



सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

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INDRP ARBITRATION  
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

Starbucks Corporation  
Vs  
Matt Faile  
ARBITRATION AWARD: Disputed Domain Name: [www.starbux.in](http://www.starbux.in)

#### Statutory Alert:

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### 1. The Parties

The Complainant in this arbitration proceedings is Starbucks Corporation, 2401, Utah Avenue South, Seattle, Washington 98134, USA. The Complainant is represented by Mr Vikrant Rana, S.S.Rana&Co.Advocates,317, Lawyers Chamber, High Court Of Delhi, New Delhi.(email: [info@ssrana.com](mailto:info@ssrana.com), telephone:+911140123000)

The Respondent is Mr Matt Faile, 632, 2<sup>nd</sup> St N, Stevens Point, WI 54481, USA (email:hamlopamjui5478@gmail.com,telephone: +1.6238503163).

### 2. Domain Name and Registrar

(i) The disputed domain name is <starbux.in>.

(ii) The accredited registrar with whom disputed domain is registered 1API GmbH, Germany.

### 3. Procedural History

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure("the Rules") which were approved on June 28,2005 in accordance with the Indian Arbitration and Conciliation Act,1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

As per the information received from NIXI, the history of the proceedings is as follows:

On December 10, 2021, I submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on December 10, 2021 and served an electronic copy of the complaint on the respondent. I informed the Parties about commencement of arbitration proceeding on December 10, 2021 and the Respondent was directed to submit a response within 7(seven) days. The respondent did not reply to the notice within the stipulated time. The Respondent was further given 5 (five) days time through email dated 17.12.2021 to respond to the notice already served through email dated 10.12.2021.The Respondent failed to file any response even after expiry of extended time line. In fact the respondent has not filed any response till date.

### 5. Grounds for Administrative Proceedings

1. The disputed domain name is identical and/or confusingly similar to a trademark in which the





Complainant has rights.

2. The respondent has no rights or legitimate interests in respect of the disputed domain name.
3. The registered domain name has registered the domain name in bad faith.

#### 6. Background of the Complainant

The Complainant, STARBUCKS CORPORATION, a lifestyle brand company operating since 1971, has a significant global following of customers. The Complainant contends to have the world's largest number of cafes, which serve a variety of food and beverages, and offer premium merchandise and other goods and services under the name/ mark STARBUCKS. The Complainant has number of retail stores in many countries of the world. The Complainant has used the STARBUCKS MARKS since 1971 for its goods, services and business. The complainant has submitted that because of the Complainant's sole and exclusive long-term use of the STARBUCKS MARKS, the STARBUCKS MARKS have become highly distinctive and world famous, and consumers associate them uniquely with Starbucks Corporation. The Complainant registered the top-level domain <starbucks.com> on October 25, 1993 and the India-specific domain STARBUCKS.IN was registered on February 16, 2005 and other domain variations which resolves to the website. Starbucks domain are registered in many countries and resolved to parent website. The Complainant has also got registered starbucks trademarks (with variations) in many countries including India to safegaurd its interest. The Complainant also got registered its trademark in many Indian languages.

The Complainant has submitted that because of the India trade mark registrations the exclusive statutory right to use the STARBUCKS MARKS in India in respect of the goods and services for which they are registered. The Complainant generates billions of US dollars revenue from various products and the services. The Complainant also spends a substantial amount on advertisement and sales promotion. The Complainant has garnered attention from national and international print and electronic media. The STARBUCKS MARKS have been featured in popular national and international trade magazines, newspapers (and their corresponding websites) that have worldwide circulation, including India. The Complainant launched STARBUCKS stores in India through the joint venture with TATA Consumer Products Limited. STARBUCKS has received top level rankings from various global agencies. The Complainant submitted that it has received many awards and recognition for their business ethics and social causes. The Complainant's products with the STARBUCKS trade name, the STARBUCKS MARKS, and/or STARBUCKS retail store locations have been



featured in famous Hollywood and Bollywood motion pictures. The Complainant has sourced large quantities of green coffee from India since 2005. The Complainant has presence in many Indian cities. The Complainant is also present on various media platforms with large number of followers. The Complainant submitted that STARBUCKS is not only the trade mark and trade name of the Complainant, but it is its trading style as well, as its House Mark. By virtue of the prior adoption, long standing and uninterrupted use, extensive publicity and the Complainant's proprietary rights in its trade mark and name STARBUCKS and variations thereof, both under common law and statutory protection, the said trade mark has acquired a high degree of distinctiveness and are identified by the market and general trade and public as exclusively belonging to the Complainant and its goods/ services and have acquired a significant reputation amongst the trade and public. The Complainant further submitted that STARBUCKS MARKS and variations thereof have become distinctive and well-known and have enjoyed distinctiveness, goodwill and reputation long prior to the date on which the Respondent registered the disputed domain name

