



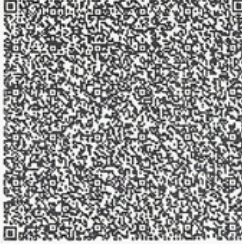
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

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|---------------------------|--|
| Certificate No. | : IN-DL833762695262380 |
| Certificate Issued Date | : 12-Aug-2016 02:42 PM |
| Account Reference | : IMPACC (IV)/ dl835403/ DELHI/ DL-DLH |
| Unique Doc. Reference | : SUBIN-DL835403662312707130710 |
| Purchased by | : ANKUR RAHEJA |
| Description of Document | : Article 12 Award |
| Property Description | : Not Applicable |
| Consideration Price (Rs.) | : 0 (Zero) |
| First Party | : ANKUR RAHEJA |
| Second Party | : Not Applicable |
| Stamp Duty Paid By | : ANKUR RAHEJA |
| Stamp Duty Amount(Rs.) | : 100 (One Hundred only) |



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INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

AREVA Société Anonyme V Rajendra Mishra (ArevaIndia.in)

SOLE ARBITRATOR: ANKUR RAHEJA, MCA FCS LLB

A. Raheja

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

In the matter of:

AREVA Société Anonyme

... Complainant

versus

Rajendra Mishra

... Respondent

ARBITRATION AWARD

Dispute Domain Name: www.arevaindia.in

1. The Parties:

a. **Complainant:** The Complainant in this arbitration proceedings is: **AREVA Société Anonyme à Directoire et Conseil de Surveillance** (hereinafter referred to as Areva), Tour AREVA, 1 Place Jean Millier, 92 400 Courbevoie, France represented by Martin Brodén, CSC Digital Brand Services Group AB, Saltmätargatan 7, SE-113 59 Stockholm, Sweden.

b. Respondent: The Respondent in this arbitration proceedings is Rajendra Mishra having WHOIS address as 608, Maruti Niwas, Plot No B 37, Sector 6, New P, 410206 Mumbai, Maharashtra, India (E-mail: arevalogis@gmail.com).

2. The Domain Name and the Registrar:

- a. The Disputed Domain Name is www.arevaindia.in.
- b. Disputed Domain Name is registered with Net4India, New Delhi, India.

Further, details of the Disputed Domain Name are as follows, as per the publicly available WHOIS details:

Domain Name: AREVAINDIA.IN

Created On: 09-Sep-2011 09:48:42 UTC

Last Updated On: 26-May-2016 12:10:34 UTC

Expiration Date: 09-Sep-2016 09:48:42 UTC

Sponsoring Registrar: Net4India (R7-AFIN)

Registrant Name: Rajendra Mishra

Registrant Street1: B 608, Maruti Niwas, Plot No B 37, Sector 6, New P

Registrant City: Mumbai

Registrant State/Province: Maharashtra

Registrant Postal Code: 410206

Registrant Country: IN

Registrant Phone: +91.12345678

Registrant Email: arevalogis@gmail.com

Name Server: NS93.MOCHAHOST.COM

Name Server: NS94.MOCHAHOST.COM

3. Procedural History [Arbitration Proceedings]

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Advocate Ankur Raheja as the Sole Arbitrator for adjudicating upon the disputed in accordance with the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder, INDRP Policy and Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

In this matter, the arbitration proceedings commenced on 06 July 2016 in terms of INDRP Rules. Relevant Dates are as follows:

| Sr No | Particulars | Date |
|-------|--|--------------|
| 1 | Arbitration Case referred to Arbitrator & Acceptance given | 27 June 2016 |
| 2 | Date of Handover of Complaint by NIXI | 04 July 2016 |

| | | |
|---|--|----------------|
| 3 | Soft Copy of Complaint served upon Respondent by Nixi | 05 July 2016 |
| 4 | Hard Copy of Complaint received by Arbitrator and Notice of Arbitration issued to the Respondent, also referred as date of commencement of Proceedings | 06 July 2016 |
| 5 | Second Notice to the Respondent | 16 July 2016 |
| 6 | Exparte Order | 26 July 2016 |
| 7 | Award Passed | 23 August 2016 |

- In accordance with INDRP read with INDRP Rules of procedure, notice of Arbitration was sent to the Respondent on 06th July 2016, with the instructions to file his reply / response by 15th July 2016.
- Nixi did service of electronic copy of the Complaint upon the Complainant on 05th July 2016 to expedite the proceedings. And later Nixi informed that the Hard Copy of the Complaint through courier had already been delivered to the Respondent.
- That on failure of the Respondent to file any response to the complaint, another opportunity was provided to the Respondent on 16 July 2016.

- The communication at various stages of proceedings through emails at the ID provided in the WHOIS information of the Disputed Domain also had successful delivery notifications. Therefore, service of notice was deemed to have been complied with in accordance with Rule 2 of the INDRP Rules of Procedure.
- Therefore, an order for ex-parte proceedings was issued on 26th July 2016, as no response was received from the Respondent.
- No personal hearing was requested / granted / held.

4. Factual Background

According to the documentary evidence and contentions submitted:

A. AREVA Société Anonyme à Directoire et Conseil de Surveillance (hereinafter referred to as the Complainant) was founded on 3rd September 2001 and is quoted on Euronext Paris. Complainant is registered under number 712 054 923 with the Business Registry of Nanterre, France. Complainant's former name was Société des Participations du Commissariat à l'Energie Atomique. On 3rd May 2007 the Articles of Association were changed to reflect the new corporate name AREVA, (Annexure attached). Some of Complainant's trademarks are registered in its former name.

