

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 84 of 2019**

[Arising out of Order dated 15<sup>th</sup> November, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P.(IB) No.615/KB/2018]

**IN THE MATTER OF:**

Sri Munisuvrata Agri International Pvt. Ltd.

Through its Authorised representative

Mr. J.K. Jain

Having its registered office at:

16, British India Street,  
2<sup>nd</sup> Floor, Kolkata-700069.

.... Appellant

Vs

1. Bank of Baroda,  
Having its Branch Office at  
4, India Exchange Place,  
Kolkata 700 001.
2. State Bank of India  
Having its Commercial Branch Office at  
24, Park Street, Kolkata 700 016.
3. Allahabad Bank  
Having its Branch office at  
2, Netaji Subhas Road,  
Kolkata.  
and also at  
7, Red Cross Place, Kolkata 700001.
4. Indian Overseas Bank  
Having its Branch Office at  
F-47, Malhotra Building,  
Janpath, New Delhi 110 001.
5. Corporation Bank  
Having its Branch Office at  
WatchelMolla Mansion,  
8, Lenin Sarani, Dharamtalla Street,  
Kolkata 700 013.
6. UCO Bank  
Having its Branch Office at  
BTM Sarani  
and  
2, India Exchange Place,  
Ground Floor, Kolkata 700 001.

7. Standard Chartered Bank  
Having its Branch Office at  
19, Netaji Subhas Road,  
Kolkata 700 001.
  8. Canara Bank  
Having its Branch Office at  
7, Kyd Street, Kolkata 700 016.
  9. Punjab National Bank  
Having its Branch Office at  
A-8, Connaught Place,  
New Delhi 110 001.
  10. Punjab & Sind Bank  
Having its Branch office at  
14 & 15, Hemanta Basu Sarani,  
Kolkata 700 001.
  11. Sleepwell Industries Company Limited  
Having its place of business at  
Lakerajada Business Complex,  
28<sup>th</sup> Floor, 193/116, Rachandagisek Road,  
Klongtoy, Bangkok – 10110, Thailand.
  12. Swiss Singapore Overseas Enterprises Pte. Ltd.  
Having its office at  
14-01 Shenton House,  
3, Shenton Way, Singapore – 068805.
  13. Suresh Kumar Jain  
Residing at Flat 3A, 26B,  
Camac Street, Kolkata – 700 016.
  14. Smt. Sunita Jain  
Wife of Suresh Kumar Jain  
Residing at Flat 3A, 26B,  
Camac Street, Kolkata – 700 016.
  15. Centrum Financial Services Limited  
Having its registered office at  
2<sup>nd</sup> Floor, Bombay Mutual Building,  
Dr. D.N. Road, Fort,  
Mumbai – 400 041.
  16. Basudev Chandra Mallick,  
Director of Sri Munisuvrata Agri  
International Limited  
Residing at 58, Munirka Enclave,  
New Delhi – 110 067.
- ....Respondents

**Present:**

**For Appellant: Mr. Ajeet Sinha, Senior Advocate with  
Mr. Vikas Sethi, Advocate.**

**For Respondents: Mr. Pankaj Vivek, Bidyarani, Advocate.**

**Mr. Aaditya Vijay Kumar and Ms. Ayushi  
Kumar, Advocates.**

**Mr. P. Nagesh, Mr. Soumya Dutta and  
Mr. Shailendra Jain, Advocates for  
Respondent No.11.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

The Appellant Sri Munisuvrata Agri International Limited/ Corporate Applicant moved an application under Section 10 of the of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**') for initiating 'Corporate Insolvency Resolution Process' for it on the ground that it could not conduct the business due to RBI Circular dated 13<sup>th</sup> March, 2018.

2. In the said application, number of objections were filed by different parties challenging the maintainability. The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by impugned order dated 15<sup>th</sup> November, 2018 accepted the objections and allowed the applications preferred by the Objectors-Respondents and dismissed the application under Section 10 of the I&B Code. The Adjudicating Authority has held that in absence of any decision of the shareholders, the application under Section

10 was not maintainable and the Appellant failed to prove existence of default.

3. The case of the Appellant is as follows: -

“9. The corporate debtor, having lost opportunities for export contracts to be executed/ implemented, and having faced with difficulties in doing business due to the recent financial sector turmoil, has filed this application under Section 10 of the I & B Code. The corporate debtor submits that prior to a consent award dated January 3, 2013, the overall control and management of the corporate debtor was with Mr. Suresh Kumar Jain, the eldest brother of the present directors, who held 51% shares in the Company and who, according to the corporate debtor, had generated a lot of debts/ liabilities during his tenure, which have passed on to the present directors (under the said award) making it difficult for them to run the company. The said award is being executed before the Calcutta High Court (Annexure A-8).

