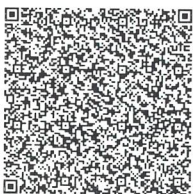




Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL51765068703420X
Certificate Issued Date	: 18-Mar-2025 12:04 PM
Account Reference	: IMPACC (IV)/ dl755003/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL75500345522282460365X
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. 1912**

In Re:

Havana Club Holding S.A.

5 place de la Gare

L-1616, Luxembourg

Grand Duchy of Luxembourg

and

Ratn Tilakraj Batra trading as Star Sapphire

R-737, New Rajender Nagar

Rajender Park, Central Delhi - 110060, Delhi

...Complainant

...Respondent

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.
Any discrepancy in the details on this Certificate and as available on the website / Mobile App 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.

Heaven W. /

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...Complainant

and

Ratn Tilakraj Batra trading as Star Sapphire

R-737, New Rajender Nagar

Rajender Park, Central Delhi - 110060, Delhi

...Respondent

REPRESENTED BY:

For the Complainant:

Mr. Manish Kumar Mishra, Advocate with

Ms. Anindhya Sharma, Advocate

Mr. Deepak Singh, Advocate

Mr. Roohan Kathuria, Advocate

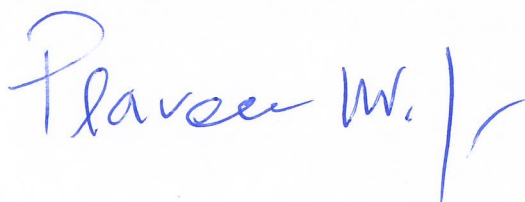
For the Respondent:

Mr. Gurman Chahal, Advocate

ARBITRAL AWARD DATED 22-04-2025

A. INTRODUCTION:

The above-titled complaint has been filed by the Complainant, **Havana Club Holding S.A.**, for adjudication of the domain name dispute in accordance with the *.IN Domain Name Dispute Resolution Policy* (hereinafter referred to as "the Policy") and the *INDRP Rules of Procedure* (hereinafter referred to as "the INDRP Rules"), as adopted



by the .IN Registry – National Internet Exchange of India (hereinafter referred to as "NIXI" or "the Registry"). The disputed domain name, <<https://clubhavana.in/>>, is registered with the Registrar, namely GoDaddy.com, LLC. It was created on 24-01-2023 (YYYY/MM/DD) and is set to expire on 2025-01-24 (YYYY/MM/DD). The domain is registered by **Mr. Ratn Tilakraj Batra** trading as Star Sapphire, the Respondent herein.

B. PROCEDURAL HISTORY:

Appointment of the sole Arbitrator:

- i. That *vide* its email dated 11-01-2025, 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* my email dated 11-01-2025, I had shared my digitally signed Statement of Acceptance cum Declaration of Impartiality & Independence with the Registry.
- iii. Thereafter, the Registry *vide* its email dated 20-01-2025 apprised the parties that the undersigned would adjudicate the dispute concerning the domain name <<https://clubhavana.in/>> as the sole Arbitrator and INDRP Case No. 1912 was assigned to the matter. The Registry had also attached the soft copies of the Complaint, its Annexure Nos. 1 to 13 in the above-said email dt. 20-01-2025. Rest of the Annexure Nos. 14 to 22 and my above-referred

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statement of acceptance was sent to the parties by the Registry through its another email of even date.

- iv. That *vide* its email dated 21-01-2025 to the Registry, the Counsel for the Complainant had confirmed that the documents shared *via* emails dt. 20-01-2025 by the Registry were the complete set of documents accompanying the complaint.

Tribunal's Notice to the Parties:

- v. That *vide* its email 22-01-2025, the Tribunal issued the Notice dt. 22-01-2025 under Rule 5(c) of the INDRP Rules. Though, the Registry had shared with the parties my Statement of Acceptance and Declaration of Impartiality & Independence dated 22-01-2025 given in its prescribed format; however, I deemed it fit to share with the parties my declaration of independence, impartiality and availability dated 22-01-2025 under section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") r/w the Sixth Schedule of the Act. None of the parties objected to my appointment as the sole Arbitrator in the present matter.

Service of the complaint and its annexures on the Respondent:

- vi. That *vide* its email dated 25-01-2025, the Counsel for the Complainant herein had, in compliance of the Tribunal's Notice dated 22-01-2025, served the copy of the complaint along with the annexures. In the aforesaid email, the Counsel for the Complainant also informed the Respondent that a physical copy of the

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complaint, its annexures and a CD containing the annexures had been sent *via* Speed Post also.

Respondent's Reply to the Complaint:

- vii. That *vide* its email dated 07-02-2025, the Respondent herein sent its Reply to the complaint which had been delivered to it *via* Speed Post on 01-02-2025. However, the said email was sent to only the Registry.
- viii. That on 10-02-2025 at 01.58 PM, the Respondent sent an email to the Tribunal with copy to the Registry stating therein *inter alia* that it was suffering losses due to non-renewal of its website and showed his readiness and willingness to give an unconditional undertaking that it would not transfer the ownership to any individual if the disputed domain was allowed to be renewed. The Respondent requested the Tribunal to pass an immediate order allowing renewal of the disputed domain. The Respondent had also attached its Reply to the Complaint in its aforesaid email which was not marked to the Complainant or its Counsel.
- ix. That the Respondent sent another email on 10-02-2025 at 05.01 PM to the Tribunal only, repeating therein the same averments which were made in its earlier email received on 10-02-2025 at 01.58 PM.
- x. That the Respondent also sent an email on 12-02-2025 requesting therein to consider its grievance as stated in the emails dated 07-

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02-2025 and 10-02-2025. The above-said email was marked to the counsel for the Complainant but not to the Registry.

Procedural order dt. 19-02-2025:

- xi. That *vide* its email dated 19-02-2025, the Tribunal sent the procedural order dated 19-02-2025 to the parties with copy to all concerned. The Tribunal, in the said order, took on record the Respondent's Reply and directed the Complainant to file its Rejoinder to the above-said Reply on or before 01-03-2025. In the order dt. 19-02-2025, the following directions were also issued:

"...The Tribunal is also in receipt of the email dt. 10-02-2025 at 5.01 pm from the Respondent which was not copied to anyone else; hence, the same cannot be taken on record for being violative of Rule 12 of INDRP Rules of Procedure as well as the directions given to the Respondent *vide* Notice dt. 22-01-2025. The Tribunal received another email dt. 12-02-2025 at 12.53 pm from the Respondent having the almost same contents which was copied to the Complainant's email ID: mamta@inttladvocare.com. However, the same is not copied to the Registry. Both the parties are directed to copy their emails to each other as well as to the Registry while communicating with the Tribunal. The Respondent is directed to file its duly signed statement containing the facts, grievance/ objections/ grounds, etc with specific prayer in proper format with reference to the INDRP Rules of Procedure and the Statutory Provisions under which it is being filed for the consideration of the Tribunal.

Both the parties are directed to file their respective Statements of Admission/ Denial of Documents along with the suggested "Issues" to be framed by the Tribunal on or before 05-03-2025. The Complainant

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is directed to provide a Stamp Paper of Rs. 100/- to the Tribunal at its office address within 10 days from today for making the award..."

- xii. That *vide* its email dated 21-02-2025 to the Registry only, the Respondent *inter alia* acknowledged receipt of the procedural order dt. 19-02-2025 and requested to provide the format of the Reply to the Complainant as well as the Statement of Admission/ Denial of the Complainant's documents.
- xiii. That *vide* its email dated 24-02-2025, the Registry herein forwarded the Respondent's email dt. 21-02-2025 to the Tribunal.

Procedural order dt. 25-02-2025:

- xiv. That *vide* its email dated 25-02-2025, the Tribunal sent to the parties the procedural order dated 25-02-2025 whereby it was clarified that the Reply to the Complaint had already been taken on the record and no defect was pointed out by the Tribunal in the format/ presentation/ filing of the Reply. The Tribunal provided the following format along with the guidelines to the parties for filing their respective Statement of Admission/ Denial of the documents:

I	II	III	IV
Sr. No.	Particulars of the documents	Admitted or Denied	Remarks
1			
2			
3			

Plaveen Mr. J

The statement of admissions and denials shall set out explicitly in the fourth column titled "Remarks", whether such party was admitting or denying:-

- (a) correctness of contents of a document;
- (b) existence of a document;
- (c) execution of a document;
- (d) issuance or receipt of a document;
- (e) custody of a document.

Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Tribunal.

Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

Complainant's Rejoinder to the Respondent's Reply:

- xv. That *vide* its email dt. 27-02-2025, Ld. Counsel for the Complainant filed the Complainant's Rejoinder to the Respondent's Reply and stated that it would file the Statement of Admission/ Denial and suggested issues, as directed by the Tribunal, within the given deadline.

Statement of Admission/ Denial of documents & proposed issues:

- xvi. That *vide* its email dt. 03-03-2025, the Respondent filed the Statement of Admission/ Denial of Complainant's documents and the proposed issues. The Respondent had admitted only the

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Annexure No. 1 (Copy of the WHOIS details of the disputed domain name <https://clubhavana.in/>), the Annexure No. 2 (Copies of the trade mark applications filed by the Respondent) and the Annexure No. 20 (Copies of Online status of the application nos. 5898403 and 5898404 of the Respondent showing opposition details). Rest of the 19 documents annexed with the Complaint were denied by the Respondent for want of knowledge.

