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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision : 22.04.2024*+ **FAO(OS) (COMM) 75/2024 & CM APPL. 22862-64/2024****KASHMIR HARVARD EDUCATIONAL INSTITUTE**

..... Appellant

Through: Mr.Keshav Thakur, Ms.Palak Mathur,
Mr.Ritik Kumar and Mr.Prithvi
Thakur, Advocates.

versus

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

..... Respondent

Through: Mr.R.K.Aggarwal, Mr.Ayushi Bansal
and Mr.Vinay Padam, Advocates**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning a judgment dated 31.01.2024 (hereafter *the impugned judgment*) passed by the learned Single Judge in OMP (COMM) No.290/2023 captioned *Kashmir Harvard Educational Institute v. President and Fellows of Harvard College*.

2. The appellant had preferred the said appeal under Section 34 of the



A&C Act impugning an Arbitral Award dated 04.04.2023 (hereafter *the impugned award*) rendered by the Arbitral Tribunal comprising of a sole Arbitrator under the ‘.IN Domain Name Dispute Resolution Policy’ (hereafter the *INDRP*) adopted by the National Internet Exchange of India (hereafter the *NIXI*).

3. The impugned award was rendered pursuant to a complaint filed by the respondent (President and Fellows of Harvard College – hereafter *the complainant*) objecting to the appellant’s use of domain name <www.kashmirharvard.edu.in> (hereafter *the impugned domain name*). It is the complainant’s case *inter alia* that the appellant had adopted the impugned domain name in bad faith. The complainant is the proprietor of a well-known trademark, ‘HARVARD’, and other formative marks. The complainant states that the trademark ‘HARVARD’, was adopted in the year 1638 and claims that the said trademark and other formative trademarks have acquired significant goodwill all over the world. The trademark ‘HARVARD’ and other formative marks are also registered in India.

4. The details of the trademark registrations as provided in the complaint are set out below:-

Registration No.	Trademark	Class
824285	HARVARD BUSINESS REVIEW	16
1301756	HARVARD	41
1303894	HARVARD	09
1302475	HARVARD VERITAS SHIELD DESIGN	41
1241784	HARVARD VERITAS SHIELD DESIGN	42



1241786	Harvard Medical International & Line Design (logo)	42
1241787	Harvard Medical International & Line Design (logo)	41
1221606	Harvard Medical International & Line Design (logo)	16
1378489	Harvard Graphics	09
1493805	Harvard Business School Publishing House	16
1493806	Harvard Business Review - South Asia	16
1493805	Harvard Veritas Shield	14,16,18
1302475	Harvard Veritas Shield Design	41
1594962	Harvard	28
1426603 and 1426604	Harvard Dental International	41 and 42

5. The appellant is running an educational institution in Srinagar, Union Territory of Jammu and Kashmir, India under the name of '*Kashmir Harvard Educational Institute*'.

6. The appellant did not contest the proceedings before the Arbitral Tribunal.

7. The Arbitral Tribunal held that the complainant had established that it had rights in the trademark 'HARVARD' by virtue of (i) prior adoption and continuous use of the distinctive trademark, 'HARVARD'; (ii) trademark registrations of 'HARVARD' and formative marks in India, and other countries; (iii) ownership of domain names which included the



mark/name 'HARVARD'; (iv) a widespread network of 'HARVARD' alumni including in India; (v) enforcement of its rights in the 'HARVARD' Mark and successful transfer /cancellation of unauthorized domain names containing the mark 'HARVARD'; and (vi) goodwill and reputation of the 'HARVARD' Mark as reflected by its rankings, successful alumni, and recognition of the trademark, 'HARVARD', as a well-known/famous trademark in some jurisdictions.

8. The Arbitral Tribunal also found that merely pre-fixing 'Kashmir' to 'HARVARD' did not significantly distinguish the domain name from the complainant's trademark or name. And, it did not obviate the possibility of confusion. The Arbitral Tribunal also noted that the activities of the appellant and the complainant were in educational services and the domain extension 'edu.in' did have the propensity to cause confusion, which was required to be prevented to safeguard a vulnerable section of the public, namely students. The Arbitral Tribunal also observed that it is common knowledge that online educational courses are widely subscribed to by a number of students and therefore, even the slightest possibility of confusion was required to be avoided.

