the RP also includes those documents pertaining to the year 2019, i.e. prior to Covid-19. The plea of lay-off of the CS cannot be a justification for not complying with the statutory requirements of the law. Further, there is no material placed on record by the Respondents to support that these submissions were made to the RP.
17. Moreover, besides these violations of statutory compliances, the Respondents, more particularly, Respondents 1 & 2 as ex-directors of the Corporate Debtor, were also involved in serious fraudulent conducts. The order dated 31.07.2024 already mentions in detail about the order dated 22.11.2023 passed in IA/2115/2022, whereby the assignment of brand “SMAAASH” to Fun Gateway Arena Private Limited was declared as “fraudulent transaction” under section 66 of the Code.

18. Though at the cost of repetition but for the completeness and ease of reference, the relevant extract of the order dated 22.11.2023 passed in IA/2115/2023 is reproduced below:

“10. After hearing the submissions of both sides, this Bench observes that the Respondent No. 1 in their reply at Para 3.3.7 to 3.3.9, while admitting that they are related parties, at some point in the past contends that itself is not a ground enough to assail the genuineness or legality of the validity of the Assignment Agreement and with the same breath contends that the Assignment Deed dated 19th April 2022 is in continuation of the earlier Deed of Assignment dated 31st August 2019 and Cancellation Deed 19th April 2022. Therefore, it is very clear from their own assertion in their pleadings and from the arguments that the Deed of Assignment under challenge is a related party transaction since both the above pleas raised by the Respondents are mutually destructive to each other.

11. It has also been observed that there was no mention about the earlier Deed of Assignment dated 31st August 2019 anywhere in the latest Deed of Assignment dated 19th April 2022 nor the Cancellation Deed dated 19th April 2022. This itself falsifies the theory of Respondent that the Deed of Assignment dated 19th April 2022 is nothing but a continuation of earlier transaction.

12. It has been also observed that the assignee has approached the Registrar of Trademarks sometime in June-July, 2022 for registering the brand name in their favour basing on the original Deed of Assignment dated 31st August 2019 and the said registration was not culminated into action at the intervention of the RP of the CD and the Interim Order passed by this Tribunal. There was no explanation whatsoever forthcoming, from the Respondents as to why there was a delay of more than 3 years for getting the brand name registered in their favour if at all the earlier Deed of Assignment in August 2019 is true and genuine. This itself proves and establishes that the earlier Deed of Assignment as well as the Deed of Cancellation and the present Deed of Assignment are fabricated and bogus documents brought into existence by the Respondents to scuttle the CIRP process and to take away the valuable asset of CD from the CIRP process hardly 18 days before ordering CIRP against the CD and the above transaction squarely falls during the lookback period. There is no explanation whatsoever from the Respondent as to why the brand name “SMAAASH” was not shown in the books of accounts of Respondent, even till 2021 and why it is still continuing as an asset

of CD? This itself speaks that the above Deed of Assignment is a collusive document brought into existence by the Respondent in anticipation of CIRP order.

13. Even though both the Deed of Assignments dated 31st August 2019 and 22nd April 2022 appears to have been notarized they do not contain the Serial No. and Document No. of the Notary Register and therefore the execution of the documents before the Notary also appears to be doubtful.

14. This Bench further observes, as rightly pointed out by Mr. Dwarka Das, the value of the brand was grossly undervalued even according to their own valuation reports as well as the valuation reports obtained by the RP. Since this Adjudicating Authority is annulling the Deed of Assignment on the ground of fraud and forgery, the nitty-gritties of valuation, exact value of the brand etc. need not be gone into. Even otherwise, this Tribunal cannot decide the aspects of valuation, expert's opinions as a Court of Appeal or Review as per the settled position of law.

15. This Bench is also of the considered opinion that the RP has exercised every due diligence in coming to an independent opinion that the Deed of Assignment is an undervalued related party transaction for an alleged antecedent debt of the CD and this Bench is in complete agreement with the RP in this regard.

16. This Bench also further observes that the alleged Deed of Assignment was executed by the CD without the NOC of the Financial Creditor and the Board Resolution and therefore, they cannot be held as valid documents.

17. For the aforesaid reasons, viewing from any angle, this Tribunal has no hesitation in holding that the above Deed of Assignment, dated 19th April 2022 is a fraudulent transaction entered into by the Respondents during the lookback period for the alleged discharge of an antecedent debt of the CD and is liable to be set aside.”

19. It is pertinent to mention that subsequent to the order dated 31.07.2024 issuing notice to Respondents under section 213 of Companies Act, some of the applications filed by the RP were disposed of. The following observations of this Tribunal warrant notice:

I. IA/4888/2023

This IA was filed under section 66 of the Code seeking reversal of the transaction of Rs. 8.42 crores between the suspended directors of the Corporate Debtor and FGAPL. The said IA was allowed vide order dated 20.02.2025 and the impugned transaction was held to be a 'fraudulent and wrongful transaction' covered under section 66 of the I&B Code. The following observations are relevant:

"69. ...it is clear from the Respondents' contentions itself that the Entertainment Centre was not taken over by the Corporate Debtor as on the insolvency commencement date (ICD). We also note that apart from the extract from the purported business plan prepared in August 2021, there has been no other material/documents/agreements placed on record which establishes that there was an intent to actually transfer the operations of the Entertainment Centre at Pune Mall from FGAPL to the Corporate Debtor. At such circumstances, the contention that the RP failed to take the necessary steps in taking control of the Entertainment Centre has no force of law since the Entertainment Centre did not become an asset of the Corporate Debtor as on the ICD.

