



The Bank of  
Rajasthan Ltd., Laxmi  
Road, Pune-30

D-5/STP(V)C.R.1/2004  
/114648/04



Special Adhesive  
महाराष्ट्र  
APR 03 2006

ZERO ZERO ZERO ZERO ONE ZERO ZERO 16:13

Rs.0000100/-PB5139

INDIA STAMP DUTY MAHARASHTRA

नांव/Name \_\_\_\_\_

पत्ता/Address \_\_\_\_\_

हस्ते/By \_\_\_\_\_

पावती क्र./Receipt No. 34465

For THE BANK OF RAJASTHAN LTD.

AUTHORISED SIGNATORY

## AWARD

### IN ARBITRATION

### IN DISPUTE

### BETWEEN

**USHA INTERNATIONAL LIMITED -**

**THE COMPLAINANT**

REPRESENTED BY: -

K & S PARTNERS

84-C, C-6 LANE, OFF CENTRAL AVENUE

SAINIK FARMS

NEW DELHI. 110 062.

AND

**CHINAR TRUST -**

**THE RESPONDENTS**

REPRESENTED BY: -

ANAND AND ANAND

ADVOCATES

B-41, NIZAMUDDIN EAST

NEW DEHLI. 110 013.

**IN THE MATTER OF DISPUTED DOMAIN NAME: - ushaappliances.in**

**CASE NO. - AA2006-0010**

**BEFORE MR.S.C.INAMDAR, B.COM., LL.B., F.C.S.**

**SOLE ARBITRATOR**

**DELIVERED ON THIS 4<sup>th</sup> DAY OF APRIL TWO THOUSAND SIX.**



**I] SUMMARISED INFORMATION ABOUT THE DISPUTE: -**

01. Name and address

of the Complainant:-

Usha International Limited  
Surya Kiran Building  
19, Kasturba Gandhi Marg  
New Delhi. 110 001.

02. Name of the Authorised

Representative of complainant: -

M/s K & S Partners  
84-C, C-6 Lane, Off Central Avenue  
Sainik Farms  
New Delhi. 100 062.  
[shabana@knspartners.com](mailto:shabana@knspartners.com)

03. Name and address of

The Respondent: -

Chinar Trust  
Unit No. 11, Block A,  
DDA Shopping Complex,  
Ring Road, Naraina  
New Delhi. 110 028.

04. Name of the authorised

Representative of the

Respondent: -

M/s Anand And Anand  
B-41, Nizamuddin East  
New Delhi. 110 013.  
[azadvirk\(g\),anandandanand.com](mailto:azadvirk(g),anandandanand.com)

05. Date on which case was

Referred to me for

Arbitration

22.02.2006.

06. Date on which notice of Arbitration was sent: - 25.02.2006.
07. Date on which notice of Arbitration was sent to Changed address of the Respondent 27.02.2006.
08. Date on which statement of Defense was filed: - 10<sup>th</sup> March 2006
09. Date on which notice of closure of evidence was sent: - 29<sup>th</sup> March 2006

A handwritten signature in black ink, consisting of a vertical line with a loop at the top and a horizontal stroke extending to the right.

**WHEREAS: -**

- 1) Usha International Limited is a public limited company incorporated under the provisions of the Companies Act, 1956. **(The Complainant)**
- 2) It has been carrying on business of manufacturing electrical and household appliances, automotive components, sugar, edible oils etc.
- 3) Since the Complainant is holder of trademark and also the word 'USHA' is a part of its corporate name, it has disputed registration of domain name **ushaappliances.in (the disputed / domain name)** in the name of the M/s Chinar Trust, a business trust **(The Respondent)**.
- 4) Upon Complainant's filing complaint under .IN Domain Disputes Resolution Policy, National Internet Exchange of India (NIXI) has referred the dispute for arbitration to me.

**II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -**

01. National Internet Exchange of India, a regulatory authority in respect of .in domain names allotment, dispute resolution etc., (NIXI) vide its communication dated 22<sup>nd</sup> February 2006 appointed me as sole Arbitrator in the dispute.
02. After my sending statement of acceptance and furnishing Statement of Impartiality and Independence, I received a copy of complaint on 24.02.2006.
03. On 25<sup>th</sup> February 2006 I issued Notice of Arbitration to Mr.Umesh Gupta, representative of the Respondent, as per records of NIXI, under copies to the Complainant and NIXI.

