



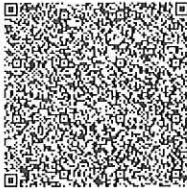
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# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

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Certificate Issued Date	: 18-Dec-2020 01:08 PM
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Stamp Duty Amount(Rs.)	: 500 (Five Hundred only)



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**BEFORE THE .IN REGISTRY OF INDIA**

**INDRP CASE NO. 1282**

**IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME DISPUTE  
RESOLUTION POLICY ("INDRP" or "the Policy"); THE INDRP RULES OF PROCEDURE  
("the Rules") AND THE ARBITRATION AND CONCILIATION ACT, 1996**

**FINAL AWARD**

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("the Rules") AND THE ARBITRATION AND CONCILIATION ACT, 1996

IN THE MATTER OF

Cloudera INC  
395 Page Mill Road  
Palo Alto, CA 94306, USA

... Complainant

versus

Amy Cox  
2321 George Street  
Ocala, Florida 34471, USA

... Respondent

AND

IN THE MATTER OF

A DISPUTE RELATING TO THE DOMAIN NAME CLOUDERA.IN

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FINAL AWARD

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Dated this the 26<sup>th</sup> day of December 2020

Venue: New Delhi, India



ROBIN RATNAKAR DAVID  
SOLE ARBITRATOR

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## I. PARTIES TO THE ARBITRATION

### 1. The Complainant

The Complainant, Cloudera Inc. is a corporation incorporated under the laws of the State of Delaware, USA at 395 Page Mill Road, Palo Alto, CA 94306, USA. The Complainant is represented by Mr. Rahul Chaudry of Rahul Chaudry & Partners, Attorneys at Law, RYC House, C-235 Defence Colony, New Delhi India.

### 2. The Respondent

The Respondent is Amy Cox of 232 George Street, Ocala, Florida, USA having Registrant Client ID: EDT\_76301948 and email: nameservices@outlook.com.

## II. APPLICABLE LAW AND JURISDICTION

### The .IN Domain Name Dispute Resolution Policy

1. The present arbitration proceeding is under and in accordance with the .IN Domain Name Dispute Resolution Policy (**the Policy**) which was adopted by the National Internet Exchange of India (NIXI) and sets out the legal framework for resolution of disputes between a Domain Name Registrant and a Complainant arising out of the registration and use of an .IN Domain Name. By registering the Domain Name with the NIXI accredited Registrar, the Respondent agreed to the resolution of disputes under the .IN Dispute Resolution Policy and Rules framed thereunder. The Policy and the .IN Domain Name Dispute Resolution Rules of Procedure posted on 16 September 2020 (**the Rules**) were approved by NIXI in accordance with the Arbitration and Conciliation Act, 1996.



## Filing of the Complaint and Constitution of the Arbitral Tribunal

2. The Complainant filed a complaint under the .IN Domain Name Dispute Resolution Policy against the Respondent, seeking the transfer of Domain Name cloudera.in to the Complainant. On 23 October 2020 the .IN Registry sought the consent of Mr. Robin Ratnakar David (the undersigned), who is a listed .IN Dispute Resolution Arbitrator under Rule 5 (a) of the Rules, to act as Arbitrator in the said matter. On 24 October 2020, Mr. David, gave his consent along with the signed Statement of Acceptance and Declaration of Impartiality and Independence to act in the matter as Arbitrator.
3. On 27 October 2020, the Arbitral Tribunal comprising of the said Mr. Robin Ratnakar David, Sole Arbitrator, was constituted under Rule 5 (b) of the Rules<sup>1</sup> in respect of the Complaint filed by Cloudera Inc against Amy Cox, the Respondent.
4. On 28 October 2020 the Arbitral Tribunal noted that the Complaint, as filed, contained an index mentioning 777 pages and only pages 1 to 429 were provided to the Arbitral Tribunal. Also the Complaint was not in compliance with Rule 4(a) of the Rules which prescribed a maximum word limit of 5,000 words for pleadings and a maximum page limit of 100 pages for annexures.<sup>2</sup> Therefore, the Arbitral Tribunal directed the Complainant to submit a fresh/amended Complaint in conformity with the Rules within two days. Pursuant to the said directions the Complainant submitted a Complaint with annexures (hereinafter "the Complaint") on 30 October 2020. On the very same day, namely 30 October 2020 the Arbitral Tribunal issued the **Notice of Arbitration** under Rule 5(c) of the Rules.