#### **The Respondent**

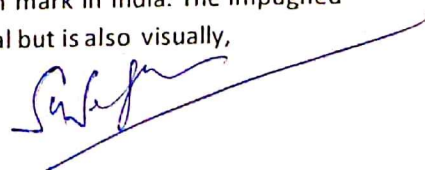
The Respondent is Mr Matt Faile, 632, 2<sup>nd</sup> St N, Stevens Point, WI 54481, USA (email:hamlopamjui5478@gmail.com,telephone: +1.6238503163).The disputed domain name <starbux.in> was registered by the respondent on 29.4.2021.

#### **5. Legal Grounds**

I. The domain <STARBUX.IN> is identical and/or confusingly similar to the Complainant's trade mark STARBUCKS in which the Complainant has rights (Paragraph 4(a) of the .IN Policy)

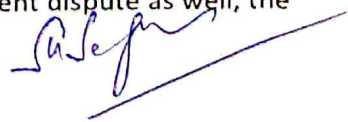
#### **Complainant's Contentions**

The Complainant is the proprietor of the trademark STARBUCKS and the STARBUCKS MARKS and has been continuously and exclusively using the same in relation to their business since at least as early as 1971, i.e., fifty (50) years prior to the date on which the Respondent registered the domain <STARBUX.IN>. By virtue of its long-standing use and registration, the Complainant's trademark STARBUCKS qualifies as a well-known mark. The Complainant has submitted that panels adjudicating under the INDRP have already deemed STARBUCKS to be a well-known mark in India. The impugned domain name <STARBUX.IN> is not only phonetically identical but is also visually,





conceptually, deceptively and confusingly identical and/or similar to Complainant's corporate and trade name STARBUCKS CORPORATION, trade mark STARBUCKS and the Complainant's domains <STARBUCKS.COM>, <STARBUCKS.IN>, <STARBUCKS.CO.IN> and <STARBUCKS.NET.IN>. The Complainant has further contended that given the visual, phonetical, conceptual similarity/ identity of the impugned domain name <STARBUX.IN> with the Complainant's name and its STARBUCKS MARKS, the same is bound to cause confusion and deception in the minds of the public that Respondent has some connection, association or affiliation with Complainant, when it is not so. The Complainant has relied on case of Skyscanner Limited v. Artem Ponomarev INDRP/1218 wherein it has been held by the INDRP that, "The disputed Domain Name omits one 'n' from the Complainant's registered trademark "SKYSCANNER". ".co" is the acronym for the company and the domain extension ".in" is the country code Top Level Domain (ccTLD), but they are suffixes to the complainant's registered trade mark. The omission of one "n" from the Complainant's registered trademark is not-distinctive and incapable from differentiating the disputed Domain Name from the Complainant's registered trademark having phonetic similarity." The Complainant further contends that it has been held by prior panels, deciding under the INDRP in favour of the Complainant, that incorporating a trademark (particularly a well-known trademark such as STARBUCKS) is sufficient to establish that the domain is identical or confusingly similar to the Complainant's registered mark. The Complainant has relied on *Starbucks Corporation v. Aditya Khanna JNDRP/614*). Further, a TLD/ccTLD such as ".in" is an essential part of domain name. Notably, 'cks' is identical in sound to 'x.' Therefore, replacement of the letters 'cks' in STARBUCKS with the letter 'x' in the impugned domain does nothing to distinguish the Respondent's domain name <STARBUX.IN> from the Complainant's STARBUCKS trade mark. The Complainant has relied on *Retail Royalty Company v. Mr. Folk Brook JNDRP/ 705* wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much before the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent, it was held that, "The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant." The Complainant contends that in the present dispute as well, the



Complainant has acquired rights in the trade mark STARBUCKS by way of trademark registrations, and by virtue of use as part of their company and domain names since much prior to the date on which the Respondent created the impugned domain <STARBUX.IN> which is visually, phonetically, conceptually, deceptively and confusingly identical and/or similar to Complainant's company name, trade name and its STARBUCKS MARKS. This evident visual, phonetical and conceptual similarity/ identity between the Respondent's domain name and the Complainant's marks, domain names and company name incorporating STARBUCKS is likely to mislead, confuse and deceive the Complainant's customers as well as the general lay public as to the source, sponsorship, affiliation or endorsement of the Respondent's domain name. As evidenced in the preceding paragraphs, the Complainant's rights over the STARBUCKS MARKS predate the Respondent's registration of the impugned domain <STARBUX.IN>, which, according to the WHOIS records, was only registered/created on April 29, 2021, by 50 years.