- xvii. That Ld. Counsel for the Complainant also filed the Statement of Admission/ Denial and proposed issues *vide* its email dt. 04-03-2025. The Complainant had divided the Column titled: 'Remarks' into five categories *viz.* Correctness of the document, Existence of the document, Execution of the document, Issuance or receipt of the document and Custody of the document. The Complainant had denied the Respondent's documents *viz.* the **Annexure A** (Extracts of the Respondent's website under the disputed domain name) and the **Annexure B** (Extracts from the Respondent's alleged social media pages) in all above-stated five categories for lack of Complainant's personal knowledge.

Procedural order dt. 22-03-2025:

- xviii. That *vide* its email dt. 22-03-2025, the Tribunal communicated with the parties its procedural order dt. 22-03-2025 which contained *inter alia* the following directions:

- | | | |
|-----|---|-----|
| xxx | xxx | xxx |
| 4. | In the light of the above-stated pleadings, remedies requested, statements of admission/ denial and the proposed issues filed by both the parties, the Tribunal hereby frames the following issues: | |

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pleadings, documents and statements of admission/ denial of documents.

(emphasis added)

- xix. That Ld. Counsel for the Complainant, upon receipt of the above-said procedural order dt. 22-03-2025, acknowledged that the parties were required to express their desire if they wish to frame any other specific issue/s, apart from the issues framed by the Tribunal or if the parties wish to have an oral hearing scheduled in the matter for the presentation of evidence and/ or for oral submissions by 1.30 pm of 24-03-2025. By citing the practical difficulty in seeking instructions on non-working days, Ld. Counsel for the Complainant sought some more time to seek instructions from the Complainant, which is based out of India, with regard to framing of any other specific issue or for an oral hearing.
- xx. That the Respondent *vide* its email dt. 24-03-2025 sent an application to amend the issues framed by the Tribunal *vide* procedural order dt. 22-03-2025 and to schedule a hearing for making oral arguments or to allow it to file written submissions.
- xxi. *Vide* its email dt. 31-03-2025, Ld. Counsel for the Complainant had also requested to hold a hearing for making oral arguments.

Procedural order dt. 02-04-2025:

- xxii. The Tribunal sent its procedural order dt. 02-04-2025 to the parties *vide* its email dt. 02-04-2025 wherein *inter alia* the following directions were passed:

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XXX

- (emphasis added)*

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Request for personal hearing:

- xxiii. Both the parties deposited with the Registry the required fee for holding personal hearing for making oral arguments and the Respondent, *vide* its email dt. 09-04-2025 filed the Vakalatnama of its Counsel Mr. Gurman Chahal, Advocate to represent it during the arbitral hearings. Ld. Counsel for the Complainant also filed the Vakalatnama to attend the arbitral hearings. Both Vakalatnamas were taken on the arbitral record. Further, both the parties agreed to have the personal hearing on 11-04-2025 from 3 pm to 5 pm through Video Conferencing mode. Accordingly, the Registry provided the link for holding arbitral hearing through VC.

Respondent's written submissions:

- xxiv. That Ld. Counsel for the Respondent, *vide* its email dt. 11-04-2025, filed the written submissions on behalf of the Respondent which were taken on the arbitral record.

Arbitral hearing dt. 11-04-2025:

- xxv. The arbitral hearing was held through VC as per the above-stated schedule wherein Ld. Counsel for the Complainant commenced its oral arguments. During the arbitral hearing, Ld. Counsel for the Complainant sent an email at 3.30 PM containing a compendium of fourteen judgments which would be relied upon by the Complainant during the course of oral hearing. Ld. Counsel for both parties made their oral submissions in detail; however, they requested for one more hearing to conclude their submissions.

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Accordingly, 16-04-2025 was fixed as the next date of hearing for making final arguments from 3 pm to 5 pm.

Arbitral hearing dt. 16-04-2025:

- xxvi. During the arbitral hearing dt. 16-04-2025, Ld. Counsel for the Respondent sent an email at 3.04 PM attaching therewith the Index of nine judgments which were to be relied upon by the Respondent during its final arguments that day. Ld. Counsel for both parties concluded their oral arguments and expressed their complete satisfaction with regard to the time allotted to them by the Tribunal for making oral arguments. Ld. Counsel for both the parties requested two days' time to file their written submissions in support of their oral arguments which was allowed by the Tribunal. With the consent of the Ld. Counsel for the parties, arbitral proceedings were concluded and the award was reserved. None of the parties have complained of any inconvenience or distortion of audio/ video during the arbitral hearings dt. 11-04-2025 and 16-04-2025 held through VC.

Complainant's written submissions:

- xxvii. *Vide* its email dt. 18-04-2025, Ld. Counsel for the Complainant filed an Index of judgments relied upon by the Complainant, along with a post hearing written note of submissions both dated 18-04-2025. The Respondent has not filed any post hearing written submissions. None of the parties have filed their statement of costs despite liberty granted to them by the Tribunal *vide* its procedural order dt. 02-04-2025.

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C. FACTS OF THE CASE:

C.1: COMPLAINANT'S COMPLAINT:

The Complainant has stated the following facts in its complaint dated 05-09-2024:


1. The Complainant is a part of 'Groupe Pernod Ricard', a group of companies ultimately held by Pernod Ricard S.A. and having presence in many countries of the world. Pernod Ricard is engaged in the business of manufacturing and marketing a variety of alcoholic beverages worldwide including a wide range of whiskies (including Scotch), anise drinks, liqueurs and other spirits, bitters, white spirits, vodka, rums, cognacs and brandies under various nationally and internationally renowned and acclaimed brands such as ROYAL STAG, BLENDERS PRIDE, PASSPORT, HAVANA CLUB, 100 PIPERS, IMPERIAL BLUE, ROYAL SALUTE, CHIVAS REGAL, ABSOLUT, THE GLENLIVET, JAMESON, BEEFEATER, RICARD, JACOB'S CREEK, KAHLUA, MARTELL etc. Pernod Ricard is a huge player and a global performer, present in all the continents of the world and having wine and spirits net sales to the tune of Euros 8.82 billion in 2020-21 fiscal year, Euros 10.70 billion in 2021-22 fiscal year and Euros 12.137 billion in the fiscal year 2022-2023. Copies of the Annual Reports of Groupe Pernod Ricard for the fiscal years 2020-21, 2021-22 and 2022-23 exhibiting the above-mentioned figures have been annexed as **Annexure-3 (Colly)**. It is further stated that Ms. Lydia Plumelle is Attorney in Fact of the

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Complainant and is fully competent and authorized to institute the present complaint on its behalf. A copy of the Power of Attorney dated 14-06-2024, in favour of Ms. Lydia Plumelle, has been annexed as **Annexure- 4**.

The Complainant's Trade Mark-HAVANA CLUB:



2. The Complainant is one of Pernod Ricard's strategic premium spirit brands and also one of the fastest-growing spirit brands worldwide, having reported a sales volume of 4.6 million 9-liter cases worldwide in the year 2022. By virtue of an agreement dated November 23, 1993, the Complainant gave an exclusive and worldwide license to use the trade mark HAVANA CLUB to Havana Club International S.A., a company based in Havana. The Complainant is in-charge of the development of the HAVANA CLUB brand on a worldwide basis. A copy of the agreement dated November 23, 1993, has been annexed as **Annexure - 5**.
3. The Complainant further stated that the trade mark **HAVANA CLUB** not only forms a prominent part of the Complainant's business name, but is also a registered trade mark, which has been used and promoted continuously, extensively and uninterruptedly across several countries, including in India, details whereof are as under:

Reg. No.	Trade Mark	Class	Date	Status & Valid Until
850163		33	07/04/1999	Registered and valid up to 07/04/2029
1661003	HAVANA CLUB	33	04/03/2008	Registered and valid up to 04/03/2028

Praveen W. /

Copies of the online statuses and registration certificates of the Trade Mark Registration Nos. 850163 and 1661003 have been annexed as **Annexure - 6 (Colly)**.

4. The Complainant has further submitted that it is the proprietor and owner of the registered mark **HAVANA CLUB** internationally, details whereof are as under:

Country	Trademark	Registration No.	Class	Registration Date
European Union	HAVANA CLUB	4710034	25	29/06/2009
United Kingdom	HAVANA CLUB	UK00904710034	25	29/06/2009
European Union		018343961	25	12/03/2021
United Kingdom		UK00003618392	25	03/09/2021
Benelux	HAVANA CLUB	107936	33	22/04/1996
Italy	HAVANA CLUB	214663	33	11/09/1967
Cuba	HAVANA CLUB	109119	33	14/06/1968
Morocco	HAVANA CLUB	21098	33	14/02/1969
Jordan	HAVANA CLUB	11303	33	11/04/1970
Chile	HAVANA CLUB	59051-B	33	15/12/1970
United Kingdom	HAVANA CLUB	B1059835	33	20/02/1978
Peru	HAVANA CLUB	58437	33	12/08/1985
Brazil	HAVANA CLUB	812815726	33	27/12/1994
Australia	HAVANA CLUB	906171	33	13/03/2002
Dominican Republic	HAVANA CLUB	146930	33	18/03/2005
African Organization	HAVANA CLUB	51054	33	13/05/2005

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of Intellectual Property (AIPO)				
Guyana	HAVANA CLUB	2058C	33	23/05/2005
European Union	HAVANA CLUB	5414917	33	18/10/2007
Canada	HAVANA CLUB	765.615	33	03/05/2010

Copies of the international registration certificates obtained by the Complainant for its trademark **HAVANA CLUB** in classes 25 and 33 have been annexed with the complaint as **Annexure-7 (Colly)**.

