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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 13.05.2026***
Judgment pronounced on: 29.05.2026

\+ O.M.P. (COMM) 223/2026, I.A. 12470/2026 (Stay) & I.A. 12471/2026 (Ex.)

MR PATHAN IMRANKHAN ZAFARULLAKHAN & ANR.
.....Petitioners

Through: Ms. Anju Agrawal, Ms. Manisha Singh, Mr. Abhai Pandey, Ms. Khushi Chauhan and Ms. Vidhi Gupta, Advocates.

versus

MICROSOFT CORPORATION .....Respondent

Through: Mr. Ashim Sood, Ms. Pooja Dodd, Mr. Anuraj Tirthankar, Ms. Senu Nizar, Mr. Karan and Mr. Kartikeya, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been instituted under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], seeking the setting aside of the **Arbitral Award dated 02.03.2026**[2], rendered by the learned Sole Arbitrator in INDRP Case No. 2091 under the .**IN Domain Name Dispute Resolution Policy**[3].

[1] A&C Act
[2] Arbitral Award
[3] INDRP

2. By way of the Impugned Arbitral Award, the learned Arbitrator allowed the complaint preferred by the Respondent under the INDRP framework and directed transfer of the domain name "***www.exceltotally.in***"[4] from the Petitioners in favour of the Respondent herein.

BRIEF FACTS:

3. Petitioner No.1 is engaged in the business of providing software solutions and applications facilitating the transfer of data between Microsoft Excel and Tally accounting software and the Subject Domain Name has been adopted and used in connection with such activities since the year 2010.

4. According to the Petitioners, the expression "EXCELTOTALLY" was adopted in a descriptive and functional sense merely to indicate compatibility and interoperability of the software product with Microsoft Excel and Tally software.

5. The Respondent, on the other hand, claims to be the proprietor of the globally reputed and well-known trademark "EXCEL", associated with its spreadsheet software and allied technological products and services.

6. According to the Respondent herein, the Petitioners had adopted the dominant portion of the Respondent's trademark as part of the Subject Domain Name in a manner calculated to create confusion and association amongst internet users.

7. The record reflects that disputes arose between the parties when the Respondent issued a cease-and-desist communication dated

[4] Subject Domain Name

18.07.2025, objecting to the Petitioners' use of the expression "EXCELTOTALLY".

8. Pursuant thereto, the Petitioners are stated to have withdrawn the trademark application bearing no. 5790067 on 15.09.2025, furnished an undertaking and incorporated a disclaimer since 07.09.2025 stating that the Petitioners are *"neither affiliated with nor endorsed by Microsoft Corporation".*

9. According to the Respondent, however, the Petitioners failed to disclose the existence and continued use of the Subject Domain Name, whereafter objections were raised in relation thereto as well.

10. Since the disputes between the parties could not be resolved amicably, the Respondent invoked the mechanism under the INDRP before the **National Internet Exchange of India**[5] seeking transfer of the Subject Domain Name on the ground that the same was confusingly similar to the Respondent's trademark "EXCEL"; that the Petitioners lacked legitimate rights or interests therein; and that the Subject Domain Name had been registered and used in bad faith within the meaning of Clause 4 of the INDRP.

11. Upon reference of disputes under the INDRP framework, the learned Arbitrator entered upon reference and, after considering the pleadings and material placed on record, proceeded to pass the *ex parte* Impugned Arbitral Award directing transfer of the Subject Domain Name in favour of the Respondent.

12. Aggrieved by the aforesaid Award, the Petitioner has preferred the present Petition under Section 34 of the A&C Act, seeking the setting aside of the Impugned Arbitral Award.

[5] NIXI

CONTENTIONS ON BEHALF OF THE PETITIONERS:

13. At the outset, learned counsel appearing on behalf of the Petitioners would contend that the Impugned Arbitral Award stands vitiated on account of violation of the Principles of Natural Justice inasmuch as the Petitioners were deprived of an effective opportunity to participate in the arbitral proceedings.

14. It would be submitted that the communications were issued only upon an old administrative email account associated with the Subject Domain Name, which was not being actively monitored, despite the Respondent being aware of the Petitioners' active contact details through prior correspondence.

15. According to the Petitioners, the learned Arbitrator proceeded *ex parte* without ensuring effective and meaningful service and consequently denied the Petitioners an adequate opportunity to present their defence, thereby attracting Section 34(2)(a)(iii) of the A&C Act.

16. Learned counsel appearing on behalf of the Petitioners would contend that the Impugned Arbitral Award suffers from a manifest misapplication of the INDRP framework and is, therefore, liable to be set aside under Section 34 of the A&C Act.

17. The principal thrust of the challenge, according to the Petitioners, pertains to the interpretation accorded by the learned Arbitrator to Clause 4 of the INDRP. Learned counsel would submit that the three ingredients contemplated under the aforesaid clauses are distinct, independent and cumulative in nature and all the conditions are mandatorily required to be satisfied before an order directing transfer of a domain name can be sustained. According to the Petitioners, the learned Arbitrator erroneously conflated the

requirements under the said clauses and proceeded on the basis that once confusing similarity stood established under Clause 4(a), the requirement of bad faith under Clause 4(c) automatically stood satisfied as well.

18. Elaborating on the aforesaid submission, learned counsel appearing on behalf of the Petitioners would contend that the requirement of bad faith under Clause 4(c) constitutes an independent and substantive requirement requiring separate scrutiny and evidence. It would be submitted that even assuming findings under Clauses 4(a) and 4(b) could be sustained, the same would not *ipso facto* establish bad faith within the meaning of the INDRP framework.

19. According to the Petitioners, bad faith necessarily postulates deliberate intention to deceive, mislead or exploit the goodwill of another and could not merely be inferred on account of alleged confusing similarity.

20. Learned counsel would further submit that the learned Arbitrator failed to appreciate that the expression "EXCELTOTALLY" had been adopted in a descriptive and functional sense in connection with the Petitioners' software product, facilitating conversion of data from Microsoft Excel to Tally software. According to the Petitioners, the use of the expression "EXCEL" would merely indicative of software compatibility and not suggestive of any association, sponsorship or affiliation with the Respondent.

21. It would be submitted that the Subject Domain Name had been continuously used for a considerable period of time, and no dishonest intention could legitimately be attributed to the Petitioners.

22. Learned counsel would additionally contend that the conduct of the Petitioners was wholly inconsistent with any allegation of bad faith.

23. It would be submitted that upon receipt of the Respondent's cease-and-desist communication, the Petitioners had withdrawn the trademark application filed by them and furnished an undertaking/disclaimer, thereby demonstrating their *bona fides*. According to the Petitioners, the aforesaid circumstances were completely overlooked by the learned Arbitrator while arriving at the impugned findings.

24. On the strength of the aforesaid submissions, learned counsel for the Petitioners prayed that the Impugned Arbitral Award be set aside.

