

# Virtual National Moot Court Competition Organized By



॥वसुधैव कुटुम्बकम्॥

## Symbiosis Law School, Nagpur in Collaboration with



Maharashtra State Biodiversity Board  
महाराष्ट्र राज्य जैवविविधता मंडळ

# Moot Proposition



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## MOOT PROPOSITION

Indiana is one of the Mega Biodiversity Nations in the World. Its population is only 2.4 percent of the world's land area, but it harbours 7-8 percent of all recorded species, including over 47,000 species of plants and 96,000 species of animals. Of the 34 global biodiversity hotspots, four are present in Indiana, represented by the Himadri, the Westona Range, the North-east, and the Nilambar Islands. Thousands of native plants are still used prominently in indigenous healthcare systems.

A company named as “**Galoy Pharmaceutical Pvt. Ltd.**” is a registered company under the Indiana Companies Act, 2013. Galoy Pharmaceutical Pvt. Ltd. is engaged in developing and manufacturing medicines based on the indigenously found plants, flora and fauna and is a leading manufacturer in ayurvedic medicines in Central Indiana. It conducts research and development of commercial products from genetic resources and also manufactures the said products. The company in the past has manufactured multiple clinical and ayurvedic drugs which are derived from diverse biological resources such as fungi, bacteria, and other flora-fauna that serve as one of the primary sources of identification of new molecules with specific therapeutic activities.

The company has its research center established in Citapalli area which is considered as one of the hot spots of biological diversity in Gladstone District in the **State of Navrashtra**. The said research center is known for developing new clinical and ayurvedic drugs which are derived from diverse biological resources such as fungi, bacteria and other flora-fauna that are locally found in Gladstone forest area. In 2020, nearly three years into the research, it was discovered that the plant scientifically known as “*Bioscorea Laviosa*” was a novel resource for bioactive products in dealing with ailments like asthma, bronchitis, cough, bowel complaints

and removing worms in children. It further promotes lactation in women and also is used to treat gonorrhoea. The subsequent research progressed into the invention of a novel compound called '*Plantacin*'.

After obtaining patent under the relevant law on 25.01.2021, for the said compound 'Plantacin', the company started manufacturing the same for other companies which manufactures drugs for the treatment of asthma, bronchitis, cough, etc. The drug, after its release into the market was found to have similar features and effects as that of an ayurvedic drug called 'Trishtavati'. This drug has been in use for quite some time. It was also found that one of the members of the research team who was responsible for the invention of 'Plantacin' belonged to a family of 'Vaid/Hakim', engaged in the preparation and administration of 'Trishtavati'.

The Navrashtra State Biodiversity Board issued a notice dated 30.05.2021 to the company under Section 24 of the Protection of Biodiversity Act, 2002 directing the company to stop manufacturing '*Plantacin*' as the company had not obtained any permission or had given any prior intimation to the State Biodiversity Board for obtaining biological resources.

Further, it was the contention of Navrashtra State Biodiversity Board that the company has not complied with the statutory requirement of Rule 17 of the Protection of Biodiversity Rules, 2004 and has also violated Rule 8 of Guidelines on Access to Bio Resources and Benefits Sharing Regulations, 2014. The State Biodiversity Board has charged the Company a fee amounting to Rs. 10,000/- per day under Rule 5 of Guidelines on Access to Bio Resources and Benefits Sharing Regulations, 2014 from 21.11.2014.

The company being aggrieved by the said notice approached the Hon'ble Trombay High Court, Navapur Bench, Navapur in Writ jurisdiction challenging the said notice issued by the Navrashtra State Biodiversity Board, Navapur. The Company also sought declaration that Rule 17 of the Protection of Biodiversity Rules, 2004 does not apply to Indiana entities or body corporates. It is prayed that to the extent the said Rule envisages equitable sharing of benefits by the Indiana entities, it should be declared ultra vires to the provisions of the Protection of Biodiversity Act, 2002 and, therefore, unconstitutional.

The company further sought declaration that the Guidelines on Access to Bio Resources and Benefits Sharing Regulations, 2014 apply only to transactions involving non-Indiana entities and the same do not apply to the Indiana entities not trading any biological resources with non-Indiana entities. The Company also sought to declare said regulations ultra vires to Sections 23 and 24 of the Protection of Biodiversity Act, 2002.

In the meanwhile, an intervention application was filed by one registered NGO named "**Srushtivan Club**" active in Citapalli area of Gladstone district praying for safeguarding the rights of indigenous community in respect of access to biological resources.

The Navrashtra State Biodiversity Board raised preliminary objection as to maintainability of the said Writ Petition in light of the provisions contained in Section 14 of the Central Green Tribunal Act, 2010. According to the Navrashtra State Biodiversity Board, the same should go for adjudication before the Hon'ble Central Green Tribunal.

The following issues are raised in the Writ Petition filed by the Company:

1. Whether the Writ Petition is maintainable in light of the provisions contained in Section 14 of the Central Green Tribunal Act, 2010?
2. Whether the company has complied with the statutory requirement of Rule 17 of the Protection of Bio Diversity Rules, 2004 and Rule 8 of Guidelines on Access to Bio Resources and Benefits Sharing Regulations, 2014?
3. Can the Company be charged with a fee amounting to Rs. 10,000/- per day under Rule 5 of Guidelines on Access to Bio Resources and Benefits Sharing Regulations, 2014 ?
4. Whether Rule 17 of the Protection of Bio Diversity Rules, 2004 apply to the Indiana entities or body corporates?
5. Whether Rule 17 envisaging equitable sharing of benefits by the Indiana entities is ultra vires to the provisions of the Protection of Bio Diversity Act, 2002?
6. Whether the Guidelines on Access to Bio Resources and Benefits Sharing Regulations, 2014 apply only to transactions involving non- Indiana entities and the same do not apply to the Indiana entities not trading any biological resources with non-Indiana entities and are ultra vires to Sections 23 and 24 of the Protection of Biodiversity Act, 2002?

The matter is listed for final hearing before the Hon'ble High Court on 4/12/2021.

**NOTE:** 1) The laws of Indiana are in pari materia to the laws of India.

**DISCLAIMER**: The facts stated in the Moot Proposition are fictitious and are not intended to resemble any incident or any person living or dead. Any resemblance to any incident or person (if any), is not intended, but merely co-incidental.