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BEFORE THE INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

ARBITRATOR: S SRIDHARAN

Cathay Pacific Airways Limited --- Complainant

vs

Hu wei

--- Respondant

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BEFORE THE INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

ARBITRATOR: S.SRIDHARAN

DATED: 20.10.2012

Cathay Pacific Airways Limited, Hong Kong ... Complainant
Versus
Hu Wei ... Respondent

1. The Parties

- 1.1 The complainant **Cathay Pacific Airways Limited**, is an entity organized and existing under the laws of Hong Kong, having its registered at 33rd Floor, One Pacific Place, Admiralty, Hong Kong represented by Komal of Dreyfus & Kaul, of ZeusIP Advocates at C-4 Jangpura Extension, New Delhi - 110014.
- 1.2 Respondent is Hu Wei at Jinke Road 1880, Shanghai -201203, People's Republic of China.

The Domain Name and Registrar

- 1.3 The disputed domain name <cathaypacific.co.in> is registered with Dynadot LLC (R117-AFIN).

2. Procedural History

- 2.1 On 16th August 2012, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On the same day, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.
- 2.2 On 24th August 2012, I received hardcopy of the Complaint.
- 2.3 On 24th August 2012, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.4 On 30th April 2012, I received a soft copy of the Complaint.
- 2.5 Respondent has not filed any response to the Complaint.
- 2.6 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. Factual Background

A Complainant

- 3.1 The Complainant, Cathay Pacific Airways Limited, is the flag carrier of Hong Kong, with its head office and main hub located at the Hong Kong International Airport. The Complainant's operations include scheduled passenger and cargo services to 167 destinations in 42 countries worldwide, including codeshares and joint ventures, with a fleet of wide-body aircraft, consisting of Airbus A330, Airbus A340, Boeing 747 and Boeing 777.

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The complainant currently has a fleet of 136 aircrafts, with another 96 new aircraft due for delivery up to 2019.

- 3.2 The inherently distinctive term CATHAY PACIFIC was adopted as a trade name as well as a trade mark by the Complainant in 1946 and ever since its adoption the mark has been used continuously, exclusively and extensively by the Complainant. Owing to the extensive use, the mark CATHAY PACIFIC has acquired a formidable goodwill in the minds of the consuming public and the members of the trade and is today associated with the Complainant and Complainant alone. The term "Cathay" is an ancient name for China derived from "Khitai", was combined with "Pacific" as its founders speculated that one day the airline might fly across the Pacific Ocean (which happened in the 1970s). The Chinese name for the company "國泰" comes from a Chinese idiom meaning "grand and peaceful state".
- 3.3 The Complainant has grown significantly since its inception. By 1948, the Complainant was serving Rangoon, Singapore, Bangkok, Manila and Macau, with a fleet of seven DC-3 and one Catalina flying boat. In the same year, Butterfield & Swire (now known as Swire Group) bought 45% of the Complainant, with Australian National Airways taking 35% and the Complainant's founders, Farrell and de Kantzow, taking 10% each. The newly formed company began operations on 1 July 1948 and was registered as Cathay Pacific (1948) Ltd on 18 October 1948. Exhibit-2 is the certificate of incorporation for Cathay Pacific Airways Limited.
- 3.4 Between the years 1962 and 1967, the Complainant recorded double digit growth on average every year and was the world's first airline to operate international services to Fukuoka, Nagoya and Osaka in Japan.
- 3.5 In the 1970s, the Complainant installed a computerized reservation system and flight simulators. In 1979, it acquired its first Boeing 747 and applied for traffic rights to begin flying to London in 1980. Expansion continued into the 1980s, with nonstop service to Vancouver and Los Angeles. On 15th May 1986, the complainant went public and listed on the Main Board of the Hong Kong Stock Exchange.
- 3.6 The Complainant and its parent company, Swire Pacific Limited, acquired a significant shareholding in Dragonair in January 1990, and a 75% stake in cargo airline Air Hong Kong in 1994. In the 1990s, the complainant also launched a program to upgrade its passenger service. The green and white striped livery was replaced with the current "brushwing" livery. It also expanded its fleet of aircraft during this time acquiring Airbus A330-300s, A340-300s and Boeing 777-300 (the world's largest twin-engine commercial aircraft).
- 3.7 The Complainant's regional headquarters, Cathay Pacific City, at the Hong Kong International Airport, was completed in mid-1999. In 2002, the Complainant and DHL became joint venture partners in Air Hong Kong with an expanding regional network for express overnight cargo deliveries.
- 3.8 In 2006, the Complainant acquired Dragonair as a wholly owned subsidiary but which continued to operate under its own brand. By the said acquisition, the Complainant gained more access to the restricted, yet rapidly growing, Mainland China market. At the same time, it also established a closer relationship with Air China, with each airline taking a 17.5% stake in the other.
- 3.9 Apart from its principal service for transportation of passengers and cargo, the Complainant also provides the following secondary services.
 - (a) Frequent Flyer and Loyalty Programme services.
 - (b) In-Flight Entertainment ("IFE") services: The Complainant has three principal magazines for its flying customers; Discovery, Discover the Shop and Studio CX magazines.

