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## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL72334857083620T
Certificate Issued Date	: 12-Apr-2021 03:50 PM
Account Reference	: IMPACC (IV)/ dl721003/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL72100345346384317973T
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.....

AWARD

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H.J.S.  
Former Judge  
Sole Arbitrator

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1. The authenticity of this Stamp certificate should be verified at 'www.shilestamp.com' or using e-Stamp Mobile App of Stock Holding
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**BEFORE THE ARBITRAL TRIBUNAL**

**V.P.PATHAK**

**SOLE ARBITRATOR**

**ARBITRAL AWARD**

**DISPUTED DOMAIN NAME:**

**WWW.DELL LAPTOP SERVICE CENTRE FARIDABAD.IN**

**IN THE MATTER OF INDRP CASE NUMBER 1379/2021**


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

**DELL INC.,  
ONE DELL WAY, ROUND  
ROCK, TEXAS  
78682 - USA**

**....COMPLAINANT**

**VERSUS**

**DEEPAK  
RANA APEX  
SYSTEMS  
L2-11B, MOHAN GARDEN UTTAM  
NAGAR, NEW DELHI, CLOSE TO  
JANAK PURI,  
WEST METRO STATION, NEW DELHI- 110059**

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




And

**RANJEET SINGH RANA  
OWNER/PROPRIETOR OF LAPTOP SERVICE  
CENTER AND NCR SYSTEM SOLUTION  
L2B/11C, NEAR GEETA MANDIR, MOHAN  
GARDEN UTTAM NAGAR DELHI-110059, INDIA  
ALSO AT: C1/20, 1ST FLOOR, MOHAN  
GARDEN, NAWADA METRO STATION  
PILLAR NO-744, UTTAM NAGAR, NEW  
DELHI-110059**

**....RESPONDENT**

### **AWARD**

1. The present domain name dispute relates to the registration of the domain name www.delllaptopservicecentrefaridabad.in in favor of the Respondent.
2. The Complainant has filed the instant Complaint challenging the registration of the domain name "delllaptopservicecentrefaridabad.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.

  
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3. The Declaration of impartiality and acceptance was sent by the Tribunal on 15.04.2021 and with that I gave my consent, to adjudicate the instant domain name dispute. I was handed over the complaint and accordingly as per **Rule 5 of the INDRP Rules**, I issued notice on the same day i.e., on 15.04.2021 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.
4. Also, the Complainant vide their email dated 22.04.2021, informed the Tribunal that they had sent the soft copy and hard copy to the Respondents. But, even though the Complainant had sent the Complaint to both the addresses of Respondent No. 2, even then the courier was returned to the Complainant. This implies that the Respondent did not get the hard copy of the Complaint but does have the soft copy of the same.
5. **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.
6. 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 Respondents is complied with.
7. There has been no response from the Respondents to the Complaint. In such a situation, **Rule 12 of INDRP Rules of Procedure** provides that:

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**“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.”**

8. 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*.
9. **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.
10. 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**

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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.

- 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. (P0 LTD. 2011 (1) TMI 1527- SUPREME COURT: it was held that where the appellant

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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.

11. 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 02/05/2021 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.

### **CONTENTIONS**

12. 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.delllaptopservicecentrefaridabad.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.
13. Primarily, the assertion of the Complainant in its Complaint is that the disputed domain name is identical and similar to the trade mark of

  
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DELLLAPTOPSERVICECENTREFARIDABAD. 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.delllaptopservicecentrefaridabad.in](http://www.delllaptopservicecentrefaridabad.in) is accessible to people across the globe, including in India.

14. Complainant has further stated that it is the proprietor of mark "DELLLAPTOPSERVICECENTREFARIDABAD", having valid and subsisting Trademarks registration. The Complainant has produced on record showing the details of ownership of numerous trademark registrations for DELLLAPTOPSERVICECENTREFARIDABAD in various jurisdictions/ regions.
15. 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 Billion, which is the largest

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technology company acquisition ever. Details are part of ANNEXURE 1 of this Complaint.

16. 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.
17. 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.
18. Only upon conducting one search for cyber squatter, the Complainant became aware of the registration of the domain name [www.delllaptopservicecentrefaridabad.in](http://www.delllaptopservicecentrefaridabad.in) in the name of the Respondent 1.
19. As mentioned above, the Complainant herein has filed several petitions against third parties who have adopted

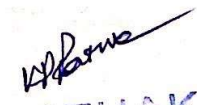
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the mark DELL or marks deceptively similar to DELL in their domain names. One such party was NCR system solution which was operated by Ranjit Singh Rana. Mr. Rana also operated Laptop service center. The Complainant had filed several petitions against both these entities and one of them was filed against the domain name [www.laptopservicecenterdeall.in](http://www.laptopservicecenterdeall.in).

