



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

.....Applicant

**Vs.**

**1. Mr. Shripal Sevantilal Morakhia,**

*Suspended Director, Smaaash Entertainment Pvt. Ltd.*

*Director, Smaaash Leisure Limited*

*S/o Sevantilal Morakhia*

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

.....Respondent No. 1

**2. Ms. Kalpana Shripal Morakhia,**

*Suspended Director, Smaaash Entertainment Pvt. Ltd.*

*W/o Shripal Sevantilal Morakhia*

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

.....Respondent No. 2

**3. Mr. Amit Ram Krishnan,**

*Suspended Director, Smaaash Entertainment Pvt. Ltd.*

*S/o Mr. Anand Krishnan*

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

.....Respondent No. 3



**4. Mr. Mayur Shah,**

*Deputy General Manager, Finance & Accounts,  
Smaaash Entertainment Private Limited  
Having office at: 403, Udyog Mandir No. 2, Mogul Lane,  
Mahim (West), Mumbai, Maharashtra- 400016.*

**.....Respondent No. 4**

**5. Mr. Anand Subramaniam Krishnan,**

*Suspended Director, Smaaash Entertainment Pvt. Ltd.  
Having office at: 403, Udyog Mandir No. 2, Mogul Lane,  
Mahim (West), Mumbai, Maharashtra- 400016.*

**.....Respondent No. 5**

**6. Ms. Vishakha Deep Sangoi,**

*Erstwhile Legal Manager,  
Smaaash Entertainment Pvt. Ltd.  
Having office at: 403, Udyog Mandir No. 2, Mogul Lane,  
Mahim (West), Mumbai, Maharashtra- 400016.*

**.....Respondent No. 6**

**7. M/s. L.J. Kothari,**

*Erstwhile Statutory Auditor,  
Smaaash Entertainment Pvt. Ltd.  
3<sup>rd</sup> Floor, Gandhi Mansion, New Silk Bazar, Opp.  
Kalbadevi Head P.O., Mumbai- 400002.*

**.....Respondent No. 7**

*In the matter of*

**Edelweiss Asset Reconstruction Company**

**.....Financial Creditor**

**Vs.**

**Smaaash Entertainment Private Limited**

**.....Corporate Debtor**

**Order Pronounced on: 31.07.2024**



**CORAM:**

**SHRI CHARANJEET SINGH GULATI**  
**HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG**  
**HON'BLE MEMBER (J)**

*Appearances:*

For the Applicant : Adv. Shyam Kapadia a/w Adv. Kunal, Adv. Virgil i/b JSA

For the Respondent 1 & 2: Adv. Malhar Zatakia a/w Adv. Sonam pandey  
i/b Sujit Lahoit & Associates.

For the Respondent 3 & 5: Adv. Ameya Gokhale, Adv. Kriti Kalyani, Adv. Gaura Karwa  
i/b. Shardul Amarchand Mangaldas & Co.

For the Respondent 4 & 6: Adv. Akash Loya

**ORDER**

***Per- Smt Lakshmi Gurung, Member Judicial***

1. The present application has been filed by Resolution Professional (referred as **“Applicant/RP”**) of Smaaash Entertainment Private Limited (referred as **“the Corporate Debtor”**) under Section 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 and specifically seeking information/documentation/ records prescribed in Annexure- “15” annexed to the application.
2. The documents mentioned in **Annexure- “15”** are as follows:

<b>Sr. No.</b>	<b>Particulars</b>
1.	Party wise details of assets sold as scrap.
2.	Document such as agreement copy, balance confirmation of Complete Sports in support of balance of Rs. 37.17 Lakh receivable from Complete Sports & Management (I) Pvt. Ltd. to SLL.
3.	Books of accounts of the Corporate Debtor for the period starting from April 1, 2018 to December 31, 2022.



