

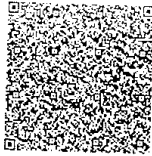
सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL72335295757670T
Certificate Issued Date	: 12-Apr-2021 03:51 PM
Account Reference	: IMPACC (IV)/ dl721003/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL72100345345946208371T
Purchased by	: V P PATHAK
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V P PATHAK
Second Party	: Not Applicable
Stamp Duty Paid By	: V P PATHAK
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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

## BEFORE THE ARBITRAL TRIBUNAL

### V.P.PATHAK

### SOLE ARBITRATOR

### ARBITRAL AWARD

*V.P. Pathak*  
 V. P. Pathak  
 Former Jt. Secy  
 Govt. of NCT of Delhi

1. The e-Stamp is valid only if it is generated by the Government of National Capital Territory of Delhi through the e-Stamping System. It is not valid if it is generated by any other authority.

2. The e-Stamp is valid only if it is generated by the Government of National Capital Territory of Delhi through the e-Stamping System. It is not valid if it is generated by any other authority.

3. The e-Stamp is valid only if it is generated by the Government of National Capital Territory of Delhi through the e-Stamping System. It is not valid if it is generated by any other authority.

**DISPUTED DOMAIN NAME: WWW.DELLAPTOPSINCHENNAI.IN**

**IN THE MATTER OF INDRP CASE NUMBER 1355/2021**

**.IN REGISTRY(NATIONAL INTERNET EXCHANGE OF INDIA)**

**DELL INC.,**

**ONE DELL WAY, ROUND ROCK,**

**TEXAS**

**78682 - USA**

**....COMPLAINANT**

**VERSUS**

**JAMES JENI,**

**LAPTAP SHOPPE,**

**OPP CSI MISSION HOSPITAL MAIN ROAD,**

**MARTHANDAM, KANYAKUMARI,**

**TAMIL NADU - 629165,**

**INDIA**

**And**

**SYNERGY SYSTEMS & PERIHPERALS**

**NO. 165, VALLUVAR KOTTAM HIGH ROAD,**

**NEAR SOTC.**

**NUNGAMBAKKAM,**


**CHENNAI- 600034**

*V.P. Pathak*  
**V. P. PATHAK**  
**H.J.S.**  
**Former Judge**  
**Sole Arbitrator**


**....RESPONDENT**

### AWARD

1. The present domain name dispute relates to the registration of the domain name www.delllaptopsinchennai.in in favor of the Respondent.
2. The Complainant has filed the instant Complaint challenging the registration of the domain name "delllaptopsinchennai.in" in favor of the Respondent. Pursuant to the ".in" Domain Name Dispute Resolution Policy (INDRP) and the rules framed there under, the Complainant has preferred this arbitration for raising this dispute for reprisal of its grievances.
3. The Declaration of impartiality and acceptance was sent by the Tribunal on 01/03/2021 and with that I gave my consent, to adjudicate the instant domain name dispute. I was handed over the Complaint on 02/03/2021.
4. After perusal of the Complaint, it was found that there was no email id of the Respondent No. 2. Hence, an email was sent to the Complainant and Legal NIXI for rectification. The Complainant then on 05.03.2021 sent an amended Complaint to the Tribunal but again no email id of the Respondent No. 2 was mentioned in the Complaint and in the email they also mentioned that the Complainant's were unaware of the email id of Respondent No. 2.
5. Thereafter, an order on dated 07.03.2021 was passed by this Tribunal that the Complainant shall get the email address and other necessary contact information of Respondent No. 2 from NIXI. After passing of around 12 days the Complainant had not responded to the order of the Tribunal. So, the Tribunal sent an email dated 20.03.2021 to the Complainant, NIXI that no proceeding can be held further in such a situation where in there is half information provided to the Tribunal. Hence,