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- (c) Travel agency services and package holiday services: The Complainant offers a range of holiday choices including holiday packages (bookings for hotels, flight and other activities) and bookings for hotel accommodation through its wholly owned subsidiary- Cathay Holdings Limited.
 - (d) Certain airport related services including operation of lounges.
- 3.10 Exhibit-3 is sample copies of the In-Flight Entertainment magazine and website printouts for travel packages offered by the Complainant along with the details of the frequent flyer and loyalty programme services as enumerated above
- 3.11 The complainant currently ranks as the world's 2nd most profitable airline and the 7th largest airline in the world by operating profit. It is ranked 10th largest in the world in terms of revenue passenger kilometers and 4th largest in freight tones kilometers. According to IATA, Complainant was the world's number one in terms of international cargo traffic in 2010. Documents evidencing the above rankings are at Exhibit-4.
- 3.12 The extent of the Complainant's operations and well-known stature can be estimated from its following turnover figures for the past three years.

	2008	2009	2010	2011
Revenue passengers carried	24,959,000	24,558,000	26,796,000	27,581,000
Cargo and mail carried (tonnes)	1,645,000	1,528,000	1,804,000	1,649,000
Turnover (HKD million)	86,563	66,978	89,524	98,406
Profit/(loss) attributable to owners of Cathay Pacific (HKD million)	(8,696)	4,694	14,048	5,501

- 3.13 In addition to the above, the Complainant's services were recognized by the following awards in the year 2011:
- (a) Best Airline Transpacific in Skytrax Awards 2011
 - (b) Best First Class Airline Seat in Skytrax Awards 2011
 - (c) Corporate Award in 2010/11 HKIA Customer Service Excellence Programme
 - (d) Caring Company Status in Caring Company NGO Partnership Day 2010/11
 - (e) Sing Tao Excellent Services Brand Award 2010 (airline category)
 - (f) Eastweek Hong Kong Service Awards 2011 (airline sub-category)
- 3.14 In India, the Complainant had its first flight to Kolkata, India in 1950. In early 2008, it strengthened its services to India, adding 20 more flights each week and a new destination, Chennai. The number of actual passengers carried by the complainant airline and Dragonair to/from India in 2010 and 2011 were 881,925 and 823,055, respectively (including a significant amount of 5th freedom airline traffic between India and Southeast Asia/Middle East). The Complainant operates on average 31 flights per week to India (including Chennai, Delhi and Mumbai).
- 3.15 The Complainant has registered and used its CATHAY PACIFIC and other allied trademarks in over 35 countries around the world, including India. The CATHAY PACIFIC

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family of trademarks are protected in the relevant classes of interest including class 39 (transportation services), class 16 (stationery, magazines, paper products etc.), class 35 (loyalty programmes) and class 42 (accommodation services). **Exhibit-5** is a copy of trademark status report showing the details of a representative sample of many of the Complainant's trademark registrations and pending applications for its trademarks worldwide.

- 3.16 The Complainant's vast trademark portfolio includes the following trade mark registrations in India, copies of which are attached at Exhibit-6

Mark	Registration		Classes
	Number	Date	
CATHAY PACIFIC	1406240	14/12/2005	16, 39, 42
CATHAY PACIFIC WITH WING LOGO, 'Now you're really flying'	1288999	09/06/2004	39, 42
MARCOPOLO CATHAY PACIFIC	1517762	29/12/2006	16, 35, 39

- 3.17 The Complainant is the owner of a number of domain names that feature the mark CATHAY PACIFIC. The domain names are as follows:

- (a) Cathaypacific.com
- (b) Cathaypacific.com.hk
- (c) Cathaypacific.hk
- (d) Cathaypacificairway.com
- (e) Cathaypacificairways.com
- (f) Thecathaypacificawards.co.uk

- 3.18 The Complainant has used the trade mark and trade name CATHAY PACIFIC extensively, exclusively and continuously all over the world and by virtue of such extensive sales and publicity, CATHAY PACIFIC has acquired an enviable reputation and goodwill amongst consumers and the members of the trade. At present, the mark is exclusively associated with the high quality products and services of the Complainant. Additionally the complainant has spent enormous amounts of resources in publicizing, marketing, advertising and promoting its mark CATHAY PACIFIC and by virtue of the same and the immense goodwill that has accrued to the mark CATHAY PACIFIC, the mark CATHAY PACIFIC is a well-known mark as defined under Article 6bis of the Paris Convention, to which India is a signatory as well as Section 2(z) g(g) of the Trade marks Act, 1999.