B. Complainant is a nuclear industry leader with a global presence. Complainant provides solutions for each stage of nuclear power generation; from uranium mining to used fuel recycling, including reactor design and related services. In 2015, Complainant's revenue was EUR 8.336 billion and it obtained a consolidated net income of EUR 2.038 billion. Today, Complainant employs approximately 44,000 people around the world. Complainant has commercial and industrial operations in the European, American, African, and Asian continents as well as the countries of Oceania (Annexure attached).

C. Complainant has had a presence in India since 2004 and employs around 100 persons and is present at four locations in India: AREVA India Pvt. Ltd. in Mumbai, Maharashtra, AREVA Solar India Pvt. Ltd. in Mumbai, Maharashtra, AREVA Renewable Energies India Pvt. Ltd., in Chennai, Tamil Nadu, and a site dedicated to CSP Solar project in Dhursar, Rajasthan (Annexure attached).

D. Founded in November 2008, AREVA India Pvt. Ltd. is dedicated to the Complainant's development activities in India for nuclear energy. On 30th September, 2008, France and India signed a bilateral agreement to collaborate on the development of peaceful applications of nuclear power and in December 2008, AREVA signed a contract with NFC (Nuclear Fuel Complex) to supply 300 tons of natural uranium.

E. In February 2009, Complainant and Nuclear Power Corporation of India Limited (NPCIL), a 100% subsidiary of the Department of Atomic Energy India, concluded a Memorandum of Understanding (MoU) concerning the supply of up to 6 EPR™ reactors for the Jaitapur site in the Indian state of Maharashtra. As part of its global supply chain policy, Complainant has developed special and close relationships with Indian partners for sourcing opportunities.

F. The AREVA Solar India Pvt. Ltd. office is based in Mumbai with a project management team at the site in Rajasthan. In October 2011, AREVA Solar India Pvt. Ltd entered into a contract to install its Compact Linear Fresnel Collector (CLFR) technology for Reliance Power Limited in Rajasthan, which will be the largest Concentrated Solar Power (CSP) project in Asia and ranked among the world's largest solar installations. The project was successfully synchronised with the grid in November 2014. AREVA Solar India Pvt. Ltd. received the "Excellence Award 2012" from the Energy and Environment Foundation in April 2012.

G. The AREVA Corporate Foundation was created in April 2007 in order to support humanitarian and public-interest projects underpinning Complainants Group's commitment to society and community involvement in countries in which it develops and conducts business. The Foundation supports concrete, targeted

and sustainable actions, especially those benefitting children, women and students. These actions focus on education, health and culture.

H. Complainant's activities relating to India have received extensive attention and have been widely reported in international as well as in local Indian news media due to the security of electrical supply for the Indian population but also due to public concerns over safety and environmental protection (Annexure attached).

I. In accordance with the INDRP Rules of Procedure paragraph 3 (b)(v), are copies of the trademark certificates and records on which the Complaint is based, (Annexure attached).

J. The standalone word "AREVA" does not have a dictionary meaning in any known language.

K. AREVA trademark is protected throughout the world in relation to various products, services, and activities, particularly in the field of power generation. Complainant holds rights in numerous trademark registrations for AREVA word, e.g. an AREVA International Registration Number 783282 registered on 28th November 2001 covering goods and services in classes 1, 4, 6, 7, 9, 11, 19, 35, 36, 37, 38, 39, 40, 41 and 42 and AREVA International Registration Number

839880 registered on 16th July 2004 covering goods and services in classes 6, 7, 9, 17, 35, 37, 38, 39, 40, 41, 42 and 45. The AREVA brand is also recognized by its logotype which consists in a stylized “A” letter in combination with the name “AREVA” and it is protected by numerous trademark registrations including A AREVA International Registration Number 787894 covering goods and services in classes 1, 4, 6, 7, 9, 11, 19, 35, 36, 37, 38, 39, 40, 41 and 42 registered on 5th February 2002 (Annexure attached).

L. Complainant is also the owner of several trademark registrations in India, e.g. an AREVA Registration Number 1295313, applied on 12th July 2004 covering goods and services in classes 6, 7, 9, 17, 35, 37, 38, 39, 40, 41 and 42. The stylized A AREVA trademark is protected in India under Registration No. 1729789, applied on 9th September 2008 for goods and services in classes 6, 7, 11, 17, 35, 36, 37, 38, 39, 40, 41 and 42. The trademark AREVA is furthermore protected in India for the benefit of Complainant for goods in class 1 with Indian registration number 1065514, for goods in class 4 with Indian registration number 1065516, for goods in class 6 with Indian registration number 1065517, for goods in class 7 with Indian registration number 1065518, for goods in class 9 with Indian registration number 1065515 and for goods in class 11 with Indian registration number 1065519; all with application date 7th December 2001 (Annexure attached).

M. In addition, the Complainant is also notably the owner of a Community Trademark Registration for AREVA Registration Number 2478840 registered on 29th October 2004 covering goods in classes 1, 4, 6, 7, 9, 11, 19, 35, 36, 37, 38, 39, 40, 41 and 42 (Annexure attached).

N. The Complainant and its trademark AREVA enjoy a worldwide reputation. The Complainant has used the trademark AREVA in connection with a wide variety of products and services relating to production, distribution and transmission of energy around the world, including in India. In the WIPO Case No. D2013-1778 the panel stated that “AREVA is a well-known trademark, in France and worldwide.” The Panel went on to say that due to the large number of UDRP proceedings involving the trademark AREVA it “...shows that that well-known trademark [AREVA] is particularly sensitive to cybersquatting.” Previous decisions involving AREVA, and upholding its reputation, include Areva v. N/A, WIPO Case No. D2008-0537; Areva v. Razine Alain, WIPO Case No. D2011-1188 ; Areva v. Wang Songxu, WIPO Case No. D2012-2422. In Areva v. Domain Investment Inc. Liyu, INDRP case No. 442, dated 8th February 2013 (regarding areva.co.in), the Arbitrator stated that Complainant...”has rights on account of prior and longstanding use of the mark “AREVA”...” and that the Complainant’s trademark ”has earned considerable reputation in the market”.



