



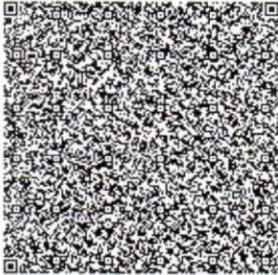
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No. : IN-DL699673406751350  
Certificate Issued Date : 13-Jul-2016 02:33 PM  
Account Reference : IMPACC (IV)/ dl851303/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL851303393875880974970  
Purchased by : VISHESHWAR SHRIVASTAV  
Description of Document : Article 12 Award  
Property Description : CHAMBER NO. 228 M.C. SETALVAD LAWYERS CHAMBERS .  
SUPREME COURT OF INDIA BHAGWAN DASS ROAD, NEW  
DELHI  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : VISHESHWAR SHRIVASTAV  
Second Party : AS APPLICABLE  
Stamp Duty Paid By : VISHESHWAR SHRIVASTAV  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



.....Please write or type below this line.....

### VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR  
IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

[www.nncc.in](http://www.nncc.in)

between

NEPHROLOGY NURSING CETIFICATION  
COMMISSION INC.

SAMBASIVA RAO KANDULA

AND

AWARD

...COMPLAINANT

...RESPONDENT

1

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website 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.

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 28/05/2016. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier .
2. That the Complainants vide their email dated 30/05/2016 complied partially with the directions of this Tribunal and were given 4 days time to comply.
3. This Tribunal received an email dated 30/05/2016 from NIXI stating that they have sent the complaint by courier to the Respondents on 27/05/2016 and are awaiting the delivery. This



Tribunal on tracking the courier sent by NIXI had been duly delivered to the Respondents.

4. Hence, vide its order dated 04/06/2016 this Tribunal notified the Respondent to send their Statement of Defense to the complaint by 14<sup>th</sup> June, 2016.
5. This Tribunal on the request of the Respondent granted further time till 18<sup>th</sup> June, 2016 vide its order dated 06/06/2016. It was notified that in case no response is received from the Respondent this Tribunal will be constrained to move further and pass its award based on the material placed before it.
6. The Respondent complied with the orders and by further order dated 20/06/2016 this Tribunal directed the Complainants to file their Rejoinder if any, and both the parties were given time till 27/06/2016 to file their Evidence by way of Affidavit.
7. Further vide its order dated 29/06/2016 this Tribunal gave time till 02/07/2016 for filing of Sur Rejoinder by the Respondent.



8. The Complainants sent a photocopy of their Reply to the Sur Rejoinder and did not send the original, hence this Tribunal ignores the same. On 11/07/2016 this Tribunal reserved the award.

### **CLAIM**

9. The claim as put forward by the complainant is briefly as under:

A. It is claimed that Nephrology Nursing Certification Commission, Inc.(known as "NNCC"), a company incorporated under the law of United States of America, formerly the Nephrology Nursing Certification Board (NNCB), was established in 1987 to develop and implement certification examinations for nephrology nursing. The Complainant has relied upon a Copy of Certificate of Incorporation issued by the Registrar of Companies providing details of incorporation marked as **Annexure A**.

B. It is further claimed that the Complainant NNCC is separately incorporated, and an independent organization that

collaborates with the Center for Nursing Education and Testing (C-NET) in test development, test administration, and test evaluation and it also works collaboratively with the American Nephrology Nurses' Association (ANNA) to promote, advertise and offer the certification examinations and to recognize certified individuals. It is claimed that all of the certification examinations are endorsed by ANNA. The Complainants place their reliance on **Annexure B** in support of their claims.

C. It is claimed that the Complainant NNCC aims to promote the highest standards of nephrology nursing practice through the development, implementation, coordination and evaluation of all aspects of the certification and re-certification processes and is currently providing six examinations to validate clinical performance -

- a. [The Certified Dialysis Nurse examination](#)
- b. [The Certified Dialysis LPN/LVN examination](#)
- c. [The Certified Nephrology Nurse examination](#)
- d. [The Certified Clinical Hemodialysis Technician](#)
- e. [The Certified Clinical Hemodialysis Technician - Advanced](#)
- f. [The Certified Nephrology Nurse - Nurse Practitioner](#)

Besides this it is claimed that NNCC regularly publishes Certification Preparation Guide. Reliance is placed on **Annexure C (Colly)**.

