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ARBITRATION AWARD

INDRP CASE No. 1407

Gartner Inc. [Complainant] v Sandeep Kumar [Respondent]

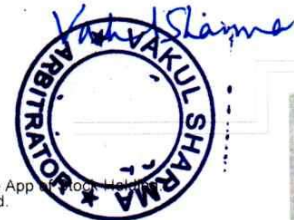
Disputed Domain Name: CAPTERRA.IN

BEFORE THE SOLE ARBITRATOR: VAKUL SHARMA

DATED: SEPTEMBER 30, 2021

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ARBITRATION AWARD

In the matter of:

**Gartner, Inc.,
a Delaware corporation,
56 Top Gallant Road,
Stamford,
CT 06902 USA**

[Complainant]

Disputed Domain Name:

-v-

**Sandeep Kumar, Anand Vihar,
Solan, Himachal Pradesh, 173212,
India**

www.capterra.in

[Respondent]

INDRP CASE No. 1407

1. The Complainant

The Complainant, Gartner Inc. is US \$4 Billion Delaware Corporation, based in USA. The Complainant is the owner of the trademark 'Capterra' and other 'Capterra' formative marks across several countries. The Capterra business of the Complainant is operated through



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Capterra, Inc. which is a subsidiary of the Complainant, Gartner, Inc., the world's leading research and advisory company. The Complainant's Capterra service is a digital marketplace serving as an intermediary between buyers and technology vendors in the software industry.

2. Respondent

In this administrative proceeding, the Respondent is identified by the Complainant primarily on the basis of WHOIS data.

3. The Registrar

The Registrar with which the domain name is registered is: GoDaddy.com LLC.

4. Disputed Domain Name

<CAPTERRA.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.



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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 09/07/2021 and subsequently appointed by NIXI as an Arbitrator in the above matter [INDRP No. 1407] vide email dated July 12, 2021.
- (iv) Complainant submitted a Copy of the Complaint and Annexures to me as well as to the Respondent vide email dated July 14, 2021 from its email ID in accordance with the Rules.
- (v) Complainant has further placed on record as proof of dispatch a Speedpost Receipt bearing no. ED83961222N dated July 14 2021.
- (vi) Complainant has filed its service compliance report vide email dated July 17, 2021 informing that email sent to email ID: addedsonu@gmail.com was delivered, however email sent to email ID: postmaster@capterra.in has bounced back on July 14, 2021. Further, the Complainant has submitted that the "copy of the tracking



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report as retrieved from the India Post website showing the status as 'Item Redirected to Saproon HO Insufficient Address'. A copy is annexed as Annexure – A with the service compliance report”.

- (vii) In view of the completion of procedures related to Service of Complaint as mandated under the Rules, I issued a Notice dated 28/07/2021 to the Respondent to submit its reply to the above said complaint within 15 days from the date of the Notice failing which the Complaint shall be decided on merit.
- (viii) I issued another notice dated 13/08/2021 informing the parties that in the interest of justice a final opportunity being to the Respondent to submit its reply within next five days of the notice failing which the Complaint shall be decided ex-parte on the merits of the complaint.
- (ix) Despite giving a final opportunity, the Respondent has failed to submit any reply and hence vide notice dated 19/08/2021, I informed both the parties that “*the Respondent right to file Reply stands closed and the Complaint shall now be decided ex-parte on the basis of the merits of the Complaint.*”
- (x) The Arbitration Award is now pronounced on this day, i.e., September 30, 2021 after considering the contentions of the Complainant and the Policy framework under my signatures. This is an **ex-parte order** as the Respondent has failed to file their Reply despite being given adequate opportunity.



7. Contentions of the Complainant

Complainant submits as follows:

- (i) The Complainant, Gartner, Inc. is a US \$4 Billion corporation and a member of the S&P 500.
- (ii) The Complainant's services span across various niches, inter alia, providing strategic insight, technically in-depth knowledge in communications, customer service and support, finance, human resources, legal and compliance, marketing and sales.
- (iii) The Complainant has been ranked Number 621 (six hundred and twenty one) in the Forbes 'Fortune 1000' ranking and ranked Number 73 (seventy three) in the Forbes '100 Fastest-Growing Companies Globally' ranking in 2020.
- (iv) The Complainant's Capterra service is a digital marketplace serving as an intermediary between buyers and technology vendors in the software industry.
- (v) Nearly 10% of the total traffic on the Complainant's <Capterra.com> domain name originates from India, which makes India Capterra's third biggest market based on volume of traffic, after the United States and the United Kingdom. Reliance has been placed on Annexure F.
- (vi) The Complainant's website is accessible in India through its <Capterra.com> domain name. At present, has more than 300 India based vendors with fixed landing pages (vendor pages) accessible through the Complainant's said website. Reliance has been placed on Annexure G.
- (vii) The trademark 'Capterra' was first adopted by the Complainant (through its predecessor-in-title) in the year 1999. The Complainant's 'Capterra' trademark was



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first filed for protection in the United States vide trademark application no. 76045332, which registration remains valid and subsisting till date. The Complainant (through its predecessor-in-title) has been using the 'Capterra' trademark continuously, consistently and extensively since 1999 in respect of the abovementioned services that they provide to clients globally, as a consequence of which the Complainant's 'Capterra' trademark enjoys statutory protection and recognition across various jurisdictions.