4.	Financial statements of the Corporate Debtor, audited for FY 21-22 and unaudited for the period starting from April 1, 2018 to December 31, 2022.
5.	Statutory registers of the Corporate Debtor to be maintained under the Companies Act for the period starting from April 1, 2018 to December 31, 2022.
6.	Minutes of the meeting of board of directors of the Corporate Debtor for the period starting from April 1, 2018 to December 31, 2022.
7.	Minutes of the meeting of members/shareholders of the Corporate Debtor for the period starting from April 1, 2018 to December 31, 2022.
8.	Copy of the annual returns and Register of Companies ("RoC") forms of the Corporate Debtor filed in compliance with the Companies Act for the period starting from April 1, 2018 to December 31, 2022.
9.	Date on which SLL centres were reopened post Covid and pre Covid.
10.	List of SLL centres under development.
11.	ROC details pertaining to SLL.
12.	The basis on which SLL is using Smaaash brand and intellectual property.
13.	Register of Members of the Corporate Debtor.
14.	Registers of Deposits of the Corporate Debtor, if any.
15.	Details of corporate guarantee given by the Corporate Debtor in respect to another associates company, subsidiary joint venture etc., if any.
16.	Latest Credit Monitoring Analysis data submitted to the bank for the Corporate Debtor.
17.	Details of any quality certifications obtained by the Corporate Debtor (such as ISO, EHS, OHSAS etc.) and any initiatives taken by the Corporate Debtor to maintain and improve the quality of its services. Copies of such certificates and other Supporting's as well.
18.	Details of any intra-group agreements including any indemnities or guarantees given to or for the benefit of or by other group/associate company and the relevant documents.
19.	Details & documents relating to Intellectual property rights. In case the intellectual property rights are not registered in the name of the Corporate Debtor, the name of the entity with which they are registered.
20.	Agreement of property purchased by the Corporate Debtor.



21.	Details of any intangible assets and right to use the assets and any expenses capitalized during the historical period.
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**Brief Facts sans unnecessary details**

3. Upon a Petition filed by Edelweiss Asset Reconstruction Company under Section 7 of the IBC the Corporate Debtor was admitted into corporate insolvency resolution process vide Order dated 06.05.2022 and the Applicant was appointed as Interim Resolution Professional (“IRP”) and subsequently confirmed as the Resolution Professional.
4. While conducting the audit of the Corporate Debtor, the Transaction Auditor appraised the Applicant that there were certain documents which were required in order to conduct a holistic audit of the Corporate Debtor. The Applicant in order to obtain the requisite information needed by the Transaction Auditors, wrote an email dated 01.08.2022 to the Respondent No. 4 (Deputy General Manager, Finance & Accounts) requesting for documents needed by the Transaction Auditor. The Applicant thereafter wrote multiple emails dated 02.08.2022, 04.08.2022, 13.08.2022 and 22.08.2022, whereby the Applicant followed up with Respondent No. 4 with respect to the documents sought for. However, neither Respondent No. 4 nor anyone else from the erstwhile management of the Corporate Debtor provided the documents as sought by the Applicant.
5. The Applicant further addressed emails dated 08.08.2022 and 04.10.2022 to Respondent No. 4 whereby the Applicant had provided the list of queries raised and documents needed. As the Applicant did not receive any response, he addressed another email dated 06.10.2022 at 01:48 PM to the CEO and Respondent No. 4 requesting them to provide their response to the email and informing them that the same was urgent, to which, Respondent No. 4 responded vide email dated 06.10.2022 (at 2:54 PM) informing the Applicant that he would provide the information by 07.10.2022.