 5

04. Mr.Ashish Malkotia sent email to me stating that the address of the respondent has changed and that he was authorised as representative.
05. Accordingly I sent copy of the Compliant and Notice of Arbitration afresh to him on the address stated in his email on 27.02.2006.
06. M/s Anand and Anand, Advocates of the Respondent sent through courier to me their statement of defense dated 10<sup>th</sup> March 2006.
07. Upon receipt of the said statement of defense, vide my email dated 13<sup>th</sup> March 2006, I asked the Complainant to submit their say on the said statement of defense latest by 20<sup>th</sup> March 2006.
08. No response was received from the Complainant within the prescribed time limit. To give one more opportunity to the Complainant, I again sent email on 24<sup>th</sup> March 2006 to the Complainant asking them to respond latest by 25<sup>th</sup> March 2006.
09. However no response was received from the Complainant.
10. Since there was no response from the Complainant, nor did it submit any say on the Statement of Defense, there was no need for the Respondent to adduce anything to what was stated in its Statement of Defense.
11. Therefore I issued a notice of closure of evidence to both the parties on 29<sup>th</sup> March 2006.
12. None of the parties requested for personal hearing nor were there extra-ordinary circumstances warranting personal hearing. Therefore no personal hearing was granted in the arbitration proceedings.



13. The Respondent has submitted a copy of power of attorney executed in favour of Mr. Anil Gupta as constituted attorney to represent its case.



### III] SUMMARY OF THE COMPLAINT: -

(A) The Complainant has raised, *inter-alia*, following important objections in its Complaint: -

- a) The Complainant is an associated company of the Siddharth Shriram Group which is a reputed business house with a wide range of interests including, *inter-alia*, in electrical and household appliances, automotive components, sugar, edible oils, chemicals, air conditioning and refrigeration, automobiles, power equipment and engineering etc. Due to this it has become a household name in India and also abroad.
- b) The Complainant is the registered owner and/or proprietor of various trademarks including 'USHA' in various forms since 1935.
- c) Jay Engineering Works Limited (**JEW**), a company in which the Complainant is a major shareholder and sole agent and distributor of its products - especially sewing machines, adopted the trademark 'USHA' in 1936. JEW was the first to adopt, use and register the trademark 'USHA' in connection with its goods and business. It has also registered / applied for registration as a trademark in India as also other major jurisdiction of the world.
- d) The corporate name of the Complainant also includes the word "USHA".
- e) The Complainant has been continuously using the trademark "USHA" for last more than fifty years in respect of its business and products. This has generated immense reputation and goodwill and 'USHA' has become a household name.



- f) The Complainant is a **holder of four trademarks** including the word 'USHA' and also its logo. Similarly **seven other trademarks** with the word "USHA" **have been advertised** and two more are awaiting advertisement.
- g) The Complainant applied for the disputed domain name in the month of January 2005 with the Net4India and also made payment of fees required for that purpose. Order Code 6610 was provided to the Complainant.
- h) However it was discovered that the disputed domain name was already registered in the name of the Respondent. After this discovery the Complainant made numerous representations to NIXI.
- i) The use of disputed domain name by the Respondent is likely to cause immense confusion and deception in the market since the public identifies the mark 'USHA' with the Complainant.
- j) **In view of prior adoption and use of the "USHA" mark** the Respondent has obtained domain name in bad faith and has no legitimate rights to use the disputed domain name.

**(B) DOCUMENTS PRODUCED BY THE COMPLAINANT:** - In support of its contentions the Complainant has furnished copies of the following documents: -

- a. Copies of relevant Journal advertisements totaling to 26 pages
- b. Copy of application for registration of disputed domain name with Net4India dated 19.01.2005
- c. Copy of receipt No. CQ6971 dated 19.01.2005 for Rs. 10,64,337/-



- d. Copy of WHOIS Search with *.in* registry in respect of the disputed domain name
- e. Copy of letter dated 10th January 2006 written by M/s K & S Partners to NIXI in respect of several domain names, including disputed domain names.
- f. Copy of a letter dated 3<sup>rd</sup> November 2005 written by M/s K & S Partners to Dr.Govind, Scientist For Ministry of Communications and Information Technology, Deptt. Of Information Technology, Government of India in respect of several domain names, including disputed domain names.

