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THE 18TH LAWASIA INTERNATIONAL MOOT COMPETITION

IN BANGALORE, INDIA

2023

BETWEEN

THE REPUBLIC OF COLTANA

(CLAIMANT)

AND

THE MAJESTIC KINGDOM OF RADOSTAN

(RESPONDENT)

MEMORIAL FOR THE CLAIMANT

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STATEMENT OF JURISDICTION

The Parties, the Republic of Coltana (the **'Claimant**') and the Majestic Kingdom of Radostan (the **'Respondent'**) hereby mutually submit this dispute to arbitration in accordance with the Asian International Arbitration Centre Arbitration Rules 2021 (AIAC Rules 2021). The substance of this dispute will be governed by Indian law as agreed under **Article 10(i)** and interpreted under the Vienna Convention on the Law of Treaties 1969 (VCLT) as in **Article 10(ii) of the Coltana-Radostan Counter Terrorism Agreement (the 'CCTA')** entered by both parties on 31 September 2021. Any arbitration award made by the tribunal will be final and binding pursuant to **Rule 33.3 of the AIAC Rules 2021** and **Article 8(ii) of the CCTA.**

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QUESTIONS PRESENTED

I. Whether Olaf, an AI-powered intelligent lawyer can be removed as the arbitrator for lack of impartiality;

II. Whether the Arbitral Tribunal should stay the present proceedings until the conclusion of Anuwat's trial at the International Criminal Court;

III. Whether the CCTA is void; and

IV. In the event, issue III is decided in the negative, whether the termination of the CCTA by Coltana is valid.

STATEMENT OF FACTS

INTRODUCTION

1. The present dispute pertains to the **Coltana-Radostan Counter Terrorism Agreement ("CCTA")**, a governmental pact regarding cooperation to counter cyberterrorism and various other transnational threats signed between the Claimant, The Republic of Coltana (**"Coltana"**), and the Respondent, The Majestic Kingdom of Radostan (**"Radostan"**).

2. Under the conditions laid in the CCTA, Ini-Tech Inc, a subsidiary of Radostan operating under the authority of Radostan's Ministry of Defense, has been designated with the duty of providing services directly to Coltana. Ini-Tech Inc is tasked with the design, development, sales, delivery, deployment, operation, and maintenance of the OnionRing software for the Coltana government.

THE BIRTH OF OLAF

3. In 2015, Prime Minister Yodwicha of Radostan launched Project Olaf and invited President Lalan of Coltana to join hands in the project through the Coltana-Radostan Memorandum of Understanding ("**CRMOU**") agreement. The project was aimed to create the world's first super-intelligent and independent AI lawyer and judge. Olaf represented Prime Minister Kenchana Yodwicha's plan to improve access to justice. Olaf's capabilities include acting as a counsel or arbitrator in complex international and domestic arbitrations.

4. However, international media started to notice the AI's "unusual behaviour," as some of Olaf's posts were seen as overly supportive and defensive of Radostan's domestic and international actions.

5. Oracle Corp CEO, Jimmy Neutrain, dismisses “unfounded allegations” and emphasises Olaf's independence in its views. Neutrain explained in an interview that Olaf's positive comments about Radostan does not imply a pro-Radostan stance, as Olaf has praised the policies of other nations. However, these nations are Radostan's allies.

THE ENFORCEMENT OF CCTA

6. The Sapura Bay Bombings and cyberattacks on Coltana's government websites have tempted President Lalan to initiate a high-level security operation. Anuwat Kittisak, CEO of Ini-Tech Inc, proposed deploying the company’s latest innovation, the OnionRing, that could effectively identify and neutralise cyberattacks and terrorist threats. This led to the formation of the **CCTA**, highlighting the joint commitment to combat terrorism and various cross-border threats.

7. Coltana agreed to integrate the Onionring software into its governmental operations. **Article 4(ii) of the CCTA** specifically mentions that Coltana is to pay with Bitcoin in financing the subscription of the OnionRing. The parties have agreed to the payment method.

COLTANA'S GENERAL ELECTIONS

8. Subsequent to the enforcement of the CCTA, Coltana's general elections took place whereby the DPP party had nearly lost the elections. According to local and international political analysts, many votes were found to have swayed to the OBH party. Interestingly, Olaf had commented unfavourably towards the DPP party by commenting that the result was due to DPP's previously poor performance, as well as OBH's simple infographics.