6. The Applicant on 07.10.2022 at 12:39 PM addressed a reminder email to Respondent No. 4, this was in continuation of the email dated 06.10.2022 sent at 01:48 PM by the Applicant. Thereafter, Respondent No. 4 vide his email dated 07.10.2022 responded saying that he was in receipt of the email dated 04.10.2022 addressed by the Applicant. However, he was not aware if there was an agreement or revenue sharing basis which the Smaaash brand and other intellectual property of the Corporate Debtor is being used by Smaaash Leisure Limited (“SLL”). He further stated that the Smaaash brand was assigned to FGAPL in August, 2019, which is a subject matter of challenge before this Hon’ble Tribunal.
7. The draft financial statements as on March 31, 2022 and as on the Insolvency Commencement Date i.e. 06.05.2022 were made available by the erstwhile management of Corporate Debtor on 07.10.2022 and 08.10.2022, which is after 155 days from the initiation of CIRP.
8. The Transaction Auditor finalized the Draft Report and submitted the final report to the Applicant on 23.01.2023. As the Transaction Auditor was not in receipt of necessary documents from the erstwhile management of the Corporate Debtor, it has in the Transaction Review Report classified several potential preferential and fraudulent transactions.
9. The Applicant on 04.02.2023, sent an email to Mr. Lalit Kothari (who is part of Respondent No. 7) the erstwhile statutory auditor of the Corporate Debtor, requesting certain documents. However, the Applicant has not received the documents sought for.
10. In such circumstances, the Applicant has filed the present application and submitted that the documents sought for by the Applicant are documents of the Corporate Debtor which are necessary for successful CIRP of the Corporate Debtor and the Respondents with mala fide intent denying access to the same.



11. It was submitted that delay caused by the Respondents and the non-cooperation displayed, the PRAs who are genuinely interested in bidding and taking over the Corporate Debtor could not conduct necessary due diligence of the Corporate Debtor. As a result, the Applicant is unable to receive a fair bid for the Corporate Debtor from the PRA's. The conduct of the Respondents in not providing the information/ documentation/ correspondence is hampering the CIRP of the Corporate Debtor.

**Respondent No. 3 and 5 submissions:**

12. Respondent no. 3 and 5 had filed separate affidavits in reply both dated 20.03.2023 stating that the applicant had not addressed any communication to the Respondent No. 3 and 5. They are not even marked/ copied as a recipient in any of the correspondence referred by the applicant in its application. In the absence of any request by the Applicant, the question of the Respondent No. 3 and 5 having failed or refused to provide any information does not arise at all.
13. It was further submitted that the Respondent No. 3 and 5 were not involved in the day-to-day functioning and management of the Corporate Debtor. In the event that the Applicant seeks certain information/ documents which are available with Respondent No. 3 and 5, the same would be duly provided to the Applicant.
14. During the course of the hearing on 05.02.2024, Ld. Counsel for Respondent Nos. 3 and 5 submitted that they both are nominee directors on behalf of M/s F. W. Metis Pte. Ltd. holding 38% shareholding in the corporate debtor.

**Respondent No. 4 submissions:**

15. The Respondent no. 4 has filed an affidavit in reply dated 27.02.2024 stating that he was initially employed with the Corporate Debtor as Senior Manager (Accounts and Finance) in 2015 and thereafter was promoted as Deputy General Manager (Accounts and Finance) in 2018



and continued on same position after the initiation of Corporate Insolvency Resolution Process.

16. It is submitted that his employment was terminated by the Applicant on 09.03.2023, in a high-handed manner in derogation of the Appointment Letter. Being aggrieved by the said arbitrary conduct of the Applicant, he had filed IA No. 3641 of 2023, which was subsequently withdrawn on 05.01.2024.
17. He further submitted that in lieu of the unlawful termination of his employment in March 2023, he does not have access to any of the details/documents/data sought by the Applicant.

**Respondent No. 6 submissions:**

18. The Respondent no. 6 has filed an affidavit in reply dated 27.02.2024 stating that she had joined the Corporate Debtor on 24.11.2017 as a Management Trainee and thereafter was appointed as Legal Manager in 2021. It was submitted that on account of delay in receiving salary coupled with the actions of the management she tendered resignation on 10.03.2023. Thereafter, she does not have access to the email ID of the Corporate Debtor. She has annexed the screenshot of the email dated 10.03.2023 sent to the Corporate Debtor.

