



Government of National Capital Territory of Delhi

e-Stamp

सत्यमेव जयते

Certificate No.

Certificate Issued Date

Account Reference

Unique Doc. Reference

Purchased by

Description of Document

Property Description

Consideration Price (Rs.)

First Party

Second Party

Stamp Duty Paid By

Stamp Duty Amount(Rs.)

: IN-DL37978718528220T

: 18-Oct-2021 11:48 AM

: SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH

: SUBIN-DL DL-SELF71212477698243T

: KARNIKA SETH

: Article 12 Award

: ARBITRATION AWARD UNDER INDRP POLICY

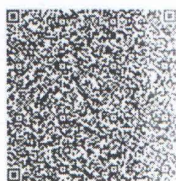
: 0
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: KARNIKA SETH

: NOT APPLICABLE

: KARNIKA SETH

: 100
: (One Hundred only)



Online E-Stamp Certificate Online E-Stamp Certificate Online E-Stamp Certificate Online E-Stamp Certificate
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SELF PRINTED CERTIFICATE
TO BE VERIFIED BY THE RECIPIENT
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ARBITRATION AWARD

Before the Sole Arbitrator, Dr. Karnika Seth

IN INDRP Case No. 1432

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. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

.IN REGISTRY
(NATIONAL INTERNET EXCHANGE OF INDIA)
.IN Domain Name Dispute Resolution Policy (INDRP)

Disputed Domain Name: www.bulkpowders.in

Dated: 18th October, 2021

IN THE MATTER OF:

Sports Supplements Limited
Unit 1 Gunfleet Business Park,
Brunel Way, Colchester,
Essex, CO 49QX,
United Kingdom

.....Complainant

Vs.

Bulk Powders Nutraceuticals Private Limited
Haryana, India

.....Respondent

1. Parties

- 1.1 The Complainant in this arbitration proceeding is Sports Supplements Limited, having address at Unit 1 Gunfleet Business Park, Brunel Way, Colchester, Essex, CO 49QX, United Kingdom. The Complainant is represented by Mettle Legal.
- 1.2 The Respondent in this arbitration proceeding as per 'Whois' record is Bulk Powders Nutraceuticals Private Limited in Haryana, India (as per

Annexure B of the complaint). Registrant has registered the disputed domain name with GoDaddy.com.

2. **The Dispute-** The domain name in dispute is "www.bulkpowders.in" registered by the Respondent on 31st January, 2013. According to the .IN 'Whois' search, the Registrar of the disputed domain name is GoDaddy.com.

3. Important Dates

S. No.	Particulars	Dates (All communication in electronic mode)
1.	Date on which NIXI's email was received seeking consent for appointment as Arbitrator.	Sept 23, 2021
2.	Date on which consent was given to act as an Arbitrator in the case.	Sept 23, 2021
3.	Date of Appointment as Arbitrator.	Sept 23, 2021
4.	Soft Copy of complaint and annexures were received from NIXI through email.	Sept 23, 2021
5.	Date on which notice was issued to the Respondent	Sept 24, 2021
6.	Date on which Complaint filed proof of completed service of complaint on Respondent	Oct 5, 2021

7.	Date on which Award passed	October 18, 2021
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4. Procedural History

- 4.1 This is mandatory arbitration proceeding 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. The updated rules are available on <https://www.registry.in/INDRP%20Rules%20of%20Procedure>. By registering the disputed domain name accredited Registrar of NIXI, the Respondent agreed to the resolution of the dispute pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.
- 4.2 In accordance with the Rules 2(a) and 4(a) of INDRP Rules, NIXI formally notified the Respondent of the complaint and appointed Dr. Karnika Seth as a sole arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder. The Arbitrator submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.
- 4.3 The complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution.
- 4.4 The Arbitrator issued notice to the Respondent on 24th Sept., 2021 at the email address webmaster@bulkpowders.in calling upon the respondent to submit his reply to the complaint within fifteen (15) days of receipt of the Arbitrator's email. The Complainant also filed proof

of completed service of the complaint upon Respondent on 5th Oct, 2021.

- 4.5 Despite notice, the Respondent failed to file any reply. Therefore, in accordance with the Rule 12 of INDRP Rules, the Arbitration proceedings were conducted ex-parte and the Award is passed which is binding on both parties herein.

