

ARBITRATION PROCEEDINGS OF DOMAIN NAME
www.stnceramica.in

between

SPANISH TILE FROM NULES S.A.

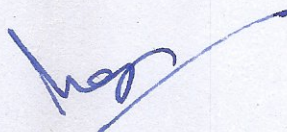
...COMPLAINANT

AND

SUNLEX INTERNATIONAL

...RESPONDENT

AWARD



**VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
NEW DELHI**



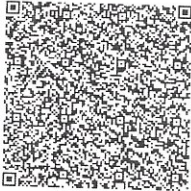
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL53085418935248S
Certificate Issued Date	: 01-Jul-2020 03:39 PM
Account Reference	: IMPACC (IV)/ dl732103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL73210314869106961634S
Purchased by	: V SHRIVASTAV
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V SHRIVASTAV
Second Party	: Not Applicable
Stamp Duty Paid By	: V SHRIVASTAV
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



.....Please write or type below this line.....

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR
IN

www.stnceramica.in
between

SPANISH TILE FROM NULES S.A.

SUNLEX INTERNATIONAL

AND

...COMPLAINANT

...RESPONDENT

AWARD
(Dated 12/07/2020)

Statutory Alert:

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

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding through communication by NIXI and accordingly this Tribunal started the proceedings on 29/05/2020. It was noticed that due to prevailing COVID-19 Pandemic only soft copy of the complaint could be served on the Respondent. Hence, vide email dated 29/05/2020 this Tribunal directed the Respondents to file their Statement of Defense by 08/06/2020 and also directed the Complainant to send a copy of the complaint in word format within 5 days which was complied to by the Complainants.
2. It was noted by this Tribunal that by email dated 30/05/2020 and 01/06/2020 both the parties started engaging in correspondence /negotiations for a Out of Court Settlement and started marking copies of the same to this Tribunal upon which this Tribunal directed the parties to state the contents of their email by way of an affidavit duly notarized by a Public Notary and gave them time till 07/06/2020 for the same. It was also

notified in case no affidavit is received this Tribunal shall proceed with the proceedings.

3. As stated *supra* this Tribunal had granted time to the Respondent till 08/06/2020 to file their SOD which they failed to comply, hence vide its order dated 11/06/2020 this Tribunal directed the Complainants to send their Evidence by way of Affidavit by 21/06/2020. In the interest of Justice the Respondents were given **last and final** opportunity to send their SOD along with the documentary evidence if any, and their Evidence by way of affidavit in support of their SOD by 21/06/2020 failing which this Tribunal would proceed ahead in the matter as per section 25 of the Arbitration and Conciliation Act, 1996.
4. Pursuant to the order dated 11/06/2020 the Complainants vide email dated 12/06/2020 sent an unusual request to the Tribunal requesting for guidance as to the format of preparation of their Affidavit by way of Evidence. Though as per practice an

Arbitrator is not required to advice or guide the parties however, looking into the fact that the complainants were a Spanish Company and were not familiar with the procedural laws prevalent in India or UK sent them a format of an Evidence by way of Affidavit as per the Civil practice in India and UK and gave them time till 21/06/2020 for filing their Evidence by way of Affidavit.

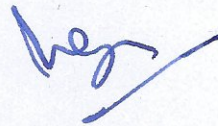
5. On 21/06/2020, this Tribunal vide email received the soft copy of the Respondent's Reply cum Affidavit but they failed to send the hard copy. Hence, vide email dated 01/07/2020 this Tribunal directed the Respondents to send the hard copy of their affidavit by Courier. On receipt of the hard copy on 08/07/2020 this Tribunal reserved the Award.

BACKGROUND

- A. The present dispute is with respect to the domain name "**www.stnceramica.in**" to which the complainants, **M/s Spanish Tile from Nules SA**, claims to be the trade mark

owner and allege that the same is identical and confusingly similar to their Trade Mark which they have filed/ obtained from countries like Argentina, Costa Rica, Ecuador, Angola, Aruba, Guatemala, Barbados, Belize, Cabo Verde, Salvador, Etiopia, Gaza, Haiti, Honduras, Hong Kong, Cayman Islands, Jamaica, Malaysia, Mauritius, Qatar, Sri Lank, Surinam. Tanzania, Trinidad & Tobago, Uruguay, Yemen, Canada, Chile, Nigeria, Panama, Peru, African Organization of Intellectual Property (ARIPO), WIPO, European Union, India, Korea, Dominican Republic, South Africa, Taiwan, Saudi Arabia, Arab Emirates, Iraq, Jordania, Kuwait, Lybia, Lebanon, Nigeria, Pakistan, and Spain.

