

**CAS 2024/A/10440 Pramod Bhagat v. Badminton World Federation (BWF)**

**ARBITRAL AWARD**

**delivered by the**

**Court of Arbitration for Sport**

**sitting in the following composition:**

President: Mr Anton Jagodic, Lawyer in Ljubljana, Slovenia

Arbitrators: Mr Steven Bainbridge, Attorney-at-Law in Dubai, United Arab Emirates  
Mr Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law in  
Hamburg, Germany

**in the arbitration between**

**Pramod Bhagat, Odisha, India**

Represented by Mr Achyuth Jayagopal, Mr Vidushpat Singhania, Mr Arnav Singhal and  
Mr Neil Goswami, Krida Legal, New Dehli, India

**Appellant**

**and**

**Badminton World Federation (BWF), Kuala Lumpur, Malaysia**

Represented by Mr Nicolas Zbinden and Mr Anton Sotir, Kellerhals Carrard, Lausanne,  
Switzerland

**Respondent**

## **I. PARTIES**

1. The Appellant, Mr. Pramod Bhagat (“the Athlete”), is a para-badminton Athlete from India. He is aged 35 years and is a noted international level badminton Athlete. He won the gold medal in the men’s singles category at the 2020 Paralympic Games in Tokyo, Japan.
2. The Respondent is the Badminton World Federation (“BWF”) with registered headquarters in Kuala Lumpur, Malaysia. BWF is the International Federation for the sport of Badminton.

## **II. FACTUAL BACKGROUND**

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence adduced. Additional facts and allegations found in the Parties’ written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence the Panel considers necessary to explain its reasoning.

### **VIOLATIONS OF THE ATHLETE**

#### **A. First Whereabouts Failure: Recorded Missed Test On 14 May 2022**

4. The first Whereabouts Failure alleged against the Athlete relates to the Missed Test that occurred on 14 May 2022. The Athlete’s Whereabouts information stated that on 14 May 2022 between 7:00 a.m. and 8:00 a.m. he would be available for testing at a specified address. On that day, a Doping Control Officer (“DCO”) of International Doping Tests and Management (“IDTM”) attended the relevant address but was unable to locate the Athlete for testing during the stipulated 60-minute time slot. The Athlete’s brother, who was present, informed the DCO that the Athlete was in Brazil and had not returned to India after his last International Competition. The DCO telephoned the Athlete who answered the call and confirmed that he was in Brazil and had not updated his Whereabouts.
5. On 17 May 2022, the BWF notified the Athlete of an apparent Missed Test and requested his explanation. He signed an acknowledgement that he had received the notification letter, that he understood its contents and that he should update his Whereabouts on the Anti-Doping Administration and Management System — the online management system for Athletes to notify the applicable Anti-Doping Organisation of the required particulars (“ADAMS” or the “ADAMS System”) in accordance with the deadline set by the BWF. He did not provide any explanation with respect to the Missed Test.
6. On 31 May 2022, the BWF sent a letter to the Athlete informing him about the BWF’s intention to record a Missed Test against him and advised him of his right to request an

Administrative Review within seven days. The Athlete signed an acknowledgement that he received the letter.

7. On 4 June 2022, the BWF received the Athlete acknowledgement, in which he admitted the Missed Test and agreed to the BWF recording it against him. He did not avail himself of his right to request an Administrative Review.
8. The Missed Test on 14 May 2022 was thereafter recorded as the First Whereabouts Failure against the Athlete.

**B. Second Whereabouts Failure: Recorded Missed Test On 29 August 2022**

9. The second Whereabouts Failure alleged against the Athlete relates to the Missed Test that occurred on 29 August 2022. The Athlete's Whereabouts information stated that on 29 August 2022 between 7:00 a.m. and 8:00 a.m. he would be available for testing at a specified address. On that day, a DCO of IDTM attended the specified address but was unable to locate the Athlete for testing during the stipulated 60-minute time slot. At the Athlete's specified address, the DCO knocked on the door of the Athlete's apartment. A person arrived and informed the DCO that the Athlete was "not in town". The DCO then called the telephone number specified in the Athlete's ADAMS account. The Athlete answered the call and advised that he was in a city approximately 800 kilometres away. Approximately one hour after receiving the call from the DCO the Athlete logged into ADAMS and changed his entries for 29 and 30 August 2022. He changed the 60-minute time slot and the overnight accommodation to a new address.
10. On 1 September 2022, the BWF notified the Athlete of an apparent Missed Test and requested his explanation. The Athlete was also invited to sign and return an acknowledgement slip. On 15 September 2022, the BWF received the acknowledgement slip signed by the Athlete whereby he confirmed receipt of the notification letter, that he understood its contents and that he should update his Whereabouts on the ADAMS system in accordance with a deadline set by the BWF. He did not provide any explanation with respect to the missed test.
11. On 20 September 2022, the BWF sent a letter to the Athlete informing him of the BWF's intention to record a Missed Test against him and reminding him of his right to request an Administrative Review within seven days. He was invited to sign and return an acknowledgement slip which was subsequently received by the BWF on 28 September 2022 in which the Athlete admitted the Missed Test and agreed to the BWF recording it against him. He did not avail himself of his right to request an Administrative Review.
12. The Missed Test on 29 August 2022 was thereafter recorded as the second Whereabouts Failure against the Athlete.

**C. Third Whereabouts Failure: Q1 — 2023 Filing Failure**

13. On 15 November 2022, the BWF sent a reminder to the Badminton Association of India ("BAI") about the inclusion of the Athlete in the BWF RTP for Q1 - 2023 and about his obligation to submit and update his Whereabouts by 15 December 2022. A reminder

letter was sent by the BWF to the BAI on 2 December 2022 as at that date no athletes who were included in BWF RTP had submitted their Whereabouts for Q1 - 2023. Another reminder was sent by the BWF to the BAI on 13 December 2022 advising of the deadline of 15 December 2022 and this letter was forwarded via email by the BAI to the Athlete on that date.

14. On 19 December 2022, the BWF notified the Athlete that his failure to submit his Whereabouts for Q1 - 2023 by 15 December 2022 constituted an apparent Filing Failure and requested his explanation by no later than 2 January 2023. The BWF extended the deadline to submit his Whereabouts to 26 December 2022 to allow the Athlete to remedy his apparent Filing Failure and to submit a complete Whereabouts Filing for Q1 - 2023. On 28 February 2023, the BWF informed the Athlete in writing that it would cancel the finding of this Filing Failure (see paragraph 41).
15. On 30 December 2022, the Athlete logged in to his ADAMS account and entered the address of the location where he was staying overnight as well as the 60-minute time slot for each day. He did not make any entries for his regular activity and competition/event schedule and failed to confirm his email address. The result of that incomplete entry of details prevented the Athlete from being able to successfully activate the “submit” button on the ADAMS website. The result was that the information entered into the ADAMS System by the Athlete was only saved in his own ADAMS profile as a draft, and, consequently, was not submitted via the portal system and was not visible to anyone but him.
16. On 3 January 2023, the BWF sent an email to the BAI informing it that no response had been received from the Athlete with respect to the BWF’s letter of 19 December 2022 and requested that the BAI ensure that the Athlete signs and returns an acknowledgement slip of having received that letter. The BAI forwarded the email from the BWF to the Athlete on the same date. That email stated that, as the deadline had passed in relation to providing an explanation, a Filing Failure should be recorded against the Athlete for the following reasons:

*“it appears that the Whereabouts Filing is inaccurate and does not contain information that is sufficient to enable Anti-Doping Organisations, including the BWF, to locate you for testing.*

*I am therefore waiting to confirm that we intend to record a Filing Failure against you, with the Consequences set out in my letter dated 19 December 2022”.*

The letter went on to advise the Athlete of his right to request an Administrative Review. The Athlete requested an Administrative Review.

17. On 3 January 2023, the Athlete logged into his ADAMS account, completed his Whereabouts for Q1 - 2023 by creating entries for regular activity and competition/event schedule, confirmed his email address and submitted his Whereabouts. These additional entries enabled the “submit” button to be activated and the information was thereby entered onto the system portal.

18. On 4 January 2023, the Athlete sent an email to BWF in which he explained that he “...could not check the email dated 19 Dec 2022 from BWF nor the email dated 21 Dec 2022 [a notification letter] from BAI due to [his] year ending program”. He also stated in that email that he had moved during his vacation period due to holidays and he had not checked his emails during those days. He assured BWF that his failure to submit his Whereabouts within the deadline would not happen in the future and asked if he could be given an opportunity to answer the BWF’s letter of 19 December 2022.
19. On 5 January 2023, the Athlete sent a further email to the BWF and claimed that he was not aware of his inclusion in the BWF RTP for Q1 - 2023 and that the email from BWF dated 15 December 2022 reminding him to update his Whereabouts went to his email “spam folder”. He further explained that the delay was only due to him not receiving his communications directly on his ADAMS Registered Email and that he had updated his Whereabouts for Q1 - 2023 on 30 December 2022 without knowing about deadlines.
20. On 6 January 2023, the Athlete sent a further email to the BWF requesting that the matter not be treated as a Filing Failure.
21. On 20 January 2023, after the completion of an Administrative Review by the Head of Legal and Governance at BWF, the Athlete was informed that the BWF intended to proceed with the recording of the Filing Failure as previously indicated. By further correspondence to the Athlete on 20 January 2023 he was advised that the Filing Failure Notice would remain in force from 1 January 2023 to 31 December 2023.
22. In response to this communication the Athlete challenged the recording of the Filing Failure and relied on the provisions of the International Standards of Testing and Investigation (“ISTI”) to challenge the Filing Failure recorded against him. Specifically, he relied on the Comment to Article 4.8.8.2, the effect of which was that although Antidoping Organisations may require that Whereabouts information be submitted on a date which is the 15th day of the month preceding the quarter, no consequences for a failure to submit prior to the first day of the quarter shall apply.
23. On 28 February 2023, the BWF informed the Athlete in writing that it would cancel the finding of a Filing Failure “*due to an administrative oversight related to the timing of the first notification*” but confirmed that the BWF would be opening a new process for the alleged Q1 - 2023 Filing Failure and that the Athlete would be afforded the opportunity to provide additional comments and evidence through the new process.
24. On 3 March 2023, the BWF notified the Athlete that his failure to submit his Whereabouts for Q1-2023 before 1 January 2023 constituted an apparent Filing Failure and requested his explanation by no later than 17 March 2023. The Athlete was also invited to sign and return an acknowledgement slip which was received by BWF signed by the Athlete on 16 March 2023. On that slip he also confirmed receipt of the notification letter and provided his written explanation in which he claimed that the Whereabouts submission for Q1 - 2023 was made in accordance with the time limits. He claimed that on 30 December 2022 he updated his Whereabouts on the ADAMS portal and that whilst it was displayed on his account that his Whereabouts were updated on that date; it would appear that due to some technical error it was not reflected on

BWF's system. He further stated that upon being notified of a prospective Filing Failure on 3 January 2023 he immediately re-submitted his entries.

25. On 31 March 2023, the BWF, by letter sent to the Athlete, confirmed its intention to maintain its position that a Filing Failure should be recorded against him. The Athlete was reminded of his right to request an Administrative Review within seven days which he requested on the same day.
26. The BWF conducted an administrative review and on 27 April 2023, advised the Athlete that the Administrative Review considered that the Athlete had submitted his Whereabouts for Q1 - 2023 on 3 January 2023 which was after the applicable deadline.
27. The Filing Failure was thereafter recorded as the third Whereabouts Failure, effective as of 1 January 2023.
28. On 16 May 2023, the BWF notified the Athlete of a potential Anti-Doping Rule Violation ("the ADRV") in connection with three Whereabouts Failures within a 12-month period, contrary to Article 2.4 of the 2021 BWF Anti-Doping Regulations ("BWF ADR"). The BWF allowed the Athlete until 30 May 2023 to provide written explanations for the alleged ADRV. On 29 May 2023, the Athlete submitted explanations to the BWF asserting that he did not commit an ADRV, or in the alternative that if found to have committed an ADRV the degree of the Athlete's fault was low.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

#### **A. The Proceeding before the CAS ADD**

29. On 16 June 2023, the BWF charged the Athlete with an ADRV pursuant to Article 2.4 of the BWF ADR, in respect of a Missed Test on 14 May 2022, a Missed Test on 29 August 2022 and a Filing Failure in respect of Q1- 2023 deemed to have occurred on 1 January 2023 (pursuant to Article B.1.3 of the ISRM) (the "Charge").
30. In the Charge, the Athlete was given until 30 June 2023 to admit the asserted ADRV or to request a hearing before the CAS ADD. The BWF confirmed that the Athlete was not provisionally suspended at that time.
31. On 21 June 2023, the Athlete formally objected to the Charge and requested a hearing before the CAS ADD.
32. On September 2023, the BWF filed a request for arbitration to the CAS ADD in accordance with Article 8.1 BWF ADR and A13 CAS ADD Rules. In particular, the BWF sought to establish that the Athlete had committed an ADRV pursuant to Article 2.4 BWF ADR, and to impose a two-year period of ineligibility.
33. On 1 March 2024, the CAS ADD rendered a decision (the "Appealed Decision") in which the Sole Arbitrator found that the Athlete had committed an ADRV and sanctioned the Athlete with a period of ineligibility of eighteen (18) months.

**B. The Appeals Arbitration Proceeding before the CAS**

34. On 21 March 2024, the Athlete filed the “*Appeal Petition*” considered as his Statement of Appeal according to Article R48 of the Code of Sports-related Arbitration (“CAS Code”) and as his Appeal Brief within the meaning of Article R51 of the CAS Code. Therein, the Athlete – *inter alia* – requested interim relief in the form of a “*temporary suspension of the period of ineligibility imposed on him for the course of the 2024 Paralympics*” or “*by staying the execution of the Award [of the CAS ADD], in the manner provided for in R48 of the CAS Code Procedural Rules, as the Athlete’s status as a qualified athlete for the 2024 Paralympics stands to be hampered by the implementation of the Award*”.
35. On 26 April 2024, the Athlete reminded the CAS Court Office that the deadline for submission of bipartite invitations coming through National Paralympic Committees has been set for the 30 April 2024 and, therefore, requested that the decision regarding a stay on the implementation of the Appealed Decision rendered prior to 30 April 2024.
36. On the same day, the Deputy President of the CAS Appeals Arbitration Division dismissed the Appellant’s Request for a Stay.
37. On 7 May 2024, the Respondent submitted its Answer to the CAS Court Office.
38. On the same day, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel to decide the present dispute was constituted as follows:
- President: Mr Anton Jagodic, Lawyer in Ljubljana, Slovenia
- Arbitrators Mr Steven Bainbridge, Attorney-at-Law in Dubai, United Arab Emirates
- Mr Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany
39. On 8 May 2024, the CAS Court Office advised the Parties that they, in principle, shall not be authorized to supplement or amend their submissions. Furthermore, the letter invited the Parties to inform the CAS Court Office by 15 May 2024 whether they prefer a hearing. The letter also invited the Parties to state whether they wanted a case management conference (“CMC”) to be held.
40. On 13 May 2024, the Athlete informed the CAS Court Office of his preference of holding a hearing and a CMC.
41. On 16 May 2024, the Respondent informed the CAS Court Office that it defers to the Panel’s discretion as to whether a hearing was necessary and would of course make itself available if it deemed one necessary. The letter continued to state that a CMC was not necessary at this stage.

42. On 23 May 2024, the CAS Court Office informed the Parties that the Panel intended to hold a CMC on Monday 27 May 2024 at 17:00 (CET).

43. On 27 May 2024, a CMC was held via videoconference. Besides the members of the Panel and Ms Andrea Sherpa-Zimmermann, CAS Counsel, the following persons attended the CMC:

For the Athlete:

- The Athlete
- Mr Achyuth Jayagopal, Mr Vidushpat Singhania, Mr Arnav Singhal, Mr Neil Goswami, Krida Legal, New Dehli, India

For the Respondent:

- Mr Nicolas Zbinden

44. On 28 May 2024, the CAS Court Office invited the Athlete to provide witness statements for the witnesses that he intended to hear at the hearing on or before 31 May 2024. The letter further invited the Respondent to communicate to the CAS Court Office the formal system of BWF that was set to enable para-athletes to compete in the Paralympic Games and to explain in detail the situation in which the Athlete was. In addition, the Athlete was invited to provide to the CAS Court Office the formal confirmation of BWF that he was on the long list of candidates to compete in the Paralympic Games.

45. On 29 May 2024, the Athlete provided the evidence that he was included in the BWF's long list of candidates.

46. On 31 May 2024, the Athlete provided the witness statements of Mr Sukant Kadam, Nilesh Gaikwad, Sandeep Kumar. Furthermore, the Athlete provided details pertaining to his status.

47. On 5 June 2024, the CAS Court Office invited the Athlete to explain the reason for not providing witness statements for all witnesses listed in his Appeal Brief, and which were the "exceptional circumstances".

48. On the same date, the Athlete informed the CAS Court Office as follows:

*"With respect to our explanation pertaining to the non-proposal of witnesses in the Appeal Statement, we wish to state that in the past on multiple occasions - namely, CAS 2022/A/9173 and 2022/ADD/47 - we were directed to provide details of witnesses (if any), during the preparation of the Hearing Plan in each instance. Considering that in the present matter, such stage had not been reached, we were under the belief that the deadline for provision of name of witnesses, only arises at such stage of the CAS proceedings when hearing plan is being scheduled. We therefore request consideration*



*of the same towards admissibility of the witnesses' testimony/statements, per the instructions of this Hon'ble Panel".*

49. On 4 July 2024, the Athlete informed the Panel that the deadline for submitting names of para-athletes for participation in the Paralympic Games 2024 concluded on 5 August 2024.
50. On 18 July 2024, the CAS Court Office, on behalf of the President of the Panel, issued an Order of Procedure, which was signed by both Parties on the same date.
51. On 24 July 2024, a video hearing was held in this matter. The Panel was assisted throughout the hearing by Mrs. Andrea Sherpa Zimmerman, CAS Counsel, and joined by the following:

**For the Appellant:**

Mr Pramod Bhagat, the Athlete  
Mr Vidushpat Singhania, Counsel  
Mr Arnav Singhal, Counsel  
Mr Neil Goswami, Counsel  
Mr Achyuth Jayagopal, Counsel  
Mr Sukant Kadam, Witness

**For the Respondent:**

Mr Nicolas Zbinden, Counsel  
Mr Thomas Delaye, BWF Head of Legal and Governance  
Mr. Emmanuel Gomes, Expert (WADA Senior Product Specialist (ADAMS), IT Data & Digital Development)

The witnesses were examined and cross-examined by Counsels and answered various questions put by the Panel. The Panel also heard the testimony of the Athlete.

52. At the outset of the hearing, the Parties confirmed that they had no objection to the jurisdiction of CAS or to the constitution of the Panel. At the closing of the hearing the Parties confirmed that their right to be heard had been fully respected.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. The Athlete

###### A1. Athlete's general remarks regarding the Appealed Decision

53. The contents of the Appealed Decision contain various instances where it appears that the evidence submitted by the Athlete was inadvertently not considered or was just dismissed. While dealt with in detail in the Athlete's submissions, some of the Athlete's major contentions with the Appealed Decision include the following:
- (i) The Sole Arbitrator states in Para 25, that the Athlete failed to make any entries for his regular activity and competition/event schedule and that he failed to confirm his email address therein rendering his submission on the ADAMS platform incomplete. This is disputed in whole by the Athlete and screenshots to the contrary have been submitted by the Athlete. However, the evidence submitted by the Athlete does not find relevant mention in the Appealed Decision.
  - (ii) In Para 27 of the Appealed Decision, the Sole Arbitrator incorrectly represented the way the Athlete made his filing for Q1 -2023 by stating that the Athlete's submission was only completed on 3 January 2023. This is incorrect and has been stated, without taking into consideration, the relevant proof submitted by the Athlete for consideration.
  - (iii) In Para 107, the Sole Arbitrator incorrectly states that the Athlete's attempts to include the relevant information were "*insufficient to comply with his responsibilities and requirements as a person in the RTP*" and that the Athlete failed to enter his competition schedule. This is incorrect as the Athlete had marked 'NA', which is an accepted entry, where the competition schedule was to be filled. No entry was left blank or incomplete by the Athlete, and although evidence indicating the same had been submitted it finds no mention in the Appealed Decision.
  - (iv) In Para 112, the Sole Arbitrator further states that there is no evidence to prove that the Athlete did make the 'NA' entry. This is also false and is prejudicial to the Athlete who provided various screenshots and pertinent data trail entries to prove the same.
  - (v) While determining the fault associated with the Athlete's actions associated with the first Missed Test alleged against the Athlete, the Sole Arbitrator failed to account for the details provided by the Athlete to the DCO.
  - (vi) In Para 52, the Sole Arbitrator also failed to understand the explanation provided by the Athlete with respect to why he was not able to update his whereabouts for the period of 13-26 April 2022. In fact, the Sole

Arbitrator misconstrued the representation to mean that the Athlete was in India during the period of time, which is factually incorrect.

