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BEFORE THE SOLE ARBITRATOR
MR. PRAVEEN KUMAR JAIN, ADVOCATE
INDRP CASE NO. 1924

In Re:
Mattel, Inc.
 and
Antoaneta Tabutova

...Complainant

...Respondent

Praveen W. Jain

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**BEFORE THE SOLE ARBITRATOR
MR. PRAVEEN KUMAR JAIN, ADVOCATE
INDRP CASE NO. 1924**

In the arbitration between:

Mattel, Inc.

333, Continental Boulevard
El Segundo, California 90245 – 5012
United States of America

...Complainant

and

Antoaneta Tabutova

48 Predel Street
Simitli, 2730, BG

...Respondent

REPRESENTED BY:

For the Complainant:

Ms. Shruti Raj Srivastava, Advocate
Ms. Astha Negi, Advocate
Mr. Saurabh Nandrekar, Advocate


For the Respondent:

Nil

ARBITRAL AWARD DATED 22-04-2025

A. INTRODUCTION:

The above-titled complaint has been filed by the Complainant – **Mattel Inc.** 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 Procedure”) as adopted by the .IN Registry - National Internet Exchange of India (hereinafter referred to as the



"NIXI" or "the Registry", for short). The disputed domain name, <**barbies.in**> is registered with the Registrar, namely, *Costrar EOOD*. It was created on **2024-06-15** (YYY/MM/DD) and is set to expire on **2025-06-15** (YYY/MM/DD). The disputed domain is registered by **Antoaneta Tabutova**, the Respondent herein.

B. PROCEDURAL HISTORY:

Appointment of the sole Arbitrator:

- i. That *vide* its email dated 15-01-2025, 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 15-01-2025, I had furnished to the Registry my digitally signed Statement of Acceptance and Declaration of Impartiality & Independence dated 15-01-2025 in the format prescribed by the Registry.
- iii. Thereafter, the Registry *vide* its email dated 21-01-2025 apprised the parties that the undersigned would adjudicate the dispute concerning the domain name <**barbies.in**> as the sole Arbitrator and INDRP Case No. 1924 was assigned to the matter. The Registry had also attached the soft copies of the Complaint, its Annexures A to M, in the above-said email dt. 21-01-2025, and my above-referred statement of acceptance was sent to the parties by the Registry through another email of even date.

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- iv. That *vide* email dated 21-01-2025, the Counsel for the Complainant had shared a copy of the complaint as per the INDRP Rule 3 with this Tribunal and the Respondent *via* its email dated 21-01-2025 along with the WhoIs details for reference.

Tribunal's Notice to the Parties:

- v. That *vide* its email dt. 22-01-2025, the Tribunal had issued the Notice dated 22-01-2025 to all concerned parties and their representatives/ counsel under Rule 5(c) of the INDRP Rules of Procedure. Although the Registry had shared my 'Statement of Acceptance and Declaration of Impartiality & Independence' dated 09-01-2025, in the prescribed format with the parties, I deemed it appropriate to also provide them with my 'Declaration of Independence, Impartiality, and Availability' dated 22-01-2025, in accordance with Section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act), read with the Sixth Schedule of the Act. To date, none of the parties have raised any objections to my appointment as the sole Arbitrator in this matter.

Service of the complaint on the Respondent:

- vi. That *vide* its email dated 27-01-2025, the Counsel for the Complainant had informed the Tribunal that the copy of the complaint had been served on both the Respondent and the Arbitrator. The proof of service was attached to the said email. Additionally, the email delivery receipts for the Respondent and the Arbitrator (email sent on 21st January 2025), along with the courier tracking receipt (Waybill tracking no. 9530403035),

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confirm that the documents were dispatched on 23rd January 2025.

Follow-up mail by the Complainant:

- vii. That *vide* its email dated 11-02-2025, the Counsel for the Complainant has brought to the Tribunal's notice that the Respondent had not filed its response despite the directions issued by this Tribunal to file the same within 10 days of service of the Complainant.

Procedural order dt. 25-02-2025:

- viii. That *vide* its email dated 25.02.2025, the Tribunal had issued the Order dated 25.02.2025 whereby the Complainant was directed to serve the Respondent with the copies of complaint with annexures *via* email as well as the Speed Post/ Registered Post. The parties were also directed to file their respective Statements of Admission/ Denial of documents in the format prescribed in the said Order dated 25.02.2025 along with the suggested issues.
- ix. That *vide* its email dated 27-02-2025, the Counsel for the Complainant informed the Tribunal that a copy of the complaint relating to the disputed domain name had been served on the Respondent in compliance with the directions issued *vide* Order dated 25-02-2025.

