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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **FAO (COMM) 126/2023 & CM APPLs. 31160/2023, 31161/2023, 31162/2023, 31163/2023, 31164/2023**

4TWENTY LIFESTYLE LLP

..... Appellant

Through: Mr. Jayant Mehta, Sr. Advocate
 with Mr. Ankur Sangal, Mr. Ankit
 Arvind, Mr. Raghu Vinayak Sinha
 and Mr. Kiratraj Sadana,
 Advocates.

versus

M/S SOCIAL ORGANICS PVT LTD & ORS. Respondents

Through: Ms. Jasmine Damkewala with Ms.
 Vaishali Sharma, Advocates for R-1
 (through VC).

Reserved on: 13th July, 2023

Date of Decision: 28th July, 2023

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CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J:

1. The present appeal has been filed under Section 37(1) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') against the judgment dated 9th May, 2023 passed by District Judge (Commercial Courts – 03), Patiala House Courts, New Delhi in *O.M.P.*



(COMM) 13/2022, *M/s Social Organics Private Limited Vs. A.W. Alliance and Others*. By way of the impugned judgment, the learned District Judge has set aside the amended award dated 22nd July, 2021 passed by the learned arbitrator, which was in favour of the appellant herein.

2. As per the case canvassed before this Court, the respondent no.1 herein filed a complaint on 24th March, 2021 before the IN Registry of National Internet Exchange of India (NIXI) under Indian Domain Name Dispute Resolution Policy (INDR Policy). As per the said complaint, respondent no.1 was a registered proprietor of trademark 'SLIMJIM', claiming to use the said trademark from 14th February, 2013 in respect of Cigarettes, Tobacco, Cigarette Paper, Tobacco Paper, Rolling Paper, Smoking Paper, Tobacco Filters, Cigarette Filters, Filter Rods, Filter Buds, Smoker Articles and other tobacco related articles and accessories. Since as per the data available with the WHOIS website (an Internet Service used to look up information about a domain name), the domain name SLIMJIM.IN was registered in the name of A.W. Alliance, respondent no.2 herein, respondent no.1 filed a complaint to NIXI.

3. In the complaint to NIXI, it was claimed that the domain name SLIMJIM.IN was visually, phonetically and structurally identical to the registered trademark 'SLIMJIM' of the respondent no.1 in respect of its goods. The respondent no.1, thus, claimed that the Registrant, i.e., respondent no.2 herein had no rights or legitimate interest in respect of the said domain name and that Registrant's domain name had been registered or was being used in bad faith.

4. Pursuant to the aforesaid complaint, an arbitrator was appointed by NIXI under INDR Policy. Respondent no.2 herein, "A.W. Alliance" was



made the sole respondent in the said arbitration proceedings. The learned arbitrator passed an award dated 29th May, 2021 wherein it was observed that the respondent therein, i.e., respondent no.2 herein, had failed/neglected to file its reply to the specific allegations made in the complaint within the stipulated time, despite receipt of a copy of complaint and annexures. Since no response had been received from respondent no.2, it proceeded ex parte against respondent no.2. Thus, by award dated 29th May, 2021, the learned arbitrator held that the domain name 'slimjim.in' be transferred to the complainant/petitioner, i.e., respondent no.1 herein.

5. Appellant claiming to be subsequent proprietor of the trademark 'SLIMJIM', and "A.W. Alliance" being agent/IT contact of its current partners, received the award dated 29th May, 2021 on 8th July, 2021. Thus, an email dated 8th July, 2021 was sent by attorney of the appellant to the learned arbitrator informing that the findings of the learned arbitrator in its award that the appellant had not filed its reply, was incorrect. It was submitted that reply was filed on behalf of the appellant on 15th April, 2021.

6. Subsequently, appellant received an email dated 20th July, 2021 from NIXI informing that the reply filed by appellant was being considered. It was intimated that the matter was being re-considered in view of the appellant's reply.

