



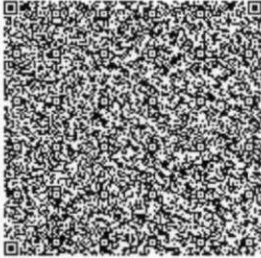
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL24036145750290M
Certificate Issued Date	: 19-Feb-2014 10:51 AM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130345476643692481M
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

ARBITRATION PROCEEDINGS OF DOMAIN NAME

"www.iimahd-ernet.in"

between

INDIAN INSTITUTE OF MANAGEMENT, AHMEDABAD

...COMPLAINANT

SARABJIT ROY

AND

...RESPONDENT

AWARD

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 26/12/2013. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents and also there is no Power of Attorney/ Authorization in favour of Mr. Mohan B. Paliwal purported signatory of the Complaint pending adjudication the AR for the Complainants. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to 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 compliance of the order was done by the Complainants vide their email dated 30/12/2013. The tracking of Speed post receipt as supplied by the complainant did not show the status

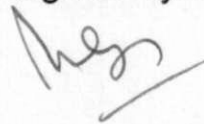


report but the Respondent had received the soft copy of the complaint via email. This Tribunal has received both i.e. a scanned copy of POA of the complainant and the hard copy. This Tribunal vide order dated 06/01/2014 directed the Respondents to send their Statement of Defense by 13/01/2014 as they were in receipt of the complaint and were aware of the Arbitration proceedings.

3. That this Tribunal received the soft copy of the Response vide email dated 09/01/2014 from the Respondent but the same was unsigned hence vide order dated 10/01/2014 this Tribunal directed the Respondents to send their duly signed hard copy to this Tribunal which was received on 13/01/14. Vide order dated 14/01/14 the Complainant was then directed to file their Rejoinder if any and Evidence by way of an affidavit by 21/01/2014 which was received on time by the Tribunal. Likewise, the Respondents were also called upon to submit their evidence by way of affidavit within 3 days of receipt of Rejoinder/ Evidence by way of Affidavit of the complainants.

The Respondents vide their email dated 23/01/2014 sought 14 days time to file their Evidence by way of Affidavit which after due considerations were given till 06/02/14. Then vide order dated 08/02/2014 this Tribunal had directed the Complainants to file their response within 3 days which was not done and this Tribunal reserved its award on 17/02/2014. Thereafter, the Complainants replied and requested for 3 days time to file their sur rejoinder as they had missed the last para of the order dated 08/02/14 due to inadvertence. Hence, this Tribunal granted them 2 days time and the Respondent 24 hours to file their reply/ response to the complainants sur rejoinder which were complied with.

4. The Respondent vide his email dated 21/02/2014 pointed out that the complainant had given a fabricated certificate procured from ERNET india dated 15/01/2014 signed by one Mr. Dilip Barman.



5. This Tribunal noted his contention and on 21/02/2014 wrote to the Director Mr. B.B.Tiwari of ERNET India to prove their certificate as authentic which was forwarded by Mr. Tiwari to the concerned person who chose to keep silent. This Tribunal simultaneously extended the date of publishing of award.
6. This Tribunal then received an email dated 28/02/2014 from the Respondent regarding impleadment of ERNET India and NIXI to which the Tribunal vide its order dated 28/02/2014 gave 3 days time to the Complainants give their response but they chose not to answer to this email.
7. The complainant on 06/03/2014 forwarded an email of Mr. Tiwari stating (which was not sent to the Tribunal or the parties) that Mr. Barman has sent a reply when no reply was received by this Tribunal. In view of the above this Tribunal was constrained to disregard the said email as the email did not depict the true picture and was against the INDRP.

8. The Respondents by his email dated 06/03/14 had requested this Tribunal to suspend the proceedings for discussion between the parties. This request was not acceded to as per INDRP by this Tribunal and reserved the award.
9. In view of these peculiar facts and circumstances of the present matter and also in view of INDRP this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

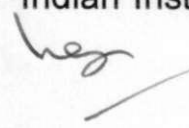
10. The claim as put forward by the complainant is briefly as under:
 - A. Indian Institute of Management, Ahmedabad is the official domain holder of **iimahd.ernet.in** since 1995, registered with ernet.in domain service provider. The complainants are aggrieved by registration of domain **iimahd-ernet.in** by Mr. Sarbajit Roy, of India Against Corruption, New Delhi as the



same is identical and confusingly similar and misleading to the domains of the complainants.