CONTENTIONS ON BEHALF OF THE RESPONDENT:

25. ***Per contra***, learned counsel appearing on behalf of the Respondent would submit that the objection regarding service is wholly misconceived and contrary to the record.

26. It would be contended that the learned Arbitrator had recorded satisfaction regarding service upon the Petitioners through the contact details and email address associated with the Subject Domain Name and only thereafter proceeded *ex parte*.

27. Learned counsel would further submit that once the Petitioners themselves had furnished the said contact particulars in connection with the Subject Domain Name, they cannot subsequently evade the proceedings by merely asserting that the concerned email account was not being regularly monitored. According to the Respondent, adequate notice and sufficient opportunity had been afforded during the arbitral

proceedings and, therefore, no violation of the Principles of Natural Justice is made out.

28. Learned counsel appearing on behalf of the Respondent would support the Impugned Arbitral Award and contend that the learned Arbitrator has rendered a detailed, reasoned and plausible Award upon due appreciation of the pleadings, documents and the applicable provisions of the INDRP framework and, therefore, no interference is warranted within the limited supervisory jurisdiction exercisable under Section 34 of the A&C Act.

29. It would further be contended that in the case of an International Commercial Arbitration, as in the present case, the challenge to an arbitral award is confined only to the limited grounds contemplated under Section 34(2) of the A&C Act, thereby rendering the scope of judicial interference significantly narrower than that applicable in the case of a domestic arbitral award.

30. Learned counsel for the Respondent would rely upon the Judgment of the Hon'ble Supreme Court in ***Ssangyong Engineering and Construction Co. Ltd. v. NHAI***[6], to contend that the present proceedings arise out of an International Commercial Arbitration within the meaning of Section 2(1)(f) of the A&C Act, the Respondent being a corporation incorporated outside India, and consequently the ground of "patent illegality" under Section 34(2A) of the A&C Act is itself unavailable to the Petitioners.

31. It would further be contended that the INDRP framework operates as a contractual mechanism governing domain name disputes

[6] (2019) 15 SCC 131

and, therefore, the interpretation accorded thereto by the learned Arbitrator is entitled to substantial judicial deference.

32. Reliance in this regard would be placed upon ***Quantum University v. International Quantum University for Integrative Medicine Inc.***[7] to contend that this Court, while exercising jurisdiction under Section 34 of the A&C Act, would refrain from interfering with the interpretation adopted by the learned Arbitrator unless the same is shown to be wholly untenable in law.

33. In light of the aforesaid judgment, it would be further contended that Clause 7 of the INDRP is illustrative and not exhaustive, and specifically contemplates that intentional use of a domain name so as to attract internet users by creating a likelihood of confusion with the complainant's mark itself constitutes evidence of bad faith.

34. According to the Respondent, the learned Arbitrator rightly applied the said principle while concluding that incorporation of the Respondent's mark "EXCEL" within the Subject Domain Name was likely to create confusion and diversion of internet users and, therefore, squarely attracted Clauses 7(c) of the INDRP.

35. It would further be contended that the Petitioners' own conduct in withdrawing the trademark application for "EXCELTOTALLY" immediately upon receipt of the cease-and-desist notice itself constitutes a relevant circumstance evidencing bad faith, inasmuch as such withdrawal demonstrates prior knowledge of the Respondent's rights in the mark "EXCEL" and acknowledgment of the legal vulnerability of the impugned adoption.

[7] 2023 SCC OnLine Del 8016

36. Learned counsel appearing on behalf of the Respondent would further submit that the learned Arbitrator rightly appreciated that the analysis under Clauses 4(a), 4(b) and 4(c) of the INDRP cannot be viewed in isolated watertight compartments. According to the Respondent, while the ingredients may be distinct, the findings returned under Clauses 4(a) and 4(b) necessarily bear upon and inform the determination under Clause 4(c).

37. Learned counsel appearing on behalf of the Respondent would lastly contend that the Petitioners are effectively inviting this Court to re-appreciate the factual findings returned by the learned Arbitrator regarding confusing similarity, legitimate interests and bad faith, which exercise is wholly impermissible within the confines of Section 34 jurisdiction under the A&C Act.

ANALYSIS:

38. This Court has heard the learned counsel appearing for the parties at considerable length and, with their able assistance, carefully perused the Impugned Arbitral Award, the pleadings and the material placed on record.

39. At the outset, this Court considers it appropriate to address the preliminary procedural objection raised by the Petitioners concerning the alleged absence of proper service in relation to the initiation and conduct of the arbitral proceedings under the INDRP framework.

40. In the considered opinion of this Court, the Petitioners have failed to place any cogent material on record to substantiate the contention that they were genuinely denied notice of the proceedings or deprived of a fair and reasonable opportunity to present their case. The plea advanced on behalf of the Petitioners, namely that the

concerned email address was allegedly not in regular use and that knowledge of the proceedings was acquired only subsequently, does not persuade this Court to take a view different from that reflected in the Impugned Arbitral Award.

41. The material available on record indicates that all relevant communications and notices were issued to the contact details and electronic coordinates associated with the Subject Domain Name, including the email addresses reflected in the relevant registration records. The Impugned Arbitral Award itself records that the learned Arbitrator proceeded *ex parte* only upon being satisfied that due service had been effected upon the Petitioners in accordance with the applicable procedure governing the proceedings.

42. Further, once the Petitioners themselves had furnished, maintained, or permitted the continued use of the said contact details in connection with the Subject Domain Name, they cannot subsequently avoid the legal consequences of valid service merely by asserting that the concerned email account was not being regularly monitored, accessed, or actively used. A party cannot be permitted to defeat the efficacy of electronic service by relying upon its own failure to maintain or monitor the communication channels voluntarily associated with the disputed domain registration.

43. In the considered view of this Court, mere dissatisfaction with the ultimate outcome of the arbitral proceedings cannot, by itself, justify an inference that the proceedings stood vitiated on account of lack of notice or denial of opportunity. The Principles of Natural Justice do not mandate actual participation by a party despite due notice; they require only that a fair and reasonable opportunity be

afforded. In the present case, no material irregularity or procedural infirmity has been demonstrated which would warrant interference on this ground. Accordingly, this Court finds no merit in the objection raised by the Petitioners concerning service of notice or the alleged violation of the Principles of Natural Justice as contemplated under Section 34(2)(a)(iii) of the A&C Act.

44. Before proceeding to examine the merits of the rival submissions advanced on behalf of the parties, this Court considers it apposite to reiterate the well-settled limitations governing the exercise of jurisdiction under Section 34 of the A&C Act, particularly in the context of an International Commercial Arbitration. The jurisdiction of this Court in such proceedings is supervisory and not appellate in nature, and therefore does not permit a reappreciation of facts or a reconsideration of the merits of the dispute as though this Court were sitting in appeal over the arbitral award.