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<sup>1</sup> INDRP Rules of Procedure, Rule 5 (b) – The .IN Registry shall appoint an Arbitrator from the .IN Registry's list and shall forward the Complaint along with supporting documents to such Arbitrator.

<sup>2</sup> INDRP Rules of Procedure, Rule 4 (a) – The (maximum) word limit shall be 5,000 words for all pleadings individually (excluding annexures). Annexures shall not be more than 100 pages in total. Parties shall observe this rule strictly subject to Arbitrator's discretion.





5. This Arbitral Tribunal has been constituted in accordance with the Arbitration and Conciliation Act, 1996 and the INDRP Policy and the Rules as amended from time to time and no party has objected to the constitution and jurisdiction of the Arbitral Tribunal and the arbitrability of the dispute.

### **III. THE DOMAIN NAME, REGISTRAR & REGISTRANT**

1. The domain name which is the subject matter of the Complaint is [www.cloudera.in](http://www.cloudera.in)
2. The Registrar is Endurance Domains Technology LLP (Public Domain Registry) having its address at Unit No. 501, 5<sup>th</sup> Floor, IT Building 3, Nesco Complex, Western Express Highway, Goregaon (E), Mumbai 400063.
3. The Registrant is Amy Cox, 2321 George Street, Ocala, Florida 34471 USA having Registrant Client ID: EDT\_76301948 and email: [nameservices@outlook.com](mailto:nameservices@outlook.com).

### **IV. PROCEDURAL HISTORY**

1. On 30 October 2020, the Arbitral Tribunal issued the Notice of Arbitration to the Respondent with the Complaint and annexures by email. The Respondent was directed to file a Response in writing in opposition to the Complaint, if any, along with evidence in support of its stand or contention on or before 10 November 2020. In addition, the Complainant was directed to serve a hard copy and a soft copy of the Notice of Arbitration with the Complaint and annexures on the Respondent. On 2 November 2020 the Complainant, in compliance with the direction dated 30 October 2020 sent a soft copy of the Notice of Arbitration with Complaint and Annexures to the Respondent and placed on record of a courier receipt dated 2 November 2020 bearing waybill number 304013288 indicating that same was sent to the Respondent through



courier as well. The Complaint (including annexure) was sent at the email address of the Respondent shown in the WHOIS details and service on the Respondent was done in accordance with Rule 2 of the Rules. However, the Respondent did not file a response to the Complaint by 10 November 2020.

2. Further, in the interest of justice, on 11 November 2020, the Respondent was granted a second and a final opportunity to file a response to the Complaint within a week, that is on or before 18 November 2020. It was also mentioned that in case a response is not filed by the Respondent on or before 18 November 2020 the Complaint will be determined by the Arbitral Tribunal after considering the Complaint and evidence on record in accordance with the law.
3. Pursuant to the direction dated 11 November 2020, the Complaint (including annexure) was sent at the email address of the Respondent shown in the WHOIS details by the Complainant in addition. Service of Complaint on the Respondent was done in accordance with Rule 2 of the Rules. However, the Respondent did not file a response to the Complaint by 18 November 2020.
4. The Arbitral Tribunal received no response from the Respondent and has not been informed of any settlement between the parties. Further, the Arbitral Tribunal did not receive any delivery failure notification from the Respondent's email address shown in WHOIS details. It must be mentioned that the Respondent was served at its email address provided in the WHOIS details by the Arbitral Tribunal on 30 October 2020 and again on 11 November 2020 and by the Complainant pursuant to directions of 30 October 2020 and 11 November 2020. Consequently, the Notice of Arbitration and Complaint and annexures are served on the Respondent as required by Rule 2 of the Rules.
5. All emails from the Arbitral Tribunal were copied to the Complainant and Respondent as well as NIXI.
6. The key procedural steps in these proceedings are summarised by the Arbitral Tribunal below :



No.	Date	Event
1.	23 October 2020	The .IN Registry sought the consent of the .IN Dispute Resolution Arbitrator to act as Arbitrator.
2.	24 October 2020	The Arbitrator gives his consent along with a signed Statement of Acceptance and Declaration of Impartiality and Independence.
3.	27 October 2020	The Arbitral Tribunal was constituted.
4.	28 October 2020	The Arbitral Tribunal directs the Complainant to submit a fresh complaint in conformity with the Rules.
5.	30 October 2020	Pursuant to directions a Complaint (with Annexures) filed by Complainant.
6.	30 October 2020	Notice of Arbitration issued under 5(c) of the Rules by email. Complainant directed to serve the Respondent with hard and soft copy. Respondent directed to file Response/Reply by 10 November 2020.
7.	2 November 2020	Complainant sent Complaint (with annexure) to Respondent by email and by courier.
8.	10 November 2020	No response filed by the Respondent.
9.	11 November 2020	Respondent granted second and final opportunity to file Response/Reply by 18 November 2020. The email with Complaint and annexures sent to Respondent. Complainant directed to serve the Respondent.