5. The Complainant has further stated that by the virtue of the aforementioned registrations and provisions of the Trade Marks Act, 1999, the Complainant has exclusive right to use the aforesaid trademarks *inter- alia* in respect of the goods and/ or services for which they are registered. Additionally, by virtue of Section 31 of the Trade Marks Act, 1999, the abovementioned registration(s) are *prima facie* evidence of their validity.
6. The Complainant has further stated that to its credit there are several domain name registrations including the trade mark **HAVANA CLUB** as well as havana.clubTLD (A top-level domain). A reverse WhoIs search available at <https://www.reversewhois.io/?> also evinces that the Complainant is the registrant of quite a few domains. The complainant has provided an illustrative list of such other domain name registrations:

- <https://havana-club.com/en/>

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- <http://havanaclub.com/>
- <https://www.havana-club.com/>
- <https://havanaclub.cn/>
- <https://havana-club.cn/>
- <http://habanaclub.info/>
- <https://havanaclub.club/>
- <http://havana-club.co.il/>
- <https://havanaclub.com.au/>
- <https://havanaclub.com.ua/>
- <https://havanaclub.co.za/>
- <https://havanaclub.fr/>
- <https://havana-club.ie/>
- <https://havanaclub.jp/>
- <https://havana.club/>
- <https://havana-club-maximo.com/>
- <https://havanaclubmojito.com/>
- <https://havanaclub-rum.com/>
- <https://havana-club.uk/>
- <https://havanaclub.uk/>

Illustrative WHOIS extracts and the TLD delegation details have been annexed as **Annexure-8 (Colly)**.

7. The Complainant has further submitted that the goods under the trade mark **HAVANA CLUB** are extremely popular worldwide and have been given wide media coverage by various publications across the world and have also been the subject of various press

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releases which have worldwide circulation, including in India. Extracts of the relevant pages from the press releases have been annexed as **Annexure -9 (Colly)**.

8. It is further submitted by the Complainant that the trademark **HAVANA CLUB** has been recognised as a well-known trade mark or at least highly distinctive to designate alcoholic beverages in various countries such as Bolivia, Spain, Venezuela, Greece and by the EUIPO. Copies of the orders/ decisions passed by the judicial authorities of the said countries along with English translation copies have been annexed as **Annexure -10 (Colly)**.
9. The Complainant has further submitted that its goods under the trade mark **HAVANA CLUB** have also been felicitated on numerous instances over the years and has garnered an impeccable reputation for itself. The Complainant has also annexed a detailed list of awards and recognitions which its trademark **HAVANA CLUB** has won from the year of 1994 till the year of 2024 along with a few certificates as **Annexure -11 (Colly)**.
10. It is further stated by the Complainant that the products under the trade mark **HAVANA CLUB** are also promoted extensively by the Complainant through social media platforms such as Facebook, Instagram, Twitter and YouTube where users/ followers are apprised of all the latest developments, campaigns, product launches pertaining to the Complainant's goods under the trade mark **HAVANA CLUB**. The abovementioned brand

Plavce W. /

promotion activities have successfully facilitated the ever-increasing demand for **HAVANA CLUB** amongst consumers and the public at large. It is further stated that the popularity of the Complainant's products is also evident from the fact that hundreds and thousands of users across the world use the hashtag **#havanaclub** and upload photos and videos on various social media platforms. Extracts from social media pages showing likes/followers and promotion have been annexed as **Annexure-12 (Colly)**.

11. The Complainant has further submitted that the trademark **HAVANA CLUB** has been extensively promoted in various countries, including in India at huge financial expense without territorial limitations. On account of extensive sales and marketing, the trade mark **HAVANA CLUB** has acquired a very high level of distinctiveness and enjoys formidable goodwill and reputation in all such countries. A list providing details of the sales volume of goods under **HAVANA CLUB** in various countries reflecting the consolidated sales of goods under **HAVANA CLUB** has been annexed as **Annexure-13 (Colly)**. Copies of sales invoices evidencing sale of goods under the trade mark **HAVANA CLUB** in various countries around the world have also been annexed as **Annexure 14 (colly)**. Copies of the invoices evidencing the sale of Complainant's alcoholic beverages under the trademark **HAVANA CLUB** in India have also been annexed as **Annexure 15 (Colly)**.

Plavee W. /r

12. The Complainant has further annexed the relevant extracts of the magazines, reports and press releases which have ranked the Complainant's brand in the list of Top 100 Premium Spirit brands in the years of 2009, 2010, 2013 and 2019 as **Annexure 16 (colly)**. The Complainant has also stated that the said trademark **HAVANA CLUB** has been ranked among the top rum brands and was included in the list of top 100 Spirit brands for the years 2017, 2018 and 2019, published by IWSR. The relevant extracts from the above-stated magazine have also been included in the above-stated Annexure -16 (Colly).
13. The Complainant submits that because of the regular, continuous and extensive use of the trade mark **HAVANA CLUB** by the Complainant and by reason of superior quality and efficacy of the goods provided by the Complainant, the trade mark **HAVANA CLUB** has become distinctive of the Complainant and the goods offered by it and none else. Thus, the Complainant also enjoys Common Law Rights in the trade mark **HAVANA CLUB**. It is further stated in the complaint that the Complainant's trade mark **HAVANA CLUB** is a well-known trade mark and enjoys a tremendous trans-border reputation and goodwill in India and is known to a substantial segment of society in India. Therefore, any unauthorised use of the name/ mark **HAVANA CLUB** by a third party as a mark, name, domain name or, in any other form whatsoever constitutes infringement and passing off and is a violation of the Complainant's rights in the said mark.

Plavee W. /r

14. The Complainant has further submitted that it has zealously guarded its Intellectual Property Rights in the trademark **HAVANA CLUB** and has obtained protection from Courts, Tribunals and other authorities around the world. It has also filed a UDRP complaint with regard to disputed domain names '*havanaclub.cc*', '*havanaclubl.net*' and '*havanaclubl.vip*' being Case No. D2023-4470. The Complainant further stated that the said complaint was decided in its favour and the domain name was ordered to be transferred *vide* decision dated 04-01-2024. The complainant has shared a link for access to the decision dated 04-01-2024 along with a copy of the same which is annexed with the Complaint as **Annexure-17**.
15. The Complainant has further submitted that it had instituted another UDRP complaint having Case number D2012-0019 *vide* decision dated 20.02.2012 wherein it was ordered that the domain name <https://habana-club.com/> be transferred in favour of the Complainant. The Complainant has shared a link to access the decision dated 20-02-2012, along with a copy of the same which have been annexed with the Complaint as **Annexure-18**.

Complainant's collaborations with clothing and merchandise brands:

16. The Complainant further states that it has collaborated with world-renowned artists/ musicians and sponsored events across the world to promote its trade mark **HAVANA CLUB**. The Complainant further stated that over the years through its collaborations such as

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"Havana Club x Places+Faces" and "Havana Club x SKEPTA 2.0", to name a few, has launched limited edition clothing and merchandise and on account of such extensive use and brand promotions across the world, the trade mark **HAVANA CLUB** is associated with the complainant alone. Extracts of the online articles elaborating on the collaboration of the Complainant with clothing and merchandise brands have been annexed and marked as **Annexure -19 (Colly)**.

17. The Complainant further submitted that it was evident that the Complainant had the Statutory and Common law rights in the Trademark **HAVANA CLUB**. It is further submitted that the INDRP Rules of Procedure specify a 100 page limit for all annexures. Accordingly, the Complainant was constrained to file illustrative evidence for the sake of brevity. The Complainant has also hyperlinked all documents and judgments, which are part of public records. The Complainant reserved its right to file detailed evidence if required.

Infringement of Complainant's Trademark by the Respondent:

18. The Complainant further stated that recently to its utter surprise and shock, it came to know that apart from filing two applications bearing nos. 5898403 and 5898404 for trademark **CLUB HAVANA** in classes 25 and 35 respectively before the Trade Marks Registry (*which has been opposed by the Complainant on the grounds of being the prior adopter, user and registrant of the trade mark HAVANA CLUB*). The Respondent has also obtained

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the domain name registration for <https://clubhavana.in/> (**the disputed domain name**), which is a blatant imitation of not only the Complainant's well-known trade mark **HAVANA CLUB**, but also the Complainant's website <https://havana-club.com/en/>. The Complainant has annexed copies of the aforementioned applications showing opposition details as **Annexure 20 (Colly)**.

19. The Complainant further submitted that upon becoming aware of such disputed domain name, the Complainant immediately searched the WhoIs database for the disputed domain name and found that the Registrant's information has been redacted for privacy, which itself is indicative of bad faith on the part of the Respondent.

Cause of action for filing the present complaint before the Registry:

20. It is stated by the Complainant that the name of the disputed domain name, i.e. <https://clubhavana.in/> itself suggested that it had been registered with the *mala fide* intention and without any legitimate interest. It is further stated that the same has been registered by the Respondent being fully aware of the rights of the Complainant in its well-known trade mark **HAVANA CLUB** and with dishonest intent to capitalise on the same as the Respondent has merely interchanged the words **CLUB** and **HAVANA** of the Complainant's trade mark **HAVANA CLUB**. Not only has the Respondent adopted a nearly identical and confusingly similar trade mark as that of the Complainant's trade mark **HAVANA CLUB**, without authorisation or consent, but is also using the

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disputed domain name catering to the clothing sector which is related to the goods/ services offered by the Complainant under its trade mark **HAVANA CLUB**. It is further stated that the Complainant had neither consented to nor permitted any such use of the trade mark **HAVANA CLUB** or domain registration to the disputed domain. It has further been stated that there is an imminent threat that the disputed domain can be transferred to a third party who may use the same to resume the act of diversion. The domain may also be used again to promote the activities of the Complainant's competitors. It is further submitted that these acts/ threats were harming the Complainant's hard-earned goodwill and reputation irretrievably and necessitated filing of the present Complaint.

