



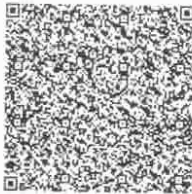
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL50731194747484X
Certificate Issued Date : 16-Mar-2025 12:56 PM
Account Reference : IMPACC (IV)/ dl755003/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL75500343642908833444X
Purchased by : PRAVEEN KUMAR JAIN
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : PRAVEEN KUMAR JAIN
Second Party : Not Applicable
Stamp Duty Paid By : PRAVEEN KUMAR JAIN
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line

BEFORE THE SOLE ARBITRATOR
MR. PRAVEEN KUMAR JAIN, ADVOCATE
INDRP CASE NO. 1900

In the arbitration between:

TMY PRODUCTS LLC

...Complainant

and

ABHISHEK SINGH

...Respondent

Praveen W. Jain

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding.
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority

BEFORE THE SOLE ARBITRATOR
MR. PRAVEEN KUMAR JAIN, ADVOCATE
INDRP CASE NO. 1900

In the arbitration between:

TMY PRODUCTS LLC

...Complainant

and

ABHISHEK SINGH

...Respondent

ARBITRAL AWARD DT. 17-03-2025

A. Introduction:

The above titled complaint has been filed by the complainant - TMY PRODUCTS LLC for adjudication of the domain name dispute in accordance with the *.IN Domain Name Dispute Resolution Policy* (hereinafter referred to as "the INDRP", for short), and the *INDRP Rules of Procedure* as adopted by the .IN Registry - National Internet Exchange of India (hereinafter referred to the "NIXI" or "Registry", for short). The disputed domain name <mkprofessional.in> is registered under the Registrar, namely *Godaddy.com, LLC*, which was created on **2023-07-05** (YYY/MM/DD) and the same shall expire on **2033-07-05** (YYY/MM/DD), by Mr. Abhishek Singh, the Respondent herein.

B. Procedural History:

- i. That *vide* its email dated 08-01-2025, the Registry sought my consent for appointment as the Sole Arbitrator to adjudicate the above-stated domain name dispute between the above-said parties.
- ii. That *vide* email dated 09-01-2025, I had shared with the Registry my digitally signed Statement of Acceptance and Declaration of Impartiality & Independence dated 09-01-2025 in the form prescribed by the Registry.
- iii. Thereafter, the Registry *vide* its email dated 14-01-2025 apprised the parties that I would adjudicate the dispute relating to the domain name "mkprofessional.in" as the sole Arbitrator and INDRP Case No. 1900 was

Praveen W. J.

assigned to the same. The Registry had also attached the soft copies of the complaint and its annexures, my above-referred statement of acceptance and WHOIS details of the domain name in the above-stated email dt. 14-01-2025 sent to the parties.

- iv. That *vide* email dt. 16-01-2025, I had issued the Notice dt. 16-01-2025 to all concerned parties and their representatives/ counsel under Rule 5(c) of the INDRP Rules of Procedure. Though, the Registry had shared with the parties my Statement of Acceptance and Declaration of Impartiality & Independence dated 09-01-2025 given in its prescribed format; however, I deemed it fit to share with the parties my declaration of independence, impartiality and availability dt. 16-01-2025 under section 12 r/w the Sixth Schedule of the Arbitration & Conciliation Act, 1996 also. None of the parties has objected to my appointment as the sole Arbitrator in the present matter.
- v. That the Respondent *vide* its email dt. 16-01-2025 immediately responded to the above-stated Notice dt. 16-01-2025 by stating therein that he had made several requests to TMY importers, Pranav and Rajesh from NUCARE MARKETING, regarding the transfer of the domain name. However, he had not received any confirmation from their side. The respondent further stated that NIXI would only facilitate the transfer of the disputed domain name "mkprofessional.in" to TMY LLC. The Respondent further stated that he could proceed with the transfer only once he received confirmation that the domain would be transferred to TMY LLC and not to NUCARE MARKETING.
- vi. That *vide* its email dt. 21-01-2025, the Tribunal sent its Procedural Order dt. 21-01-2025 to the parties directing therein the Complainant to file its response within 5 days to the Reply received from the Respondent on 16-01-2025.
- vii. That *vide* its email dated 24-01-2025, the Complainant submitted its supplemental filing/ response dt. 24-01-2025 to the Reply received from the



Respondent on 16-01-2025. The above-said supplemental filing/ response dt. 24-01-2025 was taken on the arbitral record as the Complainant's Rejoinder to the Respondent's Response dt. 16-01-2025.

viii. That *vide* its email dt. 24-01-2025, the respondent sent its response to the complainant's above-said supplemental filing dt. 24-01-2025 which was taken on the arbitral record as the sur-Rejoinder of the Respondent. Thus, the pleadings of the parties stood completed as on 24-01-2025.

ix. That *vide* its email dt. 19-02-2025, the Tribunal sent its Procedural Order dt. 19-02-2025 to the parties observing therein that there was no need to direct the parties to file their statement of admission/ denial of the documents as the Respondent had not disputed any of the documents filed by the Complainant along with its Complaint and the Respondent had not filed any document along with its Reply dt. 16-01-2025 and sur-Rejoinder dt. 24-01-2025. Hence, the Tribunal deemed it fit to frame the following issues arising from the pleadings of the parties:

1. Whether the Complainant is entitled to the relief of transfer of the disputed domain name "<https://www.mkprofessional.in>" from the Respondent?
2. Whether the Complainant is entitled to get the costs of proceedings from the Respondent? If yes, how much?
3. Relief.