- (vii) These errors led the Sole Arbitrator to hold that the degree of fault attributable to the Athlete was considerably higher than is warranted. The Athlete's failure to update the relevant Whereabouts, due to the manner in which his travel to various tournaments and training programmes were arranged, was communicated but does not find mention in the Appealed Decision.
- (viii) Additionally, in Para 52, the Sole Arbitrator fails to comprehend the efforts undertaken by the Athlete towards reporting the issues faced by him concerning nonreceipt of the One-Time Password ("OTP"), as the Athlete reached out to the ADAMS Help Desk instead of reporting the same to the BWF. Opting for a more direct route of reporting an issue may not be held against the Athlete while determining the degree of fault associated with the Athlete in the present matter. This is relevant as the same has been reiterated in Para 99 by the Sole Arbitrator while placing a higher degree of fault on the Athlete than is warranted. The fact that the same was also reported to the DCO and has been so recorded by the DCO, was not considered.
- (ix) The Athlete further pointed out that there were various lapses on behalf of the BWF in the Result Management Process that should be accounted for while determining the period of ineligibility to be imposed on him.

## **A2. Athlete's description of the circumstances of all three of the alleged infringements**

### **First Whereabout Failure – Missed Test 1**

- 54. With respect to the first Missed Test, a much higher degree of fault than should properly be attributed to him has been applied by the Sole Arbitrator.
- 55. The mitigating factors and circumstances applicable to the degree of fault attributable to the Athlete suggest it should be lower than in the view taken by the Sole Arbitrator with respect to the first Missed Test 1, as summarized below:
  - (i) The Athlete's submissions regarding how on previous instances, his updating of Whereabouts had not been hindered by the non-receipt of OTPs despite him travelling outside of his home country.
  - (ii) The Athlete's prompt act of informing the DCO of the circumstances he found himself in, as a result of which he failed to update his Whereabouts, leading directly to him missing the Test.
  - (iii) The last-minute nature of the Athlete's receipt of necessary travel itinerary and the egregious circumstances he found himself in owing to a

hectic travel and tournament plan provided to him by tournament organizers and relevant bodies.

- (iv) The Athlete's efforts to travel to India or in the alternative, to send his teammate Mr. Sukant Kadam, to rectify a possible issue with his SIM card which left him incapable of receiving the OTP necessary to complete the two-factor authentication on the ADAMS portal.
- (v) The Athlete's efforts to log-in while he was in Peru in an attempt to try updating his whereabouts significantly prior to the eventuality of the first Missed Test.
- (vi) The Athlete's prompt attempt to seek a solution to the problem he faced by contacting the ADAMS Help Desk.

56. A missed test was recorded on 14 May 2022, which was notified to the Athlete on 17 May 2022. The notice stated that he was unavailable at his location as per ADAMS system on 14 May 2022 between 07:00 a.m. to 08:00 a.m.
57. Such a situation arose solely because the Athlete was unable to update his whereabouts on the ADAMS portal owing to non-receipt of the relevant OTP required to complete the process of logging into the ADAMS portal.
58. The Athlete contends that the failure to update his Whereabouts which ultimately led to the events of 14 May 2022 arose from a technical error. He had made several attempts to log into the WADA ADAMS portal, however he was unable to receive the OTP required to log in. He could not access the ADAMS platform despite multiple attempts to do so including resetting his password in his attempts to access the portal. As a result, he was unable to complete the two-factor authentication which required the input of an OTP on the platform.
59. He had two alternate travel itineraries prior to commencing the trip to Brazil. The first option was to travel to Brazil for the tournament and thereafter return to India on 25 April 2022. The alternate option was to travel to Brazil and thereafter to further travel to Peru. He travelled to Brazil on 17 April 2022 via flight and participated in the Brazil Para Badminton International 2022 held at São Paulo from 19 April 2022 to 24 April 2022 and thereafter travelled from Brazil to Peru on 26 April 2022. The tickets for his travels were made available to him on 11 April 2022 and 16 April 2022, respectively, as the bookings were done by the Paralympic Committee of India and the Peru Badminton Association.
60. The Athlete was then undergoing training in Lima, Peru, from 26 April 2022 to 13 May 2022 and thereafter he travelled from Peru to Bahrain and participated in the Bahrain Para Badminton International Tournament from 16 May 2022 to 21 May 2022. The travel route taken by him was from Peru to Brazil (Sao Paulo) to Dubai and thereafter to Bahrain.

61. On 14 May 2022, while he was at São Paulo Airport in Brazil, the DCO visited his residence for sample collection. Thereafter, the DCO tried contacting him regarding the test and during such conversation with the DCO, he repeatedly expressed his concerns for not being available for testing. He also mentioned that he had not been able to update the Whereabouts information due to nonreceipt of an OTP from the ADAMS portal leading to the DCO arriving at his house. He had also expressed his intentions to come to India and submit to sample collection as soon as possible. The same has been recorded in the DCO Report.
62. The BWF Bahrain Para Badminton International 2022, the tournament that he was participating in, was scheduled from 15 May 2022 to 21 May 2022 and he had already reached Brazil on 14 May 2022 in transit. However, during his conversation and upon learning that the DCO had arrived at his residence for testing, he was concerned and had volunteered to come to India during this period to allow officials to collect his sample at the earliest possible alternative date. The same was conveyed to the DCO by him when he reached out to him, and this was duly noted by the DCO in his Report. This is a clear indication of the fact that he was concerned with his inability to be present for sample collection despite the same arising due to the afore-mentioned technical glitch.
63. Furthermore, he had even booked tickets for travel from Dubai to Delhi to change his SIM card, as he suspected that the error could also have arisen due to an issue with his SIM card, on 13 May 2022. During the call with the DCO he had mentioned his willingness to be available for testing in Delhi on 15 May 2022, however these tickets were later cancelled when he realised that there would be no such alternative available to him under the circumstances.
64. The Athlete was scheduled to practice on the days prior to the start of the BWF Bahrain Para Badminton International 2022 tournament on 15 May 2022. Despite this, he still tried to change his SIM card to ensure he left no stone unturned with respect to ensuring that he executed his duties as an athlete in the RTP. Alternatively, he took the effort of sending the SIM card with his ADAMS registered phone number to India with Mr. Sukant Kadam, who is an international para badminton athlete and his long-time teammate and doubles partner. Mr. Kadam travelled to India on 15 May 2022 from Bahrain to Delhi so that the issue of receiving the OTP could be resolved with the restoration of normal network coverage. However, the notification pertaining to the Missed Test had already been issued to him by that stage.
65. Thereafter, the issue of the SIM card was resolved on 20 May 2022 and as reflected in his ADAMS Profile, the Athlete was diligently updating his location and Whereabouts activities since the issue of the SIM card was resolved. It is clear from his ADAMS activity that he had successfully updated his Whereabouts after resolving the issue surrounding the OTP. The Whereabouts Details Report for the month of May 2022 clearly indicates that from 21 May 2022, he was able to update his Whereabouts and participation in the BWF Bahrain Para Badminton International 2022.
66. Thereafter, the Athlete was finally able to update his Whereabouts as reflected in the entries from 21 May 2022. His activity after this time, show that he was constantly

updating his whereabouts. He also ensured that the tournaments he was participating in and travelling for were being reflected in the WADA ADAMS portal.

67. Moreover, the Athlete underwent testing on 25 May 2022 whilst he was competing at the 4th Fazza Dubai Para Badminton International 2022 in Dubai. This is indicative of the fact that he was willing to always submit to testing and there was no intention on his part to evade testing or to not comply with the anti-doping requirements in any way. The test was conducted within a short period of time after the apparent Missed Test on 14 May 2022. His intention was thus to always comply with the testing requirements and the missed test on 14 May 2022 was solely due to the technical glitch as he was unable to access the ADAMS platform and update his whereabouts.
68. It was the first time in all the years of travelling to different countries that the Athlete was unable to access the ADAMS portal due to non-receipt of OTP. He had travelled to competitions abroad on several occasions whilst fulfilling his whereabouts requirements. He had previously been able to fulfil the whereabouts requirements using the same registered phone number and SIM card with which he had attempted to log in to ADAMS in Brazil and then Peru. In this regard, one relevant instance is from January 2022 wherein he had travelled to Spain on 9 January 2022 for training and to participate in the Spanish Para Badminton International. During his stay in Spain, he successfully updated his Whereabouts with the same SIM card. Therefore, there was no reason for him to believe that the same device would not suffice for making the relevant updates on this instance.
69. The Athlete made several attempts to login and update the Whereabouts Information and update the details of the competitions he was participating in and other relevant information. However, despite making multiple attempts to login during this period and visiting the ADAMS profile multiple times as reflected in his browsing history, he could not access the same.
70. It is pertinent to note that, the Missed Test occurred on the dates during which the Athlete was travelling for the BWF Bahrain Para Badminton International 2022 and the confusion regarding his whereabouts arose due to the issues he faced. During this period, he had tried multiple times to log in and update his Whereabouts but the issue with the OTP persisted.
71. The Athlete decided to seek assistance from Mr. Sukant Kadam as well, as he was the only Indian present in Lima, Peru with him. They tried to adopt other methods as well as by not only logging in with different devices and various locations. They also made an attempt to reset the ADAMS portal password and access it. Other means used by him included the use of incognito browsers, using a Virtual Private Network (VPN) and using the SIM card via different devices to check if the OTP could be generated and received on his phone.
72. The browser history reflects that the Athlete made attempts to log in to the ADAMS Profile. One particular instance in this regard was on 9 May 2022, when he tried logging into ADAMS from Lima, Peru as shown in his browser history. Thereafter, he was

finally able to receive an OTP on 20 May 2022 and thereafter he updated the necessary whereabouts information to reflect his location from 21 May 2022 onwards.

73. In this context, it is pertinent to note that in the case of *CAS 2022/A/9031*, the athlete faced a similar conundrum wherein he had made several attempts to update his Whereabouts. The athlete was unable to do so as he was asked to input a two-factor verification code during his attempts to access the portal which, *inter alia*, required receipt of a pin code via text message. Unexpectedly, while he did have Wi-Fi access, he did not have cellular/mobile service at his location in Costa Rica at that time and, as a result, could not receive the verification code.
74. This resulted in a Missed a Test on 2 January 2021 wherein the athlete's Whereabouts Filing listed his address in Paris within the relevant 60-minute time slot, whilst the athlete was in Costa Rica at that time. In light of the circumstances of that case, it was held that the consideration of the question of whether the athlete could rebut the presumption of negligence fell to two matters: Whether the athlete should have updated his Whereabouts Filing earlier, either when he first became aware that he would not be at his Paris apartment or, alternatively, when he became aware that he would be staying at the Sirena Ranger Station in Costa Rica; and whether the athlete, after realising he could not access ADAMS to update his Whereabouts Filing, should have updated his filing by other available means, such as emailing the International Tennis Federation ("ITF"), which was the relevant International Federation in this regard.
75. Further, the Sole Arbitrator held that "*the mere fact that the athlete could have updated his whereabouts filing at an earlier date (yet did not) does not constitute 'negligent behaviour' for the purposes of Article B.2.4 (e) of the ISRM*" and having regard to the specific circumstances, the athlete had been updating his Whereabouts Filings throughout his journey through Costa Rica. The Sole Arbitrator also took note of the athlete's evidence that two-factor authentication was not required every time he tried to sign into ADAMS. Therefore, in the Sole Arbitrator's view, it was reasonable for the Athlete to believe that he would be able to update his Whereabouts Filing upon arrival at the Sirena Ranger Station, which was his location in Costa Rica on the day of the Missed Test. The decision in this regard, clearly highlights the fact that the need for a cellular network to fulfil the OTP requirement was a barrier in the athlete updating his Whereabouts accurately due to his SIM card not working properly.
76. A parallel can be drawn to the present case, wherein the Athlete faced a similar roadblock in updating his Whereabouts due to the OTP requirement. Further, as the Athlete had already travelled internationally several times and had never faced such an issue, it does not amount to negligent behaviour on his part as it was reasonable for him to expect that he would be able to comply with the requirements on this instance too, based on his previous experiences in this regard. He has also undertaken additional measures including mailing the ADAMS Helpdesk raising his concern regarding his mobile number and sought guidance on the same due to his limited technical capabilities pertaining to such a situation.
77. A perusal of the Athlete's conduct in the present matter indicates that he has taken all reasonable measures possible to ensure there is no ADRV committed by him - even

inadvertently. He made sure that alternative means were assessed to rectify any issue if it arose from his end, reached out to the WADA ADAMS helpdesk when faced the issue at hand, and even sent his teammate, Mr. Sukant Kadam to India to verify and ensure that any issue that arose was not due to a problem associated with his SIM card. Such conduct shows how there was no wilful negligence on his part and how his degree of fault is considerably lower, when all factors are accounted for. Despite the same, the Sole Arbitrator has on a number of instances, taken the view that the Athlete's conduct was negligent and pointed at a finding of a high degree of fault.

78. In Para 14 of the Appealed Decision, it states that *“The DCO telephoned the Athlete who answered the call and confirmed that he was in Brazil and had not updated his Whereabouts”*. This is factually incorrect as the Report submitted by the DCO clearly states that the Athlete informed the DCO regarding the issue he was facing at the time with non-receipt of OTP on his cell phone. This rendered him incapable of clearing the two-factor authentication system on the ADAMS platform, leading directly to the commission of the first Whereabout Failure.
79. In both instances, the Report by the DCO, which establishes that the Athlete promptly informed the authorities of his non-receipt of OTP seems to have been overlooked while determining the degree of fault arising from his conduct.
80. In Para 52 of the Appealed Decision, the Sole Arbitrator makes an incorrect observation pertaining to the Whereabouts information the Athlete entered on the ADAMS platform for April 2022. The Sole Arbitrator states that *“His Whereabout Information for April 2022, by way of contrast, indicated that the Athlete was home in India from 13 April 2022 until 26 April 2022 and therefore was able to update his Whereabouts well in advance of the planned trip to Brazil and Peru without encountering any issue with the receipt of messages on his mobile phone while being in India”*. This is incorrect as the Athlete was only in India for the duration of three days between 13 April 2022 and 16 April 2022.
81. The organisers of the upcoming para-badminton tournament had booked his tickets at the last moment and failed to provide him with the necessary details required to update his Whereabouts. The tickets were received by him only on 16 April 2022, the day of his departure for the para-badminton tournament.
82. He, naturally, got caught up with preparing for the journey and he believed that once he arrived at the tournament location, he would be able to update his Whereabouts for the upcoming days. Once he reached his destination, he made attempts to log-in and update his Whereabouts, but ultimately failed to receive an OTP. This clarification is important as the manner in which the Athlete's conduct is reflected in the Appealed Decision points to a higher degree of fault on him than what his actions demand.
83. Additionally, in the same Para 52 of the Appealed Decision, the Sole Arbitrator states that *“Further, the Athlete did not notify the BWF about his technical problem to log into ADAMS to ensure that his Whereabouts were up to date. It was emphasised that the BWF Facts Sheet on Whereabouts, which was provided to the Athlete and is available*



*online, explains how Athletes may contact the BWF in case they have forgotten their ADAMS user name or password or if they need any assistance with ADAMS”* implying that the Athlete had a responsibility to inform the BWF and his failure to do so contributed to the determination of the period of ineligibility imposed on him. However, it is to be noted that the Athlete did inform ADAMS Help Desk of the situation he faced and by the time he was instructed to reach out to the BWF custodian, the issue regarding non-receipt of an OTP had been resolved. While this could not prevent the Missed Test, it needs to be noted that he did avail himself of all means to ensure that he could update his Whereabouts and that he had no intention of missing a doping control test.

84. In Para 99 of the Appealed Decision, the same point regarding the Athlete’s alleged failure to inform the BWF from Brazil has been relied on to place a higher degree of fault on him than is warranted. Here, once again, the Sole Arbitrator failed to take into account the fact that the ADAMS Help Desk, the body directly responsible to assist athletes in making Whereabouts Filings on the ADAMS portal, had been contacted by him at the first possible instance.
85. In light of the above, with the mitigating circumstances elaborated on in detail, the Athlete submits that the degree of fault attributable to him is to be viewed as minimal and at the lowest end of the spectrum of determination with respect to the first Missed Test.

### **Second Whereabouts Failure – Missed Test 2**

86. The Whereabouts Failure notified on 28 September 2022 is linked to a Missed Test on 29 August 2022, when a DCO, Mr. Vuppula of IDTM, attempted to test the Athlete. The DCO contacted the Athlete and during the conversation, the Athlete informed the DCO that he had been obligated to travel to Patna, Bihar on very short notice.
87. In this regard, the Athlete submits that the circumstances that led to him missing the test should be taken into consideration while determining any sanction that may be imposed on him, particularly with respect to determination of degree of fault attributable to him.
88. In summary, the mitigating factors and circumstances ameliorating the degree of fault attributable to the Athlete indicate that it is lower than that found by the Sole Arbitrator with respect to the second Missed Test. These factors are summarised as follows:
- (i) The Athlete received an invitation from the relevant government authority hosting an event of considerable significance only late on the day prior to the event.
  - (ii) The Athlete had undergone routine doping control tests shortly before the missed test and shortly after, not returning any adverse analytical findings, thus indicating his commitment to clean sport.
89. On 27 August 2022, the Athlete received an invitation for the 22nd Bihar Award Ceremony 2022 to be held on 28 August 2022 organised by the Bihar Disabled Sports Academy (the “Ceremony”). The Athlete is one of the most inspirational figures in

Indian sports due to his achievements. He has been awarded several prestigious awards in India including the Padmashri Award, one of the highest civilian honours available to citizens of India.

90. Keeping in mind that he received such invitation at approximately 18:30 p.m. on 27 August 2022, he immediately left for Patna, Bihar due to the short notice on which his presence was requested by the Bihar Disabled Sports Academy.
91. On the day of the second Missed Test, the Athlete was celebrated by the State Government of Bihar for his contributions to sports on National Sports Day (29 August 2022). He was invited to the event by the Chief Minister of the State of Bihar on extremely short notice. It was only due to such an unavoidable commitment that he failed to update his Whereabouts for the relevant dates. Thereafter, realising that there might have been an unintentional error on his part, he instantly updated his Whereabouts. He made sure that his Whereabouts information reflected the relevant location for that day and the next day to ensure that any testing requirement could be fulfilled.
92. Therefore, with regards to the Missed Test recorded on 28 August 2022, he unfortunately missed out on the test due to his presence being demanded at the Ceremony. There was no intention on his part to evade sample collection, as conveyed in his conversation with the DCO. Further, it is to be noted that the Athlete had undertaken two tests around the period in which the Missed Test was recorded against him. The first test was conducted on 16 August 2022, prior to the Missed Test being recorded and the second test was conducted on 13 September 2022 i.e., shortly after the Missed Test. Both these tests returned negative for any prohibited substance, and this is a clear indication of the Athlete's clean doping record. He has never had any intention to miss a test, rather he has ensured compliance with testing requirements to all extent possible within his control.

### **Third Whereabouts Failure – Filing failure**

93. The alleged third Whereabouts Failure pertains to the Whereabouts Filing for Q1 - 2023 on the WADA ADAMS portal. The Athlete was notified of a Filing Failure declaration on 3 March 2023 in relation to a failure to submit his Whereabouts for Q1 - 2023.
94. The Athlete contends that any apparent failure with respect to his filing of Whereabouts information pertaining to Q1 - 2023 is solely linked to a technical glitch on the WADA ADAMS platform, which resulted in the data associated with his submission being displayed differently on his end than at the end of the relevant authorities.
95. The Athlete also contests and provides relevant explanations pertaining to the following findings of the Sole Arbitrator as represented in the Appealed Decision:
  - (i) That he failed to confirm his e-mail address on the ADAMS platform;
  - (ii) That he would not have been able to click on the 'submit' button on 30 December 2022 due to his entries being incomplete;

- (iii) That he failed to make entries marked 'NA' corresponding to his proposed competition schedule;
- (iv) That 'NA' as an entry in the column pertaining to his competition schedule is an invalid entry; and
- (v) That he would have received indicators which revealed the status of his filing to be 'incomplete', based on his actions on 30 December 2022 on the ADAMS platform, with any such incomplete entry being demarcated in red.