B. It is claimed that Indian Institute of Management, Ahmedabad is the official domain holder of **iimahd.ernet.in**, and that the domain **iimahd-ernet.in** registered by Mr. Roy was no way related to IIM Ahmedabad. It is further alleged that the group setup by the registrant "Ethical Research Network (ERNET)" is also misleading and unethical as ERNET was established in 1998 as an autonomous scientific society under the Department of Electronics & Information Technology (DeitY), Government of India, ERNET stands for India's National Research and Education Network dedicated to support the needs of the research and education community within the country and that ERNET operates a pan-Indian terrestrial and satellite network with 15 points of presence at premier research and academic institutions.

C. It is also claimed by the complainants that Indian Institute of



Management, Ahmedabad is a premier business school of India and deals with all issues and complaints as per its administrative setup rules and policies. The Complainants further state that the site created "www.iimahd-ernet.in" is having similar looks and is providing links to complainants website and the impugned site is seemingly misleading in nature and further Email ids used with the disputed domain is also misleading besides it is alleged that the registrant is sending unwanted, misleading and spam e-mails to users. Reliance is placed on Screen shoots – Annexure C & D.

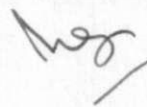
D. Through this compliant the complainants seek Withdrawal of 'IIMAHD-ERNET.IN' ('iimahd-ernet.in') domain.

E. The Respondents *per contra* has stated that that since 09-Oct-2013 the Complainant has blacklisted the emails IDs of the Registrant on their mail servers and has also inserted a keyword filter against names of Sarbajit Roy, India Against

Corruption, "India Manager" etc. to prevent any communication by emails between the parties and their respective stakeholders. They further state that the Complainant has also misrepresented his authority to file this Complaint as IIM Ahmedabad ("IIM-A") which is a Society registered with the Charity Commissioner at Ahmedabad and as per the said Society's Memorandum of Association r/w the Society Rules only the Secretary of the Society can sue on behalf of IIMA, hence on this ground the complaint ought to be rejected.

F. Further the respondent denies that "iimahd.ernet.in" is a trademark or service mark of the Complainant and that the Complainant has not provided any registration documents for the said trademark "iimahd.ernet.in" from the Trademark Registrars or other certifying authority(s).

G. The Respondents further allege that the Complainant has not produced the WHOIS record for the domain and has



attached **Annexure 'a'** the WHOIS report for the 2nd level domain "ernet.in" and passed it off as their own.

H. The Respondent has specifically denied that Complainant's alleged URL "iimahd.ernet.in" is a "domain" and has cited http://en.wikipedia.org/wiki/Domain_name.

I. That the Respondents has reproduced the ICANN list of ".IN" official eTLDs,

***" // in : <http://en.wikipedia.org/wiki/.in>
// see also: <https://registry.in/Policies>
// Please note, that nic.in is not an
// official eTLD, but used by most
// government institutions.***

***// Unlimited registrations are available
// in the following zones. Registration is
// available freely to all parties
// worldwide, and there are no nexus or
// other qualifications:***

***in
co.in
firm.in
net.in
org.in
gen.in (general)
ind.in (individuals)
nic.in***

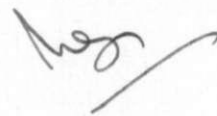
// Reserved zones for use by qualified

*// organizations in India
ac.in (Academic)
edu.in (Indian colleges and universities)
res.in (Indian research institutes)
gov.in (Indian government)
mil.in (Indian military)”*

J. The Respondents allege that the Complainant has suppressed providing a copy of the WHOIS record of their own domain “iimahd.in” as it would establish that the Registrant had created and registered the domain “iimahd-ernet.in” at least a month before the Complainant had created and registered the domain “iimahd.in” on 18-Nov-2013.

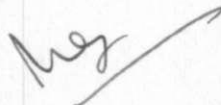
K. The respondents denies that the term “iimahd” refers exclusively to Indian Institute of Management Ahmedabad, or that only persons related to IIM Ahmedabad are entitled to register a domain containing the term “iimahd”.

L. The Respondents allege that the group “Ethical Researchers Network India” is the Registrant of the disputed



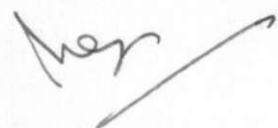
domain and that the Respondent has registered the said disputed domain in his personal name for their mutual common benefit and as a **public service transparency initiative** for educational and research objectives. Further the respondent has taken precaution to ensure that visitors who click the domain "iimahd-ernet.in" do not get confused with the Complainant's sub-domain resolve host "iimahd.ernet.in".

