

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH
I.A. NO. 1228 OF 2021**

IN

COMPANY PETITION (IB) NO. ND.409 (PB) / 2017

IN THE MATTER OF:

Vikram Bajaj (Resolution Professional of Net 4 India Limited) ...Applicant

Versus

Internet Corporation for Assigned Names and Numbers & Others ...Respondents

IN

Edelweiss Asset Reconstruction Co. Ltd ... Financial Creditor

Versus

Net 4 India Limited ...Corporate Debtor

**BRIEF WRITTEN SUBMISSIONS OF RESPONDENT NO. 1 IN THE APPLICATION
UNDER SECTION 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

1. These Submissions (**Submissions**) are being filed by Respondent No. 1 to the present Application (i.e., the Internet Corporation for Assigned Names and Numbers or **ICANN**) in IA No. 1228 of 2021 in CP (IB) NO. ND.409 (PB) of 2017 (**Application**) i.e., filed by the Applicant, Mr. Vikram Bajaj, being the Resolution Professional (**RP**) of Net 4 India Limited (**Corporate Debtor**) under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) against ICANN and Mr. Jasjit Singh Sawhney and Net 4 Network Services Ltd.
2. ICANN has already filed (i) preliminary written submissions (**First Written Submissions**) on 12 March 2021 for the purpose of opposing any ad-interim order, and (ii) Objections dated 15 March 2021 (**Objections**) to the Application. These Submissions are therefore brief and are being filed in furtherance of this Hon'ble Tribunal's Order dated 16 March 2021. The First Written Submissions and Objections must be read as part and parcel along with these Submissions. These Submissions are being filed without prejudice to the ICANN's position that this Hon'ble Tribunal does not have jurisdiction over ICANN or in the present matter.
3. With the filing of these Submissions, ICANN affirmatively requests that this Hon'ble Tribunal issue an order denying the Application as soon as practicable given the serious repercussions that the Corporate Debtor's non-compliances are having on the Internet community and the harm that is being caused on a daily basis to registrants.
4. ICANN submits as follows:

A. OBJECTION AS TO JURISDICTION OF THIS HON'BLE TRIBUNAL

- (a) IBC does not have extra-territorial application: This Hon'ble Tribunal's jurisdiction is defined by Section 1(2) of the IBC. There is no provision which *ipso facto* makes the IBC applicable to foreign parties or contracts governed by foreign law. (**¶ 13-15 of Objections, ¶ 6-8 of First Written Submissions**)
- (b) Territorial jurisdiction of Indian courts excluded by agreement: The RAA contains a jurisdictional clause as per which all issues / litigation arising under the RAA (including ICANN's right to terminate the RAA) must be adjudicated exclusively by the courts at Los Angeles, California. (**¶ 16-17 of Objections, ¶ 9-10 of First Written Submissions**)
- (c) In any event, there is no personal jurisdiction over a foreign entity, and in particular, ICANN: ICANN has no presence in India. It is not registered to do business nor has any

property or bank account or employees in India. (¶ 18-19 of Objections, ¶ 11 of First Written Submissions)

- (d) *In any event, this Hon'ble Tribunal's jurisdiction under the IBC is not invoked in the present case:* The jurisdiction of this Hon'ble Tribunal is available only in limited circumstances when it will result in the corporate death of the corporate debtor, which is not the case in the current proceedings. (¶ 20-25 of Objections, ¶ 12-15 of First Written Submissions)
- (e) *Section 14(2A) of the IBC is not attracted:* Section 14(2A) of the IBC is attracted if only if the RP is able to demonstrate that the contract provides 'critical' goods or services. It is submitted that the RAA is not such a critical contract for Net 4. In any case, the RP does not possess the information to allege this, let alone demonstrate the criticality of the RAA with any cogent evidence. In any case, the termination of contracts supplying critical goods / services is also expressly allowed in case of non-payment of dues during the CIRP period. In the present case, there were continued non-payments by the Corporate Debtor, including as on the Termination Date¹. (¶ 26-27 of Objections, ¶ 16-17 of First Written Submissions)
- (f) Courts must refrain from exercising jurisdiction when enforcement of its orders is doubtful (¶ 28-39 of Objections, ¶ 18-19 of First Written Submissions)

B. THE APPLICATION IS BARRED BY RES JUDICATA/ CONSTRUCTIVE RE JUDICATA

This matter was previously heard, disposed of by this Hon'ble Tribunal in IA No 5761 of 2020, which was disposed of *vide* order dated 25 January 2021. In particular, there was no direction or injunction restraining ICANN from terminating the RAA as requested by the RP. Therefore, the present Application is essentially a re-agitation of the same issues and thus barred by *res judicata* / constructive *res judicata*. (¶ 30-38 of Objections, ¶ 20-24 of First Written Submissions)