70. However, despite this being the case, the Respondents are now submitting that FGAPL has no outstanding dues as on the ICD due to the takeover of the Entertainment Center and putting the entire blame on the RP for failure of taking over the said Centre. This clearly shows that the suspended directors are trying to let go the liability of FGAPL as well as the Entertainment Centre of FGAPL thereby causing potential loss to the Corporate Debtor and to its creditors.

73. It also appears that the present director/s of FGAPL are also connected/associated to the suspended directors of the Corporate Debtor. Nonetheless, the attempt to fraudulently transfer the brand 'SMAAASH' to FGAPL itself establishes that the Respondents 2 & 3 have been attempting to dispose of the assets of the Corporate Debtor and trying to run FGAPL as an alter-ego of the Corporate Debtor. As already noted above, the impugned transaction had taken place shortly after R-3 ceased to be a shareholder of FGAPL and further, despite having a considerable amount as outstanding

receivables from FGAPL, the directors decided to settle the outstanding dues of FGAPL in exchange of the Entertainment Centre owned by FGAPL. However, no steps whatsoever had been taken by the erstwhile management towards the transfer of the Entertainment Centre in favour of the Corporate Debtor and the said Centre continues to be with FGAPL.

74. It is pertinent to note here that FGAPL had obtained the domain name smaash.com as contended in IA No. 2430/2023 and has refused to transfer such domain name back to Corporate Debtor. The Respondents 2 & 3 who are the suspended directors of the Corporate Debtor are also in support of FGAPL which clearly shows the dishonest intent of Respondents 2 & 3 and FGAPL to not give back the possession of smaaash.com to Corporate Debtor. All these events clearly lead to the suspicion as to the intention of Respondents 2 & 3 to set up a parallel business similar to that of the Corporate Debtor through FGAPL and that for this purpose alone, the impugned transaction had taken place.”

II. IA/2430/2023

This application was filed by the RP under section 19(2) of the Code seeking co-operation from the ex-directors including the Respondents. In that proceedings almost all of the issues were resolved except the transfer of domain of “Smaaash.com” from FGAPL to Corporate Debtor. While disposing of the said IA, this Tribunal made the following observations:

“41. Considering the above, it is clear that the Corporate Debtor and FGAPL are closely associated entities. Further, it is also an admitted fact that FGAPL was incorporated under the name ‘Smash Amusement Park Private Limited’ in the year 2015 wherein Mrs. Kalpana Morakhia, one of the suspended directors of the Corporate Debtor, held 99.99% of shares in FGAPL. However, in February 2019 Mrs. Kalpana Morakhia transferred her shares to Mr. Paresh Patel. It appears that Mr. Paresh Patel is also connected/associated to the suspended directors of the Corporate Debtor.

42. We further note that FGAPL had acquired the said domain when the Brand Content IA was pending before this

Tribunal. Further, FGAPL has also not given any plausible explanation to adopt the domain, the brand name of which belongs exclusively to the Corporate Debtor. Since this Tribunal has annulled the Brand Assignment, FGAPL has no vested right over the smaaash.com domain. The case of FGAPL acquiring and using the domain 'smaaash.com' is in the nature of cyber-squatting. Even though we understand that FGAPL has discontinued its usage of the said domain, however, in order to prevent infringers from violating the proprietary interest of the Corporate Debtor, we consider it necessary that the domain 'smaaash.com' carrying the brand name which belongs to the Corporate Debtor ought to be transferred to the Corporate Debtor."

20. The above remarks clearly indicate that the Respondent No. 1 and 2 have done all that they could possibly do to create hurdles in smooth insolvency resolution process of the Corporate Debtor.
21. On a comprehensive view of the case, it can be seen that the violations under the various provisions of the Companies Act, 2013 and the fraudulent transactions executed by the Respondents may warrant investigation to unearth the true nature of the business operations of the Corporate Debtor prior to the insolvency commencement date.
22. However, considering the fact that the corporate debtor has already been revived by a resolution plan submitted by M/s Nazara Technologies Private Limited which was approved by this Bench vide order dated 07.05.2025, the prayers sought in the present application have become infructuous. Further, we are of considered view that no useful purpose would be served by ordering investigation of the Corporate Debtor under section 213 of the Companies Act, 2013 since the business and operations of the Corporate Debtor is now vested with the new management and the corporate debtor will also get the benefit of section 32A of the Code.
23. However, in view of the observations recorded above, we deem it appropriate to direct the Registry to forward copy of this order to the statutory authorities to take appropriate steps, as may be permitted

under the law against the persons in charge at the relevant time for non-compliances of various statutory provisions.

24. Accordingly, the Registry is directed to send a copy of this order to the following authorities:

- i. Central Government, Ministry of Corporate Affairs.
- ii. The Regional Director, Western Region,
- iii. Registrar of Companies, Mumbai, Maharashtra.
- iv. Nodal Officer of Income Tax Authority

25. With above directions, IA/742/2023 stands **disposed of**.

Sd/-

Hariharan Neelakanta Iyer
Member (Technical)

/Uma/

Sd/-

Lakshmi Gurung
Member (Judicial)