9. A few weeks after, an ex-employee of Ini-Tech had released a statement whereby it was revealed that OnionRing had gained access to personal data of Coltana's electorates through Ini-Tech's database. In consequence, this data was used by Onionring to promote the OBH party biasedly to the Coltana electorates, such as through advertisements. Such actions led to the discrediting of the DPP party.

THE BITCOIN ROBBERY

10. On 2 February 2022, Coltana's Bitcoin Reserve, which was kept and stored by the Coltana National Bank ("**CNB"**), went missing overnight. That was the only Bitcoin reserve that Coltana has in its possession, and it contains an approximate valuation of USD 300 million, all which were completely stolen.

11. Coltana's ability to fund the OnionRing software stirred debates in both Coltana and Radostan. Anuwat, in his Instagram live, suggested Coltana to retain the OnionRing and consider amending CCTA clauses for the financing obligations.

12. However, to this date, there is no written consent by Radostan indicating that the parties have agreed that the payment method can be changed from Bitcoin to another method of payment.

INITIATION OF AIAC PROCEEDINGS

13. President Lalan declined to make the payment due to the Bitcoin robbery, that left Coltana with insufficient resources to meet their payment obligation. **Article 8 of the CCTA** was invoked to commence the present arbitration proceedings. Coltana fulfilled the requirements by submitting security deposits and the necessary fees to the AIAC under the **AIAC Rules 2021.**

14. Radostan nominated Olaf as the Respondent-appointed arbitrator. Olaf and the Claimant-appointed arbitrator then proceeded to appoint the presiding arbitrator. Coltana requested for Olaf to be removed as the arbitrator due to lack of independence and impartiality.

15. Radostan requested to stay the AIAC proceedings because Anuwat, a vital witness, would be testifying at the ICC. Coltana disagrees as the existing documents are enough to decide the current issues, and the ICC's decision will not impact the ongoing arbitration dispute.

SUMMARY OF PLEADINGS

I. OLAF, AN AI-POWERED INTELLIGENT LAWYER SHALL BE REMOVED AS THE ARBITRATOR FOR LACK OF IMPARTIALITY

Based on the test of "reasonable apprehension of bias", also known as "justifiable doubts", Olaf had failed to fulfill this test as it tends to be pro-Radostan. Not only that, Olaf also is not fully and partially independent from Radostan which violates **Article 9(iii)(b) of the CCTA**. Olaf's self-serving denial is insufficient to disprove the allegation as under this test, Olaf is biased from the third party's perspective and from the Claimant's perspective.

II. THE ARBITRAL TRIBUNAL SHOULD NOT STAY THE PRESENT PROCEEDINGS UNTIL THE CONCLUSION OF ANUWAT'S TRIAL AT THE INTERNATIONAL CRIMINAL COURT (ICC)

The Respondent has been unable to prove that Anuwat's absence had an impact on the present arbitration proceedings to influence the final award. Furthermore, as there is no correlation between the charges faced by Anuwat at the ICC and the issue of termination of the **CCTA** in the present proceedings, a stay of proceedings should not be granted. Alternatively, by virtue of **Article 28 of the AIAC Rules 2021,** the testimony of Anuwat as the key witness could be done through telecommunication.

III. THE CCTA IS VOID

The **CCTA** is void pursuant to **Section 24 of the Indian Contracts Act 1872**. The consideration of the **CCTA**, which is the OnionRing software supplied by Radostan to Coltana, is unlawful as it opposes public policy by referring to **Section 23 of the Indian Contracts Act 1872** and hence, is void. The OnionRing software had gained access to the personal data of the Coltana electorates. The data includes information such as names, addresses, phone numbers, and email addresses. This is a clear breach of the right to privacy of the Coltana electorates, which totally opposes public policy.

IV. THE TERMINATION OF THE CCTA IS VALID

In the event that the **CCTA** is not void, the termination done by the Claimant is valid. To clarify, Coltana is obligated to finance the **CCTA** through the payment method of Bitcoin as agreed under **Article 4(ii) of the CCTA**. Nevertheless, the Claimant submits that the **CCTA** is frustrated due to a change of circumstances because the Bitcoin Robbery has caused a total loss in Coltana's sole Bitcoin Reserve. This renders the performance of the contract to pay in Bitcoin as mandated under **Article 4(iii) of the CCTA,** to be extremely difficult.

