

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

**IA (CA) No. 213/KB/2023
and
CP No. 42/KB/2021**

*Section 231(1) read with 231(3) and 424(3) of the Companies Act 2013 read with
Rule 11 of the National Company Law Tribunal Rules 2016;*

In the matter of:

Machino Transport Private Limited

.....Applicant

-Versus-

In the matter of:

Machino Finance Private Limited

....Respondent

And

In the matter of:

Machino Transport Private Limited

....Petitioner

Versus

Machino Finance Private Limited & Ors.

....Respondent

Date of Pronouncement: 01 May 2024

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (via video conferencing/physically)

Ms. Ranjana Roy Gawai, Adv. : For Petitioner

Mr. Pervindra, Adv.

Mr. Shikhar Upadhyay, Adv.

Mr. Ratnanko Banerji, Sr. Adv. : For Respondent

Mr. Ajay Gaggar, Adv.

Ms. Tahira Karanjawala, Adv.

Ms. Manmeet Kaur, Adv.
Mr. Uttiyo Mallick, Adv.
Mr. Chand Malan, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened through hybrid mode.
2. This IA has been filed seeking implementation of one scheme of arrangement sanctioned vide order dated 10th of August 2011 under Section 391(1), 393 and 394 of Companies Act, 1956.
3. While opposing this petition, preliminary objection has been raised by respondents that this application is barred by limitation. It is contended on behalf of respondents that the application is barred by limitation as the petitioner is seeking implementation of order dated 10th of August 2011 after the expiry of period of three years provided under Article 137 of Limitation Act, 1963. According to Ld. Counsel for the petitioner, this petition falls within the scope of 'any other application' in terms of Article 137 of the limitation Act provided for is three years. Right, if any, accrued to the petitioner on the passing of order dated 10th of August 2011 and, therefore, upon expiry of three years from this date, this petition is not maintainable.
4. Per contra, Ld. Counsel appearing for the petitioner states that the petitioner is seeking execution of decree, and the limitation period is provided under Article 136 which is 12 years, therefore, this petition is well within the period of limitation.
5. Ld. Counsel appearing for applicant has further referred to Section 424 of Companies Act, while asserting that the order passed dated 11th of August 2011 is a decree in terms of Section 424 of Companies Act and therefore, the period of limitation is 12 years for seeking enforcement of decree. She has also placed reliance on Section 231 of the Companies Act. According to Ld. Counsel, it also implies that there is no time limit specified for implementation of the decree and this Tribunal has powers to oversee the implementation of the scheme.

6. Ld. Counsel appearing for the petitioner also argues that even if it is taken to be three years, since the order dated 10th of August, 2011 came to the knowledge of the petitioner only in 2020 when the auditors of the Company got it to the notice to the management, therefore, the period of limitation is to the start running from the date of knowledge and therefore this application is within the limitation period as it was filed on the date which is within three years from the date of knowledge. Ld. Counsel, while making this submission, has placed reliance on averments contained in para 26, 27, 28 and 29 of this petition.
7. Ld. Sr. Counsel appearing for respondents while pressing his objection regarding bar of limitation of three years has placed reliance on judgment passed by Hon'ble Supreme Court of India (2018) 3 SCC 622 paragraph 14 reproduced hereinbelow: -

“14. We would now like to refer to the provisions of the said Act, more specifically Section 36(1), which deals with the enforcement of the award:

“36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of the Civil Procedure, 1908 (5 to 1908), in the same manner as if it were a decree of the court.”

