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IN THE HIGH COURT OF DELHI AT NEW DELHI*Decided on: 31st January, 2024*

+ O.M.P.(COMM) 290/2023 & I.A. 14397-399/2023, 22041/2023

**KASHMIR HARVARD
EDUCATIONAL INSTITUTE**

..... Petitioner

Through: Mr. Keshav Thakur, Mr. Mahesh Prasad, Ms. Malak Mathur, Mr. Prithvi Thakur & Mr. Ritik Kumar, Advocates.

versus

**PRESIDENT AND FELLOWS
OF HARVARD COLLEGE**

..... Respondent

Through: Mr. R.K. Aggarwal, Ms. Ayushi Bansal & Mr. Vinay Padam, Advocates.

CORAM:**HON'BLE MR. JUSTICE PRATEEK JALAN****JUDGMENT****IA. 14398/2023 (for exemption)**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

IA 14399/2023 (for condonation of delay)

1. The petitioner seeks condonation of delay of 25 days in filing of the petition. Although it has not been mentioned in the application, the record shows that a scanned copy of the award was received by the petitioner by an email of the Legal Officer of National Internet Exchange of India ["NIXI"] dated 06.04.2023. The period of three months for filing of the petition, provided under Section 34(3) of the Arbitration and Conciliation Act, 1996 ["the Act"], thus lapsed on 06.07.2023.

2. The petition, filed on 28.07.2023, was thus belated by approximately 22 days, which is within the maximum condonable period of 30 days under



the proviso to Section 34(3) of the Act. The ground mentioned in the application is that the petitioner is based in “*a remote area of Kashmir*,” and had to travel to Delhi to engage counsel.

3. As the delay is within the maximum condonable period, the application is allowed for the reasons stated, in the interest of justice.

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1. By way of this petition under Section 34 of the Act, the petitioner assails an arbitral award dated 04.04.2023 under the “.IN Domain Name Dispute Resolution Policy” [“INDRP”]. By the impugned award, the learned arbitrator has directed that a domain name registered by the petitioner herein i.e., <kashmirharvard.edu.in>, be transferred to the complainant/ respondent, being the President and Fellows of Harvard College in the United States of America.

A. Facts

2. The petitioner imparts school education [pre-Nursery to class XII] in the name and style of “Kashmir Harvard Educational Institute” in Srinagar, Union Territory of Jammu and Kashmir. It has registered a domain name with the .in domain name registry being <kashmirharvard.edu.in> [“the disputed domain name”].

3. On 16.11.2022, the respondent submitted a complaint to NIXI under the INDRP, seeking cancellation of the disputed domain name or transfer thereof to the respondent. It was stated therein that the respondent is a charitable and educational corporation incorporated in the Commonwealth of Massachusetts, United States of America. It was established in the year 1636 and is the oldest education institution in the United States. It claimed to have used the HARVARD mark since 1638 in connection with educational and research goods and services offered by it. It imparts



undergraduate education through Harvard College, and also comprises of various schools of higher education, such as Harvard Law School, Harvard Medical School and Harvard Business School.

4. The respondent claims a worldwide reputation as an educational institution. The complaint asserts that 30 of its graduates have been Heads of State of various countries, including 8 Presidents of the United States, and its faculty has included 50 Noble Prize awardees. Its student body includes 10,000 students from 155 countries. Harvard University is consistently ranked amongst the top universities in the United States and globally. The complaint traces the links of Harvard University with India, including by way of successful alumni, a club called the Harvard Alumni Club and research and services conducted in India by its scholars.

5. It is also mentioned in the complaint that Harvard has established a Harvard trademark programme, under which it enforces and licenses its trademarks described as the “HARVARD Marks”. It also has online learning services under the name HarvardX. It operates a website <www.harvard.edu> and social media accounts which include the name “Harvard”. Several of its trademarks are registered in India, and a list has been provided in the complaint as follows:-

<i>“Registration No.</i>	<i>Trademark</i>	<i>Class</i>
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	42



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

6. As far as the Harvard trademark is concerned, it is stated that several authorities in different countries have designated Harvard as a famous and well-known trademark, and that the respondent has successfully taken several actions with regard to infringement of its marks in India and overseas.

7. The respondent sought cancellation of the disputed domain name, or transfer of the domain to itself, on the ground that it is identical or confusingly similar to a trademark or service mark in which it has a right, that the petitioner was ineligible for rights or legitimate interest in respect to the domain name, and that the impugned domain name has been registered or used in bad faith.