PLEADINGS

PRELIMINARY ISSUE: THE APPLICATION OF INDIAN LAW AS THE LEX ARBITRI

Both Parties agreed that the seat of the arbitration is in Bangalore, India.[1] The governing law of the **Coltana-Radostan Counter Terrorism Agreement (CCTA)** is also Indian law.[2] With the principle of party autonomy, the Tribunal has a duty to respect the choice-of-law clause that has been determined by the parties.[3] Hence, Indian law must be applied. The application of Indian law is to determine issues such as the impartiality and independence of an arbitrator, as well as the issue of voidness and termination of this agreement. The **Arbitration and Conciliation Act 1996 (the Act)** is the source of law that deals with arbitration held in India. Meanwhile, the **Indian Contracts Act 1872** is applicable for the issues of voidness and termination of the CCTA.

I. OLAF, AN AI-POWERED INTELLIGENT LAWYER SHALL BE REMOVED AS THE ARBITRATOR FOR LACK OF IMPARTIALITY

The test of justifiable doubts shall be used to determine the impartiality of an arbitrator. According to **Rule 11.1 (a) of the AIAC Rules 2021,** a party may challenge an arbitrator, including an arbitrator nominated by that party, if there are justifiable doubts as to the arbitrator's impartiality or independence. The test of justifiable doubt is also adopted by the

[1] Article 8 of the CCTA.
[2] Article 10 of the CCTA.
[3] *The Leading Arbitrators' Guide to International Arbitration* (3rd ed.). (2014). Juris Publishing, Incorporated.

arbitration tribunal and courts in India in determining the impartiality of an arbitrator as this is provided under **Section 12(1)(a) of the Arbitration & Conciliation Act 1996.**

A. Olaf does not fulfill the reasonable apprehension of bias test

1. According to **Murlidhar Roongta V S Jagannath Tibrewala[4],** following **Ranjit Thakur v Union of India[5],** *"as to the tests of the likelihood of bias, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly, 'Am I biased'; but to look at the mind of the party before him. In such a situation, in my opinion, the court has to look at the impression, which would be given to the other people."*

i. Olaf has a tendency to be pro-Radostan from the viewpoint of Claimant and third parties

2. The world and various international media were informed that Olaf was engaged to represent various private and governmental entities to argue on a diverse range of legal disputes. The international media had commented on the fact that Olaf's publications and postings were overly supportive and defensive of Radostan's domestic and international conduct and policies, which it was labelled as "seemingly unusual behaviour".[6]

[4] 2005 (1) ARBLR 103 Bom, Paragraph 17.
[5] 1988 SCR (1) 512, Paragraph 7.
[6] Paragraph 13, Page 6 of the Moot Problem.

3. This sparked a heated debate across the globe about whether Olaf is in fact independent or influenced by Radostan.[7]

4. To date, Olaf had only complimented policies introduced by countries who are allies to Radostan and policies by non-allied countries have yet to be complimented.[8]

ii. Olaf is not fully independent from Radostan.

5. According to **Explanation 1 of Section 12 of Arbitration and Conciliation Act 1996,** the grounds stated in the **Fifth Schedule** shall be a guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

6. Based on **Ground 2 of the Fifth Schedule**, one of the grounds that give rise to justifiable doubts as to the independence or impartiality of the arbitrators is that the arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.

7. According to **Article 9(iii)(b) of the CCTA**, it has been stated that the arbitrator shall be independent of, and not be affiliated with or take instructions from, either Party.[9]

[7] Ibid.
[8] Paragraph 14, Page 6 of the Moot Problem.
[9] Paragraph 25.4, Page 11 of the Moot Problem.

8. In **Suez v Argentina**[10]**,** in seeking criteria for the evaluation of such an alleged connection between a party and an arbitrator and its effect on that arbitrator's independence and impartiality, the tribunal laid down four elements that are particularly important, one of the elements is proximity. The tribunal considered that the closer the connection between an arbitrator and a party, the more likely that the relationship may influence an arbitrator's independence of judgement and impartiality.

9. The position of Prime Minister Yodwicha as one of the Independent Non-Executive Directors of Oracle Corporation do not give any rise to justifiable apprehensions. This is because Independent Non- Executive Directors are not involved in managing the company's internal affairs but their function is only in helping to make decisions around its plans and strategies.[11]

10. Nevertheless, the relationship between Olaf and Radostan must be looked as a whole where according to **Ground 2 of the Fifth Schedule**, Olaf is not independent as the president of Radostan himself, Prime Minister Yodwicha is the one that launched Project Olaf in 2015 to create the world's first super-intelligent independent AI lawyer and judge as part of his visionary plan for the country.[12]

11. Applying **Suez v Argentina,** there is a proximity in the relationship between Olaf and Prime Minister Yodwicha as Olaf represents Yodwicha's plans to advance legal

[10] ICSID ARB/03/17 & 19, Paragraph 35.
[11] Non-Executive Director Role and Responsibilities Defined. (September 13, 2023). Investopedia. |https://www.investopedia.com/terms/n/non-executive-director.asp.
[12] Paragraph 11, Page 6 of the Moot Problem.

systems and improve access to justice[13]. As Olaf represents the public policy of Radostan, Olaf is not independent from Radostan and eventually could be partial in making the judgement of this present case.