7. Appellant herein also received an email on the same date, i.e., 20th July, 2021 from the learned arbitrator informing that he did not receive the reply from the appellant and accordingly asked NIXI to forward the reply to him. In the said email, it was intimated by the learned arbitrator that he



would consider the response and will pass an amended order. The learned arbitrator further informed that the earlier award dated 29th May, 2021 be treated as cancelled.

8. Thereafter, the learned arbitrator passed an amended award dated 22nd July, 2021 taking into consideration the reply filed on behalf of the appellant. The said amended award was passed in favour of the appellant herein.

9. Against the aforesaid amended award dated 22nd July, 2021, respondent no.1 herein filed a petition under Section 34 of the Act. By the impugned judgment dated 9th May, 2023, the learned District Judge set aside the amended award dated 22nd July, 2021 by holding that the learned arbitrator had become *functus officio* after passing of the award dated 29th May, 2021 and could not have passed the amended award dated 22nd July, 2021. Hence, the present appeal has been filed.

10. On behalf of the appellant, it is submitted that the first award dated 29th May, 2021 was passed by the learned arbitrator without taking into consideration the complete facts, as reply on its behalf was not considered. It is submitted that respondent no.2 herein, “A.W. Alliance” is agent/IT contact of the appellant and was wrongly impleaded in the arbitration proceedings, as respondent no.2 has no right/claim over the dispute/domain name or trademark ‘SLIMJIM’. It is submitted that appellant is the subsequent proprietor of trademark ‘SLIMJIM’ on the basis of Assignment Deed dated 25th March, 2022 executed on behalf of erstwhile SLIMJIM Trading LLP, respondent no.3 herein, in favour of appellant. It is submitted that Kunaal Kapoor and Nikunj Ahuja who were founders/co-partners of SLIMJIM Trading LLP are also the partners of



appellant. In effect there is no change in proprietorship since the partners are the same. The said partners have been using the trademark 'SLIMJIM' since the year 2011. Thus, appellant has the prior and superior right over the trademark 'SLIMJIM'.

11. It is contended that appellant is engaged in the business of marketing and providing a wide range of products including smoking paraphernalia, munchies, glassware, bongos, apparel, body care products, decorative, embellishing products, etc., since at least 2011. It is submitted that appellant is the Registrant of the domain name <https://slimjim.in/> as of date. Appellant's business is conducted under its distinctive and well known trade mark 'SLIMJIM', which is extensively used as product/service identification mark and also as part of appellant's trading name, domain name and trading style in respect of various products/services.

12. It is the case on behalf of appellant that it is the prior adopter and bona fide user of the trademark 'SLIMJIM' since the year 2011, in comparison to respondent no.1's alleged use since 2013 and appellant being the prior user has superior rights. Respondent no.1 has suppressed and concealed the above material facts in the complaint and did not come before the learned arbitrator with clean hands.

13. It is contended that while the District Judge has not specifically restored the first arbitral award dated 29th May, 2021, the respondent no.1 has already written to NIXI stating that the directions in the award dated 29th May, 2021 to transfer the domain name SLIMJIM.IN to the respondent no.1 be complied with. Thus, it is contended that there is grave urgency in the present appeal.



14. In support of his submissions, learned senior counsel for the appellant has relied upon the judgment in the case of *National Highways Authority of India Vs. P. Nagaraju alias Cheluvaiah and Another, 2022 SCC OnLine SC 864*.

15. On the other hand, learned counsel appearing for respondent no.1 submits that respondent no.1 is the registered proprietor of the trademark 'SLIMJIM' since taking over the same from the erstwhile registered owner of the said mark on 4th December, 2020, i.e., Sahill Rajwani who was the owner of the said trademark since its use on 14th February, 2013. The respondent no.1 has been in continuous use of the said trademark since 2020. It is submitted that appellant claims to have obtained the mark 'SLIMJIM' from respondent no.3 by way of an assignment deed dated 25th March, 2022, which is a fabricated document. Respondent no.3 was defunct since its incorporation on 2nd April, 2014 and its name was struck off on 10th July, 2018. Thus, a defunct LLP was not legally capable of assigning the trademark in question to the appellant by way of the purported assignment deed.