5. Factual Background

- 5.1 The Complainant, trading as Sports Supplements Limited is a well-known leading sports nutrition provider providing a range of health and performance nutrition supplements. The Complainant is incorporated under the laws of United Kingdom and is also a member of ESSNA (the European Specialist Sports Nutrition Alliance). The Complainant provides supplements designed to cover all aspects of nutritional requirements (as per **Annexure D** of the complaint).
- 5.2 The Complainant adopted the trademark "BULK POWDERS" and using its trademark has been providing a variety of nutritional products like high quality supplements containing powders, capsules, tablets, softgels, multivitamins, protein blends, probiotic, breakfast smoothies, premium whey protein, diet protein, mineral supplements, lean shakes, slimming capsules, active foods such as liquid egg whites, peanut butter, snack bar, organic tiger nuts, seasonings, organic virgin coconut oil, chia seeds, protein bars and also vegan products like Vitamin D2 products, vegan protein powder, mass gainers etc. (as per **Annexure E** of the complaint.) The Complainant is using its trademark for past 16 years worldwide including Europe, China, Denmark, Finland, Norway,



Switzerland, Sweden, Turkey, Canada, Japan, Singapore, Vietnam, USA and Middle East (as per **Annexure G and H** of the complaint).

- 5.3 The Complainant has been using the trademark BULKPOWDERS in relation to sports nutrition supplements. The Complainant owns numerous trademark registrations using the word BULKPOWDERS in various countries including India (as per **Annexure H and I** of the complaint). The trademark BULKPOWDERS (word mark) is registered in India under class 5, 29, 30, 32 and 35 under registration no.3569685 (as per **Annexure I** of the complaint) which was registered on 13th June, 2017. Complainant's products sold under the trademark Bulk powders has been receiving sales queries from Indian companies since 2007 (as per **Annexure F** of the Complaint).
- 5.4 The Complainant has been using the "BULKPOWDERS" trademark distinctively in connection with its products and also maintains the website www.bulkpowders.co.uk (registered on May 10, 2005) and also owns the website www.bulkpowders.com (registered in 2004) and other formative country level domains for its trademark (as per **Annexure G** of the complaint).
- 5.5 The Complainant's products are recognized worldwide including in India and the trademark has achieved continuous popularity with consistent growth of business as the products are advertised and sold worldwide (as per Para 16 of complaint and **Annexure J & K** of the complaint). The Complainant has been advertising its products through Google AdWords, social media websites, radio, campaigns, exhibitions, sponsorship depicting its trademark and its advertisements are also featured in magazines, car panels, billboards. The Complainant in 2017 spent around USD 6 million and USD 10,7000,000 in 2018

worldwide on advertising and promotional activities alone. In 2018 Complainant launched Dominate Life Campaign featuring professional athletes and social media influencers for promotion of its trademark (as per **Annexure K** of the complaint).

5.6 The Complainant also has extensive presence and following of its trademark on social media websites with 3,07,000 followers on Instagram, 28,000 followers on Twitter and 2,46,069 followers on Facebook as on March 22, 2021 (as per **Annexure M** of the complaint). In India, the Complainant exhibited its products in 2018 at Asia's largest exhibition and also engaged a famous celebrity to promote its products (as per **Annexure L** of the complaint).

5.7 The Respondent in this administrative proceeding as per 'Whois' database is Bulk Powders Nutraceuticals Private Limited in Haryana, India. The email address of the Registrant is not available. The Registrant registered the disputed domain name with GoDaddy.com having email address webmaster@bulkpowders.in.

6. Parties Contentions

6.1 Complainant's Submissions

6.1.1 Complainant operates its business using the trademark "BULKPOWDERS" and is engaged in providing sports nutrition supplements with a comprehensive range of health and performance nutrition since 2005. The Complainant claims that it has been using its mark continuously for its products not only in India but across various countries. Due to its established reputation worldwide including India, the word BULKPOWDERS has been exclusively associated with the Complainant and no one else. The Complainant claims to have gained

popularity, reputation and is widely known through use of its trademark "BULKPOWDERS".

- 6.1.2 The Complainant states that the trademark BULKPOWDERS is registered in India in classes 5, 29, 30, 32 and 35 under registration no. 3569685 (as per **Annexure I** of the complaint). The said trademark has been applied/registered in various jurisdictions by Complainant. A list of trademark registration certificates granted in India and other countries in favour of Complainant are annexed with the complaint (as per **Annexure H and I**).
- 6.1.3 The Complainant submits that in India it is consistently receiving emails from individuals since 2007 for placing orders for Complainant's products using the trademark BULKPOWDERS and to also inquire about establishing business relationship by way of distributor arrangements and export raw materials (as per **Annexure F** of the complaint).
- 6.1.4 The Complainant submits it is the owner and proprietor of registered domain name www.bulkpowders.co.uk (registered on May 10, 2005) and www.bulkpowders.com (registered in 2004) which features information about the products of the Complainant using the mark BULKPOWDERS (as per **Annexure G** of the complaint). The Complainant also has a very strong social media presence on Instagram, Twitter and Facebook with 3,07,000, 28,000 and 2,46,069 followers respectively (as per **Annexure M** of the complaint). The Complainant also has presence on popular search engine www.google.com which displays Complainant's trademark in the main search result for the keyword 'Bulk powders' that pertains to Complainant and no other (as per **Annexure P** of the complaint).

