



NATIONAL LAW UNIVERSITY, ASSAM  
*PRESENTS*

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# **3rd VOX ANATOLIS MOOT COURT COMPETITION**

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**MOOT PROPOSITION**

3RD JUNE-5TH JUNE, 2022

OFFICIAL PARTNERS



#VALARMOOTGHULIS

**MOOT PROPOSITION, 3RD VOX ANATOLIS NATIONAL MOOT COURT COMPETITION 2022**

1. The 1992 Earth Summit was significant in many ways with respect to the global concern on sustainable development and preservation of biodiversity. Unregulated commercial exploitation of biodiversity and the natural resources was a sure shot downward sloping path and the world realised the threat it posed. At the Rio Earth Summit of 1992, the Global World Order adopted three conventions- (i) Convention on Biological Diversity (ii) UN Convention to Combat Desertification and (iii) the UN Framework Convention on Climate Change.
2. The objectives of the Convention on Biological Diversity (hereinafter referred to as “the CBD”) are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from commercial and other utilisation of genetic resources. The agreement covers all ecosystems, species, and genetic resources. India, with a varied reserve of biological diversity signed the CBD at the Rio Earth Summit. On 29 December 1993, the CBD entered into force and on 18 February 1994, India ratified the CBD. In December 2002, the Indian Parliament passed the Biodiversity Act (hereinafter referred to as “the Act”) to implement the CBD and the Act was notified on 5 February, 2003. Subsequently, the Central Biodiversity Rules were notified in 2004.
3. One of the most important features of the CBD regime is with respect to Access and Benefit Sharing (hereinafter referred to as “the ABS”). The ABS provisions of the CBD have been formulated to ensure that the physical access to genetic resources is facilitated and that the benefits obtained from their use are shared equitably with the providers. The Nagoya Protocol on ABS was adopted in 2010 and India signed and ratified the protocol in 2011 and 2012, respectively. In November 2014, the National Biodiversity Authority (hereinafter referred to as “the NBA”) framed the ABS guidelines in consonance with the Nagoya Protocol.
4. The Global World was subjected to a shock in the form of the outbreak of Covid-19 which left its impact all over the world and the pandemic forced the world to lock itself up. As there was no scientifically proven treatment protocol in hand, people throughout the World were

encouraged to stay indoors and work on their health so that the immune system is kept healthy and in prime condition so that the novel virus is not able to do much damage and people are able to fight it off. People all over the world started inculcating healthy habits like sleeping well, exercising and staying active, eating clean, meditating and adding supplements to their diets in order to stay healthy and strong.

5. In India, there are multiple systems of medicines which form part of the traditional system of medicine and treatments. The Indian Government has formalised the different traditional systems of medicine and has brought them under the nodal Ministry of AYUSH in order to exercise proper control and regulate the traditional system of medicine.
6. The traditional system of medicines in India is very well appreciated and is looked up to and studied scientifically to examine its benefits, particularly, the nutraceuticals. A lot of the nutraceutical products claim to benefit the overall health of people consuming it and particularly the immune system. These nutraceuticals are made by combining various natural products, a lot of which is extracted from the forests. One product, which is of prime importance in such a mixture, is *ABX*.
7. *ABX* is a product of nature and is also part of the traditional medicine systems for hundreds of years. There are various varieties of *ABX* found throughout the length and breadth of the country. The effectiveness of *ABX* though depends on the presence of a special particle in the plant which is called *ZYM*. As per the traditional system of medicine and also as per different scientific studies conducted, the best varieties of *ABX* are the ones with the highest percentage of *ZYM* in them. The highest concentration of *ZYM* is found in a variety of *ABX* called the *Adong* and the concentration of *ZYM* in *Adong* ranges from 65-75 %.
8. As the pandemic started causing rampage through the World and India, the demand for nutraceutical, especially the ones produced in the traditional system of medicines increased manifolds. There were news articles and reports published in the print and electronic media on the benefits of adding the *ABX* in the diet to help strengthen the immunity and people

also were made aware of the varieties of *ABX* found and as people gained knowledge and information on the *Adong* variety of *ABX*, its demand skyrocketed.

