

1/21

DATED: June 12, 2023

Compagnie Générale des Etablissements [Complainant] v Khan b [Respondent]

**Certificate No.** : **DL-03940844121021V**  
**Certificate Issued Date** : **11-May-2023 12:03 PM**  
**Account Reference** : **1778389996454385V**  
**Unique Doc. Reference** : **SUBIN-DLDLSHIMP1778389996454385V**  
**Purchased by** : **VAKUL SHARMA**  
**Description of Document** : **Article 12 Award**  
**Property Description** : **Not Applicable**  
**Consideration Price (Rs.)** : **0**  
 : **(Zero)**  
**First Party** : **VAKUL SHARMA**  
**Second Party** : **Not Applicable**  
**Stamp Duty Paid By** : **VAKUL SHARMA**  
**Stamp Duty Amount(Rs.)** : **100**  
 : **(One Hundred only)**



**INDRP CASE No. 1676**

**Disputed Domain Name: MICHELINMOTORSPORT.IN**  
BEFORE THE SOLE ARBITRATOR: VAKUL SHARMA

DATED: June 12, 2023



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

**ARBITRATION AWARD****In the matter of:**

**Compagnie Générale des  
Etablissements Michelin 23 place  
des Carmes-Déchaux 63000  
Clermont-Ferrand France**

**[Complainant]****Disputed Domain Name:****<michelinmotorsport.in>****-v-****Khan b****23 Coffee, Navi Mumbai 400709****Maharashtra, India****[Respondent]****INDRP CASE No. 1676****1. The Complainant**

The Complainant is Compagnie Générale des Etablissements having its registered office at Michelin 23 place des Carmes-Déchaux 63000 Clermont-Ferrand, France. The Complainant is the leading tire company, is dedicated to sustainably improving the mobility of goods and people by manufacturing and marketing tires for every type of



vehicle, including airplanes, automobiles, bicycles/motorcycles, earthmovers, farm equipment and trucks.

## 2. The Respondent

The Respondent was until recently identified as Khan b, 23 Coffee, Navi Mumbai 400709 Maharashtra, India having email ID: khan15may1989@gmail.com. The respondent registered the disputed domain name on August 3, 2022.

## 3. The Registrar

The Registrar with which the domain name is registered is: GoDaddy.com LLC

## 4. Disputed Domain Name

<MICHELINMOTORSPORT.IN>

## 5. Jurisdiction

The Complainant by filing the Complaint under the aforesaid INDRP Rules of Procedure [Rules] has accepted the subject matter jurisdiction of the .IN Domain Dispute Resolution Policy -.INDRP [Policy].

In view of the above, this domain name dispute is properly within the scope of the Policy. The registration agreement, pursuant to which the disputed domain name was registered, incorporates the Policy. Disputes between Registrants, as they relate to domain name registrations, are governed by the Policy.





## 6. Procedural History

- (i) This Arbitration Proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the “Policy”), adopted by the National Internet Exchange of India (“NIXI”) and the INDRP Rules of Procedure (the “Rules”), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By submitting to the Policy and the Rules, the Complainant agreed to the resolution of the disputes pursuant to the Policy and the Rules.
- (ii) Complaint was filed by the Complainant with NIXI against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- (iii) I submitted the statement of acceptance on March 24, 2023 and subsequently appointed by NIXI as an Arbitrator in the above matter [INDRP No. 1676].
- (iv) Complainant submitted a Copy of the Complaint and Annexures to me in accordance with the Rules. However, the Complainant was able to confirm only on April 4, 2023 that it has successfully delivered a soft copy of the amended complaint along with the annexures to the Respondent’s email ID: [khan15may1989@gmail.com](mailto:khan15may1989@gmail.com) from its email ID. Further the Complainant vide email dated April 5, 2023 informed that it has received a delivery failure notice from the courier service stating “*Consignee’s Address Incomplete/Incorrect*”.



