

(2021) 02 SHI CK 0286

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 888, 889 Of 2010

Mahle Filter Systems India Ltd. (Formerly Purolator India Ltd) **APPELLANT**
Vs

Himachal Pradesh Urban Development Authority (HIMUDA) **RESPONDENT**
And Another

Date of Decision : 26-02-2021

Acts Referred:

Companies Act, 1956 — Section 21, 22, 23(1), 23(3), 394(2)

Citation : (2021) 02 SHI CK 0286

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Manisha Gandhi, Suvineet Shamra, Rahul Mahajan, Bhupinder Gupta, Ajeet Singh Jaswal, Desh Raj Thakur, R.P.Singh, T.S. Chauhan, Abhay Kaushal

Final Decision : Allowed

Judgement

Vivek Singh Thakur, J

1. These interconnected two petitions are being disposed of by this common judgment.

CWP No.888 of 2010

2. M/s Mahle Filter Systems India Ltd. (formerly Purolator India Ltd.) (hereinafter referred to as Petitioner "Company"), by way of this Writ

Petition, has approached this Court, assailing Office Order dated 25.2.2010, Annexure-1, passed by CEO-cum-Secretary, Himachal Pradesh Urban

Development Authority (HIMUDA) "respondent No.1, whereby petitioner - M/s Mahle Filter Systems India Ltd. has been called upon to deposit

an amount to the tune of Rs15,80,97,144/- alongwith interest at the rate of 14% per annum from 12.6.2009 till its realization, on account of 50%

unearned increase with respect to Plots No.14 to 15, Sector-1, Parwanoo, for alleged transfer of these plots from M/s Purolator India Ltd. to a new

company M/s Mahle Filter Systems India Ltd., without taking prior permission/ consent of the lessor, i.e. HIMUDA, causing violation of Clause-2(v)(a)

of Lease Deed executed between HIMUDA and M/s Purolator India Ltd.

3. Facts emerging from the pleadings are that petitioner-Company was originally incorporated in the name of M/s Purolator India Ltd. under

Companies Act, 1956 and registered as Public Limited Company in the year 1966, resulting into issuance of Certificate of Incorporation dated

16.4.1966, Annexure-2, in its favour by Registrar of Companies, Punjab and Himachal Pradesh.

4. M/s Purolator India Ltd. was allotted two industrial Plots No.14 & 15 in Sector-1, Parwanoo, by the then Himachal Pradesh Housing Board (now

HIMUDA) on 12.9.1975 and 7.5.1977 respectively, on a Long Term Lease of 95 years, whereupon M/s Purolator India Ltd. established its

manufacturing facilities Unit-1 and Unit-2.

5. In the year 2007, a Company namely M/s Mahle Filter Systems India (P) Ltd. presented a scheme in the High Court of Delhi for amalgamating

itself with M/s Purolator India Ltd. and proposing thereby that all assets and liabilities of the Transferor Company, i.e. M/s Mahle Filter Systems India

(P) Ltd. were to be transferred and vested in Transferee Company, i.e. M/s Purolator India Ltd., with further condition that M/s Purolator India Ltd.

shall change its name to M/s Mahle Filter Systems India Ltd., by following the prescribed procedure under the Companies Act, 1956.

6. Aforesaid Amalgamation Scheme was sanctioned by the High Court of Delhi, vide order dated 27.5.2008, whereupon Assets and Liabilities of M/s

Mahle Filter Systems India (P) Ltd. were transferred to and vested in M/s Purolator India Ltd. with effect from the appointed date, i.e. 1.4.2007.

7. Consequent upon sanction of Amalgamation Scheme and condition incorporated therein, M/s Purolator India Ltd. applied to the Registrar of

Companies for change of its name to M/s Mahle Filter Systems India Ltd., by passing necessary resolution, in terms of Section 21 of the Companies

Act, 1956. After due approval of Central Government, coupled with Notification dated 24.6.1985, Registrar of Companies, on 4.9.2008, notified the

change of name of M/s Purolator India Ltd., as proposed, to M/s Mahle Filter

Systems India Ltd. and issued a Fresh Certificate of Incorporation

Consequent upon Change of Name (Annexure-3) pursuant to Section 23(1) of the Companies Act, 1956.

