

**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

**OBJECTIONS OF RESPONDENT NO. 1 TO THE APPLICATION UNDER  
SECTION 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

That Respondent No. 1 to the present Application (i.e., the Internet Corporation for Assigned Names and Numbers or **ICANN**) respectfully submits as follows:

1. These Objections (**Objections**) are being filed by ICANN pursuant to the 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 also Mr. Jasjit Singh Sawhney and Net 4 Network Services Ltd. (**Other Respondents**).
2. That while ICANN had raised an objection to the maintainability of the instant Application inter alia on the grounds of lack of jurisdiction, this Hon'ble Tribunal pass an ad-interim order (**Ad-interim Order**) on 13 March 2021 directing ICANN to not give effect to the Termination Notice dated 26 February 2021 (**Termination Notice**) until the next date of

hearing, i.e., 16 March 2021, without issuing a ruling on jurisdiction. Vide the aforesaid order, this Hon'ble Tribunal also granted ICANN leave to file its objections to the Application pursuant to which, the present Objections are being filed.

3. ICANN submits that these Objections, its appearance before this Hon'ble Tribunal, as well as any oral and written submissions made by it are strictly without prejudice to its objection to the jurisdiction of this Hon'ble Tribunal, as set out in greater detail below.
4. These Objections ought to be treated as limited, preliminary objections filed in the interest of assisting this Hon'ble Tribunal with regard to the breaches committed by the Corporate Debtor, with respect to the Registrar Accreditation Agreement (**RAA**) entered into between ICANN and the Corporate Debtor and in relation to the ongoing harm suffered by various registrants. As such, these Objections are not intended to be a comprehensive reply to the Application. The Objections do not address all aspects raised in the Application, especially since ICANN is not privy to certain facts raised therein and owing to paucity of time. In fact, ICANN does not even possess the pleadings referred to and relied upon in the Application. To date, ICANN has not been served with the same by the RP and the Other Respondents despite repeated request in this regard. A copy of the email from the counsel for ICANN dated 12 March 2021 requesting that a copy of the said pleadings be supplied is annexed hereto as **Annexure A**. These Objections also do not address any other proceedings in the underlying insolvency proceedings initiated by Edelweiss Asset Reconstruction Company Limited against the Corporate Debtor. In light of the above, ICANN reserves its right to file a detailed response to the Application, if required and if so called upon by this Hon'ble Tribunal.
5. ICANN has previously filed its Preliminary Written Submissions (**Preliminary Written Submissions**) in furtherance of the hearing dated 12 March 2021 on some limited aspects and for the limited purpose of opposing grant of any ad interim reliefs. ICANN is also filing a 'Convenience Compilation' of relevant documents. The Preliminary Written Submissions and Convenience Compilation may be treated as part and parcel of the present Objections.

#### **BRIEF DESCRIPTION OF THE KEY STAKEHOLDERS**

6. ICANN is a California-based non-profit, public benefit corporation incorporated and existing under the laws of California, USA. ICANN is engaged in the business of

coordination of the global Internet systems of unique identifiers and ensuring the stability and secure operation of the Internet's unique identifier systems, including but not limited to the Domain Name System (DNS) and Internet Protocol (IP) addresses. ICANN does not offer any products or services for sale.

7. To assist in its functions, ICANN accredits and/or contracts with 'registries' and 'registrars' across the world, which are necessary for a stable, secure, and unified global Internet. Pertinently, ICANN does not provide IT services to the Corporate Debtor. The key actors in the ICANN ecosystem are as follows:
  - a. **Registry Operators:** 'Registry Operators' are organizations that operate generic top-level domains (**gTLDs**), such as ".com" and ".org" and are responsible for managing the definitive list / database of domain names registered within the gTLDs that they operate.
  - b. **Registrars:** 'Registrars' are companies accredited by ICANN that are responsible for processing and transferring the registration of domain names. Registrars provide services allowing consumers, businesses and organizations to obtain the right to use and operate individual domain names within a particular gTLD – referred to as domain name registrations. Simply put, one of the functions of a Registrar is to facilitate the registration and use of a domain name to consumers / end users. The Corporate Debtor is a Registrar.
  - c. **Registrants:** 'Registrants' or 'domain name registrants' or 'Registered Name Holders' are the end consumers, businesses and organizations (non-profits, educational institutions, etc.) that register and use individual domain names, with the assistance of Registrars. They are the Registrar's customers. In order to register a domain name in a gTLD (and become a registered name holder), registrants contract with an ICANN-accredited registrar. Registrars collect information about the registrants (such as identifying information, billing information, server address) as a part of the registration process.
8. As such, ICANN does not contract with the registrants directly. ICANN contracts with Registry Operators and Registrars, which contracts contain certain provisions aimed at ensuring that Registry Operators and Registrars comply with a core set of standards that provide Registrants with certain levels of protection, including access to and control over

their domain names and access to certain information about registered domain names. Thus, in many ways, the Corporate Debtor's compliance with the contractual terms of the RAA is a matter of public interest. Just as an example, subject to applicable laws, Registrars are obliged to provide up-to-date information concerning all active registered domain names sponsored by the Registrar through a public query-based WHOIS system - this enables Internet users in general, law enforcement authorities, intellectual property owners, and cybersecurity researchers to access critical information and identify the persons or businesses that manage the domain names.

9. ICANN first entered into an RAA with the Corporate Debtor in 2006 and the latest renewal of the RAA was entered into on 14 October 2019. By way of the RAA, ICANN accredited the Corporate Debtor as a Registrar. In turn, the RAA required the Corporate Debtor to discharge various obligations including but not limited to the following.
  - a. Submission of Registered Name Holder data to the Registry (*Section 3.2, RAA*)
  - b. Provision of public access to data on Registered Names, through an interactive web page and a port 43 WHOIS service (*Section 3.3, RAA*)
  - c. Collection and retention of data in relation to Registered Name Holders and Registration (*Section 3.4, RAA*)
  - d. Timely response and addressing Registrants' requests to transfer or renew registrations (*Section 4.1, RAA*, in relation to Transfer Policy and Expired Registration Recovery Policy)
  - e. Submission of electronic copy of data to a mutually acceptable escrow agent (*Section 3.6, RAA*)
  - f. Payment of accreditation fees to ICANN (*Section 3.9, RAA*)

## **PRELIMINARY OBJECTIONS**

### **I. OBJECTION AS TO JURISDICTION OF THIS HON'BLE TRIBUNAL**

10. It is respectfully submitted that this Hon'ble Tribunal does not have the jurisdiction to adjudicate on the matter for the reasons explained below.