- (v) In view of the completion of procedures related to Service of Complaint as mandated under the Rules, I issued a Notice dated April 11, 2023 to the Respondent to submit its reply to the above said complaint within 15 days from the date of the Notice failing which the Complaint shall be decided on merit.
- (vi) In the interest of justice, it was felt that the Respondent should be given another opportunity to file its Reply. I, therefore issued a Notice dated May 1, 2023 to the Respondent granting another three days' time to submit its Reply, if any, failing which the Respondent right to file Reply stands closed and the Complaint shall be decided *ex-parte* based on merits of the Complaint.
- (vii) Despite giving a final opportunity, the Respondent has failed to submit any reply and hence vide notice dated May 5, 2023, I informed both the parties that "*the Respondent right to file Reply stands closed and the Complaint shall now be decided ex-parte on the basis of the merits of the Complaint.*"
- (viii) The Arbitration Award is now pronounced on this day, i.e., June 12, 2023 (within 60 days of date of commencement of the arbitration proceeding shall be the date on which the Arbitrator issues notice to the Respondent [Para 5(d) –(e) INDRP Rules of Procedure] after considering the contentions of the Complainant, evidence on record and the Policy framework under my signatures. This is an *ex-parte order* as the Respondent has failed to file their Reply despite being given adequate opportunity.



## 7. Contentions of the Complainant

Complainant in its complaint has made assertions to establish presence of each of the three elements required by paragraph 4 of the Policy.

### I. Whether the domain name <michelinmotorsport.in> registered by the Respondent is identical to the trademarks of the Complainant?

The Complainant submits that:

- (a) Michelin, the leading tire company, is dedicated to sustainably improving the mobility of goods and people by manufacturing and marketing tires for every type of vehicle, including airplanes, automobiles, bicycles/motorcycles, earthmovers, farm equipment and trucks. It also offers electronic mobility support services on ViaMichelin.com and publishes travel guides, hotel and restaurant guides, maps and road atlases (reliance is placed on Annex 3).
- (b) Complainant is also present in India since almost a decade ago and through a rapidly expanding distribution network, has established itself as a leading international tyre maker in the country. Today, it offers a range of tyres which feature the best of Michelin's innovative technology. Michelin tyres are designed, produced and marketed to meet the challenges of mobility in the Indian market. Michelin India's operation is assisted by Michelin India Technology Center



(MITC), an integral part of the company's global R&D network that has over 6,000 employees engaged in research, development and process engineering.

- (c) Complainant has become aware of the registration of the disputed domain name which reproduces entirely its trademark MICHELIN associated with the generic term "motorsport" and the ccTLD , which do not prevent any likelihood of confusion. On the contrary, the use of this term increases the likelihood of confusion since it targets Complainant's official website and its field of activity. Indeed, the disputed domain name <michelinmotorsport.com> differs from the Complainant's official domain name only by its extension, which is extremely dangerous for its business and reputation.
- (d) The Complainant tried for an amicable settlement by sending cease-and-desist letter but received no response. The Complainant has placed on record documents establishing that the disputed domain name pointed to a page with commercial links targeting Complainant's field of activity, with two email servers configured on it (reliance is placed on Annex 1). Subsequently, the latter deactivated a parking page (reliance is placed on Annex 6) so the disputed domain name currently resolves to an inactive website and two email servers are still configured.
- (e) The Complainant submits a documentary evidence of trademark registrations of 'MICHELIN' under different classes of trademarks (reliance is placed on Annex 4). It has also placed on record its domain registration details of: <michelin.in>





registered on February 16, 2005 and <michelinmotorsport.com> registered on May 16, 2012 (reliance is placed on Annex 5).

- (f) The disputed domain name has been registered in the TLD “.in”. The presence of the suffix “.in” is not to be taken into account when assessing the likelihood of confusion between Complainant’s trademark and the disputed domain name. Indeed, it is well established in domain name cases that the suffix to indicate the top level of the domain name, such as “.in” or “.co.in”, has to be disregarded for the purpose of determining whether the domain name is identical or confusingly similar to Complainant’s trademark (INDRP Dispute Decision <pepsico.in> decided on April 24, 2006; INDRP Dispute Decision <mothercare.in> decided on April 27, 2008 ; INDRP Dispute Decision <sensex.in> decided on August 17, 2008.
- (g) The Complainant uses the trademark MICHELIN in connection with a wide variety of products and services around the world. Consequently, the public has learnt to perceive the goods and services offered under these trademarks as being those of Complainant. Therefore, the public would reasonably assume that the disputed domain name belongs to Complainant or is at least, related to Complainant. Accordingly, with the registration of the disputed domain name, Respondent created a likelihood of confusion with Complainant’s trademarks. It is likely that this domain name could mislead Internet users into thinking that this is, in some ways, associated with Complainant and thus may heighten the risk of confusion.

