

(2009) 10 DEL CK 0306
In the Delhi High Court
Case No : O.M.P. No. 264 of 2009

Shriram Pistons and Rings Ltd.

APPELLANT

Vs

Usha International Ltd.

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 14
Companies Act, 1956 — Section 391, 394, 394(2)
Delhi Rent Control Act, 1958 — Section 14(1), 14(2)

Citation : (2009) 164 DLT 73

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : T.K. Ganju, A.K. Thakur R.K. Mishra and Rajiv Arora, for the Appellant; Sanjeev Bhandari, Ekta Kapil, Vijay Kundal, Shweta Bidhuri, Sudhanshu Goil and Gaurav Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—Arbitration proceedings were going on between M/s Usha International Limited and Shriram Pistons & Rings Limited in respect of dispute referred to the Arbitrator. During pendency of the arbitration proceedings M/s Usha International Limited, New Delhi got amalgamated with Jay Engineering Works Limited. The order of sanction u/s 394 of the Companies Act passed by this Court on 26.5.2008 provided as under:

2(a) That all the liabilities and duties of the Transferor Companies 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(a) That all the proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company; and

2. The petitioner by filing this application u/s 14 of the Arbitration & Conciliation

Act has contended that the arbitration proceedings pending between the petitioner and the respondent i.e. M/s Usha International Limited should stand terminated as there was no arbitration agreement between the petitioner and the transferee company i.e. Jay Engineering Works Ltd. and therefore the mandate of the Arbitrator stands exhausted. The argument pressed is that amalgamation of M/s Usha International Ltd. with Jay Engineering Works Ltd. had resulted into M/s Usha International Ltd. becoming a non entity and petitioner was having no arbitration agreement with Jay Engineering Works Ltd. therefore the mandate of the Arbitrator stands terminated.

3. I consider that the argument advanced by the petitioner is misconceived. As held in *Singer India Ltd. Vs. Chander Mohan Chadha and Others*, ? amalgamation? is a blending of two or more existing undertakings into one undertaking. The provisions for facilitating amalgamation of the companies are made u/s 394 of the Companies Act. By amalgamation two or more companies get fused into one by merger or by one taking over another. Re-construction or amalgamation has no precise legal meaning. The amalgamation takes place strictly in accordance with the order of the court. No doubt, the transferor company loses its name and identity but all the respective rights and liabilities of the transferor company are determined under the scheme of amalgamation and do not stand wiped out.

4. In *Singer India Limited (supra)* an argument was advanced before the Supreme Court that in view of amalgamation of the tenant with the sub-tenant Section 14(2) of the Delhi Rent Control Act 1958 shall cease to operate and since the sub-tenant had amalgamated into tenant the issue of sub-letting would not stand. The Supreme Court observed as under:

11. These cases clearly hold that even if there is an order of a court sanctioning the scheme of amalgamation under Sections 391 and 394 of the Companies Act whereunder the leases, rights of tenancy or occupancy of the transferor company get vested in and become the property of the transferee company, it would make no difference in so far as the applicability of Section 14(1)(b) is concerned, as the Act does not make any exception in favour of a lessee who may have adopted such a course of action in order to secure compliance of law.

Despite the amalgamation of Singer company of US with Singer company of India, the Supreme Court upheld the order of eviction u/s 14(1)(b) and dismissed the appeal.

5. I consider that the amalgamation does not bring the rights and obligations of the transferor company to an end. All rights and obligations of the transferor company stand merged into the transferee company and the transferee company is equally bound by the contracts entered into by the transferor company with the third parties. The transferor company no doubt loses its name when it merges into the transferee company but it acquires a new name i.e. the name of the transferee company and its rights and obligations to the third party are

carried by the transferee company in terms of the scheme. It is not a case of wiping out of the identity but it is a case of merger of two identities into one and when two legal entities merge into one, it only amounts to change of name of the transferor company to that of a transferee company. This means that M/s Usha International Limited after merger would be known as Jay Engineering Works Limited and by a change of name, the contractual obligations do not come to an end.

I, therefore consider that the plea raised by the petitioner that because of merger of M/s Usha International Limited with Jay Engineering Works Limited, the arbitration proceedings should come to an end and the mandate of the Arbitrator has come to an end is baseless plea. The petition is therefore dismissed with costs of Rs. 50,000/-.