11. It is further submitted that the question of jurisdiction goes to the root of the matter and must be decided prior to any order (even an interim or ad-interim order) is passed. It is settled law that an order passed in the absence of jurisdiction is a nullity and ought to be vacated forthwith, inter alia, for reasons set out hereunder.

12. In this regard, ICANN's submissions on jurisdiction are summarised as follows:

**A. IBC does not have extra-territorial application**

13. This Hon'ble Tribunal derives its jurisdiction from the IBC and Section 1(2) of the IBC expressly states that "*It extends to the whole of India.*" There is no provision which *ipso facto* makes the IBC applicable to foreign parties or contracts governed by foreign law.

14. Section 234(1) provides that the Central Government may enter into an agreement with the Government of any country outside India for enforcing the provisions of IBC. There is presently no agreement between India and United States of America for enforcing the provisions of IBC in the United States of America. Consequently, the IBC does not and cannot apply to contracts entered into with ICANN which are, in any event, governed by the law of the State of California, USA.. Absent such an agreement, there cannot be any case for extra-territorial application of the IBC.

15. Should the Applicant (i.e., the RP) require any injunctive reliefs against ICANN, the Applicant must approach the jurisdictional courts in the United States of America.

**B. Territorial Jurisdiction of Indian courts excluded by agreement**

16. The commercial relationship between the Corporate Debtor and ICANN is governed by the RAA. The RAA contains a jurisdictional clause, the relevant portion reads as follows:

*"In all litigation involving ICANN concerning this Agreement (whether in a case where arbitration has not been elected or to enforce an arbitration award), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction."*

(emphasis supplied)

17. Therefore, all issues / litigation arising under the RAA including ICANN's right to terminate the RAA ought to be adjudicated exclusively by the courts at Los Angeles, California, USA. It is settled law in India that exclusive jurisdiction clauses must be given effect to and should be inferred to mean that there was an intention to exclude all other courts from exercising jurisdiction. For this reason, it is respectfully submitted that this Hon'ble Tribunal has no jurisdiction in respect of the same.

**C. In any event, there is no personal jurisdiction over a foreign entity and in particular, ICANN**

18. In any event, ICANN respectfully submits that it does not submit to the jurisdiction of Indian courts and tribunals and it is not subject to the jurisdiction of Indian courts or tribunals. In this regard, ICANN submits as follows:

- a. ICANN is not registered to do business within the territorial jurisdiction of this Hon'ble Tribunal or in India. It is incorporated with its principal place of business in California, USA.
- b. ICANN does not own any property or bank accounts within the territorial jurisdiction of this Hon'ble Tribunal or in India.
- c. ICANN does not have an agent for service of process or a registered address within the territorial jurisdiction of this Hon'ble Tribunal or in India.

19. The Other Respondents have sought to rely on the presence of Mr. Samiran Gupta being based in New Delhi to contend that ICANN has an Indian presence. It is clarified that ICANN does not have a direct agreement/contract with Mr. Gupta, who provides services to ICANN through Mr. Gupta's third-party employer. Therefore, Mr. Gupta's presence in India is not relevant to the territorial jurisdiction of this Hon'ble Tribunal over ICANN.

**D. In any event, this Hon'ble Tribunal's jurisdiction under the IBC is not invoked in the present case.**

20. 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. This was recently held by the Supreme Court in *Gujarat Urja Vikas Nigam Limited v. Amit Gupta (Civil Appeal No. 9241 of 2019, decided on 08.03.2021)*. In particular, it was held as follows:

*"The jurisdiction of the NCLT under Section 60(5)(c) of the IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the corporate debtor. Even more crucially, it cannot even be invoked in the event of a legitimate termination of a contract ... if such termination will not have the effect of making certain the death of the corporate debtor. As such, in all future cases, NCLT would have to be wary of setting aside valid contractual terminations which would merely dilute the value of the corporate debtor, and not push it to its corporate death by virtue of it being the corporate debtor's sole contract (as was the case in this matter's unique factual matrix)."*

(emphasis supplied)

21. In the present case, the RP's stance that the Corporate Debtor will be out of business upon the termination of the RAA is without any basis whatsoever as admitted by the RP himself. It is noteworthy that at the hearing on 13 March 2021, in response to the query from the Hon'ble Tribunal as to what percentage of business of the Corporate Debtor can be attributed to the contract with ICANN, the position taken by the RP was that: (a) the RP did not have the required information; and (b) any such information would be available only with the erstwhile Promoters. On the RP's own admission, the RP does not have the information to demonstrate the criticality or otherwise of the RAA. Consequently, there is no basis to invoke the Hon'ble Tribunal's jurisdiction to issue any injunctions whatsoever. In fact, the Application must be dismissed with heavy costs.
22. ICANN notes that the RP had previously submitted an avoidance application bearing CA No. 1756 of 2019 on the basis that the entire business and operations of the Corporate Debtor have been diverted to the Other Respondents. In light of these facts, there is no point in keeping the business of the Corporate Debtor as a going concern since on the RP's own showing the Corporate Debtor's business has been diverted. Interestingly while the Other Respondents have not been made to bear any consequences, the RP is seeking to restrain bona fide third parties from exercising valid contractual rights that are in public interest. The request of the RP is thus inexplicable and ought to be rejected as being contrary to the letter and spirit of the IBC as well as being contrary to the terms of the RAA. Furthermore, it is reiterated this Hon'ble Tribunal's jurisdiction does not extend to requiring ICANN to continue a contractual relationship with the Corporate Debtor.