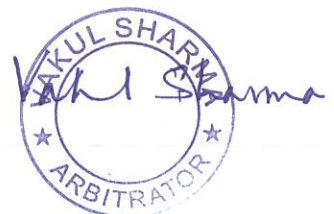




**II. Whether The Respondent has no rights or legitimate interests in respect of the domain name <michelinmotorsport.in> ?**

The Complainant submits that:

- (a) Respondent is neither affiliated with Complainant in any way nor has he been authorized by Complainant to use and register its trademark, or to seek registration of any domain name incorporating said mark. Furthermore, Respondent has no prior rights or legitimate interest in the domain name. The registration of the MICHELIN trademarks preceded the registration of the disputed domain name for years.
- (b) Respondent did not demonstrate use of, or demonstrable preparations to use, the domain names in connection with a bona fide offering of goods or services. As already mentioned, the disputed domain name resolved to a parking page displaying commercial links, and most of them were related to Complainant's main field of activity.
- (c) Likewise, the domain name in dispute used to direct Internet users to a parking page with pay-per-clicks which are likely to generate revenues. Hence, as a matter of fact, it cannot be inferred that Respondent is making a legitimate non-commercial or fair use of disputed domain name (WIPO Case No. D2006-1268, *Credit Industriel et Commercial S.A. v. XUBO* and WIPO Case No. D2009-1529, *Société nationale des télécommunications: Tunisie Telecom v. Ismael Leviste*).



(d) Finally, Complainant attempted to contact the Registrant by sending a cease-and-desist letters by registered letters and emails (reliance is placed on Annex 6). Respondent has never replied despite of several reminders. Panels have repeatedly stated that when Respondent does not avail himself of his right to respond to Complainant, it can be assumed that Respondent has no rights or legitimate interests in the disputed domain name, (WIPO Case n°D2003-0269 *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case n°D2010-1017, *AREVA v. St. James Robyn Limoges*). If Respondent had a right or legitimate interest in connection with the disputed domain name, he would have vigorously defended its rights by quickly replying to Complainants' cease-and-desist letter. In light of these circumstances, it clearly appears that Respondent does not have any legitimate interest with respect to the disputed domain names (WIPO Case n°D2010-0865, *Compagnie Générale des Etablissements Michelin v. Gioacchino Zerbo*).

**III. Whether the domain name <michelinmotorsport.in> has been registered or is being used in bad faith?**

The Complainant submits that:

- (a) It is implausible that Respondent was unaware of Complainant when he registered the disputed domain name. Bad faith can be found where respondent "knew or should have known" of Complainant's trademark



rights and, nevertheless registered a domain name in which he had no rights or legitimate interest (WIPO Case No. D2009-0320, *Research In Motion Limited v. Privacy Locked LLC/Nat Collicot*; WIPO Case No. D2009-0113, *The Gap, Inc. v. Deng Youqian*).

- (b) The choice of the disputed domain name including Complainant's trademark and the generic term "motorsport" corresponding to Complainant's structure suggests that Respondent was perfectly aware of Complainant and its MICHELIN trademark.
- (c) In fact, bad faith has already been found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith (WIPO Case No. D2013-0091, *LEGO Juris A/S v. store24hour*; WIPO Case n° D2008-0226, *Lancôme Parfums et Beauté & Cie, L'Oréal v. 10 Selling*; WIPO Case n° D2006-0464, *Caixa D'Estalvis I Pensions de Barcelona ("La Caixa") v. Eric Adam*). Given the reputation of the MICHELIN trademark, registration in bad faith can be inferred.
- (d) A quick MICHELIN trademark search would have revealed to Respondent the existence of Complainant and its trademark. Respondent's failure to do so is a contributory factor to its bad faith (WIPO Case n° D2008-0226, *Lancôme Parfums et Beauté & Cie, L'Oréal v. 10 Selling*). Supposing that Respondent was not aware of the possibility of searching trademarks online





before registering a domain name, a simple search via Google or any other search engine using the keywords “MICHELIN” demonstrates that all first results relate to Complainant’s products or news (reliance is placed on Annex 7). Previous Panels have established that knowledge of Complainant’s intellectual property rights, including trademarks, at the time of registration of the disputed domain name proves bad faith registration (WIPO Case No. D2008-0287, *Alstom v. Domain Investments LLC*; WIPO Case No. D2007-0077, *NBC Universal Inc. v. Szk.com*). Also, as indicated in another Policy case, “it would have been pertinent for Respondent to provide an explanation of its choice in the disputed domain name, failing which the Panel draws the conclusion that the disputed domain name was registered in bad faith with intent to create an impression of an association with Complainant and its products” (WIPO Case No. D2007-1325, *Bouygues v. Chengzhang, Lu Ciagao*).

