



उत्तर प्रदेश UTTAR PRADESH

BA 192649

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

Ipca Laboratories Limited, 48

Kandivli Co-operative Industrial Estate Ltd.

Kandivli (West) Mumbai - 400 067

Maharashtra, India

(Complainant)

Vs.

IPCA Headquarters

Block AB, Basement, Baid Mehta Complex 16,

Anna Salai, Little Mount, Saidapet, Chennai- 600015,

Tamil Nadu, India.

(Respondent)

The complainant has filed the present Complaint for decision in accordance with the IN Domain Name Dispute Resolution policy (the policy), and the INDRP Rules of procedure (the Rules) of the .IN Registry.

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1. The parties are:

The Complainant in this administrative proceeding is Ipca Laboratories Limited, a Company incorporated under the Indian Companies Act, 1913.

The Complainant's contact details are: Address: 48, Kandivli Co-operative Industrial Estate Ltd, Kandivli (West), Mumbai- 400067.

The Complainant's authorized representative in this administrative proceeding is: KRISHNA & SAURASTRI ASSOCIATES

CONTACT DETAILS:

Postal Address: K. K. Chambers, Sir P. T. Marg, off. D. N. Road, Mumbai- 400 001, India.

Email address: kavita@ krishnaandsaurastri.com

info@ krishnaandsaurastri.com

The Complainant's preferred method of communication directed to the Complainant in this administrative proceeding is Electronic Method: e- mail

Address: Kavita@ krishnaandsarastrri.com/ info@ krishnaandsaurastri.com

Contact:

Krishna & Saurastri Associates, K K Chambers, Sir P. T. Marg, OFF: D. N. Road, Mumbai- 400 001, India.

Material including hardcopy:

Method: post/ Courier.

Address: Krishna & Saurastri Associates, K. K. Chambers, Sir p. t. Marg off. D. n. Road, MUMBAI- 400 001, India + 91- 22- 22006326/ +91-22-66550607.

Contact: Ms. Kavita Mundkur

According to the information available in the whois database of the .IN Registry, the Respondent in this administrative proceeding is IPCA Headquarters, Block AB, Basement, Baid Mehta Complex 16, Anna Salai, Little Mount Saidlapet Chennai- 600015, Tamil Nadu, India. Annexed hereto and marked as Annexure -1 is a copy of the printout of the search conducted in the said Whois database of the .IN Registry.

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All information known to the complainant regarding how to contact the respondent is as follows:

Postal address: Block AB, Basement, Baid Mehta Complex 16, Anna Salai, Little Mount, Saidapet, Chennai- 600015, Tamil Nadu, India

E-mail:pharm@vsnl.net

2. Disputed Domain Name: "www.ipca.in"

The trademark of the complainant is "**IPCA**".

The registrar with whom the domain name is registered is: Rediff.com India Limited.

3. BRIEF BACKGROUND:

This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.

The complainant submitted his complaint in the registry of NIXI. Shri Sanjay Kumar Singh was appointed as Sole Arbitrator in the matter by NIXI.

A copy of complaint has already been sent to the respondent by the .In Registry through e-mail. Upon receipt of the complaint, the Arbitrator sent a notice dated 11-12-2011 to the respondent to send his defence / counter to the complaint along with supportive documents / evidence at his e-mail address within **10** days from receipt. But the respondent did not send his defence / counter to the complaint.

Failing to send the defence / counter by the respondent, the Arbitrator again sent a notice dated 11-01-2012 by giving another opportunity to the respondent to send his defence / counter to the complaint within **FIVE** days from receipt, with further notice that in default or non-filing of the defence / counter to the complaint, the matter would be proceeded ex-parte and award would be passed ex-parte on merits of the case. It was also stated in the notice that it was last and final opportunity to the respondent.

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4.

In spite of repeated notices, the respondent has not submitted the reply / defence / counter to the complaint of the complainant. The respondent has also not submitted any document in their favour so far.

Therefore, this complaint is being decided on the merits of the case and as per law of the land.