16. It is further submitted on behalf of respondent no.1 that an unregistered partnership could not have any vested rights since an unregistered partnership cannot sue for its rights as per Partnership Act, 1932. It is further contended that respondent no.2 herein is the Registrant of the trademark in question. Therefore, respondent no.2 was rightly made a party in the arbitration proceedings. The appellant is not a party to the arbitration complaint as per Rules of INDR Policy and appellant is also not a party in the arbitral award dated 29th May, 2021.

17. It is submitted that the appellant was not a Registrant Respondent



for the 'Arbitration Period' which concluded with the final award dated 29th May, 2021. As per Rules of INDR Policy, the submissions of the appellant cannot be considered or heard as the appellant was not the 'Registrant Respondent' for the arbitration period.

18. Learned counsel for the respondent no.1 has submitted that amended award dated 22nd July, 2021 could not have been passed by the learned arbitrator after passing the final award dated 29th May, 2021, as he became *functus officio*. Thus, the amended award dated 22nd July, 2021 has rightly been set aside by the learned District Judge.

19. In support of her submissions, learned counsel for respondent no.1 has relied upon the following judgments:

- I. *Ms. Vag Educational Services Vs. Aakash Educational Services Ltd, (2022) SCC Online Del 3401.***
- II. *Union of India Vs. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239***
- III. *Dwaraka Das Vs. State of M.P. & Anr., (1999) 3 SCC 500***
- IV. *Gyan Prakash Arya Vs. M/s Titan Industries Limited SC, Civil Appeal No. 6876 of 2021.***
- V. *Dr. A. Parthasarathy & Ors Vs. E Springs Avenues Pvt Ltd & Ors, (2022) SCC OnLine SC 719***
- VI. *R Amutha Vs. Jeyachitra, (2017) SCC OnLine Mad 17049***
- VII. *R Selvam Vs. N Vasudevan, CMA (MD) No 1001/2002.***
- VIII. *Sundarajan Vs. Aanji, (2010) SCC OnLine Mad 4476***
- IX. *Kartar Vs. Board of Revenue for Rajasthan, (2009) SCC OnLine Raj 5534***
- X. *Radha Chemicals Vs. Union of India, CA No. 10386/2018 dated 10.10.2018.***



- XI. *State of Bihar & Ors Vs. Mohd Idris Ansari, (1995) Supp (3) SCC 56.***
- XII. *Kinnari Mullick & Anor Vs. Ghanshyam Das Damani, (2018) 11 SCC 328***
- XIII. *Dyna Technologies Pvt Ltd Vs. Crompton Greaves Ltd, (2019) SCC OnLine SC 1656.***
- XIV. *I-Pay Clearing Services Pvt Ltd Vs. ICICI Bank Ltd, (2022) SCC OnLine SC 4.***
- XV. *Vidya Drolia & Ors Vs. Durga Trading Corp CA No. 2402/2019 dated 14.12.2020***
- XVI. *Municipal Corp of Delhi Vs. Narinder Kumar (2023) SCC OnLine Del 435***

20. In rejoinder, learned senior counsel for the appellant has submitted that the case of the appellant herein was not considered at the time of passing the first award dated 29th May, 2021. It is submitted that reply was filed before the learned arbitrator on 15th April, 2021, receipt of which was confirmed by the learned arbitrator vide email dated 24th April, 2021. However, without considering the reply filed on behalf of appellant herein, the learned arbitrator passed the original arbitral award dated 29th May, 2021 accepting the claim of respondent no.1 herein. Hence, it is prayed by learned senior counsel for the appellant that the matter be remanded back to the learned arbitrator

21. We have heard learned counsel for the parties and have perused the record.

22. Facts on record show that respondent no.1 herein had filed a complaint with the NIXI on 24th March, 2021. In the complaint, it was alleged by the respondent no.1 that domain name 'slimjim.in' which was registered with respondent no.2 herein, i.e., "A.W. Alliance", was



deceptively and phonetically similar to the trademark used by respondent no.1 herein, i.e., 'SLIMJIM'. Thus, NIXI appointed an arbitrator under the INDR Policy.