#### Respondent's Contentions

The Respondent has failed to submit any response to the notice issued by this panel.

II. The Respondent has no rights or legitimate interests in respect of the domain name (Paragraph 4(b) and Paragraph 6 of the .IN Policy)

#### Complainant's contentions

The Complainant has contended that, the Respondent has no right or legitimate interest in the domain name <STARBUX.IN>. The complainant has not authorized the Respondent at any point of time to register the impugned domain name. The Complainant has further contended that the Respondent cannot assert that it is using the domain name in connection with a bona fide offering of goods and services, in accordance with Paragraph 6(a) of the .IN Policy, as it is not operating any website from the impugned domain and is not hosting any content therein. The Complainant has submitted that the Respondent is not commonly known by the name STARBUCKS/ STARBUX within the meaning of Paragraph 6(b) of the Policy, nor does it appear to have been known as such prior to the date on which Respondent registered the impugned domain name. Accordingly, Respondent is not making a legitimate, non-commercial fair use of the domain name. Therefore, it appears that the Respondent has deliberately chosen to use the domain name <STARBUX.IN> which is phonetically, visually, conceptually, deceptively and confusingly similar and/or identical to the Complainant's





STARBUCKS trade mark, so as to suggest a direct connection or affiliation with the Complainant's STARBUCKS and to create a direct affiliation with the Complainant and its business when in fact there is none. The Respondent cannot assert that it is currently making a legitimate, non-commercial or fair use of the domain name, in accordance with Paragraph 6(c) of the Policy. In fact, the Respondent is not making any use of the domain name <STARBUX.IN> at all and is not hosting any content on the impugned website so as to fall within the ambit of Paragraph 6(c) of the Policy. Further, any use of the impugned domain name now or in the future by the Respondent is likely to create a false association and affiliation with the Complainant, Starbucks Corporation and its well-known STARBUCKS MARKS as well as its official website at STARBUCKS.COM and STARBUCKS.IN. It is further contended by the Complainant that the Respondent herein registered the impugned domain <STARBUX.IN> more than 50 years after the Complainant adopted the STARBUCKS trade mark in relation to the Complainant's business. Further, Respondent is presently not making any use of the domain with a bona fide offering of goods or services; in fact, it is not currently making any use of the domain at all. In the circumstances of this case, the Respondent's use of the disputed domain name is not "bona fide" within the meaning of Paragraph 6(c) of the Policy since there is no apparent legitimate justification for the Respondent's registration of the <STARBUX.IN> domain name that is visually, phonetically, conceptually, deceptively and confusingly identical and/or similar to the Complainant's trade name/mark. It is not possible to conceive of any plausible use of the domain name <STARBUX.IN> by Respondent that would not be illegitimate, as it would inevitably create a false association and affiliation with Complainant and its well-known STARBUCKS trade mark. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name. The Complainant has relied on Starbucks Corporation v. Khanna INDRP/614 held in favour of the Complainant as under: "The Tribunal is of the view that that Complainant's mark is well known and it has gained rights based on prior use. Therefore, the use of the disputed domain name without permission from the Complainant is an act done in bad faith, and confers no right or legitimate interest in favour of the Respondent."

The Respondent has failed to submit any response to the notice issued by this panel.

III. The domain name was registered or is being used in bad faith.

(Paragraph 4(c) and Paragraph 7 of the INDRP Policy)



