



सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

## e-Stamp

Certificate No.

: IN-DL29221682481146T

Certificate Issued Date

: 11-Jan-2021 04:36 PM

Account Reference

: IMPACC (IV)/dl721003/ DELHI/ DL-DLH

Unique Doc. Reference

: SUBIN-DL72100361876959061316T

Purchased by

: V P PATHAK

Description of Document

: Article 12 Award

Property Description

: Not Applicable

Consideration Price (Rs.)

: 0  
(Zero)

First Party

: V P PATHAK

Second Party

: Not Applicable

Stamp Duty Paid By

: V P PATHAK

Stamp Duty Amount(Rs.)

: 100  
(One Hundred only)

Please write or type below this line

BEFORE THE ARBITRAL TRIBUNAL

V.P.PATHAK

SOLE ARBITRATOR

ARBITRAL AWARD

V.P. PATHAK  
H.J.S.  
Former Judge  
Sole Arbitrator

## Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding.
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The onus of checking the legitimacy is on the users of the certificate.
4. In case of any discrepancy please inform the Competent Authority.

DISPUTED DOMAIN NAME: WWW.SURYASOLAR.CO.IN  
IN THE MATTER OF INDRP CASE NUMBER 1341/2021  
.IN REGISTRY(NATIONAL INTERNET EXCHANGE OF INDIA)

SURYA ROSHNI LIMITED

PADMA TOWER- 1,

RAJENDRA PLACE,

NEW DELHI- 110008

....COMPLAINANT

AND

SURYA SOLAR ENERGY SYSTEMS

H. NO. LIG B-272, DR. A.S. RAO NAGAR,

ECIL, HYDERABAD- 500062

And

CHARVIK IT SOLUTIONS & SERVICES LLP

H.NO. 11-95, Sy No. 782, WATER TANK LANE,

OPP. CISF NISA GATE NO.2, HAKIMPET,

HYDERABAD- 500078

....RESPONDENT

AWARD

1. The present domain name dispute relates to the registration of the domain name www.suryasolar.co.in in favor of the Respondent.

*V. P. Pathak*  
V. P. PATHAK  
H.O.G.  
Former Judge  
Sole Arbitrator



2. The Complainant has filed the instant complaint challenging the registration of the domain name "suryasolar.co.in" in favor of the Respondent. Pursuant to the ".in" Domain Name Dispute Resolution Policy (INDRP) and the rules framed there under, the Complainant has preferred this arbitration for raising this dispute for reprisal of its grievances.
3. The Declaration of impartiality and acceptance was sent by the Tribunal on 24/02/2021 and with that I gave my consent, to adjudicate the instant domain name dispute. I was handed over the complaint and accordingly as per **Rule 5 of the INDRP Rules**, I issued notice on the same day i.e., on 24.02.2021 calling upon the Respondent to file its reply on the complaint within fifteen days from the date of receipt of the notice and rejoinder within fifteen days thereafter.
4. **Rule 2 of INDRP Rules of Procedure** provides for communication/services of complaint. In accordance with this rule, the respondent was sent the complaint on the email shown in the domain name registration data in .IN Registry's WHOIS database, which has not returned so far.
5. On the direction of the Tribunal, Complainant also sent an email and hard copy of the complaint to the Respondent. But, no reply was filed by the Respondent.
6. Since the complainant has been served through one of the modes as specified in Rule 2 (above mentioned), I am of the view that the service of the complaint upon the respondent is complied with.
7. Since, there has been no response from the Respondent's to the Complaint, so according to **Rule 12 of INDRP Rules of Procedure** which states about default of parties wherein it is clearly mentioned that:

"In the event of any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex-

*V. P. Patil*  
V. P. PATIL  
N. 102  
For  
Sole Arbitrator

*parte* by the Arbitrator and such arbitral award shall be binding in accordance to law."