Re-Service of the Complaint:

- x. That *vide* its email dt. 01-03-2025, the Counsel for the Complainant confirmed that it had re-served the copy of the Complaint along with

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the annexures and had also attached the documents as proof of service, which are as under:

- a. Copy of the email delivery receipt dated 27th February 2025.
 - b. Speed Post tracking receipt showing dispatch of documents on 28-02-2025.
 - c. Speed Post tracking report having tracking no. EU68358992IN.
- xi. That *vide* its email dated 10.03.2025, the Counsel for the Complainant has, *inter alia*, informed the Tribunal that a hard copy of the INDRP Complaint along with a complete set of annexures was duly delivered to the Respondent by Speed Post on 06.03.2025, and that the delivery report in respect thereof had been annexed to the said email.

Procedural Order dt. 23-03-2025:

Issues framed:

- xii. That *vide* its email dated 23.03.2025, the Tribunal issued the Order dated 23.03.2025 wherein it framed the following issues for adjudication:
- a. Whether the Complainant is entitled to the relief of transfer of the disputed domain name <barbies.in> from the Respondent? OPC
 - b. Whether the Complainant is entitled to get the costs of the arbitral proceedings from the Respondent? If yes, how much? OPC
 - c. Relief, if any.

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Complainant's Communication dt. 24-03-2025:

- xiii. That *vide* its email dated 24-03-2025, the Counsel for the Complainant informed the Tribunal that the Complainant did not wish to file any additional issues in the matter and did not wish to opt for an oral hearing. It was further stated that the Complainant had filed the duly stamped and signed Power of Attorney (POA), which was in order and had been accepted in previous INDRP matters decided in favour of the Complainant. The Complainant also reserved its right to file written submissions in the present matter.

Complainant's Communication dt. 25-03-2025:

- xiv. That *vide* its email dated 25-03-2025, the counsel for the Complainant had sought additional time to rectify the discrepancies in the "POA," as the same could not be rectified within the stipulated deadline of 26-03-2025 owing to the fact that the Complainant was based in the USA. Therefore, the Counsel for the Complainant requested an extension of fifteen (15) days for the purpose of rectifying the discrepancies in the POA.

Complainant's Communication dt. 25-03-2025:

Fresh Power of Attorney filed by the Complainant:

- xv. That *vide* its email dated 28-03-2025, the Counsel for the Complainant filed a fresh, duly signed and notarised Power of Attorney dt. 25-03-2025 and to further substantiate the authority of the representative signing the POA on behalf of the Complainant, a duly signed and notarised Assistant Secretary's

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Certificate, enclosing extracts from the relevant bylaws and minutes of the meeting, had also been filed. Tribunal's permission was sought to file scanned copies of the aforesaid documents, as the originals were required for multiple proceedings.

Procedural Order dt. 29-03-2025:

Award reserved:

- xvi. *Vide* its email dt. 29-03-2025, the Tribunal issued its order dt. 29-03-2025 whereby the scanned copy of the fresh Power of Attorney received *vide* Complainant's email dt. 28-03-2025 was taken on arbitral record and the matter was reserved for passing the award. The Tribunal had also noted that the Respondent had not filed any response till that day.

C. FACTS OF THE CASE:

C. 1: COMPLAINANT'S COMPLAINT:

The Complainant has stated the following facts in its Complaint dated 09-10-2024:

1. The Complainant is a leading global toy company and the proprietor of one of the strongest portfolios of children's and family entertainment franchises in the world. The Complainant and its related companies are the owners of some of the world's most well-known and beloved brands, including BARBIE, FISHER-PRICE, HOT WHEELS, AMERICAN GIRL, THOMAS & FRIENDS, UNO, and MEGA BLOKS. The

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Complainant employs over 33,000 individuals across 35 countries and territories and sells its products in more than 150 nations. True copies of the web extracts from the 'About Us' and 'Awards' pages of the Complainant's official website, namely "www.mattel.com," have been annexed as **Annexure-A**.

2. The Complainant adopted the trademark **BARBIE** in the year 1959, inspired by an observation made by one of the Complainant's founders, whose daughter, Barbara, was seen playing with paper dolls. This led to the creation of a three-dimensional doll, enabling young girls to play out their dreams. In the year 1959, the first doll bearing the trademark **BARBIE**, named after the co-founder's daughter, was launched at the New York Toy Fair, thereby revolutionising the toy industry forever.
3. The Complainant has further stated that the brand and character **BARBIE** is one of the most iconic figures in popular cultures across the globe. The influence of the dolls, bearing the trademark **BARBIE**, on young girls is evidenced by the fact that the doll has held over 180 careers throughout the years, which include, but are not limited to, six-time Presidential Candidate, Astronaut (a role assumed in 1965, years prior to Neil Armstrong's moon landing), Goodwill Ambassador for UNICEF, tennis player, baseball player, palaeontologist, computer engineer, doctor, architect, entrepreneur, and film director. Most recently, in 2023, the Complainant celebrated the fifth anniversary of the **BARBIE** Dream Gap Project, a program established by the Complainant in

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2019 to support non-profit charities that work directly with girls to empower them to achieve their aspirations. As of October 2023, the Complainant has donated \$2 million USD to organizations supporting the program's initiatives, which have positively impacted over 25 million children worldwide. Relevant extracts from "www.barbiemedia.com," the Complainant's official website, as well as third-party articles highlighting some of the careers BARBIE has undertaken over the years, have been enclosed collectively as **Annexure B**.