### Complainant's Contentions

The Complainant has contended that as per paragraph 7(c) of the Policy, it is stipulated that a "bad faith" registration and use of a domain name can be established inter alia by showing circumstances indicating that the Respondent has registered and was previously using the domain name to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's website or location, or of a product or service on Respondent's website or location. The Complainant has further contended that the mark STARBUCKS is a unique word and has been coined by the Complainant further aggravates the Respondent's bad faith, in as much as the Respondent is using a phonetically identical word with respect to the impugned domain name <STARBUX.IN>. The Complainant further submits that there can be no other plausible explanation as to how the Respondent arrived at the impugned domain name <STARBUX.IN> which is phonetically, visually, conceptually, deceptively and confusingly similar and/or identical to the Complainant's mark STARBUCKS. In light of the Complainant's continuous and exclusive use of the STARBUCKS trade mark, including its trade and corporate name over many years, this mark has no meaning other than as an identifier of the Complainant. The Complainant has relied on Reliance is placed on M/s Merck KGaA v Zeng Wei INDRP/323, wherein it was stated that: "The choice of the domain name does not appear to be a mere coincidence, but a deliberate use of a well-recognized mark...such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration." The Complainant contends that the Respondent had no reason to adopt an identical name mark with respect to the impugned domain name except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with or endorsed by the Complainant, with the sole intent to ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain enrichment from the same. The Complainant has further submitted that the fact that the Respondent is currently not using the domain for any purpose and no content is being hosted therein, gives the impression that it is a case of passive holding and the same is tantamount to the fact that the Respondent does not hold any legitimate interest in the domain name. The Complainant has relied on this panel's decision in Flipkart Online Services Private Limited v. Azeem Ahmed Khan wherein it was held that "parking of domain names incorporating someone else's trademark constitutes bad faith".

A handwritten signature in blue ink, appearing to be 'Santosh', with a long horizontal line extending to the right.



The Complainant has also relied on Instagram, LLC v. Contact Privacy Inc. / Serum Lider (WIPO Case No. D2019-0419) wherein it was held that "passive holding can be sufficient to find bad faith use". The Complaint has relied on Johnson & Johnson v. Daniel Wistbacka (WIPO Case No. D2017-0709), and on Telstra Corporation Limited v. Nuclear Marshmallows (WIPO Case No. D2000-0003). The Complainant contends that because of the Complainant's longstanding reputation, and the ubiquitous presence of the Complainant's STARBUCKS MARKS on the Internet, Respondent was, or should have been, aware of the Complainant's trade marks long prior to registering the domain name. The Complainant has further submitted that the Respondent had constructive notice of the Complainant's STARBUCKS MARKS which are registered in the United States (where the Respondent is situated) and many other jurisdictions around the world. The Complainant has also relied on Caesars World, Inc. v. Forum LLC (41, I PO Case No. 1)2005-0517), HUGO BOSS Trade Mark Management GmbH & Co. KG, HUGO BOSS AG v. Dzianis Zakharenka, (WIPO Case No. D2015-0640).

#### **Respondent's Contentions**

The Respondent has failed to submit any response to the notice issued by this panel.

#### **6. Discussion and findings**

The Complainant Starbucks Corporation, a lifestyle brand company, is the owner of the trademark STARBUCKS and various domain names containing Starbucks and its variations. The Complainant has been continuously and exclusively using the marks since 1971. The Complainant has got registered its mark Starbucks and its variations in many countries of the world. The Complainant has business in several countries including USA where the respondent is based. The Complainant has built strong reputation over the years and present on major social media platforms with large followers. The Complainant is spending substantial funds on sales and advertising of its brand in newspapers, TV, Bollywood/Hollywood and social media platforms. The Complainant is also operating in India through joint venture with TATA Starbucks Ltd. The Complainant has also received top level brand ranking by various brand evaluating companies. The Corporation has also won several global awards. The STARRUCKS MARKS constitute invaluable intellectual property and needs to be protected. The top level domain name <starbucks.com> was registered by the Complainant on October 25, 1993 and India specific domain <starbucks.in> was registered in February 16, 2005 whereas the disputed domain name <STARBUX.IN> was registered by the respondent on 29.4.2021. By virtue of its long-standing use and registration, and previous

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INDRP decisions and documentary evidences submitted by the complainant, the Complainant's trademark STARBUCKS falls under the category of a well-known mark. It is 'cks' is identical in sound to 'x.' and replacement of the letters 'cks' in STARBUCKS with the letter 'x' in the disputed domain does nothing to distinguish the Respondent's domain name <STARBUX.IN> from the Complainant's STARBUCKS trade mark. The impugned domain name <STARBUX.IN> is phonetically identical and deceptively/ confusingly similar to Complainant's mark STARBUCKS. The disputed domain name <starbux.in> is also confusingly similar to Complainant's domains <STARBUCKS.COM>, <STARBUCKS.IN>, <STARBUCKS.CO.IN> and <STARBUCKS.NET.IN>. The Respondent is Mr Matt Faile, 632, 2<sup>nd</sup> St N, Stevens Point, WI 54481, USA. The disputed domain name <starbux.in> was registered by the respondent on 29.4.2021 years after registration of marks and domains by the complainant. The disputed domain has no content and passively held by the respondent. The Respondent failed to produce any evidence of bonafide or legitimate use of disputed domain as he has preferred not to respond to notice issued by this panel. The Respondent has not replied to the notices issued by this panel.