O. As shown, the mark AREVA is in possession of substantial inherent and acquired distinctiveness. According to the provisions of Article 6b of the Paris Convention for protection of Industrial Property ("PC"), confirmed and extended by Article 16.2 and Article 16.3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), the statute of a well-known trademark provides the owner of such a trademark with the right to prevent any use of the well-known trademark or a confusingly similar denomination in connection with any products or services (i.e. regardless of the list of the products and services for which the trademark is registered). Thus, the protection for AREVA goes beyond the nuclear industry.

P. The Complainant is the owner of more than 300 domain names containing the term AREVA and AREVAINDIA, among these AREVA.com, AREVA.in, AREVA.co.in, AREVA-nc.in, AREVA-np.in and AREVAINDIA.com etc. (Annexure attached).

Q. Complainant also maintain a website under the domain name AREVA.com. Several AREVA domain names including AREVA.in, AREVA.co.in and AREVAINDIA.com redirects to the AREVA.com corporate website.

R. According to the Domain Name Whois record the Respondent is a person named Rajendra Mishra domiciled in Mumbai, India. The Domain Name was

registered on 9th September, 2011. The Domain Name points to a website of Areva Logistics Private Ltd. The website offers car rental services to businesses and individuals. The website features a logo of a stylized letter “A” in red colour in combination with the word “AREVA” and beneath the letters “LOGISTICSPVT.LTD”. The website has a copyright notice of 2012. According to records found on the internet, a company Areva Logistics Private Ltd was incorporated on 10th August 2011 with corporate identification number U74900MH2011PTC220809 (Annexure attached).

S. The contact portion on the website at arevaindia.in is still under construction. Comparing the current layout of the website at arevaindia.in with historic screenshots of the same it is evident that it has not changed since it was set up (see Annexure 9, 9.1, 9.2, 9.3 and 9.4).

T. On 11th February 2016 a cease and desist letter was sent via email to Respondent at the Domain Name registrant’s Whois email address. In the cease and desist letter, the Respondent was advised that the unauthorised use of the trademark AREVA within the Domain Name violated the rights in the Complainant’s trademarks. Cease of use and immediate transfer of the Domain Name was requested. As no reply was received Complainant sent a reminder on 24th February 2016. Complainant sent a further cease and desist letter on 14th March 2016 now adding also the email address in the Certificate of Incorporation

but the letter was again left unanswered and on 26th March 2016 Complainant made a final attempt to resolve the matter amicably by sending yet another reminder (Annexure attached).

5. The Dispute

- a. The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
- b. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- c. The disputed Domain Name has been registered or is being used in Bad Faith.

6. Parties Contentions

I. Complainant contends as follows:

1. Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(i) of the INDRP)

- A. The disputed domain name differs only from the Complainant's trademark by the addition of the term "india". In comparing the trademark AREVA and the

disputed domain name <arevaindia.in>, it is appropriate to give most weight to the most outstanding portion of the terms. The most outstanding portion of each term at issue is “areva” since it is in first position in the domain name and since it is a distinctive term without any meaning, in any language.

B. In many WIPO decisions, the panel has considered that the incorporation of a trademark in its entirety in the disputed domain name may be sufficient to establish that said domain name is identical or confusingly similar to the Complainant’s registered mark, see WIPO cases *Société des Participations du Commissariat à l’Énergie Atomique v. Davidorton*, WIPO Case No. D200 - 0679; and *AT&T Corp. v. William Gormally*, WIPO Case No. D2005-0758; and *AREVA v. MIC / Hussain, Syed*, WIPO Case No. D2010-0098.

C. It is well established that the addition of generic or descriptive terms to a trademark in a domain name does nothing to distinguish it from the trademark. The mere addition of the common term “india” in the disputed domain name is not sufficient to distinguish the domain name in dispute from the Complainant’s AREVA trademark and Complainant refers to WIPO cases *Fondation Le Corbusier v. Monsieur Bernard Weber, Madame Heidi Weber*, WIPO Case No. D2003-0251; and *The Coca-Cola Company v. PrivacyProtect.org / Acosta Jose Julian*, WIPO Case No. D2010-0335.

D. In fact, the inclusion of the common English word "india" only serves to increase the likelihood of confusion rather than distinguishing the trademark AREVA from the disputed domain name because Internet users are likely to believe that the disputed domain name <arevaindia.in> is specifically dedicated to India where the Complainant has an ever increasing activity. Generally speaking, a simple geographic identifier accompanying the Complainant's trademark is usually deemed as increasing the likelihood of confusion, *Compagnie Gervais Danone v. Amit Kumar*, WIPO Case No. D2010-0563.

E. The country code top level domain (cc TLD) ".in" can be disregarded for purposes of assessing similarity of the domain name to the trade mark. See case *Morgan Stanley v. Bharat Jain*, INDRP case No. 156, dated 27th October 2010 (www.morganstandleybank.co.in).

F. The Complainant has used and is using the trademark AREVA in connection with a wide variety of products and services relating to production, distribution and transmission of energy around the world, including India. Consequently, the public has learned to perceive the goods and services offered under this mark as being those of the Complainant. The public would therefore reasonably assume that the Domain Name such as this, composed with the Complainant's trademark, is related to the Complainant or owned by the Complainant.

2. No Rights or Legitimate Interests (paragraph 4(ii) of the INDRP)

G. Respondent has no connection to or link with the Complainant. Respondent has not been given any authorisation to use the Complainant's mark. This was stated by the panel as a factor in the finding of non-legitimate interest with the Respondent in the WIPO Case No. D2004-0312 Dr. Ing. h.c. F. Porsche AG v. Ron Anderson.