23. In any event, today, there is not a single document before this Tribunal to support the claim that the Corporate Debtor's business is entirely dependent on ICANN or the RAA. On the contrary, there is clear evidence that the Corporate Debtor has many streams of business that are not related to ICANN / the RAA and they will not be directly impacted by the termination of the RAA.
- a. Per the Corporate Debtor's own website, the Corporate Debtor provides a host of services. These include: “*Hosting, Email, Easysite, Office 365, Cloudserver, SSL, Reseller*”; and providing registrations under the .IN country code top-level domain (ccTLD). A screenshot of the Corporate Debtor’s website offering the aforesaid services is annexed as **Annexure B**. In fact, the Application itself (under Paragraph 2.2 and 3) makes it clear that the business of the Corporate Debtor includes "*website/email hosting*" and ICANN states that this business is unrelated to the RAA. The RAA is required only for registering domain names in gTLDs. The Corporate Debtor is not required to be accredited by ICANN through the RAA for providing any of the other services.
  - b. As noted above, the Corporate Debtor acts as a registrar for the .IN ccTLD pursuant to an agreement with the .IN ccTLD operator being the National Internet Exchange of India (NIXI). ICANN is not a party to the Corporate Debtor's contract with NIXI and the RAA is unrelated to the Corporate Debtor's contract with NIXI. Currently, the Corporate Debtor is the registrar for approximately 73,000 .IN domain names. By comparison, the Corporate Debtor is the registrar for approximately 76,000 domain names in gTLDs. Thus, even considering this particular business stream of the Corporate Debtor (i.e., acting as a domain name registrar), the RAA accounts for approximately only half of the Corporate Debtor’s business. When the Corporate Debtor’s other lines of business, such as hosting, email, and acting as a reseller, are taken into account, the RAA likely accounts for less than half of the Corporate Debtor’s overall business. These facts clearly attract the law laid down in Gujarat Urja (*Supra*) and the instant application ought to be rejected for this reason, in addition.
24. As mentioned above, given that even after the termination of the RAA, there are several other streams of business that are available to the Corporate Debtor, it cannot be said that the mere termination of the RAA will result in the corporate death / liquidation of the



Corporate Debtor. The aforementioned observations by the Hon'ble Supreme Court in *Gujarat Urja* (supra) are therefore clearly attracted to the present case and this Hon'ble Tribunal's jurisdiction is clearly not attracted.

25. It is settled law that "*jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results*" (*Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors. (Civil Appeal Nos. 9170-9172 of 2019)*). Given the indisputable facts relating to the numerous streams of business provided by the Corporate Debtor, it would be an "absurd result" to conclude that the Corporate Debtor's business is entirely dependent upon ICANN/the RAA. Moreover, the validity of termination of the RAA has not been questioned by either the RP or the other Respondents (other than some vague oral submissions made during the hearing on 12 and 13 March 2021). In any event, it is an admitted position that the termination is merely on account of contractual default and does not relate to or arise from the insolvency of the Corporate Debtor. Therefore the NCLT does not have the jurisdiction to entertain any application in this regard..

**E. Section 14(2A) of the IBC is not attracted**

26. The contention of the RP that the RAA offers a critical service in terms of Section 14(2A) of the IBC and therefore the NCLT is empowered to stay the same in terms of Section 14(2A) of the IBC is completely misplaced.
- a. Section 14(2A) of the IBC does not confer extra-territorial jurisdiction to the NCLT or make the IBC applicable beyond India. The RP's argument that Section 14(2A) of the IBC does not expressly limit itself to India (and therefore, it must receive extra-territorial application) is misconceived. The extent and applicability of the IBC under Section 14(2A) must necessarily be read along with Section 1 of the IBC. Similarly, the jurisdiction of the NCLT under Section 14(2A) of the IBC must necessarily be read alongside Section 60 of the IBC (and the observations in *Gujarat Urja* (supra)).
  - b. Without prejudice, in order for Section 14(2A) of the IBC to apply, the RP is required to demonstrate that the contract between ICANN and the Corporate Debtor is "*critical*". The RP has failed to do this. There is not a single document on record to show that the RAA is indispensable for the Corporate Debtor's business. The Hon'ble Tribunal cannot rely only on the RP's mere say so. The contents of

paragraphs 23-24 above are reiterated and the same are not being repeated herein for the sake of brevity.

- c. In any event, even if the contract were to be deemed as "*critical*". Section 14(2A) expressly permits termination for non-payment of dues arising during the CIRP. As on date of termination, it is undisputed that there were unpaid dues under the RAA and reference in this regard can be had to See paragraph 2.17(a) and page 51 of the Application. Therefore, the termination is valid under Section 14(2A) of the IBC. The validity of the termination must be determined as on the date of termination. The IBC does not provide for post-hoc payment / remedying the breach in order to resuscitate a terminated contract especially when the termination is issued in the face of successive and multiple breaches.
- d. Further, Section 14(2A) cannot be construed as being a leeway to a corporate debtor to continually breach the contract while insisting that the counterparty cannot seek recourse to contractual agreed rights and remedies. Nothing in the IBC allows continuance of contracts even in the face of serious contractual breaches. There have been serious breaches of the RAA (as can be seen from a bare perusal of the Termination Notice) and this is not repeated herein. As such, a post-hoc remedy of these breaches or an undertaking to cure the said breaches cannot be the basis for invalidating an otherwise valid termination. Notably, Section 14(2A) of the IBC (and the RAA) casts the obligation of payment of dues on the corporate debtor (and not any third-party). These obligations are without exception and as such, the Corporate Debtor cannot excuse itself from payment obligations on the ground that it has no control over the operations.
- e. The breaches are causing harm to hundreds / thousands, of Registrants and Registered Name Holders. This is an undisputed fact inasmuch as the RP acknowledges at paragraph 2.8 of the Application that "*even the business of the customers of the Corporate Debtor have been put to jeopardy on account of such non-compliances*". It is added that many educational institutions, non-profit organisations, individuals, etc. are suffering and their rights to a livelihood are being seriously impacted due to the Corporate Debtor's continuous breaches. Therefore, the RP's interpretation of Section 14(2A) is absurd as would amount to continuing contracts for the benefit of the Corporate Debtor even in the face of serious public

harm. Such an interpretation is untenable and contrary to public policy. It is therefore submitted that the Applicant cannot take recourse to Section 14(2A), with a view to clothe this Hon'ble Tribunal with jurisdiction that it does not otherwise possess.

