



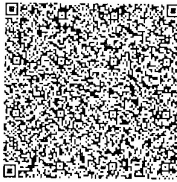
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Certificate No.	: IN-DL09241650810985T
Certificate Issued Date	: 11-Aug-2021 02:30 PM
Account Reference	: IMPACC (IV)/ dl717303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL71730315976998007975T
Purchased by	: AJAY GUPTA ARBITRATOR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: AJAY GUPTA ARBITRATOR
Second Party	: Not Applicable
Stamp Duty Paid By	: AJAY GUPTA ARBITRATOR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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INDRP ARBITRATION CASE NO.1413
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR : AJAY GUPTA

ARCELORMITTAL(SA)

Vs.

DATA PRIVACY PROTECTED

Disputed Domain Name : laskshminiwasmittal.in

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INDRP ARBITRATION CASE NO.1413
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR : AJAY GUPTA

ARCELORMITTAL(SA)
24-26, boulevard d' Avranches,
1160 Luxembourg
LUXEMBOURG

...Complainant

Vs.

DATA PRIVACY PROTECTED
Ernst Frey -Strasse 9, Karlsruhe,
BW 76135, GERMANY

...Respondent

Disputed Domain Name : laskshminiwasmittal.in



The Parties

The **Complainant** in this arbitration proceedings is ARCELORMITTAL (SA), is a Luxembourgish steel manufacturing company having its principal place of business at 24-26, boulevard d' Avranches, 1160 Luxembourg. The complainant in this proceeding is represented by NAMESHIELD (Enora Millocheau) of France.

The **Respondent**, in this arbitration proceeding, is Data Privacy Protected, located at Ernst Frey-Strasse 9, Karlsruhe, BW 76135 GERMANY as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

The Domain Name and Registrar

The disputed Domain name is lakshminiwasmittal.in. The Registrar with which the disputed domain name is registered is **1&1 IONOS SE**.

Procedural History [Arbitration Proceedings]

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India(NIXI). The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act,1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

According to the information provided by the National Internet Exchange of India ["NIXI"] the history of this proceeding is as follows:

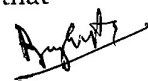
In accordance with the Rules,2(a) and 4(a) , NIXI formally notified the Respondent of the complaint, and appointed Ajay Gupta as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under, .IN Domain Resolution Policy and the Rules framed there under. The on 28.07.2021 Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

That commencing the arbitration proceedings an Arbitration Notice Dated 29.07.2021 was sent to the respondent by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file reply of the complaint if any within 10 days. The Copy of the Notice was also mailed to the Complainant and the Registrar for the disputed domain. That on the direction of this panel the copy of complaint along with annexures was also sent to respondent by Complainant vide their mail dated 04.08.2021 and the proof of service of Complaint was supplied to this panel vide their mail dated 16.08.2021. That no reply of the notice and complainant was received from the respondent within stipulated time of 10 days. However, this panel in the interest of justice granted further period of 7days to file the reply and same was communicated to respondent by mail dated 09.08.2021 of NIXI.

The Respondent failed to file the reply to the Arbitration notice and complaint even within the further extended period of 7 days.

Respondent

The Respondent failed to reply to the notice regarding the complaint. It is a well established principal that once a Complainant makes a prima facie case showing that



a Respondent lacks rights to the domain name at issue; the Respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is "lakshminiwasmittal.in"

The Respondent's Default

The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows:

"In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."

The Respondent was given notice of this administrative proceedings in accordance with the Rules. The .IN discharged its responsibility under Rules paragraph 2(a) to employ reasonable available means calculated to achieve actual notice to the Respondent of the complaint.

The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file reply of the Complaint if any but Respondent neither gave any reply to notice nor to the complaint. The 'Rules' paragraph 12 provides that "In event 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." In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions, evidences, inferences and merits only as the Respondent has not replied and is proceeded ex parte.

Background of the Complainant and its statutory and common law rights Adoption :

The Complainant in this arbitration proceedings is ARCELORMITTAL (SA), is a Luxembourgish Steel Company. That according to complainant, the company is specialized and the largest steel producing company in the world. It further claims that the company is the market leader in steel for use in automotive, constructions, household appliances and packaging. It holds sizeable captive supplies of raw materials and operates extensive distribution networks. The Complainant is also present in India through numerous entities. The Complainant further claims that it owns a several trademarks including the wording "MITTAL" in several countries, including in India, such as :

Trademark Territory	Registration	Number	Registration Date	Classes
MITTAL	International	1198046	05.12.2013	06, 40
MITTAL	INDIA	1319446	08.11.2004	06
ARCELOR	INDIA	162497	23.11.2007	06

The Complainant also owns and communicates on Internet through various domain names, such as <arcelormittal.com> registered on January 27th, 2006.

