

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

रु. 100

ONE  
HUNDRED RUPEES



सत्यमेव जयते

भारत INDIA  
INDIA NON JUDICIAL



தமிழ்நாடு தமில்நாடு TAMILNADU

1 50 OCT 2013

**D. SARAVANAN**  
Advocate, Arbitrator & Mediator  
"Orient Chambers", No. 80 (Old No. 73),  
4th & 5th Floor, Armanies Street,  
Chennai - 600 801.

AS 046398  
**P.S. SHANMUGA SUNDARAM**  
STAMP VENDOR,  
L No B4 / 109 / 88  
HIGH COURT CAMPUS,  
CHENNAI-600 104 (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN  
IN REGISTRY  
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: < www.muthootbank.in >

M/s Muthoot Finance Limited,  
Muthoot Towers,  
Plot No. 2-4,  
Community Centre,  
Alaknanda, New Delhi- 110 019

....Complainant

Versus

Mr.K.K.Sivan,  
2e4 Saniya Plaza,  
Near KSRTC, Ernakulam,  
Cochin, Kerala- 682 035

....Respondent

...2/



भारतीय गैर न्यायिक

पचास  
रुपये  
रु.50



FIFTY  
RUPEES  
Rs.50

INDIA NON JUDICIAL

தமிழ்நாடு தமில்நாடு TAMILNADU

40570,  
5 OCT 2013

D. SARAVANAN  
Advocate, Arbitrator & Mediator  
"Sant Chambers", No. 80 (Old No. 73),  
4th & 5th Floor, Arumugam Street,  
Chennai - 600 801.

AD 853543  
P.S. SHANMUGA SUNDARAM  
STAMP VENDOR,  
L No B4 / 109 / 88  
HIGH COURT CAMPUS,  
CHENNAI-600 104 (TAMIL NADU)

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**1. The Parties:**

The Complainant is a financial company duly organized under the laws of India, having its principal place of business at Muthoot Towers, Plot No.2- 4, Community Centre, Alaknanda, New Delhi - 110 019.

The Respondent is K.K.Sivan, having place of communication at 2e4, Saniya Plaza, Near KSRTC, Ernakulam, Cochin, Kerala- 682035.

**2. The Domain Name and Registrar:**

The dispute domain name : < www.muthootbank.in >

The disputed domain name is registered with National Internet Exchange of India (NIXI).

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### 3. Procedural History:

28.10.2013	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
28.10.2013	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
01.11.2013	Complaint along with supporting documents were sent to the Respondent by NIXI through courier but it returned with endorsement "Cannot be delivered."
13.11.2013	NIXI was informed by the Arbitrator to send the soft copy of complaint through email, to the respondent.
13.11.2013	Complainant was informed by NIXI to send the complaint with supporting documents.
21.11.2013	Soft copy of the complaint was sent to the Respondent by e-mail enabling him to file his response.
01.12.2013	Due date for filing response.
12.12.2013	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

### 4. Factual Background

#### 4.1 The Complainant:

The Complainant is a financial company duly organized under the laws of India, having its principal place of business at Muthoot Towers, Plot No.2- 4, Community Centre, Alaknanda, New Delhi- 110 019. The complainant company is represented by Mr.Ravi Kant Jha.





#### 4.2 Complainant's Trading Name:

The complainant has registered its trademark in Trade Mark No. 1215365 dated 17.07.2002 under class 16 in respect of Printed Matter, Printed Publications, Catalogues, Brochures, posters, pamphlets, teaching and Publicity Materials, Cards and Stationery included in Class 16.

The complainant uses various domain names in connection with the goods and services offered by it, viz., (a) muthootfinance.com; (b) muthootfinance.co.in; (c) muthootbank.com; (d) muthootbank.net.

#### 5. Respondent's Identity and activities:

The Respondent is K.K.Sivan, having place of communication at 2e4, Saniya Plaza, Near KSRTC, Ernakulam, Cochin, Kerala- 682035.

