

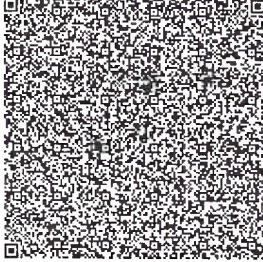
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

|                           |  |
|---------------------------|--|
| Certificate No.           | : IN-DL242809011967940                 |
| Certificate Issued Date   | : 29-Nov-2016 11:11 AM                 |
| Account Reference         | : IMPACC (IV)/ dl700603/ DELHI/ DL-DLH |
| Unique Doc. Reference     | : SUBIN-DL700603488633501213070        |
| Purchased by              | : DEEPA GUPTA                          |
| Description of Document   | : Article Others                       |
| Property Description      | : Not Applicable                       |
| Consideration Price (Rs.) | : 0<br>(Zero)                          |
| First Party               | : DEEPA GUPTA                          |
| Second Party              | : NIXI                                 |
| Stamp Duty Paid By        | : DEEPA GUPTA                          |
| Stamp Duty Amount(Rs.)    | : 100<br>(One Hundred only)            |



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**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF  
NATIONAL INTERNET EXCHANGE OF INDIA  
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA  
.IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure**

**Statutory Alert:**

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## ARBITRATION AWARD

DATED: 28<sup>th</sup> November 2016

In the matter of:

**Volvo Trademark Holding AB,  
C/O AB Volvo  
SE-405 08 Goteborg Sweden**

**Complainant**

**VS**

**Mukesh  
Patel Nagar, New Delhi-110008**

**Also At**

**2155, Guru Arjun Nagar, West Patel Nagar,  
Near Satyam Hall  
New Delhi, Delhi, Pin: 110008**

**Respondent**

### 1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant is: **VOLVO TRADEMARK HOLDING AB, C/O AB Volvo, SE-40508 Goteborg Sweden**
- (b) Respondent is: **Mukesh, Patel Nagar, New Delhi-110008**. It has presence on internet with domain name of **www.volvobus.co.in** which is subject of dispute.

### 2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is **www.volvobus.co.in** registered with the **.IN Registry** through Webiq Domains Solutions Pvt. Ltd. (R131-AFIN)
- ii. The Registry Operator **.IN Registry c/o NIXI is at Flat no. 6B, 6<sup>th</sup> Floor Uppals M6 Plaza, Jasola District Centre, New Delhi-110025**. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iii. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
  - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
  - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
  - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.



Volvo Companies adopted VOLVO, a Latin word, as a trademark and a trade/corporate name on 5th May, 1915. 'VOLVO' forms a key and dominant part of the corporate name and style of the majority of the VOLVO Companies. VOLVO including that of Volvo India Private Limited, flagship company of Aktiebolaget Volvo India. Volvo companies have high value Goodwill built over eight decades.

Volvo annual spending on publicity runs into 1613 million Swedish Kroner plus. VOLVO is registered proprietor of "VOLVO" trademark in several classes in India, earliest dates back to year 1975. Volvo Companies have trademark registrations for "VOLVO" in various countries. It is well-known, reputed & easily identifiable. Indian Trademark Registry included it in its list of well-known trademarks published on the website of the Registry. Through its website created on 9 December 1995, [www.volvo.com](http://www.volvo.com), Company provides information of its products or services. Other websites owned by it are [www.volvobuses.com](http://www.volvobuses.com), [www.volvocars.com](http://www.volvocars.com), [www.volvotrucks.com](http://www.volvotrucks.com).

**In regards to Respondent being Mukesh Patel Nagar, New Delhi**, NIXI through courier agent DTDC sent a Postal courier to the three Respondent addresses. The courier agent was unable to deliver the parcel at the designated addresses. The same was returned undelivered from the respondent address with Courier remarks stating "Consignment No Z98437253 - Incomplete Address", "Consignment No Z98437250 - No Such person", "Consignment No Z98437251 - No Such person". The designated addresses had been taken from a reliable source, which, in this case was Whois database. More so that this notice was further followed by an electronic notice to the respondent by email (at the email address provided in the whois database) from the side of the designated Arbitrator, which can reasonably be presumed as having been received, since no mailer daemon error, stating that- email had failed to be delivered, was received.

No response/information was submitted by the respondent in reference of the Arbitration proceedings.