21. The Complainant further submitted that the *mala fide* intent of the Respondent was writ large since the Respondent had no affiliation or connection with the Complainant, despite which the Respondent had registered the disputed domain name, which contains the well-known and registered trade mark of the Complainant. In light of the aforesaid, it has been stated that it is clear that the Respondent's registration of the disputed domain name <https://clubhavana.in/> is dishonest and has been obtained with a *mala fide* intention, solely to unfairly enrich from the hard-earned reputation and goodwill associated with the Complainant's trade mark. It is further stated that in respect of the aforesaid violation, the present Complaint had been filed for transfer of the domain name <https://clubhavana.in/> in favour of the Complainant.

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Legal Grounds stated in the complaint:

The Complainant has stated in the complaint the legal grounds titled as “**VI. LEGAL GROUNDS**” on which the complaint is based and the same have been thoroughly examined by the Tribunal. However, for the sake of brevity and convenience, only the headings of the legal grounds have been stated hereinunder:

- A. The domain name is nearly identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in the disputed domain name;
- C. The domain name was registered in bad faith or is being held in bad faith.

Remedies sought by the Complainant:

On the basis of the above-stated reasons, the Complainant has requested to transfer the domain name <https://clubhavana.in/> from the Respondent to it along with the costs of the proceedings in its favour.

C.2: RESPONDENT'S RESPONSE:**Preliminary submissions and objections:**

1. The respondent has submitted its response *vide* its email dt. 10-02-2025 wherein it has stated that it is trading as STAR SAPPHIRE and is engaged in the business of providing of Clothing, Shirts, Shorts, Scarfs,

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Neck Scarfs, Tee Shirts, Clothing for men, women and children and provides the same under the brand name "**CLUB HAVANA**". Further that since its inception, the business under the respondent's brand has become a commercial success and has gained tremendous goodwill among the customers, patrons and members of trade as one of the best luxury brand to embody panache and sophistication and has garnered an image that is unparalleled of any other luxury clothing brand focused on a specific niche.

2. The Respondent has further stated that the Complainant has made bald and vague statements and has failed to disclose any cause of action against the Respondent's domain name and has not filed anything material on record to support its contentions against the Respondent's domain; hence, the complaint should be dismissed.
3. The Respondent has further stated that the present complaint is nothing but a mere arm-twisting tool adopted by the complainant in order to put pressure upon the Respondent. Further, the Complainant has failed to put any material on record to show that the Respondent's domain is either manufacturing or supplying any infringing products created/ supplied or manufactured by the Complainant or even using any of the marks registered by the Complainant worldwide.
4. The Respondent has annexed some screenshots of its website run by the disputed domain name as **Annexure A (colly)** to show that the Respondent has an active presence through internet and through the ubiquitous medium of the internet makes available and advertise its

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services. The Respondent has also annexed a few screenshots of various social networking channels and E-Commerce sites like Instagram, Facebook, Shopify, etc. as **Annexure B (colly)** which can also be accessed from anywhere in the world. As per the Respondent, its mark "**CLUBHAVANA**" as well as the domain name <https://clubhavana.in> are unique and striking mark which as a composite whole is distinctive of the services and are even synonymous to luxury clothing and only to luxury clothing. The Respondent has further stated that its mark is unique, inherently distinctive, eye catching and memorable and because of this the Trademark office has accepted and advertised for publication as a Registered Mark for the Respondent. The Respondent further stated that its domain caters to only clothes whereas when an ordinary person upon accessing the Complainant's domain would be entering the domain name in search of the popular brand names under the ownership of the Complainant's brands like ROYAL STAG, BLENDERS PRIDE, 100 PIPER, CHIVAS REGAL, JACOB'S CREEK and can easily identify that the Complainant's and Respondent's brands are separate with their own individuality and services. The Respondent has also stated that the complaint made by the complainant is subjective to the fact that anyone using either the word "**CLUB**" or "**HAVANA**" would somehow tantamount to an infringement of its mark which is absolutely preposterous and baseless.

Parawise reply to the facts and legal grounds of the complaint:

5. While submitting its parawise reply to the factual and legal grounds of the complaint, the Respondent has denied the contents of para nos. 1 to 15 (*sic.* 17) for want of knowledge. With regard to the contents of para

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no. 18 of the complaint, the Respondent has only admitted that the application of the Respondent's Trademark was filed under class 25 and class 35. The Respondent has also denied the contents of para nos. 19, 20 and 21 of the factual part of the complaint. The Respondent has also denied the contents of para 11 i.e. the legal grounds of the complaint on the line of its stand taken while replying to the factual grounds. The Respondent has finally prayed to dismiss the complaint in the interest of justice.

C.3: COMPLAINANT'S REJOINDER:

1. *Vide* its email dated 27-02-2025, the Complainant filed its Rejoinder to the Reply submitted by the Respondent and stated that the contents of para nos. 1 and 2 of the Respondent's Reply are merely panegyric and self-serving. It is further submitted by the Complainant that any alleged success attained by the Respondent in its business is on account of its similarity with the Complainant's prior adopted, prior used, prior registered and well-known trade mark **HAVANA CLUB** and that the said averments of the Respondent in the paragraphs under reply do not justify the adoption of the deceptively similar mark **CLUB HAVANA** and the Disputed Domain Name by the Respondent.
2. The Complainant has denied the contents of para nos. 3 to 14 of the Respondent's Reply for being false and misleading. The Complainant has stated that it was made aware of the infringing domain name upon the service of the Counter-Statement filed by the Respondent herein in support of its trade mark applications bearing nos. 5898403 and 5898404 on 21.05.2024, wherein the Respondent had relied upon its

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website to show the use of the infringing mark **CLUB HAVANA**. It is stated that the Complainant upon being aware of the disputed domain name, filed the complaint dated 05.09.2024 on lawful and meritorious grounds and has already substantiated its claims with clear, cogent and extensive documentary evidence. The Complainant has further stated that the Respondent has merely interchanged the two elements of the Complainant's trade mark in order to come up with the infringing mark "**CLUB HAVANA**"; however, the same does not change the overall structure of the Respondent's infringing mark making it a clear imitation of the Complainant's well-known and prior adopted mark. The Complainant has reiterated that it also holds international registrations for the trademark **HAVANA CLUB** in class 25 for goods being "Clothing, footwear, headgear" and that the Complainant is also engaged in the clothing business under the trade mark **HAVANA CLUB**.

3. The contents of para nos. 1 to 21 of the para-wise reply have also been denied by the Complainant as being false, baseless and flimsy. It is reiterated by the Complainant that there is a likelihood of association amongst the consumers and public at large as the Complainant has collaborated with world-renowned artists/ musicians and sponsored events across the world to promote its trade mark **HAVANA CLUB**. The Complainant has denied that it is claiming that no one should be allowed to use the words '**Club**' or '**Havana**' as alleged by the Respondent. It is further stated that the Complainant is not claiming exclusivity over the words '**Club**' or '**Havana**' separately, rather on the trade mark **HAVANA CLUB** as a whole.

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4. The Complainant has further denied the contents of para nos. A(i) to C(v) of the reply to the legal grounds as being false, baseless and repetitive. The Complainant has stated that the Respondent has merely made bald and tall claims without substantiating its claims and has not submitted enough cogent documentary evidence to support its claims. It is denied by the Complainant that the websites of both parties cater to different clientele. The Complainant has further stated that the Respondent has made huge self-serving claims without substantiating the same with cogent and relevant documents, while the Complainant has placed clear, bulky evidence in support of its submissions. The Complainant has further stated that the Respondent has unauthorisedly used the Complainant's trademark, **HAVANA CLUB**, by registering a domain name by merely interchanging the words **CLUB** and **HAVANA**. The Complainant has reiterated that the Respondent has further filed trade mark applications bearing nos. 5898403 and 5898404 for the trade mark **CLUB HAVANA** that is identical to the trade mark **HAVANA CLUB** of the Complainant with an interchanged arrangement of the words **HAVANA** and **CLUB**. The Complainant has further stated that the Respondent has failed to prosecute the said applications as the Respondent was required to file its affidavit being "Evidence in support of application" under Rule 46 of the Trade Marks Rules, 2017, on or by 17.08.2024 and the same are now liable to be deemed '*abandoned*' by the Trade Marks Registry in due course. It is further reiterated by the Complainant that mere change of arrangement of the words does not render the domain unique or distinctive. The Complainant has further reiterated that the Respondent has not only

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failed to provide any plausible or reasonable explanation for the adoption of the deceptively similar Disputed Domain Name but has also failed to demonstrate any legitimate rights or interests in its registration or use. The Complainant has further reiterated that Respondent's inability to offer any credible justification for the domain name's selection raises serious concerns about the intention of the Respondent in adopting the infringing mark **CLUB HAVANA** as well as the Disputed Domain Name. The Complainant has further stated that the registration and use of the Disputed Domain Name should be immediately prohibited in order to protect the integrity of the Complainant's brand **HAVANA CLUB** and prevent further unfair advantage being taken by the Respondent.

5. Finally, the Complainant has, in its Rejoinder, prayed to pass a decision based on merits, taking into consideration the submissions made by the Complainant and documentary evidence filed therein, rather than the Respondent's hollow attempt to evade liability.

