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ARBITRATION AWARD

INDRP CASE No. 1299

Nippon Life India Asset Management Limited [Complainant] v *ABC XYZ* [Respondent]

Disputed Domain Name: NIMF.IN

BEFORE THE SOLE ARBITRATOR: VAKUL SHARMA

DATED: FEBRUARY 21, 2021

Vakul Sharma
Arbitrator

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ARBITRATION AWARD

In the matter of:

**Nippon Life India Asset
Management Limited**

4th Floor, Tower A

Peninsula Business Park

Ganapatrao Kadam Marg

Lower Parel [W]

Mumbai – 400 013, Maharashtra

India

[Complainant]

-v-

Disputed Domain Name:

ABC XYZ

ABCXYZ

Mumbai

Mumbai - 400001

India

www.nimf.in

[Respondent]

INDRP CASE No. 1299

1. The Complainant

Nippon India Mutual Fund [NIMF] was earlier known as Reliance Mutual Fund. The name was changed from Reliance Mutual Fund to Nippon India Mutual Fund effective September 28, 2019.

V. Sharma
Arbitrator

2. The Respondent

Respondent in this administrative proceeding is ABC XYZ. A copy of the printout of the database search conducted for the disputed domain name on 19 November 2020 and the WHOIS details provided by the National Internet Exchange of India [NIXI] is annexed by the Complainant as Annexure A in the Complaint.

3. The Registrar

The Registrar with which the domain name is registered is: 101 Domain Inc.

4. Disputed Domain Name

<NIME.IN>

5. Jurisdiction

The Complainant by filing the Complaint under the aforesaid INDRP Rules of Procedure [Rules] has accepted the subject matter jurisdiction of the .IN Domain Dispute Resolution Policy - .INDRP [Policy].

In view of the above, this domain name dispute is properly within the scope of the Policy. The registration agreement, pursuant to which the disputed domain name was registered, incorporates the Policy. Disputes between Registrants, as they relate to domain name registrations, are governed by the Policy.

Vishal Sharma
Arbitrator

6. Procedural History

- (i) This Arbitration Proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By submitting to the Policy and the Rules, the Complainant agreed to the resolution of the disputes pursuant to the Policy and the Rules.
- (ii) The Complaint was filed by the Complainant with NIXI against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- (iii) I submitted the statement of acceptance on 3/12/2020 and subsequently appointed by NIXI as an Arbitrator in the above matter [INDRP No. 1299] vide email dated December 4, 2020.
- (iv) Complainant submitted a Copy of the Complaint and Annexures to me as well as to the Respondent vide email dated December 7, 2020 on its email IDs: postmaster@nimf.in and nipponindiafunds@gmail.com in accordance with the Rules.
- (v) Complainant has further placed on record a scanned copy of a Courier Receipt bearing No. Z 60011903 dated December 5, 2020, as proof of dispatch.

Vallu Sharma
Arbitrator

- (vi) In view of the completion of procedures related to Service of Complaint as mandated under the Rules, I issued a Notice dated 08/12/2020 to the Respondent to submit its reply to the above said complaint within 15 days from the date of the Notice.
- (vii) Complainant subsequently informed me vide email dated December 19, 2020 that the physical copy of the Complaint remained undelivered due to incorrect address.
- (viii) In view of the emerging facts, I issued another notice dated 26/12/2020 to the Complainant directing him to confirm within three days whether the Complaint and accompanying annexures sent to the Respondent's email ID: nipponindiafunds@gmail.com has been delivered and served and has not bounced back in any instance, as email sent to the Respondent's email ID: postmaster@nimf.in had also bounced back. Furthermore, in the interest of justice a *final opportunity* in terms of extension of 15 days was given to the Respondent in the said Notice to submit its Reply to the above complaint, failing which the Complaint shall be decided *ex-parte* on the basis of the merits of the Complaint.
- (ix) The Complainant has confirmed vide email dated 28/12/2020 that reproduced below:

"...we confirm that the two [2]e-mails sent to the Respondent on <nipponindiafunds@gmail.com>, dated December 07, 2020, containing the Complaint and the annexes did not 'bounce back'. We have so far not received any 'failure' or 'bounce' notice regarding any of the e-mails sent to <nipponindiafunds@gmail.com>.

Vahid Sharma
Arbitrator

It is further submitted that this e-mail id <nipponindiafunds@gmail.com> is the 'Registrant' e-mail id listed in the WHOIS details, as provided to us by NIXI."