Besides the above by relying on **Annexure D** it is claimed that the Nephrology Nursing Certification Commission (NNCC) also offers of research grants, career mobility scholarships and advocacy awards annually.

D. By relying on **Annexure E & F Colly** the Complainant's claim to have proprietary rights in the mark "**NNCC**" as under :

Sr no.	Trade Mark No.	Trade Mark	Class	Date of Filing	Designated Countries	Status of Trade Mark
1.	4087804	NNCC	42	14-06-2011	United States	Registered
2.	4269958	<u>NEPHROLOGY NURSING CERTIFICATION COMMISSION</u>	42	14-06-2011	United States	Registered
2.	2879007	NNCC	9, 16, 41, 42	08-01-2015	India	Pending



**E.** It is further claimed that the Complainant, since inception, has made substantial investment in building its brand, through various advertisements, promotions, and marketing activities by advertising its goods and services under its various Trade Marks, through every mode viable, including their websites "nncc-exam.org".

**F.** It is claimed that the domain name "nncc-exam.org" was registered on November 16, 2000, which has been used by the Complainant extensively since its registration and over the period it has earned a lot of good will and reputation [Reliance is placed on **Annexure G**].

**G.** It is claimed that Complainant's Trade Name "NNCC", its domain names "nncc-exam.org", represents its invaluable proprietary rights and the Complainant vigorously enforces and vehemently defends such rights against any act of infringement and passing off.

H. The Complainant is aggrieved by the act of the Respondent in registering the disputed domain name **"NNCC.IN"** on 25<sup>th</sup> October 2015.

I. It is alleged that the Complainant has never authorised, licensed or otherwise permitted the respondent to use the name, trade mark or domain name consisting of NNCC or to use "nncc.in" as a domain name. They also claim that they wish to use "nncc.in" as another domain name for protection of their website, trade name and trade mark to avoid any such extreme misuse of the domain name.

J. As per the complainants the disputed domain name is

- (i) Identical and Confusingly Similar to the trade mark of the complainants and has relied upon an award of WIPO reported at *OSRAM GmbH v. Yuri A Ivanov; (CaseNo. D2009-0692)*
- (ii) It is alleged that the Respondent has no rights or legitimate interests in the domain name and for this allegation the complainants have relied upon an



award given at **Annexure J**.

- (iii) It is alleged that the Respondent has registered this domain name in bad faith and its act is an exercise to resell or rent the same to a third party which would cause irreparable damage to the Complainant. It is also alleged that the projection of the link relates to the nursing profession and other related jobs is an attempt by the respondent to attract the users who will click on the link believing it to be actual recruitment /certification /exam /course/advertisement by the Complainant's Company NNCC which is not the case. Reliance is placed on **Annexure L** and to judgment(s) marked as **Annexure M, Annexure O, P and Q**.

- K. It is alleged that the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services and has also not been commonly known by the name or mark nncc.in in any manner whatsoever and the

Registration of the said domain name is an exercise in dishonesty.

L. Per contra the Respondent defends its registration on the grounds:

***“Non Exclusivity of the mark ‘NNCC’***

- 1. The mark ‘NNCC’ is a four lettered acronym which has several different meanings.*
- 2. Many businesses are known as ‘NNCC’ in their abbreviated form.*
- 3. Several domain names involving the mark ‘NNCC’ have been registered across the world.*
- 4. The mark ‘NNCC’ does not have any actual meaning and cannot be exclusively associated with a single entity.*

***Willful Failure of the Complainant to assert their Rights***

- 5. That the Indian domain name variants of the Complainant’s primary website <www.nncc-exam.org> are available. The Complainant has so far not registered*

*them. This action or rather non-action on the part of the Complainant proves that the Complainant is not interested in protecting its business or apparent good will, but is rather interested in harassing the Respondent.*