10.	11 November 2020	Complainant served the Complaint with annexure on the Respondent by email.
11.	18 November 2020	No response filed by the Respondent.

## V. THE PLEADINGS

### COMPLAINT

1. The Complainant's position is that it is an internationally reputed company and is the registered proprietor of the trademark "Cloudera" in India and other countries and holds International registration for the mark "Cloudera" (under WIPO Madrid- international trademark system) bearing the IRDI-3864898 since 2018 in class 42 in relation to Software as a service (SAAS) featuring software for analyzing, managing, securing and reporting on data; providing temporary use of web-based software for analyzing, managing, securing and reporting on data which has also been granted protection by the Registrar of Trademarks in India. The Complainant applied for two International registrations for "Cloudera" designating India as one of the countries wherein protection is sought as detailed below:

Trade Mark	Class	Application Number	Status	Date of application
CLOUDERA	09, 41 and 42	IRDI-4465233	Accepted and advertised	30 October 2019
CLOUDERA	09, 41 and 42	IRDI-4461805	Accepted and advertised	14 October 2019



2. The Complainant asserts that the trademark "Cloudera" has been used over the internet and is associated with the Complainant. The Complainant is the owner of the domain name www.cloudera.com registered on 28 February 2006. The Complainant owns the following domain names:

S.No.	Particulars
1.	www.cloudera.com
2.	www.cloudera.it
3.	www.cloudera.jp
4.	www.cloudera.me
5.	www.cloudera.site
6.	www.cloudera.com.sg
7.	www.clouderafoundation.org
8.	www.cloudera-live.com
9.	www. cloudera.net
10.	www.cloudera.info
11.	www. cloudera .io
12.	www.cloudera.biz

Printouts of the WHOIS status of the abovementioned domain names were filed with the Complaint.

3. The Complainant states that it has been offering its services under the mark "Cloudera" and its various "Cloudera" formative marks from the year 2008. It provides a software platform for data engineering data warehousing machine learning and analytics that runs in the cloud or on-premises. It offers a unified platform for big data which was built on Apache Hadoop and has trained over 40,000 individuals worldwide. It has subsidiaries with the name "Cloudera"



such as Cloudera K. K. Japan; Cloudera (Shanghai) Software Co. Ltd., China; Cloudera Singapore Pt Ltd; Cloudera Korea Inc South Korea and Cloudera Software India Private Ltd. The Complainant is operating in India under the mark "Cloudera" with its Indian subsidiary Cloudera Software India Private Limited at Taramani, Chennai, Bengaluru, Karnataka and Mumbai.

4. The Complainant contends the disputed domain name [www.cloudera.in](http://www.cloudera.in) incorporates the whole of the Complainant's prior registered and used mark "Cloudera" and is using the India specific ccTLD ".in" which gives the impression that the domain name is an India specific domain name or website of the Complainant and when one tries to visit the disputed domain name it resolves to a parked page following a "pay-per-click" format listing various website and business-related to cloud storage. The website also goes further by providing links of third-party websites on its webpage which re-directs the users to different websites selling cloud storage services. The domain name [www.cloudera.in](http://www.cloudera.in) was registered in 2013 and the Respondent has not developed a website in this connection. Further, on top of the parked page of the domain name, there is a link stating that the domain name is available for sale.
5. The Complainant states that the mark "Cloudera" is a coined word having no dictionary meaning hence there can be no justification for the Respondent to adopt an identical mark into its domain name.
6. The Complainant states that "Cloudera" has been used since 2008 and the Respondent's domain name - [www.cloudera.in](http://www.cloudera.in) encompasses the whole of the Complainant's registered trademark "Cloudera". Addition of ".in" does not make the domain name distinguishable from the Complainant's registered and well-known mark "Cloudera" and reinforces the association with the Complainant's mark by showing that the domain name is associated with the Complainant and its Indian subsidiary while no such association exists. The Respondent has no legitimate interest in the trademark "Cloudera" and is not





the lawful owner of the Complainant's mark. The Respondent has no relationship with the business of Complainant and has no licence or authorization to use the Complainant's mark.