4. The Complainant has further stated that the trademark **BARBIE** has been licensed across a diverse array of categories, thereby evolving into an all-encompassing lifestyle brand. The Complainant maintains an official website, <https://creations.mattel.com/pages/barbie-signature>, which caters exclusively to the Complainant's collector fans, including BARBIE aficionados and collectors. Relevant excerpts from the membership page and the blog have been enclosed as **Annexure C**.
5. The Complainant has further stated that it has developed several mobile applications under the trademark BARBIE, which feature games centred around the life of the BARBIE character. The mobile application "BARBIE Fashion Closet" has been downloaded over 50 million times from the Google Play Store. Extracts from the Apple App Store and Google Play Store have collectively been enclosed as **Annexure D**.

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6. The Complainant has further stated that its website “www.mattel.com” offers products for sale under the trademark BARBIE, provides information about the BARBIE brand and its history, and information about the Complainant’s upcoming launches under the trademark BARBIE. The aforementioned website is accessible to individuals worldwide, including in India. Relevant extracts from the website have been collectively enclosed as **Annexure E**.
7. The Complainant has further stated that the brand name **BARBIE** has a strong presence on social media sites, including Facebook and Instagram. Furthermore, it has vlog on YouTube that reflects the global fame and reputation of the mark. Extracts from the social media accounts have been enclosed as **Annexure F**.
8. The Complainant has further stated that the products under the trademark BARBIE have been advertised through television commercials, newspapers, and magazines, thereby enhancing the reputation and goodwill of the Complainant’s trademark. Extracts from newspapers and popular publications covering recent BARBIE related developments have been enclosed as **Annexure G**.
9. The Complainant has further stated that the doll was introduced under the trademark BARBIE in India as early as 1987 and has been continuously, extensively, and uninterruptedly using the

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trademark BARBIE in India since that time for a wide range of goods and services. Furthermore, the Complainant has established an extensive distribution network for its products and services under the trademark BARBIE in India. Additionally, it is stated that products under the trademark BARBIE have also been manufactured in India for several years. In the 1990s, the Complainant introduced dolls under the trademark BARBIE in an Indian avatar, specifically aimed at the Indian market.

10. The Complainant has further stated that the products under the BARBIE trademark are also available on popular Indian e-commerce marketplaces such as Amazon, Myntra, Nykaa, etc. Extracts from the aforementioned e-commerce marketplaces have been enclosed as **Annexure H**.
11. The Complainant has further stated that it has over 1800 registrations for the trademark BARBIE in over 100 countries. An indicative list of the Complainant's registrations for its trademark BARBIE has been enclosed as **Annexure I**.
12. The Complainant has further stated that it has registered the trademark **BARBIE** under the Trademark Act, 1999 in several classes, and the details of the registration are as follows-

Trademark	Registration No.	Class	Date of Registration
BARBIE	444951	28	31/10/1985
BARBIE	678299	16	28/08/1995

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BARBIE	678300	25	09/02/1999
BARBIE	847694	03	09/02/1999
BARBIE	847695	06	09/02/1999
BARBIE	847696	09	09/02/1999
BARBIE	847697	14	09/02/1999
BARBIE	847698	18	09/02/1999
BARBIE	847699	21	09/02/1999
BARBIE	847700	24	09/02/1999
BARBIE	847702	26	09/02/1999
BARBIE	1058090	30	09/11/2001
BARBIE	1058091	32	09/11/2001
BARBIE	1058092	05	09/11/2001
BARBIE	1058093	11	09/11/2001
BARBIE	1058094	12	09/11/2001
BARBIE	1058095	20	09/11/2001
BARBIE	1823784	35	29/05/2009
BARBIE	2187654	41	08/08/2011
BARBIE	3376400	8,29	29/09/2016

The copies of the trademark registration certificates have been annexed as **Annexure J**.

13. The Complainant has stated its relevant domain names relating to the trademark **BARBIE** as follows:

Domain name	Registration Date
<barbie.com>	19th June 1996
<barbie.in>	2nd May 2007
<barbiemedia.com>	20th October 2008
<barbiedoll.com>	6th January 1998
<barbiecollector.com>	17th December 1996

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Copies of WHOIS extracts of the aforementioned domain name registrations of the Complainant have been annexed as **Annexure-K**.