#### **IV] SUMMARY OF STATEMENT OF DEFENSE: -**

(A) In response to the Complaint, the Respondent has, in its Statement of Defense, raised, *inter-alia*, following points: -

- a. Admittedly both the Complainant and Respondent belong to one identifiable group of associate companies popularly known as "USHA' / SHRIRAM group of companies in India. The member entities of this group have been marketing various consumer durable items under the trademark 'USHA', 'SHRIRAM' and 'USHA SHRIRAM'. Further more all these entities have been united in protecting the aforesaid marks against the world. Consequently the group entities constitute one economic entity for the purposes of the proprietorship of the trademark / trade name "USHA". The group is constituted of the following entities: -

1. Chinar Trust (Registrant / Respondent)
2. Usha Intercontinental (India) Prop. General Sales Ltd.



3. Usha Shriram (India) Prop. Mansarovar Trust
  4. Usha Shriram Pistons and Rings Limited
  5. Usha International Limited (The Complainant)
- b. The Respondent has been getting domestic electronic and electrical appliances including without limitation water heater, electric iron, mixer grinder, juicer mixer grinder, water filter, sandwich toaster, cooler kit, water heaters, vaccum cleaner, washing machine, room coolers, ventilating fan etc. manufactured under the aforesaid trademarks and design specifications, know-how and strict quality control through Mansarovar Trust doing business as Usha Shriram (India).
- c. The Respondent has acquired common law rights to the exclusive use of the trademark 'USHA' in respect of its range of goods and services.
- d. The trademark 'USHA' was earlier subject matter of a dispute between Jay Engineering Works (**JEW**) and Shri Swaran Singh trading as Appliance Emporium, Delhi. Shri. Swaran Singh had claimed to be the proprietor of the trademark 'USHA' since 1960. An opposition filed by JEW against registration of trademark 'USHA' in the name of Mr.Swaran Singh, was disallowed. An appeal filed by JEW against the said order of the Assistant Registrar of Trade Marks was also dismissed by the order of the Hon'ble High Court at Delhi vide order dated 10<sup>th</sup> December 1979. Thus Mr. Swaran Singh was the legal and registered owner of the trademark of 'USHA'.
- e. Since Mr.Swaran Singh had also challenged the rights of the Respondent, the Respondent purchased all rights to the trademark 'USHA' from Mr.Swaran Singh vide a registered Deed of Assignment dated 1<sup>st</sup> January 1985. Thus the Respondent has become legal and registered owner of the said trademark.



- f. The Complainant has been common All India Distributor for the associated group companies including the Respondent under an Agreement, which is valid till 2015.
- g. The Complainant has through License Agreement dated 25<sup>th</sup> September 2001 taken the Respondent's permission for the use of the trademarks 'USHA' and 'USHA SHRIRAM' in respect of inverters for consideration equivalent to 0.5% of the unit value. The said License Agreement is still valid and the Complainant continues to pay the royalty to the Respondent under the said agreement.
- h. The Respondent is holder of various trademarks 'USHA' and 'USHA SHRIRAM' in India and various other countries as per the list provided along with the Statement of Defense.
- i. Both the Complainant and Respondent have joined hands in promoting their business and products by jointly participating in trade fairs, international trade fairs. They have also joined along with JEW and other group entities to file a suit against M/s Usha Rectifier (India) Limited being suit No.2149 of 1994 before the Hon'ble High Court of Delhi and sought orders restraining that company from using the trademark 'USHA'.
- j. The Complainant and its associate companies have un-successfully instituted various actions against the Respondent as under: -

01. M/s SIEL Limited opposed respondent's trademark application for the trademark "USHA' SHRIRAM 5-block logo' before the Registrar of Patents and Trademarks, Sri Lanka. In the proceedings the Hon'ble Tribunal decided the opposition in favour of the Respondent through its

decision dated 19 June 2002 and allowed application of the Respondent.

