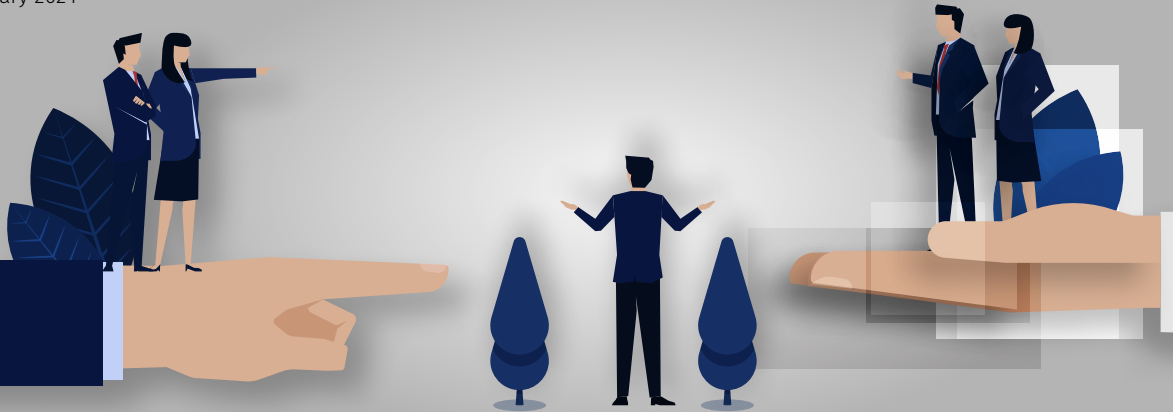


February 2024



High Court of Delhi restrains interference under Section 34 of the Arbitration and Conciliation Act, 1996 in issues relating to the subjective satisfaction of and interpretation of contractual covenants by an arbitral tribunal¹

Brief Facts

The International Quantum University for Integrative Medicine, Hawaii (“**Respondent**”) provides online degrees and certifications to students across the world, under the trade name ‘Quantum University’ that is duly registered with the Department of Commerce and Consumer Affairs, Hawaii with effect from 2009. ‘Quantum University’ is also registered as a trademark with the United States Patent and Trademark Office (“**USPTO**”). The Respondent owns the Secondary Level Domain (“**SLD**”) ‘quantumuniversity’ with various domain extensions, such as ‘quantumuniversity.com’, ‘quantumuniversity.net’, ‘quantumuniversity.education’ and ‘quantumuniversity.online’.

The State of Uttarakhand enacted the Quantum University Act, 2016 (“**QU Act**”) establishing Quantum University (“**Petitioner**”), which was previously known as the Quantum School of Technology, Roorkee. After its establishment as a University, the Petitioner registered the domain name ‘www.quantumuniversity.edu.in’ in 2017.

Aggrieved, the Respondent initiated arbitration proceedings, as provided for in the .IN Domain Name Dispute Resolution Policy (“**INDRP**”). The Respondent sought cancellation of the Petitioner’s domain name before the .IN Registry (established under the INDRP) on the ground that it infringed the Respondent’s ‘quantumuniversity.com’ domain name, which was registered at a prior point in time.

In its arbitral award dated 4 May 2021 (“**Award**”), the sole arbitrator held *inter alia* that the Petitioner’s domain name, ‘www.quantumuniversity.edu.in’, infringed the Respondent’s SLD and ordered cancellation of the Petitioner’s domain name as: (a) it was identical and confusingly similar to the Respondent’s SLD; (b) the Petitioner has no legitimate right or interest over the domain name; and (c) it was registered in bad faith.

The Petitioner challenged the Award under Section 34 of the Arbitration and Conciliation Act, 1996 (“**Act**”) before the High Court of Delhi (“**Court**”) on the following grounds:

- The Petitioner is a prior user of the name ‘Quantum University’, having adopted the name in 2006.
- The Petitioner has been granted permission by the All India Council for Technical Education to open an institution under the said name.
- The QU Act established the Petitioner/Quantum University and therefore, the Award renders the Act and its provisions otiose.
- The University Grants Commission Act, 1956 (“**UGC Act**”) empowers only certain universities/ institutions to confer or grant degrees and as such, the Respondent has not been empowered to do so.