14. The Complainant has further stated that it has been successful in several domain name disputes under the Uniform Domain Name Dispute Resolution Policy (“UDRP”) on the basis of its trademark rights in **BARBIE**. Details of such UDRP decisions in favour of the Complainant has been stated as under:

Particulars	WIPO Cases Numbers	Domain name(s)	Decision Date
Mattel Inc. v. Privacy Protect.org/Stuparu Darius	D2012-1281	barbiedollmaker.com barbie-dressupgames.biz barbie-dressupgames.info barbie-dressupgames.net barbie-dressupgames.org barbie-games4u.com barbiegames4u.com bratzbarbiedressup.com fairybarbiegames.com fashionbarbiedolls.com fashionbarbiegames.com fashionbarbiegirls.com freebarbiegames.biz freebarbiegames.info freebarbiegames.org games-barbie.net games-barbie.org	13 th August 2012
Mattel, Inc V. Domains by Proxy, Inc./Above.com Domain Privacy	D2011-2264	barbiedressupgames.net	23 rd February 2012
Mattel, Inc V. Maria Morariu	D2011-2229	barbiedollgames.net jocuri-barbie.com	8th February 2012

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Mattel, Inc V. Glaciar State S.L.	DES2009- 0040	barbiestore.es	8 th November 2009
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Cause of action:

15. The Complainant has further stated that it recently came across the Respondent's domain name <barbies.in> ('disputed domain name'), which was registered on 15th June 2024. At the time of filing the instant Complaint, the disputed domain name is valid until 15th June 2025. The Whois extract of the disputed domain name has been enclosed as **Annexure L**.
16. The Complainant has further stated that the disputed domain name is a parked domain name with Pay-per-click ("PPC") links. Additionally, the disputed domain name is also made available for sale. Extracts from the Respondent's website "www.barbies.in" showing the PPC links have been annexed as **Annexure- M**.

Grounds of the complaint:

The Complainant has submitted the following grounds for the maintainability of its complaint:

I. The Respondent's domain name is identical to a name, trademark/ trade name in which the Complainant has rights:

- a) That the disputed domain name <barbies.in> subsumes the Complainant's trademark BARBIE in its entirety and therefore is identical to the Complainant's trademark. Further that the Complainant has established that it possesses statutory and

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common law rights in the trademark BARBIE, and such rights predate the registration of the disputed domain name by decades. Moreover, the past INDRP decisions have held the fact that a domain name wholly incorporates a Complainant's registered trademark is sufficient to establish identity or confusing similarity for the purpose of INDRP, as evidenced in *ITC Limited v. Travel India* (INDRP Case No. 065), *Allied DOMEQ Spirits and Wine Limited v. Roberto Ferrari* (INDRP Case No. 071), *International Business Machines Corporation v. Zhu Xumei* (INDRP Case No. 646) and *Jaguar Land Rover v. Yitao* (INDRP Case No. 641).

- b) The Complainant has further relied on past INDRP decisions in *Nike Inc. v. Nike Innovative CV Zhaxia* (Case No. INDRP/804); *Metropolitain Trading Company v. Chandan Chandan* (Case No. INDRP/811); *Lego Juris A/s v. Robert Martin* (Case No. INDRP/125), where it was held that if a disputed domain name completely incorporates the trademark or service mark of the Complainant, then the mere addition of TLDs, gTLDs, ccTLDs such as “.in” and/ or “.co.in” will not distinguish the Respondent’s disputed domain name. The Complainant has submitted that, in the present case, the disputed domain name is identical to the Complainant’s trademark BARBIE, and that the Complaint has successfully satisfied the first requirement set out in clause 4(a) of the INDRP.

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II. The Respondent has no rights or legitimate interests in respect of the domain name:

- a) The Complainant has submitted that under clause 6 of the INDRP, three grounds have been provided which may establish the respondent's legitimate rights and interests in the disputed domain name. However as per the complainant, none of the circumstances mentioned in Clause 6 of the INDRP are present in the present dispute. It is submitted that the disputed domain name is parked, and the Respondent runs pay-per-click (PPC) links on it. The Complainant's trademark, which is highly distinctive and well-known in India, cannot be used in a disputed domain name to host a page of PPC links. The Respondent's such actions cannot give rights or legitimate interests in the disputed domain name as per Section 2.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"). Therefore, the disputed domain name has not been used in connection with a *bona fide* offering of goods or services by the Respondent.
- b) The Complainant has further submitted that by using the trademark BARBIE in the disputed domain name, the Respondent is attempting to attract consumers by portraying itself as an affiliate of the Complainant and is making commercial gains either by selling the domain to the Complainant or its competitors.