- (viii) A list of trademark registration in multiple jurisdictions, like Brazil, United States of America, Singapore, New Zealand, International TM (Madrid Protocol), European Union (EUTM), Mexico, South America, Switzerland and United Kingdom, alongwith pending (Canada) under different classes are placed on record by the Complainant.
- (ix) The Complainant also owns 'Capterra' country code top level domain names (ccTLD) in various jurisdictions [<capterra.com>, <capterra.com.sg>, <capterra.com.au>, <capterra.co.nz>, <capterra.ca>].
- (x) Due to such extensive and consistent international use, the trademark 'Capterra' of the Complainant has acquired a unique reputation and goodwill in the eyes of the general public and trade, and services/products bearing the trademark 'Capterra' are exclusively associated with the Complainant alone. The 'Capterra' trademark of the Complainant has assumed the distinction of being a well-known and famous trademark across the world, and is considered synonymous with the highest quality of services that are offered by the Complainant.



- (xi) The presence of any other entity / individual that uses or incorporates 'Capterra' as part of its trademark, trade name and / or domain name would inevitably result in the public and trade getting deceived and misled into assuming that all such services/products are emanating from the Complainant itself.
- (xii) The Complainant became aware of the Respondent and his registration of the impugned domain 'Capterra.in' recently. On 10th May 2021, the Complainant sent a letter to the Respondent offering to settle the matter amicably without resorting to legal proceedings. Reliance has been placed on Annexure H.
- (xiii) The Respondent has procured the impugned domain name 'Capterra.in' in bad faith with the sole objective of squatting and preventing the Complainant from obtaining and/or using the said domain name for its services.
- (xiv) The Respondent can, by no stretch of imagination, explain his purchase and/or use of the 'Capterra.in' domain. This goes on to show the mala fide intent of the Respondent, who is squatting on the impugned domain 'Capterra.in' that he obtained by illegally and maliciously exploiting the circumstances at the time when the impugned domain 'Capterra.in' was available for purchase.
- (xv) Further, trademarks and domain names are not mutually exclusive and there is an overlap between the trademarks and services rendered under domain names [*Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.*, 2004(3) AWC 2366 SC]. It is also trite law that the mere addition of the ".in" ccTLD is insufficient to render the domain name dissimilar to the Complainant's well known and famous 'Capterra' trademark, as well as the Complainant's 'Capterra.com' and other 'Capterra' related domain names [*Morgan Stanley vs. Bharat Jain* (INDRP/156)]



In the context of the above, the Complainant has made assertions to establish presence of each of the three elements required by paragraph 4 of the Policy.

I. 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?

In response to the first element, the Complainant has made following submissions:

- (a) That the Complainant not only owns 'Capterra' country code top level domain names (ccTLD), like <capterra.com>, <capterra.com.sg>, <capterra.com.au>, <capterra.co.nz>, <capterra.ca> but has also registered Capterra under different classes of trademark under various jurisdictions.
- (b) That the Respondent has illegally, dishonestly and with mala fide motives procured the registration of the impugned domain name <CAPTERRA.IN> without the leave, license or consent of the Complainant, which is a direct infringement of the Complainant's intellectual property and common law rights.
- (c) That the clients and consumers who intend to reach the Complainant's website may end up getting confused and/or deceived and get redirected to the impugned domain <Capterra.in>. Such confusion and/or deception on the part of the public will amount to irreparable loss and damage to the Complainant's stellar reputation and goodwill. While drawing traffic meant for the Complainant's website to the Respondent's impugned domain name, the Respondent will also stand to gain



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illegal and unlawful revenue by way of the advertisements displayed on its website.

- (d) That the presence of any other entity / individual that uses or incorporates 'Capterra' as part of its trademark, trade name and / or domain name would inevitably result in the public and trade getting deceived and misled into assuming that all such services/products are emanating from the Complainant itself.
- (e) That the Respondent by registering the domain name which is identical to the Complainant's trade mark and also its domain name: <capterra.com> thereby diluting the trademark of the Complainant and causing harm to its reputation.
- (f) That it is apparent that the Respondent's impugned domain name wholly contains the Complainant's trade mark **CAPTERRA** and is identical to the trademark in which the Complainant has statutory rights as well as common law rights.