Considering the above-framed issues, the Tribunal was of the view that there was no need of presentation of evidence by the parties. However, both the parties were given liberty to file their written submissions, if any, within a period of 7 days from that day. It was informed to the parties that the arbitral award would be passed on the basis of the pleadings and written submissions

Plavee W. J

filed by the parties unless any request was made for having a hearing for making oral arguments by any of the parties as per the Rule Nos. 16 and 22 of INDRP Rules of Procedure.

- x. That *vide* its email dt. 24-02-2025, the complainant's counsel stated it would like to rely upon its pleadings *viz.* the Complaint dated 13.08.2024 and the Rejoinder dated 24.01.2025. The complainant's counsel further requested to pass a detailed award based on the merits of the case irrespective of the consent of the Respondent to transfer the disputed domain to the Complainant, and to award costs in the interest of justice, equity and good conscience. However, the respondent had not responded to the Procedural Order dt. 19-02-2025. Thus, none of the parties has filed written submissions in support of their respective stands taken in their pleadings. Further, no other "issue" has been raised by the parties and no request for holding a physical/virtual hearing for making oral arguments has been made by the parties.

C. ANALYSIS OF THE FACTS OF THE CASE:

The complainant has stated the following facts in its Complaint dt. 13-08-2024:

1. The Complainant is a limited liability company, formed under the laws of United States of America having its principal place of business at 1107 Industrial PKWY, Suite A, Brick, New Jersey - 08724, United States. The complainant commenced its business in 2010 under its flagship brand 'Majestic Keratin/ MK Professional' and is engaged in the business of manufacturing, selling and distributing a wide range of hair care products, hair and body care apparatus and related apparel. It also offers Hair BTX, Biotin Hair Treatments, Protein Treatments, Organic Keratin Treatments and much more ("Products"). The Complainant is a company of international repute and is one of the leading manufacturers and distributors of high-quality hair care and body care products catering to customers across the globe. Copy of registration certificate of the company issued by the State of New Jersey, the United States of America, has been attached and marked as **Annexure 3**.

Plavee W. Jr

2. The Complainant adopted the brand name "Majestic Keratin/ MK" ("Brand Name") in relation to its business in November 2010 and further also registered a domain www.majestickeratin.com through which it was marketing its Products. Further, domain purchase receipt issued by the registrar Godaddy for the purchase of the said domain and screenshot from the web-archive of the said domain has been provided as **Annexure 4**.
3. Further, with the expansion of its business and products, the Complainant adopted the brand "MK Professional" in 2011, as popularly known till date across the globe, and specifically in the United States, India and Canada. The Complainant also adopted a new logo for the Brand Name in 2016 and has been using the same in all of its Products across the globe. Copy of the invoice raised by the designer company for the design of the logo for the Brand Name and emails exchanged between the designer and the Complainant with respect to the said logo and positioning of the same on the Products of the Complainant has been marked and attached as **Annexure 5**.
4. The Complainant, in furtherance to the adoption of the Brand Name, registered the domain www.mkprofessional.com ("Complainant's Webpage") in 2016, has been using the trademark MK Professional ever since, as part of its online business channels and to market and publicize its products and services on the world wide web as well. Copy of the domain purchase receipt issued by the registrar Godaddy for the purchase of the Complainant's Webpage, Whois data details and screenshots of the Complainant's Webpage have been attached as **Annexure 6**. It has also been submitted by the Complainant that a domain name served the same function as the trademark and was not a mere address or like finding number on the internet but was also entitled to equal protection as a trademark. Reference was drawn to *Info Edge (India) Pvt. Ltd. And Anr. vs Shailesh Gupta & Anr.* [98 (2002) DLT 499] & *Satyam Infoway v. Siffynet Solutions (P) Ltd.* (2004) 6 SCC 145.
5. Further, the Complainant is the proprietor of the trademark "MK Professional" ("Subject Mark") and its formative marks and the list of trademarks held by the

Praveen W.