- (e) Respondent neither tried to defend its rights nor stated any valid arguments to justify the registration of the disputed domain name. Consequently, in view of the above-mentioned circumstances, it is established that Respondent registered the disputed domain name in bad faith

## 8. Respondent’s Contentions

Despite given adequate opportunities, Respondent has failed to submit any Reply.



## 9. Discussion and Findings

The Respondent has not filed any Reply to the Complaint. However, the Respondent's default does not automatically result in a decision in favour of the Complainant. The Complainant has to still establish each of the three elements required by Paragraph 4 of the Policy:

Under the Paragraph 4 clauses (a) – (c) of the Policy, the Complainant must prove that:

- (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;
- (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.

**The Complaint has to be decided on the basis of the provisions of INDRP, pleadings, including documentary evidence presented before me. The Complainant in order to succeed must satisfy the conditions laid down in Paragraph 4, clauses (a) – (c) of the Policy.**

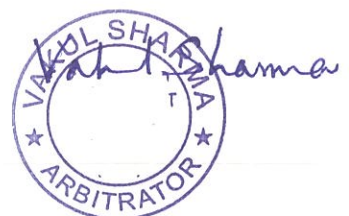
**I have considered the Complainant's pleadings, documentary evidence, conditions as laid down in the aforesaid Policy alongwith the relevant case law. My opinion is as follows:**

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



The Complainant has placed on record details of its trademark 'MICHELIN' across multiple jurisdictions (reliance is placed on Annex 4) as documentary evidence to highlight that 'MICHELIN' is undisputedly a well-known trademark world-wide. From the documentary evidence as placed before me, it is quite evident that 'MICHELIN', a well-known trademark is incorporated not only in its entirety by the Respondent, but also mirrored its disputed domain name <michelinmotorsport.in> after the Complainant's popular commercial website: <michelinmotorsport.com>, which in my view is a well-thought of attempt on the part of the Respondent to register confusingly similar domain name to seek wrongful gains. In my considered opinion registration of <michelinmotorsport.in> by the Respondent cannot be termed legitimate.

I found the concern of the Complainant genuine. Even a reasonable man would be confused between the disputed domain name and the Complainant's commercially active website: <michelinmotorsport.com> incorporating Complainant's trademark 'MICHELIN'. The danger to the Complainant's commercial activities including intellectual property is present and clear. It seems that for the Respondent, the intention behind the registration of domain name <michelinmotorsport.in> is a kind of 'rouge commercial investment' which would give return at a future date. It is obvious that the Respondent herein registered the disputed domain name NOT for love for sport. The Respondent's disputed domain name is a combination of three words: MICHELIN+MOTOR+SPORT which have been chosen with due care and cold calculations with an eye on future pay day! In fact, it mirrored the Complainant's domain name purchase <michelinmotorsport.com> in 2012. I am of the view that the





arrangement of the words: MICHELIN+MOTOR+SPORT by the Respondent is *malafide by design* as it opted for the same sequence of words while registering <michelinmotorsport.in>. This also implies that the Respondent had the prior knowledge of existence of <michelinmotorsport.com> and by registering <michelinmotorsport.in> has been trying to take advantage of the Complainant's goodwill, reputation and commercial value of its trademarks.

Furthermore, the Respondent has failed to observe the legal obligations as laid down in Paragraph 3 [Registrant's Representations] of the INDRP, which provides:

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

- (a) the credentials furnished by the Registrant for registration of Domain Name are complete and accurate;*
- (b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and*
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.*

I am inclined to accept the Complainant's submission that the Respondent's registration of domain name <MICHELINMOTORSPORT.IN > confusingly similar or to the Complainant's trademark with the sole purpose of unlawful gains. It is to be noted that the Respondent has failed to deny the documentary evidence on record despite being given ample opportunities. I am of the opinion



that the benefit under the circumstances lies with the Complainant. It is thus very clear that the Respondent violated the conditions as laid down in the Paragraph 3(a) – (d) of the policy as mentioned above. In view of the above, the requirement of the Policy as stated in Paragraph 4(a) is satisfied.

**(b) Whether the Registrant has no rights or legitimate interests in respect of the domain name?**

There is nothing on record to suggest that the Respondent is either licensee or authorised agent of the Complainant. In other words, the Respondent has no legal right or legitimate interests in the disputed domain name. The Complainant has placed on record documents establishing that the disputed domain name pointed to a page with commercial links targeting Complainant's field of activity, with two email servers configured on it (reliance is placed on Annex 1). Subsequently, the latter deactivated a parking page (reliance is placed on Annex 6) so the disputed domain name currently resolves to an inactive website and two email servers are still configured.