**Analysis and Findings**

19. Heard Ld. Counsel for the parties and perused the record.
20. At this juncture, we would like to refer to the extract of the daily order passed by this Tribunal on 05.02.2024:

**“I.A. 742/2023**

*The counsel for the RP has handed over the details of the documents and information sought from the Respondent Nos. 1 & 2 in a chart containing 36 items, which has been handed over to the counsel for Respondent Nos. 1 & 2. Respondent Nos. 1 & 2 submitted that*





*Respondents have already submitted whatever was available with them and nothing more is available. We are not satisfied with a generalised answer and direct the respondents to file point wise response/reply to the 36 items mentioned in the chart handed over by the RP, within two weeks.”*

21. In pursuance to above order, the Respondent nos. 1 and 2 filed an additional affidavit dated 28.02.2024 providing responses to each of the 36 items mentioned in the chart submitted by the Applicant. The information sought by the applicant and the responses provided by R1 and 2 are as follows:

<b>Entry No.</b>	<b>Details sought by the Applicant</b>	<b>Response</b>
1.	Documents related to Asset disposal during the period April 1, 2022 to May 6, 2022.	No disposal took place during this period. Therefore, no such document exists.
2.	Current status of Assets held by the centers which was closed during the period April 1, 2022 to May 6, 2022.	All the details are available in the books of account of the Corporate Debtor. These books of accounts are available on the Tally, the access of which is with the Applicant only.
3.	Signed copies of audited financial statements of the corporate Debtor, Smaaash Leisure Limited (“SLL”), Fun Gateway Arena Private Limited (“FGAPL”) & Aha Holdings Pvt. Ltd. (“AHA”) for the FY 2021-2022	The Applicant cannot seek access to these documents as they do not pertain to the Corporate Debtor. In any event:  i. the financial of SLL for the Financial year 2021-22 have not been finalized till date and therefore the said financials do not exist.  ii. The financials of AHA for the Financial Year 2021-22 are available. Copy of audited financial statement is attached herewith as Exhibit-“A”.



		iii. No access to the audited/unaudited documents of FGAPL.
4.	Copies of Minutes of Board of directors during 1.04.2018 till date.	Minutes of Board of Directors have been provided until March 2019 as evident from Exhibit-F of the Affidavit-in-Reply filed on behalf of Respondent Nos. 1 and 2 dated 27 <sup>th</sup> June 2023 (filed on 11 <sup>th</sup> January 2024). It is to be noted that either of us do not have access/possession of any other Minutes of Board Directors apart from the Minutes already submitted.
5.	Security Documents executed in favour of lenders & particularly debenture deed between ECL Finance Ltd., & the Corporate Debtor.	<p>The following documents are available with us:</p> <ul style="list-style-type: none"><li>i. Debenture Trust Deed between the Corporate Debtor and Catalyst Trusteeship Limited dated 17<sup>th</sup> August 2017.</li><li>ii. First Supplemental Deed dated 15<sup>th</sup> January 2018 to Debenture Trust Deed dated 17<sup>th</sup> August 2017.</li><li>iii. Deed of Hypothecation between the Corporate Debtor and Catalyst Trusteeship Limited dated 17<sup>th</sup> August 2017.</li><li>iv. Deed of Hypothecation between AHA Holdings and Catalyst Trusteeship Limited dated 17<sup>th</sup> August 2017.</li><li>v. First Supplemental Hypothecation Deed dated 15<sup>th</sup> January 2018 between Corporate Debtor and Catalyst Trusteeship Limited.</li></ul>



