

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. No.353 OF 2021
IN
C.P.(IB) No. 1084/KB/2020**

*An application under Section 65 of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the National Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

CFM Asset Reconstruction Pvt. Ltd.

... Financial Creditor

Verses

SRI Muni Suvrata Agri International Limited.

...Corporate Debtor

And

IN THE MATTER OF:

1. **Suresh Kumar Jain**, son of Late Madanlal Jain, residing at Flat 3A,26B, Camac Street, Kolkata-700016.
2. **Smt. Sunita Jain**, wife of Suresh Kumar Jain, residing at Flat 3A,26B, Camac Street, Kolkata-700016.
3. **Siddharth Jain**, son of Suresh Kumar Jain, residing at Flat 3A,26B, Camac Street, Kolkata-700016.
4. **Suresh Kumar Jain**, as Karta of Suresh Kumar Jain (HUF), residing at Flat 3A,26B, Camac Street, Kolkata-700016.

...Applicants

Date of Pronouncement:08.05.2024

CORAM:

Smt. Bidisha Banerjee, Member (Judicial)

Shri. D. Arvind, Member (Technical)

Appearances (via Hybrid Mode):

For the Financial Creditor: Mr. Aishwarya Kumar Awasthi, Adv.

For the Respondent: Mr. D.N. Sharma, Adv.

Ms. Supriya Saha, Adv.

For the Intervenors: Mr. Nirmalya Dasgupta, Adv.

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ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court congregated through a hybrid mode.
2. The Learned Counsel, Mr. D.N.Sharma appeared on behalf of the applicant was heard.
3. The 4 applicants namely Suresh Kumar Jain, Smt. Sunita Jain, Siddharth Jain, and Suresh Kumar Jain jointly preferred this I.A. No. 353 of 2021 to seek the following reliefs:
 - a) In view of the facts stated herein, CP(IB) No.1084/KB of 2020 (CFM Asset Reconstruction Private Limited -Vs- Sri Muni Suvrata Agri International Ltd) be declared as malafide and a clear case of collusion between CFM Asset Reconstruction Private Limited and Sri Muni Suvrata Agri International Ltd. and, therefore, is an abuse of the process of insolvency under the Code as per Section- 65 of IBC, 2016 and therefore be dismissed.
 - b) The applicants be added as parties to the instant proceeding being CP(IB) No.1084/KB of 2020 (CFM Asset Reconstruction Private Limited Vs- Sri Muni Suvrata Agri International Ltd) and be allowed to file necessary reply affidavit to the said application filed under section 7 of the Code.
 - c) The financial creditor be directed to serve a copy of the said application upon the applicants herein.
 - d) The parties to the said proceeding being CP(IB) No. 1084/KB of 2020 (CFM Asset Reconstruction Private Limited-vs-Sri Muni Suvrata Agri International Ltd)be also directed to serve the other pleadings which are filed in the said proceedings, upon the applicants herein.

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- e) Stay the hearing of the said proceeding and/or proceedings being CP(IB) No.1084/KB of 2020 (CFM Asset Reconstruction Private Limited - Vs- Sri Muni Suvrata Agri International Ltd), until and unless the instant application is disposed of.
- f) Ad-interim orders in terms of prayers above.
- g) Such further order or orders, direction or directions, as may be passed by this Hon'ble Tribunal which would afford complete relief to the applicant.

4. Submissions of Applicants in a nutshell:

- 4.1 The applicants claim that Applicant No. 1 is a shareholder of the corporate debtor holding 34,24,080 shares, constituting around 21.04% shareholding of the Corporate Debtor. Similarly, Applicant No. 2 holds 10,42,600 shares constituting around 6.5% shareholding of the Corporate Debtor. Applicant No. 3 holds 21,37,850 shares which constitute around 6.5% shareholding of the Corporate Debtor and Applicant No. 4 holds 14,80,000 shares which constitute around 9.25% shareholding of the Corporate Debtor.
- 4.2 That substantial monetary claim and/or rights of the applicants are involved in respect of the Company namely Sri Munisuvrata Agri International Limited and in the event the instant application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short "IBC"), the monetary claim and substantial rights of the applicants/non- petitioner will be severely prejudiced. That initially, the family members of Jain family were all together and were carrying on their businesses jointly under the leadership of Suresh Kumar Jain and also Madanlal Jain (since deceased), the father of Suresh Kumar Jain, Jayant Kumar Jain, Hulash Chand Jain, and

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Naveen Kumar Jain. Subsequently, disputes and differences arose among the family members of the Jain family.