- M. The Complainant on the other hand has rejoined by alleging that the Registrant has, with an ulterior motive, registered the domain name "iimahd-ernet.in" knowing that the Complainant Institute has been using trade marks IIMA, IIM-A for over half a century. The Complainant further state that the trade marks IIM, IIMA and IIM-A are registered trade marks of the Complainant Institute and used since 17.03.1962. Reliance is placed on **Annexure-I (Colly)** and the same is given as under:



Trade mark No.	Trade mark	Class	Services/Goods description	Status
2167867	IIMA	41	Education, providing of training, entertainment, sporting and cultural activities	Registered
2167868	IIM-A	41	Education, providing of training, entertainment, sporting and cultural activities	Registered
2034091	IIMA	16	Printed matter, photographs, stationery, instructional and teaching materials, except apparatus	Registered
2034092	IIMA	41	Providing of training Entertainment Sporting and cultural activities	Registered
2034093	IIMA	35	Management Business Administration	Registered

N. The Complainant Institute state that they have common law rights as well as statutory rights to restrain and exclude the Registrant and anybody else from using the said trade marks or any other trade mark, which is identical with or deceptively similar to the said trade marks and they further state that the Complainant Institute has never authorized or permitted the Respondent to use the said trade marks,



namely, IIMA, IIM-A or IIM with or without any added matter.

- O. The Complainant Institute state that it has registered the following domain names:

Domain name	Date of registration
iimahd.ernet.in	Before 2006
iima.edu.in	19 th February, 2008
iima.ac.in	19 th February, 2008
iimahd.in	18 th November, 2013

- P. The complainants have relied upon case of *Kaviraj Pandit Durga Dutt Sharma Vs. Navratna Pharmaceutical Laboratories* reported in **AIR 1965 SC 980**.

- Q. The complainants have stated that the Registrant has, in his Reply raised numerous issues unrelated / extraneous to the present proceedings, and has attempted to divert the focus away from the main issues and in doing so, has made the Reply unnecessarily lengthy.



R. The Respondent *per contra* submits (quote) :

“ i) That the Complaint is required to be in the prescribed format specified at Rule 3 of the INDRP Rules of Procedure, and by Rule 3(ix) the Complaint is required to be complete and accurate, and by Rule 3(x) the Complainant is required to annex any trademark or service mark registration upon which the Complaint relies. I say that the Complainant had failed to comply with the basic procedural requirements and his Complaint is invalid at the very threshold and ought not to have been admitted by the .IN Registry.

ii) That by INDRP Procedural Rule 3(v) the Complainant was required to “specify the trademark(s) or service mark(s) on which the Complaint is based and, for each mark, describe the goods or services, if any, with which the mark is used.” Accordingly the Complainant specified as follows:-

“iimahd.ernet.in” – Registered domain of Indian Institute of Management, Vastrapur, Ahmedabad.

iii) That by INDRP Procedural Rule 3(v) “The Complainant may also separately describe other goods and services with which it intends, at the time the complaint is submitted, to use the mark in the future.” To which the Complainant described

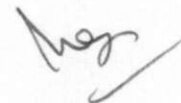
“iimahd.in” (Unquote)



S. The Respondent further allege that the annexure 'a' submitted by Complainant as evidence under Rule 3(x) is actually for the domain name "ERNET.IN" with Domain ID D601047-AFIN which is not registered to the Complainant and which makes no mention of any domain such as "iimahd.ernet.in". Further .IN Registry's WHOIS lookup fails to show any such domain as "iimahd.ernet.in" hence there is no such domain as "iimahd.ernet.in" and the Complainant has made a false statement. Reliance is placed on **ANNEXURE-R1**.

T. The Respondent alleges that the Complainant has then attempted to get the ERNET India to certify that "iimahd.ernet.in" is a domain by procuring a letter dated 16.01.2014 which is nothing but a fabricated document made to mislead the Tribunal .

U. It is alleged that Dilip Barman (Senior Manager) is "Addl. Director – Terrestrial Group" whereas the concerned



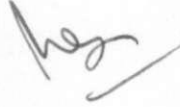
“Projects and Domains” vertical of the ERNET is actually under “B.B. Tiwari – Director”. Reliance is placed on **ANNEXURE-R2**.

- V. It is alleged that the Complainant has procured the aforesaid fabricated certificate from the ISP division of ERNET India, and not from ERNET India’s “Domains” division because there exists a lucrative commercial ISP and VSAT contracts between ERNET and IIM-A. In fact he alleges that the Complainant has produced documents showing that lakhs of rupees are being paid by IIM to ERNET India for VSAT and Router subscriptions since the 1990’s. The Respondent alleged that ever since .IN policy of 2005 came into force the ISPs like ERNET-INDIA were having a field day and were indulging in domain blackmarketing and cyber squatting for .IN sub-domains. Reliance is placed on **ANNEXURE-R3**.



W. The Respondents have further alleged that the ERNET India "certificate" misleadingly states that "iimahd.ernet.in" is a domain but fails to mention the unique DOMAIN ID for the domain.