  
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 Sole Arbitrat

- this mail the Complainant wrote an email to NIXI on 22.03.2021 asking for information about Respondent No. 2.
6. An email dated 22.03.2021 was then sent to the Tribunal by the Complainant, requesting to waive off the service of the Respondent No. 2 as they could not find their email id. Legal NIXI also informed that the email id of Respondent No. 2 is not available in their domain.
  7. Keeping in mind all the above facts, the Tribunal on 24.03.2021 sent an order through email to all concerned that the Respondent No. 1 & 2 be communicated by registered/speed post or by facsimile providing them the Complaint.
  8. Accordingly as per **Rule 5 of the INDRP Rules**, I issued notice on 24.03.2021 calling upon the Respondent to file its reply on the complaint within fifteen days from the date of receipt of the notice and rejoinder within fifteen days thereafter.
  9. The Complainant by following the directions of the Tribunal had sent the hard copy of the Complaint to the Respondents on 25.03.2021 by Blue Dart whose receipt has been sent to the Tribunal vide email dated 31.03.2021.
  10. Also, the Complainant sent an email too to Respondent No. 1 as only his email id was found on Whois Record and the hard copy of the Complaint was sent to both the Respondents. **Rule 2 of INDRP Rules of Procedure** provides for communication/services of Complaint. But, no reply was filed by the Respondents even after passing of several days.
  11. Since the Complainant has been served through one of the modes as specified in **Rule 2** (above mentioned), I am of the view that the service of the Complaint upon the Respondent is complied with.
  12. There has been no response from the Respondents to the Complaint. In such a situation, **Rule 12 of INDRP Rules of Procedure** provides that:

  
V. P. PRASAD  
Former Judge  
Sole Arbitrator

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

13. Further, **Section 25 of the Arbitration Act, 1996** says that the Arbitrator may pass *ex-parte* in the absence of any of the parties to Arbitration. It is also the duty of the Arbitrator to inform the parties concerned about his intention to proceed with the case *ex-parte*.

14. **Order VIII Rule 10 of CPC** also authorizes the arbitrator to pronounce judgment against the Respondent or to make such an order in relation to the Complaint as it thinks fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed.


15. Following are some of the cases in which the court has allowed *ex-parte*, when either of the parties have not responded to the Tribunals notice:

- **SARASWATHI CHEMICALS v. BALMER LAWRIE & CO. LIMITED. 2011 (3) TMI 1759 MADRAS HIGH COURT:** it was held that the Arbitrator has to inform the parties that he intends to proceed with the reference at a specified time and place , whether that party attends or not. If still a party does not attend, then only the Arbitrator is at the liberty to proceed *ex-parte* against him. **NAGASRINIVASULU v. GLADA FINANCE LTD. 2008 (11) TMI 724 MADRAS HIGH COURT:** it was held that where a party did not appear on the adjourned date inspite of a note by the Arbitrator in the minutes of hearing that if the party does not appear on the appointed date and time, the hearing would proceed *ex-parte* and no separate notice is given, the *ex-parte* award in such a case is legal.

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V. P. RAMANI  
Former Judge  
Sole Arbitrator

- **P.S. OBEROI v. ORISSA FOREST CORPORATION LTD. 1982 (3) TMI 275- ORISSA HIGH COURT:** has held that when from the conduct of the objectors to an award, it is abundantly clear that they had no intention of appearing before the arbitrators, the arbitrators are justified in proceeding *ex-parte*.
- **DAISY TRADING CORPORATION v. UNION OF INDIA 2001 (10) TMI 1183- DELHI HIGH COURT:** it was held that where the Arbitrator had allowed a period of three weeks to the appellant to file its counter claim and reply to the claim statement of the Respondent, then it was the bounden duty of the Arbitrator to have ascertained the date on which service had been effected on the appellant before taking steps to proceed *ex-parte*.
- **STATE OF U.P v. COMBINED CHEMICALS CO. (PO LTD. 2011 (1) TMI 1527- SUPREME COURT:** it was held that where the appellant sought adjournment on the ground that he had filed an appeal against the order of the trial court on the question of maintainability of petition, the arbitrator granted adjournment but the appellant failed to obtain stay order from the appellant court and continued to abstain from the arbitral proceedings, the arbitrator was justified in proceeding *ex-parte* against such a party.

16. In the above situation when the Respondent has not responded even after lapse of stipulated period for filing their counter, an order was passed on 09/04/2021 that the case will now proceed *ex-parte* and an award will be passed. **Rule 6 of the INDRP Rules** also states that an Arbitrator has to be impartial and independent therefore, I accordingly proceed to pass the award on merit.