- 4.3 Due to this, sometime in 2012 the family members of the said Jain family entered into a Settlement Agreement for distributing the properties and assets among themselves.
- 4.4 The said Agreement duly consists of an Arbitration clause to refer the disputes to three Arbitrators namely Vinod Kumar Jain, the Presiding Arbitrator, and two Arbitrators Babu Lal Jain and Mohan Lal Jain (Luharia) respectively.
- 4.5 Despite entering into such an Agreement, the disputes between the parties could not be amicably settled and the disputes were referred to the Arbitral Tribunal following which the Arbitral Tribunal on January 3, 2013 passed an award upon consent of the parties.
- 4.6 Prior to passing of the award, the applicants were shareholders of the corporate debtor.
- 4.7 The applicants, dissatisfied with the said award filed an application under Section 34 of the Arbitration and Conciliation Act, 1996, registered as AP No. 1044 of 2013 which was allowed to be withdrawn on December 2, 2014.
- 4.8 Pursuant to and in terms of the said award, several businesses and business entities and several assets and properties came to the applicants who are described as the Party of the First Part, namely ‘Suresh Kumar Jain Group’ in the said award while the other family members are described as ‘ the Other Part’ being ‘Mandanlal Jain Group’ in the said Award. The award is principally the division of diverse businesses and/or business entities and assets and properties of the Jain family into the said two groups namely Suresh

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Kumar Jain Group or the “SKJ Group” or the applicants herein, and the Mandalal Jain Group or “MLJ Group”.

- 4.9 One Mr. Kamelash Songani, Chartered Accountant carrying on business at 1, R.N. Mukherjee Road, Room No. 209, Kolkata-700001 was appointed by the Arbitral Tribunal as the custodian of various documents, deed, instruments, books of accounts, properties etc. to hold the same till the award is implemented in terms thereof and also to take all steps required for the implementation of the award, including to issue and/or make requests to the parties.
- 4.10 The applicants assert that they have duly complied with such award and have deposited various documents, conveyances, share scripts which include the share transfer deeds to the applicants with respect to the corporate debtor, keys, etc. with the said custodian in original. On June 11, 2015, the custodian vide a letter to the MLJ Group recording his satisfaction of the applicant's compliance and wanted documents in original to the applicant's group but the said MLJ group have defaulted in complying with their part of obligations.
- 4.11 The applicants herein, have filed an Execution Application before the Hon'ble High Court, inter alia, seeking the discharge of obligations in terms of the said Award dated January 3, 2013 which is registered as EC No. 873 of 2015.
- 4.12 The said MLJ group has also filed an Execution Application which has been registered as EC No. 144 of 2016.
- 4.13 Further, from time to time various orders have been passed in the said proceedings including an interim order dated March 4, 2016.
- 4.14 The Applicant alleges that supressing all the material facts , the Corporate Debtor, namely, Sri Muni Suvrata Agri International Ltd.

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has filed the application under Section 10 of the IBC read with Rule 7 of the IBC Rules 2016 for initiating Corporate Insolvency Resolution Process(CIRP).

5. We have noted the contentions and perused records.
6. Evidently and irrefutably after the Award in question, the applicants group cannot claim themselves as shareholders of the Corporate Debtor anymore.
7. The Award clearly and categorically mentions delineation in the following terms:

MADAN LALL JAIN GROUP:

(i) *Internet Valley Limited,*

XXXX

(iv) *“LMJ International Limited, bearing CIN*

U51226WB1992PLC056951, having its registered office at 15-B, Hemanta Basu Sarani, 5th Floor, Kolkata-700001”.

“However, the plant and machineries of Tea Bag Unit installed at 19, Brooklene Depot Road, Kolkata-700024 shall belong to the party of the First Part and the party of the Other Part and/or M/s. LMJ International Limited shall ensure transfer of such plant and machineries in favour of M/s LMJ Overseas Ltd. It is further made clear for removal of doubts that all kinds of stocks whether packed or loose, stores including consumables and packing materials lying at tea bag unit at 19, Brooklene Depot Road, Kolkata-700024 as at 31st December 2012 shall continue to remain property and asset of Messrs. LMJ International Limited and shall exclusively belong to the party of the Other Part.

Here Suresh Kr. Jain and his heirs etc. form the party of the First Part and MadanLal Jain and his heir etc. form the party of the Other Part to whom

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MadanLal Jain Group or LMJ (Sri Muni Suvrata Agri International Limited) will pass on.

Therefore, there is no gainsaying that the Intervenor applicants, Suresh Kr. Jain Group has exclusive rights over the Corporate Debtor (Sri Muni Suvrata Agri International Limited).

8. Having noted as above, we are of the considered opinion that the petitioners are not required to be impleaded in the Company Petition filed against the Corporate Debtor.
9. Further, the execution petitions filed by both the groups are pending before the Hon'ble High Court at Calcutta and a breach of terms of award by any of the parties cannot be decided by the NCLT.
10. However, before we part we direct that the property belonging exclusively to the Suresh Kr. Jain group, as it appears from the award shall not be included in the insolvency proceedings of MInisuvrata Agro International Ltd.
11. Accordingly the **I.A. (I.B.C) No.353/KB/2021** fails and is dismissed with no costs.
12. Urgent Certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on the 8th Day of May 2024

A.S. LRA