45. There exists a consistent and authoritative line of decisions rendered by the Hon'ble Supreme Court, which has clearly delineated the contours of judicial interference under Section 34 of the A&C Act. Such precedents repeatedly emphasise that the scope of interference with an arbitral award arising out of an International Commercial Arbitration is significantly narrower than that applicable in the case of a purely domestic award.

46. In this regard, this Court considers it apposite to refer to the decision of the Hon'ble Supreme Court in ***Ssangyong Engineering*** (*supra*), wherein the Apex Court, while examining the scope of interference with an arbitral award arising out of an International Commercial Arbitration, reiterated that, by virtue of Section 34(2A)

read with Section 2(1)(f) of the A&C Act, the ground of '*patent illegality*' is not available as a basis for challenging an award rendered in an International Commercial Arbitration. The Apex Court further clarified that the additional ground introduced under Section 34(2A) of the A&C Act is confined only to domestic arbitral awards and does not extend to awards arising from International Commercial Arbitrations seated in India. The relevant extracts from the said judgment are reproduced hereunder:

> "**34.** What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law as explained in paragraphs 18 and 27 of Associate Builders (supra), i.e., the fundamental policy of Indian law would be relegated to the "Renusagar understanding of this expression. This would necessarily mean that the ***Western Geco*** (supra) expansion has been done away with. In short, ***Western Geco*** (supra), as explained in paragraphs 28 and 29 of ***Associate Builders*** (supra), would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in paragraph 30 of ***Associate Builders*** (supra).
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> **36.** Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of ***Associate Builders*** (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of ***Associate Builders*** (supra). Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that ***Western Geco*** (supra), as understood in ***Associate Builders*** (supra), and paragraphs 28 and 29 in particular, is now done away with.
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> **37.** Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not

amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, paragraph 42.1 of ***Associate Builders*** (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of ***Associate Builders*** (supra), however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

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41. What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of ***Associate Builders*** (supra), while no longer being a ground for challenge under "public policy' of India, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.

42. Given the fact that the amended Act will now apply, and that the "patent illegality" ground for setting aside arbitral awards in international commercial arbitrations will not apply."

(emphasis supplied)

47. In view of the aforesaid settled principles governing the limited scope of judicial interference under Section 34 of the A&C Act in matters arising out of International Commercial Arbitration, this Court now proceeds to examine the Impugned Arbitral Award strictly within the narrow confines permissible under the said provision. In proceedings of the present nature, the scope of interference remains circumscribed by the grounds expressly enumerated under Section

34(2) of the A&C Act, including Section 34(2)(b)(ii), *namely*, whether the award is in conflict with the public policy of India.

48. The significant facet of Section 34 of the A&C Act, namely, "*conflict with the public policy of India*", which constitutes the core fulcrum for testing an arbitral award arising out of an International Commercial Arbitration, has been comprehensively explained and authoritatively summarised by a three-Judge Bench of the Hon'ble Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[8].

49. The said judgment, after undertaking an exhaustive examination of a catena of prior decisions rendered on the subject, lucidly delineates the contours, limitations, and permissible extent of judicial interference on the ground of "*public policy of India*", particularly after the amendments introduced by the Arbitration and Conciliation (Amendment) Act, 2015.

50. The Hon'ble Supreme Court, in that Judgment, while summarising the legal position in paragraphs 55 and 56 of the said judgment, reiterated that following the 2015 Amendments to Sections 34(2)(b)(ii) and 48(2)(b) of the A&C Act, the expression "*conflict with the public policy of India*" has been accorded a narrow and restricted interpretation, and since mere contravention of law is insufficient to invalidate an arbitral award unless such contravention affects the fundamental policy of Indian law governing the administration of justice and enforcement of law, only violations such as breach of natural justice, disregard of binding judgments or orders of superior courts, or contravention of laws linked to public interest or

[8] (2025) 2 SCC 417

public good may justify interference, though even such scrutiny cannot extend into a review on merits. Certain pertinent observations from ***OPG Power*** (*supra*) are reproduced hereunder:

> *"**Public policy***
> **31.** "Public policy" is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.
> *****
> **36.** In fact, in ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644]**, this Court was dealing with the enforceability of a foreign award. For that end, it had to interpret the expression "contrary to public policy" in the context of Section 7(1)(*b*)(*ii*) of the Foreign Awards (Recognition and Enforcement) Act, 1961. While doing so, this Court held that:
> (*a*) contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required [***Renusagar Power Co. case*, 1994 Supp (1) SCC 644, para 65**]; and
> (*b*) the expression "public policy" must be construed in the sense the doctrine of public policy is applied in the field of private international law.
> Applying the said criteria, it was held that enforcement of a foreign award could be refused on the ground of being contrary to public policy if such enforcement would be contrary to:
> (*a*) fundamental policy of Indian law, or
> (*b*) the interests of India, or
> (*c*) justice or morality [***Renusagar Power Co. case*, 1994 Supp (1) SCC 644, para 66**].
> The Court thereafter proceeded to hold that a contravention of the provisions of the Foreign Exchange Regulation Act would be contrary to the public policy of India as that statute is enacted for the national economic interest to ensure that the nation does not lose foreign exchange which is essential for the economic survival of the nation [***Renusagar Power Co. case*, 1994 Supp (1) SCC 644, para 75**].
> **37.** What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.
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> **41.** In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49**, a two-Judge Bench of this Court, held that *audi alteram partem* principle is

undoubtedly a fundamental juristic principle in Indian law and is enshrined in Sections 18 and 34(2)(*a*)(*iii*) of the 1996 Act. In addition to the earlier recognised principles forming fundamental policy of Indian law, it was held that disregarding:

(*a*) orders of superior courts in India; and

(*b*) the binding effect of the judgment of a superior court would also be regarded as being contrary to the fundamental policy of Indian law [See ***Associate Builders case*, (2015) 3 SCC 49, para 27**].

Further, elaborating upon the third juristic principle (i.e. qua perversity), as laid down in ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263**, it was observed that where:

(*i*) a finding is based on no evidence; or

(*ii*) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(*iii*) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse [***Associate Builders case*, (2015) 3 SCC 49, para 31**].

To this a caveat was added by observing that when a court applies the "public policy test" to an arbitration award, it does not act as a court of appeal and, consequently, errors of fact cannot be corrected; and a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score. Thus, once it is found that the arbitrator's approach is not arbitrary or capricious, it is to be taken as the last word on facts [***Associate Builders case*, (2015) 3 SCC 49, para 33**] .

The 2015 Amendment in Sections 34 and 48

42. The aforementioned judicial pronouncements were all prior to the 2015 Amendment. Notably, prior to the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not used by the legislature in either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*). The pre-amended Section 34(2)(*b*)(*ii*) and its Explanation read:

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44. By the 2015 Amendment, in place of the old Explanation to Section 34(2)(*b*)(*ii*), *Explanations 1 and 2* were added to remove any doubt as to when an arbitral award is in conflict with the public policy of India.