02. JEW filed a suit before the Hon'ble High Court of Kolkata under suit no.70 of 2002 to seek, inter alia, an order of injunction restraining the Respondent's licensee Mansarovar Trust from using the trademark 'USHA'/'USHA' SHRIRAM. On the wrongful claims JEW obtained an ex-parte injunction order dated 11<sup>th</sup> February 2002 which was later vacated by the Hon'ble court vide its order dated 14<sup>th</sup> August 2003 dismissing JEW's application on the ground of suppression of material facts. Upon JEW's appeal against this order the Division Bench restricted the JEW's claims only to ventilating exhaust fans and allowed the use of the trademark 'USHA' SHRIRAM in relation to those items only.
  
03. JEW filed an application u/s 50 of the Copyright Act, 1957 seeking expunction of the Respondent's artistic works titled 'USHA' SHRIRAM 5-BLOCK LOGO from the Register of Copyright. Vide its detailed order dated 22<sup>nd</sup> August 2005, the Hon'ble Tribunal was pleased to reject the application.
  
04. JEW filed an opposition under No.DEL-T-1770/55488 against trademark application filed by the Respondent's associate concern, M/s 'USHA' International (India) that was disallowed.



k. The Respondent has registered the impugned domain name with the bona fide intention of using the same in relation to its goods and services being manufactured and marketed under the trademark 'USHA' or other trademarks comprising the mark 'USHA'. The Respondent has not only registered disputed domain name but also other various other domain names comprising the word 'USHA'.

1. The present complaint is frivolous, not maintainable and liable to be dismissed as it suffers from material insufficiencies. Similarly the present complaint suffers from suppression and concealment of material facts and particulars. The present complaint has been filed for improper purpose of harassing the Respondent.

m. The Complainant has failed to establish that the Respondent has no rights or legitimate interests in the domain name and the Respondent has registered domain name in bad faith.

n. The Respondent has legitimate rights and interests in the domain name for several reasons stated in clause no.4 of the Statement of Defense. Important among these reasons are (1) The Respondent has been a part of an identifiable group referred to as 'USHA7 'USHA SHRIRAM' group of companies and is entitled to used the trademark in respect of its goods and services. (2) The Respondent has acquired the trademark 'USHA' from Shri Swaran Singh trading as M/s Appliance Emporium, Delhi. (3) The Respondent is registered proprietor of the trademark 'USHA' in various classes. (4) The Respondent has been using and advertising trademark 'USHA' in relation to household appliances at an extensive scale. The Respondent's goods are commonly known by the trademark



'USHA'. (5) The Respondent has registered and using various other domain names comprising the trademark 'USHA' without any challenge from the Complainant.

- o. The Respondent has acquired immense and unparalleled reputation and goodwill in the trademark 'USHA' on account of extensive use and promotion of diverse range of electrical and electronic appliances. There can be no possible reason for the Respondent to trade upon and usurp the so-called goodwill generated by the Complainant.
- p. The Respondent has not registered domain name for the purpose of selling, renting or transferring the domain to any person.
- q. The Complainant's independent use of the trademark 'USHA' is limited to fan, sewing machines and fuel injunctions.
- r. Individual group entities are owners of the trademark 'USHA' and have used the same within their individual spheres. All group entities have registered the trademarks 'USHA' / 'USHA SHRIRAM' in respect of the goods of their manufacture.
- s. It is categorically denied that the public identifies the trademark 'USHA' exclusively with the Complainant and would assume that the domain name belongs to the Complainant.
- t. The trademark 'USHA' has acquired the significance of a famous mark due to the combined efforts of the various members of the USHA / SHRIRAM group that have used the said trademark in respect of their individual goods.



- u. Various group entities including the Respondent are the registered proprietors of the trademark USHA and therefore it is not true that the Complainant alone is the proprietor of the said trademark.
- v. The Complainant has failed to establish any ground for the cancellation and / or transfer of the impugned domain name.
- w. Mere application for the registration of disputed domain name or the representations filed by the Complainant after the grant of the same to the Respondent are completely inconsequential for the domain name proceedings under INDRP.
- x. Generally speaking the Complainant, by making false and exaggerated claims in its complaint, has attempted to mislead this Hon'ble Tribunal. This is done with the sole object of harassing the Respondent.

**(B) DOCUMENTS PRODUCED BY THE REGISTRANT / RESPONDENT:**

The Respondent has not produced any document in support of his contentions.