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

In response to the second element, the Complainant has made following submissions:

- (a) That the Respondent clearly has no legitimate interest in the impugned domain name 'Capterra.in' which is evident upon a mere cursory review of the Respondent's website, wherein there is no substantial content whatsoever, and only hyperlink-based advertisements can be found which direct the user to the advertiser's website. The unlawful



acquisition of the impugned domain name 'Capterra.in' without due reason and with the sole objective of obtaining illegal revenue on account of misdirected traffic intending to reach the Complainant's website, further establishes that the Respondent has registered the same in bad faith.

- (b) That it is an established principle that a domain name adopted by the Complainant is entitled to equal protection against passing off as in the case of a trademark. In support of this submission, the Complainant has placed reliance upon the judgments in *Yahoo! Inc. vs Akash Arora & Anr.* [78 (1999) DLT 285], and *Rediff Communication Ltd. vs. Cyberbooth and Anr.* [AIR 2000 AIR Bom. 27]
- (c) That the Respondent is not affiliated and/or connected in any manner whatsoever with the Complainant or its group entities. It is also pertinent to note that the Respondent has never had any prior dealings with the Complainant or its affiliates and/or subsidiaries in connection with the Capterra business of the Complainant. On the basis of these facts, there cannot be any legitimate interest or justification made out by the Respondent in respect of claiming any right in the impugned domain name or otherwise. The Respondent has no authorization, leave, license and/or consent from the Complainant to use the impugned domain name in any manner.



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

In response to the third element, the Complainant has made following submissions:

- (a) That the disputed domain name <capterra.in> fully incorporates the Complainant's reputed mark **CAPTERRA** and it is evident that the Respondent can have no rights or legitimate interest in the domain name.
- (b) That the Respondent has acquired and registered the impugned domain name <Capterra.in> primarily for the unlawful purpose of selling, renting, or otherwise transferring the impugned domain name registration to the Complainant which is the owner of the trademark '**CAPTERRA**' along with several 'Capterra' based domain names, or to a competitor of the Complainant, for valuable consideration in excess of the documented out-of-pocket costs incurred by the Respondent in relation to the domain name.
- (c) That the sole purpose of the adoption of the Complainant's trademark in its entirety is to misappropriate the Complainant's reputed trademark **CAPTERRA** and to prevent the Complainant as the owner of the 'Capterra' trademark to exercise his legal rights and conduct business using a corresponding domain name that reflects the trademark owned by it.

8. Respondent's Contentions

Despite giving adequate opportunity, Respondent has failed to submit any Reply.



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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 Complainant must prove that:

- (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 provisions of INDRP, pleadings, including documentary 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 Complainant's pleadings, documentary evidence and 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 details of its 'CAPTERRA' trade mark registrations under various jurisdictions and has submitted web pages/documentary evidence to highlight the fact that CAPTERRA trademark and the 'CAPTERRA' name, as a trade name, corporate name



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[Capterra Inc.], domain name, or all other distinctive sign identifying the company or its products and services. There is no document on record to suggest that the Respondent has ever been given authorization, leave, license and/or consent to incorporate the 'CAPTERRA' trademark in the disputed domain name: <CAPTERRA.IN>. The Complainant has placed on record its portfolio of domain names <capterra.com [gTLD] and <capterra.com.au>, <capterra.com.sg>, <capterra.co.nz>, <capterra.ca> [ccTLDs] alongwith copies of trademark registration certificates as a *bonafide* proof that its interest in the disputed domain name is legitimate.

I consider that there is a force in the arguments of the Complainant that the words 'CAPTERRA' is legally associated with Complainant's company. Furthermore, the Respondent has failed to observe the legal obligations as laid down in Paragraph 3 [Registrant's Representations] of the INDRP, which provides:

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.*



In my opinion, the Respondent has knowingly registered the Complainant's trademark in the form of an identical name <CAPTERRA>, which is followed by a *suffix*, .IN [ccTLD] to complete the domain name string <CAPTERRA.IN>. In fact the Respondent's registration of an identical domain name <CAPTERRA> is an attempt on the part of the Respondent to take a free ride on the Complainant's reputation and goodwill. However, I found it strange that as per WHOIS details [Annexure A of the Complaint] that the disputed domain name was registered on July 10, 2016 and yet it took five long years to the Complainant to discover the infringing domain name! The Complainant has failed to offer any explanation for this which I feel is not right. However, in view of the documentary evidence tendered before me, I am inclined to accept the Complainant's argument that the Respondent/Registrant has illegally, dishonestly and with mala fide motives procured the registration of the impugned domain name <CAPTERRA.IN> without the leave, license or consent of the Complainant, which is a direct infringement of the Complainant's intellectual property and common law rights. Furthermore, there is a force in the Complainant's argument that the presence of any other entity / individual that uses or incorporates 'CAPTERRA' as part of its trademark, trade name and / or domain name would inevitably result in the public and trade getting deceived and misled into assuming that all such services/products are emanating from the Complainant itself.