		<p>vi. First Supplemental Hypothecation Deed dated 15<sup>th</sup> January 2018 between AHA Holding and Catalyst Trusteeship Limited.</p> <p>vii. Guarantee Agreement dated 17<sup>th</sup> August 2017 between AHA Holding and Catalyst Trusteeship Limited.</p> <p>viii. Guarantee Agreement dated 17<sup>th</sup> August 2017 between Respondent No.1 and Catalyst Trusteeship Limited.</p> <p>ix. Guarantee Agreement dated 24<sup>th</sup> August 2017 between Respondent No.2 and Catalyst Trusteeship Limited.</p> <p>x. Guarantee Agreement dated 24<sup>th</sup> August 2017 between Respondent No.2 and Catalyst Trusteeship Limited.</p> <p>xi. Guarantee Agreement dated 28<sup>th</sup> August 2017 between Smaash Entertainment USA Limited and Catalyst Trusteeship Limited.</p> <p>xii. Guarantee Agreement dated 24<sup>th</sup> August 2017 between Sushil Tarakaram Karaikar and Catalyst Trusteeship Limited.</p> <p>xiii. Guarantee Agreement dated 17<sup>th</sup> August 2017 between Elements Learning Centre Private Limited and Catalyst Trusteeship Limited.</p> <p>xiv. Guarantee Agreement dated 15<sup>th</sup> January 2018 between AHA Holding and Catalyst Trusteeship Limited.</p> <p>xv. Guarantee Agreement dated 15<sup>th</sup> January 2018 between Smaash Entertainment USA</p>
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		<p>Limited and Catalyst Trusteeship Limited.</p> <p>xvi. Guarantee Agreement dated 15<sup>th</sup> January 2018 between Elements Learning Centre Private Limited and Catalyst Trusteeship Limited.</p> <p>xvii. Agreements for pledge of Shares in favour of Catalyst Trusteeship Limited dated 16<sup>th</sup> August 2017, 11<sup>th</sup> January 2018.</p> <p>xviii. First Supplemental Pledge Agreement dated 15<sup>th</sup> January 2018 in relation to Catalyst Trusteeship Limited.</p> <p>Considering the voluminous nature of the documents, the said documents have not been annexed herewith. However, Respondent No. 2 and I undertake to provide the Applicant with the copies of each of the documents, if need be.</p>
6.	Extract of Register of Contracts maintained under provisions of companies Act from April 1, 2019 to March 31, 2022.	The Extract of Registers of Contracts till 2019 have been submitted as Exhibit-g of the Affidavit in Reply filed on behalf of Respondent Nos. 1 and 2 dated 27 <sup>th</sup> June 2023 (filed on 11 <sup>th</sup> January 2024). To the best of my and Respondent No. 2's knowledge, no Registers were maintained and/or exist for the subsequent period.
7.	Transfer Pricing Reports for FY 2019-20 to 2021-22.	These documents or reports are not prepared and thus do not exist to the best of my and Respondent No. 2's knowledge.



8.	Internal Audits Report from April 1, 2020 to March 31, 2022.									
9.	Tax Audit Reports for FY 2019-20 to 2021-22.									
10.	Copy of Balance confirmation obtained from customers/vendors for year ended March 31, 2022 & if any obtained at subsequent date. In case, this confirmation directly obtained by statutory Auditors, copies thereof may be obtained from them.	<p>No balance confirmation was sought from the vendor. This is evident from Page nos. 3 and 4 of the Audit Report annexed herewith.</p> <p>Copy of Audit Report annexed herewith as <b>Exhibit – “B”</b></p>								
11.	Party wise details of assets sold as scrap.	As per books of accounts of Corporate Debtor								
12.	Details of Advertisement & promotion expenses of Rs. 1.68 Crore incurred during the period April 1, 2017 to September 30, 2019 for Smaaash Entertainment USA Ltd.	<p>The said details have already been shared as part of Exhibit – A of the Affidavit-in-Reply filed on behalf of Respondent Nos. 1 and 2 dated 27<sup>th</sup> June 2023 (filed on 11<sup>th</sup> January 2024). In any event, the said details have been extracted in a tabular form below for ease of reference.</p> <p>Summary of receivables of Rs. 1.68 Crores as on 01.04.2020 from Smaaash Entertainment USA Ltd.</p> <table><tr><th>Nature of Expenses</th><th>Total Amount</th></tr><tr><td>Foreign Payment made on behalf of Smaaash USA</td><td>12,525,968</td></tr><tr><td>Reimbursement of Expenses</td><td>370,681</td></tr><tr><td>Social media - Marketing</td><td>3,336,845</td></tr></table>	Nature of Expenses	Total Amount	Foreign Payment made on behalf of Smaaash USA	12,525,968	Reimbursement of Expenses	370,681	Social media - Marketing	3,336,845
Nature of Expenses	Total Amount									
Foreign Payment made on behalf of Smaaash USA	12,525,968									
Reimbursement of Expenses	370,681									
Social media - Marketing	3,336,845									