- (x) Further vide notice dated 12/01/2021 I closed the Respondent's right to file Reply as even after completion of an extension period of 15 (fifteen) days granted to the Respondent as *final opportunity* vide Notice dated 26/12/2020, to submit its Reply to the above Complaint, and accordingly both the Complainant and the Respondent were informed that the Complaint shall be decided *ex-parte* on the basis of the merits of the Complaint.
- (xi) The Arbitration Award is now pronounced on this day, i.e., February 21, 2021 after considering the contentions of the Complainant and the Policy framework under my signatures. This is an *ex-parte* order as the Respondent failed to file its Reply despite being given adequate opportunity, including an extension of 15 days to submit the same in the interest of justice. *This has led to a delay of 12 days in rendering this Arbitration Award from the stipulated period of 60 days as mentioned in the Rule 5 [Rules] on the account of non-completion of service of the Complaint to my satisfaction leading to an extension of 15 days to the Respondent to submit its Reply.*

7. Contentions of the Complainant

Complainant submits as follows:

- (i) Nippon India Mutual Fund [NIMF] was earlier known as Reliance Mutual Fund. The name was changed from Reliance Mutual Fund to Nippon India Mutual Fund

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Arbitrator

effective September 28, 2019. NIMF is one of India's leading mutual funds, with Average Assets Under Management of INR 200030.43 Crores and 92.73 Lakhs folios.

- (ii) Nippon India Mutual Fund [the Complainant] considers their corporate name as well trade/service name/mark an important and an extremely valuable asset and thus in order to protect the same, had secured Indian trade mark registrations in multiple classes for the wordmark and device-mark of 'Reliance Nippon Life Asset Management' before the name change.
- (iii) The Complainant filed for trademarks in India for the following marks in several classes. Reliance is placed on Annexure D of the Complaint.
- (iv) The profile and popularity of the Complainant under the trademark 'Nippon India', 'NIMF', and 'Nippon India Mutual Fund' has been continuously increasing since the date of use of the mark. Prior to this, the Complainant enjoyed widespread reputation under the 'Reliance Nippon' mark. The mark 'NIMF' and/or 'Nippon India Mutual Fund' is used as a trademark on all publicity material of the Complainant. At present, the Complainant's trade name/mark is identified by the trading public exclusively with the Complainant and has acquired an enormous goodwill in India.
- (v) The popularity of the Complainant's 'NIMF' mark can be further established by the fact that a www.google.com ["Google"] search of the said term reveals search results,

Vishal Sharma
Arbitrator

on the first page, almost all of which pertain to the Complainant and its services. Reliance is placed on Annexure E of the Complaint.

- (vi) The Complainant further submits that it had registered, or rather instructed one of its employees Mr Hiren Shah, the then 'Head – IT Projects and Transformation' of the Complainant to register several such domain names, including the present domain name which is the subject matter of this present complaint. Documents indicating that Mr Shah was an employee of the Complainant from July 24, 2018 to December 19, 2019. However, instead of registering the said domain names, including the disputed domain name, on behalf of the Complainant, Mr Shah registered the disputed domain name [and other domains] through his personal account. Reliance is placed on Annexure G.
- (vii) The Complainant has relied on annexes [From H to M] to establish the fact that Mr Hiren Shah is the actual Respondent in the present matter; and that he himself and through his associate Mr Abhishek Rai and Amplinno India Private Limited is attempting to blackmail the Complainant into paying exorbitant amounts of money in lieu of transferring the impugned domain name to the Complaint.
- (viii) The Complainant submits that that while the hosting and control of the content of the website on the said domain name is with the Complainant, the Complainant at this point does not have access to the account associated with the domain name and has thus no control over the domain name. The Complainant has, as of now, created a back-end page for its employees. Reliance is placed on web-pages of URLs as Annexure N.

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Arbitrator

- (ix) In this context, the Complainant in its Complaint has made assertions to establish presence of each of the three elements required by paragraph 4 of the Policy.

I. Whether the domain name is identical and/or confusingly similar to the Complainant's mark 'NIMF' ?

- (a) The Complainant submits that the mark 'NIMF' is associated with the Complainant and no one else. The mark 'NIMF' is used by the general public and the Complainant to refer to its mutual fund – that is 'Nippon India Mutual Fund'.
- (b) Further, the Complainant has submitted that the members of the trade and consumers while discussing Systematic Investment Plans [SIPs] refer to the Complainant's mutual fund as 'NIMF'. Reliance has been placed on the decisions of the INDRP Panels which have held that Complainant's have rights in their brand names' abbreviations as well: *Mumbai International Airport Limited v Sugra K* [INDRP/1223] and *Bennett Coleman & Co. Ltd. v Mr Suresh Kumar* [INDRP/399].
- (c) The Complainant further submits that a mark is capable of being a trademark if it has acquired a secondary meaning in the market. The evidence is sufficient to show that Complainant's mark 'NIMF' has acquired secondary meaning. In the present dispute, the Complainant and its group companies are recognised by their mutual fund which is known as 'NIMF' and the mark has thus acquired secondary meaning. Reliance is placed on Panels decisions wherein complainants have been