4. Factual and Legal Grounds:

A. The domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights:

1. The complainant has submitted that the Complainant, Ipca Laboratories Limited, incorporated in or around the year 1949 under the Indian Companies Act, 1913, commonly known and referred to as IPCA" has been carrying on an old, leading and well" established business as manufacturer and dealer inter alia in medicinal and pharmaceutical preparations and substances, bulk drugs, etc since the past several decades. The aforesaid products of the Complainant are sold under several well-known and distinctive trademarks. The Complainant has submitted that it has become one of the most progressive and fastest growing pharmaceutical companies manufacturing and marketing wide range of health care products and also exporting them from India to other countries. The Complainant has submitted that it is a fully integrated, rapidly growing Indian pharmaceutical company with a strong thrust on exports. The Complaint's APLS ND Formulations produced t world class manufacturing facilities are approved by leading drug regulatory authorities including the US-Food and Drug Administration(FDA) UK-Medicines and Healthcare products Regulatory Agency (MHRA) South Africa-Medicines Control Council (MCC), Brazil-Brazilian National Health Vigilance Agency (ANVISA) and Australia-Therapeutic Goods Administration (TGA) With operations in over 100 countries, the Complainant's exports account for over 52% of the company's income Forbes, a leading US business magazine, selected the Complainant in 2003 among its top 200 successful, rising companies outside USA. Over 19,000 companies were considered by Forbes, and of the 18 companies from

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India that figured in this list, only four were from the Indian pharmaceutical Sector, the Complainant being one of them. Thereafter, Forbes, repeatedly selected IPCA in the year 2004, 2005 and 2007 among its top 200 successful, is rising companies outside USA. Annexed hereto and marked as Annexure 2 is a copy of the said Forbes listing featuring the Complainant.

The complainant has submitted that the Complainant is the proprietor of the trading name and mark IPCA which is registered under the Indian Trade Marks Act, 1999 as given herein below:

<u>Registration No.</u>	<u>Date</u>	<u>Class</u>
182476	04/12/1957	5
338574	17/07/1978	1
421546	07/05/1984	9
421545	07/05/1984	10
421544	07/05/1984	12
421524	07/05/1984	17
421527	07/05/1984	18
421528	07/05/1984	20
421529	07/05/1984	21
421530	07/05/1984	22
421531	07/05/1984	23
421532	07/05/1984	24
421534	07/05/1984	26
421535	07/05/1984	27
421536	07/05/1984	28
421537	07/05/1984	29
421538	07/05/1984	31
421539	07/05/1984	32
421540	07/05/1984	33

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766580	24/09/1997	10
766379	24/09/1997	3
766381	24/09/1997	16

The complainant has submitted that the aforesaid trademarks are valid, subsisting and in force. The complainant has submitted the copies of the registration certificates granted for the aforesaid mark of the complainant as annexure-3.

The complainant has submitted that the said name and mark IPCA of the complainant has gained tremendous reputation and goodwill and has become well known, connoting and denoting to the members of public, the complainant's said business. The complainant has submitted the random copies of news articles published in leading news paper showing popularities of the name / mark **IPCA** of the complainant as annexure-4. The said name and mark IPCA is distinctive of and has become to be exclusively associated and identified with the complainant's business alone.

The complainant has submitted that by virtue of the open, long and extensive use of the said name and mark IPCA in relation to the aforesaid business, the complainant has acquired valuable and protectable proprietary rights including statutory rights and protectable reputation and goodwill in the said name and mark IPCA. The complainant has contended that by virtue of the registration of name and mark IPCA, they are entitled to the exclusive use thereof.

The complainant has submitted that it is also the registrant and user of the Domain Name www.ipcalabs.com from 7th April, 2002. The domain name/ website of the complainant attract several potential clients and customers to the complainant's business and are one of the most valuable business assets of the complainant. Any use of an identical and/or deceptively similar domain name and / or trademark is bound to divert internet traffic and cause enormous losses including pecuniary loss to the complainant. The complainant has submitted the random pages of the said website of the complainant as annexure-5.