#### **Respondent's Default**

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

"In all cases, 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."

Rule 12 empowers arbitrator to proceed with an ex parte decision in case any party does not comply within the time limits or fails to reply against the complaint. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and /or the directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance with the law."

The respondent was given notice of administrative proceedings in accordance with Rules. The panel finds that the Respondent has been given fair opportunity to present his case. The Rules paragraph 12(a) provides that the Arbitrator shall decide the complaint on the basis of the Complainant's contention and documents submitted in accordance with Rules and any other law which Arbitrator deems fit to be applicable. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions, evidence and inferences as the respondent has not replied.





**The Domain Name <starbux.in> is confusingly similar to the trade mark "starbucks" in which the Complainant has rights:**

The Complainant has been able to prove that it has trademark rights and other rights in marks 'STARBUCKS' by submitting substantial documents. The mark comes under category of well known trademark. The mark is widely used by the Complainant in different advertising modes and has a strong presence in social media like facebook, twitter, instagram and pinterest etc. The disputed domain contains name which is phonetically, deceptively and confusingly similar to mark 'STARBUCKS'. Addition of top level domain (CCTLD) extension '.in' is insignificant. There can not be coincidence that the respondent has chosen domain name confusingly similar to the marks of the Complainant. The top level domain <starbucks.com> was registered by the Complainant in 1993 whereas India specific domain <starbucks.in> was registered in 2005 years before registration of disputed domain by the respondent on 29.4.2021. The Complainant has successfully got transferred different domain variations of its mark through INDRP and other panels proceedings. The respondent has failed to reply to the notice issued by this panel to rebut the contentions of the Complainant.

Bases on the forgoing analysis, I am of the opinion that the disputed domain name is identical and confusingly similar to the complainant's mark.

**The Respondent has no rights or legitimate interest in respect of the disputed domain name.**

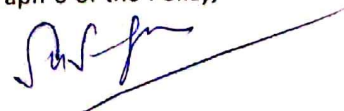
The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark STARBUCKS. The Respondent is neither a licensee nor an authorized agent of Complainant, to use Complainant's mark. The Respondent is not known by the mark and can not have legitimate interest in the disputed domain. The Respondent should have come forward with evidence to show his legitimate interest by rebutting the contention of the Complainant. The Respondent failed to submit his response to justify legitimate non commercial use of disputed domain name. The Respondent has also failed to respond to the contentions of the Complainant. This panel is of the view that mere registration of domain name can't establish rights in disputed domain.

According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name".

The burden of proof to establish any legitimate interest falls on the respondent. The Respondent could have invoked any of the circumstances set out in paragraph 6 of the Policy,

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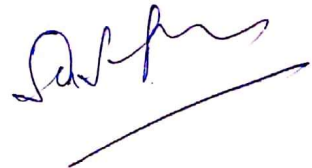
in order to demonstrate rights or legitimate interests in the Disputed Domain Name but the Respondent has not filed any response to justify the legitimate interests in the disputed domain name to rebut the contentions of the Complainant.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.

**The Respondent has registered the disputed domain name in bad faith.**

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating well known mark of the Complainant. The Complainant has been using the mark for several years when the Respondent registered the disputed domain name in April, 2021. The panel finds that the Respondent has used the well known mark of the Complainant in disputed domain name giving impression that this site is Indian subsidiary of Starbucks Corporation. The sole purpose of the respondent is to create confusion to an ordinary internet user. There is no content on site and passively held by the respondent. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights. The panel also takes notice of the fact that the Respondent has preferred not reply to the notice issued in these arbitration proceedings.

In view of the above, In view of the above, I am of the opinion that registration of disputed domain name is bad faith.





### Decision


Based on the of contentions of the complainant , the attached documents , cited decisions and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. The Respondent has failed to file any response to rebut the Complainant's contentions. In view of the forgoing discussion, I am of the opinion that the disputed domain name is identical/confusingly similar to the Complainant's marks. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith.

In accordance with the Policy and Rules I direct that the Disputed Domain name be transferred to the Complainant , with a request to NIXI to monitor the transfer.

The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

January 03 ,2021

  
Sudhir Kumar Sengar  
Sole Arbitrator