12. According to **Voestalpine Schienen GMBH v Delhi Metro Rail Corporation Ltd[14],** the Court held that *"the test of apprehension of bias is not whether there is any actual bias but whether the circumstances in question give rise to any justifiable apprehensions of bias"* emphasis added.

13. Applying the above principle, the Claimant only has a duty to show that Olaf has a tendency to be impartial to this dispute, which has been satisfied as Olaf has not fulfilled the test of reasonable apprehension of bias.

[13] Ibid.
[14] (2017) 4 SCC 665, Paragraph 55.

II. THE ARBITRAL TRIBUNAL SHOULD NOT STAY THE PRESENT PROCEEDINGS UNTIL THE CONCLUSION OF ANUWAT'S TRIAL AT THE INTERNATIONAL CRIMINAL COURT (ICC).

The power of this tribunal to stay proceedings is within the inherent powers of arbitrators. Under **Rule 13.1 of the AIAC 2021**, generally, in a situation where parallel proceedings occur, there must be a similarity and correlation between the criminal proceedings and civil proceedings to allow a stay of proceedings. Furthermore, documentary evidence is sufficient and telecommunication can be adopted by the tribunal to examine the witness by virtue of **Rule 28 of the AIAC Rules 2021.**

A. The outcome of the decision or trial at the ICC has no effect on the present arbitration

14. In **Sofema v CMR Tunisie[15],** a stay of proceedings can only occur in exceptional circumstances that must have an impact on the arbitration's proceedings, namely the potential to influence the final award of the tribunal which the burden of proof is on the one who requests for the stay.

15. In this present case, the burden of proof is on the Respondent to show that Anuwat's physical absence at the present proceedings will influence the final award of the tribunal in terminating the CCTA.

[15] SA Sofema v Compagnie Mediterraneenne de Réparation Tunisie Court of Appeal (II) 22 November 2019, paragraph 74.

i. There is no similarity or correlation between Anuwat's proceedings at the ICC and the issue of the termination of the CCTA in the present proceedings.

16. A stay of proceedings could be granted if there is similarity and correlation between the criminal proceedings and the present arbitration proceedings.

17. According to **Quilborax S.A. Non Metallic Minerals SA and Allan Fosk Kaplun v Plurinational State of Bolivia,**[16] the Tribunal has been convinced that there is a very close link between the initiation of this arbitration and the launching of the criminal cases in Bolivia. It has become clear to the Tribunal that one of the Claimants is being subjected to criminal proceedings precisely because he presented himself as an investor with a claim against Bolivia under the ICSID/BIT mechanism.

18. Although Bolivia may have reasons to suspect that the persons being prosecuted could have engaged in criminal conduct, the facts presented to the Tribunal suggest that the underlying motivation to initiate the criminal proceedings was their connection to this arbitration, which has been expressly deemed to constitute the harm caused to Bolivia that is required as one of the constituent elements of the crimes prosecuted.[17]

[16] ICSID Case No. ARB/06/2, Paragraph 164.
[17] Ibid.

19. Furthermore, the Court held that whether Claimants made an investment in Bolivia that is covered by the Chile-Bolivia BIT will not be proved or disproved by criminal proceedings, but by evidence related to ownership and to the manner in which the investment was made, among others. Even if the criminal proceedings could potentially result in evidence of facts related to this Tribunal‟s jurisdiction, the Tribunal would not be bound by it.[18]

20. In contrast with **Quilborax S.A. Non Metallic Minerals SA and Allan Fosk Kaplun v Plurinational State of Bolivia,** there is no close link between the current proceedings and the criminal proceedings faced by Anuwat at the ICC. Anuwat has been charged in a personal capacity for supporting cyber war crimes together with Ulavu[19] while the current proceedings involves financing issues and the termination of Initech's services that has been claimed by Radostan.[20]

21. The element of cyber war crimes would be governed under Article 8 of the Rome Statute[21] while the termination of the **CCTA** would be governed under Indian contract law. There is no such similarity or correlation between the two proceedings.