Complainant is as provided below pursuant to Rules of Procedure, Paragraph 4(b)(v):

TRADEMARK	CLASSES	COUNTRY	REGISTRATION/ APPLICATION NUMBER	STATUS
MAJESTIC MK PROFESSIONAL KERATIN	03	United States	6117467	Registered
MAJESTIC KERATIN	03	United States	4093587	Registered
MK PROFESSIONAL (WORD)	03	United States	98663114	Registration pending
MK PROFESSIONAL (DEVICE)	03	United States	98663127	Registration pending
BONTX MAJESTIC PROFESSIONAL LINE	03	United States	7371032	Registered
MAJESTIC PROFESSIONAL LINE	03	United States	7262150	Registered
MAJESTIC (WORD)	03	India	6540741	Registration pending
MAJESTIC (WORD)	35	India	6540742	Registration Pending
MAJESTIC HAIR(WORD)	03	India	6540743	Registration Pending
MAJESTIC HAIR(WORD)	35	India	6540744	Registration Pending
MAJESTIC KERATIN (WORD)	03	India	6540745	Registration pending
MAJESTIC KERATIN (WORD)	35	India	6540746	Registration pending
MK PROFESSIONAL LINE (DEVICE)	03	India	6540747	Registration pending
MAJESTIC PROFESSIONAL LINE (DEVICE)	35	India	6540748	Registration pending
MK PROFESSIONAL (WORD)	03	India	6540749	Registration pending

Praveen W. J

MK PROFESSIONAL (WORD)	08	India	6540750	Registration pending
MK PROFESSIONAL (WORD)	11	India	6540756	Registration pending
MK PROFESSIONAL (WORD)	21	India	6540757	Registration pending
MK PROFESSIONAL (WORD)	35	India	6540758	Registration Pending
MK PROFESSIONAL (DEVICE)	03	India	6540763	Registration Pending
MK PROFESSIONAL (DEVICE)	08	India	6540759	Registration Pending
MK PROFESSIONAL (DEVICE)	11	India	6540762	Registration Pending
MK PROFESSIONAL (DEVICE)	21	India	6540760	Registration Pending
MK PROFESSIONAL (DEVICE)	35	India	6540761	Registration Pending

Copies of the TM Registration Certificates and screenshot of trademark status pages containing the detailed description of the goods and services of the aforementioned marks obtained from the official website of the relevant trademark registries have been enclosed and marked as **Annexure 7**.

6. Further, with the increasing market demands and potential expansion of the business in India, the Complainant engaged Nu Care Marketing (India) Pvt Ltd., (hereinafter referred to as "**Authorised Agent**"), as an exclusive importer/ agent for the marketing and further distribution of the Products in the Indian territory in 2017. Copy of the agency agreement entered between the Complainant and the Authorised Agent in the year May 2017 has been enclosed and marked as **Annexure 8**.
7. The Complainant has invested huge sums of money for publicity and marketing of its Products in India and the Complainant has placed on record the following additional documents to evidence the right over the Subject Mark, its continuous

Plaveer W. J.

usage in India and the extent of publicity and recognition of the Subject Mark in India:

- i. Copy of the import registration certificates issued by the Central Drugs Standard Control Organisation to the Authorised Agent on various dates for the import of the Products in India have been marked and enclosed as **Annexure 9**.
- ii. Copy of Invoices raised by the Complainant on the Authorised Agent for the import of Products to India have been enclosed and marked as **Annexure 10**.
- iii. Product catalogues and other marketing materials of the Complainant have been marked and enclosed as **Annexure 11**.
- iv. The Complainant has widespread social media presence having over 12 K followers on Facebook and over 4K followers on Instagram. Screenshot of Social Media pages of the Complainant containing reference to the Subject Mark have been enclosed and marked as **Annexure 12**.
- v. Copies of invoices raised by the Authorised Agent on its distributors in India have been marked and enclosed as **Annexure 13**.
- vi. Screenshots of the official webpage of the Authorised Agent containing the reference to the Brand Name have been enclosed and marked as **Annexure 14**.

The complainant has submitted that from the above it is evident that the Complainant is the proprietor of the Subject Mark and has been using the trademark "MK Professional" in connection with its business since 2011 continuously and extensively worldwide including in India. The Complainant has, since inception, been steadily expanding its operations through quality delivery of its Products to its customers which has helped the Complainant create long-lasting relationships with

Praveen W. J.

its customers. Due to the long and continuous use of the Subject Mark for over a decade now, the Subject Mark has acquired distinctiveness and has attained secondary meaning amongst the public in India so that the public associate the Subject Mark exclusively with the Complainant and no one else.