  
**V. P. PATHAK**  
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 Former Judge  
 Sole Arbitrator

**CONTENTIONS**

17. Since the Respondent has been proceeded ex-parte, I shall deal with the contention of the Complainant. The Complaint has been filed for transfer of the disputed domain name www.dellaptopsinchennai.in, which was registered by the Respondent No. 1. The Complainant owns www.dell.co.in which is used for India. After clicking on the said domain the user gets redirected to www.dell.com.
18. Primarily, the assertion of the Complainant in its Complaint is that the disputed domain name is identical and similar to the trade mark of DELLAPTOPSINCENNAI. The Complainant in its Complaint has stated that they are the world's largest direct seller of computer systems. Since its establishment in 1984, the Complainant has diversified and expanded its activities which presently include, but are not limited to, computer hardware, software, computer peripheral, computer-oriented products such as phones, tablet computers etc. and computer-related consulting installation, maintenance, leasing, warranty, data computing, cloud computing, information security, virtualization , analytics, data storage, security/compliance and technical support services. The active website on the domain name, www.dellaptopsinchennai.in is accessible to people across the globe, including in India.
19. Complainant has further stated that it is the proprietor of mark "DELLAPTOPSINCENNAI', having valid and subsisting Trademarks registration. The Complainant has produced on record showing the details of ownership of numerous trademark registrations for DELLAPTOPSINCENNAI in various jurisdictions/ regions.
20. The Complainant has been in global news, owing primarily to Michael Dell taking the Complainant private, for \$ 24.4 billion, in the biggest leveraged buyout since the financial crisis. The other reason for the Complainant to be in news has been the acquisition of EMC Corporation for around \$ 67

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Former Judge  
Sole Arbitrator

Billion, which is the largest technology company acquisition ever. Details are part of **ANNEXURE 1** of this Complaint.

21. The Complainant has been using the mark "DELL" for several decades now and is also the registered proprietor of the said trademark in various countries, including India. The registrations have been renewed from time to time and are valid and subsisting. Attached as **ANNEXURE 2** are copies of legal proceeding certificate/online statuses for the trademark registrations. The Complainant also uses various formative marks like "DELLPRECISION", "DELL CHAMPS", "DELL PROSUPPORT", "DELL PREMIUMCARE, etc.
22. It is evident from the Complaint that the Complainant has been using the trademark "DELL" since last 30 years and has built an enviable reputation in respect of the said mark. By virtue of such use, the mark "DELL" is well recognized amongst the consuming public and can be termed as well-known trademark "DELL". The Complainant has also initiated several actions against domain names squatters in past several years. A list of cases, wherein awards have been passed in favour of the Complainant, is attached as **ANNEXURE 3**.
23. Only upon conducting one search for cyber squatter, the Complainant became aware of the registration of the domain name [www.delllaptopsinchennai.in](http://www.delllaptopsinchennai.in) in the name of the Respondent 1.
24. It is pertinent to mention here that until sometime back, the Impugned Domain hosted a website on it ("**Impugned Website**") and the Respondent was representing itself as a retailer of Dell and is offering all kinds of Dell products for sale such as Dell Laptops, Dell Desktops, Dell Monitors, Dell Servers, Dell Workstations, Dell Batteries, Dell Adapters and other Dell accessories. In addition to the above, the Respondent also claims to provide after sales services. Screenshots from the impugned website evidencing the above submissions are attached as **ANNEXURE 5**.

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25. In addition to this, the write-ups on the website have been portrayed in a manner to show association with the Complainant. Documents evidencing the write-ups are attached as **ANNEXURE 6**.
26. It is pertinent to mention here that the Complainant has been dealing with a habitual offender under the name and concern of Synergy Peripheral and Systems. Previously the Complainant has filed domain name actions against the domains: domaindelllaptopschennai.com, delllaptoperviceinchennai.com, delllaptopervicehyderabad.com, dellshowroomhyderabad.com, dellshowroominchennai.com, dellshowroominhyderabad.com and dellservers.in, which were all registered by the Respondent No. 2 or associated concerns or entities. The orders passed for the aforementioned domains are attached herewith as **Annexure "7"**.
27. It primarily operates through the websites [www.synergysystem.in](http://www.synergysystem.in) and [www.synergysystem.co.in](http://www.synergysystem.co.in), ("**Synergy's Websites**"). The address of Respondent No. 1, as mentioned on the Whois records, matches the address given on Synergy's Websites.
28. Attached herewith as **ANNEXURE 8**, is a screen print from the Synergy's Websites showing the address. In view of the foregoing, Synergy Peripheral and Systems is impleaded as Respondent No.2. So, both the Respondents are impleaded as they both are misfeasors.
29. The Respondent No. 1 has registered several domain names which contain DELL in them, to name a few, [www.dellshowroomchennai.com](http://www.dellshowroomchennai.com) and [www.delllaptopsinchennai.in](http://www.delllaptopsinchennai.in) ("**Other Domains**"). Attached herewith as **ANNEXURE 9** are the Whois records for the Other Domains.
30. In view of the above, it is evident that the Respondent has registered the Impugned Domain which incorporates trademark of the Complainant, hosted a website on the same to misrepresent to the relevant section of the public that it is associated with the Complainant, whereas no such association exists. Owing to the above, the Respondent cheats innocent consumer in the name of

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the Complainant and may be providing below par products/ services which may not be genuine and the Respondent may re-activate the Impugned Website.