8. Thereafter, M/s Purolator India Ltd., named as M/s Mahle Filter Systems India Ltd. informed the Member Secretary, SWCA, Industries

Department, Parwanoo (MSID) regarding the aforesaid name change with a request to take note of the change and to make necessary changes in its

records to endorse the change in the Certificate of Registration. The said information was transmitted by MSID to respondent No.2 - Director of

Industries, on the basis of which information, respondent No.2, vide letter dated 6.11.2008, recommended to HIMUDA for necessary permission for

change of name from M/s Purolator India Ltd. to M/s Mahle Filter Systems India Ltd. and for execution of Supplementary Lease Deed by the

Company, in terms of provisions of rules of HIMUDA. On perusal of communication dated 6.11.2008, Annexure-R1/B, it appears that MSID, vide

letter dated 4.10.2008, had informed respondent No.2-Director of Industries that M/s Purolator India Ltd. has been merged with M/s Mahle Filter

Systems India Ltd., as per Scheme of Merger approved by High Court of Delhi and, thus, the business vested in M/s Mahle Filter Systems India Ltd.

9. In consequence to communication dated 6.11.2008, HIMUDA, through its CEO-cum-Secretary, had asked M/s Purolator India Ltd. to supply

attested copy of petition filed by M/s Purolator India Ltd. regarding its merger with M/s Mahle Filter Systems India Ltd. alongwith certified/attested

copy of order dated 27.5.2008, passed by High Court of Delhi for merger of M/s Purolator India Ltd. with M/s Mahle Filter Systems India Ltd.

10. M/s Mahle Filter Systems India Ltd., vide communication dated 20.1.2009 responded to communication dated 14.11.2008, informing that neither

M/s Purolator India Ltd. had merged with M/s Mahle Filter Systems India Ltd. nor its business was vested in another company and to substantiate and

reflect the correct position, copy of order dated 27.5.2008 passed by High Court of Delhi, approving the Scheme of Arrangement of Amalgamation of

M/s Mahle Filter Systems India (P) Ltd. with erstwhile M/s Purolator India Ltd. and consequent change of name of company to M/s Mahle Filter

Systems India Ltd. alongwith Scheme of Arrangement of Amalgamation as submitted before the High Court of Delhi and copy of the petition filed

therein were also supplied alongwith this communication.

11. Vide communication dated 10.2.2009, HIMUDA, through its CEO-cum-Secretary, had asked the Petitioner-Company to supply some other

documents, which, in turn, were supplied to HIMUDA, vide communication dated 15.6.2009, Annexure-12. After concluding that it appeared that

leasehold rights of Industrial Plots No.14 & 15 had been transferred by M/s Purolator India Ltd. in the name of M/s Mahle Filter Systems India (P)

Ltd. without permission of Lessor (HIMUDA), in breach of the contract, Petitioner-Company was directed to deposit Rs15,80,97,144/-, on account of

50% amount of unearned increase as per Clause-2(v)(a) of Lease Deed and complete formalities were directed to be completed, within 30 days from

the date of issue of notice i.e. 15.6.2009, with condition that failing in compliance, penal interest at the rate of 14% per annum shall be charged on

delayed payment.

12. Petitioner-Company, vide communication dated 15.7.2009, Annexure-13, had tried to clarify that M/s Mahle Filter Systems India (P) Ltd. has

merged with M/s Purolator India Ltd., consequent upon the order passed by High Court of Delhi, and also thereon, as per approved Scheme for

Amalgamation, name of M/s Purolator India Ltd. to M/s Mahle Filter Systems India Ltd., as duly approved by the Registrar of Companies, by issuing

fresh Certificate of Incorporation, with effect from 4.9.2008. The said fact was also communicated by Director of Industries to HIMUDA, vide letter

dated 12.11.2008 and it was canvassed by the Petitioner-Company that change of name of Company does not result in transfer of property and,

therefore, there is no transfer of leasehold rights of Industrial Plots, warranting payment of unearned increase, attracting Clause-2(v)(a) of Lease

Deed and further that there was no condition in the Lease Deed to have prior consent of HIMUDA for change of name of the Company.

13. Vide notice dated 2.12.2009, HIMUDA again reiterated its earlier stand and called upon the Petitioner-Company to deposit the amount on account

of unearned increase as already claimed by it in previous communications with condition that failure in deposit will result cancellation of allotment and

termination of lease, with further right to recover all liquidated damages. The said notice was also responded by Petitioner-Company, vide

communication dated 23.12.2009. Thereafter, on 2.1.2010, to avoid eviction and

dispossession of Petitioner-Company from the Industrial Plots by

HIMUDA, Petitioner-Company had filed a Civil Writ Petition No.8 of 2010 before this Court, which was disposed of by a Division Bench of this

Court vide order dated 4.1.2010, directing HIMUDA to take a final decision, by passing a speaking and reasonable order, within a period of eight

weeks from the date of passing of the order, after taking into consideration contents of the reply filed by the Petitioner-Company to the notice and also

considering the provisions of Transfer of Property Act, 1882, Companies Act, 1956 and Terms and Conditions of the Lease. Liberty was also granted

to the Petitioner-Company to depute its representative, in case it was so desired, to be heard in person.