**Complaint Limited by Doctrine of Laches**

- 6. The Complainant did not register this domain name till October 2015. It was only in October 2015 that the Respondent registered this domain name. The Complainant had more than enough time to register this domain name since 2005 but did not do so. The present complaint is thus liable to be dismissed under the doctrine of laches.*

**Complainant does not own the mark 'NNCC'**

- 7. That the Complainant is not known in India. In fact, the Complainant or the mark 'NNCC' is not well known in the Complainant's country.*
- 8. The Complainant does not have any registered trademark in India. The trademark application filed in India cannot be considered a valid proof of the*



*Complainant's ownership in the mark 'NNCC' as the trademark application may very well be dismissed by the Trade Mark Registry.*

***Respondent's legitimate use of the domain name***

- 9. It has been held by numerous Panels that having automated 'pay per click ads' is legitimate use of the domain name, provided that the domain name does not target the Complainant's trademark.*
- 10. The Respondent has never targeted the Complainant's mark or business. In fact, since the mark 'NNCC' is non exclusive and pertain to several other entities and business apart from the Complainant, the Respondent is sure the 'pay per click' links generated on the domain name would have been extremely general in nature.*

***Respondent's lack of Bad Faith***

- 11. The Respondent was not aware about the Complainant's business or mark until the INDRP*

*proceedings were initiated in relation the impugned domain name.*

12. *The Respondent did not register and is not using the domain name in bad faith.*

13. *The Respondent has never approached the Complainant or any other party to sell the domain name and has never misled or targeted the Complainant's customer.*

14. *Moreover, even if the Complainant's customers would want to go to the Complainant's Indian website, it is very likely that they will visit the '.IN' variant of the Complainant's primary website which is <www.nncc-exam.org>.*

#### **Reverse Domain Name Hijacking**

15. *The fact that the Complainant has not attempted to register the .IN domain name extensions of their primary domain name <www.nncc-exam.org> as well as the fact that the Complainant did not register or try to acquire the disputed domain name before October 2015 proves that*

*the complaint has been filed in bad faith and is a clear attempt at Reverse Domain Name Hijacking.”*

**M.** The Respondent asserts that the Complainant does not have rights in the mark ‘NNCC’ barring a single registered trademark under class 42, in the United States of America. The Respondent asserts the Complainant’s trademark application for the mark ‘NNCC’ in India have been objected by the Trade Mark Registry.

The Respondent alleges that the Complainant’s primary domain name is [www.nncc-exam.org](http://www.nncc-exam.org) and it has failed to secure the Indian extension of these domain names and has instead proceeded ahead to harass the Respondent through this complaint. The Respondent by relying on **Annexure A** gives a list of domain names which are registered with nncc.

They are:

- [www.nncc-exam.in](http://www.nncc-exam.in)
- [www.nncc-exam.co.in](http://www.nncc-exam.co.in)
- [www.nncc-exam.net.in](http://www.nncc-exam.net.in)





- [www.nncc-exam.org.in](http://www.nncc-exam.org.in)
- [www.nncc-exam.firm.in](http://www.nncc-exam.firm.in)
- [www.nncc-exam.gen.in](http://www.nncc-exam.gen.in)

The Respondent furnish ***M/s Thoughtworks Inc. vs. M/s Super Software Private Limited; INDRP/682, Annexure B*** to buttress its contention.

N. It is further alleged that the Complainant had more than enough time to register the impugned domain name since 2005 but did not do so hence they are handicapped under the doctrine of laches.

O. Further as per the Respondent the mark 'NNCC' is a four lettered acronym cannot be owned exclusively by the Complainant as many domain name variants for the mark 'NNCC' are owned by several different entities, none of which is the Complainant itself. For example:

- [www.nncc.com](http://www.nncc.com)
- [www.nncc.us](http://www.nncc.us)

- [www.nncc.co.uk](http://www.nncc.co.uk)
- [www.nncc.eu](http://www.nncc.eu)
- [www.nncc.net](http://www.nncc.net)
- [www.nncc.org](http://www.nncc.org)
- [www.nncc.info](http://www.nncc.info)
- [www.nncc.biz](http://www.nncc.biz)
- [www.nncc.co](http://www.nncc.co)

Reliance is placed on **Annexure C**.

