

ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.hsbc.in

between

**HSBC GROUP MANAGEMENT
SERVICES LIMITED**

...COMPLAINANT

AND

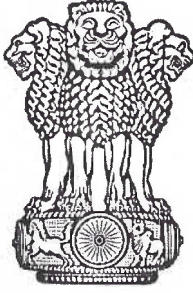
CHINMAY

...RESPONDENT

AWARD



**VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
NEW DELHI**



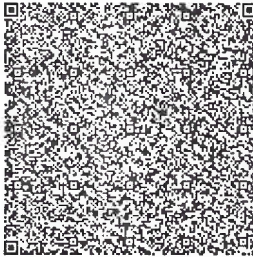
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL38553085246628Q
Certificate Issued Date	: 15-Jun-2018 09:39 AM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130381020738501316Q
Purchased by	: VISHVESHVAR SRIVASTAV
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: VISHVESHVAR SRIVASTAV
Second Party	: Not Applicable
Stamp Duty Paid By	: VISHVESHVAR SRIVASTAV
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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

VISHESHVAR SHRIVASTAV

SOLE ARBITRATOR
IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.hsbc.in

between

HSBC GROUP MANAGEMENT SERVICES LIMITED

AND

CHINMAY

...COMPLAINANT

...RESPONDENT

AWARD

1

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 vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 14/05/2018. It was also noticed that the Complainants had not filed their Power of Attorney/ Vakalatnama. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to file their Vakalatnama / POA and either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier .
2. That NIXI vide their email dated 15/05/2018 stated that they have already sent the complaint by courier giving dispatch receipts of the same.
3. This Tribunal having seen the tracking of the Courier slip supplied by NIXI and also vide the email of NIXI , finds that the complaint has been undelivered due to "*incomplete / wrong address*".

4. The address given in the "WHO IS" is the last known address of the Respondent, hence as per law it is deemed service on the Respondent. It was noticed that the emails sent to the Respondent by this Tribunal and by NIXI have been received by him as the same have not bounced back. Hence, this Tribunal holds the Respondents as served and directed the Respondent vide order dated 15/05/2018 to send their Statement of Defense / Reply within 7 days both as soft copy and hard copy so as to reach this Tribunal by 22/05/2018 with a copy to the Complainant and NIXI.
5. This Tribunal vide the same order also directed the Complainants to send their Evidence by way of Affidavit in support of their complaint by 27/05/2018.
6. This Tribunal observed vide its order dated 25/05/2018 that the Respondents had not complied its earlier order dated 15/05/2018 to send their SOD within the time frame. The Complainants having failed to send their POA as well as soft

copy of the complaint in word format were also directed to comply with the order dated 14/05/2018 ASAP.

7. This Tribunal received emails dated 25/05/18 from the Complainant regarding the non receipt of order dated 14/05/2018 vide email from this Tribunal. However, they had also requested extension of time till 1st June, 2018 for filing their POA, which was granted vide order dated 26/05/2018.
8. The Complainants on 27/05/2018 sent the soft copy of their Evidence by way of Affidavit and the hard copy of the Affidavit of Evidence of the complainants which was received by this Tribunal on 30/05/2018.
9. This Tribunal expressed its displeasure that the Ld. Counsel for the Complainants had sent the snapshot of the Affidavit which could not be taken on record. Hence, they were directed to send their duly Notarized Original Affidavit to this Tribunal within 5 days.



10. The award was reserved vide order dated 14/06/ 2018 after the receipt of the hard copy of the Original POA and Evidence by way of Affidavit. This Arbitral Tribunal notices that till 14/06/2018 there is no communication from the side of the Respondent and hence, it proceeds to examine the claim statement of the Complainant and the Evidence including documentary evidence filed in the present proceeding.

CLAIM

11. The claim as put forward by the complainant is briefly as under:
- A. The Complainant in these administrative proceedings is HSBC GROUP MANAGEMENT SERVICES LIMITED, a company incorporated under the Companies Act 2006, having its registered office at 8 Canada Square, London, E145HQ, United Kingdom.
- B. It is surprising to note that neither a copy of the Certificate of Incorporation nor the Registration number has been provided

hence it cannot be said that the complainants are a company registered in UK under the Companies Act, 2006.

- C. It is claimed by the Complainant that they are registered proprietor of trademark "HSBC" in various countries and has been using it in connection with its on-going business for this purpose the Complaint's rely on Annex 3.
- D. It is alleged that the domain name in question is identical or confusingly similar to HSBC and the Complainant have registered and unregistered rights. The Complainants rely upon the case (*The Forward Association, Inc., v. Enterprises Unlimited* (NAF case FA0008000095491, October 3, 2000).
- E. It is further alleged that HSBC is distinctive name and trade mark which is completely contained within the Domain Name. It is claimed that the complainants offer its banking services online across the World including India. It is claimed that a consumer is likely to assume that the Domain Name is linked

with the Complainant and/or the HSBC Group. It is alleged that the disputed domain name is visually and phonetically identical to the Complainant's trade mark in India and amounts to violation of Para 3 of the INDRP.

F. It is claimed that the Complainant licenses its HSBC trade marks to its parent company i.e. HSBC Holdings plc and many other companies in the HSBC group of companies which trade worldwide as, "HSBC" and over the years by extensively the Complainant and the HSBC group have generated goodwill in the HSBC name and trade mark, advertising and marketing its services worldwide thus gaining a good reputation for the HSBC brand. Reliance is placed on **Annex 4**.

G. By relying on **Annex 5, 6 & 7** the Complainant claims that it owns the following websites [<hsbc.co.in>](http://hsbc.co.in) , [<hsbc.com>](http://hsbc.com) , [<hsbc.co.uk>](http://hsbc.co.uk) besides www.hsbc.com and www.hsbc.co.in



- H. The Complainants rely upon the case of Yahoo! Inc. v. Akash Arora &Anr. 1999 PTC (19) 201 (Delhi) to point out that trade mark law applies to domain names as well.
- I. It is also claimed that the Respondent has no rights or legitimate interests in respect of the domain as the Respondent is not authorized by the Complainant and/or the HSBC Group to register or use a domain name consisting of or containing the Complainant's registered trade mark, HSBC.
- J. By relying on **Annex 8** it is claimed that the Respondent has made no legitimate use of the Domain Name or made any demonstrable preparations to use the Domain Name with a bona fide offering of goods or services and when a user navigate to the Domain Name using their web browser, they are re-directed to an advertisement "pop-up" (which changes each time it is clicked).

- K. It is further alleged that the Respondent commonly and legitimately known by the name HSBC.
- L. By relying on **Annex 9** it is claimed that HSBC wrote to the Respondent on 17 October 2017 and 14 November 2017 informing them of HSBC's intellectual property rights and requesting them to transfer the Domain Name but the Respondent failed to respond to the said letters.

ORDER

12. This Tribunal has perused the complaint / Evidence and the documents relied upon by the complainants and the same has not been controverted by the Respondents despite opportunity being given to them by this Tribunal. Hence, in view of the un-rebutted evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name www.hsbc.in hence this Tribunal directs the Registry to transfer the domain name www.hsbc.in to the complainants.



13. The Complainants too are free to approach the Registry and get the same transferred in their name.
14. There is no order as to the cost as no details of the cost / damages have been specified / detailed in the complaint nor have the complainants disclosed their revenue figures.
15. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 15th day of June, 2018.

NEW DELHI
15/06/2018



V. SHRIVASTAV
ARBITRATOR