8. It was further submitted that upon consideration of all of the above, in accordance with the Paragraph 4 (a) of the Policy and Paragraph 4(b) (vi) of the Rules of Procedure, it is evident that the Complainant has rights over the Subject Mark and the Disputed Domain name containing the Subject Mark in entirety is identical to the Subject Mark, thereby satisfying the threshold requirement of the INDRP rules for filing of the case.
9. Before traversing to the second element of the INDRP, the Complainant submitted that the Respondent was authorised merely as a distributor of the Complainant's Products in India through the Authorised Agent, in respect of which the following events ensued, that has led to the Complainant filing this Complaint:
 - a. The Respondent approached the Authorised Agent in the month of April 2023 as representative of a company named Socialflip Media Pvt Ltd., seeking to be appointed as a distributor of the Products in certain parts of Maharashtra citing potential market in such areas.
 - b. Further, the Respondent placed a test order for products worth Rs. 1 Lakh and also intimated the representative of the Authorised Agent with whom the Respondent was communicating through WhatsApp, that the trade name through which this business shall be transacted by him would be "Niyaara Cosmetics" having GST 27KHPPK3242G1Z0. The Respondent also shared the GST certificate of the said entity whereunder it was noticed that it was a proprietorship concern of one "Ms. Sapna Kumari", also trading under the name of "Pink Bliss". The complainant submitted that the following documents enclosed and marked as **Annexure 15**, are attached to evidence the aforementioned:

Praveer W. J

- (i) The WhatsApp communications between the Respondent and the representatives of the Authorised Agent (Mr. Pranav and Mr. Rajesh) that transpired from the inception of the business talks between the Respondent and the Authorised Agent for business.
 - (ii) The invoice dated 03rd May 2023 raised by the Authorised Agent for the initial test order placed by the Respondent and proof of receipt of payment of the same which indicates the payment being made by "Shobhajeet Inc.", the entity name appearing in the Whois details of the Disputed Domain.
 - (iii) Copy of GST certificate shared by the Respondent containing the trade name "Niyaara Cosmetics", and the GST details of "Shobhajeet Inc.", which evidences that the Respondent has been acting as the representative of Niyaara Cosmetics.
- c. It was further submitted that after mutual discussions with the Complainant, the Authorised Agent appointed the Respondent as one of the distributors of the Products in the territory of Goa and Rest of Maharashtra except Mumbai and other territories where the Authorised Agent did not have a presence. The business and financial understanding was formalised through an agreement (titled as Annexure A), which was executed on the 10th of August 2023 between the parties. Copy of the email received from the Respondent along with executed copy of the document has been enclosed and attached as **Annexure 16**.
- d. The Respondent had been, since May 2023, purchasing the Products from the Authorised Agent for consideration paid against valid tax invoices raised by the Authorised Agent and re-selling the same in India merely as a distributor. This *ex-facie* shows that the Respondent *per se* has no rights over the Subject Mark which forms the Disputed Domain in entirety. Copy of invoices raised by the Authorised Agent commencing from 3rd May 2023 till 6th February 2024 and copy of payment receipts received from the Respondent have been enclosed and marked as **Annexure 17**. The Complainant highlighted the

Praveen W. J.

important fact that the Respondent was merely a distributor of its Products in the territory agreed within India and clearly had no other right over the intellectual property rights of the Complainant and hence it was *ex-facie* evident that the Respondent has no legitimate rights over the Disputed Domain Name and that the said registration was apparently in bad faith. Thus, the limited association of the Respondent to the Subject Mark was that of a distributor of the Products manufactured and owned by the Complainant, in limited and defined territory within India. Reference was drawn to *Zhejiang Dahua Technology Company Limited vs. Techfinder Electronics Private Limited* (INDRP Case No.1811/2024).

- e. It was also highlighted that time and again the Respondent himself had recognised and acknowledged the Subject Mark as the Complainant's brand and requested for business partnership for further expansion and visibility of the Complainant's brand. In addition to the WhatsApp communications attached in Annexure 15 above highlighting the aforementioned, the Complainant has enclosed an email dated 12th July 2023 from the Respondent addressing himself as the "Director of Niyaara Cosmetics" seeking sponsorship for an event where the Complainant's Products shall be showcased. Copy of the said email has been marked as **Annexure 18**.
- f. The complainant has further stated that while the formal business agreement was executed and shared by Respondent only on 10th August 2023, the Respondent proceeded to fraudulently register the Disputed Domain in an illegitimate manner even prior to that on 5th July 2023 under a different entity name, Shobhajeet Inc. as inferred from the Whois page of the Disputed Domain, and has been holding the Disputed Domain passively till his engagement was terminated by the Complainant and the Authorised Agent in February 2024, thereby indicating his bad faith which are all further detailed in the context of the 2nd and the 3rd element in the relevant subsequent paragraphs.

Praveen W. J.

- g. It is also placed on record that the Respondent has blatantly violated the representations as a registrant, as provided under Paragraph 3 of the Policy which provides:

“3. Registrant's Representations

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

- (a) the credentials
- (b) to the knowledge of Registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations. It is the sole responsibility of the Registrant to determine whether their domain name registration infringes or violates someone else's right.”