45. At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly substituted/added Explanations would apply [***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

46. The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*), in place of the earlier Explanation. The significance of the newly inserted *Explanation 1* in both the sections is two-fold. First, it does away with the use of words: (*a*) "*without prejudice to the generality of sub-clause (ii)*" in the opening part of the pre-amended Explanation to Section 34(2)(b)(ii); and (b) "*without prejudice to the generality of clause (b) of this section*" in the opening part of the pre-amended Explanation to Section 48(2)(*b*); secondly, it limits the expanse of public policy of India to the three specified categories by using the words "*only if*". Whereas, *Explanation 2* lays down the standard for adjudging whether there is a contravention with the fundamental policy of Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*) of the 1996 Act.

47. The 2015 Amendment by inserting sub-section (2-A) in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

48. *Explanation 1* to Section 34(2)(*b*)(*ii*), specifies that an arbitral 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.

49. In the instant case, there is no allegation that the making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 or Section 81. Therefore, we shall confine our exercise in assessing as to whether the arbitral award is in contravention with the fundamental policy of Indian law, and/or whether it conflicts with the most basic notions of morality or justice. Additionally, in the light of the provisions of sub-section (2-A) of Section 34, we shall examine whether there is any patent illegality on the face of the award.

50. Before undertaking the aforesaid exercise, it would be apposite to consider as to how the expressions:

(*a*) "in contravention with the fundamental policy of Indian law";

(*b*) "in conflict with the most basic notions of morality or justice"; and

(*c*) "patent illegality" have been construed.

In contravention with the fundamental policy of Indian law

51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

(*a*) the fundamental policy of Indian law; and/or

(*b*) the interest of India; and/or

(*c*) justice or morality.

52. In the judicial pronouncements that followed ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, already discussed above, the domain of what could be considered contrary to the "public policy of India"/"fundamental policy of Indian law" expanded, resulting in much greater interference with arbitral awards than what the lawmakers intended. This led to the 2015 Amendment in the 1996 Act.

53. In ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**, this Court dealt with the effect of the 2015 Amendment. While doing so, it took note of a supplementary report of February 2015 of the Law Commission of India made in the context of the proposed 2015 Amendments. The said supplementary report has been extracted in para 30 of that judgment. The key features of it are summarised below:

(*a*) Mere violation of law of India would not be a violation of public policy in cases of international commercial arbitrations held in India.

(*b*) The proposed 2015 Amendments in the 1996 Act [i.e. in Sections 34(2)(*b*)(*ii*) and 48(2)(*b*) including insertion of sub-section (2-A) in Section 34] were on the assumption that the terms, such as, "fundamental policy of Indian law" or conflict with "most basic notions of morality or justice" would not be widely construed.

(*c*) The power to review an award on merits is contrary to the object of the Act and international practice.

(*d*) The judgment in ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263** would expand the court's power, contrary to international practice. Hence, a clarification needs to be incorporated to ensure that the term "fundamental policy of Indian law" is narrowly construed. The applicability of ***Wednesbury* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)]** principles to public policy will open the floodgates. Hence, Explanation 2 to Section 34(2)(*b*)(*ii*) has been proposed.

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55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of *Explanation 1*. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(*a*) violation of the principles of natural justice;

(*b*) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and

(*c*) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in *Explanation 2* to Section 34(2)(*b*)(*ii*)."

(emphasis supplied)

51. Accordingly, the scope of enquiry before this Court is confined to examining whether the learned Arbitrator correctly appreciated, interpreted, and applied the mandatory jurisdictional requirements embodied in Clause 4 read conjointly with Clause 7 of the INDRP, and whether the essential conditions stipulated therein stood independently, objectively, and substantively satisfied prior to directing transfer of the Subject Domain Name in favour of the Respondent under the Impugned Arbitral Award.

52. At this stage, it is necessary to note that the INDRP constitutes a dispute resolution mechanism formulated by NIXI for adjudicating disputes concerning ".in" and ".Bharat" domain names. The policy is

substantially modelled on the internationally recognised **Internet Corporation for Assigned Names and Numbers**[9] formulated by **Uniform Domain Name Dispute Resolution Policy**[10], which governs domain name disputes across jurisdictions.

53. The principal object of the INDRP is to provide a speedy, efficient, and cost-effective mechanism for resolving disputes arising out of abusive, dishonest, or unauthorized registration and use of domain names, commonly referred to as "*cybersquatting*". The policy seeks to safeguard the legitimate rights and commercial interests of trademark owners, business entities, and individuals against bad-faith registration or misuse of domain names that are identical or confusingly similar to their trademarks, trade names, or service marks.

54. Under the framework of the INDRP, a complainant may institute proceedings before NIXI alleging unlawful registration or use of a domain name. Such disputes are adjudicated by an independent Arbitrator appointed in accordance with the policy and the rules made thereunder.

55. The remedies contemplated under the INDRP are primarily limited to cancellation or transfer of the disputed domain name. The mechanism, therefore, operates as an important protective instrument within India's digital and commercial ecosystem by ensuring fairness, preserving consumer confidence, and protecting intellectual property and business goodwill in the online sphere.

56. A bare reading of INDRP makes it evident that the INDRP constitutes the governing legal framework for the adjudication of disputes concerning abusive or unauthorized registration and use of

[9] Known as ICANN
[10] Known as UDRP

specified domain names. The policy not only provides the procedural mechanism for the resolution of such disputes, but also prescribes substantive jurisdictional conditions that must necessarily be fulfilled by a complainant before any relief can be granted. Consequently, compliance with the requirements embodied therein is mandatory, and the learned Arbitrator is required to objectively satisfy himself that the conditions prescribed under the policy stand duly established before directing cancellation or transfer of a domain name. Failure to adhere to such mandatory requirements would necessarily entail legal consequences affecting the validity and sustainability of the award rendered thereunder.

57. The provisions contained in the INDRP are intended to prevent misuse of domain names and online identifiers by persons seeking to unfairly exploit another's trademark, brand identity, business reputation, or commercial goodwill. Clause 4 of the INDRP delineates the circumstances under which a complaint may be maintained before the INDRP authority.

58. It provides that a complainant may challenge a domain name where: (*i*) the disputed domain name is identical or confusingly similar to a trademark or business name in which the complainant possesses rights; and (*ii*) the registrant lacks any genuine or legitimate interest in the domain name; and (*iii*) the domain name has been registered or is being used in bad faith. All three requirements are required to co-exist and be independently established before relief may be granted.

59. Clause 6 of the INDRP, which bears direct linkage with the second requirement contained in Clause 4 of the INDRP relating to

the "*Registrant's Rights and Legitimate Interests in the Domain Name*", operates as a safeguard in favour of *bona fide* registrants. The provision explains the circumstances in which a registrant may legitimately claim entitlement to retain the disputed domain name. A registrant may successfully resist a complaint by demonstrating, *inter alia*, that the domain name was being genuinely used in connection with a lawful business or service prior to the dispute, that the registrant has become commonly known by the disputed name, or that the domain name is being used fairly and legitimately without any intent to mislead consumers or derive unfair commercial gain. Clause 6 of the INDRP, therefore, protects honest and legitimate use of domain names and prevents arbitrary deprivation of lawful registrants' rights merely on the basis of a trademark claim.