7. It is stated that the Respondent has registered or acquired the domain name with dishonest intention to mislead and divert the consumers and to tarnish the well-known trademark/ corporate name/ domain name "Cloudera" and cloudera.com. The Respondent has registered and is using the disputed domain name in bad faith for commercial gain and to benefit from the goodwill and fame associated with the Complainant's domain name and internet users will mistakenly believe that the disputed domain name and its associated website are connected to the Complainant and its services.

#### **RESPONDENT:**

1. The Respondent has not filed a response to the Notice of Arbitration dated 30 October 2020 and the second and final opportunity granted by direction dated 11 November 2020. The Respondent has chosen not to respond to the Notice of Arbitration by this Arbitral Tribunal or deal with the contents of the Complaint even though the Respondent has been served in accordance with the Rules.

#### **VI. ANALYSIS AND DETERMINATION BY THE TRIBUNAL**

1. Under the Policy, a Complainant who alleges that the disputed domain name conflicts with its legitimate rights or interests must establish the following three elements contained in Paragraph 4 of the Policy<sup>3</sup> namely :

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<sup>3</sup> 4. Class of Disputes

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:





- a) the Respondent's domain name is identical and confusingly similar to the trademark or service mark in which the Complainant has rights.
- b) The Respondent has no rights or legitimate interests in respect of the domain name; and
- c) The Respondent's domain name has been registered or is being used in bad faith.

Accordingly, the Arbitral Tribunal shall deal with each of the elements as under:

**2. The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.**

2.1 In order to demonstrate its legitimate rights and interests in the trademark "Cloudera" in India and other countries, the Complainant has placed reliance on registration certificate for the mark "Cloudera" of WIPO Madrid- international trademark system Registration No 1 354376 and status of applications for the mark "Cloudera" under applications IRDI 4465233 & IRDI-4461805. The Complainant has also placed on record printouts of WHOIS status of various domain names owned by the Complainant containing the name "Cloudera".

2.2 A careful examination of the Trademark registrations filed by Complainant demonstrates that the Complainant has rights and interests in the name, trademark and service mark "Cloudera" in India and other jurisdictions. The status of the WHOIS records filed by the Complainant show that it owns the domain name cloudera.com from 28 February 2006 which is a "Registered Active Website". The Complainant also owns

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(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.



cloudera.biz from 14 June 2011, cloudera.it from 5 January 2013, cloudera.jp from 10 June 2010, cloudera.net from 26 June 2008 and several other domain names with the name "cloudera". From the Complaint and Annexures, the Complainant has shown that there exist twelve (12) domain names owned by the Complainant and all use the name "Cloudera".

- 2.3 The above establishes that the Complainant owns intellectual property rights particularly service mark, trademark and tradenames in the name "Cloudera".
- 2.4 Now comparing the disputed domain cloudera.in of the Respondent with the Complainant's name, trademark and service mark it is seen that "Cloudera" is entirely contained in the domain name of the Respondent.
- 2.5 The mark "Cloudera" is a coined word and there is no explanation why the Respondent has chosen to adopt this particular identical mark in its domain name. According to paragraph 3 of the Policy<sup>4</sup>, it is the obligation of the Respondent (registrant) to find out before registration that the domain name intended for registration does not violate the rights of any third party.
- 2.6 The Respondent's domain name cloudera.in bears the Complainant's registered trademark "cloudera" which is a coined word and is distinctive in nature. In *Humor Rainbow Inc. v Yin Jun China* (INDRP/1153) it was held that incorporation of a trademark in its entirety without any

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<sup>4</sup> Paragraph 3 of the INDRP:

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.



addition, subtraction or any other modifications result in an identical domain name and that the ".in" suffix of the domain name would be immaterial for the comparison. Considering the similarity between the Complainant's trademark domain name "Cloudera" and the disputed domain name Cloudera.in of the Respondent, the Arbitral Tribunal holds that an average consumer would be led to believe that the Complainant and the Respondent or the disputed domain name are related. The Arbitral Tribunal holds that the disputed domain name cloudera.in is identical and confusingly similar to the Complainant's registered trademark "cloudera" and domain names – cloudera.com, cloudera.biz, cloudera.it, cloudera.jp, cloudera.me, cloudera.site, cloudera.com.sg, clouderafoundation.org, cloudera-live.com, cloudera.net, cloudera.info and cloudera.io.