D. ANALYSIS AND FINDINGS OF THE TRIBUNAL:

I have minutely examined the pleadings of the parties consisting of the Complaint dated 05-09-2024, Reply/ Response dated 10-02-2025 and the Rejoinder dt. 27-02-2025. I have also examined the statements of admission/ denial of the documents, written submissions and compendium of judicial precedents, etc. filed by both 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

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the provisions of the Arbitration and Conciliation Act, 1996 (as amended up to date). My issue-wise finding is as under:

ISSUE NO. 1

Whether the Respondent has caused any damage to the Complainant's business by using the disputed domain name? OPC

ANALYSIS AND FINDING:

The burden to prove the Issue No. 1 is on the Complainant. I hasten to add here that the above Issue was added in the list of Issues by the Tribunal *vide* its procedural order dt. 02-04-2025 on the specific request of the Respondent made *vide* its email dt. 24-03-2025. The Complainant has not objected to the above request of the Respondent for framing the above Issue.

In its complaint, the Complainant has stated about the damage to its business by the Respondent by using the disputed domain in the para no. 20 of the factual part:

"20...Further, there is imminent threat that the disputed domain can be transferred to third-party *who may use the same to resume the act of diversion*. The domain *may also be used* again to promote the activities of the Complainant's competitors. It is submitted that *these acts/ threats are harming the Complainant's hard-earned goodwill and reputation irretrievably* and necessitates filing the present Complaint."

(emphasis added)

The Complainant has also stated about the damage to its business in the Legal Grounds as under:

VI. Legal Grounds

xxx

xxx

xxx

- C. The domain name was registered in bad faith or is being held in bad faith:

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- xxx xxx xxx
- v. The Respondent has obtained registration of the disputed domain name in bad faith *for either or all of the following motives*:
- a. By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website/ location/ product or services on the Respondent's website or location.
 - b. The Respondent *can transfer or sell the domain name* to some competing interest of the Complainant *who may further develop the website* at the disputed domain name and *damage the goodwill and reputation of the Complainant* even more by inserting prejudicial material in relation to the Complainant. This may lead to complete tarnishment of the Complainant's mark and brand and may dissuade the Complainant's current and potential customers from availing Complainant's goods/ services.

(Emphasis added)

A perusal of the above-stated paragraphs reveals that the Complainant has not stated any affirmative damage already caused to it, but is merely speculating about potential damage to its goodwill and reputation in the future, which could be caused by an imagined third party to whom the Respondent might sell the disputed domain name.

Even during the oral hearings held on 11-04-2025 and 16-04-2025, the Ld. Counsel for the Complainant failed to point out any part of the complaint where it has been categorically stated by the Complainant that the Respondent has caused any specific damage to the Complainant's business by using the disputed domain name. When enquired by the Tribunal whether any document had been filed by the Complainant to show any kind of damage to its business, the Ld.

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Counsel for the Complainant replied in the negative, with the caveat that there was no need to provide any evidence in this regard. I am not convinced by this submission, as Issue No. 1 could only be proved by the Complainant through evidence of actual damage caused to its business by the Respondent. My above view is fortified by the observation of the Hon'ble High Court of Bombay in the case of ***Raymond Limited vs. Raymond Pharmaceutical Pvt. Ltd.***, 2017(69) PTC 79(Bom), which is as under:

77. On analysis of the judicial pronouncements that have been pressed into service on behalf of the Plaintiffs ***it would require the Plaintiffs to establish*** that the defendant's use of the mark should be demonstrably not in accordance with honest practice in commercial matters and take unfair advantage or detrimental to the Plaintiffs' mark. In the context of the allegations of passing off the registration of the impugned domain name and use of Email-id must have resulted in misrepresentation in the course of trade to customer of the defendants and/or the plaintiffs, Apart from being calculated to injure ***it must also cause actual damage to the Plaintiffs...***

(Emphasis added)

The above paragraph has been quoted with approval by a coordinate bench of Hon'ble High Court of Bombay in the case of ***People Interactive (India) Pvt. Ltd. vs Vivek Pahwa & Ors***, 2016(6) ABR 275; MANU/MH/1661/2016. Both of the above cases were related to the domain name disputes. Further, it is a well settled legal proposition that the Court/ Tribunal cannot travel beyond the pleadings of the parties. Hon'ble Supreme Court has observed in ***J.K. Iron and Steel Co. Ltd. v. The Iron and Steel Mazdoor Union, Kanpur***, AIR 1956 SC 231, that 'it is not open to the Tribunals to fly off at a tangent and, disregarding the pleadings, to reach any conclusions that they think are just and proper'. Further, the evidence cannot be recorded dehors the pleadings. If so, recorded the same cannot be taken into consideration while

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dealing with the case finally. A reference may be made in this regard to the ratio laid down in the cases of *Kashi Nath (Dead) through LRs. V. Jaganath*, (2003) 8 SCC 740; *Bachhaj Nachar v. Nilima Mandal* AIR 2009 SC 1103; *Kalyan Singh Chouhan v. C.P. Joshi*, AIR 2011 SC 1127; *Siddagangaiah v. N.K. Giriraja Shetty*, AIR 2018 SC 3080; and *Uttam Chand v. Nathu Ram*, AIR 2020 SC 461.

In the present case, the Complainant has not even mentioned in its complaint the kind of damage, the extent of damage, the amount of damage, the approx period during which the actual damage has been caused to its business by the Respondent by using the disputed domain name. Hence, there arises no question of proving the fact of actual damage/ loss to the Complainant's business through documentary evidence or by leading witness. Moreover, no document has been filed and no witness has been produced to prove actual damage to the Complainant's business by the Respondent by adopting the disputed domain. Therefore, Complainant's apprehension that the Respondent may transfer or sell the domain name to a competing interest of the Complainant, who may further develop the website at the disputed domain name and damage the Complainant's goodwill and reputation even more by inserting prejudicial material related to the Complainant, is unfounded. Hence, the Issue No. 1 is decided against the Complainant.

ISSUE NO. 2

Whether the Complainant is entitled to the relief of transfer of the disputed domain name from the Respondent? OPC

Placed in file

ANALYSIS AND FINDING:

Burden of proving the Issue No. 2 is on the Complainant. *Vide* its procedural order dt. 22-03-2025, the Tribunal had made it clear to both parties that the issues would be examined as per the provisions of the Arbitration & Conciliation Act, 1996 (as amended up to date), the INDRP Rules of Procedure and .IN Domain Name Dispute Resolution Policy as well as the well-established principles of natural justice and basic principles of Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 (The Bharatiya Sakshya Adhiniyam, 2023) which have been held to be applicable in the arbitral proceedings by the Courts of law. It was further made clear that the Tribunal was of the view that Clause Nos. 4, 6 and 7 of the Policy covered the issues proposed by the both parties and the limited relief would be granted by the Tribunal as per Clause 11 of the Policy. None of the parties had objected to the above-stated direction of the Tribunal. Moreover, the Clause No. 5 of the Policy and the Rule No. 18(a) of the INDRP Rules may also be referred to in this regard, as they provide the guidelines to the Tribunal for conducting the arbitral proceedings and passing the award.

To decide the Issue No. 2 in the present case, the Clause No. 4 of the Policy may be referred which provides as under:

4. Class of Disputes: Any Person who considers that a registered domain name conflicts with his/ her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (a) the Registrant's domain name is identical and/ or confusingly similar to a name, trademark or service mark *in which the Complainant has rights*; and

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- (b) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (c) the Registrant's domain name has been *registered or is being used in bad faith*.

(Emphasis added)

Thus, for the maintainability of its complaint, the Complainant has to first prove that it has a right in a particular name, trademark or service mark. Thereafter, the Complainant has to prove that the Registrant's domain name is identical and/ or confusingly similar to its name, trademark or service mark; or the Registrant has no rights or legitimate interests in respect of the domain name; or the Registrant's domain name has been registered or is being used in bad faith.

Further, Rule 7 of the Policy clarifies the meaning of 'bad faith' as used in Rule No. 4(c) as under:

7. Evidence of Registration and use of Domain Name in Bad Faith: For the purposes of Clause 4(c), 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:

- (a) *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
- (b) 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
- (c) 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

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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.

(Emphasis added)

Burden of proof:

The Complainant, to prove its averments made in the complaint, has annexed total 22 annexures. As noted in para no. (xvi) of the 'Procedural History' part of this award, the Respondent has admitted only the Annexure No. 1 (Copy of the WHOIS details of the disputed domain name <https://clubhavana.in/>), the Annexure No. 2 (Copies of the trade mark applications filed by the Respondent) and the Annexure No. 20 (Copies of Online status of the application nos. 5898403 and 5898404 of the Respondent showing opposition details). Rest of the 19 documents annexed with the Complaint have been denied by the Respondent for want of knowledge. The Respondent has also denied the 'Factual and Legal Grounds' of the Complaint in its Reply. In its Rejoinder, the Complainant has denied the contents of the Reply and has reiterated its stand as taken in the complaint. No other document has been filed by the Complainant with its Rejoinder. Since the Respondent was not party to any of the above-stated 19 documents annexed with the complaint; hence, it could deny them simpliciter for want of knowledge being third party documents. Necessary clarification was given by the Tribunal to the parties with regard to admission/ denial of third-party documents *vide* its order dt. 25-02-2025. The Complainant has also similarly done bare denial of the documents filed by the Respondent along with its Reply. Since except Annexure Nos. 1, 2 and 20, rest of the 19 documents had been denied by the Respondent *vide* its Statement of Admission/ Denial of the

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Complainant's documents, it was incumbent upon the Complainant to produce a competent witness to prove its disputed documents.