6.1.5 The Complainant also submits that it has won many prestigious awards and honors from the industry such as “The Grocer- UK’s 4th fastest growing food & drink brand”, Sunday Times Fast Track 100 (UK’s fastest growing private owned companies) 2016, 2017 & 2018”, Men’s Fitness Best Whey Protein 2017/2018 and many more (as per **Annexure N** of the complaint). The Complainant submits that it has achieved an annual turnover of USD 65,000,000 in 2018 worldwide with USD 92,750 in India itself in 2018 (as per Para 16 of the complaint and **Annexure J** of the complaint).

6.1.6 The Complainant submits that the disputed domain name www.bulkpowders.in is identical to and clear imitation of the “BULKPOWDERS” trademark and has been used with an intention to deceive and mislead individuals and entities at large. The Respondent has no legitimate interest or right in the domain name and has registered it to mislead consumers and capitalize on the Complainant’s reputation and goodwill. The Complainant further submits that the registrant of disputed domain name is Bulk Powders Nutraceuticals Private Limited (the Respondent) and as per the records of the ROC, the director of the company is Mr. Harneet Singh Luthra (company was registered in 2016 as per **Annexure O** of the complaint).

6.1.7 The Complainant submits that the Respondent’s domain name has never resolved to an active website and such non-active website amounts to passive holding. The Complainant has never granted any authorization, license or any right to the Respondent to use the trademark and neither the Respondent is sponsored or affiliated with the Complainant. However, to make unfair commercial gain and to tarnish the trademark of the Complainant, the Respondent registered the disputed domain

name www.bulkpowders.in using the trademark “BULKPOWDERS” in its entirety. The Respondent has not shown any use or demonstrable preparations to use the domain name <www.bulkpowders.in> nor has a name corresponding to the domain name in connection with the bona fide offering of goods and services. The Complainant submits the Respondent has registered the disputed domain name in bad faith.

6.1.8 In addition, the Complainant submitted that the Respondent has registered the mark in bad faith and is passively hoarding its trademark illegally. Such use is to attract internet traffic by creating a likelihood of confusion with the Complainant’s name or mark and to make unjust monetary gain by falsely projecting an association or affiliation with the Complainant.

6.2 Respondent’s Defence

6.2.1 Despite the service of notice by email, the Respondent failed to reply to the notice within the stipulated time

6.2.2 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 the case. Rule 8(b) reads as follows:

“The Arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case.”

6.2.3 Further, the INDRP Rules of Procedure empowers the Arbitrator to proceed with arbitration proceedings ex-parte and decide arbitration in case any party does not comply with the stipulated time limit to file its response. Rule 12 reads as follows:

“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 with law.”

6.2.4 In the present arbitration, despite completed service, the Respondent has failed to file any reply to the Complaint and has not sought any further time to answer the Complainant’s assertions, contentions or evidences in any manner. The Arbitrator thus finds that the Respondent has been given a fair chance to present its case. Since the Respondent has failed to reply to Notice to submit its response, Arbitration has been conducted ex-parte in accordance with Rule 12 of the INDRP rules and decided on merits ex-parte.

7. Discussions and Finding

7.1 The .IN Domain Name Dispute Resolution Policy in para 4 requires Complainant to establish the following three requisite conditions: -

- a) The disputed domain name is identical or confusingly similar to the trademark in which Complainant has right
- b) The Respondent has no rights or legitimate interest in the domain name and
- c) The Respondent’s domain name has been registered or is being used in bad faith

7.2 **The Registrant’s domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights (Paragraph 4(a))**

The Complainant submitted that it owns various trademark registrations using the word "BULKPOWDERS" in many jurisdictions throughout the world including India and has filed documents of its registered trademark in India to prove its right in the trademark "BULKPOWDERS" (as per **Annexure I** of the complaint). Therefore, it is established that the Complainant has statutory protection in trademark BULKPOWDERS in India. The Complainant submitted that BULKPOWDERS is a trademark well recognized amongst the consumers worldwide, including in India as is extensively followed on social media and has huge goodwill on internet as well (as per **Annexure F** and **M** of the complaint). The complainant has filed sufficient evidence of queries raised by Indian companies to purchase the bulkpowders products early as 2007. Thus, the trademark had popularity and was associated with Complainant since then in India.