H. The Respondent registered the Domain Name on 9th September 2011 which is almost 10 years subsequent to the date when Complainant became owner of the trademark AREVA. Since the Complainant's mark AREVA is famous and well-known mark and is registered in many countries including India, it is unlikely that the Respondent did not know about the Complainant's rights in the mark AREVA or the Domain Name. The magnitude and length of Complainant's commercial activities and use of the AREVA trademark in India coupled with the reporting in International and Indian media could not have passed Respondent unnoticed. In any case, it is established that the AREVA trademark had become well-known internationally and in India at the time Respondent registered the Domain Name.

I. Even if Respondent holds a registration for a corporation in India this circumstance does not establish a bona fide right to use Complainant's trademark. First, the Respondent does not have a trademark right that pre-dates that of Complainant, in fact, to the best of Complainant's knowledge Respondent is not the holder of a trademark registration for AREVA or AREVAINDIA. Secondly it appears evident in light of circumstances that the corporate registration was made merely to circumvent the application of the .IN Domain Name Dispute Resolution Policy (INDRP). Complainant refers to WIPO case Ciccone, p/k/a Madonna v. Parisi and "Madonna.com", D2000-0847 in which the Panel found that a trademark registration was "merely a way of bolstering respondent's domain name registration."

J. The fact that Respondent's corporate registration was made on 10th August 2011 which is almost a decade after Complainant acquired rights in respect to the AREVA trademark and more than half a decade after Complainant commenced its commercial operations in India under the AREVA name, proves that Respondent's company registration was not made in good faith for the purpose of making bona fide use of the company name in India, but merely to circumvent the application of the INDRP as adopted by the National Internet Exchange of India (NIXI) and implemented and maintained by INRegistry.

K. There is no evidence that the Respondent has become known by the Domain Name anywhere in the world and Respondent has no legitimate interest in the Domain Name. Further, the Complainant has not licensed nor otherwise permitted the Respondent to use its name or trademark AREVA or to apply for or use the Domain Name incorporating the trademark AREVA.

L. It is clear that the Domain Name was selected and has been used by Respondent with the intent to attract for commercial gain Internet users to Respondent's web site by trading on the fame of the Complainant's mark. This is further evidenced by the fact that Respondent is using the Domain Name to point to a website on which features a logo in the form of a stylized letter "A" in combination with the name "AREVA" in the colour red, confusingly similar to that of the Complainant.

M. The use of the AREVA trademark in the Domain Name (arevaindia.in) and the use of the stylized "A + AREVA" logo on the website linked to the Domain Name creates the false and misleading impression that Respondent is authorised, licensed or approved to provide information or goods or services with respect to Complainant's products or Complainant itself. By doing this, the Respondent is misleading Internet users to a commercial web site and consequently, the Respondent is tarnishing the trademark AREVA. In addition, the INDRP Policy paragraph 3 clearly states that it is the responsibility of the

Respondent to find out before registration that the domain name does not violate the rights of a third party.

N. Respondent's use of the Domain Name and conduct to intentionally trade on the fame of Complainant's trademark cannot therefore constitute a "bona fide" offering of goods or services. The overall circumstances including the fact that there is no connection or link between Respondent and Complainant; the fact that Respondent knew or should have known of Complainant's rights in the AREVA trademark when registering the Domain Name; the fact that Respondent is trading on the fame of Complainant's trademark and that Respondent is not known by the name AREVA makes it clear that Respondent does not have rights or legitimate interests in the Domain Name.

3. Registered or used in bad faith (paragraph 4(iii) of the INDRP)

O. AREVA is a famous trademark. Respondent was aware of Complainant's rights in the trademark and the value of said trademark, at the point of the Domain Name registration. Complainant's trademark is well-known with a substantial and widespread reputation in India and throughout the world. Respondent neglected its responsibility under INDRP paragraph 3 to find out before registration that the Domain Name does not violate the rights of a third party. Respondent therefore has registered the Domain Name in bad faith.

P. The Respondent has ignored Complainant's attempts to resolve this dispute outside of this administrative proceeding. Past WIPO Panels have held that failure to respond to a cease-and-desist letter may properly be considered a factor in finding bad faith registration and use of a Domain Name. See *Encyclopedia Britannica v. Zuccarini*, D2000-0330 (failure to positively respond to a demand letter provides "strong support for a determination of 'bad faith' registration and use"). See also *RRI Financial, Inc., v. Chen*, D2001-1242 (finding bad faith where "The Complainant alleges that it sent numerous cease and desist letters to Respondent without receiving a response").

Q. The Domain Name is currently connected to a website offering car rental services using a logo of a stylized letter "A" in combination with "AREVA" in red colour confusingly similar to that of Complainant. The Respondent is using the Domain Name to intentionally create a likelihood of confusion with the Complainant's mark as to the source.

R. By using the Domain Name, the Respondent is not making a legitimate non-commercial or fair use without intent for commercial gain but is misleadingly diverting consumers for his own commercial gain. Further, the Respondent is preventing the Complainant from reflecting the mark in a corresponding Domain Name.

S. To summarize, AREVA is a famous trademark worldwide. It is highly unlikely that the Respondent was not aware of the rights the Complainant has in the trademark and the value of said trademark, at the point of registration. Respondent has ignored Complainant's attempts to resolve this dispute outside of this administrative proceeding. Respondent is trading on the fame and recognition of Complainant's well-known trademark in order to cause initial interest confusion and bait Internet users to accessing its website with the intent for commercial gain.

II. Respondent

A. The Respondent was provided various opportunities to file his response to the Complaint by the Arbitrator by its notice dated 06 July 2016 and 16 July 2016 respectively.

B. However, Respondent failed to file any response to the Complaint filed by the Complainant despite being given an adequate notification and the opportunities by the Arbitrator.

C. The Arbitrator, therefore, has no other option but to proceed with the proceedings and to decide the complaint on the basis of the material on record

and in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder.

