



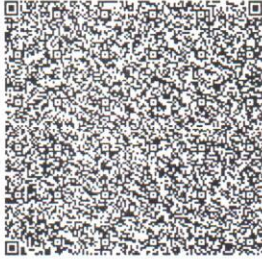
सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL69745054822974N
Certificate Issued Date	: 18-Feb-2015 12:14 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ DWARKA/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1736460279142651N
Purchased by	: JAYANT KUMAR
Description of Document	: Article 12 Award - Immovable
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: JAYANT KUMAR
Second Party	: Not Applicable
Stamp Duty Paid By	: JAYANT KUMAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA  
IN THE MATTER BETWEEN

Emirates

Complainant

v.

Pranav Upsani

Respondent

#### 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.

*Pranav*

## ARBITRATION AWARD

1. The Complainant is M/s Emirates, a corporation organized and existing under the laws of Dubai, United Arab Emirates. The Respondent is Pranav Upasani having address at PRNV, 103 Ramnimi Mandik Road, Colaba, Mumbai, India.
2. The Arbitration pertains to the disputed domain name <skywards.in> registered on November 1, 2007 by the Respondent. The registrar for the disputed domain name is Webiq Domains Solutions Pvt. Ltd.
3. The sole arbitrator appointed in this complaint by NIXI is Mr. Jayant Kumar. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence to NIXI on December 15, 2014.
4. The Complaint was handed over to the sole arbitrator by NIXI on December 18, 2014. The Respondent was granted fifteen days time to file its Reply to the Complaint on December 20, 2014. The Respondent, vide email dated January 4, 2015, sought further time to file its Reply and the Respondent was granted another seven days to file its Reply. The Respondent filed its Reply vide email dated January 12, 2015. The Complainant, vide its email dated January 14, 2016, sought an opportunity to file Rejoinder. The Complainant was granted liberty to file Rejoinder within ten days. The Complainant thereafter filed its Rejoinder vide email dated January 27, 2015. The Respondent, vide email dated January 29, 2015, stated that:

*"As stated in my earlier reply, I have never had any malafide intentions against the complainant and I am willing to transfer the domain 'skywards.in' to the complainant forthrightly and without any expectations whatsoever. I request the Honourable Arbitrator to kindly grant me 15 days to submit my reply to the rejoinder."*

The Respondent was informed vide email dated February 1, 2015 that a Reply to the Rejoinder is not required since the Rejoinder filed by the Complainant is only restricted to the allegations made in the Reply by the Respondent.

### Complainant's Submissions

5. The Complainant states that it is a world renowned international airline of United Arab Emirates and the largest airline in the Middle East. With a fleet of over 218 aircrafts, the Complainant route portfolio now comprises of more than 144 destinations in 83 countries around the world.

*Pranav*



6. The Complainant states that it adopted the mark SKYWARDS in the year 2000 and has been using the mark continuously and extensively since then. The Complainant also filed documentary evidence to show use of the mark SKYWARDS in India, earliest such evidence is dated November, 2005 (Article in November, 2005 issue of Business Traveller magazine). It also submitted that it has SKYWARDS loyalty programme, in which out of total 12 million worldwide customer, 8.5 lakh customers are Indians. The Complainant also submitted a list of recent awards and accolades received by the Complainant for the SKYWARDS programme.
7. The Complainant also has trade mark registration for the mark SKYWARDS in foreign countries viz. Australia, Singapore, USA, New Zealand, UK, Canada, etc. In India, the trademark application for the mark SKYWARDS was filed August 30, 2004 and is currently pending. It also owns domain name registration for <skywards.com> since March 7, 2000 and is actively using this domain name in connection with its business.
8. The Complainant submitted that the mark SKYWARDS is distinctive and is owned by the Complainant. The said mark is alleged to have attained significant goodwill and reputation and is a well-known mark.
9. The Complainant submitted that the domain name <skywards.in> is confusingly similar to its mark SKYWARDS.
10. The Complainant submitted that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent, appears to be in the business of holding domain names and selling them. No website has been hosted by the Respondent on the disputed domain name since 2007. The Respondent has no commercial relationship with the Complainant. The webpage hosted at [www.skywards.in](http://www.skywards.in) displays various sponsored links/ads belonging to Complainant's competitors.
11. The Complainant submitted that the disputed domain was registered and is being used in bad faith. It submitted that registration of the disputed domain name several years after the registration of the Complainant's domain name <skywards.com> is prima facie evidence of malafide intention and bad faith of the Respondent. The Complainant further stated that the disputed domain name only offers pay-per-click links to various websites and the Respondent has been earning pay-per-click revenue from the sponsored links/ads on the Respondent's website. In doing so, the Respondent has been attempting to attract Internet users, for commercial purposes, to the Respondent's website by creating a likelihood of confusion with the Complainant's mark/domain name. It was also submitted

*Akumar*

that when a domain name is so obviously connected with the Complainant and its goods/services, its very use by someone with no connection to the Complainant suggests 'opportunistic bad faith'.

### **Respondent's Submissions**

12. The Respondent is an Architect and currently providing design consultancy and advisory services to certain clients in India. The Respondent submitted that its professional or business activities do not include aviation, travel, tourism or any such related activity and that it has no business association with any company having commercial interests in these areas of business.
13. The Respondent also submitted to have underwent glider pilot training programme in 2005. It submitted that SKYWARDS is a dictionary word meaning 'towards the sky'.
14. The Respondent submitted it has not gained any commercial benefit from the webpage hosted at [www.skywards.in](http://www.skywards.in) and has registered the domain name in good faith.

### **Discussion and Finding**

15. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:
  - a. The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
  - b. The Respondent has no rights or legitimate interests in respect of the domain name; and
  - c. The Respondent's domain name has been registered and is being used in bad faith.
16. The Arbitrator finds that the Complainant has submitted sufficient documentary evidence to establish its rights in the mark SKYWARDS. The Arbitrator is convinced with the distinctive nature of and the Complainant's ownership in the mark SKYWARDS. The disputed domain name incorporates the mark SKYWARDS in entirety and hence, the disputed domain name is held to be confusingly similar with the Complainant's mark SKYWARDS.
17. Paragraph 7 of the Policy states a Respondent's or a registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant

*Answer*

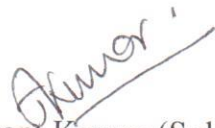


(as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain. The Respondent has not filed any evidence on record or even any submissions to show that the Respondent has made preparations to use the disputed domain name for a bona fide offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes legitimate non-commercial fair use of the website linked to the disputed domain name. Based on the above, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

18. The Respondent has made no use of the domain name or website that connects with the domain name. Passive holding of a domain name permits an inference of registration and use in bad faith. Based on the above, the Arbitrator finds that the domain name was registered and used in bad faith by the Respondent.

### **Decision**

19. In light of the aforesaid discussion and findings, the Arbitrator directs that the disputed domain name <skywards.in> be transferred to the Complainant.



Jayant Kumar (Sole Arbitrator)

Dated: February 18, 2015