#### 6. Dispute

The dispute arose when the Complainant came to know about unauthorized registration of the domain name www.muthootbank.in by the respondent through WHOIS Search.

#### 7. Parties contentions:

##### A. Complainant:

(i) The Complainant states that the domain name is identical to that of the complainant's name in which the Complainant has right and the domain name that is subject of the dispute herein has been deliberately registered in bad faith by the respondent.

(ii) The Complainant states that the respondent has no rights or legitimate interest in respect of the domain name and has no connection whatsoever with the title/ name Muthoot. The Complainant states that it is the Complainant who is



known by the name Muthoot Bank and was run by a consortium commonly known as Muthoot Bankers and has been in business of financing since 126 years.

(iii) The Complainant states that the respondent is making illegitimate demands to release/ relinquish the domain name in dispute in favour of the Complainant and have got registered the domain name in dispute in bad faith with the intent of making illegal, unauthorized and unjust monetary gain and the Complainant apprehends that the respondent may pose a threat to the business and goodwill/ reputation gained over a period of time by the Complainant.

(iv) The Complainant states that it has been commonly known by the domain name and uses various domain names in connection with the goods and services offered by it, viz., (a) muthootfinance.com; (b) muthootfinance.co.in; (c) muthootbank.com; (d) muthootbank.net.

(v) The Complainant states that by registering the domain name, the respondent has intentionally and deliberately attempted to create and cause a possible threat to the business and reputation of a public listed company.

#### **B. Respondent:**

The Respondent did not submit any response in spite of notice sent on 01.11.2013, 21.11.2013 and the notice of default sent on 12.12.2013.

#### **8. Discussion and Findings:**

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been duly notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on 12.12.2013.



Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The Respondent's domain name is identical or confusingly similar to a 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 Respondent's domain name has been registered or is being used in bad faith.

**(a) Identical or confusing similarity:**

i. The Arbitral Tribunal finds that the trade mark "The Muthoot Group" and the disputed domain name [www.muthootbank.in](http://www.muthootbank.in) are confusingly similar and identical. The Complainant has established itself beyond doubt that it is the lawful owner of the trademark "The Muthoot Group" and various domain names which are similar to that of disputed domain name i.e. [www.muthootbank.in](http://www.muthootbank.in) such as (a) [muthootfinance.com](http://muthootfinance.com) (b) [muthootfinance.co.in](http://muthootfinance.co.in) (c) [muthootbank.com](http://muthootbank.com) and (d) [muthootbank.net](http://muthootbank.net). The Arbitral Tribunal in its various decisions have established that mere addition or substitution of descriptive suffix or prefix like .com or .co.in or .in does not make a trade mark distinctive.

ii. The respondents' unwarranted registration of the impugned domain name with NIXI identical to Complainant's trade mark is clearly an offence under laws of India.

iii. The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.



**(b) Respondent's Rights or Legitimate Interests:**

(i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondents' rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

(ii) Based on the records filed by the Complainant and the WHOIS Database Search, the Arbitral Tribunal is satisfied that the respondent has registered the domain name without any authorization.

(iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

**(c) Registration and Use in Bad faith:**

(i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion



with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location. It is the specific case of the Complainant that the respondent's modus operandi is by creation of the website under the registered www.muthootbank.in mark with generic/descriptive suffix, is seeking illegal commercial gain through its opportunistic bad faith registration of the disputed domain name.

(ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

(iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.






**9. Decision:**

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal finds that the trade mark www.muthootbank.in constitutes a valuable intellectual property right owned by Complainant, which is entitled to protection in law against misuse, misappropriation as well as dilution and thus orders that the disputed domain name i.e. <www.muthootbank.in> shall be transferred to the Complainant.

**Dated at Chennai (India) on this 13<sup>th</sup> December, 2013.**

  
**(D.SARAVANAN)**  
Sole Arbitrator