**P.** It is further alleged that the Complainant or the mark 'NNCC' is not well known in India and that the Complainant is known as 'Nephrology Nursing Certification Commission Inc.' and not 'NNCC'. Reliance is placed on a judgment reported as ***Chiesi Farmaceutici S.P.A v. Brandconcern B.V.; INDRP/117*** . However, no copy is annexed.

**Q.** The Respondent further alleges the Complainant has failed to provide any valid evidentiary proof which proves that they are the exclusive owners of the mark 'NNCC' nor they have any established business in India or any registered trademarks in India. By placing **Annexure D** the Respondent shows that 100

percent of the users who visit the Complainant's website are from the United States of America. Hence, the Complainant does not have any valid or legitimate rights over the mark 'NNCC'.

**R.** It is further claimed that the Respondent has rights or legitimate interests in respect of the domain name as it is generic in nature and is easy to remember. For this purpose **Annexure F** is relied upon.

**S.** It is stated that the Respondent has plans to develop a start-up with the name 'NNCC' and is in the midst of raising funds for the same.

**T.** The Respondent admits that it has set up a parking page comprising automatically generated links to third party web sites on the said domain name and state that none of the links which have been generated have ever deliberately had any



connection with the Complainant or its business, and that if any such connection has occurred it has been inadvertent.

U. It is further submitted by the Respondent that a parking page generating "pay per click" revenue can be deemed to be a "bona fide offering of goods or services" if the mark in question is a generic or non exclusive term. Respondents have relied upon a judgment reported as ***SK Lubricants Americas v. Andrea Sabatini, Webservice Limited Case No. D2015-1566*** given as Annexure F; ***BioDelivery Sciences International, Inc. v. HLK Enterprises, Inc. c/o Domain Admin, NAF Claim No. 1175189*** [Annexure G]; ***Trans Continental Records, Inc v. Compana LLC, WIPO Case No. D2002-0105*** as "Annexure H"; ***Banca Monte deiPaschi di Siena S.p.A v. Charles Kirkpatrick, WIPO Case No. D2008-0260*** [ Annexure I ].

V. It is stated that the Respondent has not registered or used the domain name in bad faith.



W. The Respondent submits that it had set up a parking page on the domain name which generates automated links, it never deliberately tried to target the Complainant's business or mislead its customers.

X. It is further submitted by the Respondent that the Complainant has failed to prove that the domain name created a likelihood of confusion and has not been able to establish that the Respondent has intentionally attempted to attract internet users by using the Complainant's goodwill.

Y. It is again stated that the Complainant is not doing business in India and the general public is not aware of the Complainant and does not relate the mark 'NNCC' with the Complainant.

Z. It is alleged that the complaint has been filed in bad faith due to the fact that the Complainant has so far not bothered to register .IN domain name extensions corresponding to its primary domain name <www.nncc-exam.org> and there is a considerable delay of about 10 years from the time when the .IN domain names were first launched. This delay on the part

of the Complainant cannot be overlooked and that the Complainant knew that it would not be able to prove all three elements as laid down in Paragraph 4 of the Policy. Reliance is placed on **Shevaldas C Raghani v. Stephen Koenig; INDRP/008 [Annexure L]**.

AA. It is prayed by the Respondents that the complaint be dismissed as the Complainant has failed to prove the grounds enumerated in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy.

BB. The Complainants filed a Rejoinder to the SoD / WS of Respondent contending *interalia*:

1. That the current status of the website under domain name NNCC.IN as per snapshot of the website at the time of filing of complaint showed different links including the **notification for sale** including same targeting the Complainant's website, for which evidences were filed as Annexure with the Complaint and subsequent to filing of the Complaint, the same have been removed by the



Respondent and current status of the website reads as **“this site can’t be reached - nncc.in refused to connect”** Reliance is placed on **Annexure A** and judgment given as **Annexure B**. It is further alleged that nowhere in his reply to the complaint, the Respondent has come forward with the reason for adopting the disputed domain name. Reliance is placed on **N.R. Dongre And Ors vs Whirlpool Corporation And Anr** decided on **30 August, 1996** given at **Annexure C(Colly)**.