The complainant has submitted that the complainant's website www.ipcalabs.com which is accessed by millions of people from all over the world, provides detailed

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information inter alia on the products and services offered by them. The name and mark IPCA therefore has a remarkable presence on the world wide web and has become distinctive goods and services offered by the complainant in the course of trade.

The complainant has submitted that in view of the tremendous reputation and goodwill in the said name and mark IPCA and the exclusive association of the Domain Name www.ipcalabs.com with the complainant, the use and / or registration of any identical and/or deceptively confusingly similar domain name and / or internet key word shall violate the complainant's right in the said trademark, domain name and internet keyword IPCA and is bound to cause confusion and /or deception in the minds of the public as to the source, sponsorship, affiliation or endorsement of the website.

The complainant has also submitted that the mark/ name IPCA has become well known among the members of the trade and public and any use thereof is instantly associated with the complainant in the course of trade. The popularity and large scale use of the name and mark IPCA is apparent from the large and ever growing turnover of the complainant.

<u>YEAR</u>	<u>IPCA Annual Turnover (In Rs. Crores)</u>
2006-07	924.84
2007-08	1059.16
2008-09	1275.57
2009-10	1565.50

The complainant has made tremendous efforts and has spent considerable amounts of money for the publicity and promotion of mark/ name IPCA. The complainant has sponsored important events of international significance such as **CME Workshop** on '**Rheumatic-Musculoskeletal Disorders in India**'. The complainant is also a recipient of several awards such as 'National Energy Conservation Award' for the year 2007. The complainant has also won the 'Best Patent Award on BALSALAZIDE'

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in 2007. The complainant has received "Life Time Achievement Award" for 2002-03 by CHEMEXCIL (Basic Chemical, pharmaceuticals & Cosmetic Export Promotion Council) for outstanding export performance over the years. This is the highest award given by CHEMEXCIL and ranks above the Trishul Award, which the complainant had received.

The complainant has submitted that the acquired valuable common law and statutory rights in name and mark IPCA and is entitled to prevent any other party/ person from using and / or registering any identical, deceptively confusingly similar mark and / or any Domain Name containing the trading name and mark IPCA of the complainant and / or identical/ deceptively similar to the domain name www.ipcalabs.com of the complainant.

The complainant has submitted that the respondent has registered the domain name www.ipca.in (hereinafter referred to as the impugned domain name) in May, 2010 which contains the well known mark/ name IPCA of the complainant and is identical and/ or deceptively and/ or confusingly similar to the registered domain name www.ipcalabs.com of the complainant. The complainant has contended that the impugned website has no content and is not in use. The complainant has submitted the printout of the impugned website as annexure-6. The complainant has submitted that it is evident that the respondent has registered the impugned domain name for the purpose of hoarding and to cause prejudice to the complainant. The complainant has contended that the respondent has no rights and /or legitimate interests whatsoever in the impugned domain name and the same has been registered in bad faith and with a malafide intention to trade upon the reputation and goodwill acquired by the complainant in their well known mark/ name IPCA which is exclusively associated with them in course of trade.

B. The respondent has no rights and /or legitimate interests in respect of the Impugned domain name.

- (1) The complainant has submitted that the respondent does not have any legitimate right and /or interests in the mark/ name IPCA. It is contended by the complainant that to the knowledge of the complainant the respondent

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has not carried out any business under the impugned name IPCA. Further, the complainant has not in any manner authorized and/or licensed the use of the said name/ mark to the respondent. Therefore the respondent has no rights or legitimate interests in the impugned domain name and by registering the impugned domain name; the respondent is only trading upon the colossal reputation and goodwill of the said well known mark/ name IPCA of the complainant. It is submitted that the registration of the impugned domain name by the respondent is an attempt to pass off the impugned website as and for that of the complainant. In view of the enormous popularity of the Complainant's name and mark IPCA and its inseparable association with the Complainant any use of the impugned identical and / or deceptively similar domain name will inevitably divert Internet traffic and cause confusion as to the source, sponsorship, affiliation or endorsement of the domain name and thereby pass off the impugned domain name of the Respondent as for that of the Complainant. Any confusion and/ or deception caused amongst the members of trade and public or diversion of viewers to the impugned domain shall cause tremendous losses including loss of reputation, goodwill and pecuniary losses to the Complainant.