- h. It was submitted by the complainant that the fact that the Respondent registered the Disputed Domain even prior to the execution of the agreement with the Authorised Agent of the Complainant for distribution of the Products in India clearly indicates that he had knowledge of the rights of the Complainant over the Subject Mark and hence had violated and infringed upon the intellectual property rights of the Complainant at the threshold during the registration itself.
- i. The Respondent's Disputed Domain which consists of the Subject Mark of the Complainant in entirety, is a replica of the Complainant's Webpage and misrepresents the customers as to the origin and ownership of the Products. This evidences the ulterior intention of the Respondent to divert the internet traffic to the Disputed Domain and pass off the Products of the Complainant

Plaveen W. J.

as its own and thereby unjustly enrich itself, thereby amounting to registration of the domain for unlawful and malafide purposes.

- j. Reference in this regard was drawn to ***Brewing Gadgets General Trading LLC vs. Suhas Dwaraknath*** (INDRP case no. 1769).
12. It was submitted that from the aforementioned, it was *ex-facie* evident that the Complainant was the owner of the Subject Mark and that the Respondent approached the Authorised Agent merely to be appointed as a distributor to sell the Products under the Brand Name of the Complainant in a specific defined territory within India in the name of Niyara Cosmetics, and admittedly held no prima facie rights in the Disputed Domain which consists the Subject Mark of the Complainant in entirety.
13. That the complainant has made further submissions in paragraph B titled: **The Respondent has no rights or legitimate interests in respect of the domain name(s) for the reasons as mentioned below:** [Policy, Paragraph 4 (b); Rules, Paragraph 4(b) (vi)] and has made detailed submissions in paragraph C titled **The domain name(s) was registered or used in bad faith** [Policy, paragraph 4 (c); Rules, Procedure 4(b) (vi)] which are not reproduced herein for the sake of brevity and in light of the unconditional offer made by the Respondent herein to willingly transfer the disputed domain name to the complainant. However, reference to the Complaint dt. 13-08-2024 may be made for above-stated detailed submissions made in para B and C of the complaint which have not been considered necessary for reproduction herein by this Tribunal for the purpose of adjudicating the limited reliefs claimed by the complainant in its above-stated complaint which is reproduced as under:

VI. Remedies Requested

[Policy, Paragraph 11 and Rules of Procedure, Paragraph 4(b) (vii)]

In accordance with the Policy and Rules of Procedure laid thereunder, for the reasons described in Section V above, the Complainant requests the Panel that the domain name **mkprofessional.in** be transferred to the Complainant

Plaveen W. J

along with costs of the proceedings in favour of the Complainant and against the Respondent.

D. RESPONSE DT. 16-01-2025 BY THE RESPONDENT:

The respondent *vide* its email dt. 16-01-2025 had responded as under:

Dear All,

We have made several requests to TMY importers, Pranav and Rajesh from NUCARE MARKETING, regarding the transfer of the domain. However, we have not yet received confirmation from their side.

Please note that Nixi will only facilitate the transfer of the domain name *mkprofessional.in* to TMY LLC.

We can proceed with the transfer only once we receive confirmation that the domain will be transferred to TMY LLC not NUCARE MARKETING

Best regards,

E. REJOINDER DT. 24-01-2025 BY THE COMPLAINANT:

Vide its email dt. 24-01-2025, the complainant sent its supplemental filing/response to the response of the Respondent and requested to take the same on the record. The attached supplemental filing/ response which has been taken on the arbitral record as the complainant's Rejoinder submitted as under:

1. With respect to the contentions of the Respondent about having made requests to the Complainant and representatives of Nucare Marketing regarding the transfer of the disputed domain name, it is stated that the Respondent's request for transfer of the disputed domain name has always been conditional and with ulterior motive to leverage the same in return for collaborating with the Complainant in its business and has not been with an intention to settle the matter, as is being falsely portrayed herein. Every discussion of the Respondent with the Complainant or the representatives of NuCare Marketing in relation to the disputed domain name has always been with an intention to arm twist the Complainant to authorise the Respondent to sell the products of TMY in India. It was owing to such arm-twisting tactics and apparent bad faith that the Complainant was constrained to adopt the dispute resolution process under INDRP

Praveen W. J.

and incur such legal costs, thereby causing unnecessary expenditure for the Complainant to litigate and hence the Complainant is rightfully entitled not only for the transfer of the disputed domain name in its favour but is also entitled to costs to be awarded in its favour as per the relevant provisions of the INDRP.

