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BEFORE THE .IN REGISTRY OF INDIA

INDRP CASE NO. 1371

IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME DISPUTE
RESOLUTION POLICY ("INDRP" or "the Policy"); THE INDRP RULES OF PROCEDURE
("the Rules") AND THE ARBITRATION AND CONCILIATION ACT, 1996

FINAL AWARD

Sanjay

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("the Rules") AND THE ARBITRATION AND CONCILIATION ACT, 1996**

IN THE MATTER OF

**Amazon Technologies, Inc.,
410 Terry Avenue North, Seattle
Washington 98109
United States of America**

... Complainant

versus

**Murali Krishna
A 104, Rushi Heights, Riddhi Garden, Film City Road
Malad East, Mumbai - 400097 Maharashtra, India**

... Respondent

AND

IN THE MATTER OF

A DISPUTE RELATING TO THE DOMAIN NAME AMAZONFIRE.IN

FINAL AWARD

**Dated 18th May 2021
Venue: New Delhi, India**



**ROBIN RATNAKAR DAVID
SOLE ARBITRATOR**

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I. PARTIES TO THE ARBITRATION

1. The Complainant

The Complainant, Amazon Technologies Inc is a Nevada Corporation having its address at 410 Terry Avenue North, Seattle, Washington 98109 USA. The Complainant's representative is stated to be Mr. Sanjay Chhabra of Archer & Angel, New Delhi.

2. The Respondent

The Respondent is Murali Krishna, A 104, Rushi Heights, Riddhi Garden, Film City Road Malad East, Mumbai - 400097 Maharashtra, India.

II. APPLICABLE LAW AND JURISDICTION

The .IN Domain Name Dispute Resolution Policy

1. This arbitration proceeding is under and in accordance with the .IN Domain Name Dispute Resolution Policy (**the Policy**) which was adopted by the National Internet Exchange of India (NIXI) and sets out the legal framework for resolution of disputes between a domain name registrant and a Complainant arising out of the registration and use of an .IN Domain Name. By registering the domain name www.amazonfire.in with the NIXI accredited Registrar, the Respondent agreed to the resolution of disputes under the .IN Dispute Resolution Policy and Rules framed thereunder. The Policy and the .IN Domain Name Dispute Resolution Rules of Procedure posted on 16



September 2020 (**the Rules**) were approved by NIXI in accordance with the Arbitration and Conciliation Act, 1996.

Filing of the Complaint and Constitution of the Arbitral Tribunal

2. The Complainant filed a Complaint under the .IN Domain Name Dispute Resolution Policy against the Respondent, seeking the transfer of Domain Name was amazonfire.in to the Complainant dated 19 March 2021. On 1 April 2021, the .IN Registry sought the consent of Mr. Robin Ratnakar David (the undersigned), who is a listed .IN Dispute Resolution Arbitrator under Rule 5 (a) of the Rules, to act as Arbitrator in the said matter. On 2 April 2021, Mr. David gave his consent along with the signed Statement of Acceptance and Declaration of Impartiality and Independence to act in the matter as Arbitrator in compliance with the Arbitration and Conciliation Act, 1996.
3. On 5 April 2021, the Arbitral Tribunal comprising of the said Mr. Robin Ratnakar David, Sole Arbitrator was constituted under Rule 5(b) of the Rules in respect of the Complaint filed by Amazon Technologies Inc against Murali Krishna, the Respondent.
4. On 5 April 2021 the Arbitral Tribunal issued the Notice of Arbitration under Rule 5(c) of the Rules.
5. This Arbitral Tribunal has been constituted properly and in accordance with the Arbitration and Conciliation Act, 1996, the INDRP Policy and the Rules as amended from time to time. No party has objected to the constitution and jurisdiction of the Arbitral Tribunal and to the arbitrability of the dispute.