27. Therefore, Section 14 (2A) is of no assistance to the Applicant.

**F. Courts must refrain from exercising jurisdiction when enforcement of its orders is doubtful**

28. The RP has submitted that the enforceability of this Hon'ble Tribunal's directions ought not to concern the adjudication of the matter. However, this is contrary to the settled law that courts must refrain from granting reliefs that it cannot enforce. In *Suresh Jindal v. Rizzoli Corriere Delia Sera Prodzoini T.V.S.p.a & Ors.*, AIR 1991 SC 2092, the Supreme Court of India held as follows:

*"Even if we give a direction as proposed, it might be difficult for this Court to ensure that the respondents carry out these directions. Even the appellant would not be in a position to ensure that such directions are complied with. It is well known that a court will not issue directions over the compliance of which it has no control. In view of this we think that we should not issue such general directions as indicated above."*

29. The RP's reliance on the case of *SEL Manufacturing Co. Ltd.* before the District of Delaware (Bankruptcy) to state that they will take appropriate steps as required for enforcement of the NCLT's order is misplaced. This was not a case where the remedy was originally granted in India and was subsequently enforced in the USA. Instead, it was a case where on the basis of ongoing and existing insolvency proceedings in India, remedies were sought in the USA. Therefore, properly analysed, the case actually supports the contention of ICANN. The appropriate remedy (if any) of the RP is to apply to the relevant courts in Los Angeles, California and seek recognition of the present insolvency proceedings and CIRP of the Corporate Debtor and, on that basis, seek remedies in the USA.

II. THE APPLICATION IS BARRED BY THE DOCTRINE OF RES JUDICATA AND/OR CONSTRUCTIVE RES JUDICATA

30. It is submitted that the present Application is barred by the principles of *res judicata*. The subject matter and the issues raised by the RP in the present Application have already been adjudicated by this Hon'ble Tribunal previously. The RP, through an IA No. 5621 of 2020 in this petition (**First Application**) had *inter alia* sought to prevent ICANN from terminating the RAA and *inter alia* prayed as follows:

*"a) Direct Respondent No.1, Internet Corporation for Assigned Names and Numbers, to not terminate the Registrar Accreditation Agreement dated 14 October 2014;"*

31. As reliefs (c), (d) and (f) in the First Application, the RP had sought that Mr. Jasjit Singh Sawhney / Other Respondents to immediately address all concerns of *inter alia* ICANN, pay outstanding amounts and further dues on a regular basis and resolve all compliance and domain renewal issue raised at the earliest.

32. Without prejudice to its objections on jurisdiction, ICANN had submitted detailed submissions in response to the First Application. ICANN's submissions in the First Application may be read as part and parcel of its response / submissions in the current Application and is annexed hereto as **Annexure C**. In the said submissions, ICANN had annexed a consolidated table of breaches and the impact on third parties including Registrants.

33. After hearing the parties on the First Application, this Hon'ble Tribunal passed its order on the merits of the First Application on 25 January 2021 (**January 25 Order**) and disposed of the First Application. The January 25 Order notes in detail the background to the Application, as well as the arguments advanced by all parties. Specifically, in relation to the RP's prayer regarding ICANN being directed to not terminate the RAA, this Hon'ble Court was pleased to hold as under:

*"Regarding the reliefs (a) and (b), notwithstanding as to whether jurisdiction to deal with these issues relating to the agreements the Corporate Debtor entered into with R1 and R2, lies in India or elsewhere, looking at the far reaching implications likely to set in, if agreements R1 and R2 entered into are terminated, we hereby request R1 and R2 not to terminate these agreements at least until three months from hereof, so that the CIRP progress is not hampered.*

*With regard to the reliefs (c) to (f), it appears that R3 and R4 have cleared part of the dues payable to R1 and R2; they shall pay off the remaining dues, if any, as mentioned in the agreements entered into with R1 and R2. With regard to the transfer of registrations with the registrar/corporate debtor to some other gaining registrar, looking at the extenuating circumstances such as Corporate Debtor getting into CIRP, R1 and R2, so long as dues are paid on time and services are provided on time to the Registered Name Holders (RNH), may act cautiously so that the customer base of this registrar is not slipped into the hands of gaining registrars. Until the CIRP period is complete or until further orders, whichever is earlier, an SOP may be set up and follow the same by R3 & R4 counsel with the approval of the CoC taken by the RP. The same may be placed before this Bench within 15 days hereof and report compliance on fortnight basis."*

(emphasis supplied)

34. To draw a parallel with the above, the main prayer in the present Application is reproduced below:

*"a) Direct Respondent No.1, Internet Corporation for Assigned Names and Numbers, to withdraw the Notice for Termination of the Registrar Accreditation Agreement dated 26 February 2021"*

35. Prayers (b), (c), (d) of the present Application are sought against the Other Respondents and relate to addressing concerns of ICANN, payment of outstanding amounts / payment of further dues and resolving all compliance and domain renewal issues at the earliest.
36. A simple perusal of the contents and the prayers in the First Application and present Application make it clear that the current Application is in substance the same as the First Application. It relates to whether or not ICANN can terminate the RAA in view of the Corporate Debtor's CIRP and directions against the Other Respondents to remedy non-compliances. However, these issues have already been adjudicated by this Hon'ble Tribunal in the First Application under the January 25 Order. In particular, there is no direction or injunction restraining ICANN from terminating the RAA as requested by the RP. The January 25 Order annexed as Annexure No.1 to the present Application has not been appealed till date and has attained finality.
37. Without prejudice to the above, even assuming that the Application is not barred by *res judicata*, it is submitted there is no change in circumstances that entitles the RP to

request this Hon'ble Tribunal to reconsider its previous order. Given that the situation is the same and the prayers are the same, it follows the present Application must be decided in the same manner as January 25 Order (i.e., without any restraint on ICANN).

38. As such, the prayers sought in the present Application, are nothing but repetitions of what has been sought previously. The present Application deserves to be dismissed on this ground alone, as being barred by *res judicata* and/or constructive *res judicata*.

### III. IN ANY EVENT, THE APPLICATION IS NOT MAINTAINABLE

39. It is submitted that the Corporate Debtor has been in CIRP for over two years (from 8 March 2019). The RP has not demonstrated if the Corporate Debtor has sought or has been granted any extension of the prescribed statutory period for CIRP. ICANN is not aware of the same. In view of this, ICANN reserves all its rights regarding the maintainability of the Application on this basis.

### **REPLY ON MERITS OF THE APPLICATION**

40. Without prejudice to the foregoing, ICANN submits that there is no case for interference with the contractually valid termination. In addition to the preliminary objections, it is reiterated that the termination is legal, absolutely necessary and justified, and in the public interest.
41. Before dealing with the facts at hand, ICANN submits that there is nothing in the IBC that requires contracting parties to be compelled to continue contracts with a corporate debtor while the corporate debtor continues to flagrantly breach the contract. The purpose of the moratorium and the provisions of Section 14 of IBC are only to assist in maintaining a corporate debtor as a going concern for a limited period of time. The RP's obligations to ensure that a corporate debtor remains a going concern includes adhering to the contractual obligations. The IBC does not exempt a corporate debtor from its contractual obligations (whether payment obligations or otherwise).
42. That ICANN's termination of the RAA was warranted and justified in the facts of the present case - The relevant sequence of events is set out below.