2. The Complainants rebut the contention of the Respondent w.r.t. Non Exclusivity of the mark ‘NNCC’ and rely upon the judgment of Madras High Court titled **VIT University vs Bagaria Education Trust & Ors** and to the case of **Mahindra & Mahindra Limited & Anr vs Mnm Marketing Pvt. Ltd. & Anr** decided on **31 July, 2014** [Bombay High Court ] and to the judgment of Punjab & Haryana High Court in the case of **United Iron And Steel Works vs Government Of India, Trade Marks**, and to WIPO



Arbitration and Mediation Centre in the case of Japan Tobacco Inc. vs Yoshiki Okada Case No. D2000-0492. All the said judgments are annexed as **Annexure D(Colly)**.

3. The Complainants in reply to the assertion of the Respondent as regards to Wilful Failure of the Complainant to assert their Rights w.r.t. the acronym NNCC the Complainants have relied upon their interpretation of the INDRP contending that as per INDRP a Registrant before applying for registration of any domain name, it is the Registrant's duty to determine whether the Registrant's domain name registration infringes or violates someone else's rights and that the registration of the domain name will not infringe upon or otherwise violate the rights of any third party or the registration of proposed domain name would be in violation of any applicable laws or regulations.
4. The Complainant has contended w.r.t. the allegation of the Respondent of delay and laches and has contended that the Respondent is resorting to giving a gross



misinterpretation of law. The Complainant contests that it is not relevant if the Complainant has registered the impugned domain name when it was available, what is relevant is the fact that the Complainant being the registered proprietor of the trademark NNCC and also by virtue of having common law rights in the same has every right to restrain any party from misusing the domain name in which such party has no legitimate rights and which has been used and registered in bad faith and any delay or laches in registering the domain name does not allow any third party to misuse the same when the first party has exclusive trademark rights in the same. In this regards, a reference is made to the Doman Name Dispute in the matter of Case No. D2012-0618 titled as Public Service Electric & Gas Company Vanguard Resolutions LL C and *Mile, Inc. v. Michael Burg*, [WIPO Case No. D2010-2011](#), and [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition](#) ("WIPO Overview 2.0"), paragraph [4.10](#). **Annexure E.**





5. With regards to allegation of the Respondent that the Complainant does not own the mark 'NNCC' the Complainant contest that it had already commenced use of its mark NNCC in India by initiating the process of appointing Licensee and franchisees. Reliance is placed on **Annexure F**. The Complainant contends that the mark 'NNCC' is a well known mark and even a simple Google Search for NNCC generates result for the Complainant alone thus its mark NNCC has acquired secondary significance by way of long, continuous and extensive use of the same that any use of the acronym essentially relates to the Complainant only. Besides they holds common law rights in the mark NNCC and by virtue of trans-border reputation has every right in India to prevent any misuse of its trademark including any misuse of any domain name comprising of such trademark over which the Complainant holds common law rights. They rely on the decisions of the Hon'ble Apex Court as well as various High Courts given below:



- (i) Kamal Trading vs. Gillette Ltd. : 1988 PTC 1
- (ii) Apple Computers vs. Apple Leasing & Industries : 1992(1) Arb. L/R. 93
- (iii) Daimler Benz vs. Hybo Hindustan : AIR 1994 Del 239
- (iv) N. R. Dongre vs. Whirlpool(D.B) : AIR 1995 Del 300
- (v) Calvin Klein Inc. vs. International Apparel Syndicate: 1996 PTC (16) 293
- (vi) Aktiebolaget Volvo vs. Volvo Steel Ltd. : 1998 PTC (18) (DB)
- (vii) P.C. Mallappa vs. McDonald's Corporation : 1999 PTC 9(Karnataka)
- (viii) Rainforest Café, Inc. vs. Rainforest Café : 2001 PTC 353 (del)
- (ix) Honda Motor Co. vs. Charanjit Singh Ors. : 2003 (26) PTC (Del) 1
- (x) Millmet Offtho Industries vs. Allergan Inc. : 2004 (28) PTC 585 (SC)
- (xi) Madhuban Holiday Inn vs. Holiday Inn. Inc. : 2002 (25) PTC 308 (Del)
- (xii) Jolen Inc. Vs Shobanlal Jain and Ors." : W.P.(C)Nos.1210 and 1213 of 2005 (Delhi HC)