60. Similarly, Clause 7 of the INDRP elucidates the third jurisdictional element contemplated under Clause 4 of the INDRP, namely "*bad faith*" registration or use of a domain name. The provision sets out illustrative circumstances that may constitute evidence of bad faith. A registrant may be regarded as acting in bad faith where the domain name has been acquired primarily for the purpose of selling or transferring it to the trademark owner for excessive consideration, preventing the rightful owner from reflecting its mark in a corresponding domain name, misleading internet users by creating confusion as to source or affiliation, or disrupting the business activities of a competitor.

61. These provisions are intrinsically interconnected and must be read harmoniously. While Clause 4 of the INDRP prescribes the foundational grounds upon which a complaint may be preferred,

Clause 6 of the INDRP delineates the legitimate defences available to a registrant, and Clause 7 of the INDRP provides the guiding parameters for determining whether the conduct of the registrant is dishonest, abusive, or tainted by bad faith. Collectively, these provisions form the substantive jurisdictional framework governing adjudication under the INDRP.

62. At this stage, it is apposite to reproduce the relevant provisions of the INDRP governing the present dispute, *namely*, Clauses 4 and 7, upon which substantial reliance has been placed by the parties, which are as follows:

> "**4. Class of Disputes**
> 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 on the following premises:
> (a) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
> (b) the Registrant has no rights or legitimate interests in respect of the domain name; and
> (c) the Registrant's domain name has been registered or is being used in bad faith."
>
> *****
>
> "**7. Evidence of Registration and use of Domain Name in Bad Faith**
> For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the Registration and use of a domain name in bad faith:
> (a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the Trademark or Service Mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or
> (b) the Registrant has registered the domain name in order to prevent the owner of the Trademark or Service Mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location; or

(d) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor."

63. The gravamen of the Petitioners' challenge pertains to the manner in which the learned Arbitrator interpreted and applied Clause 4(c) read conjointly with Clause 7 of the INDRP. According to the Petitioners, the Impugned Arbitral Award effectively proceeds on the premise that once confusing similarity under Clause 4(a) stood established, the requirement of bad faith under Clause 4(c) automatically stood satisfied.

64. In the considered opinion of this Court, the aforesaid challenge cannot be characterised as a mere disagreement with the factual appreciation undertaken by the learned Arbitrator. Rather, the challenge strikes at the foundational structure and jurisdictional architecture of the INDRP framework itself. The Petitioners essentially contend that the learned Arbitrator failed to undertake the independent legal examination mandated under the policy before arriving at a conclusion of bad faith.

65. A plain reading of Clause 4 of the INDRP makes it abundantly clear that all the three ingredients as set out in Clause 4 would require to be satisfied in order for the complaint to be maintainable. Absent any one of the conditions enumerated therein, the complaint would fail to qualify for the grant of the remedies available under Clause 11 of the INDRP. The requirement of bad faith under Clause 4(c) constitutes an independent, substantive, and jurisdictional condition

precedent for directing transfer or cancellation of a domain name. The requirement cannot be diluted into a mere automatic consequence flowing from the existence of confusing similarity under Clause 4(a) of the INDRP.

66. In the opinion of this Court, domain name disputes frequently involve compatibility-based references, nominative usage, descriptive adoption, interoperability claims, or functional descriptions, all of which may give rise to some degree of similarity without necessarily disclosing *mala fide* conduct or dishonest intention. It is precisely for this reason that the framers of the INDRP consciously incorporated Clause 4(c) as a distinct safeguard requiring an independent examination into *mala fide* intent, deliberate deception, or dishonest exploitation of another's goodwill. If confusing similarity alone were sufficient to sustain a finding of bad faith, the separate jurisdictional safeguard embodied in Clause 4(c) would stand rendered wholly otiose and redundant.

67. The aforesaid position becomes even more apparent upon a conjoint reading of Clause 4(c) with Clause 7 of the INDRP.

68. Clause 7 of the INDRP does not proceed on the premise that every confusingly similar domain name *ipso facto* constitutes bad faith. On the contrary, the provision repeatedly emphasises intentional and deliberate conduct on the part of the registrant.

69. Clauses 7(c) and 7(d) of the INDRP, in particular, contemplate situations where the registrant intentionally attempts to attract internet users for commercial gain by creating confusion as to source, sponsorship, affiliation, or endorsement, or where the registration is

undertaken primarily for the purpose of disrupting the business of a competitor.

70. The common thread running through the aforesaid provisions is, therefore, not the mere existence of confusion in the abstract, but the intentional exploitation of such confusion through dishonest conduct aimed at deriving unfair commercial advantage or causing commercial prejudice.

71. In the considered opinion of this Court, the expressions employed under Clause 7 of the INDRP, such as "*intentionally attempted*", "*affiliation*", "*endorsement*", "*disrupting the business of a competitor*", and "*in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name*", are not ornamental phrases. They constitute substantive indicators of the degree and nature of conduct required before a finding of bad faith can legally be sustained. The architecture of Clause 7 thus makes it abundantly clear that bad faith under the INDRP framework is rooted in demonstrable intention, deliberate deception, and conscious exploitation of another's commercial goodwill.

72. Mere incorporation of a prior trademark within a domain name, absent surrounding circumstances evidencing intentional deception, diversion, or dishonest commercial exploitation, would not by itself satisfy the threshold contemplated under Clause 4(c) of the INDRP. To hold otherwise would amount to treating every instance of similarity as synonymous with bad faith, thereby collapsing the carefully demarcated distinctions consciously embedded within the INDRP framework. All the sub clauses of Clause 4 are conjunctive

and become so by the insertion of the conjunction "and" between the independent sub-clauses. In the event that a remedy were to be granted on the satisfaction of only any of the conditions set out therein, without fulfilling the requirements of the remainder of the sub-clauses, the same would result in a rewriting of the rules and result in the reading down of the conjunction "and" to "or".

73. In reality, if every situation where a registrant's domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights were, by itself, sufficient to establish bad faith, Clause 7 of the INDRP would become entirely redundant. In such a circumstance, there would have been no necessity for the policy to separately prescribe illustrative indicators and mandatory parameters for determining "*registration and use of a domain name in bad faith*". The very existence of Clause 7 of the INDRP demonstrates that confusing similarity and bad faith are distinct juridical requirements requiring separate examination.

74. It is important to note that, unlike Trade Mark law where the determination of infringement or deceptive similarity ordinarily does not require a specific inquiry into the *mens rea* underlying the adoption or use of a mark, the INDRP framework expressly contemplates and mandates the establishment of bad faith as a foundational requirement. In other words, while Trade Mark jurisprudence may proceed on the basis of likelihood of confusion simpliciter, the INDRP regime requires a qualitatively distinct examination directed towards the intention, conduct and surrounding circumstances attributable to the registrant. The analytical standards governing the two regimes are therefore fundamentally different.