Oral hearings:

With regard to presentation of evidence in arbitral proceedings, Section 24 of the Arbitration & Conciliation Act, 1996 (as amended up to date) provides as under:

24. Hearings and written proceedings.—(1) *Unless otherwise agreed by the parties*, the arbitral tribunal shall decide whether to hold oral hearings *for the presentation of evidence or for oral argument*, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal *shall hold oral hearings*, at an appropriate stage of the proceedings, *on a request by a party, unless the parties have agreed that no oral hearing shall be held:*

(emphasis added)

Acknowledging the above statutory provision, the Tribunal *vide* its order dt. 22-03-2025 provided the opportunity to the parties to produce their witness to prove the denied documents. At the stake of repetition, the relevant part of the abovesaid order is reproduced as under:

7. *Since both parties have denied most of the documents of each other in their respective Statements of admission/ denial of documents; hence, in light of the proviso to Section 24 of the Arbitration & Conciliation Act, 1996, the parties may request the Tribunal by 1.30 pm on 24-03-2025 if they would like to have oral hearings for the presentation of evidence and/ or for oral submissions.* Since, Rule 15 of the INDRP Rules of Procedure allows the parties to request for oral hearing subject to maximum of two hearings; hence, *the parties would be accordingly allowed a reasonable period to file their witnesses' affidavits, to cross examine each other's witnesses and for making oral submissions* on day to day basis for passing the award within the maximum period of 90 days from the date of commencement of the arbitral proceedings.

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8. *It is made clear that if no such request is received from the parties to hold oral hearings for the purpose of presentation of evidence and/ or for making oral submissions by 1.30 pm on 24-03-2025, the Tribunal shall decide the above-stated "issues" on the basis of the already filed pleadings, documents and statements of admission/ denial of documents.*

(emphasis added)

However, none of the parties came forward to lead their witness to prove the documents which had been denied by their opposite party. In its order dt. 12-04-2025, the Tribunal made observation about non-receipt of any request despite opportunity granted to the parties to lead witness in the previous order. The relevant part of the above-said order dt. 12-04-2025 is as under:

...It is further noted that none of the parties have expressed their intention to file the evidence by way of affidavit of their witnesses to prove their respective facts and documents despite the liberty granted to them vide order dt. 22-03-2025 by the Tribunal.

(Emphasis added)

Still, no request was made by any of the parties to provide them another opportunity to prove the disputed facts and documents. Till the conclusion of the arbitral proceedings, none of the party has expressed its intention to produce witness to prove the disputed facts and/ or the denied documents. Hence, the Tribunal can rely upon only the admitted facts and documents of the parties while adjudicating upon the above-stated Issue No. 2 as framed with the assistance of the parties. It is to be noted that the present arbitral proceedings shall be guided by the basic principles of the *Bharatiya Sakshya Adhiniyam, 2023* (hereinafter referred to as "the BSA") which has come in to force w.e.f. 1st July

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2024 while the present complaint is dated 5th September 2024. Section 104 of the BSA provides as under:

104. Burden of proof.- Whoever desires any Court to give judgment as to any legal right or liability *dependent on the existence of facts which he asserts must prove that those facts exist*, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.
(Emphasis added)

A reference to Section 105 of the BSA may also be made:

105. On whom burden of proof lies.- The burden of proof in a suitor proceeding lies on that person *who would fail if no evidence at all were given on either side*.

(Emphasis added)

Accordingly, the burden to prove the Issue No. 2 was casted on the Complainant while framing the issues which was accepted by the Complainant without any demur. There is no justifiable reason for the Complainant to have not led any witness to prove its disputed documents viz. Annexure Nos. 3-19 and Annexure Nos. 21-22. Accordingly, the Tribunal cannot grant any evidentiary value to the same.

Basic provisions of Evidence Act and Principles of natural justice:

This Arbitral Tribunal is mindful of the law that as per Section 19(1) of the Arbitration and Conciliation Act, 1996, it is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 (now replaced with the BSA) and section 19(3) of the Act provides that failing any agreement referred to in sub-section (2) of Section 19, the arbitral tribunal may conduct the proceedings in the manner it considers

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appropriate. Section 19(4) of the Act further provides that the power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence. Rule 13(d) of the INDRP Rules also provide that the Arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence. It needs to be appreciated that the Tribunal has not insisted on the hyper-technical requirement under the BSA to file a certificate for electronic evidence, even though both parties have primarily submitted electronic documents along with their pleadings. However, it has been held by the Courts of law in several cases that the arbitral tribunal is bound by the basic provisions of the Indian Evidence Act, 1872 and the principles of natural justice. I may add here that the provisions of section 101 and 102 of the Indian Evidence Act, 1872 (now Section 104 and 105 of the BSA) have been considered by the Courts to be the basic principles of the law of Evidence. Thus, in order to succeed, the Complainant has to prove its case in accordance with law by adducing affirmative evidence and it cannot be allowed to take advantage of the weakness of the case of the Respondent. Until such burden is discharged, the Respondent is not required to be called upon to prove its case. The Tribunal has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until the Tribunal arrives at such conclusion, it cannot proceed on the basis of weakness of the other party. In case the opposite party has not admitted the document or has admitted the document but denied its contents, it becomes an obligation on the part of the other party relying on such document to prove the same. This principle of law applies to the both parties equally; hence, this Tribunal cannot even take

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cognizance of the documents filed by the Respondent since the same have been denied by the Complainant for lack of personal knowledge. My above view is fortified by the judgment in *Dudh Nath Pandey (dead) by LRs. v. Suresh Chandra Bhattasali (dead) by LRs.* AIR 1986 SC 1509, wherein Hon'ble Supreme Court has categorically held that the plaintiff has to stand on his own strength. Further, in the case of *State of M.P. v. Nomi Singh*, (2015)14 SCC 450, Hon'ble Supreme Court has held as under:

"10...It is settled principle of law that in respect of relief claimed by a plaintiff, he has to stand on his own legs by proving his case. On perusal of the impugned order passed by the High Court, this Court finds that the High Court has wrongly shifted burden of proof on the defendants..."

In *Ramji Dayawala & Sons (P) Ltd. v. Invest Import*, AIR 1981 SC 2085, the Hon'ble Supreme Court held as under:

4. If the truth of the facts stated in a document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue.

It may be noted herein that the document when admitted in evidence is marked as Exhibit. However, the truth of the contents thereof shall be a matter of proof i.e. a matter of cross-examination. Mere production and marking of a document as exhibit are not enough as it does not dispense with the proof of documents or contents thereof. Hon'ble High Court of Delhi in *Sudir Engineering Company vs Nitco Roadways Ltd.* 1995(34) DRJ 86, has *inter alia* held as under:

"15... Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be postponed till the

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document has been held proved; *nor the document can be held to have been proved merely because it has been marked as an exhibit.*

(emphasis added)

In the case of *Sait Tarajee Khanchan v. Yamari Satyam*, AIR 1971 SC 1856, Hon'ble Supreme Court has observed that 'documents do not prove themselves. The contents of the document have to be proved'.

Legal consequence of not proving the disputed documents:

Now the question is with regard to the repercussion of not proving the disputed documents. In this regard, in *Pradyuman Kumar Sharma v. Jaysagar M. Sancheti*, 2013 SCC OnLine Bom 453, the Hon'ble High Court of Bombay, while dealing with the admissibility of the document on record, held as under:

"...A document which is disputed by a party and if not proved, cannot be considered even by the arbitrator to be on record or as a piece of evidence. Taking into consideration an unproved document by an arbitrator, on the contrary would be in violation of principles of natural justice."

(emphasis added)

Ld. Counsel for the Complainant submitted during oral hearings that the Tribunal should follow the principles of natural justice and consider the disputed documents. The above submission merits rejection as long back in the case of *Bareilly Electricity Supply Co. Ltd. vs. The Workmen & Ors*, AIR 1972 SC 330, Hon'ble Supreme Court has held as under:

"21. But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained

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therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein..."

(emphasis added)

By applying the above-stated principles of law, it appears that despite the Complainant being aware that the documents it relied upon have been denied by the Respondent, the Complainant has taken no steps to adduce any oral evidence to prove the same.

Arbitral proceedings summary in nature:

During the oral hearing, Ld. Counsel for the Complainant, by referring to the Rule 5(e) of the INDRP Rules, submitted that the proceedings under the Policy are summary in nature. It may be noted that the Rule 5(e) of the INDRP Rules provides that the arbitrator shall pass the award within 60 days from the date of commencement of proceedings and in exceptional circumstances, the timeline may be extended by a maximum period of 30 days by the Arbitrator subject to a reasonable justification in writing. In the present case, the award is being passed within the extended period of 90 days from the date of commencement of arbitral proceedings. In fact, Ld. Counsel for the Complainant itself had, *vide* its email dt. 24-03-2025, requested the Tribunal to extend the period of passing the award considering the difficulty in contacting the Complainant to take further instructions. However, I am not convinced that the present arbitral proceedings can be termed as summary in nature merely because the timeline of 60 days or 90 days, as the case may be, has been prescribed by the Registry. The present arbitration is an international commercial arbitration as the Complainant is based at Grand Duchy of Luxembourg. Section 23(4) of the Act while providing the

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maximum time limit of 6 months for completion of pleadings does not prescribe any minimum time limit for the same. Further, proviso to section 29A(1) of the Arbitration & Conciliation Act, 1996 persuades the arbitral tribunal to pass the award in the matter of international commercial arbitration as expeditiously as possible. Thus, no minimum time limit for passing the arbitral award has been fixed. None of the parties complained of a lack of sufficient time to file their Complaint, Reply, Rejoinder, Statement of Admission/ Denial of Documents, Written Submissions, etc., during the arbitral proceedings. Any request for additional time from either party was positively entertained by the Tribunal. Furthermore, the Tribunal itself allowed the parties to request oral hearings for the presentation of evidence and the making of oral submissions, as noted in the 'Procedural History' section of this award. Thus, the present arbitral proceedings cannot be termed as summary in nature.