10. With regard to the financial creditors, the total debt raised is Rs.544,00,00,000/- and the amount in default is Rs.536,92,00,000/- as per the list of financial creditors provided as Annexure A-5. The list of Operational Creditors along with their respective amounts outstanding as shown in Annexure A-16 (though disputed) is given as follows: -

Sl. No.	Name of the Operational Creditor	Date	Amount Outstanding (Rs.)	Submission by the Corporate Debtor
01	Sleepwell Industries Co. Ld.	30/08/2013	a) 3,94,78,064/-	SLP has been filed by the Corporate Debtor challenging the rejection of the application u/s. 48 of the Arbitration &

			b) 80,64,083/-	Conciliation Act, 1996 before the Calcutta High Court.  Application u/s. 48 of the Arbitration & Conciliation Act, 1996, disputing the amount claimed, has been filed before the Calcutta High Court by the Corporate Debtor.
02	Swiss Singapore Overseas Enterprises Pte. Ltd.	20/02/2013  10/04/2013	a) 2,81,36,186/-  b) 59,26,060/-	An appeal to a civil suit, filed by the Corporate Debtor, challenging the amount claimed as foreign award, is pending before the Calcutta High Court.  An appeal to a civil suit, filed by the Corporate Debtor, challenging the amount claimed as foreign award, is pending before the Calcutta High Court.
03	Sovarex S.A.	05/03/2014	20,98,00,966/-	A civil suit, filed by the Corporate Debtor, challenging the amount claimed as foreign award is pending before the Calcutta High Court.
04	Sifandros Carriers Ltd.	31/08/2015	5,69,18,280/-	Application u/s. 48 of the Arbitration and Conciliation Act, 1996, disputing the amount claimed, has been filed before the Calcutta High Court by the Corporate Debtor.
05	Ajit Kumar Patni	07/09/2015	95,92,564	Annexure A-18

06	Gati Kinetsu Express Pvt. Ltd.	31/12/2014	2,11,991/-	Annexure A-19
07	Income Tax Dept. (Assessment Years)			
	a) 2007-08	31/03/2014	2,06,852,369/-	Demand notices raised by the IT authorities upon the Corporate Debtor for the A.Y. 2010-11 to 2016-17 show a sum of Rs.1,67,05,21,949/- An appeal was filed by the Corporate Debtor to challenge the said demand, wherein an order was passed by the Commissioner of Income Tax, Kolkata dated March 16, 2018 (Annexure A-14) which ordered the Company to pay Rs.15,60,22,736/- and stayed the balance demand of IT Authorities. IT Authorities exercising its powers u/s. 220(3) of the IT Act, 1961, also attached various bank accounts of the Corporate Debtor and issued the attachment orders upon various banks (Annexure A-15)
	b) 2008-09	22/03/2014	41,188,240/-	
	c) 2009-10	19/12/2011	1,59,695,650/-	
	d) 2009-10	08/09/2016	38,771,310/-	
	e) 2010-11	28/03/2013	49,618,590/-	
	f) 2011-12	31/03/2014	34,920,250/-	
	g) 2012-13	31/03/2015	448,960/-	
	h) 2010-11	31/12/2017	13,92,378,970/-	
	i) 2011-12	31/12/2017	48,421,840/-	
	j) 2012-13	31/12/2017	95,421,840/-	
	k) 2013-14	31/12/2017	16,908,580/-	
	l) 2014-15	31/12/2017	1,07,127,920/-	
	m) 2015-16	31/12/2017	9,606,950/-	
	n) 2016-17	31/12/2017	702,377/-	
Total Rs.			256,01,92,031/- (approximately)	