- 3.19 The Complainant has previously taken steps to prevent other unauthorized uses of its trade marks in domain names. The Complainant has filed the following UNDRP complaints which were decided in its favor by the WIPO Arbitration and Mediation Center:

- (a) **Cathay Pacific Airways Limited v. Orcom Communication** (Case No. D2002-0317): The said complaint was filed against the domain name cathay-pacific.com. It was observed that the subject-matter domain name is confusingly similar to the Complainant's CATHAY PACIFIC registered and well known mark. It was further decided that the domain name was confusingly similar to the Complainant's well known trade mark and that the Respondent had no rights or legitimate interests relating to the Domain Name which was registered and used in bad faith.

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(b) **Cathay Pacific Airways Limited v. Mario Koch** (Case No. D2002-0318): The said complaint was filed against the domain name cathay-pacific.org. It was decided that the Domain Name was confusingly similar to the Complainant's trade mark and the Respondent had no rights or legitimate interests relating to the Domain Name, registered in bad faith and accordingly directed that the domain name be transferred back to the Complainant.

- 3.20 The judgments for the above disputes are at Exhibit-7. All of the above actions establish that Complainant routinely polices its valuable trade mark and trade name CATHAY PACIFIC and promptly takes action against any unauthorized adoption and use of the same.
- 3.21 On 20th July, 2011, the Respondent registered the disputed domain name CATHAYPACIFIC.CO.IN. The website lists links for topics such as "low cost air tickets", "cheap flights worldwide", "fall in love in Hong Kong", "cheap flights" etc. The website also shows that the said domain name is parked for sale with the seller's listing price of 6,200 EUR. A copy of the web page is attached at Exhibit-8.
- 3.22 On becoming aware of the registration of the disputed domain name, the Complainant, through its lawyers in Hong Kong, communicated with the Respondent via e-mail dated 20th June, 2012 asking him to cease the use of the disputed domain name and immediately transfer the disputed domain name voluntarily to the Complainant. The Respondent responded to the e-mail quoting an exorbitant price for transferring the disputed domain name which was not acceptable to the Complainant. The entire e-mail correspondence with the Respondent is attached at Exhibit-9.
- 3.23 Unwilling to let a third party dishonestly and in bad faith adopt and use its well-known trade mark/name CATHAY PACIFIC as a part of its domain name, the Complainant has filed this Complaint under the INDRP.

B Respondent

- 3.24 The Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

4. Parties Contentions

A Complainant

- 4.1 The Complainant owns trade mark rights in the word CATHAY PACIFIC in India and throughout the world. The domain name registered in connection with the .in extension is "CATHAYPACIFIC." Thus, the disputed domain name <cathaypacific.co.in> is identical to the trade mark in which the Complainant has rights.
- 4.2 Respondent does not have rights or a legitimate interest in the disputed domain name <cathaypacific.co.in> and has not registered it as a trademark, service mark or company name anywhere in the world. The Respondent has not used the mark for a *bona fide* offering of goods or services and the Respondent is not commonly known by the name "CATHAY PACIFIC"; nor has the Respondent made any legitimate non-commercial use of the disputed domain name <cathaypacific.co.in>.
- 4.3 No *bona fide* use of the domain name has been made whatsoever, to the best knowledge of the Complainant. The Complainant has reason to believe that the Respondent has also not registered the trademark CATHAY PACIFIC in his favour in India in any class. A search made in classes 16, 39 and 42 in the records of the Trade Mark office India is filed at **Exhibit-10**.
- 4.4 The Complainant has not licensed or otherwise permitted the Respondent to use the trademark CATHAY PACIFIC. There is no relationship between the Complainant and the Respondent whatsoever.
- 4.5 Therefore, the Respondent has no rights or legitimate interests in respect of the disputed domain name <cathaypacific.co.in>.