23. The arbitrator issued notice on the email Id tinaazwadia@gmail.com of respondent no.2 herein, which as per the appellant, is the email Id of the IT/Admin Contact of the appellant. Subsequently, reply was filed on behalf of appellant to the complaint of respondent no.1 herein on 16th April, 2021. Email dated 16th April, 2021 written on behalf of appellant to NIXI and the learned arbitrator in this regard is reproduced as below:

“From: Vivek Singh

Sent: 16 April 2021 00:45

To: Rk Kashyap <rk.kashyap@ymail.com>

***Cc: Darius F. Dalal <darius.dalal@igbd.in>;
disha.mehta@igbd.in; 'Legal NIXI' <legal@nixi.in>;
'registry@nixi.in' <registry@nixi.in>; Shailendra Bhandare
<shailendra.bhandare@khaitanco.com>***

***Subject: RE: Information on INDRP Domain Dispute
Complaint relating to the domain name – slimjim.in***

Dear Mr. Kashyap

Since we have not heard from you on the extension of time, we are submitting the Response (on behalf of the Respondent) to the Complaint. The Respondent reserves its right to file supplementary response, if required.

Further, given the lockdown in Mumbai, the Respondent is not in a position to immediately provide the power of attorney in our favour. We will be submitting the same shortly.

Regards

Khaitan & Co”



24. Thereafter, email dated 23rd April, 2021 was written on behalf of appellant to the learned arbitrator to confirm the receipt of email dated 16th April, 2021 and the response filed on behalf of appellant to the complaint of the respondent no.1. In reply, the learned arbitrator wrote email dated 24th April, 2021 to the counsel for the appellant confirming that he had received the mail on behalf of appellant and that he will pass the award within time as per Rules of INDR Policy. The trail of mail dated 23rd April, 2021 and 24th April, 2021 between the learned arbitrator and counsel for appellant herein is reproduced as below:

“From: Rk Kashyap <rk.kashyap@ymail.com>

Sent: 24April 2021 20:57

To: Vivek Singh <vivek.singh@khaitanco.com>

Subject: RE: Information on INDRP Domain Dispute Complaint relating to the domain name – slimjim.in

External communication. Exercise caution in accessing contents and attachments.

Dear vivek

Yes. We have received your main and will pass the award within time as per INDRP rules.

Sent from Yahoo Mail on Android

On Fri, 23 Apr 2021 at 8:01 PM, Vivek Singh

<vivek.singh@khaitanco.com> wrote:

Dear Mr Kashyap

Reference the communications below.

Could you confirm the receipt of our email below and the response?

We look forward to hearing from you.

Regards

Vivek”



25. However, the learned arbitrator passed award dated 29th May, 2021 thereby holding that no reply was filed on behalf of respondent. Thus, in the award dated 29th May, 2021, learned arbitrator held as follows:

“xxx xxx xxx

The Respondent has failed/neglected to file its reply to the specific allegations made in the complaint within the stipulated time despite receipt of copy of the Complaint and Annexures, as mentioned above. I feel that enough time and opportunity has been given to the Respondent. Since, no response has been received. Hence, the present proceedings have to be ex-parte.

xxx xxx xxx

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed Domain name anywhere in the World. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and as such the Respondent has no rights or legitimate interests in the disputed Domain name.

xxx xxx xxx”

26. When the award dated 29th May, 2021 was received on behalf of the appellant, an email was written to the NIXI, learned arbitrator as well as counsel for respondent no.1 herein clearly stating that response on behalf of appellant had been filed on the night of 15th April, 2021, though the award recorded that no response had been filed. In response, email dated 20th July, 2021 was written by the arbitrator to learned counsel for appellant and NIXI that he had received the response from NIXI. The learned arbitrator further wrote that he will consider response of the appellant and pass an appropriate amended award. Email dated 20th July,