- (2) The complainant has submitted that courts have taken cognizance of the fact that unlike trademarks, a domain name in addition to being an address for computers on the internet, is a business identifier which is a potentially accessible from any geographical location and therefore the same requires worldwide exclusivity. In the case of **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution Pvt. Ltd. AIR. 2004 SC 3540**, it has been held by the Hon'ble Supreme Court that "a domain name is accessible by all internet users and the need to maintain an exclusive symbol for such access is crucial. Therefore a deceptively similar domain name may not only lead to confusion of the source but also the receipt of unsought for services." Subsequently, in the year 2007, in the matter of **Ranbaxy Laboratories Ltd. vs. PE-MM SP. ZO.O and Anr. 2007 (35) PTC 865 (Del)**, the Hon'ble Delhi High Court held that "a person who is a registered owner of a trademark or domain name has a legitimate interests in the same and therefore is entitled

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to exclusive right over it and every other person is barred from using same or similar trademark or domain name". In Dr. Reddy Laboratories Ltd. vs Manu Kasuri and Anr. 2001 PTC 859, it was held by Hon'ble Delhi High Court "it appears that function of domain name is akin to a trademark on the internet and it is of vital importance in e-commerce". In this case the plaintiff was the proprietor of the trading name and mark "Dr. Reddy's". The defendant adopted the domain name drreddyslab.com which was identical / or closely similar to the plaintiff's above said name and mark. The Hon'ble court held that the defendant was liable to be prosecuted for an action of passing off since the domain name serves same function as that of a trademark and thus the Hon'ble court was pleased to restrain the defendant from registering and/or using the impugned domain name.

The complainant has submitted that the impugned domain name in the present case is identical / or deceptively similar to the well known and registered trademark/ name IPCA which name and mark is exclusively associated with the Complainant and is also identical / or deceptively and/ or confusingly similar to the registered domain name www.ipcalabs.com of the complainant. Therefore the registration and / use of the impugned mark is bound to cause confusion and / or deception and pass of the activities of the Respondent as and for that of the complainant. The respondent therefore be barred from using same or similar trademarks and / or domain names as that of the complainant's aforesaid and well known and registered trademark/ name IPCA.

The complainant has submitted that in view of the public association, tremendous popularity, reputation and goodwill subsisting in the mark/ name IPCA of the complainant and the valuable investments made by the complainant in connection therewith, the continuation of registration and any subsequent use of the identical domain name by the respondent will cause great prejudice and injury to the commercial interests of the complainant in the mark/ name IPCA.

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C. The impugned domain name was registered and is being used in bad faith:

The complainant has submitted that the respondent has registered and is being used in bad faith.

The complainant has submitted that the said mark/ name IPCA of the complainant has been used openly, continuously and extensively in respect of the goods of the complainant and the same also features extensively on the internet and is associated exclusively with the complainant in the course of trade. On the other hand, the respondent is not carrying on any business under the mark/ name IPCA and has registered the impugned domain name, which has no content, merely for the purpose of hoarding. The respondent with a dishonest intention and bad faith of trading upon the colossal reputation and goodwill of the complainant and to create confusion and deception, has created the impugned website thereby misleading the viewers as to the origin, source, sponsorship, affiliation or endorsement of the impugned website misrepresenting itself and passing off the impugned website as and for that of the complainant. The complainant has submitted that in view of the extensive use, popularity and public association of the mark/ name IPCA with the complainant, the tremendous reputation and goodwill subsisting in the said mark/ name, the large scale investment made by the complainant for promoting the mark/ brand and the existence of the registered domain name www.ipcalabs.com of the complainant, the balance of convenience clearly lies in favour of the complainant. The complainant has submitted that due to diversion of the internet traffic to the identical impugned domain name and the confusion and / or deception caused by the impugned website, grave injustice and losses including pecuniary loss and loss of reputation will be caused to the Complainant if the impugned domain name and is not transferred to the complainant.