### I. CORPORATE DEBTOR'S VARIOUS AND CONTINUOUS BREACHES OF THE RAA LEADING UP TO THE JANUARY 25 ORDER

43. The Corporate Debtor has repeatedly and persistently breached several of its obligations under the RAA since 2019. The Corporate Debtor's breaches of the RAA and its impact upon Registrants, ICANN, as well as the public have already been set out in the Notice of Termination, and Notices of Breach (as defined hereunder) and also in the submissions filed by ICANN in the First Application. Briefly, they include:
- a. Failure to provide interactive webpage and a port 43 WHOIS service;
  - b. Failure to allow transfer of domain names and failure to renew expired registrations;  
and
  - c. Failure to pay accreditation dues, amongst others.

The nature of the breaches has already been explained and detailed by ICANN during the hearings before this Hon'ble Tribunal on the First Application and its submissions therein. The same are adopted here but are not repeated.

44. The breaches became even more severe towards the end of 2020 and the volume of the complaints received by ICANN is unprecedented. Since 1 September 2020, ICANN received thousands of complaints from Registrants regarding the actions and breaches of the Corporate Debtor accompanied by requests to ICANN to step-in and remedy the situation. At least within the last decade, ICANN has never before received this volume of complaints about a single Registrar in such a short period of time. The massive volume overwhelmed ICANN's Contractual Compliance department, creating a backlog and affecting ICANN's ability accomplish other work.
45. It must be noted that the Termination Notice was issued as a last resort. Prior to the Termination Notice, ICANN issued to the Corporate Debtor three breach notices each time calling upon the Corporate Debtor to resolve the breaches and each time providing a time period of three weeks to cure the breaches. The Corporate Debtor has completely failed to do so on every occasion. Prior to each breach notice, ICANN followed a process of providing the Corporate Debtor with several opportunities to resolve the issues including: (a) First Inquiry; (b) Second Inquiry; and (c) Third Inquiry. This was over and above several informal follow ups and other efforts to reach out to the RP / Corporate Debtor. It was only when all of these attempts failed that a breach notice was issued. It was only after the Corporate Debtor failed to cure its breaches, despite repeated breach notices, was ICANN constrained to issue the Termination Notice

46. Despite the initial two breach notices dated 10 December 2020 and 24 December 2020, the Corporate Debtor failed to cure the breaches. Instead, the RP filed the First Application wherein the RP mostly sought to provide excuses for the breaches - essentially that resolving the breaches was not in his control; but rather, in the hands of the Other Respondents. In the First Application, it was *inter alia* stated as follows "*since the entire business and revenues of the Corporate Debtor has been diverted to Net 4 Network, the Applicant is not in a position to cure such non-compliances*". The RP prayed that ICANN be restrained from terminating the RAA and that certain other reliefs be granted against the Other Respondents to ensure compliance with the RAA.
47. This First Application was taken up by this Hon'ble Tribunal and heard on three occasions between 18 January 2021 and 22 January 2021. ICANN appeared without prejudice to its rights and submissions on jurisdiction. At the hearing, opportunities were given to the RP and the Other Respondents to cure the breaches. However, the breaches were not cured and remained unresolved and ICANN continued to receive numerous Registrant complaints on a daily basis including during the course of the hearings.
48. It was in these facts and circumstances that this Hon'ble Tribunal passed the January 25 Order, wherein the Hon'ble Tribunal took note of the various breaches and the impact thereof and accordingly:
- a. Requested ICANN to refrain from terminating the RAA for a period of three months. In particular, it was stated "*so long as dues are paid on time and services are provided on time to the Registered Name Holders (RNH)*" ICANN may act cautiously so that customer base of the Corporate Debtor is not slipped into the hands of gaining registrars;
  - b. Directed the RP to set up a standard operating procedure (**SOP**) in consultation with the Other Respondents (with the approval of the Committee of Creditors) and that the SOP be placed before this Hon'ble Tribunal within 15 days of the January 25 Order (i.e., by 9 February 2021);
  - c. Directed the Other Respondents to clear remaining dues if any as mentioned in the agreements with ICANN and PIR.



49. Thus, the First Application did not result in any order restraining ICANN from terminating the RAA and no such order was in existence when ICANN terminated the RAA by way of Termination Notice on 26 February 2021. Pertinently, even the request was contingent on various compliances by the Corporate Debtor (through RP / Other Respondents) which compliances were never carried out. Therefore, ICANN was legally entitled to proceed with the termination. By way of the Termination Notice, ICANN terminated the RAA in accordance with the provisions set forth in the RAA. ICANN submits that the Termination Notice complied with all the relevant contractual requirements that were stipulated for prior to the termination.

II. EVENTS SUBSEQUENT TO THE JANUARY 25 ORDER (INCLUDING RP'S NON-COMPLIANCE OF JANUARY 25 ORDER)

50. Despite the January 25 Order, the situation did not change. Not only did the Corporate Debtor fail to cure the breaches noted in the first two notices of breach, but additional breaches continued and escalated through the ICANN compliance process. ICANN was thus compelled to issue a third notice of breach dated 29 January 2021 regarding these additional breaches. The 29 January 2021 notice of breach is annexed as **Annexure D**.
51. The RP has sought to characterise the notice of breach dated 29 January 2021 as being in disregard of the January 25 Order. This is vehemently denied as in reality, the notice of breach was merely the next step in the contractual compliance process. In fact, out of respect for the spirit of the Order and without prejudice to its rights, ICANN continued to refrain from terminating the RAA despite not having any legal obligation exercise such restraint. ICANN had hoped that the Corporate Debtor (together with the RP and Other Respondents) would abide by the January 25 Order, which ordered the Corporate Debtor / Other Respondents to cure the breaches, comply with the RAA obligations, address registrant complaints, and formulate an SOP however, these issues continue to remain unresolved.
52. During this time, ICANN continued to make its best efforts to cooperate with the Corporate Debtor and the RP with the hope that the breaches would be remedied. However, over time it became clear that that ICANN's hopes would not be realised, as:
- a. The existing breaches noted in the three notices of breach were not cured.