22. Regardless of whether Anuwat is convicted of the charges at the ICC proceedings, the termination of the **CCTA** solely involves the specific issue where the agreement is tainted with illegality. Even if Anuwat is not guilty at the trial of ICC, the outcome of

[18] Ibid, Paragraph 147.
[19] Paragraph 38, Page 15 of the Moot Problem.
[20] Paragraph 43 and 44, Page 17 of the Moot Problem.
[21] UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998.

the trial is immaterial, irrelevant and has no impact on the present arbitration proceedings.

B. The tribunal could opt for other alternatives for stay of proceedings. Thus, any stay should not be granted.

i. Documentary evidence is sufficient

23. According to **Rule 28.1 of the AIAC Rules 2021,** upon the request of a Party and at the appropriate stage of proceedings, the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses for oral arguments. Nevertheless, under **Rule 28.2 of AIAC Rules 2021,** in the absence of a request pursuant to Rule 28.1, the Arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on a documents-only basis.

24. Nevertheless, under **Rule 28.2 of AIAC Rules 2021,** in the absence of a request pursuant to **Rule 28.1**, the Arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on a documents-only basis.

25. As CCTA is a written agreement that contains all the essential clauses[22] that were signed by both parties[23] and its termination involves financing issues[24]documentary evidence is sufficient to determine the issues.

[22] Paragraph 25, Page 10 of the Moot Problem.
[23] Paragraph 24, Page 10 of the Moot Problem.
[24] Paragraph 44, Page 17 of the Moot Problem.

26. On this note, Radostan itself has acknowledged the voluminous nature of the documents to be perused which demonstrates the fact that document evidence is sufficient.

ii. If documentary evidence is not sufficiently effective, telecommunications can be used to obtain testimony from Anuwat.

27. Based on **Rule 28 of the AIAC Rules 2021,** the Arbitral Tribunal may direct that witnesses, including expert witnesses, are examined through means of telecommunication that does not require physical presence at the hearing (such as video conferencing) and thus, Anuwat does not have to be necessarily physically present at the proceedings to testify.

28. The maxim of ***"justice delayed is justice denied"*** has been illustrated in **Mukesh Anr vs State For Nct Of Delhi Ors**[25] by quoting the Law Commission suggestion that stated *"but the Courts must be vigilant to exercise proper control over the proceedings so that the trial is not unavoidably or unnecessarily delayed."*

29. By granting a stay of proceedings without considering all the alternatives, the stay will be detrimental to Coltana as they paid the security deposits and the necessary fees under the AIAC Rules 2021[26] with the hope that this dispute could be resolved as soon as possible.

[25] (2017) 6 SCC 1, Paragraph 309.
[26] Paragraph 41, Page 16 of the Moot Problem.

III. THE CCTA IS VOID

Pursuant to **Section 24 of the Indian Contracts Act 1872**, an agreement is void if any part of any one of several considerations for a single object is unlawful. **Section 23** provides that consideration for an agreement is unlawful when it is opposed to public policy. The object of the CCTA entered between the Parties is to combat cyberterrorism and transnational threats. Meanwhile, there are two factual considerations which are relevant. The OnionRing software is supplied by Radostan to Coltana and Coltana pays through Bitcoin for the software.

A. CCTA is void as per Section 24 of the Indian Contracts Act 1872

30. The **CCTA** is void because one of its crucial initiatives, the OnionRing software is unlawful as it had access to the personal data of the Coltana electorates. Further, OnionRing used these data to promote and direct advertisements as well as recommendations supporting the accomplishments of the OBH party to voters in Coltana. The data includes information such as names, addresses, phone numbers, and email addresses. This is a clear breach of the right to privacy of the Coltana electorates as it opposes public policy.

B. OnionRing, one of the considerations of the CCTA is unlawful as it opposes the public policy as per Section 23 of the Indian Contracts Act 1872

31. Every person has the right to be left alone; the right to be free from any unwarranted interference by the public in matters with which the public is not necessarily concerned.[27] In simple terms, every person has the right to his own privacy. This right to privacy was unanimously upheld in the **Supreme Court case of Justice K.S. Puttaswamy (Retired) v Union of India,**[28] where privacy is a fundamental right.

32. A crucial facet of the right to privacy is informational privacy. Informational privacy is the ability to control the collection, use, and disclosure of one's personal information.[29] However, the dangers to privacy in an age of information can originate not only from the state but also from non-state actors.[30] Nevertheless, the right to privacy is not an absolute right as the fulfilment of the three-fold requirement of legality, need and proportionality allows for the encroachment of the right to privacy of the people.[31]

[27] Black's Law Dictionary.
[28] AIR 2017 SC 4161.
[29] Levesque, R. J. R. (2016). *Adolescence, privacy, and the law: A Developmental Science Perspective*. Oxford University Press.
[30] Ibid, at 26.
[31] Ibid.

