

Bond



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Haryana Government**



Date :23/10/2019

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(Rs. Zero Only)

Deponent

Name: Rachna Bakhru

H.No/Floor : Na

City/Village : Gurugram

Phone : 0

Sector/Ward : Na

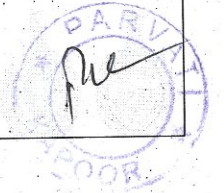
District : Gurugram

Landmark : Na

State : Haryana



Purpose : ALL PURPOSE to be submitted at All place



RACHNA BAKHRU

ARBITRATOR

Appointed by the .IN Registry – National Internet Exchange of India

In the matter of:

Voltas Limited
Voltas House "A"
Dr. Babasaheb Ambedkar Road
Chinchpokli, Mumbai 400 033

....Complainant

Rambilas Garg
Proprietor of Agarwal Enterprise
G-3, Upal Tower
Opp. Umiya Dham, A.K. Road, Surat
Gujarat – 395 006
Phone No. +91 8460606044
Email: viplav_garg@yahoo.com

.....Respondent

Disputed Domain Name: <WWW.MYVOLTAS.IN>

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Voltas Limited, of the address Voltas House "A", Dr. Babasaheb Ambedkar Road, Chinchpokli, Mumbai 400 033. The Complainant is represented by its authorized representative, Geetanjali Visvanathan and Kruttika Vijay, Ira Law.

The Respondent in this arbitration proceeding is Mr. Rambilas Garg, Proprietor of Agarwal Enterprise of G-3, Upal Tower, Opp. Umiya Dham, A.K. Road, Surat, Gujarat – 395 006 as per the details available in the Whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is <www.myvoltas.in>.

The Registrar is GoDaddy.com LLC.

The Registrant is Mr. Rambilas Garg, Proprietor of Agarwal Enterprise of G-3, Upal Tower, Opp. Umiya Dham, A.K. Road, Surat, Gujarat – 395 006.

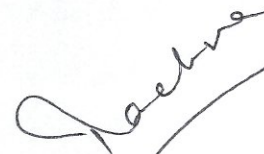
3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Rachna Bakhru as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The Complaint was produced before the Arbitrator on March 19, 2020.
- The notice was issued to the Respondent on March 19, 2020 at his email addresses viplav_garg@yahoo.com; and postmaster@myvoltas.in outlining that the Complainant had prayed for transfer of the disputed domain name "www.myvoltas.in" in its favour. The Respondent was called upon to submit their response within ten (10) days of receipt of the Arbitrator's email i.e. until March 29, 2020.



- Since no response was received by the Respondent, on March 31, 2020 the Arbitrator sent another reminder to the Respondent at the email addresses viplav_garg@yahoo.com; and postmaster@myvoltas.in providing the last and final opportunity until April 07, 2020 to provide their response. The Respondent was also informed that if no response is received by the said date, the Complaint will be decided based on the Complainant's submissions.
- The Arbitrator received no response from the Respondent within the said timeline and the Arbitrator has not been informed of any settlement between the parties. Further, the Arbitrator did not receive any delivery failure notification from the Respondent's email id, therefore the complaint is deemed to be served. In view of no response/ acknowledgment/ communication from the Respondent, the Complaint is being decided ex-parte and solely based on materials and evidence submitted by the Complainant and contentions put forth by them.
- I note that the present mode of communication i.e. emails were copied to all the concerned parties i.e. Complainant and Respondent as well as NIXI. I have returned all the pleadings/documents received in the present Arbitration case to NIXI via courier. I further confirm that I did not receive any pleadings/documents from the parties (Complainant and/or Respondent) in relation to present Arbitration case.

