

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
PRINCIPAL BENCH AT NEW DELHI  
I.A NO. 1228 OF 2021  
-IN  
C.P (IB) NO. 409 (PB)/2017**

**IN THE MATTER OF:**

**VIKRAM BAJAJ  
(Resolution Professional for Net 4 India Ltd.)**

**...APPLICANT**

VERSUS

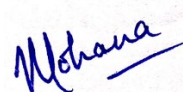
**INTERNET CORPORATION FOR ASSIGNED NAMES  
AND NUMBERS AND ORS.**

**...RESPONDENTS**

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**FILED THROUGH:**



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Date: 12 March 2021

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
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**WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANT IN THE CAPTIONED  
APPLICATION**

**MOST RESPECTFULLY THAT SHOWETH:-**

1. That the present application has been filed on behalf of Mr. Vikram Bajaj, Resolution Professional (“RP”/ “Applicant”) of Net 4 India Limited (“Corporate Debtor”) under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 seeking urgent directions against Internet Corporation for Assigned Names and Numbers and Ors. (“ICANN”/ “Respondent No. 1”) *inter alia* to withdraw the Notice of Termination dated 26 February 2021 of the Registrar Accreditation Agreement dated 10 July 2014 (“RAA”). The present written submissions are being filed in pursuant to the order dated 12 March 2021 on the limited ground raised during the hearing on 12 March 2021. The Applicant reserves the right to file further written submissions, if required.
2. That the primary issue raised during the hearing on 12 March 2021 was whether this Hon’ble Adjudicating Authority has the jurisdiction to adjudicate over the issues between the Corporate Debtor and ICANN, since ICANN is foreign entity.
3. The Applicant submits as hereunder-
  - a. Section 14(2A) of the Code provides that “Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified”.
  - b. In the present case, the Corporate Debtor is the business of selling domain names, website/email hosting and related website and is an accredited Registrar with the Respondent No. 1. The Corporate Debtor has been granted a service in the form of license by Respondent No. 1 which enables Corporate Debtor to sell the domain names. The accreditation of the Corporate Debtor with the Respondent No. 1 is extremely critical for the business of the Corporate Debtor and for preserving the value of the Corporate Debtor and keeping it as a going concern.
  - c. Further, most of the pending dues of ICANN have already been paid by the Respondent No. 2, and the Respondent No. 2 has undertaken to pay the complete dues at the earliest. It is submitted that a payment of USD 4500 was made on 22 January 2021 post which the outstanding balance was USD 163.18. Bills have been raised on 15 January 2021 for USD 1000 with due date 14 February 2021 and another bill was raised on 31 January 2021 for USD 2979.46 with due date of 02 March 2021. All previous bills have been paid and total outstanding dues, as on date, are only USD 1163.18 pertaining to invoice dated 15 January

2021. Further, the Respondent No. 2 has undertaken to resolve and address all the remaining complaints raised by the customers at the earliest and requested the Respondent No. 1 to solve the issues amicably.