7. Discussion and Findings:

I. Procedural Aspects

A. The Complainant, while filing the Complaint, submitted to Arbitration proceedings in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.

B. The .IN Dispute Resolution Policy requires the Complainant, to establish the following three elements:

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.

II. Respondent's Default

The INDRP Rules of Procedure requires under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to represent its case. Further, Rule 11 (a) empowers the arbitrator to proceed with an ex-parte decision in case any party does not comply with the time limits. The Respondent was given notice of this administrative proceedings in accordance with the Rules. The .IN Registry discharged its responsibility under Rule 2(a) of the INDRP Rules of Procedure to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

The Respondent has not filed its reply or any documentary evidence thereof and has not sought to answer the complainant's assertions, evidence or contentions in any manner. The averments made in the complaint remain unrebutted and unchallenged. There is no dispute raised to the documents relied upon by the Complainant.

The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The paragraph 12(a) of INDRP Rules of Procedure provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the

Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the arbitrator's decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.

III. Requirements of Paragraph 4 of the INDRP Policy, i.e. Issues Involved in the Dispute:

The INDRP policy lists the following three elements that the Complainant must prove to merit the finding that the domain name of the Respondent be transferred to the Complainant or whether any other remedy in terms of the paragraph 10 of the INDRP Policy will be available or not:

(i) Identical or Confusingly similar with the Trade Mark, etc [Para 4(i) of INDRP Policy]

A. Complainant company, founded on 3rd September 2001, is a nuclear industry leader with a global presence. Complainant starting name as AREVA Société Anonyme à Directoire et Conseil de Surveillance in 2007. Though

Complainant has had a presence in India since 2004 and employs around 100 persons and is present at four locations in India.

- B. In November 2008, AREVA India Pvt. Ltd. was founded at Mumbai, which is dedicated to the Complainant's development activities in India for nuclear energy, having some bilateral agreements with Indian Government as well. The AREVA Solar India Pvt. Ltd. office is based in Mumbai with a project management team at the site in Rajasthan, was founded in 2011.
- C. Complainant asserts that the standalone word "AREVA" does not have a dictionary meaning in any known language. And it has been protected world over as an International Registration since 2001 and also in India since 2004-05 under classes 6, 7, 9, 17, 35, 37, 38, 39, 40, 41 and 42. Copies of some of the trademark certificates have been annexed with the Complaint. Undoubtedly, the Complainant has statutory and common law rights in the word 'AREVA'.
- D. The Complainant is the owner of more than 300 domain names containing the term AREVA and AREVAINDIA, among these AREVA.com, AREVA.in, AREVA.co.in, AREVA-nc.in, AREVA-np.in and AREVAINDIA.com etc. The list of such domains has also been Annexed by the Complainant.

- E. The complainant asserts that Respondent has registered the Disputed Domain Name arevaindia.in on 09 September, 2011, it entirely comprised of Complainant's mark. While the word 'India' merely stands as a descriptive element, indicative of the territory where the domain name is meant to be used. In a UDRP proceedings brought by Wal Mart, it was found that a domain name is confusingly similar to a mark where a common geographical term is added to a trademark, wherein <wal-mart-europe.com> was held confusingly similar to the Wal-Mart trademark. [Wal-Mart Stores, Inc. v. Lars Stork, WIPO Case No. D2000 0628].
- F. Also the panel has considered that the incorporation of a trademark in its entirety in the disputed domain name may be sufficient to establish that said domain name is identical or confusingly similar to the Complainant's registered mark, see WIPO cases Socie te des Participations du Commissariat a l'Energie Atomique v. David Morton, WIPO Case No. D2007 - 0679; and AT&T Corp. v. William Gormally, WIPO Case No. D2005-0758; and AREVA v. MIC / Hussain, Syed, WIPO Case No. D2010-0098; ITC Limited V Travel India (INDRP Case No. 065); Boehringer Ingelheim Pharma GmbH & Co. KG v Philana Dhimkana (WIPO Case No. D2006-1594); Allied DOMEQ Spirits and Wine Limited v Roberto Ferrari, (INDRP Case No. 071); Philip Morris USA Inc. v Doug Nedwin/SRSPlus Private Registration (WIPO Case No. D2014-0339)].

G. Furthermore, complainant already has several top level and country level domains that incorporate the said style and marks. And it is apparent that the Respondent's Domain Name entirely contains the Complainant's trade mark.

H. Besides it is also well-established that the extensions such as '.co.in' in a disputed domain name does not affect a finding of similarity. In the INDRP matter of The Hershey Company V. Rimi Sen, it has been held that the addition of the country top level domain ".co.in" in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Complainant's mark [INDRP/289 - Hersheys.co.in]. Also in UDRP matters, it has been held that it is technically required for the operation of a domain name, and thus it is without legal significance in an inquiry of similarity. [Tumblr, Inc. v. Above.com Domain Privacy/Transure Enterprise Ltd., Host Master, WIPO Case No D2013-0213].

Thus, the Complainant has satisfied the requirement of paragraph 4(i) of the INDRP Policy.

(ii) Rights or Legitimate Interests in the Domain Name [Para 4(ii) of INDRP Policy]

The circumstances has been elaborated under Paragraph 7 of the INDRP policy as under and the Respondent need to fit in at least one circumstance under this clause in order to prove legitimate interest:

Para 7 of the INDRP Policy: Registrant's Rights to and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii):

(i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or

(iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

- A. The onus of proof is on the Complainant to prove that respondent has no legitimate interests in the Disputed Domain Name. While it is quite evident that the Respondent has an active website over the disputed domain name and the logo and footer on every page reads as "Areva Logistics Pvt Ltd" which is name of Respondent's Company registered under the Indian Companies Act with the Ministry of Company Affairs (MCA), India. And the Respondent Mr Rajendra Mishra is one of the Director of the Company, which was incorporated in August 2011, while the Domain was registered a month later in September 2011.
- B. The Complainant has included the facts as to the status of the Complainant as a Private Limited Company and also the Company Identification Number as U74900MH2011PTC220809, which was incorporated on 10th August 2011. The same has been verified from the Ministry of Company Affairs Website (www.MCA21.gov.in).
- C. Now the clause (ii) of Para 7 of the INDRP Policy, which is most relevant here, given the facts, the Complainant / Domain Registrant (not as an individual) but it is evident that as a business / organization, has been commonly known by the domain name, though he may not have acquired any trademark or service mark rights.