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8. As a contention has been raised in the course of arguments with regard to the procedural irregularities in the conduct of the arbitrator, the facts relating thereto are set out later in the judgement.

9. All the respondent's contentions have been upheld in the impugned award, which has found that the disputed name is identical to the trademark Harvard and causes confusion with the petitioner's trademark, that the respondent has no right or legitimate interest in the disputed domain name, and that the domain name is registered in bad faith.

10. The parties were thereafter informed by email dated 06.04.2023 that the award had been passed, and a copy of the award was also transmitted to them by email.

11. In response to this communication, the petitioner [from the email address kashmirharvardschool@gmail.com] sent an email dated 08.04.2023 to the Legal Officer of NIXI, counsel for the respondent and the learned arbitrator which reads as follows:-

"Dear Legal Officer,

Thank you for bringing to my attention the concerns raised by the fellows of Harvard College regarding my use of the term "Harvard" in my domain name, Kashmirharvard.edu.in. I would like to clarify that I am not affiliated with Harvard College, nor am I pretending to be associated with the institution in any way and would like to add that the Kashmir Harvard school is in no way comparable to Harvard College. We are a small educational institution located in Kashmir, India, and we do not claim to have the same academic standing or reputation as Harvard College.

I understand that Harvard College has a reputation for excellence and academic rigor, and I have the utmost respect for the institution and its community. However, I would like to emphasize that my domain name is simply a combination of the name of my school and the term "Harvard", which I intended to use as a descriptive term to denote the quality of education provided by my institution.

I would like to assure you that I have no intention of causing any confusion or misrepresentation regarding my affiliation with Harvard College. In fact, I have already taken steps to make it clear on my website that I am an independent educational institution and not associated with Harvard College in any way.

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Once again, I apologize for any inconvenience or confusion that my use of the term “Harvard” may have caused. Please let me know if there are any further steps that I can take to address the concerns of the fellows of Harvard College.

Sincerely
Arshid Ahmad
IT Head
Kashmir Harvard Educational Institute”¹

B. Scope of Challenge

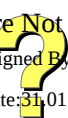
12. Before addressing the grounds upon which the award has been challenged, it may be noted that the respondent is an entity incorporated outside India. The present arbitration, therefore, falls in the category of “international commercial arbitration” under Section 2(1)(f) of the Act. Consequently, the grounds of challenge available to the petitioner are only those enumerated in Section 34(2) of the Act, and the ground of “patent illegality” referred to in Section 34(2A) of the Act is not applicable.

13. Section 34(2) of the Act 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]—*

- (i) a party was under some incapacity, or*
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
- (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*
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or





(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]”

14. Mr. Keshav Thakur, learned counsel for the petitioner, therefore, confined his argument to a challenge on the ground of natural justice [under Section 34(2)(a)(iii)] and conflict with public policy of India [under Section 34(2)(b)(ii)].

C. Submissions of Learned Counsel for the Petitioner

15. In support of his contention based on Section 34(2)(a)(iii) of the Act, Mr. Thakur submitted as follows:-

a. The physical address of the petitioner has been wrongly written in the impugned award as “Kashmir Harvard Educational Institute, 4RVH+4QV, Habak, Nasim Bagh, Srinagar, Jammu and Kashmir-190023,” whereas the address given by the petitioner in the Domain Name Information Form [also known as the “WHOIS information”] was “Kashmir Harvard Educational Institute, Habbak Naseem Bagh, Srinagar-190006.”

b. The notice of arbitration was never received by the petitioner.



c. The email address of the technical person responsible for the domain name (as given in the domain name registration information), was wrongly recorded in the award, as arshid.ahma@kashmirharvard.org (instead of arshid.ahmad@kashmirharvard.org).

d. Emails addressed to the petitioner did not reach due to internet shutdowns on account of security considerations and severe weather conditions.

e. Relying upon the judgment of this Court in *Mittal Pigments Pvt. Ltd. v. Gail Gas Limited*,² Mr. Thakur submitted that a further preemptory notice ought to have been given to the petitioner before proceeding *ex-parte* against it.

16. With regard to section 34(2)(b)(ii), Mr. Thakur raised two submissions: -

- a. The impugned award does not specify the disputed domain name in the “*Discussion and findings*” section.
- b. The respondent’s domain name is not a “.in” or “.bharat” domain name, and the present dispute, therefore, does not fall within the scope of arbitration under the INDRP.