14. Consequent to the aforesaid events, impugned order dated 25.2.2010, Annexure-1, under challenge in present petition, was passed.

15. Relevant Condition No.2(v)(a), contained in the Lease Deed, relevant for adjudication of the matter, is as under:

â??2(v)(a) The lessee shall not sell, transfer, assigns or otherwise part with the possession of the whole or any part of the industrial plot except with

the previous consent in writing of the parties which he shall be entitled to exercise in the absolute discretion.

PROVIDED that such consent shall not be given for a period of ten years from the commencement of this lease unless, in the opinion of the Lessor,

exceptional circumstances exist for the grant of such consent.

PROVIDED FURTHER that, in the event of the consent being given the Lessor may impose such terms and conditions as he thinks fit and the

Lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference sale, transfer, assignment, or parting

with the possession the amount to be recovered being fifty percent of the unearned increase and the decision of the Lessor in respect of the market

value shall be final and binding.

PROVIDED FURTHER that the Lessor shall have the pre-emptive right to purchase the property after deducting fifty percent of the unearned

increase as aforesaid.â??

16. Relevant provisions of Companies Act, 1956, in vogue, as applicable at the relevant point of time, with respect to change of name of Company are

as under:

21. Change of name by company.- A company may, by special resolution and with the approval of the Central Government signified in writing,

change its name;

Provided that no such approval shall be required where the only change in the name of the company is the addition thereto or, as the case may be, the

deletion therefrom, of the word "Private", consequent on the conversion in accordance with the provisions of this Act of a public company into a

private company or of a private company into a public company.

..

23. Registration of change of name and effect thereof.- (1) Where a company changes its name in pursuance of section 21 or 22, the Registrar

shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary

alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.

(2) The Registrar shall also make the necessary alteration in the memorandum of association of the company.

(3) The change of name shall not effect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any

legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the

company by its new name.

17. On perusal of Memo of Parties filed with copy of decision dated 27.5.2008 (Annexure-6), passed by High Court of Delhi, it is apparent that matter

decided by the said Court was a Scheme of Arrangement of Merger of M/s Mahle Filter Systems India (P) Ltd. with M/s Purolator India Ltd.,

wherein M/s Mahle Filter Systems India (P) Ltd. was Transferor Company whereas M/s Purolator India Ltd. was Transferee Company and in this

decision sanction was granted to the proposed scheme for amalgamation of Transferor Company with the Transferee Company and Scheme of

Amalgamation was approved with effect from appointed date, i.e. 1.4.2007, with following order:

1. That all the property, rights and powers of the Transferor Company specified in the First, Second and Third parts of the Schedule-II hereto and

all other property, rights and powers of the Transferor Company be transferred

without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and

2. That all the liabilities and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly

the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the Transferee

Company; and

3. That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and

4. That the Transferee Company do without further application allot to such members of the Transferor Company as have not given such notice of

dissent as is required by Clause 9 given in the Scheme of Amalgamation herein, the shares in the Transferee Company to which they are entitled

under the said amalgamation; and

5. That the Transferor Company do within five weeks after the date of this order cause a certified copy of this order to be delivered to the Registrar

of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without the process of winding

up and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in

relation to the Transferee Company and the files relating to the said Transferor and Transferee Companies shall be consolidated accordingly. It is

clarified that this order will not be construed as an order granting exemption from payment of stamp duty if payable in accordance with the law in

regard to increase in the share capital of the Transferee Company; and

6. That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary; and

7. Transferee Company to deposit cost of Rs.20,000/- in the Common Pool Fund of the Official Liquidator within three weeks.â??

18. Clause-10 of Scheme for above referred Amalgamation of Companies, containing condition for substitution of name of Transferee Company, is as

under:

10. Upon this Scheme becoming finally effective:

..

..

(e) The name of the Transferee Company shall be substituted with the name of the Transferor Company. Pursuant to the provisions of the Companies

Act, 1956, the Transferee Company will make necessary application to the concerned Registrar of Companies and other competent authorities, if any,

to give effect to the said change of name.