01. Copy of the Power of Attorney of the Trustees of the Respondent in favour of Mr. Anil Gupta
02. Copies of the Respondent's product brochures, pamphlets and guarantee cards
03. Copies of the Caution Notices and Advertisements placed by the Respondent in various newspapers
04. Copy of the order of Hon'ble Mr. Justice S.S. Chadha in Appeal against order of the learned Assistant Registrar of Trade Marks being CM. (M) NO.TM/35 of 1976.
05. Copy of the Deed of Assignment dated 1<sup>st</sup> January 1985 in favour of the Respondent



06. Copies of the documents to establish joint participation of the group entities in the Trade Fairs.
07. Copy of the License Agreement dated 25<sup>th</sup> September 2001.
08. Registration Certificates of trademarks 'USHA' and 'USHA' SHRIRAM held by the Respondent
09. Copy of the plaint in suit No.2149 of 1994 before the Hon'ble High court of Delhi.
10. copy of the decision of learned Registrar of Patents and Trademarks, Sri Lanka dated 19<sup>th</sup> June 2002 in favour of Respondent for the trademark application for 'USHA' SHRIRAM 5 block logo
11. Copy of the registration certificate for 'USHA' SHRIRAM 5- block logo in Sri Lanka
12. Copies of the orders passed by the Hon'ble High Court Kolkata
13. Copy of the order passed by the Hon'ble Copyright Board against application filed by JEW for 'USHA' SHRIRAM 5- block logo.
14. Copy of the order dated 11<sup>th</sup> May 2004 of the learned Assistant Registrar of Trademarks in opposition No. DEL-T-1770 / 55488.
15. Print out of the confirmation of Respondent's Domain Name Registration for 'USHA'appliances.in dated 11<sup>th</sup> January 2005.
16. Who-is reports of the Respondent's registered domain names with the word 'USHA'.



**V] ADDITIONAL EVIDENCE / CLAIMS BY COMPLAINANT ON THE  
REPLY OF THE RESPONDENT: -**

As stated in Para II.7, II. 8 and II.9, the Complainant did not respond to any of the emails sent by me. The Complainant has not filed any say on statement of defense.

**VII] ADDITIONAL POINTS OF DEFENSE RAISED BY RESPONDENT /  
REGISTRANT: -**

Since the Complainant did not submit anything afresh in response to the statement of defense, the Respondent was not required to furnish additional say.

**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.

<b>SR. NO.</b>	<b>ISSUE</b>	<b>FINDING</b>
01	Whether the Complainant is holder of any registered trademark or service mark?	Yes
02	Whether the Respondent is holder of any registered trademark or service mark?	Yes
03	Whether the Respondent / Registrant has registered domain name in bad faith?	No
04	Has the Registrant registered disputed domain name primarily for the purpose of selling or otherwise transferring it to the Complainant?	No



05	Whether the Registrant has exhibited demonstrable preparations to use the domain name before notice to him?	No
06	Whether the Registrant has commonly been known by the domain name?	Yes
07	Whether the Registrant has registered the disputed domain name to intentionally attempt to attract internet users to the website by creating confusion with the Complainant's name?	No
08	Whether, on the basis of the registered trademarks, the Respondent is entitled to continue to use the disputed domain name?	Yes

**BASIS OF FINDINGS: -**

1. In this dispute both the Complainant and Respondent are holders of trademarks containing the word 'USHA', which forms a part of disputed domain name. However these trademarks are for different products / goods. Therefore though the word USHA has been included in these trademarks registered both by the Complainant and Respondent, they are for identifiable separate goods and products.

The Complainant has furnished copies of four registered trademarks, copies of seven advertised marks and copies of two applications pending advertisement. However it has failed to establish that it has been using the said trademark since 1935.

As against this the Respondent has furnished copies of seven trademarks registered in India. It has also furnished copies of five registered trademarks in countries other than India.



Thus admittedly both the Complainant and Respondent are holders of trademarks, which include the word 'USHA'. Therefore on the basis of holding trademark alone this dispute cannot be resolved.

2. The Respondent has furnished copy of registered Deed of Assignment dated 1<sup>st</sup> January 1985 by which it has acquired the trademark 'USHA' from Shri Swaran Singh trading as Appliance Emporium. The Respondent has also filed a copy of the decision of the Assistant Registrar of Trademarks under C.M.(M) NO. TM/35 of 1976. It is pertinent to note that JEW had failed to establish its legal entitlement to the said trademark both at the Trademark Registry as also in the Hon'ble High Court at Delhi.