2021 written by the learned arbitrator is reproduced as below:

“From: Rk Kashyap <rk.kashyap@ymail.com>
Sent: 20 July 2021 12:36
To: Shailendra Bhandare
 <shailendra.bhandare@khaitanco.com>; Legal
 NIXI <legal@nixi.in>
Cc: Registry NIXI <registry@nixi.in>; Vivek Singh
 <vivek.singh@khaitanco.com>
Subject: Re: Information on INDRP Domain Dispute
 Complaint relating to the domain name – slimjim.in

*External communication. Exercise caution in accessing
 contents and attachments.*

Dear Shailendra Bhandare,

*I have already send a mail on 14/07/2021, in this regard. I
 have checked my mail, you have not sent the attachment of
 your response to me and only sent to NIXI. But now I am not
 going into this controversy. I have requested the NIXI to sent
 the attachment of your response. I have received the
 attachment and will consider your response and pass the
 appropriate amended award, to impart fair justice to all the
 parties. The earlier award dated 29/05/2021 be treated as
 cancelled.*

R.K Kashyap

Sole Arbitrator”

27. Likewise, an email dated 20th July, 2021 was also written by NIXI, wherein it was stated that reply on behalf of the appellant was being taken on record and was being considered by the learned arbitrator. Email dated 20th July, 2021 written by Legal Officer, NIXI is reproduced as below:



“On Tuesday, 20 July, 2021, 10:22:11 am IST. Legal NIXI legal@nixi.in wrote:

Dear Sir,

Thank you for the email.

Your reply is being taken on record and is being considered by the Ld. Arbitrator. The matter is being reconsidered in the light of your reply/Respondent's Reply.

Regards

*Puneet Dhawan
Legal Officer
National Internet Exchange of India (NIXI)
Delhi, India
Tel: +91-11-48202010”*

28. Thus, an amended award dated 22nd July, 2021 was passed by the learned arbitrator after taking into account the response filed on behalf of the appellant herein. Subsequently, an email dated 5th August, 2021 was written by the learned arbitrator, wherein he stated that the earlier award dated 29th May, 2021 be treated as cancelled and that amended award dated 22nd July, 2021 had already been passed after considering the response on behalf of appellant herein. Email dated 5th August, 2021 written by learned arbitrator is reproduced as below:

“From: Rk Kashyap [<mailto:rk.kashyap@ymail.com>]
Sent: 05 August 2021 12:23
To: Legal NIXI <legal@nixi.in>; Shailendra Bhandare <shailendra.bhandare@khaitanco.com>
Cc: Registry NIXI <registry@nixi.in>; Vivek Singh <vivek.singh@khaitanco.com>



Subject: *Re: Information on INDRP Domain Dispute Complaint relating to the domain name – slimjim.in*

Dear Shailendra Bhandare,

I have already sent a mail on 20/07/2021 that the earlier award dated 29/05/2021 be treated as cancelled and pass the amended award after considering your response.

I have already passed the amended award on 22/07/2021, which was duly submitted before the NIXI on 26/07/2021.

The following is the mail, which I have sent on 20/07/2021

“I have already send a mail on 14/07/2021, in this regard, I have checked my mail, you have not sent the attachment of your response to me and only sent to NIXI. But now I am not going into this controversy. I have requested the NIXI to sent the attachment of your response. I have received the attachment and will consider your response and pass the appropriate amended award, to impart fair justice to all the parties. The earlier award dated 29/05/2021 be treated as cancelled.”

*R.K. Kashyap
Sole Arbitrator”*

29. Thus, it transpires that the learned arbitrator passed two awards. By the first award dated 29th May, 2021, which was passed without taking into account the response filed on behalf of appellant, the learned arbitrator held that the appellant had no rights or legitimate interest in the



domain name. While by the amended award dated 22nd July, 2021 passed after considering the response filed on behalf of appellant herein, learned arbitrator held that respondent no.1 herein had no right or legitimate interest in the domain name. Consequently, two awards with contradictory findings have come to be passed on behalf of the learned arbitrator.