9. The Arbitral Tribunal also found that there was no material to suggest that the appellant had any rights or legitimate interest in the disputed name or the impugned domain name. Absent any contest from the appellant, the Arbitral Tribunal accepted that it must be presumed that the intention of the appellant to use the impugned domain name was for the purpose of misrepresenting it as affiliated to the complainant and to trade upon the



complainant's trademark 'HARVARD'.

10. The learned counsel for the appellant has assailed the impugned judgment, essentially, on two grounds. First, he claimed that that impugned award was passed without affording the appellant sufficient opportunity to contest the same – Section 34(2)(a)(iii) of the A&C Act. And second, that the impugned award is in conflict with the public policy of India – Section 34(2)(b)(ii) of the A&C Act.

11. The appellant's claim that the impugned award is violative of natural justice is premised on the basis that it had not received the notice of the appointment of the learned Arbitral Tribunal or the arbitral proceedings. The said contention was examined and rejected by the learned Single Judge.

12. The appellant's contention is, *inter alia*, premised on the basis that the email address of the technical person responsible for the website was incorrectly mentioned as <arshid.ahma@kashmirharvard.org> instead of <arshid.ahmad@kashmirharvard.org>. It is the appellant's case that since the said e-mail address is incorrect, the complaint and notices sent electronically could not be received and remained unserved.

13. The learned Single Judge did not accept the aforementioned contention. The learned Single Judge found that the complainant had lodged its complaint on 16.11.2022 with NIXI. NIXI appointed the learned Sole Arbitrator and communicated the same to the parties by e-mails sent on 08.02.2023. The said communication was also sent to the appellant at its email address <kashmirharvardschool@gmail.com>, which was admittedly



its email address at the material time.

14. The learned Sole Arbitrator (the Arbitral Tribunal) also informed the parties by an email dated 09.02.2023 that the arbitral proceedings had commenced and gave an opportunity to the appellant to file the Statement of Defence and documents within a period of 15 days. Additionally, another email dated 27.02.2023 was addressed by the Arbitral Tribunal to both the parties informing them that the time for the appellant to file a response had lapsed and neither a response nor a request for extension of time was received from the appellant. The Arbitral Tribunal accordingly closed the right of the appellant to file the Statement of Defence and communicated to the appellant that the Arbitral Tribunal would proceed under Rule 12 of the INDRP.

15. The Arbitral Tribunal proceeded to render the impugned award and also sent an email dated 06.04.2023 enclosing therewith a scanned copy of the impugned award.

16. The learned Single Judge found that the appellant had sent an email dated 08.04.2023 on receipt of the impugned award. In its communication, the appellant claimed that it was not pretending to be associated with 'HARVARD' in anyway as the school '*Kashmir Harvard School*' is in no way comparable to Harvard College. The appellant claimed it is a small educational institution located in Srinagar, Union Territory of Jammu Kashmir, India and did not claim to have the academic standing or reputation of Harvard College. Interestingly, the appellant also claimed that it had used the impugned domain name by combining the name of the



School and the term 'Harvard' for the purpose of using it as a distinctive term denoting the quality of education provided by the institution. It is also claimed that the appellant had no intention to cause any confusion or misrepresent that it had any affiliation with Harvard College. The appellant also tendered its apology for causing any inconvenience by the use of the name 'HARVARD'. It is also stated that it had already taken steps to make it clear on its website that it is an independent educational institution which is not associated with Harvard College.

17. In view of the above, the learned Single Judge rejected the contention that the principles of natural justice were violated or that any grounds for assailing it under Section 34(2)(a)(iii) of the A&C Act are established.

18. The learned Single Judge also examined the appellant's contention in regard to the challenge on the ground of conflict with the public policy of India and found no merit in the same.