3. The Respondent has also filed a copy of License Agreement dated 25<sup>th</sup> September 2001 granting the license to the Complainant to use the trademark USHA and USHA SHRIRAM in respect of inverters for consideration of 0.5% of inverter unit value. It shows that the Complainant is dependent upon the Respondent for use of trademark at least in respect of product like inverter.

4. The Respondent has established that it also holds registrations of trademark USHA / USHA SHRIRAM in several other countries like Egypt, Sri Lanka, Nigeria and Bhutan. This indicates that the Respondent has generated good amount of reputation not only in India but also abroad. This fact rebuts the contention of the Complainant that the Respondent is trying to trade on its goodwill and reputation by registering the disputed domain name in its name.

5. The Respondent has also narrated instances of joint participation of the Complainant, the Respondent and other group entities for promoting jointly goods and products manufactured separately by them. Similarly the Respondent has also submitted copy of the order of Hon'ble High Court of Delhi in the matter of defending suit against Usha Rectifier (India) Limited (not a group entity) filed jointly by JEW along with the Respondent. It is pertinent to note that in this case



Hon'ble High Court was pleased to grant injunction in favour of the plaintiffs. These facts prove beyond doubt that the Complainant and Respondent belong to one identifiable group as claimed by the Respondent.

6. The Respondent has furnished copies of orders passed by various courts at different times in the disputes raised by the Complainant against the Respondent. I have referred to these disputes in Para 4.j above. It can be observed that in all those disputes orders were passed in favour of the Respondent. The Complainant has failed before all those authorities and forums in establishing its exclusive entitlement to the trademark USHA.

7. Admittedly the Respondent has successfully registered disputed domain name prior to the Complainant. The Respondent has also registered other domain names, which include a word USHA as part of it. The domain name registry was duty bound to get itself satisfied about trademark entitlement before registering the domain name. Therefore it can be inferred that applications made by the Respondent for registrations of these domain names were valid and complete in all respects, including issues related to trademarks.

8. The Respondent has furnished data in respect of advertising expenses and sales turnover since 1990-91 to 2004-05. This data establishes the fact that the Respondent was advertising various products very widely by using the trademark 'USHA'.

9. The Complainant has failed to establish according to INDRP that: -

- a) The Registrant has no rights or legitimate interests in respect of the domain name and
- b) The Registrant's domain name has been registered or is being used in bad faith.

c) The Registrant has registered domain name primarily for selling, renting or otherwise transferring the domain to the Complainant.

10. The Complainant has suppressed and concealed material facts pertaining to the dispute from this Arbitration panel.

11. The Complainant has not submitted its say on statement of defense. It has not bothered to even reply to the emails sent by me in this regard. This silence on the part of the Complainant turns out to be acceptance of the contentions in the Statement of Defense.

**IX) SUMMARY OF FINDINGS: -**

- a) Both the Complainant and Respondent are holders of trademarks containing the word 'USHA'.
- b) The Respondent has successfully established that the Complainant, Respondent and other entities actually form an identifiable economic group.
- c) The Respondent has successfully registered the domain name prior to the Complainant.
- d) The Complainant has failed to establish that the Respondent is not entitled to domain name or that it has no legal and legitimate interests in the disputed domain name.
- e) The Respondent has proved that it has acquired trademark 'USHA' from Shri Swaran Singh trading as Appliance Emporium vide a registered Deed of Assignment dated 1<sup>st</sup> January 1985.



- f) The Respondent has also proved that it has licensed use of the word 'USHA' to the Complainant in respect of inverters against payment of royalty.
- g) The Respondent has also established that Complainant has failed in obtaining any order in its favour from any court or authority in respect of disputes about the trademark USHA or use of the word by Respondent, against the Respondent.
- h) The Respondent has also established that the Complainant has also joined hands with it for promoting business of their respective products, in defending suits against third parties and protecting intellectual properties in the trademarks USHA.
- i) The Complainant has failed to make out its case for cancellation or transfer of disputed domain name in its name.

**X] BASIS OF AWARD: -**

Admittedly in this dispute both the Complainant and Respondent / Registrant are holders of registered trademarks comprising the word 'USHA'. Therefore according to Sunrise Policy and other policies announced for registration of .in domain names, both the parties to the dispute would have qualified for registration of disputed domain name. However the Respondent has rightfully taken steps to register the disputed domain name ahead of the Complainant.