8. Further, **Section 25 of the Arbitration Act, 1996** says that the Arbitrator may pass *ex-parte* in the absence of any of the parties to Arbitration. It is also the duty of the Arbitrator to inform the parties concerned about his intention to proceed with the case *ex-parte*.

9. **Order VIII Rule 10 of CPC** also authorizes the arbitrator to pronounce judgment against the Respondent or to make such an order in relation to the Complaint as it thinks fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed.

10. Following are some of the cases in which the court has allowed *ex-parte*, when either of the parties have not responded to the Tribunals notice:

- **SARASWATHI CHEMICALS v. BALMER LAWRIE & CO. LIMITED. 2011 (3) TMI 1759 MADRAS HIGH COURT:** it was held that the Arbitrator has to inform the parties that he intends to proceed with the reference at a specified time and place , whether that party attends or not. If still a party does not attend, then only the Arbitrator is at the liberty to proceed *ex-parte* against him.
- **NAGASRINIVASULU v. GLADA FINANCE LTD. 2008 (11) TMI 724 MADRAS HIGH COURT:** it was held that where a party did not appear on the adjourned date inspite of a note by the Arbitrator in the minutes of hearing that if the party does not appear on the appointed date and time, the hearing would proceed *ex-parte* and no separate notice is given, the *ex-parte* award in such a case is legal.
- **P.S. OBEROI v. ORISSA FOREST CORPORATION LTD. 1982 (3) TMI 275- ORISSA HIGH COURT:** has held that when

*V. P. Pathay*  
V. P. PATHAY  
H.J.S.  
Former Judge  
Sole Arbitrator



from the conduct of the objectors to an award, it is abundantly clear that they had no intention of appearing before the arbitrators, the arbitrators are justified in proceeding *ex-parte*.

- DAISY TRADING CORPORATION v. UNION OF INDIA 2001 (10) TMI 1183- DELHI HIGH COURT: it was held that where the Arbitrator had allowed a period of three weeks to the appellant to file its counter claim and reply to the claim statement of the Respondent, then it was the bounden duty of the Arbitrator to have ascertained the date on which service had been effected on the appellant before taking steps to proceed *ex-parte*.
- STATE OF U.P v. COMBINED CHEMICALS CO. (PO LTD. 2011 (1) TMI 1527- SUPREME COURT: it was held that where the appellant sought adjournment on the ground that he had filed an appeal against the order of the trial court on the question of maintainability of petition, the arbitrator granted adjournment but the appellant failed to obtain stay order from the appellant court and continued to abstain from the arbitral proceedings, the arbitrator was justified in proceeding *ex-parte* against such a party.

11. In the above situation when the Respondent has not responded even after lapse of stipulated period for filing their counter, an order was passed on 12/03/2021 that the case will now proceed *ex-parte* and an award will be passed. **Rule 6 of the INDRP Rules** also states that an Arbitrator has to be impartial and independent therefore, I accordingly proceed to pass the award on merit.

*V. P. Pathak*  
V. P. PATHAK  
H.J.S.  
Former Judge  
Sole Arbitrator

CONTENTIONS:

12. Since the Respondent has been proceeded ex-parte, I shall deal with the contention of the Complainant. The complaint has been filed for transfer of the disputed domain name www.suryasolar.co.in, which was registered with the Respondent No. 2 on 09-01-2021.
13. Primarily, the assertion of the Complainant in its complaint is that the disputed domain name is identical and similar to the trade mark of SURYASOLAR. The Complainant in its complaint has stated that, Surya Roshni Limited is one of the largest multinational with a revenue of USD \$ 840 million (6,000 Crore INR)(around) for the year ending 2018-2019, which was set up in the year 1973 with a small steel pipe unit in Bahadurgarh which was setup in the year 1973 with a small steel pipe unit in Bahadurgarh, Haryana (around 30 Kms away from Delhi). The Complainant was incorporated in the year 1973 and has been promoted by Shree Basudev Agarwal and his son Shri J.P. Agarwal.
14. The Complainant began its lighting business in the year 1983 with the setting up its lighting products factory in the year 1984 at Kashipur, Uttar Pradesh followed by the second factory in the year 1992 in Malanpur, Madhya Pradesh. Other than the steel and lighting business, the Complainant also deals in Electrical goods, Home Appliances, Fans, Geysers, Water Heaters, and other Heating and Cooking Appliances, CPVC/UPVC pipes and fittings, Solar lightning and solar operated Equipments, devices and various other products.
15. The Complainant company and their predecessors-in-title have been carrying on the business of manufacturing, marketing, exporting of variety of products such as Solar driven products. Solar Panels, Solar related electrical goods, Heating products including water heaters, geysers, immersion heaters, room heaters, air heaters and many more. The "SURYA" brand has become a

*V. P. Rathore*  
 V. P. RATHORE  
 Former Justice  
 Sole Arbitrator



- household mark through its use in almost every home since 5 decades of legacy in the Indian market. All the said goods and services of the Complainant are well covered in trademark classes from 1-42 of the Trademarks Act, 1999.
16. The Complainant not only caters to the Indian public but has presence around 44 countries worldwide including Bangladesh, Pakistan, Sri Lanka, Nigeria, China, Algeria etc. That the Complainant owns and maintains a website [www.surya.co.in](http://www.surya.co.in) which is the corporate website of the Complainant and detailed information about history, activities, products etc of the Complainant and its consumers and affiliates.
17. The Complainant is the owner and the registered proprietor of the Trade Mark "SURYA" and various thereof, which are registered under different classes of the Trade Mark registry as early as the year 1981 and has been maintained continuously since those days by the Complainant.
18. It is also to say that, the Complainant sales, markets and promotes a wide range of products and services through a number of authorized partners, dealers, retailers, both physical and online resellers through Amazon, Flipkart, Snapdeal etc. It is humbly submitted that the Complainant runs awareness campaigns for public at large and has been making conscious and cautious efforts to curb the sales, marketing and promotion of illegal, unauthorized and often, destructive products & services. The Complainant also takes stringent steps to ensure customer safety, quality and standards of the products and related services. In fact, the Complainant also operates a toll free line at 1800-102-5657 for the customers care services and verification of the "SURYA" genuine product.
19. The Complainant has filed good number of cases and FIRs against several infringing parties and has obtained decrees against them. Few such actions taken against third parties have been attached as ANNEXURE F.

*V.P. Pathak*  
V. P. PATHAK  
H.N.B.  
Former JUDGE  
Sole Arbitrator

20. Recently, the Complainant has obtained a few awards against false domains which were similar/identical to complainant's domain. In such cases the impugned domain was transferred to the Complainant by imposing cost on the Respondent's. Copy of awards is attached as **ANNEXURE G**.
21. The Complainant also markets and promotes its "SURYA" branded products through both print and online media. Celebrities like Preeti Zinta and Sonali Bendre have promoted this brand name "SURYA". Refer to **ANNEXURE H** for website, advertisement and promotional material.
22. The Complainant also holds various Copyright Registrations for the "SURYA" trade mark label which was specifically designed and the said artistic lettering style being a unique design stands registered under the Copyright Act, 1957 under numbers: *A-129617/2019, A-86580/2009, A-64247/2003, A-61394/2002, A-60433/2002, A-55046/1998, A-54370/1997 and A-51050/1991*.
23. The Complainant learned that the Registrant/ Owner of the website flagrantly used the Complainant's registered trademark on the said website for promoting goods and services, which were identical to the goods and services of the Complainant Company in respect to its brand "SURYA".
24. The Respondent flagrantly and prominently used the Complainant's well known trademark "SURYA" on impugned domain SURYASOLAR.CO.IN which is prima facie similar/identical to the Complainant's domain SURYA.CO.IN for the identical goods & services.
25. Owing to the confusing similarity of the impugned domain with the Complainant's registered trademarks and domain name SURYA.CO.IN, the customers and internet users, are *inter alia* bound to: visit the website, which is hosted on the impugned domain name, under pretext that the same belong to the Complainant; believe that the Respondent's business is an another vertical of complainant group or the Respondent's are closely