19. Mr.Thakur, learned counsel appearing on behalf of the appellant has assailed the impugned award and the impugned judgment essentially on three fronts. First, he submits that the principles of natural justice were violated, thus, the impugned award is liable to be set aside on the ground as set out in Section 34(2)(a)(iii) of the A&C Act. Second he submits, that the impugned award is without jurisdiction as the INDRP was confined only to those disputes regarding '.IN' and '.Bharat' domain names. Since the complainant was not registered with NIXI it could not maintain its complaint. According to him, it was necessary for the complainant's domain name to be registered with the Registrar affiliated with '.IN



Registry’ or ‘.Bharat’. He also referred to the INDRP and particularly drew the attention of this Court to the definitions of the terms ‘Complainant’, ‘Complaint’, ‘Registrant’, and ‘Registrar’. He also referred to Paragraph no. 16 of the INDRP, which limited its applicability to the disputes relating to ‘.IN’ or ‘Bharat’ domains and did not apply to the domain names registered with any other Registry. Third, he submits that the impugned award was rendered without any evidence and is in conflict with the public policy of India and is thus liable to be set aside under Section 34(2)(b)(ii) of the A&C Act.

Section 34(2)(a)(iii) of the A&C Act

20. We find no substance in the contentions as advanced by the learned counsel appearing for the appellant. In so far as the challenge on the ground of Section 34(2)(a)(iii) of the A&C Act is concerned, it is relevant to refer to said provisions of the A&C Act. The same is set out below:

“(2)An arbitral award may be set aside by the Court only if
(a) the party making the application establishes on the basis of the record of the arbitral tribunal that:
...
(iii)the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or”

21. It is apparent that an arbitral award may be set aside if a party is not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case.



22. In the present case, the learned Single Judge has found that a notice of the complaint was received by the appellant. The learned counsel appearing for the respondent also contests that a copy of the complaint was not received. She contends that NIXI had informed the complainant of the error in the e-mail address and the same was subsequently rectified by resending the complaint on 08.02.2023.

23. It is not necessary to determine whether the complainant had subsequently resent the complaint at the correct e-mail address, as there is no dispute that additional communications were also sent to the appellant's e-mail address <kashmirharvardschool@gmail.com> and the said e-mail address is one of the email addresses of the appellant. It is also not disputed before us that the e-mail address <kashmirharvardschool@gmail.com> is not the correct e-mail address of the appellant. It is also apparent that, in fact, the appellant did receive the complaint as well as the notice of appointment of an Arbitral Tribunal and notice of the arbitral proceedings. Learned counsel appearing for the respondent has drawn our attention to the pleadings in the appeal which also reflects the same.

24. The appellant has founded his challenge in the aforesaid regard essentially on two grounds. First, that one of the emails of the technical person was incorrect and second that a hard copy of the complaint, as required to be provided under Rule 3(d) of the INDRP Rules of Procedure (hereafter *the Rules*) was not provided. In so far as the incorrect email address is concerned, the same would be of little relevance considering that communications were marked to another email address as well, which as



noted above, is the correct address.

25. In so far as Rule 3(d) of the Rules is concerned, it does require the complainant to serve a hard copy in addition to the complaint filed on electronic mode. Concededly, the said hard copy was not sent. To that extent the procedure under INDRP was not complied with. However, we are unable to accept that the failure to send a hard copy of the complaint would fall within the scope of Section 34(2)(a)(iii) of the A&C Act. The purpose of providing additional mode of service is to ensure that the respondent receives the complaint as instituted. In the present case, the appellant did receive the complaint, although, through electronic mode. Thus, the principles of natural justice were complied with.

26. It is also relevant to note that Section 34(2)(a)(iii) of the A&C Act relates to a notice for appointment of an arbitrator. NIXI had issued the notice in the manner as required under the INDRP for the appointment of the arbitrator. The Arbitral Tribunal had also issued communications electronically as required under the INDRP. Therefore, the appellant had the full opportunity to contest the proceedings which he did not avail.

27. It is also important to note that the communication dated 08.04.2023 sent by the appellant after receipt of the impugned award did not raise any protest in regard to violation of Rule 3(d) of the Rules or the failure to grant an opportunity for contesting the same. On the contrary, the appellant conceded that it had used the name 'Harvard' to reflect that it is providing high quality education services. Thus, in effect the purpose was to identify the quality of the services rendered by the school on the aspirational



standards of Harvard University. As noted above, the appellant also stated that it would make a disclaimer on its website to obviate any confusion. No objection of any other nature was raised by the appellant at the said stage.