- b. The Corporate Debtor continued to fail to provide services to its registrants, as evidenced by ICANN's receipt of numerous new registrant complaints on a daily basis.
  - c. No proper response was forthcoming from the RP to ICANN's follow-ups regarding the existing breaches and non-compliance issues.
  - d. In ICANN's interactions, the RP took the stance that he does not have the capacity to cure the breaches of the Corporate Debtor by himself. And, the Corporate Debtor was fully reliant on third-parties (in particular, the Other Respondents) to comply with its obligations under the RAA. This is also a matter of record in the applications filed by the RP before this Hon'ble Tribunal.
  - e. No SOP was placed before this Hon'ble Tribunal within 15 days as required by the January 25 Order. As far as ICANN is aware, the RP / Other Respondents have never placed a draft of the SOP before this Hon'ble Tribunal or a request for further time to do so.
  - f. Even after the January 25 Order, the existing overdue fees remained unpaid and additional fees went unpaid and overdue.
53. The result was a perverse situation in which ICANN paid heed to the request of this Hon'ble Tribunal even as the Corporate Debtor and Other Respondents did not comply with the binding directions passed by the Hon'ble Tribunal.
54. There has been, and continues to be, global-level public scrutiny on ICANN as to why a defaulting Registrar is being allowed to continue despite successive breaches and repeated complaints. ICANN had previously annexed certain media reports on the Corporate Debtor's breaches leading to Registrants being left with no support and raising questions as to ICANN's responsibility in such a situation as Annexure F and Annexure G to its written submissions in the First Application. The same is referred to here.
55. After waiting for over a month after the January 25 Order, ICANN was compelled to take the view that the interests of the Registrants could no longer be sacrificed when the breaches continued unaddressed; and that ICANN cannot be expected to comply

with a request and stay its hands indefinitely when binding directions have not been complied with by the other parties. ICANN noted that the January 25 Order itself recognised that ICANN must act cautiously so that the customer base of this Registrar is not slipped into the hands of gaining registrars only so long as dues are paid on time and services are provided on time to the Registrants. At this time, the Corporate Debtor had not paid its accreditation fees that are past due, the breaches continued unabated, and Registrants continue to be harmed on a daily basis. Thus, after careful consideration and as a last-resort measure, ICANN proceeded with the termination of the RAA and issued the Termination Notice. In good faith, ICANN followed up the Termination Notice with a letter from its counsel dated 27 February 2021 (produced as Annexure 3 with the present Application) explaining the reasons behind the termination and also setting out why termination was the only real choice in order to protect the thousands of Registrants at risk.

### III. POST-TERMINATION EVENTS

56. As of 26 February 2021 (date of termination) more than 400 contractual compliance cases remained unresolved and hundreds of new complaints were still under review by ICANN. In fact, new complaints continue to be received daily. Virtually all of these complaints relate to lack of services from the Corporate Debtor. Essentially, the Corporate Debtor's customers resorted to filing complaints with ICANN after numerous unsuccessful attempts to obtain assistance or even a response from the Corporate Debtor. Notably, many of those complaints involve numerous domain names.
57. After issuing the termination, ICANN did not send any further cases to the Corporate Debtor since the RAA had been terminated. At this time (as of 12 March 2021), the Corporate Debtor has responded to ICANN regarding approximately 20 contractual compliance cases (of over 400 cases and hundreds of other Registrant complaints). Even in those 20 responses, the Corporate Debtor's responses were thoroughly unsatisfactory. For example, in certain instances, the Corporate Debtor simply indicated that someone had talked to the Registrant and asserted that the issue had been resolved, while ignoring all questions or requests for evidence in those cases related to renewals, registration data updates or unauthorized transfers. In other instances, the Corporate Debtor merely provided the AuthInfo code.

58. Accordingly, as of today, approximately 400 cases remain unresolved while more than 1,300 new complaints are pending review. ICANN continues to receive new complaints every day (even post-termination of the RAA). The purpose of indicating this is not to insinuate that the RAA must now be performed. ICANN stands by its termination. As such, the above is only to substantiate that there is no hope of any proper remedial measures being taken by the Corporate Debtor / Other Respondents. Therefore, an order to withdraw the termination will not serve any purpose.
59. On 1 March 2021, the RP responded to ICANN's Termination Notice. Notably, in this response, the RP acknowledged ICANN's continuous cooperation. The RP shared documents that purportedly related to a draft of the SOP and requested ICANN to withdraw the Termination Notice. However, even in this communication, the RP did not inform ICANN as to when a finalised, operative SOP would be placed before this Hon'ble Tribunal. It is pertinent to mention that even the draft SOP documents shared by the RP did not properly address the Corporate Debtor's key obligations under the RAA or the breaches / compliance issues raised by ICANN. For example, these documents did not address how to cure the Corporate Debtor's failure to provide an interactive webpage and a port 43 WHOIS service, also known as Registration Data Directory Service. Nor did the draft SOP documents even address how the Corporate Debtor would pay the dues owed to ICANN in a timely fashion.
60. Overall, the documents relating to the draft SOP are meaningless and irrelevant to ICANN as ICANN is only concerned with compliance with the RAA, which in turn leads to protection of the Registrants. In any case, the documents relating to the draft SOP were shared only after the termination. As far as ICANN is concerned, the termination is final. There is no question of curing the breaches subsequent to termination for withdrawing the Termination Notice.
61. The counsel for the Other Respondents has incorrectly relied on Clause 15.6 of the RAA to suggest that the breaches can be cured post-termination. This is incorrect. It is submitted that the termination takes effect after 15 days of the written notice. Clause 15.6 of the RAA provides an in-built protection to the Corporate Debtor to challenge the termination. In the 15 days' time, an opportunity is given to the registrar to initiate arbitration within the proper jurisdiction (Los Angeles, California) to raise challenges to the basis for termination under the RAA (if any). In this case, the RP has not

challenged the termination of the RAA in this manner, making it clear that the termination is contractually sound. The fact that the RP has not challenged the termination before an arbitral tribunal (i.e., the correct forum) but has instead approached this Hon'ble Tribunal (which does not have jurisdiction over ICANN or the RAA) shows that the RP is seeking to indirectly achieve results to which the Corporate Debtor is not entitled. Pertinently, such circumvention of the contractually provided for remedy, is in stark contradiction to the law settled by the Hon'ble Supreme Court in Embassy Property Developments Pvt. Ltd. (Supra).