19. It is apparent from record that Transferor Company, i.e. M/s Mahle Filter Systems India (P) Ltd., stood dissolved without process of winding up,

on account of its amalgamation in the Transferee Company, i.e. M/s Purolator India Ltd., whereas M/s Purolator India Ltd. was incorporated and

registered as Public Limited Company and after amalgamation/merger, M/s Purolator India Ltd. was re-named as M/s Mahle Filter Systems India

Ltd., but not as M/s Mahle Filter Systems India Private Ltd., for the reason that M/s Mahle Filter Systems India (P) Ltd. stood dissolved after its

merger in M/s Purolator India Ltd., which was a Public Limited Company, and was re-named as M/s Mahle Filter Systems India Ltd. It has been

informed that it remained Public Limited Company till 2015. The lis in present petition is pertaining to the period prior to 2010. The constitution of the

renamed company, at relevant point of time was as a Public Limited. However, this description was overlooked by HIMUDA, as in their

communication, notices and orders, particularly communication dated 10.9.2009 (Annexure-10); and notice dated 2.12.2009 (Annexure-14), HIMUDA

had considered and addressed the Petitioner-Company as M/s Mahle Filter Systems India Private Ltd. and, thus, it appears that due to resemblance of

name of two different companies, one of which was Private Limited and another was Public Limited, Officers and officials of HIMUDA had erred in

arriving at conclusion that Transferor Company M/s Mahle Filter Systems India (P) Ltd., in the Scheme sanctioned by the High Court of Delhi, was

the Company which had acquired M/s Purolator India Ltd., resulting into transfer of Industrial Plots by M/s Purolator India Ltd. to the said Company,

whereas, as a matter of fact, M/s Mahle Filter Systems India (P) Ltd. was dissolved and, after amalgamation, M/s Purolator India Ltd. was re-named

as M/s Mahle Filter Systems India Ltd. but not M/s Mahle Filter Systems India (P)

Ltd.

20. With sanction of Scheme of Amalgamation with effect from the appointed date, i.e. 1.4.2007, Transferor Company stood dissolved from the said

date, or at the most from the date of sanction of the Scheme by the High Court of Delhi, vide order dated 27.5.2008, whereas name of M/s Purolator

India Ltd. has been changed to M/s Mahle Filter Systems India Ltd. on 4.9.2008, in pursuant to resolution passed by the said Company and due

approval by Central Government, in terms of Section 21 of the Companies Act, 1956. At the time of allowing and registering the change of name of

M/s Purolator India Ltd. as M/s Mahle Filter Systems India Ltd., no Company, so registered with identical or too closely resembling with the changed

name, was in existence, and fresh Certificate of Incorporation has been issued consequent upon change of name by Registrar of Companies after due

compliance of provisions of Companies Act, particularly Section 21.

21. Section 23(3) of Companies Act, 1956 provides that change of name of the Company shall not affect any rights or obligations of the Company, or

render defective any legal procedure by or against it and such proceedings may be continued by or against the Company by substituting its new name.

22. Change of name of a Company does not mean change of owner or proprietor. On change of name of a person, natural or legal, including an entity

like a Company registered under Companies Act, 1956, it cannot be construed that property belonging to that person/entity has been transferred from

person A to person B as there are no two persons but only one person in existence, who has to be identified with changed name.

Therefore, in present case also, HIMUDA has mis-described and misconstrued the documents placed before it and at one place Director of Industries

and/or MSID, in their communications dated 6.11.2009 and 4.10.2008 respectively, had also mis-communicated that M/s Purolator India Ltd. has

merged with M/s Mahle Filter Systems India Ltd. and business of M/s Purolator India Ltd. has vested in M/s Mahle Filter Systems India Ltd.,

whereas fact was and is that M/s Mahle Filter Systems India (P) Ltd. had merged in M/s Purolator India Ltd. and thereafter name of M/s Purolator

India Ltd. has been changed to M/s Mahle Filter Systems India Ltd.

23. Clause-2(v)(a) of Lease Deed mandates recovery of unearned increase for breach of this clause whereby a bar has been put on the lessee on

selling, transferring, assigning or otherwise parting with possession of the whole or any part of Industrial Plots, except, in writing previous consent of

parties. On change of name of A from X to Y, the person A remains the same and, thus, property of A also

remains with A but with changed name and, thus, change of name of A from X to Y does not amount to selling,

transferring, assigning or otherwise parting with possession of the property of A to some other person. Therefore, in present case, HIMUDA

has wrongly invoked this condition for issuance of notices against the Petitioner-Company and passing impugned order dated 25.2.2010.

24. Present case is acquisition of another company by way of amalgamation/merger and change of name of acquiring company, i.e. Lessee to the

name of acquired company. Clause-2(v)(a) of Lease Deed, nowhere prohibits the lessee from changing its name. It does not contemplate a condition

to have permission, muchless previous in writing permission, to change the name of lessee or to acquire any other company by way of amalgamation.