4) Summary of Complainant's contentions:

The Complainant in support of its case has made the following submissions:

- i) The Complainant was incorporated in the year 1954 and is the registered proprietor of the trademark/ service mark "VOLTAS" in India and abroad. The Complainant is credited with revolutionizing the Indian air conditioning and refrigeration industry and setting international standards in product design, quality and retailing in India through innovative products. The Complainant belongs to TATA group of companies and therefore belongs to the oldest, largest and best known Indian conglomerate.
- ii) The Complainant submits that apart from domestic home appliances such as air conditioners, refrigerators, water coolers, water dispensers, the Complainant also manufactures products for industrial use such as industrial air conditioning and refrigeration equipment, water coolers, freezers, commercial refrigerators, visicoolers, vapor absorption machines. All products of the Complainant bear the stamp of state of the art automated manufacturing plants resulting in consistently high quality and reduced costs.
- iii) The Complainant has also established a strong international presence and is actively engaged in turnkey projects in fields such as engineering procurement and constructions (EPC), electro-mechanical works comprising HVAC, electrical systems for buildings, plumbing, fire-fighting, power lighting, water management and pollution controls. In these sectors, the Complainant demonstrates its specialized engineering expertise, as well as its extensive



network of global sourcing. The Complainant also has ISO 9001:2008 standard certification with respect to its projects, businesses and has successfully undertaken and executed prestigious high value projects in the Middle East, Far East and South East Asia, CIS countries, Africa and India.

- iv) The Complainant submits that they have adopted the trademark "VOLTAS" over 65 years ago in the year 1954, as not only its trademark but also its corporate name and trading style; the same is thus a vitally important source identifier of the Complainant and its subsidiaries/ affiliates and group companies and is a carrier of the Complainant's reputation and associated goodwill.
- v) The Complainant has provided printouts from the Complainant's website listing the various awards won by the Complainant as **Annexure F**; printout from the Complainant's website showing location of various offices of the Complainant in India and abroad as **Annexure G**; certificate of the Executive Vice President & Chief Financial Officer of the Complainant company certifying the sales turnover of the Complainant over the past five years along-with the expenditure towards promotion and advertising under the trade/ service mark "VOLTAS" as **Annexure F**; Newspaper articles and magazine extracts illustrating the goodwill and reputation of the Complainant as **Annexure I** and copy of the Bombay High Court declaring the mark "VOLTAS" as a well known mark as **Annexure J**.
- vi) As per the submissions of the Complainant, the trademark VOLTAS is a coined by the two promoters of the Complainant i.e. VOLKART, a Swiss Company and TATAS, an Indian Company. The trade name and mark VOLTAS was coined telescoping the prefix VOL from VOLKART and TAS the suffix of TATAS. The Complainant is the registered proprietor of the trademark VOLTAS as early as 1955 and has enclosed as **Annexure K & Annexure L** the various trademark registration certificates for VOLTAS and VOLTAS formative marks in the Indian Trade Marks Registry database. The Complainant is also the registered proprietor of the trademark VOLTAS in various countries across the world including Singapore, Hong Kong, Qatar, Bahrain, China, South Africa etc to name a few. The illustrative list of worldwide trademark registration of the Complainant for the mark VOLTAS is enclosed as **Annexure M**.
- vii) The Complainant is also the Registrant of various domain names containing its trade/ service mark VOLTAS, some of which include www.voltas.com, www.voltasservice.com, www.voltaslimited.co.in, www.myvoltas.com etc. The complete list of domain names containing the trade/ service mark VOLTAS registered in favor of the Complainant is annexed as **Annexure P**.
- viii) The Complainant through **Annexure Q, Annexure R, Annexure S** and **Annexure T** have enclosed orders passed by Courts protecting the well-known mark VOLTAS. Further **Annexure U & Annexure V** are orders passed by WIPO Arbitration and Mediation Center protecting the trademark VOLTAS of the



Complainant. The Complainant has annexed as **Annexure W** and **Annexure X**, the decisions of NIXI upholding the Complainant's trademark rights.

5) Respondent:

The Respondent has not filed any official response dealing with the contents of the Complaint. Therefore, the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the INDRP policy.

6) Discussion and Findings:

The submissions and contentions provided by the Complainant shows that the mark 'VOLTAS' was first adopted in the year 1954 and has been in use as a trade/ service mark since then. Further, the Complainant has applied and secured registration for the trademark VOLTAS as early as 1955 as provided in Annexure K & Annexure L. The Arbitrator notes that the Complainant has been using the trademark for several years and has filed numerous domain name actions before WIPO and NIXI against third parties as shown in the list annexed as **Annexure U to X**. The Arbitrator also notes that the Complainant has an active specific website www.myvoltas.com as shown from **Annexure N**.

Based on the submissions and documents filed in support, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below. Further the Respondent has not contested the claims, therefore deemed to have admitted the contentions of the Complainant.