C. IN ANY EVENT, THE APPLICATION IS NOT MAINTAINABLE

The Corporate Debtor has been in CIRP for over two years. ICANN is not aware, and the RP has not demonstrated if the Corporate Debtor has sought or has been granted any extension of the prescribed statutory period for CIRP. Therefore, the present Application is not maintainable. (¶ 39 of Objections)

D. CORPORATE DEBTOR'S VARIOUS AND CONTINUOUS BREACHES OF THE RAA

The Corporate Debtor has repeatedly and persistently breached several of its obligations under the RAA since 2019, and they remain uncured despite several opportunities and breach notices. In fact, the Corporate Debtor has still not put in place an SOP as directed by this Hon'ble Tribunal *vide* its Order dated 25 January 2021. The termination was a measure of last resort. (¶ 43-64 of Objections, ¶ 16, 26-31 of First Written Submissions)

E. PUBLIC INTEREST AND BALANCE OF CONVENIENCE

The termination by ICANN was a measure to alleviate harm suffered by thousands of registrants of domain names under the Corporate Debtor's control. The breaches have affected tens of thousands of domain names - many of which are registered by small business owners, educational institutes, and non-profit organisations. There is global scrutiny as to why a defaulting registrar is being allowed to continue.

In fact, letters have been issued by organisations pointing out the harm being caused to the end-user community and expressing concern over the situation with Net 4. Illustratively, a copy of the letter received from CCAOI - non-governmental organization (representing

¹ It is submitted that the non-payment has been subsequently cured (after a period of several months). However, this is entirely irrelevant as the validity of the termination must be assessed by this Hon'ble Tribunal as on the date of the Termination Notice. In any case, it is clarified that the other serious and egregious breaches of the RAA continue as on date.

the internet ecosystem in India and the end user community) is hereby annexed as **Annexure A**.

In contrast, the termination will impinge on just one of the several streams of business available to the Corporate Debtor. The balance of convenience lies in favour of termination. (**¶ 67-72 of Objections, ¶28-31 of First Written Submissions**)

F. ICANN HAS CONSISTENTLY ACTED IN GOOD FAITH

ICANN has extended its continuous cooperation during the CIRP of the Corporate Debtor and did not terminate the RAA despite continuous breaches by the Corporate Debtor and numerous complaints it received from registrants. It also respected the spirit of this Hon'ble Tribunal's order for over a month and did not terminate the RAA despite not being bound by this Hon'ble Tribunal's orders / requests. It was only after being left with no option, and the mounting global-public scrutiny, that ICANN was compelled to terminate the RAA. (**¶43-64 of Objections, ¶31-32 of First Written Submissions**).

5. In view of the serious repercussions that Net 4's non-compliances are having on the internet community and the harm that is being caused on a daily basis to registrants, without prejudice as to all submissions as to jurisdiction, ICANN humbly requests that this Hon'ble Tribunal forthwith vacate the Ad-Interim Order and dismiss the Application filed by the RP with heavy costs, in the interest of justice and equity.
6. Unfortunately, ICANN has not been served with any of the written submissions or Reply / Objections filed by Respondent No. 2 and Respondent No. 3 in the present Application (despite request). ICANN reserves the right to supplement the present written submissions, if required.
7. Finally, ICANN reiterates its request that this Hon'ble Tribunal issue an order denying the Application as soon as practicable given the serious harm being suffered by the Internet community and registrants due to the Corporate Debtor's non-compliances.

TRILEGAL

Advocates for Respondent No. 1



Representing the ecosystem of Internet -Bharat Model

13 March, 2021

Mr. Samiran Gupta
Head of India
ICANN

Sub: Query on the final resolution date of Net4 India Limited case.

Dear Mr. Gupta,

This is with reference to the closure of Net4 India Limited.

The closure of Net4 India Limited has resulted in a loss of livelihood from many small businesses whose website went down or are unable to access or transfer their websites, mail servers etc.

In the last few months, we have received frantic calls from many of their customers including business houses seeking help to retrieve their domain names, websites, etc.

We have read that ICANN has terminated the Registrar Accreditation Agreement (RAA) with Net 4 India Limited and that the Net4 India Limited case is currently with the NCLT Court.

We from CCAOI who represent the Internet ecosystem in India and especially the end user community are extremely concerned at the current situation.

For protecting consumers, it is utmost that issues are resolved at the NCLT Court are resolved at the earliest. In that context **could you indicate by when the final resolution will happen?**

We look forward to your revert and hope the a resolution to this issue will happen at the earliest to protect the interest of the erstwhile Net4India Limited customers who have been suffering for so long.

Sincerely,

On behalf of CCAOI

A handwritten signature in blue ink, appearing to read 'Amrita', with a horizontal line underneath.

Amrita Choudhury
Director

Contact Information Redacted

CCAOI

C/o Awfis Space Solutions, L29-34, Connaught Place, New Delhi -110001. website:www.ccaoi.in