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- c) The Complainant has further submitted that the Respondent has no legitimate interest in the disputed domain name; rather, the sole purpose of its registration is to misleadingly divert consumers and to tarnish the trademark of the Complainant and misappropriate the reputation associated with the Complainant, including the Complainant's famous trademark BARBIE.
- d) It is further submitted by the Complainant that it has not authorised, licensed, or permitted the Respondent to register or use the domain name or to use the trademark BARBIE. The Complainant clearly has prior rights in the trademark BARBIE, which precedes the registration of the disputed domain name.
- e) It is further submitted by the Complainant that it has established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name, and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name. The Complainant has relied on the decisions in *Eurocopter, an EADS Company v. Bruno Kerrien*, Case No. INDRP Case No. 116, *Voltas Ltd. v. Sergi Avaliani*, INDRP Case No.1257, *Hitachi Ltd v. Kuldeep Kuamr* INDRP Case No. 1092, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; and *Payoneer, Inc. / Payoneer Europe Limited v. Korchia Thibault, Quinv S.A.* WIPO Case No. DEU2019-0013. Further, the Complainant has placed reliance upon *Bruyerre S.A. v. OnlineSystems*, WIPO Case No. D2016-1686, where UDRP Panel found "Given that there is no

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active website associated with the Disputed Domain Name, the Panel does not find that the Respondent is making any use of the Disputed Domain Name within the meaning of paragraph 4(c) of the Policy. Rather, given that the Disputed Domain Name is identical to the Complainant's Trademark, it gives the misimpression that the Respondent is the Complainant or is otherwise affiliated with the Complainant”.

- f) The Complainant has further submitted that it has successfully satisfied the second requirement set out in clause 4(b) of INDRP as the Respondent's use of the domain name is neither a *bona fide* offering of services nor a legitimate non-commercial or fair use

III. The disputed domain name has been registered in bad faith;

- a) That the Complainant's trademark BARBIE is a well-known and widely recognised mark with significant goodwill, having been in use globally since 1959, well before the registration of the disputed domain name. The Respondent is presumed to have known about the Complainant's trademark rights and registered the domain name with the intention of exploiting those rights. Even constructive knowledge of a famous trademark like BARBIE is enough to demonstrate bad faith registration, as outlined in (WIPO Overview 3.0, Section 3.2.2).
- b) The Complainant has further submitted that under clause 7(c) of the INDRP, if by using the domain name, the Registrant has

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intentionally attempted to attract 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; then the Arbitrator shall take this as evidence of the registration and use of a domain name in bad faith.

- c) It is further submitted by the Complainant that the Respondent has registered the disputed domain name subsuming the Complainant's trademark BARBIE with the sole reason of attracting Internet users to its website where it has PPC links. By using the disputed domain name, the Respondent is attracting users to its website and in the hope of making commercial gains by the PPC links.
- d) The Complainant has further relied on decisions in *Bharti Airtel Limited vs. Rajeev Garg*, INDRP Case No. 285, *Merck KGaA vs. Zeng Wei*, INDRP Case No. 323, *General Motors India Pvt. Ltd. & Anr. vs. Anish Sharma*, INDRP Case No. 799, and *Sensient Technologies Corporation v. Katrina Kaif, Corporate Domain*, INDRP Case No. 207, where respondent's bad faith was found from intentionally attempting to attract, for gain, Internet users to the respondent's website or other online location by creating a likelihood of confusion with complainant's mark. The Respondent is also guilty of trademark infringement and passing off the Complainant's trademark, BARBIE.

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- e) It is submitted by the Complainant that the Respondent has registered the disputed domain primarily to sell the domain name to the Complainant (or its competitor) for valuable consideration in excess of the Respondent's costs related to the disputed domain name. The circumstances in the present case include as fame and distinctiveness of Complainant's mark BARBIE, addition of the letter (s) by the Respondent in <barbies.in>, indicate that the disputed domain name was registered for the bad faith purpose of selling it to the Complainant or its competitors. The Complainant has referred to the Section 3.1.1 of the WIPO overview 3.0.
- f) It is further submitted by the Complainant that Clause 3(d) of the Policy requires a Registrant to not knowingly use the domain name in violation or abuse of any applicable laws or regulations. The obligations imposed by Clause 3(d), which are an integral part of the Policy applicable to all Registrants, cannot be ignored, as was observed by the Ld. Arbitrator in *Momondo A/S v. Ijorghe Ghenrimopuzulu*, INDRP Case No. 882. Hence, the Respondent has an onus to ensure that the registration of the disputed domain name did not violate the Complainant's trademark rights in BARBIE. It is further submitted by the Complainant that the disputed domain has been registered and is being used in bad faith.

Reliefs sought by the Complainant:

In light of the above, the Complainant has prayed that the .IN Registry be directed to transfer the domain name <barbies.in> to the Complainant along with the costs of the present proceedings.