Vakul Sharma
Advocate

given benefit even where the mark was not registered: *Satyam Computer Service Limited v. Vasudeva Varma Gokharaju*, D2000-0835; *Express Publications [Madurai] Ltd. v. Murali Ramakrishnan*, D2001-0208 and *Hindustan Petroleum Corporation Limited v. Neel Punatar*, D2004-0351.

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

- (a) The Complainant submits that UDRP Panels have repeatedly held that former employees do not have a right to or legitimate interest in domain names incorporating the marks of their former employers. Reliance is placed on *GFH Capital Limited v. David Haigh* D2014-2148; *Topcon Positioning Systems, Inc. v. Jason W. Evans* D2015-0708; *Simple Abilities Inc. v. Jeff Hoogveld and Adaptivies Abilities Inc.* D2006-0143; *The Gloria Kaufman Dance Foundation and Gloria Kaufman v. Carolyn B. Baker & Associates and "Gloria Kaufman Dance Foundation," formerly Domains By Proxy, Inc.* D2010-0034; *Savino Del Bene Inc. v. Graziano Innocenti Gennari* D2000-1133.

- (b) The Complainant also submits that the very fact that the Respondent has himself and through Amplinno India Private Limited tried to blackmail the Complainant and has demanded an exorbitant amount of money to transfer the domain name establishes that the Respondent does not have any rights or legitimate interests in the domain name.

Vallu Sharma
Arbitrator

- (c) The Complainant further submits that the Respondent is not, either as an individual, business or other organization, commonly known by the name 'NIMF' or 'Nippon India Mutual Fund'. The Complainant has not licensed or otherwise permitted the Respondent to use its trade/service marks.
- (d) Furthermore, the Respondent has not provided his correct details in the WHOIS contact information. This clearly indicates the mala fide of the Respondent leading to the conclusion that the Respondent does not have any legitimate interests or rights in the disputed domain name. Moreover, by providing inaccurate and unreliable information, the Respondent has violated Section 2 of the 'Terms and Conditions for Registrants' issued by the .IN Registry. Reliance is placed on Terms & Conditions as available on the .IN Registry website as Annexure S.
- (e) The Complainant further submits that Mr Hiren Shah and Amplinno are closely associated and that the domain name was registered by Mr Shah. Reliance is placed on Annexures K to M.

III. Whether The Respondent registered and/or is using the domain name in bad faith?

- (a) The Complainant submits that the Respondent, which the Complainant strongly believes is Mr Hiren Shah, registered the domain name on the instructions of the

Vijal Sharma
Arbitrator

Complainant, but instead of using his official e-mail id, the Respondent used his personal e-mail id to register the domain name. Thereafter, the Respondent must have changed the e-mail id to the present e-mail id as provided in the WHOIS details by NIXI.

- (b) Furthermore, the Complainant submits that when the Complainant asked the Respondent to transfer the domain name to it, the Respondent instead started blackmailing the Complainant is indicative of the Respondent's bad faith use of the domain name. It is the contention of the Complainant that the Respondent is very well aware that the domain name is the rightful property of the Complainant and yet the Respondent with an intention to blackmail the Complainant, did not transfer the domain name to the Complainant and instead sought an exorbitant amount of money in lieu of the domain name.

8. Respondent's Contentions

That despite giving adequate opportunity, including an extension of 15 days to submit its Reply, in the interest of justice, the Respondent has failed to submit any Reply to the Complaint.

9. Discussion and Findings

The Respondent has not filed any Reply to the Complaint. However, the Respondent's default does not automatically result in a decision in favour of the complainant. The Complainant has to still establish each of the three elements required by Paragraph 4 of the Policy:

Under the Paragraph 4 clauses (a) – (c) of the Policy, the Complainants must prove that:

Vahl Sharma
(Arbitrator)

- (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;
- (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.

The Complaint has to be decided on the basis of the pleadings, including evidence presented before me. The Complainant in order to succeed must satisfy the conditions laid down in Paragraph 4, clauses (a) – (c) of the Policy.

I have considered the conditions as laid down in the aforesaid Policy. My opinion is as follows:

(a) Whether the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights?