X. It is alleged that Dilip Barman has deliberately committed perjury to mislead this Hon'ble Tribunal that "iimahd.ernet.in" is a domain, when he has himself stated in the same breath that "iimahd.ernet.in" is a domain registered "**under**" ernet.in. It is alleged that the usage of the term "under" shows that the said officer knows very well that "iimahd.ernet.in" is merely a "sub"-domain which is incapable of being officially registered. Thus Mr. Dilip Barman has knowingly perjured himself to say that "iimahd.ernet.in" is "registered for last more than 10 years". It is alleged that there is no WHOIS lookup record for the domain. It was also prayed that the Tribunal ought to summon the records for "iimahd.ernet.in" from the .IN registry in terms of section 9 of the INDRP.



Y. It is alleged that the new .IN policy from 2005 afforded a sunshine period for registered trademark holders to book their domains and to carry forward the earlier sub-domains being hosted by the ISPs or through a resolve host mechanism hence the ERNET India or the Complainant could have availed the said sunshine policy to preferentially register the disputed domain before it was opened to the general public for registrations. Reliance is placed on **ANNEXURE R-4** as an example.

On the basis of above allegations the Respondent seeks rejection of the Complaint. The Complainants have filed their response to the above.

ORDER

11. This Tribunal sees that there is nothing on record to buttress the allegations made by Respondents detailed in para E above regarding the competence of Mr.Paliwal. This Tribunal notices

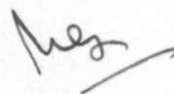


that the said objection goes into oblivion as it not denied that Mr. Paliwal is not associated with IIM Ahmedabad. Be it that as it may, the plea raised is hypertechnical in nature and it has been consistently held by Hon'ble Apex Court that substantive justice should not be allowed to be sacrificed on the altar of technicalities. Hence, the contentions of the Respondents w.r.t. the competence of Mr. Paliwal is rejected.

12. This Tribunal notes with concern that the allegations of Respondent detailed in para 5,6, U-Y regarding the letter dated 15/01/2014 produced by the Complainants. The Complainants have not been able to establish the authenticity of the said letter. In fact ERNET India could not send any confirmation of the same. Hence, this Tribunal draws an adverse inference *qua* the same.

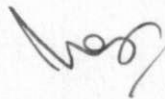
FINDINGS

13. Respondents contentions appear plausible in the first blush but melt away into thin air on a mere casual look at the



pictures depicted on the Page of the disputed domain. A glance at the opening page of the official website of complainants namely iimahd.ernet.in, iima.edu.in, iima.ac.in, one notices the same picture leaving no doubt that the domain are for IIM Ahmedabad. This Tribunal made efforts *suo motto* and downloaded the opening pages of websites iimahd.ernet.in, iima.edu.in, iima.ac.in and iimahd-ernet.in and the same are annexed with this Award as **Annexure A Colly**.

14. This Tribunal has perused the voluminous pleadings of the parties and the documentary evidence and finds that though the Respondent and the complainants have given a lot of stress on the term 'IIM-A' & IIM A being similar /different from 'iimahd' yet it is seen that they did not give any weight to the screen shots depicted in the websites 'iimahd.ernet.in' and the disputed website 'iimahd-ernet-in' which as stated above depict the picture of the building of IIM Ahmedabad even the logo given at left hand top corner is confusingly similar to the logo of IIM Ahmedabad. In view of the above this Tribunal is



constrained to hold that by registering the disputed domain name the Respondent has tried to do indirectly what he could not do directly which is impermissible both in equity and law.

15. Even though the Respondent has in his disputed domain name referred to some alleged malpractices going in IIM Ahmedabad but the same does not justify creation of a website and putting a picture of the building of IIM A on the disputed domain website. The objects of the Respondents website, whether laudable or not, do not justify registration of a domain name and publishing the picture of the building of the Institution and putting a logo similar to the logo of the said institution and providing a linkup with the official website of IIM Ahmedabad. The end does not justify the means.

16. A layman or a young student of 20 years would certainly get swayed into believing that the disputed domain is the authentic website of IIM Ahmedabad. The contentions raised by the Respondents as detailed in Para L (discussed above) w.r.t. the



registration of trade mark IIM-A by the complainants not being akin to the term 'iimahd' sounds plausible but as held above the Respondents in all fairness cannot justify portrayal of the picture of IIM Ahmedabad and putting up a logo akin/ confusingly similar to the official logo of the complainants. Hence this Tribunal holds that the respondents did not have any claim on the domain name <iimahd-ernet.in>, hence this Tribunal directs the Registry to withdraw the domain name <iimahd-ernet.in>. The Complainants too are free to approach the Registry and get the same withdrawn. There is no order as to the cost. The original copy of the Award is being sent along with the records of this proceeding 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 12th day of March, 2014.

NEW DELHI
12/03/2014



V. SHRIVASTAV
ARBITRATOR