



தமிழ்நாடு தமில்நாடு TAMILNADU  
10927  
17.5.2013

*Sridharan*

AL 596644  
J. NELSON  
STAMP VENDOR  
L.No. 12857/B4/98  
HIGH COURT CAMPUS  
CHENNAI 104

BEFORE S SRIDHARAN, SOLE ARBITRATOR

OF NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

DATED: 22<sup>nd</sup> September 2013

Award pronounced at Chennai

SAP AG, Germany

...

Complainant

Versus

Mr. Francis Rapheal, Bangalore

...

Respondent

*Sridharan*

The complainant, SAP AG is a company organized and existing under the laws of Germany having its place of business at Diemel-1000-A-15, Walldorf, Germany  
The Respondent, Mr. Francis Rapheal, Bangalore  
S. Sridharan at B-5/10 Seeringar Enclave, New Delhi - 110 028

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OF NATIONAL INTERNET EXCHANGE OF INDIA**

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**SAP AG, Germany** ... **Complainant**

**Versus**

**Mr. Francis Rapheal, Bangalore** ... **Respondent**

**1. The Parties**

- 1.1 The complainant, SAP AG is a company organized and existing under the laws of Germany having its place of business at Dietmar-Hopp-Allee 16, Walldorf, Germany represented by Rahul Beurar, Subhash.b, Jasneet Kaur, all advocates of Lakshmikumaran & Sridharan at B-6/10 Safdarjung Enclave, New Delhi – 100 029.
- 1.2 Respondent is Mr. Francis Rapheal at No.99-19/2, 2<sup>nd</sup> Main 3<sup>rd</sup> Cross Brindavan Nagar, Chikkadugodi, Bangalore – 5600029.

**The Domain Name and Registrar**

- 1.3 The disputed domain name **<saponline.co.in>** created on 8.5.2011 is registered with Webiq Domains Solutions Pvt Ltd (R131-AFIN).

**2. Procedural History**

- 2.1 On 27<sup>th</sup> August 2013, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On the same day, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.
- 2.2 On 3<sup>rd</sup> September 2013, I received hardcopy of the Complaint.
- 2.3 On 4th September, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. On the same date, I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me. In the same mail I asked the Complainant to submit the following:
- a) The complaint has alternate prayers, 8(a) and 8(b). I advised the complaint to elect the prayer that he wanted me to consider.

*Sridharan*

- b) I have not found any documents except a copy of the Delhi High Court order in support of the complaint. I advised the Complainant to send me copies of documents that he relied on to establish the three elements under Paragraph 4 of INDRP.
- c) I asked the Complainant to send me a copy of the authorization / power of attorney in its favour.

- 2.4 On 10<sup>th</sup> September 2013, I received a mail from NIXI seeking my views on the objection raised by the Counsel for the Complainant. The counsel for the Complainant vide its mail dated 04.09.2013 informed NIXI that I was associated with them as recently as 2012. Further, they have claimed that there is a conflict of interest as the Ld. Arbitrator being an ex-associate of the law firm cannot arbitrate in case where the law firm is the attorney for the complainant/claimant. On these grounds, the Complainant's counsel sought appointment of another arbitrator in my place.
- 2.5 On the same day, I explained in detail my position to NIXI. I reiterated that I have no conflict of interest with either of the parties and the counsel for the Complainant.
- 2.6 On 19<sup>th</sup> September 2013, NIXI by email informed the Counsel for the Complainant that his request to change the Arbitrator in the matter of domain name: [www.saponline.co.in](http://www.saponline.co.in) is uncalled for. The appointed Arbitrator remains an impartial and independent person. For easy reference, I am reproducing the mail of NIXI below:

*"Please refer to your email dated 04.09.2013 requesting NIXI to remove the Ld. Arbitrator Shri S. Sridharan on account of conflict of interest. We at NIXI, in view of these charges sought the views of Shri S.Sridharan in accordance with the principles of natural justice. Submissions made by Shri S.Sridharan were also examined. His submissions included the following:*

- a) *His association with the law firm representing the Complainant came to an end by March 2012;*
- b) *He is currently not on the pay role of the counsel for the complainant or the law firm of the complainant's counsel;*
- c) *The complainant is not his client and that he has not done any work for the complainant;*
- d) *He was not all consulted by the counsel for the complainant regarding anything on this particular matter.*

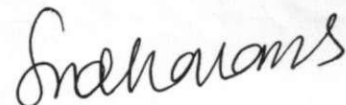
*Sridharan*

*We found that there has not been any specific charges of prejudice and bias against the Ld. Arbitrator in this specific arbitration matter towards any of the parties. Your contention that the Ld. Arbitrator cannot arbitrate in cases where the law firm is the attorney for the claimant. By this logic the Ld.Arbitrator may not be able to ever arbitrate any matter represented by the law firm in question, whether on behalf of the complainant or respondent. Accordingly, your request to change the Ld. Arbitrator in the matter of domain name: [www.saponline.co.in](http://www.saponline.co.in) is uncalled for. The Ld. Arbitrator remains an impartial and independent person."*

- 2.7 On 20<sup>th</sup> September 2013, I informed all by email that I have not received any response from the Respondent. The Complainant has not come up with the details / information sought by me. I would pronounce the award on Sunday, 22.09.2013.
- 2.8 On 21<sup>st</sup> September, the counsel for the Complainant informed me by email that during the pendency of the Arbitration Proceedings, the Respondent has agreed to accept the Petitioner's SAP AG's request to give up the domain name [www. SAPONLINE.CO.IN](http://www.SAPONLINE.CO.IN) in favour of the Complainant. The Complainant agrees to waive its claim of costs from the Respondent.
- 2.9 On the same day, the Respondent by separate email informed me that he has agreed to transfer the website [www.saponline.co.in](http://www.saponline.co.in) in favour of the petitioner SAP AG and the Complainant has given claim of cost from him.
- 2.10 Further, I sent a mail on the same day to the Respondent setting out what I have understood from his mail, i.e. the Respondent has agreed to transfer the domain name [<saponline.co.in>](mailto:saponline.co.in) to the Complainant Company. The Complainant in turn will not claim any cost from the Respondent.
- 2.11 Respondent by his return mail confirmed my understanding.
- 2.12 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

### **3. Decision**

- 3.1 On the basis of the consent expressed by the Respondent to transfer the disputed domain name [<saponline.co.in>](mailto:saponline.co.in) to the Complainant, I order as below:
- 3.2 It is hereby ordered that the disputed domain name [<saponline.co.in>](mailto:saponline.co.in) be transferred to the Complainant.
- 3.3 There shall be no order as to cost.



S.Sridharan  
Arbitrator