96. The Athlete further submits that there has not been any failure on his end with respect to submitting the Whereabouts information on the WADA ADAMS portal. In this regard, he seeks to clarify that he logged into his ADAMS account on 30 December 2022 and completed his whereabouts for Q1 - 2023 by creating entries associated with the required entries. Specifically, he logged into his ADAMS profile on 30 December 2022 to enter his Whereabouts information for Q1 - 2023. His contention in this regard is that he entered all relevant information including the Whereabouts particulars that he was aware of at the time. Thereafter, he added other information that was required, and he clicked on 'submit'. When he did so, there was no indication on the platform which warned or even indicated to him that his submission was incomplete.
97. As he was not aware of his regular activity and competition details for that relevant quarter at that point in time, he filled in the relevant categories with 'NA', a practice which he had adopted when it came to filling in details that he was unaware of at the time; and, he had even done so on previous occasions. The data trail for his previous entries clearly show that such entries of 'NA' had been considered valid.
98. It is also to be noted that entering 'NA' was not a self-adopted practice implemented by the Athlete. The instruction for filling the requisite details also states on a clarification note that in the event exact details regarding competition or regular activity are not known to an Athlete at the time of creation of the relevant entries for a quarter, the entry may be replaced with 'NA' or 'Not Applicable'.
99. The Sole Arbitrator, while reviewing submissions pertaining to the same, seems to have ignored the possibility of 'NA' forming a valid entry as he relied on the provision of the ISRM which states that Whereabouts Filings, amongst other details, must contain "*the Athlete's competition/events schedule for the following quarter including the name and address of each location where the Athlete is scheduled to compete during the quarter and the dates and times at which they are scheduled to compete at such location*". While this is the guideline, as evidenced by the various submissions which were completed with 'NA' as a valid entry, it is not the only manner in which a complete submission may be made by an athlete.
100. Furthermore, the Athlete has also adopted the practice of entering 'NA' in recent quarters as well. The same is reflected in his Whereabouts Filing for Q2 - 2024, wherein he entered 'NA' with respect to competition details and regular activity as well. However, in various instances, the Sole Arbitrator appears to have ignored the same

while determining that there was a Filing Failure committed by the Athlete in this present matter.

101. In Para 25 of the Appealed Decision, the Sole Arbitrator states that *“He did not make any entries for his regular activity and competition/event schedule and failed to confirm his email address. The result of that incomplete entry of details prevented the Athlete from being able to successfully activate the “submit” button on the ADAMS website. The result was that the information entered into the ADAMS system by the Athlete was only saved in his own ADAMS profile as a draft, and, consequently, was not submitted onto the portal system and not visible to anyone else except him”*.
102. In Para 27 of the Appealed Decision, it has been stated that *“On 3 January 2023, the Athlete logged into his ADAMS account, completed his Whereabouts for Q1 - 2023 by creating entries for regular activity and competition/event schedule, confirmed his email address and submitted his Whereabouts. These entries enabled the “submit” button to be activated and the information was thereby entered onto the system portal”*. This is false and not an accurate representation of the events that transpired.
103. The Sole Arbitrator repeats the same error in understanding in Para 112 of the Appealed Decision, wherein he observed that *“The failure to observe those requirements on 30 December 2022 was not explained by the Athlete other than to say he had attempted to include all of that information but was unable to do so because he was unaware of his competition schedule and that he had pressed the “submit” button and had assumed that all the information had been provided. He claimed that on previous occasions he had submitted “NA” in relation to his proposed competition schedule where he did not know what it would be. There is no evidence that he did so on this occasion, but even if he did that does not provide an answer in circumstances where his information was not effectively submitted”*. Such statements are false and prejudicial to the Athlete as the submitted Data Trail for his login history and activity clearly displays an ‘NA’ entry being made in this instance. This is a grave factual error based on which the Sole Arbitrator rendered his award.
104. Upon receiving notice from the BWF of his Whereabouts Failure, the Athlete logged in to his ADAMS account on 3 January 2023, and merely updated his Whereabouts for the time being. The fact remains that his Whereabouts information for 1 January 2023 and 2 January 2023 are visible on his ADAMS profile, which would not have been the case had his submission only been made on 3 January 2023. The ADAMS application does not permit back-dated entries and therefore it is impossible that the Athlete’s details for the first two days of Q1 - 2023 could have been present without the entry having been completed by the Athlete on 30 December 2022.
105. Both the above-mentioned excerpts from the Appealed Decision (Paras 25 and 27) are factually incorrect as the Athlete did make ‘NA’ as his entry for both his regular activity and competition/ event schedule as he had not set out a plan for Q1 - 2023 at that point in time. Further, he did press ‘submit’ from his end and there were no error messages or notifications that were activated which could have led him to believe that his submission was incomplete. Screenshots pertaining to how a complete submission and

an incomplete submission appear to the submitting athlete have been submitted to demonstrate how an incomplete submission appears to athletes on the ADAMS portal.

106. In Para 107 of the Appealed Decision, the Sole Arbitrator states that *“The Sole Arbitrator is satisfied that the attempts made by the Athlete to include all the required information on 30 December 2022 in the ADAMS portal were insufficient to comply with his responsibilities and requirements as a person on the RTP”* and that *“The Athlete, as he perceived, had entered the required information except for his competition schedule of which he was unaware at that time”*. This is not true and extremely prejudicial to him, as he had undertaken stringent measures to ensure that there were no further Whereabouts Failings from his end especially with two Whereabouts Failures having been registered against his name at that point in time.
107. In the aforementioned Para 107 of the Appealed Decision, the Sole Arbitrator has also stated that *“The Sole Arbitrator does not accept that the Athlete entered information on 1 and 2 January 2023 as asserted and finds that his first complete submission of information was in fact on 3 January 2023, three days overdue”* which is incorrect. The login history associated with the Athlete’s account makes it abundantly clear that he had logged in to his ADAMS profile on multiple instances between 30 December 2022 and 3 January 2023 and still had no reason to believe that his submissions were incomplete.
108. It is pertinent to note that the Athlete was under pressure since he already had two Whereabouts Failures against him, and he wanted to be extra cautious and to ensure that he provided accurate information only. This is evidenced by the meticulous measures adopted by him in tandem with his teammate Mr. Sukant Kadam towards the process of Whereabouts Filings. The duo would regularly update each other and share screenshots at each stage of the filing process and the same was a practice undertaken with respect to filing the necessary information on 30 December 2022.
109. A perusal of the Athlete’s ADAMS Profile makes it evident that there were entries for 1 January 2023 and 2 January 2023 which indicate the address where he would have been available for testing along with the preferred time slot for the same. This would only be possible if such a record was made prior to 3 January 2023 as claimed by the BWF’s as the WADA ADAMS portal does not permit a user to make retrospective entries pertaining to the requisite Whereabouts information. This is a fact that has been confirmed by Mr. Emmanuel Gomes, *vide* his communication dated 8 July 2023 wherein in response to counsel’s queries, Mr. Gomes replied that *“It is possible to change the location information as long as it is not a past entry”* confirming that creation/updating of past entries is not permitted on the ADAMS platform.
110. It is also crucial to note that inputs from Mr. Gomes have been taken into account by the Sole Arbitrator, despite evidence contrary to such statements which were submitted the Appellant. The same were not even referred to in the Appealed Decision. In particular, in Para 87 of the Appealed Decision, the witness statement provided by Mr. Gomes is relied on by the Sole Arbitrator to state that *“...the “submit” button without that information, he would have received a particular message (for which he provided a screenshot) which indicated the absent items that were required to be completed”*, an

untrue statement as the Athlete never received such a message as he made the necessary entries on the ADAMS platform.

111. He had made submissions which included Data Trail entries that clearly reflect the ‘NA’ input by him, which has been seemingly overlooked by the Sole Arbitrator in the fact-assessment process, while arriving at a conclusion that there were absent items. This is particularly problematic as the Sole Arbitrator seems to have ignored the fact that Mr. Gomes himself has confirmed that the submissions were made but only visible to the Athlete. The response of Mr. Gomes is copied below:

- (a) *"Why I am considered not providing information?"*

*Information entered by an Athlete is not visible to the Whereabouts Manager until it has been submitted by the Athlete.*

*In your case, the system says you only clicked the submit button on January 3, which made them visible only then.*

- (b) *How was I able to see where I was every day for Q1 - 2023 and about my next testing time slot?*

*The information entered by an athlete is always visible to the athlete.*

- (c) *How was I able to change the location as I did on January 2, 2023?*

*It is possible to change the location information as long as it is not a past entry.*

- (d) *Since I cannot edit past whereabouts dates, how is whereabouts information for January 1, 2 and 3, 2023 on the ADAM calendar?*

*According to our server logs history, your Data was entered on 30 December 2022 but was only visible to you. They only became visible to others when you submitted them on 03 January 2023".*

112. In the same paragraph, the Sole Arbitrator also relies on a statement by Mr. Gomes which states that it was only on 3 January 2023 that the Athlete “*eventually confirmed his email address*”. This is incorrect as evidenced by the Athlete updating his profile where confirmation of his email address is one of the first steps for successful updating before any other entry can be made. This marks a hazardous trend in the Appealed Decision wherein submissions from the BWF have been seemingly treated as the final word while submissions from the Athlete have been often ignored, even when backed with evidence.

113. The Athlete’s Whereabouts activity clearly shows that on 1 January 2023 and 2 January 2023 the testing time slots for the relevant dates were between 07:00 a.m. to 08:00 a.m. for both dates as per the entry submitted by him on 30 December 2022. This casts doubt over BWF’s contention that he failed to submit his Whereabouts for Q1 - 2023. He had

also logged into ADAMS on 2 January 2023 to make modifications to his Whereabouts information and he added an entry for 3 January 2023 for Attabira, Orrisa and updated the testing time slot for the same as reflected in his Whereabouts activity for January 2023. Thereafter, he updated the inputs which he had made on 30 December 2022, on 3 January 2023, by adding an entry with the assistance from Mr. Sukant Kadam. His ADAMS Profile clearly reflects that entries with pertinent information were “created” on 30 December 2022 and the same were confirmed by the Data Trail provided by WADA. The fact that he had logged into ADAMS on 30 December 2022 is clearly established. In this regard, in his email response dated 5 April 2023, Mr. Andy Hines-Randle, the Head of Integrity at the BWF has also acknowledged he agrees that the Athlete had modified his Whereabouts on 30 December 2022. However, Mr. Hines-Randle’s statement also suggested that there has been a failure on the Athlete’s part in that he did not ‘submit’ and ‘merely’ modified the whereabouts information. This is disputed as he did press the ‘submit’ button as is practice upon filling in the requisite information and he did not receive any notification or error message which could have pointed at his submissions being incomplete or merely modifications, at the time of filing. Further, he was able to view the next testing time slots as mentioned at his selected address for 1 January 2023, 2 January 2023 and 3 January 2023 and there was no indication of any incomplete information at this point or for that matter the same being reflected in red to denote an incomplete entry. As past modification is not permitted on ADAMS, the screenshots of the same taken at that time show the same in green as being validly submitted. Therefore, the question is whether there should be reliance on the mere statement of one party, which is not backed up by evidence, or reliance on the statement of another party, which is backed up by evidence.

114. Therefore, there was no reason for the Athlete, who filled in the details in a repetitive manner compared to past entries that were accepted by the WADA ADAMS portal, to believe that his submissions were invalid/merely to be deemed as modifications. It is important to note that the ADAMS portal utilizes colour coding to indicate incomplete filings, where entries may be demarcated in red in the event a submission is incomplete. There were no such indications in this instance.
115. It is also important to note that the Athlete had also updated his profile on the WADA ADAMS portal prior to making the relevant filing for Q1 - 2023, making it evident that his logging in on 30 January 2022 was not merely a farce to update minimal details and comply with the deadline for submission. It is clearly reflected that his profile was updated at 15:49 GMT in addition to a log-in being made by him at 00:20 GMT when he logged into ADAMS and made the entries for Q1 - 2023.
116. His activity log on the ADAMS platform reveals multiple logins on 30 December and shows that he updated his profile on the application, the first step for which is to enter and verify his e-mail address. The same is evidenced by screenshots submitted herein. Therefore, not only did he verify his email address, but he also updated his entire profile and submitted relevant entries based on the information he had available for Q1 - 2023 on 30 December 2022, as opposed to what has been observed by the Sole Arbitrator in Para 25 of the Appealed Decision.

117. Additionally, the Athlete raised a series of queries on the WADA ADAMS Help Centre in relation to his Whereabouts. In this regard he raised Request Number 52486 on 6 July 2023 requesting the following information:
- (a) Why was the Athlete being considered for not providing information?
  - (b) How was the Athlete able to see the whereabouts details for all the days of Q1 - 2023 and his next testing time slot?
  - (c) How was the Athlete able to modify the Whereabouts as he did on 2 January 2023?
  - (d) As the Athlete could not change past Whereabouts, how were the Whereabouts for 1 January 2023, 2 January 2023 and 3 January 2023 recorded on ADAMS?
118. The WADA ADAMS Help Centre addressed the queries via Mr. Emmanuel Gomes, Senior Product Specialist (ADAMS), IT, Data & Digital Development. In response to the queries, Mr. Gomes, while addressing query numbers from the list, mentions that as per the WADA ADAMS server log history, the Athlete's data was added on 30 December 2022 but was only visible to him and thereafter became visible to others subsequently on 3 January 2023. This should merely be understood as further proof of there being technical issues pertaining to his submission and its processing at the WADA ADAMS back-end and should not be construed as a failure on behalf of the Athlete. Such an acknowledgement, when considering the activity also being reflected in his ADAMS portal, essentially confirms the fact that the Athlete had taken measures to fulfil his Whereabouts obligations prior to the beginning of Q1 – 2023, in accordance with the requirements.
119. He had in his ADAMS Query also sought the Data Trail which pertains to his submissions and activity on the WADA ADAMS portal. The Data Trail which has been shared with him clearly reflects that there was the creation of an entry in the ADAMS Profile. The entries for 30 December 2022 show that he had added the requisite information on the ADAMS Profile.
120. All the above indicators point to the fact that the Athlete did make his best efforts to enter all information available to him on 30 December 2022 corresponding to the requisite fields on the WADA ADAMS portal. In his perspective, and with his level of experience, the submission was complete and there was no reason for him to believe otherwise. The statements of Mr. Gomes also confirm the fact that the Athlete made all the necessary entries and completed the submission on the portal. The same not being available for display at the back-end cannot be attributed to him and therefore, the recording of the Filing Failure is legally incorrect.
121. Further, during the aforementioned logins, there was no indication on the ADAMS platform that led the Athlete to believe that his submission was incomplete as he was also able to see the Calendar for 2023 in which he had provided valid details of his Whereabouts for a one-hour slot as required. He already had two Whereabouts Failures recorded against him at that point in time, was checking his next testing slot frequently



and since the same was visible without any of the typical indicators of an incomplete filing he was certain of there being no failure to update his Whereabouts from his end.

122. For these reasons the Athlete submits that the third filing failure pertaining to Q1 -2023 is not to be recorded against the Athlete and that as a result of the same there is no commission of the alleged ADRV in the present instance as three whereabouts failures would not accrue to meet the pre-requisite for consideration as an ADRV.

**A3. The Athlete's contentions regarding the Notification and Faults in the Result Management Process**

123. The Athlete was in receipt of a communication dated 3 January 2023 from the BWF which was initially sent to the BAI and later forwarded to him. The contents of the same reflect the recording of a Filing Failure against him. The letter contained a reference to another letter dated 19 December 2022 which was intended to formally notify him regarding an apparent filing failure prior to recording the same officially.
124. In his response to the communication dated 3 January 2023, the Athlete conveyed to the BAI how he inadvertently missed the communication dated 19 December 2022 and the same was also communicated to the BWF. He referred to the fact that he was constantly updating his Whereabouts throughout his travels to ensure availability for potential testing during the course of his travels. The same is reflected in WADA ADAMS.
125. Thereafter, he requested an Administrative Review of the decision dated 3 January 2023 wherein the BWF had communicated that they intend to record a Filing Failure against the Athlete. The Administrative Review was conducted by Mr. Thomas Delaye-Fortin, Head of Legal and Governance at BWF. Pursuant to such review, the BWF *vide* a communication dated 20 January 2023 informed the Athlete that the BWF intended to proceed with the recording of a Filing Failure as indicated in their earlier communication. On 20 January 2023, he received another communication from the BWF which made reference to the letter dated 3 January 2023 and officially communicated the declaration of a Filing Failure. He responded to the same *vide* his legal representatives and contested the recording of a Filing Failure against him on 20 January 2023.
126. He received another communication dated 28 February 2023 from the BWF, confirming that it would be “...*cancelling the finding of Filing Failure due to an administrative oversight related to the timing of the first notification*”. The communication also stated that the BWF will be opening a new Results Management Process for reviewing the filing failure against him. It was only after the communication dated 20 January 2023 from him *vide* his legal representatives that the BWF initiated direct communication with him.
127. He went on to receive a formal notice dated 3 March 2023, pursuant to the conclusion of the fresh result management process that was initiated by the BWF in the present matter. The notice informed him of an apparent Filing Failure on his behalf and the consequences of the Filing Failure being recorded against him. Further, the notice also required him to respond to the same with regards to whether he accepted the commission

of a Filing Failure or in the alternative to provide a detailed explanation regarding why such a Filing Failure should not be recorded against him. It was in response to the same that he reiterated his innocence and requested the BWF to initiate the relevant process of dispute resolution which resulted in the matter being heard by the CAS ADD.

128. While the official declaration of the Filing Failure took place only on 3 March 2023, and the manner in which the same was declared is not disputed to be in violation with the principles guiding the same, the same may not be said regarding the conduct of the BWF leading to the same.
129. The issuance of a letter notifying him of his apparent Filing Failure on 19 December 2022 was against the principles of the ISRM. While the same was subsequently cancelled, this was only done after his legal representatives pointed out how the BWF's action amounted to a violation of the ISRM and ISTI. The relevant provision which was pointed out was the comment to Article 4.8.8.2 of the ISTI which states that: *"To facilitate planning and readiness for Testing on the first day of the quarter (as countenanced in Article 4.8.8.2), Anti-Doping Organizations may require that whereabouts information is submitted on a date which is the 15th of the month preceding the quarter. However, no Consequences for a failure to submit prior to the first day of the Quarter shall apply"*.
130. The cancellation of the notification at the first instance led to another provision of the ISRM being violated. The ISRM states that:
- "B.3.2 When a Whereabouts Failure appears to have occurred, Results Management shall proceed as follows:*
- (...)*
- (d) If the Results Management Authority concludes that all of the relevant requirements as set out in B.2.1 (Filing Failure) and B.2.4 (Missed Test) have been met, it should notify the Athlete within fourteen (14) days of the date of the apparent Whereabouts Failure. The notice shall include sufficient details of the apparent Whereabouts Failure to enable the Athlete to respond meaningfully and shall give the Athlete a reasonable deadline to respond, advising whether they admit the Whereabouts Failure and, if they do not admit to the Whereabouts Failure, then an explanation as to why not"*.
131. With respect to the third Filing Failure therein, the BWF ought to have notified him within fourteen (14) days from such failure. However, he was only formally notified of the Filing Failure only after a period of over fifty days, which is a complete deviation from the relevant provision of the ISRM.
132. Further, the general principles laid down by the WADA ISRM also state under Article 4.2 that *"In the interest of fair and effective sport Justice, anti-doping rule violations should be prosecuted in a timely manner. Irrespective of the type of anti-doping rule violation involved and save for cases involving complex issues or delays not in the*

*control of the Anti-Doping Organization (e.g., delays attributable to the Athlete or other Person), Anti-Doping Organizations should be able to conclude Results Management (including the Hearing Process at first instance) within six (6) months from the notification as per Article 5 below”.*

133. Taking the cancellation of the Filing Failure and the subsequently initiated result management into account, it can be established that there is a deviation from the WADA ISRM on behalf of the BWF in the process of result management. Not only was the mode of notification to him in violation of the WADA ISRM, the subsequent handling of the result management process was also in a manner that violated the general principles of the WADA ISRM.
134. Considering how the notice was formally issued, despite the delay, on 3 March 2023, the result management process, including the first instance hearing ought to have been concluded reasonably by 3 September 2023. Interestingly, despite his communication seeking an expedited hearing, the BWF has only sent in the Request for Arbitration on 7 September 2023, a date already beyond the timeline prescribed in the WADA ISRM. At this stage, the question may be posed with respect to the cancellation of a notice and re-issuance of the same and the grounds relied on by the BWF to undertake the same.
135. Such deviations from the principles of the ISRM and the ISTI by the BWF are to be weighed seriously while determining the period of ineligibility to be imposed on him as there have been various instances during the result management process where he suffered owing to the lackadaisical approach adopted by the BWF. He stands to benefit from the procedural lapses committed by the BWF.
136. It is also important to point out that no provision in the ISRM or ISTI exists for BWF to cancel a notice after the independent Administrative Review was finalised and then issue a fresh notice of violation. The re-issuance of the notice is to be treated as bad in law owing to it being in violation of B.3.2 of the ISRM. If the BWF, as a party is allowed to unilaterally undertake this process, why is the athlete not allowed to ask for reconsideration of his facts (in this particular case, instances of the first and second Missed Tests), despite not having submitted the same in detail earlier. There has to be equity in law for both sides in the matter.
137. It is also important to note that the Athlete has sought from the BWF, on multiple occasions, the documents that were relied on for the Administrative Review process undertaken by the BWF and also the signed consent form which was provided in response to this original inclusion to the RTP in 2019. He has not signed the consent form and seeks the same to identify who may be responsible for the same so that separate legal action may be initiated with respect to the same, which could even be criminal action in nature.