- d. In such circumstances, termination of the RAA, during the continuance of the moratorium and while dues are being paid to ICANN, would be in contravention of Section 14(2A).
  - e. It is submitted that Section 14 creates a right in favour of a company undergoing insolvency. These rights operate in rem and not against a specific entity. These are rights granted by the Code to ensure that the object of the Code – keeping the company as a going concern – is fulfilled. The rights are granted in respect of all assets of the Corporate Debtor, which includes the contract between Corporate Debtor and Respondent No.1.
  - f. Once such rights are recognized to be available with the Corporate Debtor, the Hon'ble NCLT has a right to pass orders protecting such rights.
  - g. Section 14 does not make any distinction between counterparty to the right (creditor or supplier) being resident or non-resident in India. As such, the NCLT would have the jurisdiction to restrain Indian or non-Indian counterparty from interfering with such rights.
  - h. The jurisdiction of Hon'ble NCLT to pass orders under the Code are not dependent on whether such an order will be recognized by foreign court or be enforceable in a foreign jurisdiction. It is most respectfully submitted that the questions of enforceability of the order in a foreign court does not deprive an Indian court/tribunal of the jurisdiction it would otherwise have under law.
  - i. It is further submitted that India has not adopted UNCITRAL model law on cross border insolvency. However, United States (“U.S”) has adopted principles of UNCITRAL model law on cross boarder insolvency by inserting Chapter 15- Ancillary and other cross border cases, of the U.S Bankruptcy Code. By adopting such provisions, it has permitted the foreign debtor to file a petition under Chapter 15 seeking recognition of foreign proceedings in U.S.
  - j. In the past, the U.S Bankruptcy Court has recognized the Indian Insolvency Proceedings under Chapter 15 - Ancillary and other cross border cases, of the U.S Bankruptcy Code. In *SEL Manufacturing Company Ltd.*, Case No. 19-10988 (MFW), in a petition under chapter 15 of the US Bankruptcy Code, the U.S. Bankruptcy Court for the District of Delaware recognized the insolvency proceedings of SEL that were pending before the National Company Law Tribunal, Chandigarh Bench as a foreign main proceeding within the meaning of section 1502(4) of the US Bankruptcy Code. Such a recognition enforces the submission that US Courts have recognized Indian Insolvency cases. A copy of Chapter 15 is annexed herewith as **Annexure-1**. A copy of the order passed by U.S Bankruptcy Court in *SEL Manufacturing Company Ltd.*, Case No. 19-10988 (MFW) is annexed as **Annexure- 2**.
  - k. In light of the above, this Hon'ble Adjudicating Authority has the jurisdiction to pass an order directing the Respondent No 1 to withdraw the termination notice in view of Section 14 (2A) of the Code.
4. Further, in case of “*Jet Airways (India) Ltd. (Offshore Regional Hub/Offices Through its Administrator Mr. Rocco Mulder) v. State Bank of India & Anr.*”, Company Appeal (AT) (Insolvency) No. 707 of 2019, the Hon'ble National Company Law Appellate Tribunal (“**Hon'ble NCLAT**”) in the absence of UNCITRAL model law on cross border insolvency and in order to harmonize the insolvency proceedings in Netherland and India against Jet Airways (India) Limited directed the Administrator of Jet Airways (India) Limited (Offshore Regional Hub) and the Resolution Professional to submit the Terms & Conditions of Agreement termed as “Cross Border Insolvency Protocol”. The draft of “Cross Border Insolvency Protocol” was made binding on both Administrator of Jet Airways (India) Limited (Offshore Regional Hub) and the Resolution Professional. The relevant paragraph is as under:-

*“We make it clear that the ‘Dutch Trustee (Administrator) will work in co-operation with the ‘Resolution Professional of India’ and, if any, suggestion is required to be given, he may give it to the ‘Resolution Professional’. The draft of ‘Cross Border Insolvency Protocol’ clause is made final as above. It should be treated as a direction of this Appellate Tribunal and it would be mandatory to*

*comply with the order of this Appellate Tribunal subject to the other procedures which are to be followed in terms of the 'Insolvency and Bankruptcy Code, 2016'*

A copy of the judgment of the Hon'ble NCLAT in *Jet Airways (India) Ltd. (Offshore Regional Hub/Offices Through its Administrator Mr. Rocco Mulder) v. State Bank of India & Anr.*", Company Appeal (AT) (Insolvency) No. 707 of 2019 is annexed as **Annexure- 3**.

5. In view of the above submissions, this Hon'ble Adjudicating Authority may be pleased to allow the application filed by the Applicant and direct Respondent No. 1 to withdraw the termination of the RAA until the completion of 3 months as provided in the order dated 25 January 2021 passed by this Hon'ble Adjudicating Authority.

**FILED THROUGH:**



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