30. After having passed the award dated 29th May, 2021, the learned arbitrator could not have passed a second award. Section 32 of the Act clearly provides that arbitral proceedings shall be terminated by the final arbitral award. Consequently, the learned arbitrator became *functus officio* after passing of the award dated 29th May, 2021 and had no authority to pass modified award dated 22nd July, 2021. Accordingly, the second modified award dated 22nd July, 2021 passed by the learned arbitrator cannot be sustained.

31. This brings us to the further aspect of the present matter. Reading of the aforesaid emails between the learned arbitrator and learned counsel for appellant herein clearly exhibits that the response to the complaint of respondent no.1 herein was duly filed on behalf of the appellant. However, the same was not considered by the learned arbitrator. Subsequently, when this inadvertence was brought to the notice of NIXI and the learned arbitrator, they responded that the response of the appellant was being considered. Thus, it is apparent that the first award dated 29th May, 2021 was passed by the learned arbitrator without considering the response on behalf of the appellant herein.

32. It is pertinent to note here that during the course of arguments, learned counsel appearing for respondent no.1 herein categorically admitted that response filed on behalf of appellant to its complaint before



the learned arbitrator, was duly received by it. Learned counsel appearing for respondent no.1 referred to its reply to the response of appellant before the learned arbitrator, which has been attached in Volume IV of the court file. By referring to the same, it is submitted on behalf of respondent no.1 that the said reply was not filed on behalf of respondent no.1 in the arbitration proceedings, as the appellant had not filed any reply before the learned arbitrator. Perusal of the record clearly shows that reply had indeed been filed on behalf of appellant which was not taken into account by the learned arbitrator while passing the first award dated 29th May, 2021. When response on behalf of appellant herein had already been received by respondent no.1, it was the bounden duty of respondent no.1 to bring this fact to the notice of the learned arbitrator. Rather, respondent no.1 allowed the learned arbitrator to pass the award dated 29th May, 2021 without taking into account the response of the appellant, who wrongly recorded that no reply had been filed to the complaint of respondent no.1 herein.

33. The INDR Policy clearly provides that any person who considers that a registered domain name conflicts with his/her legitimate rights or interests may file a complaint to the .IN Registry. The said policy stipulates that there shall be no in-person hearings, unless the arbitrator agrees on request of either or both parties. Clause 11 of the .IN Domain Name Dispute Resolution Policy (INDRP) is reproduced as under:

“11. In-Person Hearings

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Arbitrator agrees on request of either or both parties, that such a hearing is necessary for decidi



Complaint. In event, a personal hearing takes place; the same shall be subject to maximum of two hearings.”

34. The very fact that the aforesaid INDR Policy provides that no in-person hearings shall take place, it was imperative for the learned arbitrator to have considered the response on behalf of appellant herein before passing the award dated 29th May, 2021. The said award dated 29th May, 2021 having been passed without considering the response on behalf of the appellant, is patently illegal, being in conflict with the Public Policy of India. The fundamental policy of Indian law and the most basic notions of morality and justice as established in our country clearly require that Principles of Natural Justice are adhered and no order is passed against a party without considering its stand. Consequently, the award dated 29th May, 2021 passed by the learned arbitrator also cannot be directed to be implemented.

35. Plea has been raised on behalf of respondent no.1 that the appellant herein was not party before the learned arbitrator since it was not the Registrant of the impugned domain name. Thus, it has been submitted before this Court that appellant cannot be given any opportunity to place its response before the learned arbitrator. Respondent no.1 herein has contended that respondent no.3 herein was defunct since its incorporation on 2nd April, 2014 and no rights could have been assigned to the appellant on the basis of assignment deed dated 25th March, 2022. This contention has been countered on behalf of the appellant by submitting that Kunaal Kapoor and Nikunj Ahuja who are current partners of the appellant, were the founders/co-partners of respondent no.3 herein. They had started using the trademark ‘SLIMJIM’ for their products in July, 2011. The domain



name slimjim.in was registered with the help of agent/IT contact of current partners of appellant herein under the name A.W. Alliance, respondent no.2 herein, whose contact details were given while registering the domain name. Thus, the appellant claims to be a prior user of the said trademark.