- D. The most relevant part of the Domain Name is Complaint's trademark word 'AREVA' which is also the first word of the Respondent's company. The same has been combined with the geographical location 'India', where Respondent company has been incorporated and operating.
- E. The Complainant denies giving any authorization to the Respondent to use his trademark 'AREVA' and states the Complainant got the Trademark 10 years prior to the Respondent incorporated the Company and given the recognition received by the Complainant it is not possible that Respondent had no knowledge of the Complainant's mark. Complainant further points to the logo style of the Respondent which is quite similar to the Complainant's logo.
- F. Complainant also states that it appears evident in light of circumstances that the corporate registration was made merely to circumvent the application of the .IN Domain Name Dispute Resolution Policy (INDRP). But this cannot be accepted or even assumed to be true, given the fact that the company formation/ registration of Respondent's company pre-dates the registration of disputed domain name.

- G. Complainant further states that the Contact part of the Website is under construction and the Historic Screenshots indicate that website has not been updated since its inception. This is not relevant here, as it is up to the Domain/Website owner to maintain or update the website, according to the online business demands. Rather the relevant fact is that active use of the Domain name is being made since last many years.
- H. Complainant refers to WIPO case Ciccone, p/k/a Madonna v. Parisi and “Madonna.com”, D2000-0847 in which the Panel found that a trademark registration was “merely a way of bolstering respondent’s domain name registration.” But the same is not applicable to the matter.
- I. The Respondent’s Company Details and the Director’s name are visible over the MCA21.gov.in website. Further, there are over 15 other different companies registered with MCA (India) with the first word as ‘AREVA’, which do not seem to have any relation/connection with the Complainant as well, as far as Arbitrator could check the information for most of these companies. Though, the Complainant claims to have been using mark ‘AREVA’ for over a decade now, but it is quite surprising that how these all companies could have been registered under Companies Act 1956 (*now Companies Act, 2013*) having the same first word in their respective Company Names. Though Complainant contends that it is an inventive word and does not mean any

thing else in any other language. Where India alone has over 20 languages listed in official languages in it's schedule to the constitution.

J. In any case, the following companies (including one LLP) are registered with Ministry of Company Affairs (MCA), India starting year 2004 with the first word as 'AREVA' in different Indian states:

| Sl # | Regn No | LLP / Company Name | State | Date of Regn. |
|------|---------------------------|---|-------------|---------------|
| 1 | AAB-5589 | AREVA DEVELOPERS LLP | Maharashtra | 31/05/2013 |
| 2 | U80903JH2008PT C013377 | AREVA EDUCATIONGURU PRIVATE LIMITED | Jharkhand | 19/11/2008 |
| 3 | U74140PN2007P TC129623 | AREVA FINANCIAL CONSULTANTS PRIVATE LIMITED | Maharashtra | 21/02/2007 |
| 4 | U15122DL2014PT C269222 | AREVA FMCG INDIA PRIVATE LIMITED | Delhi | 21/07/2014 |
| 5 | U70102WB2014P TC202865 | AREVA HOUSING PRIVATE LIMITED | West Bengal | 05/08/2014 |
| 6 | U17291MH2008P TC206194 | AREVA INDIA PRIVATE LIMITED | Maharashtra | 18/09/2008 |
| 7 | U72900HR2011P TC044634 | AREVA INFOCOM PRIVATE LIMITED | Haryana | 20/12/2011 |
| 8 | U74120DL2008PT C185809 | AREVA INFOTECH PRIVATE LIMITED | Delhi | 15/12/2008 |
| 9 | U70109WB2011P TC170860 | AREVA INFRASTRUCTURE INDIA PRIVATE LIMITED | West Bengal | 19/12/2011 |
| 10 | U85190DL2008PT C185572 | AREVA LIFE STYLE PRODUCTS PRIVATE LIMITED | Delhi | 08/12/2008 |

| | | | | |
|----|---------------------------|---|---------------|------------|
| 11 | U74900MH2011P TC220809 | AREVA LOGISTICS PRIVATE LIMITED | Maharashtra | 10/08/2011 |
| 12 | U36998KA2012P TC067406 | AREVA PAINTS PRIVATE LIMITED | Karnataka | 27/12/2012 |
| 13 | U45400MH2007P TC171296 | AREVA PROPERTIES PRIVATE LIMITED | Maharashtra | 05/06/2007 |
| 14 | U45400UP2012P LC052864 | AREVA REAL ESTATE LIMITED | Uttar Pradesh | 03/10/2012 |
| 15 | U29200TN2006P TC061136 | AREVA RENEWABLE ENERGIES INDIA PRIVATE LIMITED | Tamil Nadu | 18/09/2006 |
| 16 | U72900DL2007PT C165944 | AREVA SECURE TECHNOLOGIES PRIVATE LIMITED | Delhi | 17/07/2007 |
| 17 | U72200KA2004P TC034417 | AREVA SOFTWARE SOLUTIONS PRIVATE LIMITED | Karnataka | 30/07/2004 |
| 18 | U40300TN2011P TC089552 | AREVA SOLAR INDIA PRIVATE LIMITED | Tamil Nadu | 25/11/2011 |
| 19 | U72200DL2010PT C207750 | AREVA SYSTEM CONSULTANCY PRIVATE LIMITED | Delhi | 01/09/2010 |

K. Out of the above four names in bold, three are owned by the Complainant, while one company is that of the Respondent.

L. Further, some previous domain dispute decisions have been referred by the Complainant in which they have been successful, namely:

A) Areva v. N/A, WIPO Case No. D2008-0537;

B) Areva v. Razine Alain, WIPO Case No. D2011-1188 ;

C) Areva v. Wang Songxu, WIPO Case No. D2012-2422.