The issues involved in the dispute

The complainant in its complaint has invoked paragraph 4 of the INDRP, which reads:

Arjel

“Types of Disputes

Any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises :-

1. The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory /common law rights.
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
3. The disputed domain name has been registered or is/are being used in bad faith.

The Respondent is required to submit a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this policy and Rules thereunder.”

According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute, which are being discussed hereunder in the light of the facts and circumstances of this case.

Parties Contentions

1. **The Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.**

Complainant

The Complainant submits that the disputed domain name <laskshminiwasmittal.in> is confusingly similar to the trademark MITTAL®, as it incorporates the trademark in its entirety. The Complainant further submitted that the addition of the terms “LAKSHMI” and “NIWAS” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark MITTAL®. The complainant submits it does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated. The Complainant further submits that on the contrary, the addition of these names worsen the likelihood of confusion between the disputed domain name and the Complainant’s trademark. It submits that indeed , the disputed domain name includes the name of Mr. Lakshmi Niwas Mittal, CEO of ARCEORMITTAL. Furthermore, the Complainant submits that the addition of the ccTLD “.IN” is not sufficient to escape the findings that the domain is confusingly similar to it trademark and does not change the overall impression of the designation as being connected to the trademark of the Complainant. It is therefore, Complainant contended that the disputed domain name <lakshminiwasmittal.in> is confusingly similar to its trademarks.

Panel Observations

The Complainant “ARCELORMITTAL (SA) being the largest steel producing company is known worldwide including India .That similarly name of Mr. Lakshmi Niwas Mittal is also well known being the CEO of Complainant

"ARCELORMITTAL". The disputed domain name "lakshminiwasmittal.in" will cause the user into mistakenly believe that it originates from, is associated with or is sponsored by the complainant and further the addition of "in" is not sufficient to escape the finding that the domain is confusingly similar to complainant's trademark and its CEO name.

Therefore, the panel is of opinion that disputed domain name "lakshminiwasmittal.in" being similar to the trade mark of complainant and its CEO's name will mislead the public and will cause unfair advantage to respondent. The Panel is of the view that there is likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "MITTAL®" of the Complainant.

It has to be noted that the paragraph no.4 of the INDRP policy starts with following words :

"Any person who considers that a registered domain name conflicts with his legitimate rights or interest may file complaint to the registry on the following premises." This is a positive assertion and sentence. Further paragraph 4(i) also constitutes a positive assertion and sentence. The above clearly indicates that the onus of proving the contents of para 4(i) is upon complainant. To succeed he must prove them."

It has been proved by the Complainant that it has trademark rights and other rights in the mark "MITTAL" by submitting substantial documents in support of it and name "LAKSHMI NIWAS" also correspond to the name of Mr. Lakshmi Niwas Mittal, CEO of the Complainant ARCELORMITTAL.

This panel while following the rule of law is of the opinion that while considering the trademark "MITTAL" alongwith Complainant ARCELORMITTAL's CEO name i.e. Mr. Lakshmi Niwas Mittal in its entirety, the disputed domain name "lakshminiwasmittal.in" is identical or confusingly similar to the trade mark of complainant.

Paragraph 3 of the INDRP states that, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduce below :

"The Respondent's Representations :

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that :

1. the statements that the Respondent made in the Respondent's Application form for Registration of Domain Name are complete and accurate;
2. To the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
3. The respondent is not registering the domain name for an unlawful purpose; and



4. The Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights".

Respondent

The respondent has not replied to the complainant contentions.

Therefore, the Panel comes to the conclusion that the disputed domain name is confusingly similar to the Complainant marks and its CEO's name. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4 of the INDR Policy.

2. **The Respondent has no rights or legitimate interests in respect of the domain**

Complainant

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in anyway with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent . Neither license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by the complainant.

The Complainant has given the precedent of Case No.INDRP/776, Amundi Vs. GaoGou stating that the Complaint is required to make out a prime facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name, If the Respondents fails to do so, the Complainant is deemed to have satisfied paragraph 4(II) of the INDRP Policy.

The Complainant submits that based on the information regarding the Respondent, provided by the WHOIS of the disputed domain name, the Respondent is known as Data Privacy Protected. The Complainant further submits that the past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed name referring the case No.INDRP/999, Accenture Global Services Limited Vs. Vishal Singh.

The Complainant further submitted that the disputed name resolves to a registrar parking page. Therefore the Complainant states that the Respondent has not proved use of, or demonstrable preparations to use, the domain name in connection with a bona fide offering of goods or services and gave reference to the Case No.INDRP/1037, BOLLORE Vs. Mr. Karthikeyan, OCEAN SOFTWARES.