The Arbitrator finds that the disputed domain name www.bulkpowders.in is clearly identical and deceptively similar to Complainant's trademark in which the Complainant has exclusive trademark rights and the Complainant has submitted enough documentary evidence to prove its rights and ownership in BULKPOWDERS mark. A cursory glance at the disputed domain name <bulkpowders.in> makes it obvious that the Respondent has exactly incorporated the essential elements of the Complainant's BULKPOWDERS mark and thus the disputed domain name is identical/ deceptively similar to the Complainant's mark.

As per WIPO Synopsis 3.0, while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to the mark for the purposes of UDRP standing. (*Dell Inc. v George Dell & Dell Netsolutions*, case no. D2004-0512 (WIPO Aug 24, 2004), *Busybody Inc. v Fitness Outlet Inc.* D 2000-0127 (WIPO April 22, 2000).

The Disputed domain name consists of "BULKPOWDERS", the Complainant's trademark in entirety and the ccTLD ".in" which is likely to deceive and confuse consumers. It is well recognized that incorporating a trademark in its entirety, particularly if the mark is internationally well recognized mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. (*LEGO Juris A/S v. Robert Martin*, INDRP/125(2010); *Viacom International Inc. v. MTV ALBUMS-Mega Top Video Albums Peter Miadshi*, WIPO case No. D2002-0196 (April 16, 2002); *Wal Mart Stores Inc. v. Kuchora Kal*, WIPO case no. D2006-0033 (March 10, 2006). The Complainant has cited numerous decisions of INDRP and WIPO panel regarding registration of domain names similar to the domain registered by the Respondent. The Complainant has relied on *Indian Hotels Company Limited v. Mr. Sanjay Jha*, INDRP/148, *International Business Machines Corporation v. Zhu Xumei*, INDRP/646, *Yahoo! Inc. v. Akash Arora & Anr*, 1999 PTC (19) 210 Delhi.

As the Respondent's disputed domain name incorporates entire mark of Complainant's trademark BULKPOWDERS, the Arbitrator finds that the Respondent's domain name is identical or confusingly similar to Complainant's registered trademark and is likely to deceive the customers.

7.3 The Registrant has no rights or legitimate interest in respect of the domain name (Para 4(b))

Under para 6 of the policy, a Respondent can prove rights or legitimate interest in the domain name. The Complainant has filed sufficient evidence to prove disputed domain name is identical to 'BULKPOWDERS' trademark, in which the Complainant enjoys substantial reputation and goodwill including web shots of its website (as per the **Annexures E** of the complaint) and registration of trademark in India and other jurisdictions (annexed as **Annexure H** and **I** of the complaint).

The Respondent has failed to prove any rights or legitimate interests in the disputed domain name/trademark 'BULKPOWDERS.' Thus, Respondent has failed to establish legitimate interest and/or rights in the disputed domain name. Complainant has also submitted that it has not authorized nor licensed Respondent to use its BULKPOWDERS mark and Respondent has failed to rebut the same. The Complainant submits that the Respondent's website is only a parking page and that the Respondent has registered the disputed domain name with a view to engage in unfair commercial use of the mark BULKPOWDERS with the sole aim to make illegal monetary benefits from unauthorised use

of the goodwill and reputation of the Complainant's mark BULKPOWDERS. Further, the Complainant submitted that the Respondent does not have any rights or legitimate interest in the disputed domain name and it intends to make unjust and illicit commercial profits.

Further, the Complainant submitted that the Respondent had filed two trademark applications for the mark BULKPOWDERS (2645464) dated 19th Dec., 2013 which was refused by the trademark registry on account of non-appearance of the applicant at the show cause hearing. In the other application (2645466) dated 19th Dec., 2013, the Complainant opposed the same on Mar 27th 2018 and the Respondent failed to file any evidence.

Complainant contends that Respondent has registered the domain name only to take unfair advantage of Complainant's global reputation and goodwill. Unlicensed and unauthorized use of domain name incorporating complainant's trademark proves respondent has no legitimate rights nor interest pursuant to ICANN Policy 4(b). Further, the Complainant submitted that the Respondent has no rights or legitimate interests in the disputed domain name and by registering the disputed domain name the Respondent is taking advantage of innocent customers and other entities who may not enquire about the authenticity of the Respondent or its affiliation with the Complainant. The Complainant has relied on *Momondo A/S v. Ijorghe Ghenrimopuzulu*, INDRP/882, *The Caravan Club v. Mrgsale*, NAF Claim Number: FA0007000095314.