M. Complainant specifically points that in the **UDRP WIPO Case No. D2013-1778** the panel stated that “AREVA is a well-known trademark, in France and worldwide.” The Panel went on to say that due to the large number of UDRP proceedings involving the trademark AREVA it “...shows that that well-known trademark [AREVA] is particularly sensitive to cybersquatting.”

N. But under the analysis of second and third condition of the UDRP, the following has been noted by the UDRP panelist, which is not applicable to the current dispute:

"The disputed domain name was registered with a false identity. The Respondent selected as a false identity, the name of the CEO of the Complainant, L. Oursel, and the former address of the Complainant in Paris. This also demonstrates knowledge – one could even mention “deep knowledge” – of the Complainant. Not every cybersquatter takes the time to look for the name and address of the CEOs of the owners of the trademark rights that they usurpate in a domain name. This

implies a particular interest from the Respondent in the Complainant and its activities."

O. Similarly, complainant states that in the matter of **Areva v. Domain Investment Inc. Liyu, INDRP case No. 442**, dated 8th February 2013 (disputed domain - areva.co.in), the Arbitrator stated that Complainant... "has rights on account of prior and longstanding use of the mark 'AREVA'..." and that the Complainant's trademark "has earned considerable reputation in the market".

P. But it is pertinent to take note of the facts from the INDRP case no 442 pertaining to **Areva.co.in**, which is not applicable to the matter either, as firstly shockingly Respondent tried to sell the domain name for \$600 in response to the Arbitrator's notice and also facts as to Cyber Flight and Pay-Per-Click, were upheld by the Arbitrator against the Respondent:

- a. "Respondent also appears to be engaged in a cyberflight patten. Indeed Complainant noted several change on WHOIS databases as to the owner of the disputed domain name Bharat Domains then Domainjet then again Bharat Domains while these entities appear to be linked one to another and have similar post address. After Complainant filed the complaint another change occurred on Whois

database the current owner is Domain Investments Inc. which seems to be linked to the two previous registrants. Further it can be assumed that Respondent has registered this domain name to capitalize on Complainant's long history, reputation and goodwill.

- b. The Respondent's domain name resolves to a parking page displaying pay-per-click links related to different goods and services. The use of the disputed domain name is to divert internet users and directing them to a webpage providing click through revenues to Respondent evidences bad faith.”

Q. Under this clause, clearly the burden of proof is on the Complainant to prove that the Respondent has no legitimate interests in the Domain Name, but given the above analyzed facts in this matter, where the Respondent is known as a company by the “Areva Logistics Pvt Ltd.” and the Company registration (10 August 2011) pre-dates the Domain Registration date (Sept 2011), i.e. the Domain has been clearly registered after the Company was incorporated, no Bad Faith at the time of registration can be inferred either.

R. The Complainant has claimed their registered trademark as a non-dictionary word, but still under Companies Act itself, 15 more Companies are also using same Trademark word ‘AREVA’ in their Company/LLP name. And given the

facts and the established long reputation worldwide, this is really surprising that why till date Complainant hasn't taken up the matter with Indian Ministry of Company Affairs (MCA) and filed any kind of objections when there exists specific provisions in this regard as to undesirable names.

- S. The Indian Company Law states that the name is undesirable, if it is identical with or too nearly resembling with a registered trade-mark or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999. The same was defined vide general circular no 45/2011 and has been further reiterated under clause 2 of the Rule 8 of the Companies (Incorporation) Rules, 2014, after Companies Act 2013 came into force.
- T. If the Respondent and also many other Companies are still able to acquire their first word of their company name as '**AREVA**' (that is identical to the Trademark belonging to the Complainant), that should mean that they were able to justify the same.

Part B. Particulars about the proposed name(s)

10. * Number of proposed names for the company

(Please give maximum six names in order of preference)

| | | |
|----|---|--|
| I. | Proposed name | |
| | Significance of key or coined word in the proposed name | |
| | State the name of the vernacular language(s) if used in the proposed name | |

11. * Whether the proposed name is in resemblance with any class of Trade Marks Rules, 2002

☐ Yes ☐ No

If yes, Please specify the Class(s) of trade mark

12. * Whether the proposed name(s) is/are based on a registered trade mark or is subject matter of an application pending for registration under the Trade Marks Act.

☐ Yes ☐ No

If yes, furnish particulars of trade mark or application and the approval of the applicant or owner of the trademark

13. In case the name is similar to any existing company or to the foreign holding company, specify name of such company and also attach copy of the No Objection Certificate by way of board resolution (Duly attested by a director of that company)

(a) Whether the name is similar to

☐ Existing Company ☐ Foreign holding Company

(b) In case of existing Company, provide CIN

Pre-fill

(c) Name of the Company

(above image displays relevant columns from MCA Form INC-1)

U. Procedurally, at the time of name approval, which is the first step in the process of the company registration, proposed names are properly required to be justified by providing significance of the coined word as shown above, which is mainly the first word in the proposed company name. Previously Form 1A and now Form INC-1, pursuant to section 4(4) of the Companies

Act, 2013 and pursuant to Rule 8 & 9 of the Companies (Incorporation) Rules, 2014, contains the above relevant columns.