62. On 2 March 2021, there was a hearing in a related matter in the CIRP proceedings of this Corporate Debtor. In this regard, Maruti Suzuki had approached this Hon'ble Tribunal in view of the Corporate Debtor's continuous breaches. At this stage, when the Hon'ble Tribunal enquired about the status of the SOP, the RP / Other Respondents merely mentioned that it was in the process of being finalised. Curiously, the RP did not even mention the Termination Notice or that ICANN had terminated the RAA.
63. The present Application was filed a few days later on 5 March 2021 (a week after termination) and moved on a last working day before the termination was to take effect (i.e., on 12 March 2021).
64. Clearly, the sequence of events and the timing of the Application evidence that the RP has attempted to secure a stay by purposely avoiding getting into the merits of the Application, which conduct must be viewed strictly by this Hon'ble Tribunal.

#### IV. CORPORATE DEBTOR'S PURPORTED DEPENDENCY ON ICANN

65. In the Application, the RP seeks to argue that the accreditation of the Corporate Debtor with ICANN is critical for the business of the Corporate Debtor and, in case the Notice of Termination is not withdrawn, the Corporate Debtor is likely to go into liquidation as it will not have continued business operations as a consequence of the termination. ICANN strongly disagrees with this argument and, in particular, the averment that "*the entire business and resolution of the Corporate Debtor is dependent on the continuation of the accreditation of the Corporate Debtor with Respondent No. 1 to act as the registrar*" as it is not accurate. In this regard, the contents of paragraphs [23-24] are reiterated and are not being repeated herein for the sake of brevity.

66. In fact, given that the Corporate Debtor has significantly struggled in performing its duties as a Registrar, termination of the RAA may allow the Corporate Debtor to focus its efforts on its other lines of business, rather than expending efforts and resources flailing as a Registrar and harming its own customers.

V. PUBLIC INTEREST AND BALANCE OF CONVENIENCE

67. The termination 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. The fall out has been especially egregious during the pandemic, when many have shifted their operations either partially or completely online. ICANN had previously (in the written submissions to the First Application) annexed a list of illustrative extracts of complaints received by it from Registrants. Apart from that and for ease of reference, some of the complaints received by ICANN are set out below:

- *“I am struggling to contact Net 4 India on phone and mails. No response from them and +91-11-45980000 is not working. As per internet search, Net 4 India Limited shutdown the offices across India without informing customers and partners which is void of ICANN code of conduct. They are not allowing to renew the domains and not even providing domain Auth-Code so as to prevent domain transfer. ICANN Please help us to list Net 4 India Limited on Bulk Transfer Page.”*
- *“I am having 10 domains in Net 4 India. Not response over mail, phone & ticket, Now I am getting problem to transfer to service provider. Need help.”*
- *“I Have more than 150 Domains Under Net4 India some of them are under redemption and some are expired & some are in near expiry. Please ICANN help me to transfer all my domains from Net 4 India limited as early as possible as my domains are getting expired. Please list Net 4 India Limited on Bulk Transfer page. ICANN Please do the needful.”*

- *“We tried contact Net4India but there is no response on phone/email. Please help us...All my domains are down.”*
- *“Looks like ICANN continues monitoring Net 4 India Limited till we all will be finished, our all domains get expire. Mr. Jamie Hedlund please wake up and do not let us die. We are suffering every day and day by day situation will be worsen for Net 4 India customers/users. Please take concrete action and do not let ICANN becomes I CANNOT....”*
- *“We have few domains in net4india. Frequently, we had tried to contact with their technical person through the number i.e. 011-45980000. But msg received "Incoming facility on this number has been barred". Also, we had visited to their office at "303A, 3rd Floor Plot No.-3. Pocket H Market, Sarita Vihar, South Delhi". But their office does not exist there. Even, I have talked to other Registrar to transfer the existing domain from Net4india. But then need Auth code which we are unable to get it from Net4india. Please suggest how we can resolve this issue.”*

68. In fact, the harm to the Registrars also finds acknowledgement in Paragraph 2.8 of the Application where the RP has submitted that the non-compliances puts the businesses of the Corporate Debtor's customers in jeopardy. Thus, there is no doubt that the termination of the RAA will assist thousands of Registrants, whereas a stay on termination will affect all of them adversely.
69. From the Application, it appears that the RP still does not have control over the Corporate Debtor's operations and will be unable to cure the breaches independently (Paragraph 2.3 and 2.8 of the Application). Instead, the RP is dependent on the former promoters (Other Respondents) to cure the same. The RP has admitted as much in Paragraph 2.5 of the Application, *"till date, the control and custody of the IT system of the Corporate Debtor has also not been handed over to the Resolution Professional and the entire business of the Corporate Debtor continues to be diverted and wholly and solely managed by Respondent No.2 and Respondent No.3"*. This shows that there is no real hope of the Corporate Debtor addressing the registrants' concerns in the near future.

70. In these circumstances, there is no case to stay or revoke the termination or alternatively, for a direction to ICANN to withdraw the termination. Any such order of this Hon'ble Tribunal revoking the termination or prohibiting ICANN from acting on the Termination Notice will adversely affect not just ICANN, but thousands of registrants. The only persons that it will benefit (if at all) are the erstwhile promoters. The balance of convenience is clearly in favour of termination.
71. It is submitted that the IBC's mandate that the RP keep the Corporate Debtor as a going concern is not and cannot be at the cost of the public interest. Without prejudice to ICANN's case set out at paragraphs 23-24 above, the ability of the Corporate Debtor to run as a going concern is in serious question given the RP's position that the Corporate Debtor has no employees or infrastructure and that all its business / operations have been diverted to some other entity. It seems that the entire effort of the RP is to keep some other entity as a going concern and not the Corporate Debtor. Therefore, there is no legitimate countervailing interest that is necessary to protect.
72. Finally, it is submitted that no party must be allowed to avail benefits of a contract while not performing its obligations under the contract. The IBC cannot permit a party continuously breaching a contract to insist that the contract continue for its benefit. The Corporate Debtor has not cured the breaches under the RAA for years on end. Despite ICANN cooperating with it in good faith with the hope that the breaches would be remedied, no such actions have occurred. Similarly, despite this Hon'ble Tribunal's crystal clear January 25 Order, the Corporate Debtor has not formulated any SOP till date, has not cured the breaches, and has not complied with its obligations under the RAA. In such circumstances, ICANN cannot be forced to continue a contract wherein thousands of Registrants, the customers of the Corporate Debtor, are facing immense losses and damages on a daily basis merely because the Corporate Debtor suggests that the termination may lead to the closure of certain of its business operations.

