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## INDIA NON JUDICIAL

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Purchased by	: V P PATHAK
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
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AWARD

V.P. Pathak

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

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BEFORE THE ARBITRAL TRIBUNAL

V.P.PATHAK

SOLE ARBITRATOR

ARBITRAL AWARD

DISPUTED DOMAIN NAME: <http://www.2dg.in/>

IN THE MATTER OF INDRP CASE NUMBER 1399/2021

.IN REGISTRY(NATIONAL INTERNET EXCHANGE OF INDIA)

DR. REDDY'S LABORATORIES LIMITED

8-2-337, ROAD NO. 3,

BANJARA HILL, HYDERABAD

TELANGANA- 500034

....COMPLAINANT

AND

CHANDAN M A

....RESPONDENT

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



### AWARD


1. The present domain name dispute relates to the registration of the domain name http://www.2dg.in/ in favor of the Respondent.
2. The Complainant has filed the instant Complaint challenging the registration of the domain name "http://www.2dg.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 30.06.2021 and with that I gave my consent, to adjudicate the instant domain name dispute. However, the domain name mentioned in the mail of impartiality and acceptance was 2ZG so, NIXI asked the Tribunal to send the declaration of acceptance for the correct domain name 2DG and hence, after correction the declaration for impartiality and acceptance was sent on 01.07.2021. I was handed over the Complaint and accordingly as per **Rule 5 of the INDRP Rules** I issued a notice dated 02.07.2021 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, by NIXI, which has not been responded to so far.

  
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**H.J.S.**  
**Former Judge**  
**Sole Arbitrator**

5. It is pertinent to mention here that the WHOIS database only shows the name of the Respondent and not the address.
6. Since the Respondent 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 Respondents 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-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

  
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party does not attend, then only the Arbitrator is at 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 in spite 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 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 counterclaim 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

  
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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, even though an order was again passed on 18.07.2021 that the case will now proceed *ex-parte* and an award will be passed. **Rule 6 of the INDRP Rules** states that an Arbitrator has to be impartial and independent therefore, I accordingly proceed to pass the award on merit.

### CONTENTIONS

12. Since the Respondent has proceeded *ex-parte*, I shall deal with the contention of the Complainant. The Complaint has been filed for transfer of the disputed domain name <http://www.2dg.in/>, which was registered by the Respondent in May 2021.

13. Primarily, the assertion of the Complainant in its Complaint is that the disputed domain name is identical and similar to the trademark of 2DG. However, as per the Complaint the Complainant writes "The Complainant has registration for its 2DEGE mark."

14. The Complainant here has annexed two Annexures apart from the WHOIS database. **ANNEXURE 1** shows that the TradeMark the Complainant had applied for was, "2 DG." In the same Annexure on page 4 and also in **ANNEXURE 2** it shows that the Complainant has obtained the TradeMark as "2DEGE." (Page 4 of **ANNEXURE 1** and **ANNEXURE 2** both show the TradeMark Certificate which shows the TradeMark as "2DEGE.")

  
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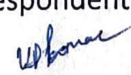
15. The Complainant in its Complaint has stated that the company, Dr. Reddy's Laboratories Limited has been in India since 1984 and is one of the leading pharmaceutical companies in India.
16. It has three businesses - Pharmaceutical Services and Active Ingredients, Global Generics and Proprietary Products – the Company offers a portfolio of products and services, including Active Pharmaceutical Ingredients ("APIs"), Custom Pharmaceutical Services ("CPS"), generics, biosimilars and differentiated formulations.
17. With a paid-up capital of 830 million, the Complainant has its principal markets in India, Russia, the United States, the United Kingdom and Germany. Further, the Complainant also reaches out to patients in various other markets such as Canada, South Africa, Australia, Brazil, China and others.
18. According to the Complainant the domain name in question is identical to the Complainant's trademark **2DG**. But this assumption of the Complainant is not bona fide as per the Annexures attached and mentioned-above.

### ANALYSIS

19. Since the domain <http://www.2dg.in/> is registered by Respondent, he has not turned up even after service of summons.
20. As the proceedings are set *ex-parte*, I shall deal with the Complaint on its prayer for transfer of the disputed domain name.
21. The disputed domain name <http://www.2dg.in/> consists of the mark 2DG & 2DEGE, which is the registered trademark of the Complainant. The Complaint given to the Tribunal seems to be incomplete and vague.

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

22. The TradeMarks in this case are two which are not clear. The Complainant has applied for "2DG" TradeMark and they obtained "2DEGE" TradeMark. In the Complaint also, the Complainant has mentioned that "The Complainant has registration for its 2DEGE mark."
23. If the Complainant has registration for 2DEGE then why is the Complainant also focussing on the TradeMark 2DG.
24. The dispute is regarding domain names, the domains are used by internet users and such users are not illiterate people who will not understand the difference between 2DG and 2DEGE.
25. The only recurring detail by the Complainant against the Respondent is that, the Respondent has been using a similar/identical domain name as that of the Complainant since May 2021.
26. It is pertinent to mention again and again that the annexed documents with the Complaint do not show that they are using one particular TradeMark. **ANNEXURE 1** shows that the TradeMark they applied for is "2DG". However, the TradeMark Certificate shows the mark as "2DEGE".
27. This above-mentioned mark does not show that even the TradeMark is similar so, the Complainant cannot say that the Respondent has been using a similar/identical domain name.
28. All these above statements support that the Complainant's TradeMark is not clear whether it is 2DG or 2DEGE. Therefore, the Complainant's claim that it has a right over the disputed name, does not stand proved.
29. The disputed domain name does not wholly incorporate the Complainant's well known mark because it is not clear as to whether it is "2DG or 2DEGE".
30. It is worth to mention here that, the Complainant itself has mentioned in the Complaint that they have no evidence against the Respondent wherein they

  
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**H.J.S.**  
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can say whether the Respondent has used the domain name for fulfilling any commercial purpose.

31. So, in such a case the Complainant should not be bothered as the Respondent is not using the Complainant's domain name and it is not yet sure as to which TradeMark belongs to the Complainant i.e., 2DG or 2DEGE.

### CONCLUSION


32. Considering the facts and circumstances of the present matter, I am of the view that the Complainant has not given a proper Complaint to rely upon to the Tribunal for passing of award in their favour.

33. The Complainant has 2 types of TradeMarks mentioned in their Annexures and Complaint. With two different TradeMarks, it is not possible for the Tribunal to refrain the Respondent from using <http://www.2dg.in/> as this disputed domain name has no specific TradeMark which is very valuable in the current case and especially for passing of award.

34. Under the facts and circumstances and on perusal of the records, I deem it fit and proper that the prayer of the Complainant is rejected. The transfer of the said domain name i.e., <http://www.2dg.in/> will not be in favor of the Complainant.

35. It is being mentioned yet again that the dispute is regarding domain names, the domains are used by internet users and such users are not illiterate people who will not understand the difference between 2DG and 2DEGE.

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

  
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**ORDER**

37. Since the Complainant has not proved its case so their case is rejected.

38. Parties to bear their own cost.

39. This award is passed today at New Delhi on 23.07.2021.

*V.P. Pathak*  
23/07/2021  
**V. P. PATHAK**  
**H.J.S.**  
**Former Judge**  
**Sole Arbitrator**

**SOLE ARBITRATOR**

**DATE: 23.07.2021**