20. In the said matter, the Whois Look up revealed the same address as has been disclosed by the Whois record in the subject matter, i.e. L2-11B Mohan Garden Uttam Nagar, New Delhi, close to Janak Puri West Metro Station, New Delhi- 110059. Please find attached herewith as **ANNEXURE 5**, the award passed against the domain name [www.laptopservicecenterdeall.in](http://www.laptopservicecenterdeall.in) and the Whois record for the said domain. In view of the above, Ranjit Singh Rana has been impleaded as Respondent No.2.

21. As per the Complaint, the exact relationship between the two Respondents is that they share the same address.

22. It is pertinent to mention here that, the Impugned Domain hosted a website on it ("**Impugned Website**") and the Respondent was representing itself as Dell Laptops in Faridabad, offering Dell spare parts along with its price range and also offers pick up services from the customers in the name of being a Dell Service Center. In addition, the Respondent also uses the DELL mark of the Complainant at several places on the Website. Attached herewith as **ANNEXURE 6** are documents evidencing the above submissions.

  
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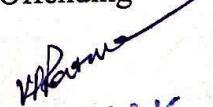
23. The Website states that it is operated by Garg IT solution, as has been mentioned in the address. A screen-shot of the address as provided on the Website is attached herewith as ANNEXURE 7.

24. 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 8 which shows screen prints from the website hosted on the Offending Domain.

25. It is pertinent to mention here that the Complainant is renowned for its services and quality of products. The services offered by the Respondent may be subpar and this will lead to tarnishing and damaging the reputation and goodwill of the Complainant.

26. The Respondent has no legitimate reasons for adoption of the 'DELL' in the Offending 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 Offending 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.

27. The use of the mark DELL in the Offending Domain and on the Website will create a false impression of association with the Complainant herein, whereas no such association exists. The Respondent is creating confusion amongst the consuming public by using the mark DELL in the Offending Domain.

  
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28. The Complainant offers, inter-alia, repair and maintenance services for Dell products like laptops, tablets, servers, mouse, battery, adapters, etc. Attached herewith as ANNEXURE 9, are screen prints from the website of the Complainant evidencing the products and services offered by it. The Complainant is also the registered proprietor of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 for computers, battery, adapter, computer accessories, computer repair and maintenance services, SAAS, PAAS and many more. Attached herewith as ANNEXURE 10, are registration certificates, evidencing registration of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 in favor of the Complainant.

29. The Respondent has adopted the identical mark of the Complainant and is using the same. Moreover, it appears that the Respondent is using the Offending Domain for identical goods and/or services and such use will lead to confusion amongst customers and may give them an impression that the Respondent is associated with the Complainant. 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 Complainant has statutory and common law rights on the mark 'DELL'. Owing this reason alone, the Respondent cannot claim to have any legitimate rights in the trademark 'DELL'. The Respondent has developed the Offending Domain name comprising of the well-known mark 'DELL' of the Complainant with the sole aim

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to make illegal benefits from the goodwill and reputation of the mark 'DELL' built by the Complainant.

30. The bad faith is evident from the use of 'DELL' in the Impugned Domain, which is the property of the Complainant and is associated with the Complainant only. The Offending Domain is worded in such a manner that it appears to be offers by Dell's laptop service center in Faridabad.

31. The mark DELL is a well-known mark and is not a commonly used word. The said mark is only associated with the Complainant and none else. Therefore, adoption of the said mark by the Respondent is dishonest and in bad faith.

#### ANALYSIS:

32. Since the domain www.delllaptopservicecentrefaridabad.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.

33. 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. delllaptopservicecentrefaridabad. in consist the mark

'DELLLAPTOPSERVICECENTREFARIDABAD', which is the registered trademark of the Complainant. "DELLLAPTOPSERVICECENTREFARIDABAD" is a mark registered which has been established by the

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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

‘DELLAPTOPSERVICECENTREFARIDABAD’.

Therefore, the Complainants claim that it has a right over the disputed name stands proved.

34. 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 incorporates the Complainant well known mark “DELLAPTOPSERVICECENTREFARIDABAD” 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 DELLAPTOPSERVICECENTREFARIDABAD by the Respondent is not lawful. Therefore, the Respondent has no legitimate right over the said domain name.

#### CONCLUSION:

35. 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

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“DELLLAPTOPSERVICECENTREFARIDABAD”. 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.delllaptopservicecentrefaridabad.in in favor of the Complainant.

36. 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:**

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

38. This award is passed today at New Delhi on 06.05.2021.

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Former Judge  
SOLE ARBITRATOR

DATE: 06.05.2021