I am of the view that the Complainant has been able to demonstrate clearly that the Respondent has neither any bonafide right nor legitimate interest over the disputed domain name. Respondent actions, which are *malafide* in nature by no stretch of imagination can constitute legitimate non-commercial or fair use, further demonstrating a lack of legitimate interests regarding said domain name.

Also, Paragraph 6 of the INDRP provides:



6. Registrant's Rights and Legitimate Interests in the Domain Name

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

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

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

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

I have evaluated the evidence on record and came to a conclusion that none of the aforesaid limbs as highlighted in the Paragraph 6 of the Policy above have been present to give the Respondent/Registrant any rights and legitimate interests in the disputed domain name. The Complainant has never authorized or licensed the Respondent to use 'MICHELIN' trademark in any way or for any purpose. There is nothing on record to suggest that the Complainant had at any time granted any licensing rights or formed contractual association or affiliation with the Respondent. The Complainant has been able to establish a *prime facie* case of Respondent's lack of legitimate rights and interests in the domain name thus shifting the burden on the Respondent to show rights or legitimate interests [*Bulgari S.p.A. v DomainBook* [INDRP/1002], *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO Case No. D2003-0455, *Belupo d.d. v.*





*WACHEM d.o.o.* WIPO Case No. D2004-0110, *Sampo plc v. Tom Staver* WIPO Case No. D2006-1135, *Audi AG v. Dr. Alireza Fahimipour* WIPO Case No. DIR2006-0003.]. It is quite evident that the registration of the disputed domain name on the part of the Respondent falls in the category of domain squatting. It is to be noted that the Respondent has failed to counter or deny assertion made by the Complainant.

In view of the above, the requirement of the Policy as stated in Paragraph 4 (b) is satisfied.

(c) **Whether the Registrant's domain name has been registered or is being used in bad faith?**

In the absence of any documentary evidence showing any legal arrangement with the Complainant, any use of the disputed domain name by the Respondent, when it has no legal rights to register the disputed domain name proves *malafide* intent on the part of the Respondent.

I am in agreement with the Complainant's assertion that bad faith can be found where respondent "knew or should have known" of Complainant's trademark rights and, nevertheless registered a domain name in which he had no rights or legitimate interest. Respondent by choosing the same sequence of words in the disputed domain name: MICHELIN+MOTOR+SPORT demonstrated its bad faith as the sequence 'mirrored' the commercially active website <michelinmotorsport.com> of the Complainant.



Further, Paragraph 7 of the policy provides:

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 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.*

Further, the Complainant has placed on record documents establishing that the disputed domain name pointed to a page with commercial links targeting Complainant's field of activity, with two email servers configured on it. Although, the Respondent later



deactivated the parking page, nevertheless two email servers are still configured, meaning thereby that at any point in future at the discretion of the Respondent parking page can come to life, even more, an entire website with URL: <michelinmotorsport.in> can come to life!

I am of the considered opinion that the Respondent has indeed taken advantage of the Complainant's reputation, brand value and goodwill by registering the disputed domain name and is taking unfair advantage of the Complainant's legal rights. The Complainant has been able to demonstrate that 'MICHELIN' trademark is only associated with the Complainant. The Respondent/Registrant in this case has been misappropriating the valuable intellectual property of the Complainant, and grave injustice would come to the Complainant if the disputed domain name remains with the Respondent.

In view of the above factual legal matrix, I agree that the adoption of MICHELIN mark by the Respondent as part of its domain name string <michelinmotorsport.in> is dishonest and in bad faith.

Accordingly, having regard to the circumstances of this particular case, I hold that the Complainant has been able to prove that the Registrant's registered the disputed domain name in bad faith. In view of the above, the requirement of the Policy as stated in Paragraph 4 (c) is satisfied.





**10. Decision**

For the foregoing reasons, in accordance with the Policy and Rules, I direct NIXI to transfer the disputed domain name <MICHELINMOTORSPORT.IN> to the Complainant.

There is no order as to costs.

The original copy of the Award is being sent alongwith the records of the proceedings to the National Internet Exchange of India (NIXI) for its record and a soft copy of the Award is being sent to both the parties thru email for their information and record.

  
Vakul Sharma  
ARBITRATOR

(Sole Arbitrator)

Dated: June 12, 2023