III. THE DOMAIN NAME, REGISTRAR & REGISTRANT

DNS Form	amazonfire.in
User Form	amazonfire.in
Registrant Registrar Name and address	Key Systems GmbH, Im Oberen Werk I, 66 386 St Ingbert, Germany email- abuse@key-systems.net
Tech name	Murali Krishna
Tech email	nandula.muralikrishna@gmail.com
Registrant Registrar IANA ID	269

IV. PROCEDURAL HISTORY

1. On 5 April 2021, the Arbitral Tribunal issued the Notice of Arbitration to the Respondent with the Complaint and annexures by email. The Respondent was directed to file a Response in writing in opposition to the Complaint, if any, along with evidence in support of its stand or contention on or before 12 April 2021. In addition to the service by the Arbitral Tribunal, the Complainant was directed to serve a hard copy and a soft copy of the Notice of Arbitration with the Complaint and annexures on the Respondent. The Complaint (including annexures) was sent at the email address of the Respondent shown in the WHOIS details and service on the Respondent was done in accordance with Rule 2 of the Rules.
2. On 6 April 2021, the Respondent sought clarification about the proceedings which was addressed by the Tribunal. The exchange of mails is reproduced below:

Email dated 6 April 2021 from Respondent as under:



I am not clear on the email or the requirement.

Would it be possible to let me know what is required to be done so that I am exactly aware of the same?

Is it easier to get a better understanding over a phone call?

The Arbitrator on the same day namely 6 April 2021 responded as under:

Dear Mr. Murali Krishna,

This is in response to your email below.

The Complainant, Amazon Technologies Inc, has filed a Complaint against you under the .IN Domain Name Dispute Resolution Policy. The Complainant seeks transfer of the domain name AMAZONFIRE.IN to the Complainant from you.

I have been appointed as a Sole Arbitrator in respect of the above Complaint and have issued notice of the arbitration to you. Please examine the Complaint and file a response or reply to the Complaint along with evidence in support of your stand on or before 12 April 2021.

I trust the above is clear, however, if you have any questions or still feel the need to discuss the same over a call please let me know by email.

Kindly note that all communication with this Arbitral Tribunal by one party MUST be marked to the other party/ parties and the National Internet Exchange of India (legal@nixi.in).

Robin Ratnakar David

Sole Arbitrator

3. Thereafter, on 11 April 2021, the Respondent sent an email stating that it was happy to transfer the domain to the Complainant. The email is as under:

"Dear Sir,



Thank you for the email that brings some perspective and explains the background.

To give a background, last year, I was reviewing potential blog names for an ecology project amongst other projects as a hobby and while searching for various topics including amazon forest fires and the causes for the same, got this domain name as a recommended match available.

While I have taken this name with the intention of writing blog posts related to ecology and ecosystem, I could not find time to start the same and this was kept aside.

Unlike what was mentioned in the complaint [point no.18] which talks of usage in bad faith and malafide intentions, I would like to submit that there was no such intent.

I am unsure if a common man like me looking for a hobby would have knowledge of all these disputes and complaints and would read through history of years while spending Rs 860/- for a domain name which was coming as a recommended match.

Further, I am surprised to see the statement in 18.2 that the domain name is available for sale since I have not done any activity post taking the domain name as explained above.

I am happy to transfer the domain name back, though would require some assistance as I am not a technical expert.

Trust the above clarifies.

Sincere regards,

Murali"

4. On 12 April 2021 the Complainant was directed to respond to the settlement offer of the Respondent by 19 April 2021. The Complainant on 17 April responded inter alia stating that *"...the contentions of the Respondent claiming that 'he is happy to transfer the domain name back, though would require some assistance as he is not a technical expert.'* is much appreciated



and acknowledged by the Complainant. It is to be noted that the Respondent is willing to take a positive stance to amicably settle the present dispute in recognition of the Complainant's proprietary rights over the AMAZON and AMAZON FIRE Marks by the voluntary transfer of the Disputed Domain Name."