6. The Complainants dispute the Respondent's legitimate use of the domain name as misleading and submits that the mark NNCC is not a non exclusive mark which pertains to several other entities but it connotes and denotes to the services provided under the mark to the Complainant only as is also evident from simple Google search which against mark NNCC generates hits that relate the mark only to the



Complainant. The Respondent had used the domain name to provide links that palpably relates to the nursing industry for which the Complainant's trademark NNCC is well-known. Thus, 'pay per click ads' on the website in no circumstances be considered as bonafide but is a clear malafide attempt by the Respondent to target the Complainant's trademark. Otherwise there are no good reasons by any stretch of imagination wherein the Respondent has not only adopted the domain name in which the Complainant has rights but also used the same to provide links related to the Complainant's activities like "Nursing profession". Reliance placed on AXA SA v. Discover Domains; D2016-0033; Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc., WIPO Case No. D2006-1315 given at **Annexure F(Colly)**.

7. The Complainants contend that the Respondent was well aware of the complainant's business and its mark prior to registering the impugned domain name and has itself listed



the same for sale. Besides a simple Google Search for NNCC hits all results for the Complainant only. Reliance is placed on **Mir Internet Marketing Inc. vs Value IT Solutions NIXI 44/2008** given at **Annexure G(Colly)**.

8. The Complainants contends that the allegation of the Respondent w.r.t. "Reverse Domain Name Hijacking" are frivolous and a gross misinterpretation of law. It is contended that the Complainant was not under obligation to register .IN domain name extensions of its primary domain name and to register the disputed domain name before October 2015.

CC. In rebuttal to the Rejoinder of the Complainant the Respondent in turn has filed Sur Rejoinder to Complainant's Rejoinder contending that the Complainant has failed to prove its rights over the mark 'NNCC' in India contending:

a. The Complainant has filed a multiclass trademark application for the word mark 'NNCC' in India and the



said application are under objection in the Trade Marks Registry.

- b. The Complainant has failed to prove that it does business in India under the mark 'NNCC'.
- c. The Complainant has not incorporated an entity in India and has neither submitted any records pertaining to its employees, sales, audit sheets, advertisement expenses, etc. regarding its business under the mark 'NNCC' in India.
- d. The Complainant primarily does business in America, and the Respondent was unable to find any records of it having an active business in India.
- e. According to the Complainant's Annual Report for the previous year available at <<https://www.nncc-exam.org/about-nncc/nncc-annual-report>>, it is evident that the Complainant does not have any active presence or business in India as **Annexure A**.



- f. The Complainant in the year 2015 – 16, only certified five thousand twenty eighth hundred nurses in the entire United States. Thus the Complainant has not been able to prove that the mark 'NNCC' has acquired trans-border reputation in India.
- g. It is a matter of record that the Complainant does not have any registered trademark registration for the mark 'NNCC' in India nor it has any established business outside USA.
- h. The Complainant's contention of that Google Search of the mark 'NNCC' produces results related to the Complainant is flawed.

DD. Further the Respondent has

- 1. never tried to sell the domain name to anyone and the Complainant has failed to prove that they were ever contacted by the Respondent in this regard.



2. That the links shown on the parking page available on the impugned domain name are automatically generated and the Respondent does not have any control over it.
3. The Respondent chose to shut down the parking page after the present proceedings were initiated out of his goodwill and respect towards the judicial system of the country.

EE. The Complainant filed their Reply to Sur Rejoinder in a form of a photocopy hence, *dehors* the objection of the Respondent this Tribunal ignores the same.