#### **A4. Degree of fault**

138. The Athlete submits that in the event the Panel deems that there was an ADRV, the degree of fault attributable to him is to be evaluated in light of the totality of all

submissions made by him pertaining to all three alleged whereabouts failures in the present matter.

139. In the CAS case CAS 2020/A/7526 & 7559, the Panel noted that it had to assess the athlete's degree of fault considering the circumstances pertaining to all three Whereabouts Failures. Therefore, a perusal of the facts pertaining to the first and second Whereabouts Failures deemed to have been committed by the Athlete is necessary with respect to the determination of degree of fault attributable to the Athlete.

### **Third Whereabouts Failure – Filing Failure**

140. The Athlete further contends that in the event the Panel believes that the Athlete did commit a Whereabouts Failure corresponding to the filing for Q1 - 2023, the mitigating factors involved are to be considered while evaluating the degree of the Athlete's fault.

141. Those points the Athlete submits are to be considered as mitigating factors in determining the degree of fault pertaining to the Q1- 2023 Whereabouts Failure are listed below:

- (i) His act of updating his ADAMS Profile including his e-mail address on 30 December 2022;
- (ii) His log-in history for the period between 30 December 2022 to 3 January 2023, evidencing his cautious nature and meticulous checks as to whether his next testing slot is visible on the ADAMS app and platform;
- (iii) His meticulous nature of exchanging information with his teammate, Mr. Sukant Kadam to ensure that no further lapses occur from even inadvertent errors owing to two Whereabouts Failures having already been recorded against him;
- (iv) His act of filling in every mandatory column on the ADAMS platform as evidenced by the various Data Trails obtained from the WADA ADAMS helpdesk;
- (v) The fact that he received no contrary notification or message which indicated at his submission being incomplete and the confirmation received from Mr. Gomes that the entries made by the Athlete were only visible to him and not to the recipient of such information; and
- (vi) The fact that his entries for 1 January 2023 and 2 January 2023 are visible on the ADAMS portal which would not have been possible unless his submission was completed prior to 1 January 2023. This is confirmed by Mr. Gomes who also attested to the fact that modifications may not be made to entries on a retrospective basis.

142. Additionally, it is also to be observed that WADA in its document titled 'Athlete Whereabouts At-a-glance' identifies whereabouts as "*information provided by some athletes so Anti-Doping Organizations (ADO) can locate them for testing, particularly*

*out-of-competition testing*". To this end, the Athlete's availability for testing even on 1 January 2023 and 2 February 2023, the two dates he may have missed owing to the alleged Filing Failure are also recorded on the WADA ADAMS platform. Therefore, there is no date on Q1 - 2023 on which his Whereabouts with respect to the one-hour testing slot that is to be provided, are missing. Hence, there is no intention from him to cheat the system or to violate the principles of clean sport.

143. In CAS 2020/A/7526 & 7559, the Panel observed that it had to assess the athlete's degree of fault considering the circumstances pertaining to all three Whereabouts Failures, the Athlete believes that in totality the degree of his fault in the event of the third Whereabouts Failure if not cancelled, is on the lower degree and warrants a period of ineligibility in the lowest bracket of what may be imposed on him under the present circumstances.

### **The Athlete's Evidence**

144. In support of his submissions, the Athlete provided a witness statement and gave oral evidence (and was cross-examined) before the Panel.
145. The Athlete mostly repeated the statements in the Appeal Petition. Regarding the First Whereabouts Failure on 14 of May 2022, he emphasised that such situation arose solely because he was unable to update his whereabouts on the ADAMS portal owing to non-receipt of the OTP required to complete the process of logging in to the ADAMS portal.
146. He was unable to complete his Whereabouts entry when he was in India before his departure to Brazil as he did not know the address of the hotel. He travelled to Brazil on 17 of April 2024, the tickets were made available shortly before his departure by the Paralympics Committee of India and the Peru Badminton Association.
147. When in Brazil and Peru he made several attempts to log into the WADA ADAMS portal, but was unable to receive the OTP required to log in. He could not access the ADAMS platform despite multiple attempts to do so including resetting his password in his attempts to access the portal. As a result, he was unable to complete the two-factor authentication which required the input of an OTP on the platform.
148. At that time, the Athlete submits that he was not aware that he could use the ADAMS Help desk. His English language capability and his knowledge as to how to update his Whereabouts when he is abroad are limited. During the stay in Brazil and Peru he asked his fellow athlete Mr Sukant Kadam to help him with logging on to ADAMS to update his whereabouts information, but they were not able to enter the application until 20 of May 2022 when the problem with the SIM card was finally resolved. The Whereabouts Details Report for the month of May 2022 clearly indicates that from 21 May 2022, he was able to update his Whereabouts and participation in the BWF Bahrain Para Badminton International 2022.
149. Regarding the Second Whereabouts Failure on 29 of August 2022, he explained that he had no plans to go to Bihar but that he was invited by the Minister of the State of Bihar on extremely short notice. On 27 August 2022 he received an invitation for the 22nd

Bihar Award Ceremony 2022 to be held on 28 August 2022 organised by the Bihar Disabled Sports Academy. It was only due to such an unavoidable commitment presenting itself that he failed to update his Whereabouts for the relevant dates. He had no intention to evade testing at any point in time and he unfortunately missed out on the test due to his presence being demanded at the Ceremony. He had undertaken two tests around the period in which the missed test was recorded against him. The first test was conducted on 16 August 2022, prior to the missed test being recorded and the second test was conducted on 13 September 2022, after the missed test. Both these tests returned negative for any prohibited substance.

150. Regarding the third Whereabouts Failure the Q1 – 2023, the Athlete has insisted that the infringement was the result of a technical glitch for which he cannot be blamed. He logged into his ADAMS account on 30 December 2022 and completed his Whereabouts for Q1 - 2023 by creating entries associated with the required entries. He had entered all the relevant information including the Whereabouts particulars that he was aware of during the time. Thereafter, he added the other information that was required, and he clicked on 'submit'. At this point, there was no indication on the platform which warned or even indicated to him that his submission was incomplete.
151. He pressed "NA" as his entry for both regular activity and competition/event Schedule as he had not set out a plan for Q1 - 2023 at that point of time. He pressed 'submit' button and there were no error messages or notifications that were activated which could have led him to believe that his submission was incomplete. He had logged into his ADAMS profile on multiple instances between 30 December 2022 and 3 January 2023 and still had no reason to believe that his submissions were incomplete.
152. He also asked his teammate Mr Sukant Kadam regarding the process of whereabouts filings. He reported that it was their practice to regularly update each other and share screenshots at each stage of the filing process and that the same was a process was undertaken with respect to filing the necessary information on 30 December 2022. When they were filling in the application between 30 December 2022 and 3 January 2023, the Athlete reported that all online fields were green at all times.

**Witness Mr Sukant Kadam**

153. Witness Sukant Kadam explained that he is a teammate and friend of Pramod as they played badminton together and have done so at times as doubles partners. On 15 May 2024, he made a statement certified before a notary public and during the hearing he largely repeated his claims in that statement.
154. He has been an international para badminton player since 2014 and stated that he has been representing India at various international Events and has won multiple accolades including securing the Bronze Medal at the Asian Para Games in 2018 and 2022 as well as at the Para Badminton World Championships in 2019 and 2024. He has been a teammate and colleague of Mr. Pramod Bhagat's since 2016, they have participated as a team in multiple doubles events and their achievements together include winning the Bronze Medal at the Asian Para Games 2022, Para Badminton World Championships 2024, and securing the No. 1 World Ranking in Doubles in 2023.

155. Mr. Bhagat was scheduled to play at the Brazil Para Badminton International from 19 April 2022 to 24 April 2022 and had two alternate travel itineraries prior to his trip to Brazil. The Paralympic Committee of India was handling the travel and accommodation of the athletes for this tournament. Travel plans of Pramod Bhagat were only finalised at the last minute, as his tickets were arranged by the Paralympic Committee of India and the Peru Badminton Association, and the travel details were shared with him only on 11 April 2022 and 16 April 2022 for his travel to Brazil and Peru, respectively.
156. Despite receiving the tickets for the Brazil Para Badminton International on 11 April 2022, the details of their accommodation were not shared with them until they reached São Paulo due to certain last-minute changes. Mr. Bhagat had no confirmation regarding his travel itinerary and accommodation prior to travelling to Brazil, due to these factors. Mr. Kadam is aware of the same owing to the fact that he was accompanying Mr. Bhagat in the aforementioned event, and he was in receipt of the communications from the Paralympic Committee of India and the Peru Badminton Association with respect to their itinerary and travel plans.
157. Mr. Bhagat made numerous attempts to log into and access the WADA ADAMS portal in order to update his Whereabouts from Sao Paulo, Brazil during the period from 18 April 2022 to 25 April 2022. Mr. Bhagat sought the assistance of Mr. Kadam to update his whereabouts and tried logging in to the WADA ADAMS portal from Lima, Peru during May 2022 as Mr. Kadam was also present with Mr. Bhagat during said time period. They tried logging into the WADA ADAMS portal several times, including on 05 May 2022, 07 May 2022, 09 May 2022 from Lima, Peru. Mr. Bhagat had also informed Mr. Kadam that he had used the same SIM card to receive the OTP and log into the WADA ADAMS portal on previous occasions when he was travelling abroad. Despite the multiple attempts made by Mr. Bhagat to log in, he reports that he did not receive the OTP and therefore could not access the ADAMS portal.
158. During this period, Mr. Bhagat also relied on various alternatives in order to try to access the ADAMS portal, including incognito browsers, use of a Virtual Private Network (VPN) and also used the SIM card via different devices to check if the OTP could be generated in order log into the ADAMS portal.
159. It was only at this stage that Mr. Bhagat and Mr. Kadam became aware of the ADAMS application which could be accessed with a smartphone. Until such point, Mr. Kadam used to assist Mr. Bhagat in making filings using their computer/laptop devices. Going forward, they made updates on the ADAMS application and would constantly update each other regarding any change made and Mr. Kadam continued to help Mr. Bhagat in subsequent filings made *vide* the application.
160. In order to rectify any issue that might be due to his SIM card, Mr. Bhagat had even booked tickets for travel from Dubai to Delhi in order to change his SIM card.
161. On 15 May 2022, Mr. Kadam travelled from Bahrain to Delhi, India with Mr. Bhagat's SIM card to ensure that the situation pertaining to the receipt of OTP could be resolved, which might enable him to update the Whereabouts of Mr. Bhagat.

162. Due to Mr. Bhagat's limited technical knowledge he sought Mr. Kadam's assistance in order to comply with the relevant requirements. Mr. Bhagat would coordinate with Mr. Kadam in order to make the necessary entries for the WADA ADAMS portal. Together they would communicate regularly on WhatsApp, and Mr. Kadam assisted Mr. Bhagat in updating his information whenever required. On 18 May 2022 they discovered the WADA Athlete Central Application and tried using the same and also raised their concerns with the WADA ADAMS Helpdesk.
163. Since the month of May 2022, Mr. Kadam also assisted Mr. Bhagat in communications with the WADA ADAMS Helpdesk and further assisted him in writing the emails to ADAMS and in navigating communications with the officials engaged by the WADA ADAMS Helpdesk for coordination with athletes. Mr. Bhagat also made sure to mention that he should be called on his WhatsApp number as well to confirm his availability for testing.
164. On 30 December 2022 Mr. Kadam assisted Mr. Bhagat to make entries on the WADA ADAMS portal in order to fulfil the requirements of the upcoming Q1 - 2023. Mr. Bhagat was in Bhubaneswar, India during this period and they used the WADA Athlete Central Application to update his Whereabouts and submitted the entries for 30 December 2022. They also updated ADAMS profile of Mr. Bhagat on 30 December 2022 via web and updated all the information. They also checked the calendar for Q1 - 2023 and all the Whereabouts details were visible. On 3 January 2023 Mr. Kadam also assisted Mr. Bhagat to update the information entered on 30 December 2022.
165. After Mr. Bhagat had entered the information on 30 December 2022 Mr. Kadam had reviewed the WADA ADAMS portal along with Mr. Bhagat and the testing time slots for his selected address for 01 January 2023, 02 January 2023 and 03 January 2023 were visible on the WADA ADAMS portal in green without any error. After filing the requisite information on 30 December 2022, since the testing timeslots for Q1 - 2023 were visible on the WADA ADAMS portal, there was no indication that there was any incomplete information. Mr. Bhagat and Mr. Kadam repeatedly logged in and checked whether all details are available for display for the upcoming days on the WADA ADAMS portal even on 1 January 2023 and 2 January 2023.
166. During the Hearing, Mr. Kadam repeated that on 3 January 2023 Mr. Bhagat assisted him by phone to update the Appellant's application. According to Mr. Kadam's knowledge, all the fields filled by Mr. Bhagat were always visible as green.

### **The Athlete's Request for Relief**

167. In the Appeal Brief, the Athlete requested the following relief:
- (i) *"The filing failure notified to the Athlete on 03.03.2023 and recorded against him be cancelled, thereby absolving him of the alleged ADRV.*
  - (ii) *The Panel may consider rendering the alleged ADRV invalid upon cancellation of the recording of one of the alleged whereabouts failures currently recorded against the Player in the present matter.*



- (iii) *In the event the filing failure is cancelled, the Player may be eligible to obtain costs pertaining to the proceedings at the CAS and legal expenses pertaining to the same.*
- (iv) *In the event the Players [sic] conduct and the BWF's management do not warrant consideration for the cancellation of the filing failure, the Panel may consider that the degree of fault on the Player to be at the lower degree taking into account the three alleged Whereabouts Failures in toto as laid down in the Naser Case.*
- (v) *Interim relief be granted to the Athlete towards participation in the 2024 Paralympics scheduled to be held at Paris, starting from 28 August 2024.*
- (vi) *The application of the Appealed Decision be stayed until the present matter is resolved by the CAS Appeals Division".*

## **B) The Respondent**

168. The Respondent submits that Advance Notice Out-of-Competition Testing is a significant and fundamental element of the BWF's anti-doping programme to combat the threat of doping to the integrity of the sport of badminton.
169. If those that are willing to cheat are able to put themselves beyond the reach of testing agencies for several days (or even hours), they will be able to dope with impunity. It is for this reason that athletes' Whereabouts duties must be closely monitored and strictly enforced. Where athletes repeatedly fail to meet their Whereabouts responsibilities, the appropriate Consequences must be imposed (regardless of whether there is evidence of doping). Otherwise, the Whereabouts system will have no teeth and no deterrent force.
170. Three (3) Whereabouts Failures were confirmed against the Athlete in the twelve-month period, viz.:
- (i) a Missed Test on 14 May 2022;
  - (ii) a Missed Test on 29 August 2022; and
  - (iii) a Filing Failure in respect of the first quarter of 2023, *i.e.* the period between 1 January 2023 and 31 March 2023 (effective as of 1 January 2023).

### **First Whereabouts Failure: Recorded Missed Test on 14 May 2022**

171. The First Whereabouts Failure relates to the Missed Test that occurred on 14 May 2022. The allegations and a summary of the evidence in respect of the First Whereabouts Failure are set out at paragraphs 4 to 8 above.
172. The Respondent notes the following in terms of the Athlete's level of Fault regarding the First Whereabouts Failure:

- (i) Per Article B.2.4(e) ISRM, includes a presumption that it is the Athlete's failure to be available for testing.
- (ii) Testing at the specified location during the specified 60-minute time slot is negligent, and it is the Athlete's burden to demonstrate that no negligent behaviour on his part caused or contributed to his lack of availability for Testing and to update his Whereabouts.
- (iii) When invited to submit his explanations with respect to the Missed Test, the Athlete initially did not provide any explanation and even signed an acknowledgement slip on 4 June 2022, whereby he admitted the Missed Test and agreed to the BWF recording it against him.
- (iv) On 29 May 2023, the Athlete provided written explanations in response to the Charge. In this context, the Athlete went back on his admission and argued that he was abroad and had problems receiving an SMS with a verification password on his mobile phone, which was required in order to log into his ADAMS account. Therefore, he had no technical means to update his Whereabouts for 14 May 2022.
- (v) With respect to this explanation, the Respondent notes the following:
  - 1) The Athlete was aware of his trip to Brazil since as early as 13 April 2022, when the tickets were booked.
  - 2) The ticket reservation shows that the Athlete supposedly travelled from Brazil to Peru on 26 April 2022 and back, from Peru to Brazil, on 13 May 2022.
  - 3) According to his Whereabouts information for April 2022, the Athlete was at home in India from 13 April 2022 until 26 April 2022 and, therefore, was able to update his Whereabouts well in advance of the planned trip to Brazil.
  - 4) In any event, the Athlete could have notified the BWF about his alleged technical problem to log into ADAMS to ensure that his Whereabouts were up-to-date, but he failed to do so. The BWF Fact Sheet on Whereabouts, which was provided to the Athlete, and which is available online, explains how athletes can contact the BWF in case they have forgotten their ADAMS username or password or if they need any assistance with ADAMS. A screenshot of the BWF Fact Sheet on Whereabouts is as follows:

*“How to provide Information?”*

*Information must be provided on “ADAMS” - this is the World Anti-Doping Agency's (WADA) online system [Anti-Doping Administration and Management System].*

& ADAMS can be accessed at <https://adams.wada-ama.org/adams/login.do?prompt=true&nopopup=true>

Q Contact Murali Paramasivam [m.paramasivam@bwfbadminton.org](mailto:m.paramasivam@bwfbadminton.org) if you have forgotten your Username or Password or if you need assistance with ADAMS”.

- 5) The Athlete’s failure to be available for Testing on 14 May 2022 at the specified location during the specified 60-minute time slot was manifestly negligent.

### **Second Whereabouts Failure**

173. The Second Whereabouts Failure relates to the Missed Test that occurred on 29 August 2022. The allegations and a summary of the evidence in respect of the Second Whereabouts Failure are set out at paragraphs 9 - 12 above.
174. The Respondent notes the following in terms of the Athlete’s level of Fault regarding the Second Whereabouts Failure:
  - (i) Per Article B.2.4(e) ISRM, it is presumed that the Athlete’s failure to be available for Testing at the specified location during the specified 60-minute time slot is negligent, and it is the Athlete’s burden to demonstrate that no negligent behaviour on his part caused or contributed to be available for Testing and to update his Whereabouts.
  - (ii) When invited to submit his explanations with respect to the second Missed Test, the Athlete initially did not provide any explanation and even signed an acknowledgement slip on 28 September 2022, whereby he admitted the Missed Test and agreed to the BWF recording it against him.
  - (iii) The Respondent notes that on 29 May 2023, the Athlete provided written explanations in response to the Charge with respect to the second Whereabouts Failure. In particular, the Athlete claimed that he had been invited “[on] extremely short notice” to an award ceremony celebrating National Sports Day on 29 August 2022 and that “due to such an unavoidable commitment presenting itself at such short notice that the [Athlete] failed to update his whereabouts for the relevant date”.
  - (iv) Even taking the Athlete’s statement at face value, he was clearly negligent:
    - 1) As he allegedly went to a ceremony celebrating National Sports Day on 29 August 2022 to Patna, Bihar, which is 800km from his stated location in Bhubaneswar, he was never going to be available for Testing during the designated slot (from 07h00 to 08h00) at the address in Bhubaneswar that he entered in his Whereabouts for that day. The applicable rules require an athlete

to be present and available for testing at the indicated place during the hour-slot. As he was not at the designated place, he accepted the risk that he would not be available for Testing during the slot. This is plainly negligent.