17. No other ground of challenge was pressed by Mr. Thakur.

D. Analysis

(i) Re: Natural Justice

18. With respect to the petitioner’s contentions concerning breach of the rules of natural justice the record, as filed by the petitioner itself, reveals as follows:-



- a. The petitioner has placed on record the domain name information provided by it in connection with the disputed domain name. The email address given in the said document was kashmirharvardschool@gmail.com. This was also the email address of the administrator, Tariq Ahmad Baktoo, mentioned in the domain name information. Another email address was provided against the column “Tech email,” which was arshid.ahmad@kashmirharvard.org. It appears that this was the email address of Arshid Ahmad, who was presumably the technical person responsible for the website.
- b. After the complaint was lodged by the respondent on 16.11.2022, the learned sole arbitrator was appointed by NIXI on 08.02.2023 and an email communication to this effect was sent to both parties, including at the email address kashmirharvardschool@gmail.com.
- c. On 09.02.2023, the learned Arbitrator also informed the parties [including by an email addressed to the same email address], that the arbitration proceedings had commenced and gave the respondent 15 days’ time to file its statement of defence and documents.
- d. On 27.02.2023, a further email was addressed by the learned arbitrator to both sides [including at the aforesaid email address], stating that time for filing of the response had lapsed, and neither a response nor request for extension of time had been received from the respondent. The right to submit a statement of defence was, therefore, deemed to have been forfeited, and it was stated that the matter would proceed under Rule 12 of the INDRP.
- e. The parties were thereafter informed by email dated 06.04.2023, that the award had been passed, and a copy of the award was also transmitted to them by email.

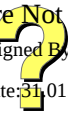
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- f. The petitioner sent an email dated 08.04.2023 [extracted above], upon receipt of the award.
- g. A physical copy of the award was received by the petitioner by Speed Post on 25.07.2023.³

19. In the face of these documents on record, I am of the view that the petitioner has failed to make out a case of breach of the principles of natural justice, for the following reasons:

- a. In the present petition, the petitioner has itself referred to the aforesaid communications dated 08.02.2023, 09.02.2023, 27.02.2023 and 06.04.2023, without any qualification as to the alleged non-receipt of these communications. In fact, copies of the communications have been annexed to the petition. It is clear therefore that the petitioner had, in fact, received the notice of appointment of the arbitrator, notice of commencement of proceedings [including time granted for filing of statement of defence], notice that the tribunal proposed to proceed *ex parte*, and the award itself.
- b. Even in the petitioner's communication dated 08.04.2023, extracted above,⁴ there is no suggestion that the petitioner did not have notice of the arbitral proceedings.
- c. In fact, such a suggestion, if any, is to be found only in the synopsis of the petition where it is stated that the emails dated 08.02.2023, 09.02.2023 and 27.02.2023 were not received. This contention in the synopsis does not find reflection in the body of the petition, and is

³ As stated in paragraph 2 of I.A. 14399/2023, set out below:

"2. That the Arbitration Award was passed on 04.04.2023 and was sent by post on 18.07.2023 which in fact was received by the Petitioner on 25.07.2023 and as such there has been a delay filing the present petition."



inconsistent with the petitioner's communication dated 08.04.2023. It is clearly an attempt to mislead the Court.

- d. With regard to the allegation that the address of the petitioner's physical location, as stated in the award, is incorrect, this is also a red herring. The petitioner has clearly admitted receipt of the award by speed post in the application for condonation of delay.⁵
- e. The petitioner's contention that the email address of the technical person, Arshid Ahmad, as stated in the award, was incorrect, is neither here nor there. The award was properly forwarded to at least one of the email addresses provided. Further, as a matter of fact, it is Mr. Arshid Ahmad who responded on behalf of the petitioner, by email dated 08.04.2023, after receipt of the award. This shows that even he was privy to the correspondence received at the email address kashmirharvardschool@gmail.com.
- f. In any event, as noted above, service of communications and the award were also effected upon the petitioner at the email address mentioned in the domain registration information. Clause 2(a) of INDRP Rules of Procedure clearly requires electronic method to be used for service of complaints. Ms. Ayushi Bansal, learned counsel for the respondent, relied upon Clause 3(d) of INDRP Rules of Procedure, which provides that the complainant can send both hard copy and soft copy of the complaint, with annexures, to the respondent. It is the contention of Mr. Thakur that the hard copy was not sent to the correct physical address. However, even assuming this factual contention to be true, the argument is unmerited. Quite apart from the fact that the petitioner has admitted receipt of the electronic



and physical copies of the award, the rules of natural justice do not require that service of the same document be effected by each of several modes which may be provided. At least in the context of the present facts, the provision of several modes of service was intended to ensure that service is effected at least by one mode.