36. While the appellant claims to be prior user since the year 2011, respondent no.1 herein claims to be user of the trademark in question since 2013. Conflicting claims have been raised on behalf of both appellant and respondent no.1 herein. Such conflicting pleas and contentions as raised by both the parties cannot be adjudicated by this Court, and the same can only be considered in the arbitration proceedings by the learned arbitrator. Whether or not the appellant herein has right to be represented before the learned arbitrator ; or, whether or not the appellant was not a proper party before the learned arbitrator as registration of the trademark was in the name of respondent no.2 herein ; or, whether or not appellant has legitimate interest in the disputed domain name ; or, whether or not the appellant was prior user of the trademark in question since 2011 compared to claim of user by respondent no.1 since 2013, are all issues which can be decided only in arbitration proceedings.

37. During the course of hearing, learned counsel appearing for the appellant prayed that the matter be remanded back for fresh arbitration proceedings. Though learned counsel appearing for respondent no.1 herein opposed the said plea, however, this Court takes note of the fact that in its petition under Section 34 of the Act, respondent no.1 herein itself had prayed that the matter be remanded back for fresh adjudication by composition of a new arbitral tribunal. The prayer (D) made on behalf of



respondent no.1 herein in its petition under Section 34 of the Act is reproduced as below:

“(D) In the alternative, remit the matter back to the Ld Registry/ NIXI for composition of a new Arbitral Tribunal for rehearing of the matter in the light of the contentions raised by the Respondent No 3 in its Reply belatedly taken on record;”

38. This Court has also considered the plea raised on behalf of respondent no.1 that the appellant herein ought to be directed to file objections to the first award dated 29th May, 2021. However, fact remains that the statutory time for filing objections to the said award is long over. There was no occasion for the appellant herein to file objections to the first award dated 29th May, 2021, as thereafter on 22nd July, 2021, amended award was passed by the learned arbitrator in favour of the appellant herein. The first award dated 29th May, 2021 was stated by the learned arbitrator to have been cancelled by his email dated 20th July, 2021 and 5th August, 2021. Consequently, no objections were filed on behalf of the appellant to the first award dated 29th May, 2021 as the said award was stated by the arbitrator himself to have been cancelled after passing of the second amended award dated 22nd July, 2021. Therefore, the appellant herein cannot be faulted with that no objections to the first award dated 29th May, 2021 under Section 34 of the Act was filed in its behalf within the statutory period. Consequently, no directions can be given to the appellant to file its objections under Section 34 of the Act to the first award dated 29th May, 2021.

39. Considering the aforesaid detailed discussion, the present case is a fit case for fresh adjudication in arbitration proceedings. However, this



Court takes note of the fact that the learned arbitrator has passed two contradictory and conflicting awards, one in favour of the appellant herein and the other in favour of respondent no.1 herein. Accordingly, considering the peculiar facts and circumstances of the present case, this Court is of the view that it would not be appropriate to remand back the matter to the same arbitrator. In view thereof, directions are issued to National Internet Exchange of India (NIXI) to constitute a new arbitral tribunal for hearing the matter afresh.

40. It is made clear that rights and contentions of all the parties are left open, who shall have right to raise all issues and their submissions before the learned arbitrator. It is clarified that this Court has not expressed any opinion on any issue as regards the merits of the case of either of the parties or objection raised by respondent no.1 on the entitlement of the appellant herein to represent its case before the learned arbitrator. All the issues as raised by the parties shall be considered by the learned arbitrator and finding shall be given thereto after considering the case as put up by the respective parties.

41. The present appeal is accordingly allowed in terms of the aforesaid directions. The pending applications are also accordingly disposed of.

MINI PUSHKARNA, J

MANMOHAN, J

JULY 28, 2023/au