4. The Sleepwell Industries Company Limited (Respondent No.11), an 'Unsecured Creditor' objected on the ground that the application under Section 10 was filed to defraud its creditors and to frustrate the orders

passed by the Hon'ble Supreme Court of India in SLP (C) No.540 of 2018 dated 20<sup>th</sup> April, 2018. It is alleged that for non-payment of value of goods an Arbitral Award was passed, for which two Execution Applications were filed against LMJ International Ltd. (Now known as Sri Munisuvrata Agri International Ltd.). By order dated 4<sup>th</sup> December, 2014, a composite order was passed by the Hon'ble High Court of Calcutta holding that the Awards were enforceable. The Appellant earlier known as LMJ International Ltd., then preferred two appeals before the Division Bench of Calcutta High Court, which were disposed of on 1<sup>st</sup> December, 2015. Thereafter, the Appellant filed formal applications under Section 48 of the Arbitration and Conciliation Act before the Calcutta High Court in Execution Cases of 2013 praying that the Awards be held unenforceable, which were ultimately dismissed by orders dated 22<sup>nd</sup> August, 2017 and 9<sup>th</sup> July, 2018. Thereafter, LMJ International Ltd. (now Appellant) preferred SLP being Special Leave Petition (Civil) No.540 of 2018 against the judgment and order dated 22<sup>nd</sup> August, 2017. In the SLP, approximately Rs.1.78 crores were remitted in favour of Sleepwell Industries Company Limited by the Registrar, in compliance of the order of the Hon'ble Supreme Court dated 5<sup>th</sup> January, 2018. The Hon'ble Supreme Court passed further order dated 20<sup>th</sup> April, 2018 allowing Sleepwell Industries Company Limited encashment of 50% of the bank guarantee amount, which had been furnished by the Allahabad Bank.

5. Further, according to the Sleepwell Industries Company Limited (Respondent No.11), it is only after the order passed by the Hon'ble Supreme Court, suddenly LMJ International Ltd. changed its name as Sri Munisuvrata Agri International Ltd. (Corporate Applicant herein) and moved an

application under Section 10 of the I&B Code with an ulterior and malicious motive and to defraud its creditors.

6. The other application was filed by Swiss Singapore Overseas Enterprises Pvt. Ltd., a Singaporean Company, requesting for leave to intervene alleging that the application under Section 10 was filed with malicious intent to defraud its creditors. It alleged that Singapore International Arbitration Centre passed a partial award dated 20<sup>th</sup> February, 2013 and a final award dated 10<sup>th</sup> April, 2013 in relation to dispute between the parties, and therefore, thereafter filed execution of the two awards before the Hon'ble Calcutta High Court being E.C. No.322 of 2013 and E.C. No.353 of 2017. It was further alleged by Swiss Singapore Overseas Enterprises Pvt. Ltd. that the 'Corporate Debtor' had changed its name from LMJ International Pvt. Ltd. to Sri Munisuvrata Agri International Ltd. and also changed its registered address surreptitiously without intimating the creditors and to ensure that 'Corporate Insolvency Resolution Process' is initiated against itself without informing them.

7. Two Shareholders of the 'Corporate Applicant' (Appellant) also moved applications opposing the initiation. They have submitted that initially, the shareholders in the Company, being members of the Jain family were carrying on their business jointly. However, due to subsequent differences, the dispute was referred to the Arbitral Tribunal, which passed Award upon consent of the parties on 3<sup>rd</sup> January, 2013. The aforesaid Shareholders/ Applicants being the 'Party of the First Part' have complied with their obligation under the Award, but the 'Other Part', which was to be complied by the MLJ Group (Main Group – Corporate Debtor) had defaulted in



complying with their part of obligation. Therefore, an Execution Application being EC No.873 of 2015 was filed before the Calcutta High Court for seeking enforcement of the said Award, wherein, inter alia, an interim Award was passed on 4<sup>th</sup> March, 2015. Further, according to the aforesaid Shareholders/ Applicants, one of the Companies of the Jain family namely LMJ Project Pvt. Ltd. has been allotted to the aforesaid Shareholders/ Applicant's group but the said land is still in possession of MLJ group ('Corporate Applicant'). The said Company has a huge property, which belong to the Shareholders/ Applicants as per Award, which has been illegally and unlawfully leased out behind their back by one Smt. Ekta Jain of the MLJ Group to the Applicant of the proceeding namely Sri Munisuvrata Agri International Ltd.

8. The Shareholders/ Applicants further took a plea that as per Award dated 3<sup>rd</sup> January, 2013, the MLJ Group, the main Shareholder ('Corporate Applicant) failed to comply with their obligation to pay a sum of Rs.10,82,50,000/- for the default committed as per clause 14 of the said Award.

9. Similar allegations were made by one Centrum Financial Services Ltd., who claimed to be 'Financial Creditor', alleging fraud on the part of the Applicant in preferring the application under Section 12.