5. All emails from the Arbitral Tribunal were copied to the Complainant and Respondent as well as NIXI.

V. PARTIES' CONTENTIONS

COMPLAINANT

The Complainant, Amazon Technologies Inc, is a subsidiary of Amazon.com INC and is the company responsible for holding its intellectual property. The Complainant is a multinational e-commerce and cloud computing company based in Washington USA. The Complainant was founded in incorporated in 1994 and is a well reputed online retailer with standalone websites in India USA Australia United Arab Emirates and other countries. The Complainant has secured statutory protection of its trademarks such as Amazon, Amazon Fire in classes relevant to its businesses in various countries including India. The Complainant has adopted the trademark FIRE followed by various FIRE formative marks after the success of its Kindle e-reader. Amazon announced its Fire device, the Kindle Fire in 2011 as an expansion of its well-known Kindle family of products and services. Diversifying its FIRE brand, the Complainant also launched the Amazon Fire TV set-top box for streaming content and the Amazon Fire TV stick a streaming media stick in the United States in 2014. The Complainant owns Indian specific domain names <amazon.co.in> and <amazon.in> and operates its corresponding Indian website www.amazon.in and the said domain names have been in continuous use in India



since 2003. The Complainant has also secured statutory rights in its “Amazonfire” Marks in India and holds registration in classes 9, 35 and 42.

The Complainant submits that the disputed domain name wholly incorporates the Complainant’s name Amazon and its registered trademark Amazon and is wholly identical to the Complainant’s “Amazonfire” trademark but for the omission of a space addition of the CC TLD.in. The Complainant relies on INDRP/622 wherein it was held that the domain name amazonfirephone.in be transferred to the Complainant herein. The Complainant has relied on several rulings of INDRP and UDRP wherein the Complainant’s rights in its name Amazon have been upheld under INDRP and UDRP.

The Complainant also contended that the respondent has no rights or legitimate interest in respect of the disputed domain name and that the domain name has been registered or is being used in bad faith.

RESPONDENT

The Respondent filed a response and has offered to transfer the domain name to the Complainant by email of 11 April 2021.

VI. DISCUSSIONS AND FINDINGS

1. Paragraph 4 of the Policy requires that the in order to obtain the transfer of the disputed domain name, the Complainant will have to prove that.
 - (i) The Respondent's domain name is identical or confusingly similar to a name, trademark, or service mark in which the Complainant has rights.



- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
 - (iii) The Respondents' domain name has been registered or is being used in bad faith.
2. The Respondent has consented to transfer the disputed domain name to the Complainant unconditionally and on the basis of the communication namely email dated 11 April 2021. The Complainant has stated that the stand of the Respondent that he is happy to transfer the domain name *is much appreciated and acknowledged by the Complainant*. The Arbitral Tribunal is of the view that the consent of the Respondent to transfer the domain name amazonfire.in to the Complainant is genuine and unilateral.
3. The Arbitral Tribunal notes that consent to transfer by the Respondent can provide the basis for an order for transfer without the need for consideration of the grounds required in paragraph 4 of the .INDRP Policy as held in the matter of Merck Sharp & Dohome Corp. v Marketing Munch Pty Ltd under the .IN Dispute Resolution Policy award dated 3 August 2011 by placing reliance on The Cartoon Network LP, LLP v Mike Morgan WIPO Case No D2005-1132 dated 5 January 2006 a similar view was rendered in g Music.com, Inc v Mp3 Down Load City WIPO Case No. D2004-0967. The Arbitral Tribunal also refers to Celgene Corporation v Russel, Cloudcare WIPO Case No. D2018-0461 dated 31 May 2018 where it was held that when there is a genuine unilateral consent to the Complainants requested remedy for transfer, the panel does not deem it necessary to render a substantive decision on the merits of the case and ordered that the disputed domain name be transferred to the Complainant.
4. Considering the above and in view of the fact that the Respondent has not controverted the Complaint and has consented to transfer the disputed



domain name to the Complainant unconditionally and unilaterally, the Arbitral Tribunal holds that the consent to transfer by the Respondent can provide the basis for an order for transfer without the need for consideration of the grounds required in paragraph 4 of the .INDR Policy and directs that the disputed domain name www.amazonfire.in be transferred to the Complainant in accordance with the .IN Domain Name Dispute Resolution Policy.

VII. DISPOSITIONS

The Arbitral Tribunal hereby directs that the disputed domain name www.amazonfire.in be and is transferred to the Complainant, Amazon Technologies, Inc., 410 Terry Avenue North, Seattle, Washington 98109, United States of America.

Place of Arbitration: New Delhi

Date: 18th May 2021



Robin Ratnakar David
Sole Arbitrator
The Arbitral Tribunal