
(2014) 09 IPAB CK 0002

In the Intellectual Property Appellate Board

Case No : ORA/66/2008/TM/DEL

Yking Tools Manufacturing Co. Ltd

APPELLANT

Vs

Tarun Enterprises Pvt. Ltd

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Citation : (2014) 09 IPAB CK 0002

Hon'ble Judges : K.N. Basha, J; Sanjeev Kumar Chaswal, Technical Member

Bench : Division Bench

Advocate : Kamal Garg

Final Decision : Dismissed

Judgement

K.N. Basha, J

1. This application is filed for the relief of removal of the trade mark from the register of trade marks in respect of 'Y-KING bearing Registration No.

1349979 in Class 7, in the name of Tarun Enterprises Pvt. Ltd., the respondent No. 1 herein.

2. Mr. Kamal Garg, the learned counsel for the applicant is present today. The learned counsel for the respondent Mr. V.P. Ghiraya is no more as per the information given by one of the counsel before this Bench.

3. Mr. Kamal Garg, the learned counsel would submit that the matter was settled amicably between the parties namely applicant and respondent as

per the memorandum of settlement dated 10.09.2014, copy of the resolution dated 10.09.2014 passed by the applicant company and the copy of the

resolution dated 03.09.2014 passed by the respondent No. 1. The learned counsel for the applicant would also produced the original memorandum

settlement dated 10.09.2014 and the original copy of the resolution passed by

the respondent No. dated 03.09.2014 before us. As per the resolution of the applicant company dated 10.09.2014, Mr. V.K Garg, Director of the company has been authorized to make the statement made by way of affidavit or in oath in respect of the present Rectification Petition for and on behalf of the company and also authorized to execute the memorandum of settlement that the respondent No. 1 company namely Tarun Enterprises Private Limited.

4. The respondent No. 1 passed the resolution dated 03.09.2014 resolving and authorizing Shri Baldev Kumar Gupta to execute the memorandum of settlement with the applicant company in respect of the present Rectification Petition.

5. The memorandum of settlement dated 10.09.2014 signed by the applicant company and as well as by the respondent No. 1 company reads hereunder:

Reading of the above said memorandum of settlement reveals that this matter is settled between the parties namely, the applicant and the respondent

No. 1 on the basis of the terms and condition contained in the above said memorandum of settlement dated 10.09.2014. Recording the above said

settlement arrived between the parties, we are also pointing out the specific terms and conditions incorporated in the above said memorandum of

settlement. The main ground of settlement as per clause 3 of the memorandum of settlement reads hereunder:--

3. that the party of the second part agrees to surrender the registered trade mark Y-KING vide registration No. 1349979 in Class 07 in favour of

Party of the First Part as being the prior adopter and user of the trade mark YKING in respect of Power Tools and allied goods thereof. The party of

the second part agreed to assign the trade mark Y-KING under No. 1349979 in Class 07 and further agreed to execute all documents concerned

thereto in favour of the Party of the First Part.

6. It is seen that on the basis of the settlement is also in respect of the other terms and conditions as incorporated in Clause 4, 5 & 6 in the

memorandum of settlement dated 10.09.2014. As per the undertaking given by the applicant herein in the memorandum of settlement, the Rectification

Petition in ORA/66/2008/TM/DEL is hereby dismissed as withdrawn as not pressed.