- 2) Patna, Bihar is 800 km away from Bhubaneswar, which is an 18-hour trip by car or by public transport. The Athlete must have known in advance that he would not be in Bhubaneswar on 29 August 2022 as the celebration in Patna was scheduled for a special National Sports Day fixed on 29 August 2022. Nothing would have prevented him from updating his Whereabouts once he had decided to go to Patna, Bihar. He had ample time to do so.
- 3) Bearing in mind of an athlete's obligation to constantly update their Whereabouts, and to do so "as soon as possible after they become aware of the change in circumstances, and in any event prior to the 60-minute time slot specified in their filing for the relevant day", the Athlete's failure to update his Whereabouts was clearly negligent.

### **Third Whereabouts Failure**

175. The allegations and a summary of the evidence in respect of the Third Whereabouts Failure are set out at paragraphs 13 - 28 above.
176. The Respondent submits that all the requirements set forth in Article B.2.1 ISRM are met and that the Respondent correctly declared that the Athlete had committed the Q1 - 2023 Filing Failure, which was his third Whereabouts Failure.
177. Article B.2.1(a) ISRM requirement. As of 31 December 2022, *i.e.* the last day to provide Whereabouts for Q1 - 2023, the Athlete was given notice that he had been included in the BWF RTP, that he should make the required Whereabouts Filing and that he would be liable for a Filing Failure if he failed to do so:
  - (i) On 11 December 2019, the Athlete received the notification about his inclusion in the BWF RTP and possible Consequences if he would fail to provide his Whereabouts. On 10 December 2019, he created an account in ADAMS and since then regularly submitted and updated his Whereabouts.
  - (ii) As per Article 4.8.7.3 ISTI, after being included in the BWF RTP, the Athlete was not given written notice that he was no longer designated for inclusion in the BWF RTP.
  - (iii) On 15 November 2022, the Respondent sent a reminder to the BAI about the Athlete's inclusion in the BWF RTP for the 3<sup>rd</sup> quarter of 2022 and about his obligation to submit and update his Whereabouts.

- (iv) On 13 December 2022, one more reminder was sent by the BWF to the BAI related to the submission deadline. On 15 December 2022, the BAI forwarded this letter to the Athlete. The reminder noted that the Athlete continued to be included in the BWF RTP, that he had to make Whereabouts Filing for the Q1-2023 and that he would be liable for a Filing Failure if he failed to comply with this requirement.
- (v) On 21 December 2022, the BAI forwarded a letter to the Athlete from the BWF alleging an apparent Filing Failure. The BWF confirmed in the notification letter that the Athlete “*has been included in [BWF] registered Testing Pool (RTP)*” and that he was “*required to make a Whereabouts Filing at the beginning of each quarter*”; it also provided for the Consequences for failing to comply with this requirement.

178. In the Appealed Decision, the Sole Arbitrator found the following with respect to this point:

*“96. There can be no doubt, based upon the facts outlined above, that as far as the Athlete was concerned, since late 2019 he would have been aware that he was included in the RTP. For a period of 15 quarters subsequent to late 2019, the Athlete has submitted his Whereabouts details on the ADAMS system. To suggest that he did so not being aware he was included in the RTP is disingenuous and cannot be accepted. [...]”*

179. Article B.2.1(b) ISRM requirement. The Athlete failed to input the complete Whereabouts Information and submit it by the end of the previous quarter, *i.e.* 31 December 2022:

- (i) The core principle of the Whereabouts regime is that athletes must give access to the Whereabouts Information to the anti-doping authority, so that it can conduct spot tests. That is what the provisions seek to ensure. A failure to formally *submit* Whereabouts Information that has been privately *inputted* into ADAMS has the same effect of limiting anti-doping testing of athletes as would be the case if an athlete did not input anything at all.
- (ii) As explained by Mr. Emmanuel Gomes of WADA’s ADAMS team, and as demonstrated by the attached data from ADAMS (exhibited in Excel spreadsheet form), the Athlete accessed ADAMS on 30 December 2022, but he did not provide all mandatory Whereabouts Information and therefore could not have submitted it.
- (iii) On that day, he inputted and saved the address of the place where he would be staying overnight and the relevant 60-minute time slot. However, he did not confirm his email address and did not provide his competition/event schedule for the following quarter and the information regarding his regular activities, *i.e.* the name and address of each location where he would train, work or conduct any other regular activity for each day during the following quarter.

- (iv) Without this mandatory information, the Athlete could not have submitted his Whereabouts Information for Q1 - 2023. The Athlete would have also seen text in ADAMS highlighted in red, the submit button would have been inactive, and ADAMS would have told him that the status was “Not Submitted” as well as what information was missing:



*Figure 8 from the Statement of Mr Gomes*

- (v) He then did not access ADAMS again until after the deadline, on 3 January 2023, when he confirmed his email address and inputted the remaining required information related to the competition/event schedule and his regular activities. The Athlete only then completed his Whereabouts for Q1 - 2023 and submitted them, *i.e.* pressed the button ‘submit’.
- (vi) The Athlete would have practically known to press ‘submit’ because he would have done so in the past when he managed to submit his Whereabouts Filings fifteen times for all the quarters from 2020 until 2022 inclusive.

180. In this respect, the Sole Arbitrator established the following in the Appealed Decision:

*“107. The Sole Arbitrator is satisfied that the attempts made by the Athlete to include all the required information on 30 December 2022 in the ADAMS portal were insufficient to comply with his responsibilities and requirements as a person on the RTP. The Sole Arbitrator accepts the evidence of Mr. Gomes and rejects the contentions of the Athlete that the problem was in the ADAMS system. The Athlete, as he perceived, had entered the required information except for his competition schedule of which he was unaware at that time. The Sole Arbitrator does not accept that the Athlete entered information on 1 and 2 January 2023 as asserted and finds that his first*

*complete submission of information was in fact on 3 January 2023, three days overdue”.*

*“112. The Sole Arbitrator finds that the Athlete was clearly aware of these requirements and, as indicated above, had repeatedly complied with them. The failure to observe those requirements on 30 December 2022 was not explained by the Athlete other than to say he had attempted to include all of that information but was unable to do so because he was unaware of his competition schedule and that he had pressed the ‘submit’ button and had assumed that all the information had been provided. [...]”*

*“114. Again, the Sole Arbitrator finds the explanations given by the Athlete to be disingenuous and those explanation cannot be accepted. Attempts to blame his failures on the deficiency of the ADAMS portal cannot be substantiated on the evidence”.*

1. The requirement at Article B.2.1(b) ISRM was therefore met: the Athlete failed to comply with the requirement by the deadline, as he had not inputted everything that was required and had therefore, not submitted anything by then.

181. Article B.2.1(c) ISRM requirement. The requirement was met given that when the Filing Failure occurred on 1 January 2023, the Athlete had already been notified of the first and the second Whereabouts Failures on 17 May 2022 and 1 September 2022, respectively.

182. Article B.2.1(d) ISRM requirement. The Athlete’s failure to provide Whereabouts was negligent:

- (i) Per Article B.2.1(d) ISRM, the Athlete is presumed to have been negligent. In order to rebut that presumption, the Athlete must prove that *“no negligent behaviour on their part caused or contributed to the failure”*. This is a very strict test. The Athlete cannot satisfy it, as he was clearly negligent.
- (ii) He failed to input all mandatory Whereabouts Information before the end of 31 December 2022, despite accessing ADAMS on 30 December 2022 when the deadline had not yet expired. On that day, he only inputted incomplete Whereabouts Information. He would have realised that it was incomplete because it was missing entries for regular activity and competition/events schedule for the whole Q1 - 2023, and his email address was not confirmed so that the ‘submit’ button was inactive.
- (iii) The Athlete then finally inputted the missing information and submitted the Whereabouts Filing on 3 January 2023, three days after the expiry of the deadline. He was therefore not locatable for testing on 1 and 2 January 2023 at all.

- (iv) The Athlete had been sent multiple reminders prior to the deadline explicitly stating what information needed to be included in the filing. The Athlete failed to pay any or proper attention to that information. The ADAMS system was designed to assist the Athlete, and he failed to pay any or proper attention to the built-in safeguards that should have alerted him to the incomplete nature of his filing, such as the incomplete information being highlighted red (with descriptions available for what was missing) and an absence of green text or green ticks to show completeness. These safeguards were also clearly described in the BWF Whereabouts Guidelines and the BWF Fact Sheet (screengrabs below) on Whereabouts sent to the Athlete, including specifically in relation to the competition/event schedule and the regular activities which the Athlete failed to input:

**O Location of Regular**

**Activity - training/work -**

Players on the RTP must provide the name and address of any place where they train, work, or any other regular

**O Competition Schedule -** Athletes must

provide their competition schedule for the quarter, including the date(s), time(s) and venues (name and address] for each tournament / competition

If this tournament schedule changes, Athletes must update the Whereabouts information before the date of the tournament - as soon as the change is known.

**Key Athlete Obligations**

**0 Regular Activity**



You must tell us when and where you will be training, working, or conducting any other regular activity during the relevant quarter (including weekends].

If your regular activities change [for example, you start training in the morning and not the afternoon, or on a different day), you must update your Whereabouts Filing.

However, if you change your regular schedule only occasionally, then you do not have to make any change to your Whereabouts Filing to reflect that “one-off” change.



## **O Competition Schedule**

You must tell us your  
Competition schedule for each

quarter, including the date's],  
time(s) and venues (name and  
address] where you are scheduled to compete. If this changes, you must  
update your Whereabouts Filing.



- (v) Compounding the Athlete's negligence, this Filing Failure arose out of the Q1 - 2023 Filing. The Athlete was placed in the RTP at the start of 2020, so had already completed (and managed to press the 'submit' button) fifteen other Whereabouts Filings by this stage. He therefore had considerable prior experience and knowledge of all the information that was required in order to successfully submit a complete Whereabouts Filing.
- (vi) He is also an experienced, high-profile athlete, who won a gold medal at the 2020 Summer Paralympics. He therefore should be held to a higher standard of care, as per CAS 2017/A/5015 & 5110:

*“An athlete bears a personal duty of care in ensuring compliance with antidoping obligations. The standard of care for top athletes is very high in light of their experience, expected knowledge of anti-doping rules, and public impact they have on their particular sport.*

*It follows that a top athlete must always personally take very rigorous measures to discharge these obligations”.*

183. In light of the foregoing, the Athlete failed to submit the Whereabouts Information within the deadline and all requirements of Article B.2.1 ISRM were satisfied. Therefore, the CAS ADD was right to confirm that the Q1 - 2023 Filing Failure should be recorded, and that the Athlete committed an ADRV.

### **The Respondent's Evidence**

184. Expert Emmanuel Gomes confirmed his written statement of 4 September 2023. He explained that the ADAMS system provides two different phases – creating an entry (entering) and submitting the entry. The Athlete registered his profile in ADAMS on 10 December 2019. Since that registration, he submitted Whereabouts details in 4 years on a quarterly basis. During the period from 2020 until 2022 inclusive, the Athlete submitted Whereabouts information for 15 quarters.

185. Mr. Gomes underlined that the Data Trail confirms that the Athlete submitted his Whereabouts for Q1 2023 on 3 January 2023 at 7:00:20 GMT. A submission caused a change in the status of his Whereabouts for Q1 2023 from “non submitted” (red) to submitted (green). The Data Trail also confirms that the Athlete could not have submitted his Whereabouts for Q1 - 2023 earlier given that he did not confirm his email address for Q1 - 2023 until 3 January 2023. The missing information with respect to the email address was highlighted in red. As a result, up until 3 January 2023 when the Athlete eventually confirmed his email address, the button “submit” was inactive.
186. Even if the Athlete had confirmed his email address, he could still not “submit” his Whereabouts. In order to submit the Whereabouts, a “Regular Activity” and a “Competition” must be entered. It was only on 3 January 2023 from 6:58 to 7:00 AM that the Athlete made two Whereabouts entries for Q1 - 2023. If the Athlete had sought to press the “submit” button without this information, he would have received a message in red with instructions how to correctly fill in the entry. In the present case there was not any glitch, the ADAMS system reacted normally in an expected manner.

#### **The Respondent’s Request for Relief**

187. In its Answer the Respondent requested the following relief:
- (i) The appeal of Pramod Bhagat is dismissed.
  - (ii) The decision rendered by the Anti-Doping Division of the Court of Arbitration for Sport on 1 March 2024 (case 2023/ADD/66 BWF v. Pramod Bhagat) is confirmed.
  - (iii) The arbitration costs, if any, shall be borne by Pramod Bhagat.
  - (iv) The Respondent is granted a contribution to its legal and other costs.

#### **V. JURISDICTION**

188. The jurisdiction of CAS derives from Article R47 of the CAS Code, which reads:
- “An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.
189. Pursuant to Article 8.1.1 BWF ADR, the BWF has delegated its responsibilities for first instance hearings and decisions to the CAS ADD:
- “BWF has delegated its article 8 responsibilities (first instance hearings, waiver of hearings and decisions) to the CAS Anti-Doping Division (CAS ADD). The procedural rules of CAS ADD pertaining to the hearing of first instance shall apply. CAS ADD will*

*always ensure that the Athlete or other person is provided with a fair hearing within a reasonable time by a fair, impartial and Operationally Independent Hearing Panel in compliance with the Code and the International Standard for Results Management”.*

190. Article 8.1.2.1 BWF ADR provides the following:

*“When BWF sends a notice to an Athlete or other person notifying them of a potential Anti-Doping Rule Violation, and the Athlete or other person does not waive a hearing in accordance with Article 8.3.1 or Article 8.3.2, then the case shall be referred to the CAS ADD for hearing and adjudication, which shall be conducted in accordance with its procedural rules and the principles described in Articles 8 and 9 of the International Standard for Results Management”.*

191. Article A2 of the CAS ADD Rules provides as follows:

*“CAS ADD has jurisdiction to rule as a First-Instance Authority on behalf of any WADC signatory which has formally delegated its powers to CAS ADD to conduct Anti-Doping proceedings and impose applicable sanctions”.*

192. Article A21 of the CAS ADD Rules provides as follows:

*"The final decision may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final decision with reasons by mail or courier in accordance with Articles R47 et seq. of the Code of Sports-Related Arbitration, applicable to appeals procedures".*

193. The jurisdiction of CAS is not contested by the Respondent and is further confirmed by the Order of Procedure duly signed by both Parties without any reservations. In addition, the Panel observes that no objections have been raised against CAS jurisdiction throughout the proceedings.

194. It therefore follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

## **VI. ADMISSIBILITY**

195. The time limit for submitting the Statement of Appeal is 21 days from receipt of the decision appealed against pursuant to Article R49 of the CAS Code and Article A21 of the CAS ADD Rules.

196. The Statement of Appeal was filed by the Appellant on 21 March 2024, i.e. 21 days after the notification of the Appealed Decision to the Parties 1 March 2024, hence within the deadline of 21 days. The appeal complied with all other requirements of Article R48 of the CAS Code.

197. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

198. The BWF ADR apply to all Athletes who are members of the BWF or any National Federation and to all Athletes who participate in Events, Competitions and other activities organised, convened, authorised or recognised by the BWF. Further, the Athlete is an International-Level Athlete and has been part of the BWF RTP since 2019. In respect to alleged violations under Article 2.4 (Whereabouts Failures), the BWF ADR also incorporates the provisions of the ISRM and ISTI. Therefore, the BWF ADR (as supplemented by the ISRM and the ISTI) are applicable in this Arbitration.

199. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

200. The Panel, thus, will decide the dispute according to the BWF ADR. The Parties have proceeded to make submissions based upon the operation of the BWF ADR and the applicable provisions of the ISRM and ISTI which are recognised WADA instruments applied to any allegation of an ADRV. Malaysian law shall apply subsidiarily.

## VIII. MERITS

### LEGAL BACKGROUND OF WHEREABOUTS VIOLATIONS

201. In relation to the violations which are alleged against an athlete, it is first important to identify the legal background which imposes certain obligations on top international athletes in the fight against doping in sport.

202. The Registered Testing Pool (“RTP”) is a pool of the highest-priority athletes established separately at the international level by International Federations and at the National level by National Anti-Doping Organisations. Athletes within that pool are subject to focus In-Competition and Out-of-Competition Testing as part of that International Federation’s or National Anti-Doping Organisation’s test distribution plan and are therefore required to provide Whereabouts information. To facilitate effective Out-of-Competition Testing, Athletes in the RTP are required to provide complete and accurate information about their Whereabouts for every day in a forthcoming quarter, including for a defined 60-minute period each day during which they will be available for Testing.

203. The Athlete was placed in the RTP at the beginning of 2020. He continued to be part of the RTP throughout the period 2020-2023. Prior to the Filing Failure in respect of the first quarter of 2023, the Athlete had successfully completed fifteen Whereabouts filings.

204. Pursuant to Article 2.4 BWF ADR, three Whereabouts Failures in a period of 12 months constitute an ADRV.
205. Where an athlete is not present and available for Testing at the location specified in the Whereabouts Filing for the allocated 60-minute time slot on a given day, a Missed Test shall be registered. The ISRM provides for certain specified requirements to be met in order for a Missed Test to be declared.
206. Pursuant to Article B.2.4(e) ISRM, it is presumed that an athlete's failure to be available for Testing at the specified location during the specified 60-minute time slot is negligent. The presumption may only be rebutted by evidence that no negligent behaviour on the athlete's part caused or contributed to their failure to be available for Testing at such location during the time slot and/or to update their most recent Whereabouts Filing to give notice of a different location instead of the original location.
207. A Filing Failure is defined in the ISRM as a failure by an athlete to make an accurate and complete Whereabouts Filing that enables the athlete to be located for Testing at the times and locations set out in the Whereabouts Filing or to update that Whereabouts Filing where necessary to ensure that it remains accurate and complete. Pursuant to the ISRM, a Filing Failure constitutes a Whereabouts Failure.
208. Article B.1.3(a) ISRM provides that a Filing Failure will be deemed to have occurred where an athlete fails to provide complete information in due time in advance of an upcoming quarter on the first day of that quarter. The comment to Article B.2.1(b) ISRM further specifies that "*An Athlete fails to comply with the requirement to make Whereabouts Filing (i) where they do not make any such filing, or where they fail to update the filing as required by Article 4.8.8.6 of the International Standard for Testing and Investigations; or (ii) where they make the filing or update but do not include all of the required information in that filing or update*".
209. Article B.2.1 ISRM provides for the following requirements to be met in order for a Results Management Authority to declare that an athlete has committed a Filing Failure:
- (i) The athlete was duly notified (i) that they had been designated for inclusion in an RTP; (ii) of the consequent requirement to make Whereabouts Filing; and (iii) of the Consequences of any Failure to Comply with that requirement (Article B.2.1(a) ISRM).
  - (ii) In the case of a second or third Filing Failure, that the athlete was given notice, in accordance with Article B.3.2(d), of the previous Filing Failure (Article B.2.1(c) ISRM).
  - (iii) The athlete's failure to file was at least negligent (Article B.2.1(d) ISRM).
210. Furthermore, per Article B.2.1(d) ISRM, it is presumed that the athlete's failure to file Whereabouts is negligent: "*That presumption may only be rebutted by the Athlete*

*establishing that no negligent behaviour on their part caused or contributed to the failure”.*

211. With respect to what information should be provided by an athlete when making a Whereabouts Filing, Articles 4.8.8.2 and 4.8.8.3 ISRM read as follows:

*“4.8.8.2 The Anti-Doping Organization collecting an Athlete’s Whereabouts Filings may specify a date [...] when an Athlete in a [RTP] shall file a Whereabouts Filing that contains at least the following information: [...]*

- (a) A complete mailing address and personal e-mail address where correspondence may be sent to the Athlete for formal notice purposes. [...]*
- (b) Specific confirmation that the Athlete understands that their Whereabouts Filing will be shared with other Anti-Doping Organizations that have authority to conduct Testing on them;*
- (c) For each day during the following quarter, the full address of the place where the Athlete will be staying overnight (e.g., home, temporary lodgings, hotel, etc.);*
- (d) For each day during the following quarter, the name and address of each location where the Athlete will train, work or conduct any other regular activity (e.g., school), as well as the usual time frames for such regular activities; and*

*[Comment to 4.8.8.2 (d): This requirement applies only to activities that are part of the Athlete’s regular routine. For example, if the Athlete’s regular routine includes training at the gym, the pool and the track, and regular physio sessions, then the Athlete should provide the name and address of the gym, pool, track and physio in their Whereabouts Filing, and then set out their usual routine, e.g., “Mondays: 9-11 gym, 13-17 gym; Tuesdays: 9-11 gym, 16-18 gym; Wednesdays: 9-11 track, 3-5 physio; Thursdays: 9-12 gym, 16-18 track, Fridays: 9-11 pool, 3-5 physio; Saturdays: 9-12 track, 13-15 pool; Sundays: 9-11 track, 13-15 pool”. If the Athlete is not currently training, they should specify that in their Whereabouts Filing and detail any other routine that they will be following in the forthcoming quarter, e.g., their work routine, or school schedule, or rehab routine, or other routine, and identify the name and address of each location where that routine is conducted and the time frame during which it is conducted.*

*In the case of a Team Sport or other sport where competing and/or training are carried out on a collective basis, the Athlete’s regular activities are likely to include most, if not all, Team Activities.]*

- (e) The Athlete’s Competition/Event schedule for the following quarter, including the name and address of each location where the Athlete is scheduled to compete*

*during the quarter and the date(s) and time(s) at which they are scheduled to compete at such location(s).*

(f) *8.8.3 Subject to Article 4.8.8.4, the Whereabouts Filing must also include, for each day during the following quarter, one specific 60-minute time slot between 5 a.m. and 11 p.m. each day where the Athlete will be available and accessible for Testing at a specific location”.*

212. The ISRM provides for certain requirements to be met in order to conclude that an athlete has committed a Filing Failure. The ISRM also provides details of the information that must be provided by an athlete, in a prescriptive form.