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C.2: RESPONDENT'S RESPONSE:

Non-Compliance with the directions issued by the Tribunal:

As noted in the 'Procedural History' part, *vide* its notice dated 22-01-2025, the Tribunal directed the Respondent to file its Response/ Reply with all the relevant documents and annexures, if any, to the Complaint within ten (10) days from the date of receipt of the Complaint. However, the Respondent did not file any response to the complaint. Thereafter, the Tribunal, *vide* its order dt. 25-02-2025, directed the Complainant to serve the Respondent with the copy of complaint *via* email and Speed Post. Despite due service of the complaint in compliance with the aforesaid order dated 25-02-2025, no Reply/ Response has been filed by the Respondent within the stipulated period, nor at any stage thereafter. The Tribunal, in its procedure order dt. 23-03-2025 noted with concern that the Respondent neither sought any extension of time nor provided any justification for its failure to comply with the procedural directions issued under the INDRP Rules of Procedure. Therefore, the Respondent's right to file the Reply was closed and the Tribunal proceeded *ex parte*. However, the Respondent was allowed to join the further arbitral proceedings as and when it deemed it fit and proper. However, the Respondent has not responded till date despite due service of the complaint and its annexures. It is a matter of record that the complaint was duly served on the Respondent on multiple occasions, as detailed hereinbelow:

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1. The Counsel for the Complaint served the copy of the complaint with all annexures and the Whois details *via* its email dt. 21-01-2025.
2. The Respondent was served with the copy of the complaint with all annexures and the Whois details *via* DHL courier service on 27-01-2025.
3. The Counsel for the Complainant once again served the copy of the complaint upon the Respondent *via* its email dt. 27-02-2025.
4. Thereafter, the copy of the Complaint along with the complete set of annexures was delivered upon the Respondent *via* Speed Post also on 06-03-2025.

In light of the Respondent's continued non-compliance with the Tribunal's directions, the Tribunal has no other choice but to adjudicate the matter solely on the basis of the pleadings and documents placed on record by the Complainant.

D. ANALYSIS AND FINDINGS BY THE TRIBUNAL:

I have minutely examined the Complaint dated 09-10-2024 and its annexures. I have also examined the *.IN Domain Name Dispute Resolution Policy* and the *INDRP Rules of Procedure* as adopted by the .IN Registry, as well as the provisions of the Arbitration and Conciliation Act, 1996. My issue-wise finding is as under:

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ISSUE NO. 1:

Whether the Complainant is entitled to the relief of transfer of the disputed domain name <barbies.in> from the Respondent?

ANALYSIS & FINDINGS:

Rule 18 of the INDRP Rules provides as under:

18. Arbitral Award:

- a. An Arbitrator shall decide a Complaint on the basis of the *pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2019 (as amended up to date) read with the Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law* that the Arbitrator deems to be applicable, as amended from time to time.
- b. An Arbitrator shall give his/her award in writing mentioning name of parties; complete name of Arbitrator; impugned domain name; the date of passing of award and observations made while passing such award.
(emphasis added)

Accordingly, *vide* its order dt. 25-03-2025, the Tribunal had observed as under:

- "5. It is made clear that the above-stated issues shall 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 and 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 and the limited relief shall be granted by the Tribunal as per Rule 11 of the .IN Domain Name Dispute Resolution Policy..."

Further, Rule 17 of the INDRP Rules provides as under:

17. Default by Parties:

In the event any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided *ex parte* by the Arbitrator and such arbitral award shall be binding in accordance to law.

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Further, Section 25 of the Act provides as under:

25. Default of a party:

Unless otherwise agreed by the parties, where, without showing sufficient cause,-

- (a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, *the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant* and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited.
- (c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

(emphasis added)

Accordingly, the Tribunal proceeded *ex parte vide* its order dt. 23-03-2025 since the Respondent did not file its response despite service of the complaint and its annexures through multiple modes. However, failure of the Respondent in filing its Response cannot be treated as an admission of the allegations made by the Complainant in its complaint dt. 09-10-2024; hence, the Tribunal is to examine the facts as stated in the complaint and the documents annexed therewith.

To decide the Issue No. 1 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:

Plavce W. |

- (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*.

(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, Clause 7 of the Policy clarifies the meaning of 'bad faith' as used in Clause 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

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- (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.

(Emphasis added)

Burden of proof:

The Complainant, to prove its averments made in the complaint, has annexed total 13 annexures named as "Annexure A" to "Annexure M".

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 2024 while the present complaint is dated 9th October 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. 1 was casted on the Complainant while framing the issues which was accepted by the Complainant without any demur.