### 3. **BRIEF BACKGROUND**

#### **FACTUAL AND LEGAL GROUNDS**

Volvo Trademark Holding AB, is a Company incorporated in Sweden, having its main activity to own, maintain, protect and preserve the Volvo trademarks, license these rights to its owners, maintain its global portfolio of trademark registrations, act against unauthorized registration and use (including counterfeiting) of trademarks.

The Co claims exclusive and sole beneficiary ownership of the trade mark VOLVO and that under a Global Deed of Assignment, Volvo Trademarks Holding AB was assigned all registered VOLVO Trademarks and pending applications of Aktiebolaget Volvo. Aktiebolaget Volvo is a Swedish Public Company, having ownership and controls of shares in various corporations and Companies globally, together referred to as the "Volvo Group of Companies".

Under Global License Agreement, Volvo Trademark Holding AB entered into with its shareholders namely, Aktiebolaget Volvo and Volvo Car Corporation, a licensed agreement authorizing them the use of the marks within their respective businesses. Confirmatory License Agreements dated 30th May 2001 were signed for the territory of India with Aktiebolaget Volvo and Volvo Car Corporation. Volvo Car Corporation owns and controls shares in various companies, together called "Volvo Car Group". 'Volvo Group of Companies' and the 'Volvo Car Group' are collectively called 'the VOLVO Companies'.

Aktiebolaget Volvo is an international automotive and transport vehicle group, with 115,000 employees. It provides a wide spectrum of transportation-related products and services. Its Volvo brand is amongst the world leaders in heavy commercial vehicles construction equipment, as well as in drive systems for marine and industrial applications.

Volvo Car Corporation occupies a prominent global position as a car producer, has 22,300 employees. Aktiebolaget Volvo and Volvo Car Corporation and other Volvo Companies manufacture goods and provide related services, all over the world under trade mark 'VOLVO'. To support Volvo Companies & enhance their brand's image, Volvo Companies have created a range of VOLVO merchandise goods, such as pens, stationery, belts, buckles, bags, watches, clothing etc.



#### **4. PARTIES CONTENTIONS:**

##### **A. COMPLAINANT'S CONTENTIONS:**

##### **1. The Domain name is identical to a trademark/ tradename or service mark in which the Complainant has rights:**

Disputed domain name www.volvobus.co.in is identical to the Complainant's domain name www.volvo.com and www.volvobuses.com etc. which include the Complainant's well known trademark VOLVO. There is nothing in the Respondent's domain name to distinguish it from the Complainant's well-known trademark or its domain name as the use of the generic word bus is merely to identify the business activity of the Respondent which is similar to the business of the Volvo Group of Companies.

Trademark VOLVO has acquired fame and is exclusively identified with the Volvo Group of Companies' goods and services. VOLVO as a domain name is understood with reference to the Complainant and the Volvo Group of companies, thus perpetuating confusion among consumers who wish to access the Complainant's web page. Volvo Group of Companies have spent substantial time, effort and money advertising and promoting the VOLVO trademark throughout the world. As a result, the VOLVO trademark has become famous and well-known, and the goodwill and reputation throughout the world.

##### **2. The Respondent has no rights or legitimate interest in the domain name**

The disputed domain name comprises the well-known and famous trademark VOLVO, & that the Respondent can have no right or legitimate interest in the domain name. The sole purpose of registering the domain name is to misappropriate the reputation associated with the well-known trademark VOLVO and to encash the goodwill attached to the Complainant's trademark and cause confusion in the minds of consumers with respect to the source of these services. Respondent is not commonly known by the domain name and his use of the disputed domain name <www.volvobus.co.in> for a commercial gain is not *bonafide* in nature. Respondent is known by the name of 'eBus India'.

Respondent is not a licensee of the Complainant and neither has the Complainant granted any permission or consent to the Respondent to directly or indirectly use the trademark VOLVO in any manner. Respondent's use of the domain name has been for commercial gain.



**3. The domain name was registered or is being used in Bad Faith.**

Complainant's submits that the mark VOLVO is a well-known trademark for many years (Year 1975), and the Respondent registered it in year 2010 wherein it is presumed Respondent to have had knowledge of Complainant's mark at the time it registered the identical domain name. This is prima facie evidence of the Respondent's bad faith use and registration for monetary gains.

A potential visitor to the Respondent's webpage will be induced to believe that the Complainant has licensed their trademark VOLVO to the Respondent or has authorized the Respondent to register the disputed domain name, thus creating confusion in the mind of the consumer. The potential visitor to the website will be duped into believing that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant. Complainant's mark was already registered and recognized as a well-known trade mark at the time the disputed domain name was registered by the Respondent in January 2010. Despite this, the Respondent proceeded to get an identical or confusingly similar domain name registered, an act which clearly depicts bad faith and crass opportunism. The Complainant also served the Respondent with cease and desist notices, which was ignored by the latter.