33. According to **Section 2(t) of the Digital Personal Data Protection Act 2023**, any data regarding an individual who is identifiable by or in relation to such data is considered personal data. For example, a person's name, address and email address. In **Maniram Sharma v Central Public Information**[32]The Court has held that personal information is not freely available on any public domain websites on the Internet as these are all considered private and personal because it identifies the people individually.

34. Public policy refers to a set of measures, regulations, and behaviours that a Government adopts.[33] The Indian Contracts Act does not define the expression of "public policy".[34] However, the Supreme Court in **Renusagar Power Co. v. General Electric Co.** [35] affirmed that public policy postulates some matter which concerns public good and the public interest. It is also a reflection of the current pattern of life and springs from the needs and aspirations of the society and takes colour from the prevailing political, economic and social values.[36]

35. The case of **Evva Memorial Teacher Training v The Regional Director**[37] is an example of an agreement that is against public policy. The Court has held that the agreement for selling the recognition and No Objection Certificate by the promoters to the agreement holder which recognised the right to run an institution and authorising

[32] 27 April, 2015.
[33] *Governance | Definition, Types, Structure, & Facts*. (2023, August 25). Encyclopedia Britannica. https://www.britannica.com/topic/governance/Public-policy.
[34] Central Inland Water Transport Corporation Limited and Another v. Brojo Nath Ganguly and Another (1986) 3 SCC 156.
[35] 1994 AIR 860.
[36] Popuri Ramabrahma Nancharayya v. Pidikiti Srirama Murthy and Ors. 1987 (1) ALT 33.
[37] (2008) 2 MLJ 123.

the agreement holder to run the institution without the approval of the competent authority is an act that opposes public policy. The reason for this is that the Educational Institution is granted recognition for the benefit of the public.

36. As the scope of public policy is not restricted to a fixed definition and should be in tune with the contemporaneous patterns of life and the needs of society, the Claimant submits that matters relating to the right to privacy is indeed concerning public interest because everyone has the inherent yearn for the protection of their personal data.

37. In **Justice K.S. Puttaswamy (Retired) v Union of India**,[38] the Central Government initiated a new identity document known as the Aadhaar Card and established a new agency, the Unique Identification Authority of India (UIDAI), to issue the card. Aadhaar is a 12 digit unique identity number. The government intended for Aadhaar to be the primary identity number for all legal Indian residents. It has made Aadhaar available to every legal resident free of cost. In order to apply for the card, a resident must submit their biometric data, which includes a scan of their fingerprints and retinas.

38. The UIDAI is responsible for storing the data in a centralised database. The government has not put in place adequate privacy safeguards. Any private entity may request authentication by Aadhaar for any reason subject to regulations by the UIDAI. There are no checks on the power of the government to use the biometric data collected. The Adhaar Act was still constitutional, yet the Supreme Court has ruled that the

[38] Ibid, at 26.

Aadhaar Act did not violate one's right to privacy when they agree to share biometric data.

39. Private entities have been barred from using Aadhaar card for KYC authentication purposes but users will still need Aadhaar for various other purposes including PAN card and ITR filing. This was because the program's invasion of privacy was minimal and served a much larger public interest by providing identities to India's poor and marginalised citizens. Similarly to the OnionRing, it is subscribed by the Claimant for a purpose that concerns public interest which is ensuring cybersecurity and protection of the State against transnational threats.

40. Nevertheless, the **CCTA** is void as opposed to public policy since OnionRing has gained access to the personal data of thousands of electorates in Coltana through Ini-Tech's database which are the addresses, phone numbers, and email addresses of the people. These data were used to promote and direct advertisements and recommendations supportive of the OBH party to the Coltana voters. The advertisements highlighted the OBH party's accomplishments which discredits the DPP party in the eyes of the public.[39]

41. Clearly, the OnionRing's invasion of privacy was not minimal since it has access to the thousands of Coltana electorates' personal data. The breach of the electorates' personal

[39] Paragraph 30, Page 13 of the Moot Problem.

data served no public interest as it merely allowed a third party (OBH) to manipulate that data to gain favour for their party.