Fast track procedure:

In its written submissions dt. 18-04-2025, the Complainant has compared the present arbitral proceedings with the 'fast track procedure' as contemplated under Section 29B of Act and has submitted that the underlying objective of Section 29B is to provide a swift and cost effective dispute resolution mechanism which aligns directly with the intent and design of the INDRP framework which emphasises minimum procedural formality and expedited adjudication. However, the Ld. Counsel for the Complainant could not point to any provisions of the Policy and/or the INDRP Rules that prohibit the presentation of evidence or allow the arbitrator to rely on the disputed facts/ documents. I am of the view that the above submissions by the Complainant are an afterthought, as it did not

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object to the Tribunal's direction to file the statement of admission/ denial of documents, the natural corollary of which is proving the denied documents.

The Complainant, in its written submissions, has also relied upon the judgment in *Citi Corp vs. Todi Investors & Anr.*, 2006(33) PTC 631 (DEL), wherein it was held that the whole scheme of the IN Domain Dispute Resolution Policy shows that the remedies available under the said Policy are of an extremely limited nature - "limited to requiring the cancellation of the Registrant's domain name or the transfer of the Registrant's domain name registration to the Complainant". However, I am of the view that merely because this Tribunal has the authority to grant the limited relief of cancellation or transfer of the disputed domain name, it does not *ipso facto* entitle the Tribunal to rely on disputed documents that have not been proven by the parties through the production of witnesses.

Overcomplicated procedure:

During the oral hearing, the Ld. Counsel for the Respondent had referred to and relied upon eight judgments passed by different courts of law to submit that the tribunal cannot rely upon the disputed documents. To this, the Complainant has submitted in its written submissions that none of them correspond to the INDRP Rules/ Policy or its objective; hence, the same cannot be relied upon. The Complainant has further submitted that over complication through unnecessary reliance on formal civil procedure principles undermines the fundamental objective of summary adjudication under both the INDRP and Section 29B of the Arbitration & Conciliation Act, 1996. However, the Ld. Counsel for the Complainant did not cite any

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clause of the Policy, Rule of the INDRP Rules, or judicial precedent to substantiate the above-stated arguments. I am of the view that it is not an overcomplication to prove the denied documents, but rather a necessary process to enable the Tribunal to rely on them. Furthermore, by filing its Statement of Admission/Denial of the Respondent's documents, in which it has denied the Respondent's documents due to lack of personal knowledge, the Complainant has agreed to this procedure and cannot now wriggle out of its responsibility to prove the existence, execution, and relevance of the disputed documents. Additionally, I am of the view that the ratio laid down in the judgments relied upon by the Respondent, as well as the judgments referred to by the Tribunal in the preceding paragraphs of this award regarding the requirement of proving disputed documents, can be applied in the present arbitral proceedings, which are being conducted in accordance with the provisions of the Policy, the INDRP Rules, and the Arbitration & Conciliation Act, 1996. I further believe that the present arbitral proceedings cannot be compared with the fast-track proceedings contemplated under Section 29B of the Act simply because a period of 60 or 90 days (as the case may be) has been provided by the Registry. The Policy and INDRP Rules do not impose the same restrictions on the arbitral tribunal as those provided under Section 29B(3) of the Act. While six months are allowed for passing the award under the fast-track procedure, the Registry mandates that the award be passed within a maximum period of 90 days.

Entitlement of the Complainant for transfer of the disputed domain:

The issue now is whether the Complainant is entitled to have the disputed domain name transferred, even if the documents filed by the Complainant are not admitted into evidence by the Tribunal.

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As observed above, to obtain the aforementioned relief, under Clause 4 of the Policy, the Complainant must prove the following facts:

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

During its oral arguments as well as in its written submissions dt. 18-04-2025, the Complainant has submitted that the domain name disputes in India are primarily addressed through the lens of trademark law, particularly under the Trade Marks Act, 1999, which provides remedies for trademark infringement and passing off. Although there is no standalone legislation governing domain name disputes, legal principles drawn from trademark jurisprudence are routinely applied to prevent the registration and misuse of confusingly similar domain names. The Complainant has placed reliance on the judgments in the cases of *Satyam Infoway Ltd. V. Siffynet Solutions Ltd.*, (2004) SCC OnLine SC 638; *Yahoo! Inc. V. Akash Arora & Anr.* 1999 IIAD Delhi 229, 78 (1999) DLT 285 and *Tata Sons Ltd. Vs. Manu Kasuri & Ors*, 90 (2001) DLT 659. The Tribunal agrees with the above submission. In the case of *Satyam Infoway Ltd.* (supra), the principal question raised was whether internet domain names were subject to the legal norms applicable to other intellectual properties, such as trademarks. The Hon'ble Supreme Court held as follows:

"25. As far as India is concerned, there is no legislation which explicitly refers to dispute resolution in connection with domain names. But *although the operation*

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of the Trade Marks Act, 1999 itself is not extra territorial and may not allow for adequate protection of domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off."

(Emphasis added)

Further, in the case of *World Book Inc. Vs. World Book Company (P) Ltd.* 215 (2014) DLT 511, Hon'ble High Court of Delhi has laid down as under:

"48. ...So far as the issue of protection of domain names is concerned, the law relating to the passing off is well settled. The principle underlying the action is that no one is entitled to carry on his business in such a way as to lead to the belief that he is carrying on the business of another man or to lead to believe that he is carrying on or has any connection with the business carried by another man. *It is undisputed fact that a domain name serves the same function as the trade mark and is not a mere address or like finding number on the Internet and, therefore, is entitled to equal protection as a trade mark.* A domain name is more than a mere Internet Address for it also identifies the Internet site to those who reach it, much like a person's name identifies a particular person, or as more relevant to trade mark disputes, a company's name identifies a specific company."

(Emphasis added)

However, to prove the three conditions as laid down in Clause 4 of the Policy, the Complainant, during its oral arguments as well as in its written submissions, has extensively referred to and relied upon Annexure Nos. 6, 7, 8, 10, 17, 18, 19, 21, and 22—all of which have been disputed by the Respondent and not proven by the Complainant, as observed above. Since the Tribunal must disregard the disputed documents, the Complainant has failed to discharge its burden of proving that it has rights in the mark 'HAVANA CLUB.' Furthermore, the Complainant has also failed to prove, due to the lack of any evidence on the arbitral record, that the Registrant's domain name is identical to and/or confusingly similar to its trademark and/or domain name. Therefore, Issue No. 2 is decided against the Complainant.

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Analysis of Domain Name Similarity:

For the sake of argument, even if the domain names of both parties are compared by admitting the disputed documents in evidence, in the view of this Tribunal, they are neither identical nor confusingly similar. The Complainant has stated in the complaint that it has registered its trademark in India under **Class 33**, which pertains to 'Alcoholic beverages'. Admittedly, the Complainant does not have a trademark in **Class 25** in India, which pertains to 'Clothing, footwear, and headgear'. Even if it is presumed (though not proven) that the Complainant has its trademark registered in Class 25 in the European Union and the United Kingdom, the Complainant may not be entitled to relief of transfer of the disputed domain from the Respondent, as it itself does not engage in the business of clothing anywhere, nor is the business of clothing operated in India by the Complainant, even in collaboration with another company. Furthermore, the Hon'ble High Court of Delhi, in the case of *Info Edge (India) Pvt. Ltd. and Anr. vs. Shailesh Gupta and Anr.*, 98 (2002) DLT 499; 2002 (24) PTC 355 (Del.), where the plaintiff was carrying on business under the domain name 'Naukri.com' and the defendant had begun using the domain name 'Naukari.com', held that if two contesting parties are involved in the same area, there is a grave and immense possibility for confusion and deception, and both marks were deceptively similar. However, I am of the view that such an element of doing business in the same area is absent in the present case. The parties are engaged in entirely different businesses. When inquired during the oral hearing, Ld. Counsel for the Complainant stated that the Complainant does not sell its products online in India, as the same is not permissible. On the other hand, Ld. Counsel for the Respondent submitted that the Respondent sells its products only in India, and exclusively through online means. Ld.

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Counsel for the Complainant did not dispute this submission of Ld. Counsel for the Respondent. Therefore, not only is the nature of the businesses different, but the *modus operandi* of both parties' businesses is also entirely distinct. Furthermore, the logos of both parties' products are completely different.