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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 Act, 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 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 provides that the Arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence. In the present proceedings, the Tribunal has not insisted on the hyper-technical requirement under the BSA to file a certificate for electronic evidence, even though the Complainant has primarily submitted electronic documents along with its complaint. 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.

Thus, the Tribunal has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. 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.*

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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..."

It is to be noted that in the present case, the Respondent has not filed its Response either admitting or denying the facts as stated in the complaint and/ or the documents filed with the complaint. Hence, I am inclined to examine the complaint and its annexures to determine the Issue No. 1 with regard to the Complainant's right to get the disputed domain transferred from the Respondent without requiring the Complainant to technically prove its case by leading witness.

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 on the basis of the undisputed facts as stated in the complaint and documents filed by the Complainant.

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

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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*.

It is to be noted 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. A reference can be made to the judgments in the cases of *Satyam Infoway Ltd. vs. Siffynet Solutions Ltd.*, (2004) SCC OnLine SC 638; *Yahoo! Inc. vs. Akash Arora & Anr.* 1999 IAD Delhi 229, 78 (1999) DLT 285 and *Tata Sons Ltd. vs. Manu Kasuri & Ors*, 90 (2001) DLT 659. 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 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)

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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)

To prove the three conditions as laid down in Clause 4 of the Policy, the Complainant has filed 'Annexure A' which contains web extracts of the 'about us' and 'awards' pages from the Complainant's official website www.mattel.com. However, the 'Annexure A' does not reveal anything with regard to the Complainant's trademark 'Barbie'; hence, is not relevant. The Complainant has also filed 'Annexure B' which contains extracts from www.barbiemedia.com i.e. the Complainant's official website and third party articles showing some of the careers of Barbie doll which it has had over the years. This annexure shows the immense popularity of various Avatar's of Complainant's doll Barbie. Page 23 of the Complaint, which forms part of 'Annexure B', shows that the Complainant established 'The Barbie Dream Gap Project' in March 2019 with a donation of USD 250,000, and has since contributed over

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USD 2 million to support girls and help them reach their full potential. 'Annexure C' of the complaint contains some excerpts from the membership page and the blog regarding doll toys and Barbie from the official website of Mattel which also prove the long standing footprint of the Barbie doll. 'Annexure D' of the complaint contains extracts from the Apple App Store and Google Play Store which also show widespread use of the trademark BARBIE by the Complainant. 'Annexure E' of the complaint contains some extracts from the websites www.shop.mattel.com and www.barbie.mattel.com. Further 'Annexure H' contains extracts from the Complainant's store on Amazon, Nykaa and Myntra which show the various modes through which the Barbie doll is sold by the Complainant. 'Annexure F' of the complaint contains extracts from the Complainant's social media accounts like Facebook page, Instagram page and YouTube channel. Further, 'Annexure G' contains some extracts from the commercials, newspapers and magazines documents covering recent Barbie related developments. In my view, these documents demonstrate that the Barbie doll is widely recognized and popular among the general public. 'Annexure I' is an indicative list of the Complainant's registrations for its trademark Barbie in various countries. Further, 'Annexure J' contains copies of the trademark registration certificates issued in several classes for Barbie trademark in India. Thus, the Complainant's trademark 'Barbie' is entitled for protection as per the provisions of the Trade Marks Act, 1999. Section 28 of the Trade Marks Act, 1999 provides as under:

"28. Rights conferred by registration.—(1) Subject to the other provisions of this Act, *the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the*

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trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

XXX

XXX

XXX

(*emphasis added*)

Further, Section 32 of the Trade Marks Act, 1999 provides as under:

31. Registration to be *prima facie* evidence of validity.—

- (1) In all legal proceedings relating to a trade mark registered under this Act (including applications under section 57), *the original registration of the trade mark and of all subsequent assignments and transmissions of the trade mark shall be prima facie evidence of the validity thereof.*

XXX

XXX

XXX

(*emphasis added*)

Thus, the trademark registration certificates issued by the Trade Marks Registry of the Government of India, filed by the Complainant as 'Annexure J', constitute *prima facie* evidence of the validity of the trademark "Barbie." Section 28 of the Trade Marks Act, 1999, confers upon the Complainant the exclusive right to use the trademark in relation to its Barbie doll.

'Annexure K' of the complaint contains copies of WHOIS extracts of various domain name registrations held by the Complainant, which demonstrate the longstanding use of the BARBIE trademark by the Complainant. 'Annexure L' contains the WHOIS extract for the disputed domain name <www.barbies.in>, which shows that the Respondent first acquired the domain on 15-06-2024, with its registration set to expire on 15-06-2025. This extract also includes the Respondent's name, phone number, email ID, and address, through

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which the complaint was served *via* email, DHL courier service, and Speed Post (India Post).