		Travelling	576,690
		<b>Total</b>	<b>16,810,183</b>
13.	Document such as agreement copy, balance confirmation of complete Sports in support of balance of Rs. 37.17 Lakh receivable from complete Sports & Management (I) Pvt. Ltd. to SLL.	These documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery. In any event, neither agreements have been executed in relation to the said transaction to the best of my and Respondent No. 2's knowledge, nor any balance confirmation exists.	
14.	Information required current status of fixed Assets held by the closed centers of the Corporate Debtor.	The assets of closed centers of the Corporate Debtor had been moved to the existing operation centers of the Corporate Debtor and forms part the current Fixed Asset Register. However, there is not tracking for movement of these assets as it was done during COVID-19 pandemic period with staff limitation.	
15.	Copy of approval of the private placement offer to the Petitioner by the Board of Directors of SLL dated November 15, 2021.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.	
16.	Ledger of FGAPL in the books of SLL for last five years	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.	
17.	Date on which SLL centers were reopened post Covid and pre Covid.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.	



18.	List of SLL centers under development.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
19.	Copy of the approval of the private placement offer to the FGAPL by the Board of the Directors of SLL dated November 15, 2021.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
20.	Clarify if the remaining class B shares were/have been issued by SLL at any point in time.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
21.	Copy of the notice for SLL's EGM date December 18, 2021 at 17:30.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
22.	Clarify whether the FGAPL received the notice of the SLL's EGM dated December 18, 2021 at 17:30 and provide a record, if any, of the same.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
23.	Clarify whether FGAPL received a copy of the minutes of SLL's EGM dated December 18, 2021 at 17:30 and provide a record, if any, of the same.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
24.	Correspondence between FGAPL and SLL/its management regarding the alternation of the share capital clauses in accordance with the	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.



	resolutions passed at SLL's EGM dated December 18, 2021 at 17:30.	
25.	Clarify whether FGAPL received a copy of the minutes of SLL's EGM dated January 10, 2022 and provide a record, if any, of the same.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
26.	With reference to the minutes of SLL's EGM dated January 10, 2022, provide correspondence between FGAPL and SLL that records FGAPL's willingness to issue/subscribe to 2 crore convertibles warrants.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
27.	Record of the unsecured loans provide by FGAPL.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery. Without prejudice to the above, the said requisition is vague and hence without any basis.
28.	A short note clarifying what transpired between SLL and FGAPL with respect to (a) the issue of class B shares and alteration of the AoA/MoA; (b) the issue and subscription of convertible warrants.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
29.	Clarification as to the business/financial decision to raise INR 930 through the private placement offers to FGAPL whilst simultaneously	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.