- B. By relying on downloaded details of the website of their sister concern- <http://www.stnceramica.es/en> created in 2005 in which it is stated that STN Cerámica Group has been in the industrial activity of producing ceramics for almost **"30 years."**

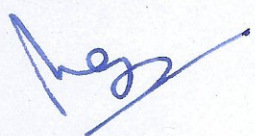


- C. The Complainant further claims that the disputed domain name has been created by Respondent when it has no rights or legitimate interest and the Respondents have *interalia* registered the domain name in bad faith as thus they want this Tribunal to get the disputed Domain Name “.... **TRANSFERRED to the Complainant.....**”
- D. The Respondent without replying to the allegations of the Complainants have on oath pleaded the following in their affidavit:
- “14....
- a) *To assign all the rights of the respondent within the domain name STNCERAMICA.IN to the complainant.*
 - b) *To assign all the rights of the complainant within the registered trademark as mentioned in para 3 of this reply to the complainant.*
 - c) *That, all and any proceedings, including but not limited to transferring process, formalities, paper work, official or attorney fees thereof in respect of 14 (a and b) shall be bear by the complainant and the respondent and with this,*

the respondent may give all the possible support for any of the formalities subject to satisfactory of the respondent (Subject to No bearing of cost).

d) That, the respondent shall not bear any of the cost in respect of this proceedings or any of the proceedings as of now or in future which is in connection of impugned matter."

- E. The above stand of the Respondent is seen from their emails dated 30/05/2020 including copies of emails dated 10/10/2017, 13/10/2017 and 02/11/2017 in which they *interalia* had demanded to be compensated by an amount of Rs. 2.5 Lacs [amount purportedly spent by them in getting the Trademarks and Domain Name registered]. Apparently vide their email dated 16th June, 2020 the Respondent waived the compensation of Rs. 2.5 lacs.
- F. Since, the aforesaid email correspondence was not supported by any affidavit this Tribunal directed the sender to affirm the contents thereof by an affidavit.

- G. Thereafter post filing of Complainant's Affidavit in Evidence the Respondents sent their Affidavit in Evidence in which they have more or less reiterated their aforestated stand as reflected in their email notified above.
- H. This Tribunal finds that based on the aforesaid stand of the Respondents the dispute towards the domain name stands extinguished as the Respondents have given a clear and unambiguous concession agreeing for transfer of their rights to domain name in question to the Complainant. In a way the stand take by the Respondents attracts provisions as stated in Order 12 Rule 6 of Code of Civil Procedure, 1908.
- I. The Respondents have further prayed that they not be burdened with costs of the proceedings.
- J. It can be seen that the Complainants have not prayed for award of costs of the present proceedings and hence this Tribunal is not to giving any finding on costs.
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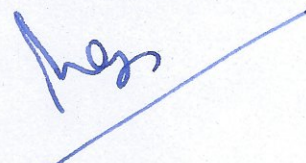
- K. At this juncture it is made clear that this Tribunal has not expressed itself on merits of the case. This award as per the mandate given to this Tribunal is strictly on the dispute relating to domain name "**www.stnceramica.in**" only and does not in any manner affect their rights emanating from registration of the respective Trade Marks by the parties in various Countries.

ORDER

6. In view of the above this Tribunal directs the Registry to transfer the domain name www.stnceramica.in to the complainants.
7. The Complainants too are free to approach the Registry and get the same transferred in their name.
8. Due to COVID 19 Pandemic this Tribunal is annexing the scanned copy of the Award to the parties and states that hard copies shall be dispatched to both the parties in due course.

Signed this 12th day of July, 2020.

NEW DELHI
12/07/2020



V. SHRIVASTAV
ARBITRATOR