*V.P. Pathak*  
**V. P. PATHAK**  
 H.J.S.  
 Former Judge  
 Sole Arbitrator



associated with the Complainant; the Respondent is providing quality products and services as provided by the Complainant.

26. It is clear that the Respondent/Website owner has adopted the impugned domain name with *mala fide* intention to impersonate itself as the Complainant, misrepresent itself and pass off unauthorized, substandard products and services as that of the Complainant and also to misappropriate the Complainant's reputation, goodwill and customer loyalty for its own wrongful profits.

27. It is submitted that by use of the impugned domain name, which clearly suggest that the Respondent is an authorized or somehow connected to the Complainant, it is much likely possible that the Respondent has already deceived, cheated and has duped several unwary customers of the Complainant who may have also availed the Respondent's products and services under confusion that the said products and services are offered affiliated by the Complainant.

#### ANALYSIS

28. Since the domain www.suryasolar.co.in is registered by Respondent No. 1, so the main party is Respondent No. 1 and they have not turned up even after service of summons.

29. As the proceedings are set ex-parte the Respondent, I shall deal with the complaint on its prayer for transfer of the dispute domain name. The disputed domain name www.suryasolar.co.in consist the mark 'SURYASOLAR', which is the registered trademark of the Complainant. "SURYASOLAR" is a mark registered which has been established by the Complainant over a period of time by its use. The Complainant has used it worldwide, including India, and owns this registered trademark. In support of which, the Complainant has placed on record the details of trademark registration. All these support the Complainant's right over the name

V. P. Prasad  
H. J. S.  
Former Judge  
Sole Arbitrator

me 'SURYASOLAR'. Therefore, the Complainant's claim that it has a right over the disputed name stands proved.

30. Secondly, as the Respondent's action to register the said domain name is not bona fide, therefore, the said registration is done in bad faith. The disputed domain name wholly incorporates the Complainant well known mark 'SURYASOLAR' and mentions the same multiple times creating an impression that the Respondent in some way is associated with the Complainant. The Complainant has specifically stated that it has no relation with the Respondent commercially or otherwise. So, therefore, the use of Trademark SURYASOLAR by the Respondent is not lawful. Therefore, the Respondent has no legitimate right over the said domain name.

#### CONCLUSION:

31. Considering the facts and circumstances of the present matter and taking view of the precedents in this context, I am of the view that the Complainant has proprietary right over the mark 'SURYASOLAR' followed by the Complainant's registered Trademark 'SURYASOLAR' will not distinguish the Respondent's disputed domain name. Under the facts and circumstances and on perusal of the records, I deem it fit and proper to allow the prayer of the Complainant and direct the Registry to transfer the said domain name i.e., www.suryasolar.co.in in favor of the Complainant.

32. It is made clear to all concerned that the award is being passed in accordance with the INDRP Rules and Arbitration and Conciliation Act, 1996 has been fully followed by the Tribunal.

#### ORDER:

*V. P. Pathak*  
V. P. PATHAK  
Former Judge  
Sole Arbitrator



33. Since the Complainant has proved its case through its documentary evidence under INDRP Rules, so it is directed that the disputed domain name www.suryasolar.co.in be transferred to the Complainant forthwith, .IN Registry to do the needful. Parties to bear their own cost.

34. This award is passed today at New Delhi on 27/03/2021.

V.P.PATHAK

V.P. Pathak  
27/03/2021

SOLE ARBITRATOR

DATE: 27/03/2021

Former Judge  
Sole Arbitrator