213. The Athlete’s appeal is directed against the Appealed Decision and the matters at issue include liability and the sanction with respect to the alleged ADRV. In his Appeal Petition the Athlete specifically challenges certain decisions of the Appealed Decision, namely in the paragraphs 25, 27, 49, 52, 99, 107 and 112. All allegations will be answered, together with the Panel's decision in the corresponding sections below.

**A. First Whereabouts Failure: Recorded Missed Test on 14 May 2022**

214. The First Whereabouts Failure relates to the Missed Test that occurred on 14 May 2022. The allegations and a summary of the evidence in respect of the First Whereabouts Failure are set out at paragraphs 22 - 26 above.

**A1. The factual situation is clear as it is described below:**

215. The First Whereabouts Failure relates to the Missed Test that occurred on 14 May 2022. The Athlete’s Whereabouts information stated that on 14 May 2022 between 07:00 and 08:00, he would be available for testing at the following address:

[...].

216. On that day, a DCO, Mr. Ahuja, of the IDTM attended the above address but was unable to locate the Athlete for testing during the stipulated 60-minute timeslot:

(i) The doping control officer arrived at the address together with a blood collection assistant at around 07:05. At the Athlete’s home address, they met a person who introduced himself as an Athlete’s brother, Mr. Shekhar Bhagat.

(ii) He told the DCO that the Athlete was in Brazil and had not returned to India after his last international competition. He also said that the Athlete’s cell phone diverted calls and therefore the officer should use WhatsApp instead to contact the Athlete.

(iii) The DCO then called the telephone number specified in the Athlete’s ADAMS account using WhatsApp. The Athlete answered the call: he confirmed that he was in Brazil and had not updated his Whereabouts.

- (iv) The DCO eventually departed around 08:05 after the 60-minute timeslot had expired.
217. On 17 May 2022, the BWF notified the Athlete of an apparent Missed Test under Article B.2.4 ISRM and requested his explanation by no later than 31 May 2022. The Athlete was also invited to sign and return an acknowledgement slip.
218. On 31 May 2022, the BWF received the acknowledgement slip signed by the Athlete, whereby he confirmed receipt of the notification letter, that he understood its contents and that he should update his Whereabouts on ADAMS in accordance with the deadlines set by the BWF. He did not provide any explanation with respect to this Missed Test.
219. On 31 May 2022, the BWF sent a letter to the Athlete informing him about the BWF's intention to record a Missed Test against him and reminding him of his right to request an Administrative Review within seven days. The Athlete was also invited to sign and return an acknowledgement slip.
220. On 4 June 2022, the BWF received the acknowledgement slip signed by the Athlete, whereby he admitted the Missed Test and agreed to the BWF recording it against him. The Athlete did not avail himself of his right to request an Administrative Review.
221. Taking into account the Athlete's allegations in relation to this infringement and clarifications regarding his stay in Brazil and Peru, the following can be concluded:
- (i) According to the Athlete, the air tickets were made available to him on 11 April 2022 and 16 April 2022 as the bookings were done by the Paralympic Committee of India and the Peru Badminton Association and that he travelled to Brazil on 17 April 2022. There is no copy of the booking for this flight in file, as there is only a copy of the booking for the flight from Brazil to Peru for 26 April 2022. Even if the bookings were actually made on 11 April 2022 (Monday) and 14 April 2022 (Thursday), the Athlete was still in a position to change his Whereabouts in India, as he travelled to Brazil on Sunday 17 April 2022.
  - (ii) If we anticipate the further days of the Athlete's stay as described in the Appeal Petition, the Athlete participated in the competition in Sao Paolo from 19 April to 24 April, then travelled to Peru on 26 April and trained in Peru until 13 May. On 14 May 2022 he travelled from Lima (Peru) to São Paolo (Brazil) and continued his voyage to Bahrain and participated in the Bahrain Para Badminton International Tournament from 16 May 2022 to 21 May 2022. The travel route taken by the Athlete was from Peru to Brazil (São Paulo) to Dubai and thereafter to Bahrain and finished his tour in Canada.
  - (iii) It is also undisputed that the Athlete changed his Whereabouts information on 20 May 2022, which means that until then his Whereabouts application considered his address to be his home address in India. This further means that between 17 April and 20 May 2022, the



wrong information was entered in his Whereabouts profile, what is more than one month. The Panel finds out that until the DCO spoke with the Athlete on 14 May 2022, the Athlete had not updated his Whereabouts and it was clear that the Athlete was not at the relevant location specified in his Whereabouts information on that date.

- (iv) The Athlete claims that during his stay in Brazil and Peru he could not access the ADAMS portal to obtain an OTP despite multiple attempts to do so including resetting his password.

## **A2. Conclusion of the Panel**

- 222. Having in mind the ADAMS rules, the logical question is when and how the Athlete tried to update his Whereabouts information about his address when staying in Brazil and Peru and if there is any appropriate evidence for that?
- 223. The basic rule to be observed by an athlete is set out by ISTI: *“Where a change in circumstances means that the information in a Whereabouts Filing is no longer accurate or complete as required by Article 4.8.8.5, the Athlete shall file an update so that the information on file is again accurate and complete. The Athlete must always update their Whereabouts Filing to reflect any change in any day in the quarter in question in particular; (a) in the time or location of the 60-minute time slot specified in Article 4.8.8.3; and/or (b) in the place where they are staying overnight. The Athlete shall file the update as soon as possible after they become aware of the change in circumstances, and in any event prior to the 60-minute time slot specified in their filing for the relevant day”*.
- 224. In specific cases, e.g. when an athlete does not know precisely details about his future stay, it is important to follow the instructions on how to deal with these situations. In the comment to Article 4.8.8.5(a) ISTI there is such a rule: *“Where an Athlete does not know precisely what their [W]hereabouts will be at all times during the forthcoming quarter, they must provide their best information, based on where they expect to be at the relevant times, and then update that information as necessary in accordance with Article 4.8.8.5”*.
- 225. The Athlete stated that his browser history reflects that he had made attempts to log in to the ADAMS profile. One particular instance in this regard is from 9 May 2022, when he tried logging into ADAMS from Lima, Peru. The Panel was unable to verify this evidence, as the Athlete did not offer corresponding material basis for his claim. From the copy of the email from ADAMS, it could be established that on 18 May 2022 he contacted the ADAMS help desk and was told to contact the person in charge of the International Badminton Federation. He received an answer that he should contact his Whereabouts Custodian, as he will be able to best assist him.
- 226. Due to the available documents the Panel finds that this was the only attempt made by the Athlete to notify ADAMS about his technical problems. There is no evidence that he later contacted his Whereabouts Custodian of BWF. As stated above, he modified his Whereabouts information on 20 May 2022.

227. From the above it can be concluded that the Athlete had at least 3 days (from 14 to 17 April 2022) before he left India to change the Whereabouts data in the ADAMS application. There is no material evidence that during his stay in Brazil and Peru from 18 April to 14 May 2022 (the day of the visit of the DCO to his home in India) he attempted to discharge his duty in an appropriate manner. His allegations and the testimony of his friend Mr Sukant Kadam alone cannot suffice, the Panel is confident that he was obliged to seek significantly more active assistance in order to be able to change the information about his actual Whereabouts.
228. According to the Athlete's Whereabouts Information for April 2022 as provided on the ADAMS portal, the Athlete was at home in India from 13 April to 20 May 2022. Therefore, the finding must be that the Missed Test was validly recorded. It is to be noted that this was accepted by the Athlete on 4 June 2022 when he admitted the Missed Test and agreed to the BWF recording it against him. The Athlete acknowledged having missed the test, did not challenge that finding nor did he seek an Administrative Review. It was not until the ADRV was alleged against him due to the accumulation of three Whereabouts Failures that the Athlete put forward an explanation as to the reasons why he missed the test on 14 May 2022.
229. The Panel notes the following in terms of the Athlete's level of Fault regarding the First Whereabouts Failure:
230. Per Article B.2.4(e) ISRM, it is presumed that the Athlete's failure to be available for Testing at the specified location during the specified 60-minute time slot is negligent, and it is the Athlete's burden to demonstrate that no negligent behaviour on his part caused or contributed to be available for Testing and to update his Whereabouts.
231. When invited to submit his explanations with respect to the Missed Test, the Athlete initially did not provide any explanation and even signed an acknowledgement slip on 4 June 2022, whereby he admitted the Missed Test and agreed to the BWF recording it against him. As described above the Athlete put forward an explanation much later only after the ADRV had been alleged against him. With respect to this explanation, the Panel further notes the following:
232. The Athlete was aware of his trip to Brazil since as early as 13 April 2022, when his plane tickets were booked. He travelled to Brazil on 17 April 2022 and returned to India after BWF Bahrain Para Badminton International and his further trip to Canada at the beginning of June 2022.
233. In any event, the Athlete could have notified the BWF about his alleged technical problem to log into ADAMS to ensure that his Whereabouts were up-to-date, but he failed to do so. There is no evidence that he contacted Mr Andy Hines-Randle of BWF as he was advised to do by ADAMS Help desk. The BWF Fact Sheet on Whereabouts, which was provided to the Athlete, and which is available online also explains how athletes could contact the BWF in case they have forgotten their ADAMS username or password or if they need any assistance with ADAMS.

234. The period of more than a month during which the ADAMS application had incorrect data of the Athlete's residence is a long period and is very difficult to explain or defend. The Athlete has failed to prove that he seriously attempted to update the data in the application during this period. It seems to the Panel, that the Athlete had simply forgotten his duty to provide the correct information. Taking into account all the facts established the Panel finds that failure to be available for Testing on 14 May 2022 at the specified location during the specified 60-minute time slot was negligent.
235. In respect of the first Missed Test, the evidence makes it clear that the Athlete's trip to Brazil was planned in advance. It is unusual that he was not aware of his accommodation details at the time he boarded a plane from India to Brazil but even if he was not so aware, immediately upon arrival in Brazil, he ought to have entered the information onto the ADAMS portal (in April and May 2022). His failure to provide any such information for a period from 17 April 2022 until 21 May 2022 cannot be excused by the reasons the Athlete submitted. The period is far too long to excuse or accept with the reported problems of getting an OTP. Even if the Athlete had troubles with OTP in Brazil and/or Peru he should have, immediately after arrival, contacted the ADAMS Help desk but it was proven that he tried to contact the Help desk only after the Missed Test was recorded on 14 May 2022. Waiting and not reacting for such a long period is a clear sign of his negligence as he should be aware of his strict obligations to update his Whereabouts Information.
236. The Athlete has also proposed the Houdet Case to be considered, as the athlete in those circumstances faced a similar conundrum wherein, he had made several attempts to update his Whereabouts. The athlete was unable to do so as he was asked to input a two-factor verification code during his attempts to access the portal which, *inter alia*, required receipt of a pin code via text message. Unexpectedly, while he did have Wi-Fi access, he did not have cellular/mobile service at his location in Costa Rica at that time and, as a result, could not receive the verification code. In this case the Sole Arbitrator held that "*the mere fact that the athlete could have updated his whereabouts filing at an earlier date (yet did not) does not constitute 'negligent behaviour' for the purposes of Article B.2.4 (e) of the ISRM*" and having regard to the specific circumstances, the athlete had been updating his Whereabouts Filings throughout his journey through Costa Rica.
237. Comparing the current matter with the Houdet Case, seems inappropriate as the circumstances were different. In the Houdet case while the athlete did have Wi-Fi access, he did not have cellular/mobile service at his location in Costa Rica at that time and, as a result, could not receive the verification code.
238. The CAS Case CAS 2022/A/9031 quite different, as it involves a single event where an athlete had problems only on a particular day. It is clear from the decision that the athlete could not be held negligent only for the day on which he was at a specific resort Sirena Ranger Station in Costa Rica. However, the decision makes a criticism which could also be applicable in the current case. It is stated: "*At the point that he realised he could not access ADAMS, he should have sent an email to the identified email address*". In the Award the Sole Arbitrator concluded that "*...the incidents on 2 January 2021 amount to a missed test*", so the infringement was established and the sanction imposed on him.

239. Such a situation is specific and there is no evidence that a similar situation happened to the Athlete when he was in Brazil and Peru. As previously noted, he had plenty of time, in fact more than one month to get in contact with ADAMS to update his information. As in the *CAS 2022/A/9031 case*, the Athlete would have had to make a serious effort to find a contact through which he could enter the data into the ADAMS system.
240. The witness Mr Sukant Kadam who was with the Athlete in Brazil and Peru has explained that the Athlete made numerous attempts to log into and access the WADA ADAMS portal in order to update his Whereabouts from São Paulo, Brazil during 18 April 2022 to 25 April 2022. The Athlete sought his assistance to update his Whereabouts and tried logging in to the WADA ADAMS portal from Lima, Peru during May 2022 as he was also present with him during said time period. They tried logging into the WADA ADAMS portal several times, including on 5 May 2022, 7 May 2022, 9 May 2022 from Lima, Peru.
241. The Athlete had also informed Mr Kadam that he had used the same SIM card to receive the OTP and log into the WADA ADAMS portal on previous occasions when he had been travelling abroad. Despite the multiple attempts made by the Athlete to log in, he did not receive the OTP and therefore could not access the ADAMS portal. During this period, the Athlete also relied on various alternatives in order to access the ADAMS portal, including incognito browsers, the use of a Virtual Private Network (VPN) and he also used the SIM card via different devices to check if an OTP could be generated in order log into the ADAMS portal.
242. As this testimony is not supported by any material evidence it must be treated with the consideration that the witness and the Athlete are teammates and good friends. As mentioned above the only evidence that the Panel has found in the Appellant's file was the email exchange between the Athlete and ADAMS Help Desk on 18 May 2022 when Ms Sunaina D'Souza advised the Athlete to contact his Whereabouts Custodian, Mr Andy Hines-Randle of BWF. The Panel is satisfied that the witness's testimony can only be partially credited, namely that he and the Athlete attempted to obtain an OTP but there is no evidence that they tried any other possibilities. However, all these efforts were too late, inadequate and cannot in any way justify the fact that the Athlete's residence address at the time in question was completely incorrect.
243. All of the above leads the Panel to the firm conclusion that the Athlete has breached the ADAMS rules, as he was unavailable at the time the DCO arrived at his home address as he was in Brazil.

**B. Second Whereabouts Failure:**

244. The Second Whereabouts Failure relates to the Missed Test that occurred on 29 August 2022. The allegations and a summary of the evidence in respect of the Second Whereabouts failure are set out at paragraphs 27 - 30 above.

**B1. In the Panel's view, the factual situation is undisputed as it is described below:**

245. The Athlete's Whereabouts information stated that on 29 August 2022 between 07:00 and 08:00, he would be available for testing at the following address:

[...].

246. On the same day, a DCO, Mr Vuppula of the IDTM attended the above address but was unable to locate the Athlete for testing during the stipulated 60-minute timeslot:

- (i) The DCO arrived at the address together with a blood collection assistant at around 06:55.
- (ii) He knocked on the door of the Athlete's apartment because the doorbell was not working.
- (iii) After some time, a person arrived and informed the DCO that the Athlete was not in town.
- (iv) At 07:55 the DCO called the telephone number specified in the Athlete's ADAMS account. The Athlete answered the call: he confirmed that he was in Patna, Bihar (*i.e.*, a city 800 km away from Bhubaneswar).
- (v) The DCO eventually departed at 08:10 after the 60-minute timeslot had expired.
- (vi) Approximately one hour after receiving the call from the DCO, the Athlete logged onto his ADAMS portal and changed his entries for 29 and 30 August 2022 and gave a new address in Bihar and times available for testing.
- (vii) On 1 September 2022, the BWF notified the Athlete of an apparent Missed Test under Article B.2.4 ISRM and requested his explanations by no later than 15 September 2022. The Athlete was also invited to sign and return an acknowledgement slip.
- (viii) On 15 September 2022, the BWF received the acknowledgement slip signed by the Athlete, whereby he confirmed receipt of the notification letter, that he understood its contents and that he should update his Whereabouts on ADAMS in accordance with the deadlines set by the BWF. He did not provide any explanation with respect to this Missed Test.
- (ix) On 20 September 2022, the BWF sent a letter to the Athlete informing him of the BWF's intention to record a Missed Test against him and reminding him of his right to request an Administrative Review within seven days. The Athlete was also invited to sign and return an acknowledgement slip.

- (x) On 28 September 2022, the BWF received the acknowledgement slip signed by the Athlete, whereby he admitted the Missed Test and agreed to the BWF recording it against him. An Administrative Review was not sought by the Athlete.
- (xi) The Missed Test on 29 August 2022 was recorded as a second Whereabouts Failure against the Athlete.

## **B2. Conclusions of the Panel**

247. The Panel concludes the following in terms of the Athlete's level of Fault regarding the Second Whereabouts Failure:
248. Per Article B.2.4(e) ISRM, it is presumed that the Athlete's failure to be available for Testing at the specified location during the specified 60-minute time slot is negligent, and it is the Athlete's burden to demonstrate that no negligent behaviour on his part caused or contributed to be available for Testing and to update his Whereabouts. Article 4.8.9.1 ISTI further prescribes: "*an Athlete in a Registered Testing Pool must specifically be present and available for Testing on any given day during the 60-minute time slot specified for that day in their Whereabouts Filing, at the location that the Athlete has specified for that time slot*".
249. When invited to submit his explanations with respect to the Missed Test, the Athlete did not provide any explanation and signed an acknowledgement slip on 28 September 2022, whereby he admitted the Missed Test and agreed to the BWF recording it against him.
250. On 29 May 2023, the Athlete provided written explanations in response to the Charge with respect to the second Whereabouts Failure. In particular, the Player claimed that he was invited "[on] extremely short notice" to an award ceremony celebrating National Sports Day on 29 August 2022 and that "*due to such an unavoidable commitment presenting itself at such short notice he failed to update his whereabouts for the relevant date*".
251. Even taking the Athlete's explanation, he was clearly negligent:
- (i) As he allegedly went to a ceremony celebrating National Sports Day on 29 August 2022 to Patna, Bihar, which is 800 km from Bhubaneswar, he was never going to be available for Testing during the designated slot (from 07:00 to 08:00) at the address in Bhubaneswar that he entered in his Whereabouts for that day.
  - (ii) As the Athlete was not at the designated place, he accepted the risk that he would not be available for Testing during the slot. This is plainly negligent.
  - (iii) The town of Patna, Bihar is 800 km away from Bhubaneswar, which is a half a day trip by car or by public transport. The Athlete must have known

in advance that he would not be in Bhubaneswar on 29 August 2022 as the celebration in Patna was scheduled for a special National Sports Day fixed on 29 August 2022. Nothing would have prevented him from updating his Whereabouts once he had decided to go to Patna, Bihar. He had ample time to do so.