**B. RESPONDENTS CONTENTIONS:**

Respondent has no contentions, there is no submission, information or response from the side of the respondent

**5. OPINION:**

**I. Issue:**

- A) In order to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following:
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
  2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
  3. Why the domain name in question should be considered as having been registered and being used in bad faith.



Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

This tribunal is of confirmed opinion that the Complainant has origination since Year 1975 and is using the brand 'VOLVO' since 1975, has a big customer base worldwide and has made extensive efforts to promote the brand name 'VOLVO' by consuming various resources available at its end and got National, International visibility, big internet presence and wide publicity and created a place of its own in the Machinery plus Vehicle world. Word 'VOLVO' has certainly acquired a popular Brand name across the GLOBE. It has created a reputation and goodwill for itself over past eight decades.

On the basis of the records submitted by the complainant it's proved that the domain name "VOLVO" in 'volvobus.co.in' has been with the Complainant since the year 2010 and in commercial use on internet by it .in is country (India) specific domain and Complainant has been conducting business in India with that name and by the name of 'volvo.com', "volvobuses.com" for many years which is owned and operated by the Complainant leads towards the conclusion that volvo.co.in is related to the Complainant's business and is derived from the operations of the Complainants Company, whereas, the same cannot be said about the respondent.

It is confirmed that Complainant is extensive user of word 'Volvo' which due to the same has acquired importance, relevance and a name. The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is not incorrect and similar web names lead to confusion among web surfers cannot be denied. Respondent's registration of the Domain 'volvo.co.in' seems to be done with the knowledge of the fame and public recognition of the word 'Volvo', establishes Infringement, and that Respondent has registered the Infringing Domain Name without performing the required due diligence. Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre-existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglia or illegality of its operation and to ensure that knowingly or unknowingly no illegalities are committed. Registrant failed to have fulfilled its responsibility to find out before registration whether the domain it is about to register violates the rights of a brand owner or not.





The respondent has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing completely well of the pre-existence at the various registries of internet, of the domain name wishing to be registered and without understanding whether he has rights to register such a name or not, still the respondent proceeded with registration of the domain name in question to trade on 'volvo.co.in', incorporated in its reputation, goodwill and trademarks. Respondent has not shown any fair or legitimate non-commercial use, but instead has just remained silent and non-responsive and seems to be accumulating the domain name with a purpose of misuse. Respondent has registered and used the Infringing Domain Name to direct Internet users familiar with word and name 'VOLVO' and its reputation and services to another portal site leading to confusion to the users and constitute bad faith use under the policy. It cannot be ruled out that the Respondent registered the domain name with the purpose of later selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Hijacking of such domain names to obtain revenue through web traffic and sponsored results is a common practice of domain hijackers constitutes bad faith. It is also important to note that the Respondent has not been commonly known by the domain name, that Respondent has no relationship with Complainant or permission from the complainant for use of its marks.

Respondent cannot have ignored the fact that 'volvo.com' created in year 1995 is a registered and popular domain name of the Complainant. It cannot be ruled out that Respondent intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).

Complainant is well-known with its trademark. Due to the strong reputation of the name and word 'VOLVO', Internet users will apparently and reasonably expect it as an offer of the Complainant or authorized or affiliated enterprises under 'volvobus.co.in'. The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's rights of the domain name.





The logo 'Volvo' and similar domain names, i.e., 'volvo.com', 'volvobuses.com', 'volvocars.com', 'volvotrucks.com' etc. were legally registered at the various registries of internet by the Complainant and some much before the respondent started the process of registration, and were legitimately using the name for business purposes. It profusely empowers them with the First right to the domain name 'volvobus.co.in' and therefore any rights of the Respondent in this regard stand defeated in favour of Complainant. The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the services provided by the Complainant make this complaint a plausible case of action.

This tribunal also holds that such misuse of the names should be checked in most efficient manner. That the complainant efforts to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

## **II. Domain name hijacking**

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

As enumerated in Para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.



### III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name 'volvobus.co.in' be and is hereby transferred to Complainant with immediate effect.

Given under my hand and seal on this day of **28<sup>th</sup>** day of **November 2016**.



  
**Deepa Gupta**  
**Arbitrator**