10. Bank of Baroda (1<sup>st</sup> Respondent) submitted that it has extended credit facility to the 'Corporate Applicant' and entered into a "Working Capital Consortium Agreement" dated 15<sup>th</sup> February, 2018. The Appellant started committing defaults since 28<sup>th</sup> February, 2018. The Consortium Members exchanged information regarding the account of Appellant, wherein it was

recorded that the account was in default since 28<sup>th</sup> February, 2018. The Bank of Baroda has supported the application filed under Section 10 by the 'Corporate Debtor' on the ground that default was committed. The Bank of Baroda, who is the lead banker of the Consortium of Banks did not oppose the said application.

11. It is also brought to our notice that pursuant to the Demand Notice under Section 13(2) of the SARFAESI Act, 2002, on 9<sup>th</sup> July, 2018 the default having been committed, the account of the Appellant was declared NPA. Since the amounts were not paid, the Bank of Baroda, as a lead Bank has moved application under Section 7 of the I&B Code, 2016 for initiation of 'Corporate Insolvency Resolution Process' being CP (IB)-1541(KB)/2018.

12. Sleepwell Industries Company Limited (Respondent No.11) brought to our notice that name of LMJ International Limited was suddenly changed on 23<sup>rd</sup> April, 2018 to "Srimunisuvrata Agri International Limited" ('Corporate Applicant'). The Registered Office was changed on 26<sup>th</sup> April, 2018 from LMJ House, 15-B, Hemanta Basu Sarani, Kolkata – 700001 to 16, British India Street, 2<sup>nd</sup> Floor, Kolkata – 700069, while other Companies are still running from LMJ House. It is further stated that immediately after change of Registered office on 26<sup>th</sup> April, 2018, the application under Section 10 was filed before the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench on next day, i.e., 27<sup>th</sup> April, 2018.

13. This Appellate Tribunal asked the Appellant, whether the Shareholders of the 'Corporate Applicant' had taken decision in its Extra Ordinary General Meeting to move an application under Section 10 of the I&B Code. Pursuant to such query, the Appellant enclosed a document to show that Shareholders'

permission were taken on 10<sup>th</sup> April, 2018. The aforesaid document was not brought on record by the 'Corporate Applicant' before the Adjudicating Authority. The 02<sup>nd</sup> Extraordinary General Meeting of the 'Corporate Applicant' shown to be held in the Registered Office of the Company on 10<sup>th</sup> April, 2018 at 15-B, Hemanta Basu Sarani, 5<sup>th</sup> Floor, Kolkata and the Minutes were signed by the Chairman on 16<sup>th</sup> April, 2018. The Respondents have shown irregularity in the document and stated that the aforesaid document is a forged document, which is subsequently manufactured and brought on record before this Appellate Tribunal and the same was not filed before the Adjudicating Authority (National Company Law Tribunal).

14. As per Section 12(3) of the Companies Act, 2013, it is a necessary for a Company to write name of the Company along with its former name, so changed during the last two years. But in the present case, the Appellant purposely suppressed the former name in Form-6 as well as in the affidavit verifying the petition filed under Section 10 of the I&B Code.

15. Centrum Financial Services Limited – Respondent No.15 brought on record a Tabular Chart and audited statement to show that the 'Corporate Applicant' was solvent and self-sustained Company and immediately before the petition was filed, the Appellant serially siphoned off money. In support of it a Tabular Chart has been enclosed.

16. However, we are not inclined to give any finding on the question of fact as to whether the Appellant is a 'solvent Company' and any amount is siphoned or not. If that be so, it will be open to the parties to move on the aforesaid facts before the Registrar of Companies and Regional Director of the Companies, Eastern Region with such allegations.

17. The stand as taken by the parties, suggest that the application under Section 10 of the I&B Code was filed by the 'Corporate Applicant' fraudulently with malicious intent and not for 'Resolution' or 'Liquidation' and may attract Section 65 of the I&B Code for penal action. However, as no such order has been passed by the Adjudicating Authority (National Company Law Tribunal) under Section 65 imposing penalty, we are not passing any penal order under Section 65. However, we hold that the application under Section 10 was not maintainable.

18. However, order passed in this Appeal, will not come in the way of the Bank of Baroda, lead Bank of the Consortium of Banks, who has already moved application under Section 7 of the I&B Code. The Adjudicating Authority is free to decide the application under Section 7 preferred against the 'Corporate Debtor', or any application preferred by the 'Financial Creditors'/ Operational Creditors uninfluenced by order dated 15<sup>th</sup> November, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) and this Appellate Tribunal, if not yet passed.

19. The Appeal is dismissed with the aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

**NEW DELHI**

24<sup>th</sup> January, 2020

Ash