Consequently, any adjudication under the INDRP which proceeds merely on the basis of similarity or likelihood of confusion, without independently examining and recording a finding on the existence of bad faith or *mala fide* intent, would fail to satisfy the mandatory requirements of the INDRP framework and, to the mind of this Court, would strike at its very foundation.

75. Turning now to the examination undertaken by the learned Arbitrator in the Impugned Arbitral Award, this Court finds substantial merit in the Petitioners' submission that the Award does not independently undertake the evaluative exercise mandated under Clause 4(c) read with Clause 7 of the INDRP. Though the Impugned Arbitral Award contains a separate heading dealing with "*Bad Faith*", the analysis thereunder does not appear to reflect strict or substantive compliance with the requirements contemplated under the INDRP framework.

76. Upon examination of the Impugned Arbitral Award, this Court finds that the learned Arbitrator has principally rested the conclusion under Clause 4(c) of the INDRP upon the likelihood of confusion arising from the incorporation of the Respondent's mark within the Subject Domain Name. However, the Award does not proceed further to independently examine whether such a likelihood of confusion was intentionally created or consciously exploited by the Petitioners in the manner specifically contemplated under Clauses 7(c) and 7(d) of the INDRP. It is pertinent to note that the finding of bad faith in the Impugned Arbitral Award has been premised purportedly on Clauses 7(c) and 7(d) of the INDRP.

77. These clauses specifically require a finding that the registrant intentionally attempted to attract internet users to its website or online location by creating confusion regarding source, sponsorship, affiliation, or endorsement, or that the domain name was registered primarily for the purpose of disrupting the business of a competitor. The existence of confusion simpliciter is therefore not sufficient; the policy mandates an independent finding of deliberate intent and dishonest commercial objective.

78. The analysis contained in the Impugned Arbitral Award, however, substantially remains confined to two aspects, *namely*, the subsequent registration of the disputed domain name *vis-à-vis* the Respondent's mark, and the possibility of association or confusion with the Respondent's trademark. The Impugned Arbitral Award does not disclose any substantive evaluation regarding deliberate intent, intentional diversion for commercial gain, calculated disruption of the Respondent's business, or conscious exploitation of the Respondent's goodwill, as contemplated under Clauses 7(c) and 7(d) of the INDRP. The relevant portions of the Impugned Arbitral Award read as follows:

> **Respondent's disputed domain name confusingly similar to Complainant's trade mark**
> **13.** The trade mark and tradename of the Complainant are prior to the registration of the disputed domain name. The EXCEL mark is used in respect of a spreadsheet software program developed by the Complainant and was first adopted and used as a trade mark in the year 1985.
> **14.** The Complainant is successful in showing the prior use of its registered trademark EXCEL which is much prior to the registration/creation of the disputed domain name.
> **15.** It is well established law that the specific top-level domain such as .com, 'net', '.net', 'in' etc does not affect the domain name for the purpose of determining whether it is identical or confusingly similar (*Relevant decision:- Rollerblade, Inc. v. Chris McCrady*). Therefore, TLD .in' is to be disregarded while

comparing the disputed domain name with the trademark of the Complainant. When the trade mark EXCEL of the Complainant and the disputed domain name (<exceltotally.in) are considered, there is no doubt that the disputed domain name is confusingly similar to the registered trade mark of the Complainant.

16. The registered trade mark of the Complainant is prior in use. The applications for the registration for trade mark EXCEL were filed much prior to the registration of the disputed domain name. The Respondent cannot be said to be unaware about the trade mark EXCEL of the Complainant.

17. Moreover, the disputed domain name includes the whole of the prior used trade mark EXCEL. A domain name which wholly incorporates a Complainant's mark may be sufficient to establish deceptive similarity, despite the addition of other words to such marks. [***Living Media, Limited v. India Services, Case No. D2000-0973***]

18. In view of foregoing, it is apparent that the disputed domain name is confusingly similar to the registered trade mark, the domain name and trade name of the Complainant. Therefore, The Complainant has established its case under paragraph 4 (a) of the INDRP.

Respondent has no rights or legitimate interests in disputed domain name

19. The Respondent has used the disputed domain name which is similar to the domain name and registered trade mark of the Complainant. The Respondent is not commonly known by the domain name. Furthermore, the registration of the disputed domain name is created and used without any consent of the Complainant.

20. An email dated 30.10.2025 was sent by the Respondent to the advocate of the Complainant whereby the Respondent stated that:

> *"We would also like to clarify that the broader wording used in the 2023 "EXCEL TO TALLY" trademark application (covering software development, networking, and related services) was submitted by our agent in error. Our actual intent, consistent with our earlier 2012 filing (application no. 2350180), was only to describe our core business (data migration software and services) not to claim any association or overlap with Microsoft's products or trademarks.*
>
> *We have already withdrawn the "Excel to Tally" trademark application and provided our signed undertaking confirming our position and commitments. The website content has been updated so that the phrase "Excel to Tally" is used only in a descriptive context to explain functionality and is accompanied by clear disclaimers that we are independent and not endorsed by Microsoft.*

We derive no commercial advantage from any association with Microsoft's brand. Given our legitimate business interests and the descriptive nature of our usage, we do not intend to transfer or cancel the domain. We believe our current position fully addresses any genuine concerns while preserving our business operations."

21. Despite the undertaking mentioned in the said email of the Respondent, the disputed domain name is similar to the trade mark EXCEL of the Complainant which was used by the Respondent. Furthermore, the said email irrevocably shows that the Respondent is much aware about the prior used trade mark of the Complainant and reputation and goodwill thereof.

22. The domain names do come under the purview of trade mark law. In **Yahoo! Inc. v. Akash Arora & Anr., 1999 (19) PTC 201 (Del)**, the Delhi High Court held that use of a deceptively similar mark in a domain name amounts to passing off, as domain names serve the same function as trademarks. In **Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd., (2004) 6 SCC 145** the Hon'ble Supreme Court confirmed that domain names are business identifiers entitled to the same legal protection as trademarks. **Rediff Communication Ltd. v. Cyberbooth & Anr., 1999 (4) Bom CR 278** - Bombay High Court held that domain names are valuable corporate assets and must be protected against misuse. Therefore, the Respondent cannot be allowed to use the trade mark of the Complainant in its domain name.

23. The disputed domain name is such that it makes an association with the Complainant which can never be termed as legitimate use of the disputed domain name. The disputed domain name uses in its disputed domain name the trade mark EXCEL.

24. The Respondent cannot be said to have any legitimate right or interest in the disputed domain name which is confusingly similar the prior used trade mark of the Complainant.

25. The Respondent is not known by the disputed domain name. The Respondent did not file any reply to the Complaint filed by the Complainant despite multiple opportunities.