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights. Since the Complainant's said website and trademarks were in existence since May 10, 2005 and extensively used when disputed domain was registered by the Respondent on 31.01.2013 (as per **Annexure B** of the complaint), the Respondent has to prove whether he discharged this responsibility at the time of purchase of disputed domain name. The Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name and has failed to discharge this burden.

7.4 The Registrant's domain name has been registered or is being used in bad faith (Para 4(c))

For the purpose of Para 4 (c) of .IN Policy, under paragraph 7 of the policy, the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant submitted that 'BULKPOWDERS' trademark has acquired considerable amount of goodwill worldwide including India in respect of sports nutrition, health and performance nutrition supplements with a wide variety of product range. The Complainant has secured registration of the mark "BULKPOWDERS" in India in classes 5, 29, 30, 32 and 35. The Respondent has produced no evidence of authorization from Complainant or justification for registering the disputed domain name. In fact, the Complainant has submitted that the Respondent's disputed domain name is not an active website but a non-

active website which amounts to passive holding. The Complainant has relied on *Facebook Inc., v. S. Demir Cilingir*, Case no. D2018-2746. The Complainant also submits that it adopted its mark much prior to that of Respondent and that the Respondent has intentionally adopted disputed domain name www.bulkpowders.in despite prior knowledge to make unfair gains. The Complainant has relied on *Monster.com (India) Pvt Limited v. Domain Leasing Company*, INDRP/002 to prove bad faith registration.

For the aforesaid reasons, the Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name (Ref. *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case no. D2012-2395).

The Complainant submitted that the Domain Name has otherwise been passively held since its registration and such passive holding of the Domain Name cannot constitute a bona fide offering of goods and services. As per WIPO Overview 3.0, section 3.3, previous UDRP panels have consistently found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive-holding. It states that "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its

registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put” (*Facebook, Inc. v. S. Demir Cilingir*, WIPO case no. D2018-2746, 28 Jan., 2019).

Complainant has submitted sufficient evidence showing widespread use, goodwill and trademark rights in ‘BULKPOWDERS’ mark in various countries, including India which long predates Respondent’s registration of the disputed domain name which incorporates completely the registered trademark BULKPOWDERS of the Complainant. WIPO Overview 3.0 notes in Section 3.14 “panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”. The same principle is relied on in *Adobe Inc. v. Amin Mohammad Salehi*, Uranos, case no. DIR2020-0006, June 30, 2020.

Thus, Arbitrator finds that Respondent’s disputed domain name is likely to mislead the consumers by creating a likelihood of confusion with the complainant’s name or mark. (*Yusuf A. Alghanism & sons WLL v Anees Salah Salahmeh* (WIPO case no. D2018-1231). The Arbitrator finds that the Respondent has registered the disputed domain name to prevent Complainant from registering or using the mark. Despite notice, Respondent failed to submit its response and evidence to support bonafide registration of disputed domain name in respect of bonafide offering of goods. Such registration and use is likely to mislead the

consumers of an affiliation with Complainant which amounts to bad faith registration under .IN policy.

Moreover, it is settled law that the incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith. (*Microsoft Corporation vs. Montrose Corporation*, (WIPO Case No. D2000-1568, January 25, 2001). It is also settled principle that registration of a domain name with the intention to create confusion in the mind of internet users and attract internet traffic based on the goodwill associated with the trademark is considered bad faith registration (*PepsiCo Ins. Vs. Wang Shaung*, INDRP case no.400, December 13, 2012).

For the aforesaid reasons, the Arbitrator finds the third ground is also established by the Complainant under the .IN Policy.

8. DECISION

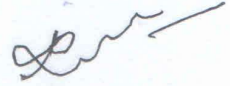
On the basis of the abovesaid findings the Sole Arbitrator finds that:

- a) The Complainant has successfully established three grounds required under the policy to succeed in these proceedings.
- b) Respondent has failed to rebut averments, contentions and submissions of the Complainant

The Arbitrator directs the .IN Registry of NIXI to transfer the domain name www.bulkpowders.in to the Complainant.

The Award is passed on this 18th October, 2021

Place: Noida

A handwritten signature in black ink, appearing to be 'Dr. Karnika Seth', written in a cursive style.

Dr. Karnika Seth

Sole Arbitrator