No other condition, restricting or prohibiting the lessee from changing its name or from acquiring other company has been pointed out. Therefore,

acquiring another company by lessee and/or change of its name to the name of acquired company, without prior permission of HIMUDA, do not

attract Clause-2(v)(a) of Lease Deed.

25. In present case, assets of lessee have not been transferred to any other company but assets of another company have been transferred in favour

of lessee. Previous consent for filing amalgamation petition, acquiring any other Company by lessee is not warranted under Clause-2(v)(a). Had it

been a merger of lessee in any other company alongwith its assets, provisions of Clause-2(v)(a) of Lease Deed might have been attracted, but factual

matrix is not so in present case. Thus, action of HIMUDA is misconceived.

26. In view of the above, it is evident that M/s Mahle Filter Systems India Ltd. is none else but the M/s Purolator India Ltd. and HIMUDA is not

entitled to claim 50% unearned increase of Rs15,80,97,144/- alongwith 14% interest from the Petitioner-Company and, accordingly, Office Order

dated 25.2.2010 (Annexure-1) is quashed and consequently HIMUDA is directed to incorporate the change of name of M/s Purolator India Ltd. in its

record of allotment of concerned Industrial Plots as M/s Mahle Filter Systems

India Ltd. and concerned parties, including HIMUDA, are directed to execute all necessary documents, including Supplementary Lease Deed, if required so, under the Rules, Regulations and Law applicable in present case on or before 30.4.2021.

CWP No.889 of 2010

27. This petition has been preferred by M/s Mahle Filter Systems India Ltd./ Petitioner-Company for quashing of letter dated 12.3.2010, Annexure A-

14, whereby CEO-cum-Secretary of HIMUDA has declined to consider the request made by Petitioner-Company for issuance of No Objection

Certificate (NOC) for sanction and release of Power Load to Petitioner-Company from Himachal Pradesh State Electricity Board (HPSEB), on the

ground that M/s Mahle Filter Systems India Ltd. is in unauthorized use and occupation of Industrial Plots No.14 & 15, referred supra. Petitioner has

also sought direction, in the nature of mandamus, to HIMUDA to issue an NOC to the Petitioner- Company with further direction to Director of

Industries not to withhold/delay the issuance of Certificate of Commencement of Production, on the ground that load connection has not been

sanctioned.

28. HIMUDA is contesting this petition on the basis of averments made in response to CWP No.888 of 2010. Director of Industries has not filed any

reply, rather, as noticed supra, has recommended for change of name in the allotment of Industrial Plots in favour of M/s Mahle Filter Systems India

Ltd.

29. HPSEB has contested this petition, by filing reply, wherein main objection taken is that a new connection has been sought to be sanctioned and

released in favour of Petitioner-Company in Industrial Plots No.14 & 15, in the name of M/s Mahle Filter Systems India Ltd. whereas, as per record

of HPSEB M/s Purolator India Ltd. is the allottee and, therefore, Petitioner-Company is not entitled for a new regular connection in its name on these

Plots and to ascertain the right of Petitioner-Company to get the electricity connection sanctioned and released in its favour, on aforesaid Industrial

Plots, HPSEB had asked the Petitioner-Company to produce NOC from HIMUDA but the Petitioner-Company had failed to produce NOC from

HIMUDA and, therefore, connection could not be sanctioned and released in favour of Petitioner -Company.

30. It is also stated on behalf of HPSEB that a new connection has been released in favour of Petitioner-Company and load has been sanctioned to it as

per orders passed by this Court as vide order dated 22.3.2010, it was directed that NOC shall not be insisted for the purpose of grant of connection. In

consequence thereto, HPSEB has already sanctioned and released the electricity connection in favour of Petitioner-Company.

31. As held in CWP No.888 of 2010, Petitioner-Company is none else but the M/s Purolator India Ltd. and HIMUDA has been directed to permit the

change of name of M/s Purolator India Ltd. in record of allotment of Industrial Plots as M/s Mahle Filter Systems India Ltd. and, therefore, Petitioner-

Company M/s Mahle Filter Systems India Ltd. (formerly Purolator India Ltd.) is original allottee of Industrial Plots No.14 & 15 and, thus, Petitioner-

Company is also entitled for consequential benefits as available to it as such.

32. Therefore, in present petition also, for discussions and order passed in CWP No.888 of 2010, respondents are directed to complete all necessary

compliance of all formalities required for regularizing the electricity connection sanctioned and power load released in favour of Petitioner-Company in

pursuance to interim order passed by this Court. Parties, including Petitioner-Company, are directed to complete all formalities on or before 30.4.2021.

CWPs No.888 and 889 of 2010

Both the petitions are allowed in the aforesaid terms, so also pending application(s), if any.