



महाराष्ट्र MAHARASHTRA

KA 701075

अनुक्रमांक ९६१२१७३ दिनांक २०/१२/२०१३ रुपये २०,०००/-
 मुद्रांक कोणत्या कारणासाठी वापरण्याचा आहे. डा. अ. दे. र. १७
 मुंबई मुद्रांक जोधनेसम १९५८ चे अगुजरेत क.
 मुद्रांक वापरण्याचे संपूर्ण पत्ता शिरीष चिंतामणी अनाम ६१
 हस्ते व्यक्तीचे संपूर्ण पत्ता सानिया प्लेझा, पुणे-२०
 पत्ता A3192 सुरेश्वरी, पिंपरी, पुणे ४११०२६



मुद्रांक धारक/हस्ते व्यक्तीची सही

स्वाक्षरी (मुद्रांक विक्रेता)
 (सी. जायशी मि. बेलखरे)
 परवाना क्र. २०१०११/१११५
 परवानाची मुदत ३१/३/२०
 पत्ता: ४२५ ब, शनिवार पेठ, पुणे-३०

**AWARD
 IN ARBITRATION**

'MUTHOOTBANK.CO.IN'

Muthoot Finance Limited
 Muthoot Towers, Alaknanda, New Delhi. 110019.

THE COMPLAINANT

AND

K.K.SIVAN
 2e4 Saniya Plaza, Near KSRTC
 ERNAKULAM, KERALA, 682035

**THE RESPONDENT /
 THE REGISTRANT**

IN THE MATTER OF DISPUTED DOMAIN NAME: - 'muthootbank.co.in'
BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.

SOLE ARBITRATOR

DELIVERED ON THIS 16TH DAY OF DECEMBER TWO THOUSAND
THIRTEEN AT PUNE, INDIA.

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

01. Names and addresses
Of the Complainant: - **Muthoot Finance Limited**
Muthoot Towers, Alaknanda
Plot No.2-4, Community Center
New Delhi. 110019..
- Through its authorized
representative Ravi Kant Jha
Authorised Signatory.
Nuthoot Finance Limited.
02. Name and address of
The Respondent: - **K.K.Sivan**
2e4, Saniya Plaza, Near KSRTC
Ernakulam, Cochin, Kerala. 682035

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	29/10/2013
02	Hard copy of complaint received	06/11/2013
03	Notice of Arbitration issued (with the instructions to file say / reply latest by 16.11.2013)	06/11/2013
04	Reminder notice sent (with instruction to file say latest by 20/11/2013)	18/11/2013
05	Reply from mother of the Registrant received	20/11/2013
06	Notice of closure of arbitration	14/12/2013
06	Award passed	16/12/2013

1) PRELIMINARY: -

- 1) Muthoot Finance Limited, a limited company registered under the provisions of the Companies Act, 1956, having its office at Muthoot Towers, Alaknanda, New Delhi, 110019 (**The Complainant**) has filed

complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name 'muthootbank.co.in' (the disputed domain name / domain name), through its authorized representative Mr. Ravi Kant Jha.

- 2) The Complainant has disputed registration of domain name 'muthootbank.co.in' in the name of K.K.Sivan (The Respondent / Registrant).
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 6th November, 2013 with the instructions to file his reply / say latest by 16th November, 2013.
02. Since no reply / say was filed by the Registrant within the prescribed period, this Arbitration Panel extended, suo-motu, the period to file say/ reply, if any, latest by 20th November, 2013.
03. On 20th November 2013 an email was received from one Smt. Janu Kumaran, claiming to be mother of the Registrant, stating that she is mother of Mr.K.K.Sivan, the registrant and that Mr.Sivan died in an accident. However no copy of death certificate has been furnished nor has any proof regarding her relationship with the Registrant been furnished.
04. In view of no response by the Registrant and also in view of the reply by Smt. Janu Kumaran no rejoinders were called for.
05. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
06. No personal hearing was requested / granted / held.

III] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -

The Complaint is based on the following points / issues in brief: - -

(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:

1. The Complainant is the owner of registered trademark No.1215365 dated 17/07/2003, in class 16 in respect of printed matter, publications, catalogues, brochures, posters, pamphlets, teaching and publicity material cards and stationery included in Class 16.

(B) IDENTITY OR CONFUSING SIMILARITY OF THE DOMAIN NAME WITH THE TRADEMARKS OF CIC: -

1. The Registrant's 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 dispute herein has been registered and is being deliberately registered in bad faith by the Registrant.
2. The Registrant has no rights or legitimate interests in respect of the domain name.
3. The Registrant is making illegitimate demands to release / relinquish the domain name in favor of the Complainant.
4. The Complainant has been commonly known by the domain name and is also the Registrant and uses the following domain names in connection with the goods and services offered by it: -
 - a. www.muthootfinance.com
 - b. www.muthootfinance.co.in
 - c. www.muthootbank.com
 - d. www.muthootbank.net
5. The Registrant has intentionally and deliberately attempted to create and cause possible threat to the business and reputation of a public listed company.

(C) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the background of the Complaint and reasons described therein the Complainant has requested for cancellation of the Registrant's domain name and transfers the same to it.

V] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

As stated earlier the Respondent / Registrant did not file any say / reply. However within the extended period one Smt. Janu Kumaran sent a reply stating that she is mother of Mr. Sivan and that he has expired in an accident. She further asked for the details of the Complaint and clarifications on what the arbitration proceedings are all about.

She has not furnished any proof about her relationship with the Registrant. She has also not furnished a copy of the death certificate of the Registrant. On the basis of the fact that she had access to the email id of the Registrant, this panel has assumed that she is mother of the Registrant.

Regarding her demand for copy of the Complaint, it is laid down procedure by NIXI that the Complainant is duty bound to mark copy of the same. Chronological sequence of events shows that the Registrant was alive till the arbitral proceedings were started. The Complainant has claimed that the Registrant was demanding unreasonable amount to relinquish the domain

name. It therefore appears that the Registrant might have received copy of the Complaint or else he could have asked for the same.

As stated earlier this Arbitration Panel received a mail from one Mrs. Janu Kumaran stating that she is mother of Mr.K.K.Sivan, the Registrant of the domain name and that the said Mr.Sivan has died in an accident. Further she stated that she did not understand as to what it is all about and asked for the clarifications. Since furnishing such clarifications is out of the scope of this panel, no reply was sent to her.

A person who can write email can be presumed to be literate and having reasonable and basic sense of legal issues. If such person does not have legal background he can consult lawyers and get their help. Arbitrator cannot be expected to teach law or explain what is the complaint about and all.

In view of this position, this panel has not communicated further with her. This panel has decided to go ahead with the arbitral proceedings on the above background.

VII] REJOINDERS OF THE PARTIES; -

In view of reply by the mother of the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

VIII] REPORTED DEATH OF THE REGISTRANT: -

As stated earlier this Arbitration Panel received a mail from one Mrs. Janu Kumaran stating that she is mother of Mr.K.K.Sivan, the Registrant of the domain name and that the said Mr.Sivan has died in an accident. On the background of this mail an issue came up before my consideration as to whether arbitral proceedings can go ahead or not. The question was considered in the light of the provisions of the Contract Act, Arbitration & Conciliation Act, Information Technology Act and Evidence Act.

It is a fact that late Mr.Sivan registered domain name and while registering he also agreed to undergo Arbitration if there was any dispute. This registration has created some rights or interests in the domain name.

It is known and established fact that domain names are sold and bought like any other commodity. Obviously according to the Succession Act his legal heirs can claim the said domain name or benefits accruing out of it provided they are also willing to undertake legal or financial obligations associated to it.

Assuming that the Registrant had some legal rights in the said domain name, his legal heirs are entitled to claim the same or benefits accruing to the same subject to the liabilities or obligations associated with it.

No such claim has been made by any of his legal heirs. Upon serving notice on the Complainant and also on NIXI to seek their views on the issue, no reply has been filed by them.