The Complainant has placed on record a list of accepted and advertised marks and pending applications [Annexure D] under different classes of registration with the words "Nippon India" as prefix. Further, the complainant has also placed on record keyword search results with the word "NIMF" providing links to some independent websites referring NIMF as Nippon India Mutual Fund. In order to test the contentions of the Complainant that "NIMF" and its group companies are recognised by their mutual fund which is known as 'NIMF' and the mark has thus acquired secondary meaning, in the interest of justice, I independently keyed the words "NIMF" at Securities Exchange Board of India (SEBI) website [www.sebi.gov.in] on 18/02/2021, I found that almost all the search results available at page 1 of the search results exhibited **Nippon India Mutual Fund (NIMF)**. I consider that there is a force in the arguments of the Complainant that the words "NIMF" is associated with Nippon India Mutual Fund. In my opinion, the disputed

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Arbitrator

domain name could make the general public interested in investing mutual funds may easily be misled in believing that such domain name belong to the Complainant. In view of the above, the requirement of the Policy as stated in Paragraph 4(a) is satisfied.

(b) Whether the Registrant has no rights or legitimate interests in respect of the domain name?

The Complainant herein has submitted that while the hosting and control of the content of the website on the disputed domain name, is with the Complainant, however, it does not have access to the account associated with the domain names. In this context, my attention has been drawn to the invoice dated 08/10/2020 raised by AMPLINNO India Pvt. Ltd. seeking Rs. 12,50,000.00 (INR Twelve Lac Fifty Thousand) towards '*domain rental service for 1 year*' [Annexure M of the Complaint]. In my view such an exorbitant sum defies all commercial logic and is unconscionable. It is an attempt to force the Complainant to pay since the disputed domain name is registered in the name of the Respondent. However, there is no domain rental agreement on record and Respondent has failed to file any submissions, I am of the opinion that the benefit under the circumstances lies with the Complainant as it has proved that this demand of exorbitant sum towards *rental service for 1 year* underlines the fact that the Respondent has no legitimate interest in the disputed domain name, whereas the Complainant has been able to demonstrate that it has a legitimate interest in the disputed domain name. In my view, the Respondent seems to be a profiteer and trying to benefit from the misery of the Complainant. Had there been any legitimacy in the demands of the Respondent, it would have filed its Reply and debunked the contentions of the complainant, however, it did not choose to file reply. In my opinion, the benefit should be given to the complainant, as there can be no possible *bona fide* interest of the

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Arbitrator

Respondent in the disputed domain name. In view of the above, the requirement of the Policy as stated in Paragraph 4(b) is satisfied.

(c) Whether the Registrant's domain name has been registered or is being used in bad faith?

The fact that the WHOIS details of the disputed domain name <NIMF.IN> merely provides name and address of the registrant as ABCXYZ as evident from the Annexure A of the Complaint. It shows that the Respondent has something to hide. Moreover, it is also evident from WHOIS that Respondent is not using any "privacy services". It only proves malafide intent on the part of the Respondent. As held in *Topcon Positioning Systems, Inc. v. Jason W. Evans* D2015-0708, "....The Panel cannot read the Respondent's mind, of course, but this behavior is so extreme that it warrants an inference of planned, bad faith conduct in the registration and use of the Domain Names."

There is merit in the Complainant's contention that this is a case of bad faith and a clear attempt to take advantage of the Complainant's goodwill and reputation. Paragraph 7 (a) of the Policy highlights that evidence of bad faith registration can be seen if a registrant has registered or acquired the domain name primarily for the purpose of renting, or otherwise transferring the domain name registration to the Complainant, who bears the name for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name. Herein the demand of Rs. 12,50,000.00 (INR Twelve Lac Fifty Thousand only) domain rental service for 1 year' clearly falls in the category of exorbitant, over-extravagant and unconscionable. Accordingly, having regard to the circumstances of this particular case, I hold

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Arbitrator

that the Complainant has been able to prove that the Registrant's registered the disputed domain name in bad faith. In view of the above, the requirement of the Policy as stated in Paragraph 4(c) is satisfied.

10. Decision

For the foregoing reasons, in accordance with the Policy and Rules, I direct NIXI to transfer the disputed domain name <NIMF.IN> to the Complainant.

There is no order as to costs.

The original copy of the Award is being sent alongwith the records of the proceedings to the National Internet Exchange of India (NIXI) for its record and a copy of the Award are being sent to both the parties for their information and record.

Vakul Sharma



(Sole Arbitrator)

Dated: February 21, 2021