The complainant has submitted that without prejudice to the above, the respondent is not using the impugned identical domain name primarily for the purpose of selling, renting or otherwise transferring the domain name

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registration to the complainant who is owner of the trade name/ mark **IPCA** or to a competitor of the complainant, for valuable consideration in excess of the respondent's out-of-pocket costs directly related to the domain name. The said act of the respondent amounts to cyber squatting and/ or hoarding of domain name and should be strongly condemned and prohibited.

The complainant has submitted that adopting the impugned identical domain name, the respondent has intentionally attempted to attract for commercial gain, internet users to the respondent's impugned domain name by creating a likelihood of confusion with the complainant's mark/ name and as to the source, sponsorship, affiliation or endorsement of the respondent's website. The complainant has submitted that there can be no justification by the respondent for the use of the impugned identical domain name but to take unfair advantage of the enormous reputation and goodwill subsisting in the well known name/ mark **IPCA**. The respondent therefore ought to be ordered to transfer the impugned identical domain name to the complainant.

5. OPINION/FINDING:

The Para no.4 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

TYPES OF DISPUTES

Any person who considers that a domain name conflicts with his legitimate rights or interest may file complaint to .IN Registry on following premises:

- "i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights;
- ii) the Registrant has no rights or legitimate interests in respect of the domain name and
- iii) The Registrant's domain name has been registered or is being used in bad faith."

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The Para no.6 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:

6. EVIDENCE OF REGISTRATION AND USE OF DOMAIN NAME IN BAD FAITH

The following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- "i) Circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or
- ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- ii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

The Para no.7 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

7. REGISTRANT'S RIGHTS TO AND LEGITIMATE INTERESTS IN THE DOMAIN NAME

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Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purpose of paragraph 4 (ii):

- "i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstratable preparations to use, the domain name or a name corresponding to the domain name in connection with a bonafide offering of goods or services;
- ii) the Registrants (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

8. OPINION AND FINDINGS ON MERITS

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

It is held in Indian case **JT.2004 (5) SC 541**, that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.

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Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

Thus the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark right on the said domain name.

This principle is settled in many Indian cases referred herein above. The complainant has made submission that he has legitimate trademark.

Thus the conclusion is that the domain name 'www.ipca.in' is identical and confusingly similar to the trademark of complainant 'IPCA' and the complainant has established that the complainant has right in the trademark.

B) Whether the respondent has no right or legitimate interest in the domain name got registered by him

It is pertinent to mention here that paragraph 4 (ii) of INDRP is to be read with paragraph no.7.

As already stated that paragraph 4 (ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras are prima facie on complainant. The onus is not very weak and prima facie, but it heavily shifts on respondent. Respondent can discharge the onus by direct congest and positive evidence which are in his special knowledge and power. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant

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has prima facie discharged the initial onus cast upon him by virtue of paragraph 4(ii) and 7 of INDRP.

The respondent on other hand has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by the impugned domain name in the present complaint. The respondent has neither put forth the reply/counter to the complaint nor has provided any evidence in its support.

Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

C. Whether the respondent's domain name has been registered or is being used in bad faith

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4 (iii) and 6 are relevant and as already stated; the onus is primarily upon complainant.

Keeping in view the above facts and circumstances and Indian cases referred herein above it is thus clear that the respondent has registered the disputed domain name and in spite of repeated notices, he has neither come forward and nor provided any substantial evidence in his support.

Thus the conclusion is that the respondent has got registered his domain name "www.ipca.in" in bad faith.

RELIEF


The respondent has no right and legitimate interest in the domain name '**www.ipca.in**' and that the respondent has illegally and wrongfully adopted the word **IPCA** of the complainant with the sole intention to create an impression of an association with the complainant. The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to

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retain the domain name. The complainant is entitled for transfer of domain name '**www.ipca.in**' to him, as he has established his bonafide rights in trademark in view of facts of the case and as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry on payment of requisite fee to the registry.

No order as to costs.


(Sanjay Kumar Singh)
Arbitrator

Date: 16-02-2012.