The Complainant based on the above based arguments, argues that the Respondent has no rights or legitimate interests in the disputed domain name.

Panel Observations

This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.



Once the Complainant makes a prime facie case showing that the respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The Respondent cannot have any right or legitimate interest in the disputed domain name because the disputed name incorporate the "MITTAL" mark and name of complainant CEO. The information regarding the respondent provided by the Whois of the disputed domain name, the respondent is known as Data Privacy Protected that is not remotely similar to the disputed name.

The respondent despite every opportunity failed to provide evidence to rebut the contention of complainant that neither licence nor authorisation has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by complainant. The respondent further failed to rebut the contention of the complainant that Respondent has nor rights or legitimate interests in respect of the domain name and respondent is not related in any way with the Complainant.

This panel further hold that since the disputed domain name resolves to a registrar's parking page , it cast doubt that Respondent has any legitimate interests in respect of domain name as Respondent has failed to prove use of, or demonstrable preparations to use, the domain name in connection with a bonafide offering of goods or services. It is clear that no actual or contemplated bonafide or legitimate use of the domain name could be claimed by the Respondent.

Respondent

The respondent has not replied to the complainants contentions.

For these reasons, the Panel holds that the Complainant has proved that the respondent does not have any rights or legitimate interests and is infringing the trademark of the complainant in the disputed domain name.

3. The Domain name(s) was /were registered and is / are being used in bad faith.

Complainant

The Complainant submits that the disputed domain name <laskshminiwasmittal.in> is confusingly similar to its trademark MITTAL®. The Complainant further submit that prior UDRP panels have established that the trademark MITTAL® is well known and refer to WIPO Case No.D2018-1086, ArcelorMittal S.A. Vs. Registrant of laskshmittal.org, C/o WHOIS trustee.com Limited/Zeus Holding Market Ltd. ("The Domain Name wholly incorporates a well-known mark [MITTAL]; WIPO Case No.D2010-2049, Arcelormittal Vs. Mesotek Software Solutions Pvt. Ltd. ("the Complainant's marks MITTAL and MITTAL STEEL have been widely used and are well-known).

The Complainant further submits that the Respondent choose to associate the trademark MITTAL® with the names "LAKSHMI NIWAS", which correspond to the name of Mr. Lakshmi Niwas Mittal, ARCELORMITTAL CEO. The Complainant submits that given the distinctiveness of the Complainant's trademarks and reputation, it is inconceivable that the Respondent could have registered the disputed domain name <lakshminiwasmittal.in> without actual knowledge of Complainant's rights in the trademark which evidences bad faith.

Amal

The Complainant asserts that the disputed domain name resolves to a registrar parking page since its registration and submits that the prior previous panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

The complainant has placed reliance on Case No.INDRP/1037, Trivago N.V. Vs. Shiv Singh ("Substantial number of precedents establish that registration of a domain name that is confusingly similar to a famous trade mark by an entity that has no relationship to that mark is itself sufficient evidence of bad faith registration and use [...] Considering that the current status of the web page corresponding to the domain name "trivagoholidays.in" is non-operational /inaccessible and the WHOIS records do not indicate the domain being available for sale, this would constitute passive/parked holding of the domain name/ website, which further contributes to bad faith [HSBC Holdings plc Vs Homman Esail Zadeh(INDRP/032), Telstra Corporation Limited Vs. Nuclear Marshmallow, WIPO Case No.D2000-0003]")

That on these facts the Complainant contends that the Respondent has registered the disputed domain name and is using it in bad faith.

Panel Observation

Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :

"Circumstances indicating that the Respondent has registered or has 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 Registrar's documented out of pocket costs directly related to the domain name; or

the Respondent 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 Respondent has engaged in a pattern of such conduct; or

by using the domain name, the Respondent has intentionally attempted to attract internet user to its website or other on -line location, by creating a likelihood of confusion with the Complainant's mark as to the source , sponsorship, affiliation or endorsement of its Website or location or of a product or services on its website or location."

The panel is of the view that from the evidence put before it, which establish that Respondent has no previous connection with the disputed domain name and any use of the disputed domain name by the Respondent, would result in confusion and deception of trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent. It must be noted that disputed domain name lakshminiwasmittal.in is confusingly similar to the trademark MITTAL® which is already established and well known. It is also to be noted that there is no link or evidence which show any connection of the respondent with name "LAKSHMI NIWASM MITTAL" which correspond to the name of CEO of the Complainant ARCELORMITTAL. It is unbelievable that Respondent before registering the domain name lakshminiwasmittal.in had no knowledge of Complainant's rights



in the trade mark MITTAL and Complainant's CEO name Mr. Lakshmi Niwas Mittal, which evidences bad faith.