31. In the Complaint, it is also contended that the Complainant owns the Trademark DELLAPTOPSINCHENNAI, which would create confusion and the Respondent has no legitimate right or interest in respect of disputed domain name, and that the disputed domain name is being used maliciously.
32. The Complainant's products, that the Respondent offers, may be of inferior quality, which upon use can burst or catch fire and cause injury to the individual using the same. Such activities will tarnish the name and reputation of the Complainant which has been built after years of toil by the Complainant and may even have legal ramifications for the Complainant.
33. The Respondent has no legitimate reasons for adoption of the 'DELL' in the Impugned Domain. It is to be noted that 'DELL' connotes and denotes the goods and services of the Complainant. In view of the same, the adoption of the said mark by the Respondent in the Impugned Domain only reeks of dishonesty in the first instance. The Respondent has no right whatsoever to use or adopt the well-known trademark 'DELL' of the Complainant.
34. The Respondent has adopted the identical mark of the Complainant and is blatantly using the same. Moreover, the Respondent is using the said mark for identical goods and services and duping customers by giving them an impression that the Respondent is associated with the Complainant. Furthermore, the Respondent used the word mark 'DELL' on the Impugned Website without the consent of the Complainant and the Respondent may activate the said website again.
35. The Respondent has no right to use/register the mark 'DELL' of the Complainant in any manner, as it is the sole property of the Complainant. The Respondent may/was taking advantage of innocent customers who may or may not enquire about the

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authenticity of the Respondent or its relation with the Complainant if the Impugned Website is activated and even while the said website was active. Even if the Respondent informs the purchasing customer that it is not related to the Complainant, the same does not bestow any right to use the trademark 'DELL' of the Complainant.

36. The Respondent had registered the Previous Domain and it also holds the active registration of the Second Domain and the Impugned Domain. The Respondent is a habitual offender and this alone is evidence of bad faith.

### ANALYSIS

37. Since the domain www.delllaptopsinchennai.in is registered by Respondent No. 1, so the main party is Respondent No. 1 and they have not turned up even after service of summons.
38. As the proceedings are set ex-parte the Respondent, I shall deal with the Complaint on its prayer for transfer of the disputed domain name. The disputed domain name www.delllaptopsinchennai.in consist the mark 'DELLLAPTOPSINCENNAI', which is the registered trademark of the Complainant. "DELLLAPTOPSINCENNAI" is a mark registered which has been established by the Complainant over a period of time by its use. The Complainant has used it worldwide, including India, and owns this registered trademark. In support of which, the Complainant has placed on record the details of trademark registration. All these support the Complainants right over the name 'DELLLAPTOPSINCENNAI". Therefore, the Complainants claim that it has a right over the disputed name stands proved.
39. Secondly, as the Respondent's action to register the said domain name is not bona fide, therefore, the said registration is done in bad faith. The disputed domain name wholly

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Sole Arbitrator

incorporates the Complainant well known mark "DELLAPTOPSINCHENNAI" and mentions the same multiple times creating an impression that the Respondent in some way is associated with the Complainant. The Complainant has specifically stated that it has no relation with the Respondent commercially or otherwise. So, therefore, the use of Trademark DELLAPTOPSINCHENNAI by the Respondent is not lawful. Therefore, the Respondent has no legitimate right over the said domain name.

**CONCLUSION:**

40. Considering the facts and circumstances of the present matter and taking in view of the precedents in this context, I am of the view that the Complainant has proprietary right over the registered Trademark "DELLAPTOPSINCHENNAI". Under the facts and circumstances and on perusal of records, I deem it fit and proper to allow the prayer of the Complainant and direct the Registry to transfer the said domain name i.e., www.dellaptopsinchennai.in in favor of the Complainant.
41. It is made clear to all concerned that the award is being passed in accordance with the INDRP Rules and Arbitration Act, 1996 has been fully followed by the Tribunal.


**ORDER**

42. Since the Complainant has proved its case through its documentary evidence under INDRP Rules, so it is directed that the disputed domain name www.dellaptopsinchennai.in be transferred to the Complainant forthwith, .IN Registry to do the needful. Parties to bear their own cost.

43. This award is passed today at New Delhi on 15/04/2021.

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 W. P. PATHAK  
 H.J.S.  
 Former Justice  
 Sole Arbitrator

**V.P.PATHAK**



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**SOLE ARBITRATOR**

Former Judge  
Sole Arbitrator

**DATE: 15/04/2021**