I am of the opinion that the Complainant by a deliberate design chose to register the disputed domain name <CAPTERRA.IN> which is identical to the Complainant's trademark **CAPTERRA**, which is a coined word and distinct. It seems that the Respondent knew it all along that the disputed domain name being identical to the Complainant's registered trademark **CAPTERRA** and thus failed to fulfil his legal obligations as laid down in Paragraph 3 of the Policy as referred above. I am of the opinion that the benefit under the circumstances lies with



the Complainant, as despite ample opportunities the Respondent has failed to contest or counter the assertions made by the Complainant eloquently in its Complaint. It is thus very clear that the Respondent violated the conditions as laid down in the Paragraph 3(a) – (d) of the policy as mentioned above. 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?

As discussed above, the Respondent has knowingly registered the Complainant's trademark in the form of an identical name <CAPTERRA>, which is followed by a *suffix*, .IN [ccTLD] to complete the domain name string <CAPTERRA.IN>, this clearly demonstrates lack of legitimate interests on the part of the Respondent.

Also, Paragraph 6 of the INDRP provides:

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;

(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.

I have evaluated the evidence on record and came to a conclusion that none of the limbs highlighted in the Paragraph 6 of the Policy above have been present to give the Respondent/Registrant any rights and legitimate interests in the disputed domain name. There is a merit in the Complainant's argument that the acquisition of the impugned domain name was unlawful and moreover the Respondent has never been affiliated or connected in any manner whatsoever with the Complainant or its group entities. Also, the fact that the Respondent has no authorization, leave, license and/or consent from the Complainant to use the impugned domain name in any manner and without any submissions/documentary evidence to the contrary has made the Respondent position untenable in the eyes of law. In view of the above it is very much clear that the Respondent actions are neither *bonafide* nor fall in the category of legitimate non-commercial or fair use of domain name. The judgments passed by the High Court(s) in *Yahoo! Inc. vs Akash Arora & Anr.* [78 (1999) DLT 285], and *Rediff Communication Ltd vs. Cyberbooth and Anr* [AIR 2000 AIR Bom. 27] supports the Complaint's contentions.

I am of the opinion, 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?

As discussed above, use of the disputed domain name by the Respondent, when it has no legal rights to register the disputed domain name in the absence of any legal arrangement with the Complainant – only proves *malafide* intent on the part of the Respondent.



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Further, Paragraph 7 of the policy provides:

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) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The documentary evidence placed on record by the Complainant clearly shows that the Respondent has indeed taken advantage of the Complainant's goodwill and reputation by registering the disputed domain name <CAPTERRA.IN> primarily to attract Internet users to the Registrant's website or other on-line location, i.e., by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.



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The registration and use of a domain name that exploits the goodwill of another's trademark is considered bad faith under INDRP (*Eli Lilly and company v Andrew Yan* – INDRP/195). The bad faith intent is clear from the fact that the said disputed domain name opens into a website, wherein there is no substantial content whatsoever, and only hyperlink-based advertisements can be found which direct the user to the advertiser's website. In other words, the Complainant's assertion that the Respondent "*.....stands to gain illegal and unlawful revenue by way of the advertisements displayed on its website*" is correct. Display of advertisements on the website carrying the Complainant's identical trademark **CAPTERRA** is indeed a wrongful gain to the Respondent and further it definitely erodes the reputation and goodwill of the Complainant.

Interestingly, the Complainant has placed reliance on a letter dated May 10, 2021 [Annexure H] written by William Dorgan, GVP, Commercial Legal & Global IP, Gartner Inc. (on behalf of its subsidiary Capterra Inc.) offering 'good money' to the Registrant (Respondent herein) seeking transfer of ownership in the domain name <capterra.in>. It is an admitted fact that the Registrant did not respond to this offer. I am of the opinion that the Registrant not responding to the offer does not absolve him from bad faith intent as he is still continuing with his illegal activities of providing access to a website with active hyperlinks at the cost of the Complainant's reputation and goodwill. I am of the opinion that such reckless behaviour/conduct has no space in "domain name ecosystem" and all such actions should never been given any legitimacy. However, as an Arbitrator it is my duty to advise that in view of the circumstances of this case, the Complainant could have approached NIXI under INDRP at the very first instance rather than offering 'good money' to a cyber squatter. Offering money to a cyber squatter is always counterproductive!



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Having regard to the circumstances of this particular case, I hold that the Complainant has been able to prove that the Respondent has 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 <CAPTERRA.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 thru email for their information and record.


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(Sole Arbitrator)



Dated September 30, 2021