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- 4.6 The Respondent has used and registered the disputed domain name <cathaypacific.co.in> in bad faith to make unlawful gains out of the transactions. The term CATHAY PACIFIC is coined and the combination of the words "CATHAY" and "PACIFIC" is arbitrary. The Respondent had no previous connection with the disputed domain name <cathaypacific.co.in> and has clearly registered the same in order to prevent the Complainant who is the owner of the trademark CATHAY PACIFIC from reflecting the said trademark in a corresponding domain name.
- 4.7 In addition, it is pertinent to note that any use of the disputed domain name <cathaypacific.co.in> by the Respondent, would certainly result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent's website, due to the use by the Respondent of the Complainant's said trademark in the disputed domain name <cathaypacific.co.in>. The said trademark has been widely used and advertised in India and all over the world by the Complainant and are associated exclusively with the Complainant.
- 4.8 The Respondent has registered the disputed domain name primarily for the purposes of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark for valuable consideration which is evident from the amount as shown on the website corresponding to the said domain name. The malafides on part of the Respondent further become evident from the exorbitant amount quoted by the Respondent on the e-mail correspondence.
- 4.9 In addition, the Respondent has prevented the Complainant, who is the owner of the trade mark "CATHAY PACIFIC", from reflecting the mark in the domain name and also that the domain name is identical to the trademark of the Complainant and will lead to confusion with the Complainant's mark "CATHAY PACIFIC".
- 4.10 In view of the above, one can reasonably conclude that the Respondent had knowledge of the existence of the Complainant and it's well known status and therefore in registering the disputed domain name <cathaypacific.co.in>, he has demonstrated bad faith.
- 4.11 It is abundantly apparent that by registering a domain name corresponding to a widely known trademark, the Respondent has intentionally tried to divert Internet users to its webpage, for commercial gain. This behavior constitutes bad faith use and may tarnish the Complainant's reputation by, inter alia, attracting Internet users to a webpage that appears to be endorsed by the Complainant when no such endorsement exists.
- 4.12 Moreover, the Complainant communicated with the Respondent informing him of Complainant's rights and requesting the transfer of the disputed domain name <cathaypacific.co.in>. The Respondent provided a response stating that they could transfer it to the Complainant at an exorbitant rate.
- 4.13 In view of the above, it is abundantly clear that the Respondent has purposely demanded an amount far more than its out-of-pocket costs for registration. Registering a domain name for the purpose of selling or transferring the domain name for excessive consideration is evidence of bad faith registration and use under paragraph 4(b) (i) of the Policy.

B. Respondent

- 4.14 Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

5. Discussion and Findings

- 5.1 Respondent has not filed his response. I have not received any communication from him until the date of this award. Therefore, I am proceeding to determine this Complaint on the basis of the materials available on record.

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5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:

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

5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.4 The Complainant is the proprietor of the mark CATHAY PACIFIC. Complainant has been using CATHAY PACIFIC mark continuously since 1946 in Hong Kong. In India, the Complainant had its first flight to Kolkata in 1950. The Complainant operates on average 31 flights per week to India. The Complainant has registered and used its CATHAY PACIFIC and other allied trademarks in over 35 countries around the world, including India. The first registration in India under No.1288999 dates back to 09.06.2004. The Complainant registered www.cathaypacific.com on 15.09.1995. The disputed domain name **<cathaypacific.co.in>** was registered on 30.08.2011. Obviously, the Complainant is the prior adopter of CATHAY PACIFIC marks. The above facts have established that the Complainant has both common law and statutory rights in respect of its CATHAY PACIFIC marks.

5.5 The Complainant's CATHAY PACIFIC marks are famous and well known throughout the world including India. It is clearly seen that the disputed domain name **<cathaypacific.co.in>** wholly incorporates the prior registered CATHAY PACIFIC marks. The suffixes .co and .in are descriptive and are not distinguishing part of the domain name. The disputed domain name **<cathaypacific.co.in>** is similar to the Complainant's domain name www.cathaypacific.com.

5.6 I, therefore, find that:

- (a) The Complaint has both common law and statutory rights in respect of its CATHAY PACIFIC marks.
- (b) The disputed domain name **<cathaypacific.co.in>** is:
 - (i) Identical to the Complainant's prior registered CATHAY PACIFIC trade marks, and
 - (ii) Similar to the Complainant's domain name www.cathaypacific.com

Respondent has no rights or legitimate interests in respect of the disputed domain name

5.7 It is already seen that:

- (a) The Complainant is the prior adopter and user of the CATHAY PACIFIC marks. The Complainant's CATHAY PACIFIC marks are well known in many countries across the globe including India.
- (b) The Complainant's CATHAY PACIFIC mark was adopted in the year 1946. It was registered in India in 2004. The disputed domain name **<cathaypacific.co.in>** was registered by the Respondent only on 30.08.2011.