26. The Complainant has been using the trade mark EXCEL which was registered is international domains much prior to the registration of the disputed domain name.

27. Therefore, the Respondent/Registrant has no rights or legitimate interests in respect of the disputed domain name. The Complainant has established its case under paragraph 4 (b) of the INDRP.

Bad Faith *(sic)*

28. The registration of the disputed domain name affects the rights of the Complainant vis-à-vis complainant's domain names and its registered trade mark. Therefore, the Complainant's right to

exclusively use its domain name and its trade marks is affected by the registration of the disputed domain name.

29. The disputed domain name will negatively affect the goodwill and reputation of the Complainant thereby disrupting business of the Complainant. Therefore, the registration of the disputed domain name is in bad faith according to paragraph 7(d) of the INDRP.

30. The Respondent registered the disputed domain name much subsequent to the use and international registrations of the domain name of the Complainant. The said registration of the disputed domain name is in bad faith to confuse internet users as to a possible association between the disputed domain name and the Complainant. The registration of the disputed domain name is in bad faith according to paragraph 7(c) of the INDRP.

31. In view of foregoing, it is apparent that the registration of the disputed domain name is in bad faith to hurt the commercial activity of the Complainant. The Complainant has established its case under paragraph 4 (c) of the INDRP.

Decision

In view of the foregoing, it is ordered that the disputed domain name <exceltotally.in> be transferred to the Complainant from the Respondent. Parties are ordered to bear the cost of the present proceedings.

(emphasis supplied)

79. In the considered opinion of this Court, the reasoning adopted in the Impugned Arbitral Award effectively reduces Clause 4(c) of the INDRP to a mere corollary or appendage of Clause 4(a). Such an approach, if accepted, would fundamentally alter the carefully structured scheme of the INDRP and obliterate the clear distinction consciously maintained between the concepts of "*confusing similarity*" and "*bad faith*". The distinction between the two is neither superficial nor merely semantic in nature; rather, it is substantive, jurisdictional, and foundational to the adjudicatory framework contemplated under the policy.

80. In the opinion of this Court, while similarity may give rise to the possibility of confusion, a finding of bad faith necessarily requires

something more, *namely*, cogent material demonstrating that such confusion was intentionally engineered, consciously exploited, or deliberately leveraged for obtaining an unfair commercial advantage or for causing commercial prejudice to the complainant. Mere existence of similarity, howsoever strong, cannot by itself substitute the independent jurisdictional requirement of establishing *mala fide* intent.

81. The distinction may appropriately be understood as akin to the distinction between resemblance and deception. Resemblance may arise incidentally, descriptively, functionally, or even legitimately in the course of commercial activity, particularly in cases involving compatibility references, descriptive expressions, nominative use, or interoperability claims. Deception, however, necessarily imports an element of intention, *namely*, a conscious design to mislead, divert, confuse, or unfairly capitalize upon another's goodwill and reputation. It is precisely this additional element of deliberate exploitation and dishonest intention that Clause 7 of the INDRP obligates the complainant to independently establish, through objective circumstances and surrounding material, before a finding of bad faith can legally be sustained.

82. The structure of Clause 7 of the INDRP itself reinforces this interpretation. The repeated use of expressions such as "*intentionally attempted*", "*creating a likelihood of confusion*", "*affiliation*", "*endorsement*", "*commercial gain*", and "*disrupting the business of a competitor*" clearly demonstrates that the policy contemplates an inquiry extending beyond the mere existence of similarity. The emphasis throughout the provision is upon intentional conduct and

calculated misuse of another's mark or reputation. Consequently, the jurisdictional threshold contemplated under Clause 4(c) of the INDRP cannot be said to stand satisfied merely because a domain name incorporates or resembles a prior trademark.

83. A further perusal of the Impugned Arbitral Award reveals that the governing framework of the INDRP, to which the Respondent herein had consciously subjected itself for adjudication of the present dispute, has not been applied in the manner contemplated under the policy itself. The Impugned Arbitral Award does not disclose any meaningful or independent examination of the Petitioners' alleged intent to intentionally divert internet users, dishonestly exploit the Respondent's goodwill, derive unfair commercial benefit, or deliberately disrupt the Respondent's business operations within the parameters contemplated under Clause 7(c) and 7(d) of the INDRP.

84. Consequently, the Impugned Arbitral Award fails to demonstrate substantive compliance with the mandatory jurisdictional requirements governing adjudication under the INDRP framework. The policy mandates not merely a finding of similarity, but an independent and reasoned determination that the registrant's conduct satisfies the threshold of bad faith as specifically contemplated under Clause 7 of the INDRP. In the absence of such an evaluative exercise, the conclusion reached under Clause 4(c) of the INDRP cannot be said to reflect a legally sustainable application of the governing framework under which the dispute itself was adjudicated.

85. This Court also takes note that the reliance placed by the Respondent herein upon ***Quantum University*** *(supra)* is misplaced. In the said decision, the finding of bad faith was sustained upon an

independent appreciation of the surrounding circumstances and material, evidencing deliberate *mala fide* intent, intentional diversion of internet users and conscious exploitation of the complainant's goodwill.

86. The Co-ordinate Bench in ***Quantum University*** *(supra)* specifically noticed material demonstrating knowledge of the complainant's prior rights and intentional creation of misleading association before affirming the conclusion under Clause 7 of the INDRP Rules. The said judgment, therefore, cannot be construed as laying down that bad faith automatically follows upon proof of confusing similarity or that the independent jurisdictional requirement under Clause 4(c) of the INDRP stands dispensed with. The relevant portions of ***Quantum University*** *(supra)* appreciating the existence of bad faith are reproduced herein below:

> "**(xxxvii)** In arriving at a conclusion that the registration and use of the impugned domain name www.quantumuniversity.edu.in, by the petitioner, was vitiated by bad faith, the learned Arbitrator has noted that
>
> (a) admittedly, the respondent had several domain names of which "quantum university" was a part, used in relation to online educational services were provided worldwide,
>
> (b) the mark "Quantum University" of the respondent also stood registered with the USPTO,
>
> (c) the petitioner was, therefore, well aware of the services provided by the respondent while seeking registration of the domain name www.quantumuniversity.edu.in,
>
> (d) Clause 3 of the INDRP obligated the petitioner to declare that the registration of the domain name www.quantumuniversity.edu.in would not infringe upon or violate the rights of any third party,
>
> (e) the petitioner had not denied the fact that it knew and had knowledge of the domain names of the respondent, as pleaded in the complaint instituted by the respondent before the .IN Registry, and
>
> (f) the petitioner, therefore, clearly registered the www.quantumuniversity.edu.in domain name with

> an obvious intent to attract internet users to the petitioner's website by creating a likelihood of confusion with the respondent's name.