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- The Award is contrary to the provisions of the INDRP as: (a) the domain names are not identical and/or deceptively similar; (b) the Petitioner has legitimate interests and rights in respect of the domain name since the domain name is in connection with the *bona fide* offering of commonly known goods/services, and does not intend to misleadingly divert consumers; and (c) the registration and use of the domain name by the Petitioner was not in bad faith.

In response, the Respondent submitted that: (a) its objection is not to the use of the name 'Quantum University', but to the use of the SLD, 'quantumuniversity'; (b) the arbitration related to domain name infringement and not trademark infringement; (c) neither the QU Act nor the UGC Act confers the Petitioner with the right to use the domain name 'www.quantumuniversity.edu.in' or prohibits the Respondent from use of 'University' in its domain name/mark; and (d) the domain name 'www.quantumuniversity.com' was registered in 2003, which the Respondent purchased in 2007. The Respondent has been registered "Doing Business As" in Hawaii since 2009 and has been certified to use 'Quantum University' as a trademark by the USPTO.

Issue

Whether the Award *vide* which the sole arbitrator addressed the submissions and interpreted the relevant clauses of the INDRP, suffers from patent illegality or perversity, and/or is contrary to the fundamental policy of Indian law, as would justify interference under Section 34 of the Act?

Judgment

The Court dismissed the petition holding that the scope of interference under Section 34 of the Act is heavily circumscribed, and that the Award did not in any manner suffer from patent illegality or perversity, and was not contrary to the fundamental policy of Indian law.

The Court divided the disputes into two broad parentheses:

- Infirmity on account of reasons under the INDRP: The Court found that the provisions of the INDRP are akin to a contract between the parties. As laid down by the Supreme Court in **Hindustan Construction Company Ltd. v. National Highways Authority of India**,² the scope of interference in respect of an arbitrator's interpretation of contractual covenants is limited unless a clause has not been considered or its construction by the arbitral tribunal is so perverse that no ordinary person would so interpret that clause.
- Infirmity on account of reasons outside the INDRP:
 - The Court held that whether the domain names are deceptively/confusingly similar or whether the Petitioner has legitimate interests, or whether the use and registration were in bad faith, are questions of fact and subjective satisfaction. As such, in the absence of perversity on the face of the Award, the Court cannot embark on an examination of fact to see whether a different conclusion can be arrived at or re-examine and arrive at its own subjective satisfaction. Nevertheless, the Court found that as the difference between both domain names is only the extensions, there is every likelihood of a member of the public confusing them.
 - Further, the Award does not compromise the status of the Petitioner in any manner or disentitle it from calling itself 'Quantum University'.
 - Relying on **Satyam Infoway Ltd. v. Siffynet Solutions (P) Ltd.**,³ the Court found that domain name rights have a global character and as such, would be *mutatis mutandis* applicable to the INDRP. The Court therefore held that it is not permissible for a person to use a domain name which is deceptively similar to the domain name used by another person, even if that other person is situated in a different jurisdiction. Prior registration confers a global right to oppose registration of any deceptively similar domain name by anyone across the internet.

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The Court restrained the creation of judicial inroads into arbitration. The Court clarified that absent the standard of perversity or illegality relating to the arbitral tribunal's interpretation of contractual aspects, the law firmly proscribes interference and restricts courts from embarking on their own excursive journey into the covenants of the documents. While the Court did consider the factual disputes with respect to the domain names to some extent, it found that with respect to subjective satisfaction and discretion, or where findings reflect an informed decision of the arbitrator, the award is substantially immune from interference. It is settled that courts cannot embark on a *de novo* examination of facts to see whether it is possible to arrive at a different conclusion. By its analysis, the Court has reinforced the limited scope and power inbuilt under Section 34 of the Act in issues relating to interpretation of contractual covenants and subjective satisfaction of the arbitral tribunal. Simultaneously, key observations with respect to the global nature of domain rights and their protection across the internet and borders have also been made.

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Endnotes

1 Authored by Karan Joseph, Partner and Gawry Cootaiah, Associate; *Quantum University v. International Quantum University for Integrative Medicine Inc.*, O.M.P. (Comm) No. 260/2021, High Court of Delhi, 2023 SCC OnLine Del 8016, judgment dated 13 December 2023.

Coram: C. Hari Shankar, J.

2 2023 SCC OnLine SC 1063.

3 (2004) 6 SCC 145.

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