2. Such statements (including his acceptance to transfer the disputed domain name) of the Respondent by itself ex-facie evidences and establishes the malafide intention and the bad faith element stipulated under Paragraph 4(c) and Rule 4(b)(vi) of the INDRP and the related INDRP rules, which shall be taken on record by the Learned Arbitrator and thereby construed to satisfy the essential requirements under the INDRP for transfer of the domain to the Complainant.
3. Further, the Complainant hereunder is TMY Products LLC and hence, as per the Policy, it is the Complainant who is entitled to the transfer of the disputed domain name in its favour and not Nu Care Marketing. The Complainant is unable to comprehend and appreciate the reasons for statements of the Respondent regarding the transfer of the disputed domain to the Complainant and not Nu Care Marketing when Nu Care is not even a party to this INDRP Proceeding.
4. In this regard, we wish to further respectfully bring to the notice of the Learned Arbitrator that INDRP specifically provides a discretionary power on the arbitrator to impose costs in cases of cybersquatting against respondents in relation to INDRP proceedings and that there are several instances under the INDRP proceedings, where the panels have exercised their discretionary power to impose costs on respondents indulging in apparent cases of cybersquatting such as the instant proceeding. In this regard, we wish to specifically rely upon INDRP case number INDRP/267 dated 31.12.2012, wherein the panel not only awarded the transfer of the disputed domain name in favour of the complainant but also was pleased to award costs of INR 1,00,000 (Rupees One Lakh) as against the respondent.
5. In conclusion, the Complainant wishes to submit that, notwithstanding the acceptance and consent of the Respondent to transfer the disputed domain name to the Complainant, the Learned Arbitrator shall be pleased to pass a merit-based detailed decision on the matter so as to record the existence of the three essential

Plavee W. /r

requirements of the INDRP being established in favour of the Complainant, along with costs as the Learned Arbitrator may deem fit, in furtherance to Paragraph 11 of the INDRP in the interest justice, equity and good conscience.

F. SUR-REJOINDER DT. 24-01-2025 OF THE RESPONDENT:

The respondent *vide* its email dt. 24-01-2025 had in reply to the Rejoinder of the complainant submitted as under:

1. Domain Registration and Good Faith Usage:

The domain **MKProfessional.in** was registered and utilized with the sole intention of promoting and enhancing the online presence of the brand **MK Professional** in India. Through this website, we have actively contributed to building the brand's visibility, reputation, and accessibility in the Indian market. At no point was the domain name registered or used in bad faith, as defined under Paragraph 4 of the INDRP.

2. Attempted Cooperation with the Complainant:

On numerous occasions, we reached out to **NuCare Marketing India Pvt Ltd**, the complainant's exclusive representative in India, offering them administrative access to the website. However, they declined to assume control or manage the domain despite our efforts to collaborate. This highlights that our actions have always been aimed at promoting the brand's interest and protecting its digital identity in good faith.

3. Redirection of Leads to the Complainant:

Furthermore, whenever salon inquiries or demo requests were generated through the website **MKProfessional.in**, these leads were **redirected and shared with NuCare Marketing**. At no time did we retain or withhold these leads for personal benefit. This demonstrates our transparency and consistent efforts to support the complainant in driving business growth through the domain.

Praveen W. J

4. **Good Faith Agreement to Transfer the Domain:**

Despite the substantial contributions made to the brand's online success through **MKProfessional.in**, we have agreed to transfer the domain to the complainant in good faith. This reflects our commitment to resolving this matter amicably. However, it is important to note that the complainant previously declared publicly, through their **Facebook post dated 19 March 2024**, that they were "not associated" with this domain. This contradiction raises doubts about the urgency and rationale behind their current claim.

5. **Relevant Legal Provisions:**

- o **Paragraph 4(i) of the INDRP:** The complainant is required to prove that (a) the domain name is identical or confusingly similar to their trademark, (b) the respondent lacks legitimate rights or interests in the domain, and (c) the domain was registered or used in bad faith. We submit that the registration and use of the domain were legitimate, lawful, and done in furtherance of the brand's interests.
- o **Principle of Equity (Section 151, Indian Contract Act, 1872):** Our actions have been rooted in good faith, as evidenced by our cooperation in redirecting leads, offering administrative access, and agreeing to transfer the domain. This aligns with the principle of equity, which upholds justice, fairness, and good conscience.

6. **Misrepresentation by the Complainant:**

The complainant's Facebook post, dated **19 March 2024**, explicitly states that they are "not associated" with the domain **MKProfessional.in**. This statement demonstrates that the complainant did not consider the domain essential to their business at that time. We respectfully request that this evidence, along with our documented cooperation, be considered in assessing the complainant's claims.

Plaveen W. J.

7. **Request for Fair Judgment:**

While we have agreed to transfer the domain to the complainant, we urge the Hon'ble Arbitrator to consider the following:

- o Our substantial efforts in building the brand's online image and reputation.
- o Our transparency in sharing salon leads and inquiries with the complainant to support their business operations.
- o The absence of any malicious intent or bad faith in our registration and use of the domain.

We also request that no penalties or additional costs be imposed, as our actions have always been aligned with promoting the brand interest and cooperating with the complainant.

Conclusion:

In light of the above, we humbly submit that:

- The complainant has failed to establish bad faith registration or usage under Paragraph 4 of the INDRP.
- Our actions demonstrate legitimate interest, good faith, and transparency.
- The complainant's previous disassociation from the domain undermines the urgency of their current claim.

We respectfully request the Hon'ble Arbitrator to deliver a fair and equitable judgment based on these facts.