- 2.7 Further, considering the global presence of Cloudera and the long and continuous usage of the name "cloudera" by the Complainant, this Arbitral Tribunal holds that the requirement of the first element in INDRP Policy paragraph 4(a) is satisfied.

### **3. The Registrant has no rights or legitimate interests in respect of the domain name**

- 3.1 In order to make a case under paragraph 4(b) of the Policy the Complainant has to show that the Respondent has no rights under paragraph 6 of the Policy<sup>5</sup>.

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<sup>5</sup> 6. Registrant's Rights and Legitimate Interests in the domain name

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

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





- 3.2 The disputed domain name www.cloudera.in was created on 5 January 2013 and the Respondent has not developed any website on the said domain. The documents show that the domain name is a parked page giving links to third-party websites. Significantly, the said parked page shows that the domain name www.cloudera.in is for sale stating "The owner of cloudera.in has chosen to receive offer enquiries regarding this domain name. Note that the owner may disregard your enquiry if your offer does not meet his or her expectation".
- 3.3 As the documents on record show that the disputed domain name is available for sale by exploiting the Complainant's mark, it does not confer any legitimate right on the Respondent. The registration of the disputed domain name for reselling or preventing Complainant's use is not legitimate.
- 3.4 The Arbitral Tribunal finds that the Complainant has made a prima facie case that the Respondent has no rights and legitimate interests in respect of the disputed domain name www.cloudera.in and has satisfied the second element under paragraph 4 (b) of the Policy.

**4. The Registrant's domain name has been registered or is being used in bad faith**

- 4.1 The Complainant has used the mark "Cloudera" since 2008 and its domain name cloudera.com was registered on 28 February 2006 followed by 11 other domain name registrations with the coined word "Cloudera".

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(b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or  
(c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.





- 4.2 As mentioned in paragraph 3.2 above the Respondent created the domain name [www.cloudera.in](http://www.cloudera.in) on 5 January 2013. The documents show that the domain name is a parked page giving links to third-party websites stating that the domain name [www.cloudera.in](http://www.cloudera.in) is for sale and that the owner of [cloudera.in](http://www.cloudera.in) has chosen to receive offers and enquiries regarding this domain name. The said parked page further mentions that the owner may disregard the enquiry if the offer does not meet his / her expectation. This shows that the disputed domain name has been acquired to be sold for consideration. Further, it is more than seven years since the disputed domain name has been acquired and a website has not been developed thereon by the Respondent.
- 4.3 In *Aditya Birla Management Corporation v Chinmay INDRP/1197* (decided on January 23, 2020) it was held the Respondent is involved in cyber-squatting by registering a domain name containing the well-known trademark of the complainant and thereby gaining illegal benefits.
- 4.4 In the present case the domain name [www.cloudera.in](http://www.cloudera.in) was acquired on 5 January 2013 and the parked page states that the domain name is for sale, this is clearly a case of cyber-squatting by registering domain name containing a well known mark "Cloudera" which is primarily for the purpose of selling and evidence of bad faith on the part of the Respondent as referred to in paragraph 7 (a) of the Policy<sup>6</sup>. Accordingly, in the present case the Arbitral Tribunal holds that the Respondent's

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<sup>6</sup> 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)...; or

(c)...



domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element in paragraph 4(c) of the Policy has been satisfied.

## **VII. DISPOSITIONS**

The Arbitral Tribunal holds that the Respondent's domain name [www.cloudera.in](http://www.cloudera.in) is identical and confusingly similar to the name, trademark and service name "Cloudera" owned by the Complainant. The Respondent has no rights or legitimate interests in the domain name [www.cloudera.in](http://www.cloudera.in) which has been registered in bad faith. The three elements set out in paragraph 4 of the INDRP Policy have been established by the Complainant. Accordingly, and in terms of the INDRP Policy, the Arbitral Tribunal hereby directs that the disputed domain name [www.cloudera.in](http://www.cloudera.in) be transferred to Cloudera Inc, 395 Page Mill Road, Palo Alto, CA 94306, USA, the Complainant.

Place of Arbitration: New Delhi

Date: 26<sup>th</sup> December 2020



**Robin Ratnakar David**

Sole Arbitrator

The Arbitral Tribunal