### **FINDINGS**

**This Tribunal before returning it's findings places it's reliance on the relevant Regulations of INDRP which are as under:**

***"4. 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:***

***(i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;***



*(ii) the Registrant has no rights or legitimate interests in respect of the domain name; and*

*(iii) the Registrant's domain name has been registered or is being used in bad faith.*

**6. Evidence of Registration and use of Domain Name in Bad Faith**

*For the purposes of Paragraph 4(iii), 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:*

*(i) 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*

*(ii) 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*

*(iii) 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.*



## **7. Registrant's Rights to 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 Paragraph 4 (ii) :*

*(i) 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;*

*(ii) 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*

*(iii) 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. The disputed domain name no doubt is identical and confusing similar to a pre existing domain name belonging to the complainants as well as their registered trademark. Hence the contention of the respondents that the complainant has no legal right on the said acronym NNCC is not plausible.





- II. The second contention of the respondents is that the complainant has not got any trademark registered in India stands belied by the fact that the complainant has moved an application seeking a trademark registration with the local Indian authorities. No doubt the same is under objection but from the record placed before this Tribunal it is not clear as to whether the objection to the said trade name / mark has been raised by the respondents or by some other party.
- III. Further this Tribunal finds that the respondents have not furnished any information with respect to their business activities relating to the acronym NNCC. Barring, an averment that they are seeking funds for a start up no details have been provided w.r.t any correspondence with the banks or with the possible investors. Even the details of the proposed activity of the startup is missing.
- IV. This Tribunal cannot help noticing that the respondents has not furnished any information with regards to his being

commonly known by the acronym NNCC so as to given him a benefit Rule 7 (ii) and (iii) of INDRP.

V. In fact this Tribunal has not found any plausible rebuttal / answer to the documents placed at Annexure L and M of the Complaint which point out that the domain name has been put for sale. Hence, by not giving a plausible response w.r.t. **Annexure N** this Tribunal cannot lose sight of the fact that the disputed domain name has been put up for sale. Thus there is a dichotomy w.r.t. the Respondents plea that it is seeking funds for starting some business with regards to the disputed domain name.

VI. Another point which comes to the mind of this Tribunal is that the complainants trade mark application of India was filed on 08.01.2015 whereas the disputed domain name was created on 25.10.2015 which establishes that even though late the complainants were moving in the right direction and had tried to secure a trade mark / name by the name NNCC with the



Trademark authorities of India in terms of their earlier already registered trademark NNCC in the United State of America. The contention of the respondents is that the complainants have no presence in India and are only active in United States of America bears no fruit as there is nothing in Rule 4, 6 & 7 of INDRP which mandates that a person is required to have localized trademark for claiming the benefit under Rule 4 (i). All that the rule says is that a person is required to either have a pre existing domain name or a trademark similar to a disputed domain name. The said rule does not, as stated above, put any rider or a *provisio vis-à-vis* having a trademark registered with local trade marks authority. Moreover, this Tribunal notices that the Respondent is based in London and has not specified as to whether his start up would be located in India or UK.

- VII. The respondents has raised two other contentions – one relating to the complainants not taking any step with respect to other domain name(s) which are confusingly similar to the



trademark and trade name of the complainant. So far as this Tribunal is concerned, the dispute which is pending before this Tribunal pertains to “**www.nncc.in**” and not any other domain name. Hence this Tribunal cannot travel beyond the scope of its reference.

VIII. Be it that as it may this Tribunal holds that there is nothing in the INDRP which puts a disability on an owner of a trademark / trade name for not acting with respect to other domain names having similar name or acronym to that of the complainant.

IX. The respondents has also raised the issue of delay and latches on the part of the complainant. However, this Tribunal did not find anything INDRP which handicaps a person / complaint from seeking the remedy under INDRP as there is no bar / limitation with respect to the enforcement of it's rights belatedly. Further this Tribunal cannot put words in the mouth of the statute.

## ORDER

10. In view of the facts and circumstances stated *supra* this Tribunal holds that the respondent do not have a plausible claim on the domain name [www.nncc.in](http://www.nncc.in) hence this Tribunal directs the Registry to transfer the domain name [www.nncc.in](http://www.nncc.in) to the complainants.
11. The Complainants too are free to approach the Registry and get the same transferred in their name.
12. There is no order as to the cost as no details of the cost / damages have been specified / detailed in the complaint.
13. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 19<sup>th</sup> day of July, 2016.

NEW DELHI  
19/07/2016



V. SHRIVASTAV  
ARBITRATOR