- (iv) Bearing in mind an athlete's obligation to constantly update their Whereabouts, and to do so "*as soon as possible after they become aware of the change in circumstances, and in any event prior to the 60-minute time slot specified in their filing for the relevant day*", (Article 4.8.8.6 ISTI) the Athlete's failure to update his Whereabouts was clearly negligent and it was appropriate that Missed Test be recorded against him, amounting to his Second Whereabouts Failure.

### **C. Third Whereabouts Failure: Q1 - 2023 Filing Failure**

252. The Third Whereabouts Failure relates to the Missed Test that occurred in December 2022. The allegations and a summary of the evidence in respect of the Third Whereabouts failure are set out at paragraphs 31 - 45 above.

#### **C1. The factual background is described below**

253. On 15 November 2022, the BWF sent a reminder to the BAI about the inclusion of the Athlete in the BWF RTP for the 1<sup>st</sup> quarter of 2023 and about his obligation to submit and update his whereabouts by 15 December 2022.
254. On 2 December 2022, the BWF sent a letter to the BAI informing it that the athletes from India who were included in the BWF RTP had not yet submitted their Whereabouts for Q1 - 2023 and that the submission deadline was 15 December 2022.
255. On 13 December 2022, one more reminder was sent by the BWF to the BAI related to the submission deadline of 15 December 2022. This letter was forwarded via email by the BAI to the Athlete on 15 December 2022.
256. On 19 December 2022, the BWF notified the Athlete that his failure to submit his Whereabouts for Q1 - 2023 by 15 December 2022 constituted an apparent Filing Failure and requested his explanation to be submitted by no later than 2 January 2023. The BWF also provided a deadline of until 26 December 2022 to remedy his apparent Filing Failure and to submit a complete Whereabouts filing for the relevant quarter.
257. On 21 December 2022, the BAI forwarded that notification letter to the Athlete.
258. On 30 December 2022, the Athlete logged into his ADAMS account and entered the address of the place where he was staying overnight, as well as the 60-minute timeslot for each day.
259. It is a controversial issue if the Athlete made any entries for his regular activity and competition/event schedule and confirmed his email address on 30 December 2022 or if that was that done on 3 January 2023.

260. On 3 January 2023, the BWF sent an email to the BAI informing it that no response was received from the Athlete with respect to the BWF's letter of 19 December 2022 and requested the BAI to ensure that the Athlete signs and returns an acknowledgement slip. The BAI forwarded the email from the BWF to the Athlete on the same date.
261. On 4 January 2023, the Athlete sent an email to the BWF. He explained that he "*could not check the email dated 19 Dec 2022 from BWF nor the email dated 21 Dec 2022 from BAI due to [his] year ending program*". He also stated that he "*kept moving during [his] vacation due to year ending world holidays so [he] was not checking [his] email during those days*". The Athlete assured that the failure to submit Whereabouts within the deadline "*won't happen in future*" and asked to be given an opportunity to answer the BWF's letter of 19 December 2022.
262. On 5 January 2023, the Athlete sent one more email to the BWF. This time he claimed that he was not aware of his inclusion in the BWF RTP for Q1 - 2023 and that the email from the BAI of 15 December 2022 reminding him to update his Whereabouts for Q1 - 2023 went to his spam folder. He further explained that the "*delay was only because [he] did not receive communication directly on [his] ADAMS registered email ID*" and that he had updated his Whereabouts for Q1 - 2023 on 30 December 2022 "*without knowing about deadlines*".
263. On 6 January 2023, the Athlete also sent an email to the BWF asking not to consider his Filing Failure.
264. On 3 March 2023, the BWF notified the Athlete that his failure to submit his Whereabouts for Q1 - 2023 before 1 January 2023 constituted an apparent Filing Failure and requested his explanation by no later than 17 March 2023. The Athlete was also invited to sign and return an acknowledgement slip.
265. On 16 March 2023, the BWF received the acknowledgement slip signed by the Athlete, whereby he confirmed receipt of the notification letter. The Athlete also provided his written explanation, in which he claimed that the Whereabouts submission for Q1 - 2023 was made in a timely manner. In particular, his counsel stated the following:  
  
*"Before Q1, 2023 commenced, on 30.12.2022, the [Athlete] did update his Whereabouts on the WADA ADAMS portal. While it was displaying on his system that the Whereabouts were updated on 30.12.2022 itself [annexure 6], it would appear that due to some technical error the same wasn't reflected on BWF's review of the same. Upon being notified of a prospective Filing Failure on 03.01.2023, the Athlete immediately re-submitted his entries too"*.
266. On 31 March 2023, the BWF sent a letter to the Athlete informing him about the BWF's intention to maintain its position that a Filing Failure should be recorded against him. The Athlete was also reminded about his right to request an Administrative Review within seven days and was invited to sign and return an acknowledgement slip
267. On 31 March 2023, the Athlete requested an Administrative Review.



268. On 27 April 2023, the BWF communicated to the Athlete the outcome of the Administrative Review of the Q1-2023 Filing Failure. In particular, the reviewer considered that the Athlete had submitted his Whereabouts for Q1 - 2023 only on 3 January 2023, which was after the applicable deadline.
269. Therefore, a Third Filing Failure within a 12-month period was recorded and confirmed against the Athlete, effective as of 1 January 2023.

## **C2. Legal background**

270. The assertions, submissions and facts relied upon by the Parties in relation to this Filing Failure are set out in detail above and need not be repeated. Article B.1.3(a) ISRM provides that:

*“A Filing Failure will be deemed to have occurred where the Athlete fails to provide complete information in due time in advance of an upcoming quarter, on the first day of that quarter”.*

271. The comment to Article B.2.1(b) further specifies that:

*“An Athlete fails to comply with the requirement to make Whereabouts Filing:*

- (i) where they do not make any such filing, or where they fail to update the filing as required by Article 4.8.8.6 of the International Standard for Testing and Investigations; or*
- (ii) where they make the filing or update but do not include all the required information in that filing or update”.*

272. Athletes included in RTP are required to enter the various requirements set out in Articles 4.8.8.2 and 4.8.8.3 ISRM which, *inter alia*, provide that Whereabouts Filings shall contain at least the following information:

- (a) a complete mailing address and personal email address where correspondence may be sent to the Athlete for formal notice purposes;
- (b) specific confirmation that the Athlete understands that their Whereabouts Filing will be shared with other Anti-Doping Organisations;
- (c) for each day during the following quarter, the full address of the place where the Athlete will be staying overnight;
- (d) for each day during the following quarter the name and address of each location where the Athlete will train, work or conduct any other regular activity as well as the usual timeframes of such regular activities;
- (e) the Athlete’s competition/events schedule for the following quarter including the name and address of each location where the Athlete is scheduled to compete

during the quarter and the dates and times at which they are scheduled to compete at such location.

273. Further, the Athlete is required in his Whereabouts Filing to also include for each day during the following quarter one specific 60-minute timeslot between 5:00 a.m. and 11:00 p.m. each day where the Athlete will be available and accessible for testing at a specific location.

### **C3. Explanations of the Athlete:**

274. Submissions of the Athlete in relation to this Filing Failure are set out in detail above and need not to be repeated. When summarizing some of the more important elements of the Athlete's defence, it is to emphasize them as follows:
275. The Athlete claims that he had updated his profile on the WADA ADAMS portal prior to making the relevant filing for Q1 - 2023, making it evident that the Athlete's logging in on 30 December 2022 was not merely a farce to update minimal details and comply with the deadline for submission. It is clearly reflected that his profile was updated at 15:49 GMT in addition to a log-in being made by him at 00:20 GMT when he had logged into ADAMS and made the entries for Q1 - 2023.
276. His activity log on the ADAMS platform reveals multiple logins on 30 December 2022 and shows that he updated his profile on the application even, the first step for which is to enter and verify his e-mail address. The same is evidenced by screenshots. Therefore, not only did he verified his email address, but he also updated his entire profile and submitted relevant entries basis the information he had available for Q1 - 2023 on 30 December 2022, as opposed to what was observed by the Sole Arbitrator in Para 25 of the Appealed Decision.
277. Further, during the aforementioned logins, there was no indication on the ADAMS platform that led him to believe that his submission was incomplete as he was also able to see the Calendar for 2023 in which he had provided valid details of his Whereabouts for a one- hour slot as required. He already had two Whereabouts Failures recorded against him at that point of time and was checking his next testing slot frequently and since the same was visible without any of the typical indicators of an incomplete filing he was certain of there being no failure to update his Whereabouts from his end.
278. The Athlete also pointed out that some mitigating factors should be considered such as:
- (i) His act of updating his ADAMS profile including his e-mail address on 30 December 2022.
  - (ii) His log-in history for the period between 30 December 2022 to 3 January 2023, evidencing his cautious nature and meticulous checks as to whether his next testing slot was visible on the ADAMS app and platform.
  - (iii) His meticulous exchanging of information with his teammate, Mr Sukant Kadam to ensure that no further lapses occur - from even inadvertent

errors - owing to two Whereabouts failures having already been recorded against him.

- (iv) His act of filling in every mandatory column on the ADAMS platform as evidenced by the various data trails obtained from the WADA ADAMS helpdesk.
- (v) The fact that he received no contrary notification or message which indicated his submission was incomplete and the confirmation received from Mr Gomes that the entries made by the Athlete were only visible to him and not to the recipient of such information.
- (vi) The fact that his entries for 1 January 2023 and 2 January 2023 are visible on the ADAMS portal which would not have been possible unless his submission was completed on prior to 1 January 2023. This is confirmed by Mr. Gomes who also attested to the fact that modifications may not be made to entries on a retrospective basis.

279. Additionally, the Athlete underlines that it is also to be observed that WADA in its document titled 'Athlete Whereabouts At-a-glance' identifies whereabouts as "*information provided by some athletes so Anti-Doping Organizations (ADO) can locate them for testing, particularly out-of-competition testing*". To this end, the Athlete's availability for testing even on 1 January 2023 and 2 February 2023, the two dates he may have missed owing to the alleged Filing Failure are also recorded on the WADA ADAMS platform. Therefore, there is no date in Q1 - 2023 on which the Athlete's Whereabouts with respect to the one-hour testing slot that is to be provided, are missing. Hence, there was no intention from the Athlete to cheat the system or to violate the principles of clean sport.

#### **C4. Decision of the Panel**

280. The Panel has to determine whether the Athlete's conduct has met all the elements of the Filing Failure and if all requirements set forth in Articles B.1.3a and B.2.1. ISRM are met.
281. Article B.2.1(a) ISRM demands that athletes should be duly notified that they have been designated for inclusion in a RTP, of the consequent requirement to make Whereabouts Filings and the Consequences of any Failure to Comply with the requirement.
282. Regarding this provision the Panel finds the following facts:
- (i) The Athlete was included in the BWF RTP since 2019 as on 11 December 2019 and he received the notification about his inclusion in the BWF RTP and possible Consequences if he were to fail to provide his Whereabouts. On 10 December 2019, he created an account in ADAMS and since then regularly submitted and updated his Whereabouts.

- (ii) As per Article 4.8.7.3 ISTI, after being included in the BWF RTP, the Athlete was not given written notice that he was no longer designated for inclusion in the RTP of the Respondent.
- (iii) On 15 November 2022, the Respondent sent a reminder to the BAI about the Athlete's inclusion in the RTP for Q1 - 2023 and about his obligation to submit and update his Whereabouts.
- (iv) On 13 December 2022, one more reminder was sent by the Respondent to the BAI related to the submission deadline. On 15 December 2022, the BAI forwarded this letter to the Athlete. The reminder noted that the Athlete continued to be included in the BWF RTP, that he had to make Whereabouts Filing for Q1-2023 and that he would be liable for a Filing Failure if he failed to comply with this requirement.
- (v) On 21 December 2022, the BAI forwarded a letter to the Athlete from the BWF alleging an apparent Filing Failure. The BWF confirmed in the notification letter that the Athlete "*has been included in [BWF] registered Testing Pool (RTP)*" and that he was "*required to make a Whereabouts Filing at the beginning of each quarter*"; it also provided for the Consequences for failing to comply with this requirement.

283. The Panel finds that the Athlete was included in RTP since late 2019 and he was surely aware of that fact. For a period of 15 quarters subsequent to 2019, the Athlete submitted his Whereabouts details on the ADAMS system. He did not receive any notice or information that he was no longer in the system of RTP. Therefore, it is not credible that he was unaware he was included in the RTP; and, as such, the requirement of provision Article B.2.1(a) ISRM is fulfilled.

284. Article B.2.1(b) ISRM specifies that:

An Athlete fails to comply with the requirement to make Whereabouts Filing:

- (i) "*Where they do not make any such filing, or where they fail to update the filing as required by Article 4.8.8.6 of the International Standard for Testing and Investigations; or*
- (ii) "*where they make the filing or update but do not include all the required information in that filing or update*".

285. The Panel finds that the Athlete failed to complete Whereabouts Information and submit the same by the end of the previous quarter, *i.e.* 31 December 2022:

286. The Athlete claims that he successfully entered data in his ADAMS application on 30 December 2022 and that he was confident that his entry was complete. This contradicts the statement of the expert Mr Gomes of WADA's ADAMS team.

287. Mr Gomes demonstrated in his written statement with attached data from ADAMS (exhibited in Excel spreadsheet form), that the Athlete accessed ADAMS on 30 December 2022, but that he did not provide all mandatory Whereabouts Information and therefore could not have submitted it.
288. On that day, the Athlete inputted and saved the address of the place where he would be staying overnight and the relevant 60-minute time slot. However, he did not confirm his email address and did not provide his competition/event schedule for the following quarter and the information regarding his regular activities, *i.e.* the name and address of each location where he would train, work or conduct any other regular activity for each day during the following quarter.
289. Without this mandatory information, the Athlete was not able to submit his Whereabouts Information for Q1 - 2023. The Athlete would have also seen text in ADAMS highlighted in red, and the “submit” button would have been inactive, and ADAMS would have advised him that the status was “Not Submitted” as well as what information was missing.
290. Mr Gomes further explained that the Athlete did not access ADAMS again until after the deadline, on 3 January 2023, when he confirmed his email address and inputted the remaining required information related to the competition/event schedule and his regular activities. The Athlete only then completed his Whereabouts for Q1 - 2023 and submitted the same, *i.e.* pressed the then activated button ‘submit’.
291. The Athlete would have practically known to press ‘submit’ because he would have done so in the past when he managed to submit his Whereabouts Filings fifteen times for all the quarters from 2020 until 2022 inclusive.
292. The essential decision for the Panel in this case is how to understand the conflicting claims of successful entry of all data into the ADAMS application comparing the testimony of the Athlete and the expert Emmanuel Gomes.
293. The next question is whether it is likely that the Athlete was in a position to believe that on 30 December 2022, when he entered the data into the application, that he had successfully completed the entry.
294. As explained by Mr Gomes, on 30 December 2022, the Athlete could not have “submitted” his Whereabouts because the information he entered was incomplete and therefore the button ‘submit’ was inactive. Therefore, the information was only saved in the Athlete’s ADAMS profile (as a draft) but was not submitted to the system and therefore was not visible to anyone but the Athlete.
295. Mr Gomes underlined that the Data Trail confirms that the Athlete submitted his whereabouts for Q1 - 2023 on 3 January 2023 at 07:00:20 GMT and not before. A submission caused a change in the status of his Whereabouts for Q1 - 2023 from “non submitted” (red) to submitted (green). The Data Trail also confirms that the Athlete could not have submitted his Whereabouts for Q1 - 2023 earlier given that he did not confirm his email address for Q1 - 2023 until 3 January 2023. The missing information

with respect to the email address was highlighted in red. As a result, up until 3 January 2023 when the Athlete eventually confirmed his email address, the button “submit” was inactive.

296. Mr Gomes further explained that even if the Athlete had confirmed his email address, he could still not have “submitted” his Whereabouts. In order to submit the Whereabouts, a “Regular Activity” and a “Competition” must be entered. It was only on 3 January 2023 from 06:58 to 07:00 that the Athlete made two Whereabouts entries for Q1 - 2023. If the Athlete had sought to press the “submit” button without this information, he would have received a message in red with instructions as to how to correctly fill in the entry. In the present case there was no glitch, the ADAMS system reacted normally in an expected manner.
297. The Panel fully credits Mr Gomes’ testimony that the Athlete did not receive information that his entry was successful until 3 January 2023, when he had filled in all the required fields. The written statement of Mr Gomes supported by his testimony during the hearing is based on material evidence derived from the official ADAMS database. The Panel takes the view that such information concerning the ADAMS system has been verified and is, therefore, credible. Based on the evidence before it, the Panel further finds it is not credible that the official data produced by the data system in connection with this matter is incorrect.
298. The screenshots of the Athlete's phone provided by the Athlete do not prove that he could be sure that he had correctly and completely filled in all the required information on the portal. Accordingly, the Panel is not satisfied that those screenshots represent the status of the Athlete’s attempted Whereabouts Filings at the relevant times or that they support the Athlete’s contentions concerning ADAMS as he seeks to portray them.
299. The conclusion of the Panel cannot be undermined by the testimony of the witness Mr Sukant Kadam, who confirmed that the Athlete was confident that he had correctly filled in the data in the system on 30 December 2022. The Panel is of the view that this statement is a subjective assessment linked to his relationship with the Athlete and is not supported by any material evidence, therefore it cannot be believed over objective evidence.
300. The Panel considers that the fundamental principle of the Whereabouts regime is that athletes must give access to the Whereabouts Information to the anti-doping authority, so that it can conduct doping tests. That is what the provisions seek to ensure. A failure to formally *submit* Whereabouts Information that has been privately *inputted* into ADAMS has no effect for those who are responsible with a very demanding obligation to operate and manage the Whereabouts system of WADA.
301. BWF has provided athletes in RTPs detailed information, how to submit Whereabouts on a quarterly basis. Precise instructions are prescribed for different regimes. There is a general rule “*For each day during the coming quarter (including weekends), you must tell us one specific location and one specific 60-minute time slot between 5 a.m. and 11 p.m. where you can be tested. If your plans for the specific time slot change, you must*

*update your Whereabouts Filing prior to that time slot to provide either a new location or a different time slot and location”.*

302. Specific instructions are given for overnight stays *“For each day during the coming quarter (including weekends), you must give us the full address of the place where you will be residing, i.e. staying overnight (e.g. home, hotel, temporary lodgings). This should include specific details, such as: Room No. Apartment/Building Block Floor. If your plans change so that you will be staying at a different place on a particular night, you must update your Whereabouts Filing prior to that night to provide the new address where you will be staying that night”.*
303. For Regular activities it is specifically prescribed *“For each day during the coming quarter (including weekends), you must give us the full address of the place where you will be residing, i.e. staying. You must tell us when and where you will be training, working, or conducting any other regular activity during the relevant quarter (including weekends). If your regular activities change (for example, you start training in the morning and not the afternoon, or on a different day), you must update your Whereabouts Filing. However, if you change your regular schedule only occasionally, then you do not have to make any change to your Whereabouts Filing to reflect that "one-off" change”.*
304. Regarding the competition *“You must tell us your Competition schedule for each quarter, including the date(s), time(s) and venues (name and address) where you are scheduled to compete. If this changes, you must update your Whereabouts Filing”.*
305. There is no doubt that the Athlete was made aware of these instructions in particular as he had to comply with them from the beginning of 2020 onwards.
306. The Panel understands the broader ADAMS system is designed for all different types of athletes’ accommodation in such a way that the athlete is always obliged to communicate the address of his/her accommodation in advance, regardless of whether he/she is training, competing or living a “normal” life.
307. In this context, the Athlete's indication that he has filled in the entry with the abbreviation Not-Applicable (NA) in cases where he could not have known the exact address of the accommodation or competition should be properly considered. As Not-Applicable is explained above the Panel believes that the whole point of the system is for the Athlete to communicate in advance where he will be. In the event of changes, he is obliged to enter this in the application to ensure that he is available for those who are responsible for testing procedures. In the absence of relevant and accurate data, the administration of the testing system would not be possible, and the main purpose of testing as designed by WADA would be lost. This means that all athletes included in an RTP must have all the fields filled in in advance at all times and that amendments should be made when a change occurs. In this respect, the Athlete’s allegation of “temporary” use of the “NA” option cannot therefore be taken into account.
308. In the case at hand this means that no information was entered in the system as to where the Athlete would be on 1 and 2 January 2023 and no controls were possible at that time.