G. REASONING/ FINDINGS OF THE TRIBUNAL:

I have examined the Complaint dt. 13-08-2024, the Response dt. 16-01-2025, the Rejoinder dt. 24-01-2025 and the sur-Rejoinder dt. 24-01-2025 filed by the parties. I have also examined the *.IN Domain Name Dispute Resolution Policy* and the *INDRP Rules of Procedure* as adopted by the .IN Registry as well as the provisions of the Arbitration & Conciliation Act, 1996 (as amended up to date). My issue wise analysis and finding is as under:

Praveer W. J ✓

ISSUE NO. 1:

Whether the Complainant is entitled to the relief of transfer of the disputed domain name "https://www.mkprofessional.in" from the Respondent?

ANALYSIS AND REASONING:

On careful consideration of the contents of the complaint and the documents annexed therewith by the Complainant, the Response dt. 16-01-2025, the Rejoinder dt. 24-01-2025 and the sur-Rejoinder dt. 24-01-2025, the Tribunal is of the opinion that the Complainant has established association with the disputed domain name and has also established that the respondent does not have any legitimate interest or right over the disputed domain name. It is evident that the Respondent was engaged solely as a distributor of the complainant's products in the territory of Goa and Rest of Maharashtra except Mumbai *vide* agreement dt. 10-08-2023 with the complainant. Further, the respondent did not possess any association or ownership rights over the domain name in question; particularly, after the termination of the distributorship agreement on 15-02-2024 (Annexure 19). It is to be noted that the respondent has not filed its para wise Reply to the facts stated in the complaint; particularly, disputing the fact of having been appointed as the complainant's distributor only for a particular region in India and the fact of termination of the above-said agreement by the complainant. The respondent has also not denied any of the documents filed by the complainant with its complaint dt. 13-08-2024.

Furthermore, the Tribunal notes that the Respondent has expressed his unconditional willingness to transfer the disputed domain name to the Complainant, as submitted in his Reply dt. 16-01-2025 and reiterated in the Sur-Rejoinder dated 24-01-2025. It is also noted that the respondent has denied his *mala fide* in obtaining the disputed domain name and has submitted having used the same in good faith *vide* its sur-Rejoinder dt. 24-01-2025 with reference to the submission of the complainant in its Rejoinder dt. 24-01-2025 for imposing costs upon the respondent apart from transferring the disputed domain name to the complainant.

Plaveer W. J.

At this juncture, I would also like to refer to the power to pass judgments or awards on admissions, in civil suits, which is exercised under Order XII Rule 6 of the Code of Civil Procedure 1908, which reads as follows:

“6. Judgment on admissions.—(1) Where admissions of fact have been made *either in the pleading or otherwise; whether orally or in writing*, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question-between the parties, *make such order or give such judgment as it may think fit, having regard to such admissions.*

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

(emphasis added)

It may not be out of place to refer to the judgment of Hon'ble Supreme Court in *Uttam Singh Duggal & Co. Ltd. v. United Bank of India*, (2000)7 SCC 120, in which the principles of Order XII Rule 6 of the CPC have been explained as under:

12. As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. *The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled*”. *We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment.* Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.

(emphasis added)

Praveen W. J.

In *Vijaya Myne v. Satya Bhushan Kaura*, 2007 SCC OnLine Del 828, Hon'ble High Court of Delhi emphasized the purpose of Order XII Rule 6 of CPC, to provide expeditious judgment in admitted claims, rather than compel the parties to undergo protracted trials.

The same principle has been followed in the context of arbitral awards also. Recently, Hon'ble High Court of Delhi in the case of *Rattan India Power Ltd. vs. Bharat Heavy Electricals Ltd.*, O.M.P.(Comm) No. 372/2017 (Decided on: 06.03.2025), Neutral Citation: 2025: DHC:1464, MANU/DE/1473/2025, upheld an interim award by which a three-member Arbitral Tribunal had awarded Rs. 115 crores in favour of the respondent, on an application filed by the respondent under Section 31(6) of the Act. The interim award was passed on the ground that the petitioner had admitted the respondent's claim to that extent.

Considering the above-stated facts, statutory provisions and judicial precedents, and in the interest of justice, the Tribunal is of the view that the ownership of the disputed domain name "**mkprofessional.in**" should be transferred from the Respondent to the Complainant as per the *.IN Domain Name Dispute Resolution Policy* and the *INDRP Rules of Procedure* as adopted by the .IN Registry read with the provisions of the Arbitration & Conciliation Act, 1996 (as amended up to date).

ISSUE NO. 2:

Whether the Complainant is entitled to get the costs of proceedings from the Respondent? If yes, how much?

ANALYSIS AND REASONING:

As far as the issue of awarding the costs of proceedings to the complainant is concerned, the reference may be made to the Section 31A of the Arbitration & Conciliation Act, 1996 which is as under:

31A. Regime for costs.—(1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the

Plaveen W. J.

Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—

- (a) whether costs are payable by one party to another;
- (b) the amount of such costs; and
- (c) when such costs are to be paid.

Explanation.—For the purpose of this sub-section, “costs” means reasonable costs relating to—

- (i) the fees and expenses of the arbitrators, Courts and witnesses;
- (ii) legal fees and expenses;
- (iii) any administration fees of the institution supervising the arbitration; and
- (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

- (2) If the Court or arbitral tribunal decides to make an order as to payment of costs,—
 - (a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or
 - (b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.
- (3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including—
 - (a) *the conduct of all the parties;*
 - (b) whether a party has succeeded partly in the case;
 - (c) *whether the party had made a frivolous counterclaim leading to delay in the disposal of the arbitral proceedings;* and
 - (d) *whether any reasonable offer to settle the dispute is made by a party and refused by the other party.*
- (4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay—
 - (a) a proportion of another party’s costs;
 - (b) a stated amount in respect of another party’s costs;
 - (c) costs from or until a certain date only;

Praveen W. J.

- (d) costs incurred before proceedings have begun;
 - (e) costs relating to particular steps taken in the proceedings;
 - (f) costs relating only to a distinct part of the proceedings; and
 - (g) interest on costs from or until a certain date.
- (5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.

(emphasis added)

Thus, the Tribunal has the discretion to determine whether the costs are payable by one party to another, the amount of such costs and when such costs are to be paid. However, in determining the costs, the arbitral tribunal has to have regard to all the circumstances as stated in section 31A(3) of the Act, which include the conduct of the parties as well as whether any reasonable offer to settle the dispute is made by a party and refused by the other.

I cannot restrain myself from noticing that the Respondent had replied to my Notice dt. 16-01-2025 which was sent to the parties *vide* my email dt. 16-01-2025 at 9.26 pm and the Respondent had immediately responded to the same *vide* his email dt. 16-01-2025 which was received at 10.02 pm expressing therein his unconditional offer to transfer the domain name in dispute to the complainant. The respondent had also stated that he had requested TMY Importers, Pranav and Rajesh from NUCARE MARKETING regarding the transfer of the domain. Further, when the complainant had filed its Rejoinder *vide* its email dt. 24-01-2025 at 12.55 pm, the Respondent had instantly filed its sur-Rejoinder on the same day at 4.23 pm *vide* its email dt. 24-01-2025 reiterating therein his consent to transfer the disputed domain name to the complainant, though he had prayed not to impose any costs upon him for the detailed reasons he had cited therein. Further, the respondent had not claimed any costs/ compensation from the complainant as a condition to transfer the disputed domain name. I cannot lose sight of the fact that the complainant has denied in its Rejoinder dt. 24-01-2025 the unconditional offer made by the respondent to it in past for the transfer of the disputed domain name; however, before the Tribunal, the conduct of the respondent has been prompt and upright as explained above.

Praveen W. J.

Considering the above-stated conduct of the respondent and his unconditional offer to transfer the disputed domain name to the complainant in its Reply dt. 16-01-2025 and in its sur-Rejoinder dt. 24-01-2025, I am of the view that it would not be in the interest of justice and fair play to direct the respondent to pay the costs to the complainant. Accordingly, both the parties are directed to bear their own costs to the present arbitral proceedings.

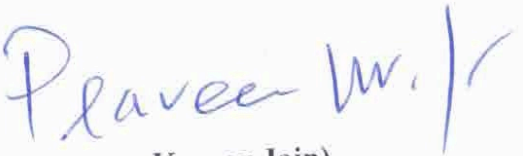
3. ISSUE NO. 3:

Relief.

In light of the above-stated analysis, reasoning and finding of the Tribunal for the Issue Nos. 1 and 2, the complainant is granted the relief of transfer of the disputed domain name "mkprofessional.in" from the Respondent to the Complainant; however, the prayer for grant of costs to the complainant from the respondent is declined. The award may be executed as per the *.IN Domain Name Dispute Resolution Policy* and the *INDRP Rules of Procedure* as adopted by the .IN Registry read with the provisions of the Arbitration & Conciliation Act, 1996 (as amended up to date).

The scanned copy of the duly signed arbitral award is being delivered to the parties via email in compliance of the provisions of section 31(5) of the Arbitration & Conciliation Act, 1996 (as amended up to date) and to the Registry. The original signed copy of the award shall be sent to the Registry via Speed Post in due course and the parties may obtain certified copy of the same, if needed, from the Registry. The award has been written on the stamp paper of Rs. 100/- and the deficient stamp duty, if any, shall be paid by the concerned party before the appropriate authority as per the applicable laws.

New Delhi
17-03-2025


(Praveen Kumar Jain)
The Sole Arbitrator

Praveen Kumar Jain
Advocate, Supreme Court of India
D-143, LGF, Lajpat Nagar-1, New Delhi-110024
Mobile: 9871278525, Phone: 011-79641086