	assigning away 74% of the voting rights.	
30.	Clarification as to why the AoA and MoA of SLL that were amended to account for the issue of 93 class B shares to FGAPL were reversed nearly immediately, therefore, i.e, December 18, 2022.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
31.	Clarification as to how the resolution on December 18, 2022 at 17:30 was passed without FGAPL's approval given that petitioner held 74% of the voting rights of the SLL as of 10:00 on December 18, 2022.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
32.	Minutes of the Board Meeting of the Corporate Debtor for FY 19-20 and FY 20-21.	Similar to Entry No. 4
33.	Fixed Asset Register for the Corporate Debtor and SLL as of march 31, 2021, including all wholly owned subsidiaries.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and roving enquiry/discovery.
34.	Report for the physical verification carried out by the Corporate Debtor, if any, for the year ended 31 <sup>st</sup> March	To the best of my and Respondent No. 2's knowledge, no such report was prepared for the year ending 31 <sup>st</sup> March 2020 and 31 <sup>st</sup> March 2021.
35.	Copy of internal audit report, valuation report or any other report, if any provided by the Corporate Debtor.	The requisition is vague and hence without any basis. In any event, either of us do not have access/possession of any these documents.
36.	Copy of the valuation report, if any, for subsidiary companies of the Corporate Debtor.	The said documents do not pertain to the Corporate Debtor and therefore the said requisition is nothing but a fishing and



		roving enquiry/discovery. Furthermore, the requisition is vague and hence without any basis. The requisition neither mentions the period nor the entities to which the report should pertain.
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22. Before moving further, it would be profitable to discuss that the applicant had filed IA bearing No.2115/2022 against Fun Gateway Arena Pvt. Ltd. – a related party of the Corporate Debtor, suspended directors of the corporate debtor and others for cancellation of the Deed of Assignment of brand content dated 19.04.2022 specifically for “SMAAASH” trademark. This Tribunal vide order dated 22.11.2023 held **“Deed of Assignment, dated 19th April 2022 is a fraudulent transaction”**. Extracts of the relevant paragraphs of order dated 22.11.2023 are reproduced below:

“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.”*
23. Now coming back to the facts of present IA, after going through the additional affidavit dated 28.02.2024 filed by the Respondent No. 1 & 2,



the applicant has pointed out items at Sl. No. 4, 6, 7, 8 and 9 in the above table have not been satisfactorily replied, which are as follows:

- i. Minutes of Board meetings from April 2019 until 6 May 2022;
- ii. Register of Contracts from April 2019 to 6 May 2022;
- iii. Transfer Pricing Reports;
- iv. Internal audit Reports;
- v. Tax Audit Reports

24. Now let us analyse the response by Respondents No. 1 and 2 with regard to above points.

<b>Entry No.</b>	<b>Detail sought by the Applicant</b>	<b>Response</b>
4.	Minutes of meetings from 1.04.2019 until 06.05.2022.	Minutes of Board of Directors have been provided until March 2019. It is to be noted that either of us do not have access/possession of any other Minutes of Board Directors apart from the Minutes already submitted.
6.	Register of Contracts from 01.04.2019 to 06.05.2022.	The Extract of Registers of Contracts till 2019 have been submitted. To the best of my and Respondent No. 2's knowledge, no Registers were maintained and/or exist for the subsequent period.
7.	Transfer Pricing Reports for FY 2019-20 to 2021-22.	These documents or reports are not prepared and thus do not exist to the best of my and Respondent No. 2's knowledge.
8.	Internal Audits Report from April 1, 2020 to March 31, 2022.	



9.	Tax Audit Reports for FY 2019-20 to 2021-22.	
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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.

30. We are not Investigating Agency to unearth the real facts. In IA No. 2115/2022, this Tribunal has already held that the Brand content specifically “SMAAASH” trademark was fraudulently transferred by the Respondents for benefit of their related party. It was noticed there no explanation whatsoever was given by the Respondents as to why the Brand name was not shown in the books of Accounts of the Corporate Debtor till 2021 and why it continued to be asset of the Corporate Debtor. It was also noted that *“Even though both the Deed of Assignments dated 31<sup>st</sup> August 2019 and 22<sup>nd</sup> 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.”*
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***

*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.”*

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.

Sd/-

**CHARANJEET SINGH GULATI**  
**(MEMBER TECHNICAL)**

Sd/-

**LAKSHMI GURUNG**  
**(MEMBER JUDICIAL)**