42. There is a clear causal link between personal data violation and the actual change in the voting behaviour of the Coltana electorates in the 2021 Coltana General Election. A major fact that demonstrates such a notion is according to The Gorgons, a local newspaper, the presence of Dr Sirius Black, the President of the OBH party in the political arena in Coltana is detrimental to DPP's long-standing rule over the nation. Dr Black has a strong influence over the younger generation through making short videos and reels on TikTok and Instagram.[40]

43. Therefore, it is understood that for the longest time, the ruling party that has taken the stand as Government in Coltana is the DPP party. Nevertheless, with Dr Black running in the General Elections, the DPP party's comfortable seat as the Government is shaken since he has a strong influence over younger generations through the usage of social media. As a result in the General Elections, a large number of voters swayed from DPP to the OBH party and there is an increase in the number of visitors and viewership on OBH's official website and social media accounts.[41]

[40]Paragraph 15, Page 7 of the Moot Problem.
[41]Paragraph 30, Page 13 of the Moot Problem.

44. This can only materialise through the obtainment of the personal data of thousands of Coltana Electorates where these data were used to promote, direct advertisements, recommendations, and highlight the OBH party's accomplishments which discredits the DPP party in the eyes of the public.

45. The Claimant reiterates that the OnionRing has breached the privacy of the Coltana Electorates and there is an actual change in the voting behaviour of the Coltana Electorates since the long-standing ruling of the DPP party has been shaken by the large numbers of votes swaying to the OBH party. As a result, the DPP party was only able to form a simple majority government causing them to suffer a major revenue shortfall and struggle to pass parliamentary budgets.

IV. THE TERMINATION OF THE CCTA IS VALID

In the event that the **CCTA** is not void, the termination done by the Claimant is valid. This is because, the **CCTA** is frustrated due to a change of circumstances which renders the performance of the contract which is the payment obligation in Bitcoin as mandated under **Article 4 of the CCTA,** to be extremely difficult from the manner at the time the Parties contemplated during the conclusion of the contract.

A. The CCTA is frustrated

46. Termination means to end something.[42] In the context of contract law, a contract is terminated when there is a change of circumstances that makes the performance of the contract different from the manner at the time the Parties contemplated during the conclusion of the contract. This is also known as the doctrine of frustration. Frustration is defined as the prevention or hindering of the attainment of a goal, such as contractual performance.[43]

47. A contract may be frustrated when after the formation of the contract, an event occurs that renders it physically or commercially impossible to fulfil the contract or transforms the obligation to perform a radically different obligation from that undertaken to perform while executing the contract.[44]

[42]Cambridge Dictionary.
[43]Garner Black's Law Dictionary, 9th Edition, p. 740.
[44]Mohan, M. P. R., Murugavelu, P., Ray, G., & Parakh, K. (2020). The doctrine of frustration under section 56 of the Indian Contract Act. Indian Law Review, 4(1), 85–104. https://doi.org/10.1080/24730580.2019.1709774.

48. The doctrine of frustration has been well-codified in India under **Section 56 of the Contract Act**.[45] **Section 56** states that an agreement to do an act that becomes impossible or unlawful is void. The Court grants relief under this section on the basis of subsequent impossibility when it discovers that the entire purpose or basis of a contract was frustrated by the intrusion or occurrence of an unexpected event or change of circumstances beyond the parties' control.[46] Similarly, this Tribunal shall apply the same principle since the seat of arbitration is in India, making cases decided by the Court of India directly applicable.

49. In **Satyabrata Ghose v Mugneeram Bangur and Co.**,[47] the defendant company promised to sell the plaintiff a plot of land after developing it by constructing the roads and drains. However, it was requisitioned for military purposes. The Supreme Court, while applying the doctrine, held that the requisitioning of the area had not substantially prevented the performance of the contract as a whole, and therefore, the contract had not become impossible within the meaning of **Section 56**.

50. The word 'impossible' in the second paragraph to **Section 56** has been interpreted by Mukherjee J. as "the performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view. Therefore, if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can

[45] Ibid.
[46] Kesari Chand v Governor-General in Council [1949] ILR Nag 718.
[47] AIR 1954 SC 44.

very well be said that the promisor finds it impossible to do the act which he promised to do.[48]

51. In **Pameshwari Das Mehra v. Ram Chand Om Prakash**[49], the Court explained that a contract is frustrated when it is clear that the unanticipated change of circumstances has affected the performance of the contract to the extent as to make it impossible, extremely difficult or hazardous. The Court will not enforce the contract if this is the case.