Under the present circumstances this panel has thought it fit to proceed with the arbitral proceedings and pass appropriate award as follows.

VIII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No
04	Whether the Registrant has commonly been known by the domain name?	No
05	Whether the Registrant has any legitimate interests in the disputed domain name?	No
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	Yes
07	Has the Registrant 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?	Yes
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	Yes
09	Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?	Yes

IX] BASIS OF FINDINGS: -

1. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

The Complainant is the owner of trademark registered at Sr. No.1215365 dated 17/07/20003 in its name. The Complainant also owns various domain names in India, which include the words 'MUTHOOT'. A comprehensive list of these marks and domain names has been produced by the Complainant.

Therefore my finding on this issue is in affirmative.

2. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'MUTHOOT' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant. It is well established beyond doubt by several arbitral decisions in India as also WIPO cases that mere addition of suffix like .in / .org does not differentiate the domain name from the marks. Looking at the stature of the Complainant, its national presence as also its strong presence on the internet it is very hard to believe that the Registrant was not aware of the same.

Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'MUTHOOT'.

Therefore my finding on the first issue is affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

Neither the Registrant, nor his legal successors, has filed any say or reply to the complaint and hence it is presumed that he does not have / he has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has commonly been known by the domain name?

The name of the Registrant, as on the Whois records is K.K.Sivan. As such he is not commonly been known by the domain name or any variation thereof.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'muthoot'. He is not commonly known by that name or any variation or combination thereof. He has not established that he has been using the registered domain name for bona fide business activities or for non-commercial purpose. He has not shown any other nexus of his business with the disputed domain name or any authority by the Complainant in this behalf.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The website is under maintenance. However any internet user when searches for this domain name, he reaches the present page. Thus the domain name attracts internet users.

Therefore my finding on this issue is affirmative.

7. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has brought out malafide registration of the disputed domain name, registration of domain name without any authority and for any bona fide business on the part of the Respondent. Therefore it is squarely established that such registration by the Registrant has resulted into denying the Complainant his lawful right to register and use the disputed domain name for his business purposes.

Therefore my finding on this issue is in affirmative.

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

The website is under maintenance. But whenever anyone searches for muthootbank.co.in he is directed to this webpage. Hence it can be said that internet users are being attracted to the website as if it is of the Complainant.

Therefore my finding on this issue is affirmative.

9. Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?

Though there is no evidence laid by the Complainant, he has claimed that the Registrant has asked for unreasonable money for releasing or selling the domain name. It is very usual that cyber-squatters are registering domain names ultimately to be sold for monetary gains unlawfully.

Therefore my finding on this issue is affirmative.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion this panel has reached the conclusion that: -

1. The Registrant has not replied to complaint or Notice of Arbitration at all. This act can lead to only conclusion that registration has been done with criminal and deceitful intentions and for the purposes of gaining illegally and immorally.
2. The disputed domain name includes the registered marks and registered domain names of the Complainant It means the Complainant's rights, interests and reputation are at stake in the disputed domain name.
3. The Registrant / Respondent does not have any registered trade mark / service mark in his name containing the words 'muthoot' and hence does not have any legitimate interest in the same and resultantly in the disputed domain name. He has not been authorised by the Complainant to register the said domain name.
4. The Registrant has not been commonly known by the disputed domain name.
5. The Registrant is not making bona fide and fair use of the disputed domain name for his bona fide business purposes, much less for non-commercial purpose.
6. The Respondent / Registrant has completely failed to establish his nexus, rights or interests in or with the disputed domain name in any way.


From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in bad faith, without any legitimate interests in it, and with the purpose of making illegal profits by selling or transferring it for valuable consideration.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

- 01. The Complainant is entitled to the disputed domain name – 'muthootbank.co.in' and hence the same be transferred to the Complainant.**
02. No orders as to the costs.

Dated: - 16.12.2013

Place: - Pune


(S.C. INAMDAR)
SOLE ARBITRATOR