V. Now it all depends upon what relevant declarations the Respondent may have given under the Form 1A in 2011 with MCA and is beyond the scope of these domain dispute / arbitration proceedings and this matter does not seem to be purely a Cybersquatting / Domain Dispute matter as dealt with INDRP or even UDRP but more of Trademark violation / Passing off. Also time and again under many UDRP decisions it has been reiterated that “UDRP is not a Court”, the same applies to INDRP as well. But if the Complainant feels, still its Trademark is being violated, he needs to approach appropriate authorities.

W. To quote **Mr Gerald M. Levine from ‘Domain Name Arbitration’ - UDRP is not a Trademark Court:** “The UDRP is a special purpose arbitral regime designed for trademark owners to challenge domain name registrants allegedly infringing their rights to exclusive use of their trademarks on the Internet. The Complainant does not have to prove Trademark Infringement, only that the domain name was registered and is being used in bad faith. This gives rise to an anomaly that a Complainant may fail to prove abusive registration of a domain name that would otherwise be condemned under trademark law” [**source: Domain Name Arbitration - Pg 75 by Mr Gerald M. Levine**]. In the matter of Ni İnsan Kaynakları Personel ve Danışmanlık

Limited Sti v. Timothy Michael Bright [Case No. D2009-0315], it was held that an administrative proceeding under the Policy is not a proceeding in “equity” in which a panel seeks to generally determine whether one party or another has acted more or less fairly toward the other, thereafter fashioning a “just” remedy. A proceeding under the Policy is not an assessment of civil trademark infringement. It is possible for a respondent to be infringing the trademark rights of a complainant, yet be found not to have acted in bad faith.

- X. Similarly, in the matter of Audi AG v. Stratofex [WIPO Case No. D2012-1894] it has been held that if the Complainant considers that the Respondent’s present (or future use) of the **Domain Name infringes its trademark rights then it is free to commence proceedings against the Respondent in a court of competent jurisdiction**. This case illustrates the widely recognised principle that the Policy is designed to deal with clear cases of cybersquatting, Further in Clockwork IP LLC, One Hour Air Conditioning Franchising, LLC v. Elena Wallace, WIPO Case No. D2009-0485, it was laid down that **UDRP proceedings are for clear cases of cybersquatting, not for resolving trademark infringement and/or trademark dilution disputes or other matters more appropriately dealt with through the courts**.

In the circumstances, the Arbitrator concludes that the Complainant has not been able to establish the requirement of paragraph 4 (ii) of the Policy. More specifically,

the Respondent is protected under clause (ii) of Para 7 of the Policy, which elaborates legitimate interests a Respondent may have.

Rather the Complainant has a better case, firstly with Ministry of Company Affairs and/or with the court of Competent Jurisdiction but no relief can be granted here in terms of the facts and circumstances, as it is necessary for the Complainant to satisfy each of the three condition provided under Para 4 of the IN Dispute Resolution Policy (INDRP).

(iii) Registered and Used in Bad Faith [Para 4(iii) of INDRP Policy]

The circumstances have been elaborated under Paragraph 6 of the INDRP policy as under and even single instance proved against Respondent is enough to conclude Bad Faith:

Paragraph 6 of the INDRP policy: Evidence of Registration and use of Domain Name in Bad Faith:

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

A. In the matter of Inpact S.A. V Inpactme SpA DME 2016 - 001 (inpact.me), it was held that given that second condition has not been met the requirements of the Policy to order for the transfer of the Disputed Domain, it is not

necessary to analyze third element in the policy in any case, given the facts and circumstances of the case.

B. In the UDRP matter of Saltworks, Inc. v. Gary Pedersen, Salt Works [Case No. D2013-0984], it was similarly held that

- a. "The evidence of continuous and substantial usage by Respondent of the term 'Salt Works' in identifying its business and services establishes that Respondent has been commonly known by the disputed domain name, whether or not Respondent has established common law trademark rights in that term.
- b. Because Respondent has been commonly known by the disputed domain name, it is not necessary to determine whether Respondent has also made use of a name corresponding to the domain name for a bona fide offering of goods or services prior to notice of this dispute. Nonetheless, based on the long use by Respondent of the name 'Salt Works' corresponding to the disputed domain name, and the absence of evidence that Complainant was doing business under that name as early as Respondent, the Panel determines that Respondent used the disputed domain name for a bona fide offering of goods and services prior to notice of this dispute.

The Panel determines that Complainant has failed to establish that Respondent lacks rights or legitimate interests in the disputed domain name. Because Complainant has failed to establish an element necessary for a finding of abusive domain name registration and use, the Panel need not address the element of bad faith registration and use. Complainant's request for relief is denied."

Accordingly, the Arbitrator need not address the element of bad faith registration and use, as the Complainant has failed to prove the second / previous clause as to legitimate use by the Respondent.

C. Further, above all, the Respondent's Company was incorporated first and only after a month the Domain name seems to be registered. Therefore, given the facts and the discussion above, it is not possible to conclude that Domain Name was registered in Bad Faith. Though Complainant claims that the logo used upon the Respondent's disputed domain is similar to that of the Complainant. But "if the Respondent is found to have registered without intent to take advantage of Complainant's mark, but subsequently began using it in bad faith there is no basis under the Policy to cancel the Respondent's registration or ordering the domain name transferred to the complainant. That is the stage beyond the Policy's jurisdiction because subsequent use raises

the issue of Trademark Infringement... [**source: Domain Name Arbitration -
Pg 76 by Mr Gerald M. Levine**]

8. Decision:

Complainant has failed to establish that the Respondent has no legitimate interest in the <arevaindia.in> Domain Name. Accordingly, the Complainant's request that the Domain Name be transferred is DENIED.

Accordingly, it is Ordered that the <arevaindia.in> Domain Name REMAINS WITH Respondent.



Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 23rd August 2016

Place: New Delhi