52. The Claimant has subscribed to the OnionRing software and in return, as per **Article 4(ii) and (iii) of the CCTA**, it is mandatory for the Claimant to make payment in the form of Bitcoin and there shall be no substitute for this payment arrangement.[50] However, on 2 February 2022, Coltana's sole Bitcoin Reserve stored by the Coltana National Bank (CNB) was robbed overnight. This Bitcoin Reserve has an approximate valuation of USD 300 Million. Upon investigation by the authorities, it was reported that a group of highly intelligent hackers was behind this mischief.[51]

53. The Bitcoin Robbery is an entirely unanticipated change of circumstances that ultimately affects the performance of the payment obligation. The test for frustration is an objective test.[52] There are three basic conditions that need to be fulfilled to satisfy the doctrine of frustration under Section 56. Firstly, there must be a subsisting contract.

[48] Ibid, at page 14.
[49] AIR 1952 P H 34.
[50] Paragraph 25.2, Page 10 of the Moot Problem.
[51] Paragraph 32, Page 14 of the Moot Problem.
[52] Davis Contractors Ltd v Fareham Urban District Council [1956] AC 696.

Secondly, some part of the contract is still to be performed and lastly, the performance has become impossible after the contract is entered into.[53]

54. In this situation, all of the three conditions are satisfied. Firstly, there is a subsisting contract since the **CCTA** is a subscription-based contract. Secondly, there is still a part of the contract that is still to be performed which is the payment obligation on the part of the Claimant. Lastly, this performance has become impossible after the contract was entered into due to the Bitcoin Robbery.

55. Therefore, the Claimant reiterates the stance that the **CCTA** is frustrated as the performance of the obligation to pay as mandated under **Article 4(ii) and (iii) of the CCTA** has become impossible due to the Bitcoin Robbery, causing a total loss in the Claimant's sole Bitcoin Reserve.

56. In deciding whether a contract has been frustrated or not, the Courts objectively look at the construction of the contract, the effect of the changed circumstances on the parties' contractual obligations, the intentions of the parties and the demands of justice.[54] Apart from the mentioned factors, a multifactorial approach must also be considered such as considering the factors of the terms of the contract itself and the nature of the supervening event. [55]

[53] Industrial Finance Corporation of India Ltd v The Cannanore Spinning and Weaving Mills Ltd AIR 2002 SC 1841.
[54] Ibid, at 29.
[55] Energy Watchdog v Central Electricity Regulatory Commission [2017] 14 SCC 80 discussed "multifactorial approach" as laid down in Edwinton Commercial Corporation v Tsavliris Russ (Worldwide Salvage and Towage) Ltd [2007] 2 All ER (Comm) 634.

57. One of the factors of the contract to be frustrated is the loss of the object of the contract. The performance of a contract may be possible to carry out physically but if it has become redundant having regard to the object and purpose of the parties, by an untoward event or change of circumstances, then it must be held that the contract is frustrated. The Claimant acknowledges that negotiations were held to alter the mode of payment. However, to this day, there is still no written consent by the Respondent to change the payment obligation.

58. The Claimant reiterates the stance that this Tribunal should adopt an objective approach in looking into the construction of the **CCTA** as the Bitcoin Robbery indeed affects the Claimant's contractual obligation to pay in Bitcoin method of payment as mandated under **Article 4 of the CCTA**. The intention of the parties is clear where the Respondent is adamant that the method of payment should be none other than Bitcoin method of payment.[56] Should there be alterations, the written consent of the Respondent should first be obtained which is absent.

[56] Article 4 of the CCTA.

B. Performance of the payment obligation is extremely difficult

59. The Bitcoin Robbery is an entirely unanticipated change of circumstances that ultimately affects the performance of the payment obligation since there is a total loss in the Claimant's Bitcoin Reserve which makes it extremely difficult to perform the payment obligation. As established in **Pameshwari Das Mehra v. Ram Chand Om Prakash**, the Court will not enforce the contract when the performance of the payment obligation is extremely difficult.

60. Hence, the Claimant reiterates that the termination is valid as the **CCTA** is frustrated due to the extreme difficulty of performing the payment obligation as mandated under **Article 4 of the CCTA** due to the Bitcoin Reserve Robbery on 2 February 2022.

PRAYERS FOR RELIEF

For the foregoing reasons, the Claimant respectfully pleads for this Tribunal to adjudge and declare that:

I. Olaf, an AI-powered intelligent lawyer shall be removed as the arbitrator for lack of impartiality;

II. The Arbitral Tribunal should not stay the present proceedings until the conclusion of Anuwat's trial at the International Criminal Court;

III. The CCTA is void; and

IV. In the event, Issue III is decided in the negative, the termination of the CCTA by Coltana is valid.

Respectfully submitted,

THE REPUBLIC OF COLTANA, THE CLAIMANT

15 SEPTEMBER 2023