The disputed domain name lakshminiwasmittal.in resolves to the registrars parking page from the time of registration coupled with an inactive website cast doubt on the respondent's intention which evidences bad faith registration and use.

It is also a well settled principle that the registration of a domain name that incorporates a well known mark by an entity that has no relationship to the mark is evidence of bad faith. [Relevant Decision : The Ritz Carlton Hotel Company LLC vs. Nelton Brands Inc., INDRP/250, December 30, 2011]

Therefore the panel comes to the conclusion that the registration by Respondent is in bad faith. By registering the disputed domain name with actual knowledge of the Complainant's trademark and its CEO's name, the Respondent acted in bad faith by breaching its service agreement with the registrar because the Respondent registered a domain name that infringes upon the intellectual Property rights of another entity, which in the present case is the Complainant ARCELORMITTAL(SA)

The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Therefore the panel comes to the conclusion that the registration is in bad faith.

Respondent

The respondent has not replied to the complainants contentions.

Consequently it is established that the disputed domain name was registered in bad faith or used in bad faith.

Decision

The following circumstances are material to the issue in the present case:

The complainant being the largest steel producing company has its presence world wide and it owns trademarks in several countries including India. The name of CEO of Complainant is also well known being the market leader in steel.

The Respondent has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name and Respondent is related in any way with the Complainant or its CEO.

The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed Domain Name. The disputed domain name resolves to the registrar parking page since its registration coupled with the inactive website also cast doubt on the intentions of the Respondent.

Taking into account the nature of the disputed domain name and in particular the ".in" extension alongside the Complainant's mark which is confusingly similar and its CEO's name, which would inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated active use of disputed Domain Name by the Respondent is and would be illegitimate.

The Respondent failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe



or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third party rights. {Relevant Decisions: Graco Children's Products Inc. V. Oakwood Services Inc. WIPO Case No.2009-0813; Ville de Paris V. Jeff Walter, WIPO Case No.D2009-1278}.

It is Registrant's/Respondent's duty under Para 3 of the .IN Dispute Resolution Policy to warrant and prove to the contrary that :

- “(a) the Registrant/ Respondent has accurately and completely made the Application Form for registration of the domain name;
- (b) to the Registrant's Knowledge, 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 purpose; and
- (d) the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.

It is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone's rights.”

The Complainant has given sufficient evidence to prove extensive global trademark rights on the disputed domain name . Further, the Respondent's adoption and registration of the disputed domain name is dishonest and done in bad faith.

That while overall burden of proof rests with the Complainant, panels have recognised that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is clear that the Respondent has registered the disputed name and is using it in bad faith.


{Relevant decisions: INDRP/776, Amundi V. Gao Gou, INDRP Case No.999, Accenture Global Services Limited V. Vishal Singh, Case No.INDRP 1037, BOLLORE V. Mr. Karthikeyan, OCEAN SOFTWARES. WIPO Case No.D2018-1086, Arcelor Mittal S.A. V. Registrant of Lakshmimittal.org, C/o WHOIS Trustees.Com Limited/ Zeus Holding Market Ltd., WIPO Case No.D2010-2049, Arcelormittal V. Mesotek Software Solutions Pvt. Ltd., Case No.INDRP/1037, Trivago N.V. V. Shiv Singh, HSBC Holdings plc V. Hooman Esmail Zaedh (INDRP/032), Telstra Corporation Limited V. Nuclear Marshmallows, WIPO Case No.D2000-0003, Aktiegesellschaft V. Hybo Hindustan, 1994 PTC 287, HONDA Case No.2004(28) PTC 332, TATA Case (27) PTC422, Ferrero S.P.A. V. Jacques Stade, Case No.DBZ2003 (WIPO August 25, 2003, Ferrari S.P.A V. American Entertainment Group, Inc, Case No.D2004-0673 WIPO October 10, 2004, Sony Ericsson Mobile Communications AB V. Salvatore Morelli, INDRP/030, Orange Brand Services Limited V. PRS Reddy, INDRP/644; International Business Machines Corporation V. Zhu Xumei, INDRP/646, January 30, 2015, Jaguar Land Rover V. Yitao, INDRP/641, (January 4, 2015), Statoil ASA V. Bright AK, D2014-1463 WIPO October 14, 2014, Satyam Infoway Ltd. V. Siffynet Solutions (P) Ltd. 2004 (6) SCC 135, The Ritz Carlton Hotel Company LLC V. Nelton Brands Inc., INDRP /250, December 30, 2011}



RELIEF

The Respondent's registration and use of the domain name [lakshminiwasmittal.in] is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. In accordance with Policy and Rules, the Panel directs that the disputed domain name [lakshminiwasmittal.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi
Dated : August 24, 2021


AJAY GUPTA
Sole Arbitrator