5.8 Respondent did not register the disputed domain name 30.08.2011 until 2011. Complainant has registered and used various domain names consisting of its mark CATHAY PACIFIC before Respondent registered the disputed domain name. It is unlikely that the Respondent was unaware of Complainant's existence of trademark rights before registering the disputed domain name **<cathaypacific.co.in>**.

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- 5.9 I visited the web site of the Respondent under the disputed domain name <cathaypacific.co.in>. The home page of the disputed domain name <cathaypacific.co.in> prominently displays: **Buy this domain, the domain cathaypacific.co.in may be for sale by its owner!** It provides links to web sites of the others including the competitors of the Complainant. It is obvious that the Respondent never intended to use the disputed domain name <cathaypacific.co.in> in connection with a bona fide offering of goods or services.
- 5.10 In the absence of response from the Respondent, I accept the argument of the Complainant that:
- (a) The Complainant has not licensed or otherwise permitted the Registrant to use the trademark CATHAY PACIFIC. There is no relationship between the Complainant and the Registrant whatsoever.
 - (b) The Registrant has also not registered the trademark CATHAY PACIFIC in his favour in India in any class.
- 5.11 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name <cathaypacific.co.in>.

Respondent's domain name has been registered or is being used in bad faith.

- 5.12 The Complainant is the proprietor of the mark CATHAY PACIFIC. Complainant has been using CATHAY PACIFIC mark continuously since 1946. The Complainant's services are available in India. Complainant owns numerous trademark registrations for CATHAY PACIFIC throughout the world. The first registration in India under No.1288999 dates back to 09.06.2004. The Complainant registered www.cathaypacific.com on 15.09.1995. The disputed domain name <cathaypacific.co.in> was registered on 30.08.2011. Obviously, Complainant's rights in the CATHAY PACIFIC marks pre-date Respondent's registration of the disputed domain name <cathaypacific.co.in>. The Respondent could not have ignored, rather actually influenced by, the well-known CATHAY PACIFIC marks of the Complainant at the time he acquired the disputed domain name <cathaypacific.co.in>.
- 5.13 As seen above, Respondent is currently holding the disputed domain name <cathaypacific.co.in> primarily for sale and gives links to other web sites of third parties and not for any other purpose. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name <cathaypacific.co.in> is nothing but an unjust exploitation of the well-known reputation of the Complainant's prior registered <cathaypacific.co.in> marks.
- 5.14 Further, before the Complaint, Respondent parked the disputed domain name <cathaypacific.co.in> for sale with the seller's listing price of 6,200 EUR. Complainant filed a copy of the web page. On becoming aware of the registration of the disputed domain name <cathaypacific.co.in>, the Complainant, through its lawyers in Hong Kong, communicated with the Respondent via e-mail dated 20th June, 2012 asking him to cease the use of the disputed domain name <cathaypacific.co.in> and immediately transfer the same voluntarily to the Complainant.
- 5.15 Respondent's lack of response to the Complaint indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's <cathaypacific.co.in> marks.
- 5.16 The Respondent had no previous connection with the disputed domain name <cathaypacific.co.in> and has clearly registered the same in order to prevent the Complainant who is the owner of the trademark CATHAY PACIFIC from reflecting the said trademark in a corresponding domain name.
- 5.17 Any use of the disputed domain name <cathaypacific.co.in> by the Respondent, would certainly result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent's

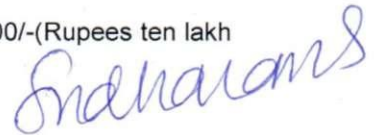
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website, due to the use by the Respondent of the Complainant's said trademark in the disputed domain name <cathaypacific.co.in>. The said trademark has been widely used and advertised in India and all over the world by the Complainant and are associated exclusively with the Complainant

- 5.18 Thus it is clearly established that Respondent registered the disputed the disputed domain name <cathaypacific.co.in> in bad faith.
- 5.19 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent never intended to put the disputed domain name <cathaypacific.co.in> into any fair/useful purpose. Respondent not even considered it worth responding the complaint of the Complainant. Respondent did not file any response. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

6. Decision

- 6.1 For all the foregoing reasons, the Complaint is allowed as prayed for in the Complaint.
- 6.2 It is hereby ordered that the disputed domain name <cathaypacific.co.in> be transferred to the Complainant.
- 6.3 Respondent is ordered to pay the Complainant a sum of Rs.10,00,000/-(Rupees ten lakh only) towards costs of the proceedings.



S.Sridharan
Arbitrator