Registered Deed of Assignment by Mr.Swaran Singh in favour of the Respondent, License Agreement between the Respondent and Complainant, history of unsuccessful disputes / litigations by the Complainant against the Respondent, suppression and concealment of material facts by the Complainant in its complaint and most importantly silence of the Complainant on the Statement of Defense have gone against the Complainant.

Therefore on the basis of submissions of the parties and my findings as above I make the following order: -

**XI] AWARD: -**

01. **The Respondent is entitled to the disputed domain name - ushaappliances.in and therefore the same shall continue to be registered in the name of the Respondent.**
02. **The Complainant shall reimburse to the Respondent the costs and expenses incurred by the Respondent in defending this dispute, against documentary evidence to that effect.**

Pune.

Dated: - 4<sup>th</sup> April 2006.

  
(S.C.INAMDAR)  
ARBITRATOR



महाराष्ट्र MAHARASHTRA

U 925746

स. नं. २२७४१८३ कसबा पेठ, पुणे. दिनांक

12 JUN 2006

स्टॅम्प रुपये

100/-

नांव टा. बी. इनामदार.

पता शनवार पेठ, पुणे.

हस्ता रकिश माने.

*(Signature)*  
स्टॅम्प केंद्र

(डॉ. एच. एच. देशपांडे)

ता. नं. २२७४१८३



12 JUN 2006

*(Signature)*

AMENDMENT TO AWARD

IN ARBITRATION

IN DISPUTE

BETWEEN

'USHA' INTERNATIONAL LIMITED -

THE COMPLAINANT

REPRESENTED BY: -

K & S PARTNERS

84-C, C-6 LANE, OFF CENTRAL AVENUE

SAINIK FARMS

NEW DELHI. 110 062.

AND

**CHINAR TRUST**

**THE RESPONDENTS**

REPRESENTED BY: -

ANAND AND ANAND

ADVOCATES

B-41, NIZAMUDDIN EAST

NEW DEHLI. 110 013.

**IN THE MATTER OF DISPUTED DOMAIN NAME: - ushaappliances.in**

**CASE NO.-AA2006-0010**

**BEFORE MR.S.C.INAMDAR, B.COM., LL.B., F.C.S.**

**SOLE ARBITRATOR**

**WHEREAS: -**

1. A dispute had arisen between **USHA INTERNATIONAL LIMITED- The Complainant**, Represented by M/s K & S PARTNERS, 84-C, C-6 Lane, Off Central Avenue, Sainik Farms, NEW DELHI. 110 062 AND **CHINAR TRUST - The Respondents**, Represented by M/s ANAND AND ANAND, Advocates, B-41, Nizamuddin East, NEW DEHLI. 110 013 in respect of registration of domain name 'ushaappliances.in' (**The Dispute**).
2. The said dispute was referred to me by National Internet Exchange of India (**NIXI**) for arbitration.
3. After giving sufficient opportunities to both the parties I passed an award in the dispute on 4<sup>th</sup> April 2006.
4. The Complainant has vide its letter No.KDB/AM/J0201/ushaappliances.in dated 30<sup>th</sup> May 2006 that they had sent email on 31<sup>st</sup> March 2006 informing that they wanted to withdraw the complaint. However the said email was not received at my end and therefore a mistake of fact has arisen.
5. Screen prints of email dated 31<sup>st</sup> March 2006 as also the confirmation to the effect of withdrawal of complaint was sent by hard copy and email dated 30<sup>th</sup> May 2006 and 31<sup>st</sup> May 2006 to me, under copies to the Respondent and NIXI.



6. In view of the withdrawal of complaint there is no need to enforce my award dated 4<sup>th</sup> April 2006.

NOW THEREFORE I PASS THIS AMENDMENT TO AWARD AS FOLLOWS: -

01. The Award dated 4<sup>th</sup> April 2006 passed by me in the above dispute stands null and void.
02. The parties to the dispute are not required to follow the Award dated 4<sup>th</sup> April 2006.

Place: - Pune

Dated: - 12<sup>th</sup> June 2006.



**(S.C. NAMDAR)**  
**ARBITRATOR**