28. Thus, the contention that the appellant had not received the hard copy of the complaint is clearly an afterthought. No such protest was raised after the receipt of the impugned award. The appellant's petition before the learned Single Judge also does not assail the impugned award on the ground of non-receipt of the hard copy of the complaint as required under Rule 3(d) of the Rules.

Maintainability of the complaint under INDRP

29. The second question to be examined is whether the complaint was maintainable under the INDRP. As noted above, it is the appellant's contention that since the complaint did not hold any registration of the domain name '.IN' or '.Bharat', by virtue of Paragraph 16 of the INDRP, the complaint was not maintainable. The said contention is clearly insubstantial.

30. Paragraph 1 of INDRP contains definitions of various terms used therein. The relevant definition of a 'Complaint', 'Complainant', '.IN Registry', and 'Registrant', which were referred to by the appellant are set out below:

'1.Definitions

6.Complaint means an official objection made by a Complainant against the Registrant in terms of INDRP and its rules.



7. **Complainant** refers to the person/party who initiates complaint against the Registrant.

8. **.IN Registry** Wherever used in this policy and the rules hereunder .IN Registry refers to National Internet Exchange of India (NIXI), a company registered under Section 25 of the Companies Act, 1956 (now Section 8 under Companies Act, 2013).

11. **Registrar** shall mean a domain name Registrar who is duly accredited with the .IN Registry pursuant to a Registrar Accreditation Agreement and is listed on the website of the .IN Registry, **registry.in**.

12. **Registrant** is a holder of the .IN/Bharat (Available in all Indian Languages) domain name.'

31. It is clear from the above that the term 'Complainant' refers to a person who initiates the complaint against the Registrant. In the present case, the appellant was a Registrant of the '.IN Registry', therefore, the complaint registered in respect of the impugned domain name could be instituted under the INDRP. There is no provision under the INDRP that requires a complainant to necessarily hold a domain name the '.IN' or '.Bharat' Registry for instituting a complaint. The complaint can be instituted against the Registrant by any person.

32. The suggestion that the complainant must necessarily be a Registrant is misconceived and misconstrues the definition of the term Registrant.

33. It is also relevant to refer to Paragraph 16 of the INDRP as the same was relied upon by the learned counsel for the appellant, in support of his contention. The same is reproduced below:

“16. Policy for .IN or BHARAT (Available in all



Indian Languages) IDN:

This policy (INDRP) shall be applicable to all/any disputes relating to .IN or BHARAT (Available in all Indian Languages) IDN's in any of the other Indian Languages. Domains under .IN or BHARAT (Available in all Indian Languages) IDN's in any of the other Indian Languages must confirm the provisions under INDRP and the Rules of Procedure laid out therein.”

34. It is apparent from the plain language of Paragraph 16 that INDRP is applicable to disputes relating to '.IN' or '.Bharat'. In the present case, the complaint relates to the appellant's registration of the impugned domain name, viz <kashmirharard.edu.in>. Thus, INDRP is squarely applicable to the dispute in question.

Lack of Evidence

35. Lastly, it is required to be examined whether the impugned award warrants any interference on account of lack of evidence. A plain reading of the impugned award indicates that it is based on relevant material. In so far as the evidence regarding the respondent's defense is concerned, the appellant had not participated in the proceedings or furnished any documents. Thus, at this stage, cannot raise any grievance in this regard.

Conclusion

36. In view of the above, the appeal is unmerited. It may also be noted that the impugned award has been rendered in an international commercial arbitration as the complainant is not an Indian national nor an association nor a body which is incorporated in this country and therefore, the ground of



patent illegality under Section 34(2A) of the A&C Act is not available to the appellant. However, even if the same was available, we are unable to accept that the impugned award is vitiated on the ground of patent illegality.

37. The appeal is unmerited and the same is dismissed with costs quantified at ₹ 50,000/-. All pending applications also stand disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 22, 2024

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Click here to check corrigendum, if any