(i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

Based on submission and evidence filed by the Complainant, it is clear that the Complainant has prior and subsisting rights in the mark VOLTAS with its earliest adoption in the year 1954 and several trademark registrations worldwide including India. In India, the Complainant has evidently proved that it has secured trademark registration for the VOLTAS trademark in various classes. Therefore, it is established that the Complainant has statutory trademark rights in the mark VOLTAS worldwide including in India. Further, the Complainant has pleaded that it has been commercially using the VOLTAS trade/ service mark since 1954. Therefore, the Complainant also has prior user rights in the VOLTAS trade/ service mark. As the Complaint is filed under INDRP, it has to be now ascertained if the disputed domain name <www.myvoltas.in> is identical to or confusingly similar with the Complainant's mark.

As per WIPO Jurisprudential Overview 3.0, *the standing or threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.*



While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

It is also noted from the documentary evidences provided by the Complainant that the Complainant is the registered proprietor of the trademark VOLTAS which is entirely contained in the disputed domain name of the Respondent. It is evident in the present case that the disputed domain name <www.myvoltas.in> is identical and confusingly similar to the Complainant's registered trademark VOLTAS and domain names www.voltas.com & www.myvoltas.com. In my opinion, owing to the worldwide presence of the Complainant's business, the disputed domain name could make Internet users to believe that such domain name and the contents originating there-from belong to the Complainant. In view of the above, the requirement of the INDRP Policy paragraph 4(i) is satisfied.

(ii) The Registrant has no rights or legitimate interests in respect of the domain name;

In order to satisfy requirement of INDRP Policy paragraph 4(ii), the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. On making such *prima facie* case, the burden of proof shifts to the Respondent to provide appropriate allegations or evidence to demonstrate rights or legitimate interests in the domain name.

In the present case, no response was received from the Respondent and none of the contentions put forth by the Complainant against the Respondent were denied or rebutted.


Paragraph 7 of INDRP Policy deals with the Registrant's Rights to and Legitimate Interests in the Domain Name:

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 purposes of Paragraph 4 (ii) :

(i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;

(ii) the Registrant (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.

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Keeping in mind instances covered in Paragraph 7 of INDRP Policy, the Arbitrator notes that the Respondent has no legitimate interest in the disputed domain name as the Respondent is likely to be trading on the fame and recognition of the Complainant's registered trademark VOLTAS and will lead to deceive the users. Therefore, the disputed domain name is registered with intent for commercial gain to misleadingly divert consumers or to tarnish the trade/ service mark VOLTAS.

Further, as there exists no business relationship or authorization or license between the Respondent and the Complainant, I find the requirement of the INDRP Policy paragraph 4(ii) also satisfied.

(iii) The Registrant's domain name has been registered or is being used in bad faith.

Paragraph 6 of the INDRP policy states Evidence of Registration and use of Domain Name in Bad Faith:

For the purposes of Paragraph 4(iii), 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

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line 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.

Based on prior adoption, worldwide use, several trademarks and domain names registrations of trademark VOLTAS by the Complainant; it is believed that the Respondent was well aware of the Complainant's business and services while registering the disputed domain name constituting the mark VOLTAS. Further, the Complainant had commenced use of the trademark VOLTAS since 1954 for its business and has also registered the trademark VOLTAS in various countries of the world including India. Therefore, based on constructive knowledge of the Respondent and no legitimate business on the disputed domain name/website, it is presumed that the Respondent registered the disputed domain name in bad faith.


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It is clear that the Respondent has registered the disputed domain name with an obvious intention to illegally benefit from the goodwill and reputation of the complainant's mark VOLTAS.

Based on the above and the documents filed by the Complainant, it can be concluded that the domain name/mark VOLTAS is identified with the Complainant's name, mark and services, therefore the adoption, registration and use of the disputed domain name by the Respondent shows 'opportunistic bad faith'. Thus, the present case squarely falls within the premises of bad faith registration and use, thus fulfilling condition laid down under paragraph 4(iii) of INDRP Policy.

7) **Decision:**

The Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance with the Policy and Rules, it is directed that the disputed domain name <WWW.MYVOLTAS.IN> be transferred to the Complainant.



RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA
May 19, 2020