Further, in para no. 14 of its written submissions, the Complainant has submitted that due to the continued usage of the trade mark **HAVANA CLUB** since last several decades amongst the members of the public in India as well as globally, the mark/ name has acquired 'secondary meaning' as people connect all of the Complainant's goods with **HAVANA CLUB**. In this regard, I cannot resist myself from referring to the explanation given by Hon'ble High Court of Bombay in the case of *People Interactive (India) Private Limited* (supra) of the term "secondary meaning" which is as under:

18. *Exclusivity claims based on secondary meaning acquisition must be established by cogent material.* References to sales and promotional expenses may be used to establish the acquisition of reputation and goodwill, i.e., to show the popularity of a mark. *Mere use and statements of sales and expenses do not, of their own, establish the acquisition of a secondary meaning.* That proof is always required of goods or services in the second category, 'merely descriptive' expressions; for these are not ordinarily registrable without such proof. That proof must be directed to establishing that the 'merely descriptive' expression in question is now firmly established in the public imagination with the claimant and its goods and services. High sales and expenses will not do; *the claimant must show from carefully neutralized market surveys, etc., that this is indeed how the public perceives the mark - not as a mere description, but a pointed reference to the origin, viz., the claimant.* Use itself does not establish distinctiveness. The extent to which a mark has lost its primary meaning and the extent to which it has acquired a secondary one are conclusions to be drawn from evidence. *That evidence, showing the displacement of the primary meaning by the secondary meaning, must be of the members of the public as well, not merely those specially placed to attest to its uniqueness.*

(emphasis added)

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Applying the above test to the facts of the present case, it becomes evident that the Complainant has not filed any cogent material along with its complaint to prove the 'secondary meaning' of the mark '**HAVANA CLUB**.' In paragraph 10 of its Rejoinder, the Complainant states as follows:

'10. It is further denied that the Complainant anywhere claims that no one should be allowed to use the words "Club" or "Havana" as alleged. ***It is submitted that the Complainant is not claiming exclusivity over the words "Club" or "Havana" separately, but rather on the trademark HAVANA CLUB as a whole.***'
(emphasis added)

Through the above statement, the Complainant has acknowledged the 'generic' or 'descriptive' nature of both words when used separately. However, the Complainant is claiming exclusivity over the trademark 'HAVANA CLUB' as a whole. If that is the case, the Tribunal fails to understand how the Complainant can claim any right over the disputed domain <https://clubhavana.in>, as its right is limited to the joint use of two generic words in a specific sequence, i.e., 'HAVANA' joined with 'CLUB.' Furthermore, even if it is assumed that the Complainant has established its trademark in multiple continents for 'alcoholic beverages', there is little likelihood that its customers would be misled by the Respondent, who operates with a completely different logo and in a different business sector, based solely in India. The Complainant has not stated in its Complaint that the Respondent has actually lured its customers by using the disputed domain, nor has it demonstrated that the Respondent has unlawfully gained or caused a loss to the Complainant's business.

The Tribunal also failed to understand how the Complainant's liquor business could be harmed by the Respondent, who sells only clothing. The

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goods are neither similar nor substitutive to each other. The Complainant's customers would not cease purchasing its alcoholic beverages even if they buy clothes from the Respondent. Moreover, the Complainant has not filed any document to prove that its sales have declined, at least in India, following the Respondent's use of the disputed domain, or to demonstrate that its goodwill or reputation has been harmed as a result of the domain name. In fact, the Complainant's sales have been increasing every year, as stated in paragraph 1 of the complaint. The Complainant has merely speculated about such consequences in the future without any substantive evidence to support this claim.

Wine bottle image:

During the oral hearings, Ld. Counsel for the Complainant pointed to a photo of a shirt, annexed with the Reply as part of **Annexure A** (pdf page no. 27), which depicted a bottle pouring wine into a glass. This image was used to support the argument that the Respondent was reaping unlawful gains by displaying the Complainant's product. In response, Ld. Counsel for the Respondent argued that the Complainant could not rely on the Respondent's documents during arguments, as the Complainant had denied them in its Statement of Admission/Denial. I am not persuaded by this argument, which the Complainant made somewhat weakly, as neither the bottle nor the glass appears to be associated with the Complainant's trademark. Further, in its complaint, the Complainant has not alleged that the Respondent is reaping unlawful gains by displaying its products on its clothes. Moreover, by denying the **Annexure A** (Extracts of the Respondent's website under the disputed domain name) and the **Annexure B** (Extracts from the Respondent's alleged social media pages) of the Reply due to lack of

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personal knowledge, in my view the Complainant has implicitly acknowledged that both parties operate in entirely different spheres and have never intersected.

Therefore, on the merit also, the Complainant has no case against the Respondent.

Implications of Not Proving the Power of Attorney:

There is another aspect that requires examination. In paragraph 1 of the complaint, the Complainant has stated as follows:

"1. ...Also, Ms. Lydia Plumelle is Attorney in Fact of the Complainant and is fully competent and authorized to institute the present complaint on its behalf. A copy of Power of Attorney dated June 14, 2024, in her favour is annexed as Annexure-4."

The aforementioned Power of Attorney dated June 14, 2024, was required to be proven by affirmative evidence, i.e., by examining a witness who is well aware of the factual situation regarding the execution of the Power of Attorney in favour of Ms. Lydia Plumelle, and who could face cross-examination by the Respondent, if any. In the absence of such evidence, reliance on the unproven Power of Attorney would amount to a miscarriage of justice to the Respondent, as it would violate the principles of natural justice. The Power of Attorney itself is the foundation of the present legal proceedings brought by the Complainant against the Respondent. The burden to prove that the Power of Attorney complies with the law lies with the Complainant, as per Section 104 of the BSA. Moreover, since the facts regarding the execution and validity of the Power of Attorney are particularly within the knowledge of the Complainant, it was necessary for

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the Complainant to prove that the Power of Attorney was in accordance with the law of the Grand Duchy of Luxembourg. Therefore, the failure to present any evidence in this regard is fatal to the Complainant's case. The legal maxim *sublato fundamento cadit opus* — if the foundation is removed, the superstructure falls — squarely applies here. It is a settled legal proposition that once the basis of a proceeding is removed, all consequential actions and orders may automatically fall to the ground. This principle applies to both judicial and quasi-judicial proceedings, as well as to administrative actions. Reference may be made to the cases of *Badri Nath v. Government of Tamil Nadu*, AIR 2000 SC 3243; *State of Kerala v. Putenkavu N.S.S. Karayogam*, (2001) 10 SCC 191; and *State of Punjab v. Davinder Pal Singh Bhullar*, AIR 2012 SC 364.

Rule 3(b) of the INDRP Rules specifically requires that either party or its authorized representative must submit a Power of Attorney when filing a complaint or a reply to the complaint. This requirement cannot be reduced to a meaningless formality by the Complainant. A simple perusal of **Annexure 4**, titled 'Power of Attorney,' reveals the following aspects:

- a. That no stamp duty has been paid on the Power of Attorney;
- b. That the Power of Attorney has not been attested by a Notary or an Oath Commissioner;
- c. That there is no witness to the Power of Attorney;
- d. That the Power of Attorney has not been apostilled, as it was executed outside of India;

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- e. That the alleged Power of Attorney does not bear the seal of the Complainant Company along with the signatures of the four Directors;
- f. That the authority of the Directors to assign the Power of Attorney in favour of a third party has not been filed on the arbitral record.

Had the Complainant produced a witness, the above questions could have been addressed during cross-examination. Therefore, the document, the existence of which is denied by the Respondent, cannot be relied upon without proof, as this would constitute not only a procedural error but also a violation of the Principles of Natural Justice. The Arbitrator cannot refer to or rely upon an unproven document. A reference may be made to the judgment in *Rashmi Housing Pvt. Ltd. v. Pan India Infotech Ltd.*, 2014 SCC OnLine Bom 1874, in this regard. Additionally, the Complainant has not even filed a certificate of its corporation under the laws of Luxembourg.

In light of the above reasons, the complaint is liable to be dismissed.

ISSUE NO. 3

Whether either party is entitled to recover the costs of the arbitral proceedings from the opposing side? If so, how much? (Onus probandi on both parties.)

ANALYSIS AND FINDING:

As far as the issue of awarding the costs of the arbitral proceedings to the parties is concerned, the reference may be made to the Section 31A of the Act which is as under:

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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 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;
 - (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.

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- (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 costs are payable by one party to another, the amount of such costs, and when they are to be paid. However, in determining the costs, the arbitral tribunal must take into account all the circumstances as outlined in Section 31A(3) of the Act, which include the conduct of the parties, as well as whether a party made a frivolous counterclaim that caused delay in the disposal of the arbitral proceedings.

The burden of proving Issue No. 3 was on both parties; however, despite the opportunity granted by the Tribunal *via* its order dated 02-04-2025 for both parties to file their respective 'Statements of Costs' along with the requisite supporting documents within five days of the conclusion of the arbitral hearings, neither party has filed the Statement of Costs to date. It is surprising to note that the Respondent had sought to modify Issue No. 3 *via* its email dated 24-03-2025 by requesting the inclusion of an additional issue regarding its entitlement to costs of proceedings, yet it has still not filed the Statement of Costs to enable the Tribunal to determine the amount of costs. The legal maxim *Vigilantibus Non Dormientibus Jura Subveniunt*—"The law assists only those who are vigilant, and not those who sleep over their rights"—seems relevant here.

In light of the above conduct of the parties in failing to file their respective Statements of Costs, I am not inclined to award costs to either party. Accordingly, both parties are directed to bear their own costs in the present arbitral proceedings.

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ISSUE NO. 4:

Relief, if any.

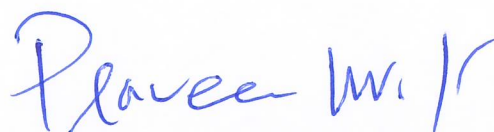
ANALYSIS AND FINDING:

In light of the above-stated analysis, reasoning and finding of the Tribunal for the Issue Nos. 1 and 2, the complaint is hereby dismissed; however, the prayer for grant of costs to the complainant or to the respondent in Issue No. 3 is declined.

In view of the Rule No. 20 of the INDRP Rules, the original signed copy of the award shall be provided to the Registry which in turn communicate the same *via* email and by uploading the same on the website of the Registry. 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

22-04-2025


(Praveen Kumar Jain)

The Sole Arbitrator

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