- g. It was sought to be argued by Mr. Thakur that there was an internet shutdown in Jammu and Kashmir due to security considerations and severe weather conditions. Such a plea does not find mention anywhere in the petition, and is entirely unsupported by pleadings or documentary evidence. It is nothing but another attempt to mislead the court.
- h. The petitioner's reliance upon the judgment of this Court in *Mittal Pigments*⁶ is similarly misconceived. The facts of that case show that the petitioner therein had replied to a notice issued under Section 21 of the Act, invoking the arbitral proceedings. Upon receipt of a communication from the learned Arbitrator, the petitioner did not appear in the arbitral proceedings. After considering the judgments of various Courts on this point, this Court held as follows:-

"27. Therefore, it is abundantly clear that, though not stipulated under the Act in clear terms, it has always been preferred and encouraged that an Arbitrator provides a preemptory notice to any party against whom it is seeking to proceed ex-parte. There is no doubt to the fact that in the instant case the learned Arbitrator did not communicate the facts of proceedings being initiated, continued and proceeded with ex-parte to the petitioner, which it ought to have at some point of time before making the Award. Strong observations have been made on this question by the Courts and hence, this Court also submits to the observations as quoted in the foregoing paragraphs. The action on part of the learned Arbitrator was erroneous and hence, warrants interference from this Court.

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28. Another aspect to be seen is that as per the reply dated 4 May 2018, the respondent also had the knowledge of pending proceedings before the Civil Court at Kota, Rajasthan, yet after over six months, the arbitration proceedings were initiated, continued and concluded without the petitioner. Therefore, this Court finds that the Suit pertaining to the same issues between the parties being pending was in itself sufficient cause for learned Arbitrator not to proceed ex-parte against the petitioner after only one intimation and opportunity to appear for arbitration proceedings.⁷

In the present case, the respondent was given notice of the appointment of the arbitrator, initiation of the arbitration proceedings and the intention of the arbitrator to proceed *ex-parte*. Factually, therefore, the observations of the Court in *Mittal Pigments* have been complied with in the present case, as the learned Arbitrator did give the respondent notice [by email dated 27.02.2023], that she proposed to proceed *ex-parte*. In any event, *Mittal Pigments* appears to proceed on a factual consideration of pre-existing civil proceedings also pending between the same parties. The judgment is, therefore, also distinguishable.

(ii) Re: Public Policy

20. Both the grounds taken by the petitioner, purportedly based upon public policy, are also unsustainable.

21. The purpose of the INDRP policy and Clauses 2 and 16 thereof, relied upon by Mr. Thakur, read as follows :-

“This INDRP (the “Policy”) has been adopted by NIXI, is incorporated by reference to the Registry Accreditation Agreement (RAA), and sets forth the terms and conditions which shall govern any or all disputed in connection with .IN or .Bharat (Available in all Indian Languages) domain name.

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2. Purpose and Object

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This .IN Domain Dispute Resolution Policy (the “Policy”) sets out the legal framework for resolution of dispute(s) between a domain name Registrant and the Complainant, arising out of the registration and use of an .IN or .Bharat (Available in all Indian languages) Domain Name.

xxxx

xxxx

xxxx

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.”

It is clear therefrom that any dispute with regard to “.in” domain name is within the scope of the policy. The petitioner’s domain name is admittedly in this category. There is no warrant in the text or the context of the policy for the suggestion of Mr. Thakur that the complainant must also have a “.in” or “.bharat” domain name. The dispute in the present case is clearly “in connection with .IN” domain name. It arises out of the registration and use of such a domain name in terms of Clause 2.

22. The last, and apparently desperate, plea of Mr. Thakur was that the disputed domain name ought to have been set out in full in the “Discussion and findings” section of the impugned award. The impugned award itself shows that the disputed domain name is clearly stated in the heading of the award – even prior to the names of the parties, and is defined in paragraph 2 thereof. The contention is therefore rejected.

E. Conclusion

23. For the aforesaid reasons, I do not find any grounds to hold that the impugned award is contrary to Section 34(2) of the Act. In fact, the arguments advanced by the petitioner show a scant regard for the limited scope of intervention with an award in an international commercial

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arbitration, or for the process of the Court. Pleas have been advanced which are contrary to the record, and attempt after attempt has been made to mislead the Court. I, therefore, consider this to be a fit case for imposition of costs against the petitioner.

24. The petition, alongwith pending applications, is dismissed with costs assessed at ₹50,000/-, payable to the respondent, within 4 weeks from today.

PRATEEK JALAN, J.

JANUARY 31, 2024

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