Additionally, the Complainant has annexed an extract from the Respondent's website as 'Annexure M', which displays pay-per-click (PPC) links. This annexure indicates that the Respondent is not using the disputed domain name for any legitimate business purpose and that the domain is openly offered for sale.

Moreover, there is nothing on record to explain why the Respondent acquired this particular domain name. As a result, the criteria prescribed under Clause 6(a) of the Policy are not met, since prior to any notice of the dispute, the Respondent was not offering any goods or services through the disputed domain. Similarly, the criteria under Clause 6(b) of the Policy are not satisfied, as the Respondent is not commonly known by the disputed domain name. In fact, there is nothing on record to show that the Respondent is doing any kind of business. Further, Clause 6(c) of the Policy is also not fulfilled, as the Respondent is not making any use of the disputed domain name—much less a legitimate non-commercial or fair use.

At this juncture, I must disagree with the Complainant's assertion that the Respondent intended to mislead or divert consumers or tarnish the Complainant's trademark. The Complainant has not placed any supporting evidence on record in this regard. In fact, 'Annexure M' of the complaint clearly shows that the Respondent has not hosted any

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website for the purpose of selling products—let alone the Complainant's Barbie dolls.

Nonetheless, the Respondent's failure to use the disputed domain name demonstrates a lack of *bona fide* intention in acquiring it. Furthermore, the Respondent has chosen not to appear before this Tribunal to present its position. It is evident that the Respondent has no intention of using the domain except to sell it for profit, which is impermissible under Clause 7(a) of the Policy, which reads as follows:

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*

xxx

xxx

xxx

(emphasis added)

For the aforesaid reasons, it is held that the Respondent has acquired the disputed domain name in bad faith.

Consequences of Identical or Confusingly Similar Domain Name:

Upon comparison of the domain names of both parties, this Tribunal is of the view that they are identical or confusingly similar. A reasonable person is highly likely to be misled or deceived into believing that the disputed domain name <www.barbies.in> is related to or associated

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with the Complainant. The Respondent has merely added the letter "s" to the Complainant's well-known trademark "Barbie," which could reasonably be interpreted as the plural form of the word "Barbie."

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. Although the element of conducting business in the same area is absent in the present case, I am still of the view that the Respondent should not be permitted to acquire domain names that closely resemble well-established trademarks of others. In this regard, Clause 3 of the Policy provides as follows:

3. Registrant's Representations:

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

- (a) the credentials 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. It is the sole responsibility

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of the Registrant to determine whether their domain name registration infringes or violates someone else's rights.

(emphasis added)

Thus, the Respondent has violated the above-mentioned undertaking given to the Registrar at the time of applying for the disputed domain name. As noted above, protection is to be granted under the provisions of the Trade Marks Act, 1999. Section 29 of the said Act provides as follows:

29. Infringement of registered trade marks.—(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

Thus, in light of the aforesaid reasons, Issue No. 1 is decided in favour of the Complainant and against the Respondent.

ISSUE NO. 2

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

ANALYSIS AND FINDING:

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

31A. Regime for costs.—(1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—

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- (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.
- (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)

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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. 2 lies with the Complainant; however, the Complainant has failed to file its *Statement of Costs* along with the requisite supporting documents before the Tribunal, despite the framing of Issue No. 2 for this purpose. The legal maxim *Vigilantibus non dormientibus jura subveniunt*—"The law assists those who are vigilant, not those who sleep over their rights"—is pertinent in this context.

In light of the Complainant's failure to submit its *Statement of Costs*, I am not inclined to award costs in its favour. Accordingly, the Complainant shall bear its own costs in the present arbitral proceedings.

ISSUE NO. 3:

Relief, if any.

ANALYSIS AND FINDING:

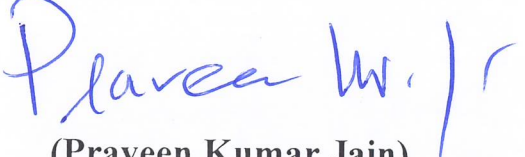
In light of the foregoing analysis, reasoning, and findings of the Tribunal on Issues Nos. 1 and 2, the prayer for the transfer of the disputed domain name <www.barbie.in> from the Respondent to the Complainant is hereby allowed; however, the prayer for the award of costs to the Complainant under Issue No. 2 is declined.

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In view of Rule 20 of the INDRP Rules, the original signed copy of the award shall be provided to the Registry, which shall, in turn, communicate the same to the parties *via* email and by uploading it on the Registry's website. The parties may obtain a certified copy of the arbitral award, if required, from the Registry. The award has been executed on stamp paper of ₹100/-, and any deficiency in stamp duty, if applicable, shall be paid by the concerned party before the appropriate authority in accordance with the applicable laws.

New Delhi

22-04-2025


(Praveen Kumar Jain)

The Sole Arbitrator

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