309. The requirement at Article B.2.1(b) ISRM was therefore met: the Athlete failed to comply with the requirement by the deadline, as he had not inputted everything that was required and had therefore, not submitted anything by then.
310. The Panel is therefore convinced that the requirement following Article B.2.1(c) ISRM was met given that when the Filing Failure occurred on 1 January 2023, the Athlete had already been notified of the first and the second Whereabouts Failures on 17 May 2022 and 1 September 2022, respectively.
311. The Athlete refers to some administrative errors on the part of the BWF which relied upon, initially, the Athlete's failure to supply the appropriate Whereabouts information on or before 15 December 2022 for Q1 — 2023. The Panel finds that this notification was premature given that, per commentary to Article 4.8.8.2 ISTI, even if an Anti-Doping Organization may require that whereabouts be submitted on a date which is the 15<sup>th</sup> of the month preceding the quarter, no consequences for a failure to submit prior to the first day of the quarter shall apply. It is obvious that this was an error as the BWF ADR made no provision for a Filing Failure to be recorded against an Athlete unless the Whereabouts had not been advised for Q1 — 2023 by midnight on 31 December 2022. This administrative error on the part of BWF was discovered in February 2023 and the original allegation of a Filing Failure was withdrawn and replaced by a new allegation concerning the incomplete details specified in the attempted submission of information on 30 December 2022. As already established in the Appealed Decision, this error has no causal link with the infringement which is the subject-matter of the present proceedings.

#### **D. Degree of Fault**

312. The offence requires proof of the Athlete's negligence. Per Article B.2.1(d) ISRM, the Athlete is presumed to have been negligent. In order to rebut that presumption, the Player must prove that “*no negligent behaviour on their part caused or contributed to the failure*”.
313. The BWF ADR defines Fault as:
- “any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other person's degree of Fault include, for example, the Athlete's or other person's experience.... the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's departure from the expected standard of behaviour”.*
314. In the WADA Code 2021 “*No Fault or Negligence*” is defined as follows: “*the Athlete establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution*”.



315. The Panel finds that the Athlete had been sent several reminders prior to the deadline explicitly stating what information needed to be included in the filing. The Athlete failed to pay any or proper attention to the built-in safeguards in the ADAMS system which should have alerted him to the incomplete nature of his filing, such as the incomplete information being highlighted red (with descriptions available for what was missing) and an absence of green text or green ticks to show completeness. These safeguards were also clearly described in the BWF Whereabouts Guidelines and the BWF Fact Sheet on Whereabouts sent to the Player, including specifically in relation to the competition/event schedule and the regular activities which the Player failed to input.
316. The Athlete failed to input all mandatory Whereabouts Information before the end of 31 December 2022, despite accessing ADAMS on 30 December 2022 when the deadline had not yet expired. On that day, he inputted incomplete Whereabouts Information. He would have realised that it was incomplete because it was missing entries for regular activity and competition/events schedule for the whole Q1 - 2023, and his email address was not confirmed so that the 'submit' button was inactive.
317. As Mr Gomes explained, the Athlete finally inputted the missing information and submitted the Whereabouts Filing on 3 January 2023, three days after the expiry of the deadline. As this is a decisive finding in respect of this infringement, the Panel reiterates that it accepts the explanation of the Expert Emmanuel Gomes, who has convincingly demonstrated, on the basis of the evidence before him, that the requested and complete data of the Athlete was not entered before 3 January 2023.
318. Regarding the Athlete's allegations concerning his status in RTP the Panel is convinced that the Athlete was duly informed that he was included in the RTP, as the last such notification was forwarded to him in December 2022.
319. The rules also clearly state until when an athlete is eligible for the RTP. The provision Article 4.8.7.2 ISTI prescribes: "*An Athlete who has been included in a Registered Testing Pool shall continue to be subject to the Code Article 2.4 Whereabouts Requirements unless and until: a) They have been given written notice by each Anti-Doping Organization that put them in its Registered Testing Pool that they are no longer designated for inclusion in its Registered Testing Pool; or b) They retire from Competition in the sport in question in accordance with the applicable rules and gives written notice to that effect to each Anti-Doping Organization that put them in its Registered Testing Pool*".
320. The Athlete has not received any notification that he is no longer eligible for the RTP, on the contrary, he has been repeatedly asked to respond, therefore the Athlete's objection cannot be taken as credible. In the Panel's view it is without doubt that the Athlete was aware that he was in the RTP and his activities on 30 December 2022 confirm this fact.
321. When considering the Athlete's negligence, it must be taken into account that the Athlete was placed in the RTP at the start of 2020, so he had already completed fifteen other Whereabouts Filings by this stage. It is therefore evident that he had prior

experience and knowledge of the information that was required in order to submit a complete Whereabouts Filing.

322. With regard to some of the Athlete's communications following the infringement of 3 January 2023, it is useful to clarify the following: On 4 January 2023, the Athlete sent an email to the BWF where he explained that "*he could not check the email dated 19 December 2022 from BWF nor the email dated 21 December 2022 from BAI due to his year ending program*". He also stated that he had kept moving during his vacation due to year ending world holidays so he was not checking his email during those days, and he assured the BWF that his failure to submit Whereabouts within the deadline would not happen in the future and asked to be given an opportunity to answer the BWF's letter of 19 December 2022. On 5 January 2023, the Athlete sent a further email to the BWF in which he claimed that he was not aware of his inclusion in the RTP for Q1 — 2023 and that the email from the BAI on 15 December 2022 reminding him to update his Whereabouts for Q1 — 2023 went to his spam folder. He further explained that the delay was only because he did not receive his communications directly on his ADAMS registered email ID and that he had updated his Whereabouts for Q1 — 2023 on 30 December 2022 without knowing anything about deadlines.
323. The Athlete's explanations are, in the Panel's view, excuses which cannot be taken into account. Even if it were true that he did not receive all the electronic communications from BAI, this could not relieve him of his obligation to transmit the required data to the system in a timely manner. The Panel is of the view this is likely an attempt to provide an explanation at a time when he realised that he had made a mistake in not entering the data on time. Given that this was the third infringement, he was well aware at the time of what this could mean in terms of Consequences.
324. The Athlete should have exercised a substantial and significant level of care and attention in relation to the clear and obvious risk of a further Whereabouts Failure constituted by a Filing Failure. The Athlete is also an experienced, top athlete having been awarded a gold medal at the 2020 Summer Paralympics. He therefore should have been prepared to exercise the highest standard of care. The fact that, as he claimed, by 3 January 2023 he was able to provide all this information and effectively submitted it all on the ADAMS portal, indicates his negligence in failing to file the requested information on or before 30 December 2022. The Panel concludes that the Athlete failed to submit the Whereabouts Information within the deadline and all requirements of Article B.2.1 ISRM were satisfied.
325. Negligence would not exist if, for example, the Athlete did not know and was not and could not be aware that he was included in the RTP and was therefore not obliged to comply with the obligations imposed on him by that status. However, there would also be no negligence for the Filing Failure if the Athlete had been able to prove by material evidence that the ADAMS application indisputably guaranteed him that he had entered all the data fully and correctly on 30 December 2022. Taking into account the fact that the Athlete failed to produce such evidence and that, on the other hand, the witness Mr Gomes was able to confirm, on the basis of the documented data, that the Athlete was unable to obtain confirmation from the system that the data entry on 30 December 2022

was correct and complete, the Panel finds that negligence has been proven in all the three cases.

326. In view of all the circumstances, the Panel concludes that the Filing Failure was made with accompanying negligence on the part of the Athlete and that the Q1 - 2023 Filing Failure should be recorded, meaning that the Athlete committed an ADRV. As three Whereabouts Failures have therefore been found to have occurred within a 12- month period, the Athlete has committed an ADRV.
327. Although the three infringements were committed in different ways, there are commonalities. The Panel finds that in all three cases the Athlete broke the applicable rules by failing to enter required data on time. This is a clear case of negligence as the Athlete was not sufficiently diligent in fulfilling his obligations.

#### **E. Sanction**

328. Under Article 10.3.2 BWF ADR the sanction for violations of Article 2.4 BWF ADR shall be two years of ineligibility subject to a reduction down to a minimum of one year depending on the Athlete's degree of Fault. Further it is stated that the flexibility between two years and one year of Ineligibility is not available to an Athlete where a pattern of last-minute Whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for testing.
329. The Panel finds there is no evidence to suggest that the Athlete was engaging in a pattern of last-minute Whereabouts changes or other conduct which raises a serious suspicion that he was trying to avoid being available for testing. As already noted on different occasions surrounding the Missed Tests in 2022, the Athlete was in fact tested and no adverse analytical findings were found.
330. The standard sanction for a violation of Article 2.4 BWF ADR according to Article 10.3.2 BWF ADR is a 2-year period of ineligibility subject to a possible reduction on the basis of the Athlete's degree of Fault. As it was explained above the Panel has come to the conclusion that the Athlete's behaviour was negligent.
331. The Athlete seeks mitigation of Consequences in accordance with Article 10.3.2 BWF ADR. The Athlete claims in general terms that his degree of Fault should be assessed at the lowest level as identified in the sanction ranges.

#### **E1. Athlete's submissions**

332. The Athlete has submitted many elements trying to prove that his Fault was at the lowest limit, which are cited above.
333. In relation to the First Missed Test the Athlete submits that he had taken all reasonable measures possible to ensure that no ADRV was committed by him even inadvertently. He made sure that alternative means were accessed to rectify any issue if it arose on his part, he reached out to the ADAMS help desk and even sent a team mate to India to verify and ensure that any issue that arose was not due to a problem associated with his

sim card. It was asserted that such conduct shows there was no wilful negligence on his part and that his degree of Fault ought to be considered “light” when all factors are accounted for. The Athlete pointed out some mitigating factors which should be observed when deciding about the degree of his fault as it follows:

- (i) The Athlete’s submission regarding how on previous instances, his updating of whereabouts has not been hindered by the non-receipt of OTP despite him travelling outside of his home country.
- (ii) The Athlete’s prompt act of informing the DCO of the circumstances he finds himself at, as a result of which he failed to update his whereabouts, leading directly to him missing the relevant test.
- (iii) The last-minute nature of his receipt of necessary travel itinerary and the egregious circumstances he found himself in owing to a hectic travel and tournament plan provided to him by tournament organizers and relevant bodies.
- (iv) The Athlete’s efforts to travel to India or in the alternative, to send his teammate Mr. Sukant Kadam, to rectify a possible issue with his SIM card which left him incapable of receiving the OTP necessary to complete the two-factor authentication on the ADAMS portal.
- (v) The Athlete’s efforts to log-in while he was at Peru in an attempt to try updating his whereabouts much prior to the eventuality of the missed test.
- (vi) The Athlete’s prompt attempt to seek a solution to the problem he faced by contacting the ADAMS Help Desk.

334. In relation to the Second Missed Test the Athlete submits that specific circumstances should be considered.

- (i) He received the invitation from the relevant government authority hosting an event of considerable significance only on the later hours of the day prior to the event. He received such invitation at around 18:30 on 27 August 2022, he immediately left for Patna, Bihar due to the short notice in which his presence was requested by the Bihar Disabled Sports Academy.
- (ii) He had undergone routine doping control tests shortly before the missed test and shortly after, not returning any adverse analytical findings indicating his commitment to clean sport.
- (iii) It was only due to such an unavoidable commitment presenting itself that he failed to update his Whereabouts for the relevant dates. Thereafter, realising that there might have been an unintentional error on his part, he instantly updated his Whereabouts. He made sure that his whereabouts

information reflected the relevant location for that day and the next day to ensure that any testing requirement could be fulfilled.

- (iv) There were no intentions on behalf of him to evade testing at any point in time and he unfortunately missed out on the test due to his presence being demanded at the Ceremony where he was invited at extremely short notice. There was no intention on his part to evade sample collection as conveyed in his conversation with the DCO. Further, it is to be noted that he had undertaken two tests around the period in which the missed test was recorded against him. The first test was conducted on 16 August 2022, prior to the missed test being recorded and the second test was conducted on 13 September 2022 i.e., after the Missed Test. Both these tests returned negative for any prohibited substance and is a clear indication of his clean doping record. He has never had intentions to miss a test and rather he has ensured compliance with testing requirements to all extent possible by his means.

335. In relation to the third Whereabouts failure - Filing Failure the Athlete submits factors in determining his degree of Fault associated with the Athlete pertaining to Filing Failure as it follows:

- (i) His act of updating his ADAMS profile including his e-mail address on 30 December 2022.
- (ii) His log-in history for the period between 30 December 2022 to 3 January 2023, evidencing his cautious nature and meticulous checks as to whether his next testing slot is visible on the ADAMS app and platform.
- (iii) His meticulous nature of exchanging information with his teammate, Mr Sukant Kadam to ensure that no further lapses occur from even inadvertent errors owing to two Whereabouts failures having already been recorded against him.
- (iv) His act of filling in every mandatory column on the ADAMS platform as evidenced by the various data trails obtained from the WADA ADAMS helpdesk.
- (v) The fact that he received no contrary notification or message which indicated at his submission being incomplete and the confirmation received from Mr Gomes that the entries made by the Athlete were only visible to him and not to the recipient of such information.
- (vi) The fact that his for 1 January 2023 and 2 January 2023 are visible on the ADAMS portal which would not have been possible unless his submission was completed on prior to 1 January 2023. This is confirmed by Mr Gomes who also attested to the fact that modifications may not be made to entries on a retrospective basis.

## **E2. Decision of the Panel**

336. The violation of Article 2.4 BWF ADR in this matter is based on three distinct Whereabouts Failures and it is clear on established authority that the Athlete's Fault must be assessed in relation to the three Whereabouts Failures in totality. A number of CAS Awards confirms that position (2020/A/7526 & 7559, 2020/A/7528, CAS/2022/A/8809). It is evident that the very lowest level of Fault for all three Whereabouts Failures in totality must be established in order to justify the maximum reduction in sanction.
337. The Panel has assessed elements which should be taken in consideration when deciding about the sanction. As the sanction depends on the degree of fault it is essential to consider that the Athlete's negligence was identified in this case.
338. In Award CAS 2013/A/3327 & 3335, the CAS Panel was of the opinion that it was helpful that both the objective and subjective levels of Fault be considered. At paragraph [71] of its decision it stated, *inter alia*, that the "*objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. [and the] subjective element describes what could have been expected from that particular athlete, in light of his personal capacities*". The Panel, in CAS 2013/A/3327 & 3335, suggested that the objective element should be the predominant factor in determining into which of the three relevant categories a particular case falls, and the subjective element can then be used to move the athlete up or down within that category. The Panel in that case concluded that factors that may be taken into account in determining the level of subjective fault include an Athlete's youth and/or inexperience; language or environment problems encountered by the Athlete; the extent of Anti-Doping Education which the Athlete has received, or which was reasonably accessible by the Athlete and any other personal impairments.
339. The Athlete submits that based upon his conduct he had taken all reasonable measures possible to ensure that no ADRV was committed by him - even inadvertently.
340. The Panel agrees with the conclusion of the Sole Arbitrator within which category of sanction the Athlete falls. As it is explained in the Appealed Decision: "*Objectively the explanations for the first two Whereabouts Failures resulting in the Missed Tests in May and August 2022 exhibited clear negligence on the part of the Athlete. There is no absence or lack of Fault on his part. The Athlete was not prevented in any way from fulfilling his obligations on the two occasions in question. In fact, when first presented with the fact of the Missed Tests on each of the first two occasions, he readily admitted that he had failed to comply with his obligations. It was only after the Filing Failure was alleged against him which resulted in the alleged ADRV that the Athlete decided to put forward elaborate explanations as to the reasons for the first Missed Test (but not the second Missed Test)*".
341. The Athlete's explanation in respect of the Second Missed Test that he was required at the last minute to go to Bihar on 28 August 2022 and, effectively, he had no time to update his Whereabouts, is again indicative of negligence on his part and inexplicable considering that on 29 August 2022 when he was in Bihar and after being told by the

DCO that he was at his home for a doping test, he immediately then accessed the ADAMS portal to enter the required information. This is not an unusual case of negligence, as it may be the Athlete simply forgot about his duty to change his address when he received an invitation to attend the Bihar ceremony.

342. The Panel also accepts the reasoning of the Sole Arbitrator in respect of the Filing Failure for Q1 - 2023, with his conclusion: “...*there can be no doubt that the Athlete was aware of his responsibilities. Why would he attempt to register the information on 30 December 2022 if he was not so aware? Why would he enter the required information on 3 January 2023 if he was not aware of all the requirements for a proper Whereabouts Filing?*” The degree of negligence in this case is lower than in the first two infringements and could be classified as “light degree of fault”. At this point it should be considered that the very lowest level of Fault for all three Whereabouts Failures in totality must be established in order to justify the maximum reduction in sanction.
343. In the Appealed Decision there is already a very transparent view how to properly approach the sensitive question of the sanction. As it is done very systematically it is the Panel’s view that it is worth repeating considerations in the case CAS 2013/A/3327 & 3335 where the sanction ranges set out were as follows:
- (i) significant degree of or considerable Fault: 16 — 24 months with a “standard” significant Fault leading to a suspension of 20 months;
  - (ii) normal degree of Fault: 8 — 16 months, with a “standard” normal degree of Fault leading to a suspension of 12 months;
  - (iii) light degree of Fault: 0 — 8 months, with a “standard” light degree of Fault leading to a suspension of 4 months.
344. Based on the sanction ranges set out in CAS 2013/A/3327 & 3335, the objective level of Fault in the opinion of the Panel is a significant degree of Fault on the part of the Athlete after taking into account the totality of his behaviour. In relation to the level of subjective fault the following matters are of significance:
- (i) the fact that during the Athlete’s career he has been the subject of drug testing on many occasions with negative results including proximate to the first and second missed tests and there is no suggestion that he was evading drug testing on any of the relevant occasions;
  - (ii) the Athlete’s lack of English language skills, which made it difficult for him to communicate when he was in Brazil and Peru;
  - (iii) he was trying not to make a mistake and so he asked his friend Mr Kadam for assistance in the case of the first and the third whereabouts failures;
  - (iv) he submitted the correct information as required in respect of the Filing on 3 January 2023;

- (v) in the case of the filing failure in January 2023, there were only two days at the beginning of 2023 for which the Athlete did not enter all the relevant data and so he missed only 3 days with his entry;
- (vi) due to his lack of familiarity with the data entry system, he may have held an incorrect belief that he had actually sent all the data concerning the third whereabouts failure; and
- (vii) he did take steps after the first Missed Test to send his teammate to India to rectify his Whereabouts Failure and entered on the ADAMS system his updated Whereabouts immediately after the second Missed Test.

345. Taking into account the fact that the Athlete has been proven to have been negligent and, at the same time, all above mitigating circumstances, the Panel agrees with the Sole Arbitrator's decision on the level of the sanction that the appropriate period of ineligibility is 18 months.

#### **IX. COSTS**

(...).



## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed on 21 March 2024 by Mr. Pramod Bhagat against the Award rendered by the CAS Anti-Doping Division in the matter *CAS 2023/ADD/66 BWF v. Pramod Bhagat* on 1 March 2024, is dismissed.
2. The Award issued on 1 March by the CAS Anti-Doping Division in the matter *CAS 2023/ADD/66 BWF v. Pramod Bhagat* is confirmed.
3. (...).
4. (...).
5. All other and further motions or requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Operative part notified on 27 July 2024

Date: 5 March 2025

## THE COURT OF ARBITRATION FOR SPORT

Mr Anton Jagodic  
President of the Panel

Mr Steven Bainbridge  
Arbitrator

Mr Ulrich Haas  
Arbitrator