#### VI. ICANN HAS ACTED IN GOOD FAITH

73. ICANN has always attempted to work in a fair, transparent and *bona fide* manner. This is *inter alia* borne out by the following:
- a. ICANN has extended its continuous cooperation during the CIRP of the Corporate Debtor. The RP's correspondence seeks hand-holding and forbearance - but ICANN



has already extended this for several months. Notably, the RP has acknowledged ICANN's cooperation in his letter dated 1 March 2021.

- b. The RAA allows for its termination on the ground of insolvency proceedings being pending for more than thirty days (Clause 5.5.8 of the RAA). Despite the event of insolvency proceedings *ipso facto* entitling ICANN to terminate, ICANN has not issued the Termination Notice on this ground.
  - c. Despite ICANN's serious objections as to jurisdiction, ICANN has appointed counsel to assist the Hon'ble Tribunal. ICANN is not bound to appear before Indian courts / tribunals and even then, ICANN has appeared and continues to appear before this Hon'ble Tribunal (including in the present Application that is clearly an abuse of process).
  - d. Finally, despite objecting to this Hon'ble Tribunal's jurisdiction, and despite there being no legal restraint against terminating the RAA, ICANN exercised restraint and heeded to the request of this Hon'ble Tribunal (in the January 25 Order) by not terminating the RAA for more than a month. The cooperation extended by ICANN was entirely without prejudice to its rights and with a view to not defeat the spirit or the intent of January 25 Order. In fact, the January 25 Order itself recognised that the cooperation cannot be unconditional. ICANN waited for a full one month before terminating.
74. In these circumstances, ICANN takes serious objection to the RP's allegations that ICANN has disregarded the spirit of the January 25 Order by issuing the third breach notice. The January 25 Order did not touch upon this aspect at all. In any case, it is hardly appropriate for the RP to raise this allegation given that he and the Corporate Debtor have failed to adhere to any of the directions passed by the January 25 Order. ICANN's issuance of the third notice of breach was intended to provide adequate notice to the RP to cure certain additional breaches. ICANN ordinarily sends notice of breaches to indicate non-compliance issues and the deadline by which they must be cured. This cannot possibly be interpreted as being in disregard of this Hon'ble Tribunal's request in its January 25 Order. It must be mentioned that breaches in the notice of breach dated 29 January 2021 related to breaches that were different from the breaches set out in the two notices of breach issued in December 2020.

VII. TIMING OF PRESENT APPLICATION AND FALSE AVERMENTS MADE AT THE HEARINGS

75. The conduct of ICANN stands in contrast with the conduct of the other parties.
76. The Termination Notice was issued on 26 February 2021 with an understanding that it comes into effect on 13 March 2021. However, the RP did not immediately object to the same and waited till the last minute to approach this Hon'ble Tribunal to seek a stay on the termination while specifically admitting that he was not in a position to ensure compliance by the Corporate Debtor. This conduct raises serious questions as to his conduct.
77. That the Corporate Debtor / RP has not approached this Hon'ble Tribunal with clean hands is further evident by the fact that the Corporate Debtor / RP is a party that has flagrantly breached the Hon'ble Tribunal's binding directions. As per the January 25 Order, the SOP was to be placed before this Hon'ble Tribunal within 15 days. The Corporate Debtor / RP failed to do so. Even now (days after the termination), the Corporate Debtor / RP has not placed a draft of the SOP before this Hon'ble Tribunal or requested further time to do so. Indeed, the current Application, which was filed close to 40 days after the January 25 Order, merely states that "*the draft SOPs are being discussed for finalization*". Such lack of commitment and direction in the resolution of complaints reaffirms ICANN's decision to terminate the RAA.
78. The submission by the RP that the breaches in the RAA have been substantially cured after the Termination Notice is also put to strict proof being contradictory to the actual state of affairs as also of the averments and prayers made in the Application. The Corporate Debtor has barely addressed a small fraction of the complaints and even those responses are not satisfactory. In any case, the purported cure of the complaints is irrelevant now as the Termination Notice does not envisage any cure period. More than sufficient time was provided to the Corporate Debtor to cure breaches in the past, and post-termination is not the time for cure.
79. During the course of the hearing, the counsel for the Other Respondents submitted that the WHOIS portal of the Corporate Debtor is operative. This is false. The WHOIS portal of the Corporate Debtor has been inoperative since October 2020. The Other Respondents have attempted to mislead this Hon'ble Tribunal by showing the WHOIS data of other Registrars in an attempt to claim that its WHOIS service was operable.

The WHOIS portal of the Corporate Debtor is not functional when seen for domain names registered with the Corporate Debtor, which is the applicable requirement under the RAA. A screenshot of the same as on date is annexed as **Annexure E**.

80. Finally, on 12 March 2021, it was stated that dues had been paid and / or would be paid immediately. As on date, ICANN is yet to receive payment for overdue fees in the amount of US\$ 4,142.64. It is noted that: (a) US\$163.18 is more than 90 days overdue (due on 30 November 2020); (b) US\$1,000 is more than four weeks overdue (due on 14 February 2021); and (c) US\$2,979.46 is approximately two weeks overdue (due on 2 March 2021). An additional US\$ 2,000.00 in fees was invoiced on 12 March 2021 and is due on 11 April 2021. A copy of the Customer Statement as on date is annexed as **Annexure F**.
81. Therefore, in the face of multiple such false submissions, this Hon'ble Tribunal must dismiss the Application with costs.

## **CONCLUSION**

82. The present Application deserves to be dismissed as against ICANN on grounds that: (i) the Hon'ble Tribunal has no jurisdiction over ICANN or the RAA; and/or (ii) the issue has already been adjudicated by this Hon'ble Tribunal and is therefore barred by *res judicata*; and/or (iii) the Application is otherwise not maintainable; (iv) there is no case made out for withdrawing the Termination Notice; and/or, finally, (v) because it is apparent that the only beneficiary of such a stay of termination are the erstwhile promoters who have diverted the business of the Corporate Debtor to another entity i.e., Net 4 Network which is wholly impermissible and would be contrary to the letter and spirit of the IBC.

In light of the facts and reasons set out above, it is humbly prayed that the present Application be dismissed and that no orders be passed against ICANN.

**TRILEGAL**

**Advocates for Respondent No. 1**