(xxxviii) These findings of the learned Arbitrator clearly attract sub-clause (c) of Clause 7 of the INDRP. The said sub-clause applies where a registrant intentionally attempts to attract internet users to its website by creating a likelihood of confusion with the name of the prior registrant as to the source, sponsorship, affiliation or endorsement of the registrant website or the location of a product or a service on the registrant website or location. As such, the registration of use of a domain name, with an intent to attract internet users to the registrant's website or location by creating a likelihood of confusion ipso facto amounts to registration and use of the domain name in bad faith.

(xxxix) Based on the above undisputed facts, the learned Arbitrator has, in para 79(c)(vii) to (xii), concluded that the petitioner had in fact intentionally attempted to attract internet users to its website and had created a likelihood of confusion by using the domain name www.quantumuniversity.edu.in in the full (presumed) knowledge of the fact that the respondent was a prior registrant of the domain name www.quantumuniversity.com and a number of other quantum university formative domain names, registered prior in point of time.

(xl) This, again, is a finding of fact based on an appreciation of the material on record. It cannot be said that the finding suffers from perversity or patent illegality. The question of whether the petitioner was, or was not, acting intentionally with a view to confuse internet users by adopting a deceptively similar domain name is essentially a matter of discretion of the learned Arbitrator. Such a discretionary finding cannot brook interference under Section 34 of the 1996 Act unless it is completely perverse. The Court, in exercise of jurisdiction vested in it by Section 34 of the 1996, cannot venture into a re-appreciation of the facts and arrive at its own subjective satisfaction as to whether they make out, or do not make out, a case of intentional diversion of internet users by adoption of a deceptively similar domain name.

(xli) So long as the findings of the learned Arbitrator in that regard do not suffer from perversity or by the illegality, the matter must rest there. The Court in exercise of its jurisdiction under Section 34 of the 1996 Act, cannot itself venture into the factual thicket to arrive at its own decision regarding the satisfaction of the ingredients which are required to be satisfied.

(xIii) The findings of the learned Arbitrator on this score do not, in my opinion, suffer either from perversity or patent illegality, so as to justify interference by the court under Section 34 of the 1996 Act."

87. In view of the aforesaid discussion, the Impugned Arbitral Award suffers from a foundational infirmity inasmuch as the essential requirement of "*bad faith*" under Clause 4(c) of the INDRP was not independently established prior to directing transfer of the Subject Domain Name. Although the learned Arbitrator returned findings regarding confusing similarity between the disputed domain name and the Respondent's mark, the Impugned Arbitral Award does not disclose any distinct substantive evidentiary scrutiny directed towards determining the existence of deliberate intent, intentional diversion of internet users for commercial gain, conscious deception, or *mala fide* exploitation of the Respondent's goodwill.

88. The analysis undertaken in the Impugned Arbitral Award substantially proceeds on the assumption that the existence of confusing similarity itself was sufficient to sustain a finding of bad faith. Such an approach materially dilutes the cumulative and compartmentalised structure consciously embedded within the INDRP framework and effectively collapses separate and independent jurisdictional requirements into one another. The scheme of the INDRP, however, requires each constituent ingredient under Clause 4 of the INDRP to be independently and substantively established before the consequence of transfer or cancellation of a domain name may legally follow.

89. In the considered opinion of this Court, the aforesaid defect is not merely one relating to factual appreciation or sufficiency of evidence, but strikes at the legality and sustainability of the arbitral determination itself. Once the governing framework expressly mandates independent satisfaction of each jurisdictional requirement

before the transfer of a domain name can be directed, failure to establish one such foundational ingredient necessarily renders the decision-making process itself legally unsustainable. The defect, therefore, transcends the realm of factual disagreement and enters the domain of jurisdictional illegality and non-compliance with the governing legal framework applicable to the dispute.

90. The Impugned Arbitral Award consequently falls foul of the limited public policy scrutiny permissible under Section 34(2)(b)(ii) of the A&C Act, as elucidated in ***OPG Power*** (*supra*), particularly insofar as it concerns adherence to the fundamental legal framework governing adjudication of the dispute. Where the governing legal regime expressly mandates the determination of specific jurisdictional and substantive conditions in a prescribed manner, a failure to undertake such determination in accordance with the governing framework cannot be relegated to the category of a mere error within jurisdiction. Such a defect strikes at the legality of the decision-making process itself.

91. It is pertinent to note that the INDRP is not merely a procedural guideline, but a specialised regulatory framework intended to govern and adjudicate disputes relating to a particular class of domain names in a specifically structured manner. The requirements embedded therein, including the mandatory determination of bad faith and the satisfaction of the jurisdictional conditions contemplated under the Policy and Rules, constitute foundational safeguards forming part of the adjudicatory mechanism itself. Consequently, an adjudication rendered in disregard of these mandatory requirements would amount

to a contravention of the governing legal framework underpinning the INDRP regime.

92. Since the INDRP operates within the legal architecture recognised in India and is intended to serve larger considerations of fairness, commercial certainty, and protection of legitimate rights in the digital domain, any decision rendered in violation of its essential requirements would necessarily offend the fundamental policy of Indian law and thereby attract the limited public policy ground contemplated under Section 34(2)(b)(ii) of the A&C Act.

93. This Court further notes that the governing framework of the INDRP not only requires adjudication upon distinct jurisdictional ingredients, but also necessarily contemplates a reasoned determination demonstrating how such requirements stood independently satisfied. The obligation to provide intelligible and adequate reasons is an integral facet of a valid adjudicatory process and constitutes an essential component of the Principles of Natural Justice. The absence of any substantive reasoning demonstrating independent satisfaction of the requirement of bad faith, despite the same constituting a mandatory jurisdictional prerequisite under Clause 4(c) read with Clause 7 of the INDRP, therefore, materially affects the fairness and legality of the adjudicatory process itself.

94. In the present case, the Impugned Arbitral Award does not disclose any independent evaluative analysis establishing intentional deception, conscious diversion of internet users, deliberate exploitation of the Respondent's goodwill, or calculated disruption of the Respondent's business in the manner contemplated under Clause 7 of the INDRP. The conclusion regarding bad faith thus remains

unsupported by the nature of reasoned examination mandated under the governing framework itself. Such absence of reasons in respect of a foundational jurisdictional requirement renders the Award vulnerable to interference under the limited contours of public policy review recognised under Section 34(2)(b)(ii) of the A&C Act.

CONCLUSION:

95. In view of the aforesaid discussion, this Court is of the considered opinion that the Impugned Arbitral Award cannot be sustained insofar as it directs transfer of the Subject Domain Name in favour of the Respondent without an independent, substantive, and evidentiary finding regarding "*bad faith*" as contemplated under Clause 4(c) read with Clause 7 of the INDRP.

96. The present petition is accordingly allowed, and the Impugned Arbitral Award dated 02.03.2026 passed by the learned Arbitrator is set aside.

97. Pending application(s), if any, shall also stand disposed of accordingly.

98. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 29, 2026/sm/kr/ma