The aforesaid provision would show that an award is to be enforced in accordance with the provisions of the said Code in the same manner as if it were a decree. It is, thus, the enforcement mechanism, which is akin to the enforcement of a decree but the award itself is not a decree of the civil court as no decree whatsoever is passed by the civil court. It is the Arbitral Tribunal, which renders an award and the tribunal does not have the power of execution of a decree. For the purposes of execution of a decree the award is to be enforced in the same manner as if it was a decree under the said Code:”

8. Ld. Sr. Counsel appearing for respondent has further relied upon another judgment of Hon'ble Supreme Court (2020) 10 SCC paragraphs 61, 65, 66, 67, 68 and 69. Para 69 is reproduced herein after:
9. It is submitted by Ld. Sr. Counsel appearing for respondent that in terms of law laid down in the above judgment in paragraph 69, reference to decree made in Section 424 of Companies Act is only for the purpose of statutory fiction and is a situation akin to as laid down by Hon'ble Supreme Court of India in para 6 of the above judgment with respect to limitation provided under the Arbitration Act. This is for a limited purpose for seeking enforcement of the decree by seeking assistance of the mechanism provided for the purpose under the Code of Civil Procedure. For limitation seeking implementation, it falls within the category of any other applications and the limitation is three years.
10. While supporting its plea the limitation is twelve years, Ld. Counsel appearing for applicant has placed reliance on law laid down by Division Bench of Calcutta High Court in the matter of *Techno Metal India (P.) Ltd. versus Prem Nath Anand* in 1973 SCC OnLine Cal 109 : (1973) 43 Comp Cas 556 : 1974 Tax LR 1608: (1972-73) 77 CWN 957. The relevant extract of which is reproduced hereinafter; -

24. *Learned counsel for the appellant relied on an unreported decision of P.B. Mukharji, J. in In re Turner Morrison & Co. Ltd. (C.P. No. 274 of 1967, decided on June 23 and 24, 1970), where it was held that article 137 applied to applications under section 397 and section 398 of the Companies Act, 1956. Reference was also made to the decision in Ram Kumar Kajaria v. Chandra Engineering (India) Ltd., where M.M. Dutt, J. held that article 137 is not restricted to applications under the Code of Civil Procedure but also applies to applications and petitions under other enactments. Had the matter been res integra we should have had no hesitation in holding that article 137 is fully applicable to an application for winding up under the Companies Act. But it seems to us that we are not free to do so having regard to a decision of the Supreme Court in Town Municipal Council, Athani v. Presiding Officer, Labour Court, to which*

attention of the learned single judges who decided those cases does not appear to have been drawn. In the Supreme Court Case it was observed:

“The language of article 137 is only slightly different from that of the earlier article 181 inasmuch as, when prescribing the three years’ period of limitation, the first column giving the description of the application reads as ‘any other application for which no period of limitation is provided elsewhere in this division’. In fact, the addition of the word ‘other’ between the words ‘any’ and ‘application’ would indicate that the legislature wanted to make it clear that the principle of interpretation of article 137. This word ‘other’ implies a reference to earlier articles, and, consequently, in intercepting this article, regard must be had to the provisions contained in all the earlier articles. The other articles in the third division to the Schedule refer to applications under the Code of Civil Procedure, with the exception of applications under the Arbitration Act and also in two cases applications under the Code of Criminal Procedure. The effect of introduction in the third division of the Schedule of reference to applications under the Arbitration Act in the old Limitation Act has already been considered by this court in the case of Sha Mulchand & Co. Ltd. We think that, on the same principle, it must be held that even the further alteration made in the articles contained in the third division of the Schedule to the new Limitation Act containing references to applications under the Code of Criminal Procedure cannot be held to have materially altered the scope of the residuary article 137 which deals with other applications. It is not possible to hold that the intention of the legislature was to drastically alter the scope of this article so as to include within it all applications, irrespective of the fact whether they had any reference to the Code of Civil Procedure.”

11. Therefore, keeping in the view the law laid down by the Hon’ble Calcutta High Court, the argument of respondent may be correct with respect to period of

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execution is three years under Arbitration Act, however under the Companies Act, under Article 136 of the Limitation Act 1963, it is 12 years. Therefore, we are of the view that the present application has been filed within the period of limitation.

12. Accordingly, post this IA for arguments on merits on 13 June 2024.
13. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on the 1st day of May, 2024.