9. The *Adong* variety of *ABX* is found in the plains of the North-Eastern part of India which are on the easternmost foothills of the Himalayan Range. The local tribal communities have been using the *Adong* for hundreds of years. The local tribal communities usually extract it from the wild. Sometimes, in the urban areas of the region, some people from such local tribal communities also carry *Adong* with them for selling it in the weekly markets. There are also a few companies which commercially extract *Adong* and process it to sell it in the form of capsules.
10. As the pandemic spread and the demand for *Adong* increased by manifolds, one Mr. Natwar, the Managing Director of Madni Group of Companies (hereinafter referred to as “the Madni Group”) could see a potential of making profits out of the situation. Mr. Natwar launched a project and was able to buy off the stakes in 3 out of the 5 local companies which were commercially extracting *Adong* and processing it and selling *Adong* capsules.
11. Thereafter, the Madni Group invested heavily in the region and started extracting *Adong* at a huge commercial scale. The Madni Group was also able to get the exclusive lease of certain areas of the government land where the production of *Adong* was naturally high and thereafter, blocked the access of the local communities to those lands. Soon, the Madni Group started its business and the total trade value of *Adong* was estimated to be above 100 Cr. INR per month.
12. Mr. R. P. Das, a local Environmental and Social Activist, on a visit to distribute relief items to one interior village in the vicinity of one such processing plant of Madni Group was made aware of the entire situation by the Headman of the village. On his return, Mr. Das filed applications to different departments of the Government seeking information on various issues. Mr. Das also filed an application seeking information from the State Forest Department on the arrangement entered into between the State Forest Department and the Biodiversity Authority with the Madni Group as far as exclusively extracting *Adong* from

the forests was concerned and information was also sought on the point that whether the local tribal communities of the area were gaining any benefit out of the process.

13. Mr. Das soon received a response from the State Forest Department and the Biodiversity Authority. The response received was a shocker for Mr. Das as it revealed details which pointed out that the Madni Group tactically found ways to bypass the laws and were engaging in activities to gain monopoly of the market and make profits out of the situation. The details revealed that there was an initial agreement entered into between the State Forest Department and the Madni Group under the terms of which, the Madni Group expressed its interest to commercially extract *Adong* from the forest land in a sustainable manner in order to process and produce *Adong* capsules which were supposed to be marketed all over the country. The Madni Group also expressed that wherever possible, the Madni Group will also export the product out of the country. Further, as part of the Agreement, the Madni Group sought an immediate and express permission from the State in order to start their operations and had executed an undertaking that the Madni Group, within a period of 1 year would fulfil all its obligations under the Biodiversity Act and the State Biodiversity Rules, 2010 (hereinafter referred to as “the Rules”) and thereby, regularise their operations in terms of the applicable laws.
14. The response received by Mr. Das also revealed that the Madni Group had started its operations in May, 2020 and till the time of filing of the application seeking information, in the month of April, 2021, had not obliged in terms of its undertaking. The response also revealed that the State Forest Department and the Biodiversity Board had sent multiple notices to the Madni Group reminding them of their obligations that they need to fulfil under the Act and the Rules and in terms of their undertaking. The State Forest Department and the Biodiversity Board had in fact also issued warnings to the Madni Group that the permission granted to them was due to existence of medical emergency and it was only a provisional permission and that if the Madni Group does not fulfil its obligations, the State Government was empowered to withdraw its permission and stop their operations. However, the Madni Group had issued a letter to the State Forest Department and the Biodiversity Board wherein the Madni Group expressed the view that the provisions of the

Act and Rules were not applicable to their operations and that the initial agreement that was entered into between the State and the Madni Group wherein the Madni Group undertook to fulfil its obligations under the Act and the Rules was a result of misinterpretation of the provisions and the Madni Group expressed that it would take corrective measures and actions soon. The response received by Mr. Das also revealed that neither the State Government, nor the local tribal communities and their villages were being given any benefit or share of the profit that the Madni Group was earning.

15. Section 7 of the Act envisages that any entity that is willing to extract biological resources for commercial utilisation needs to provide prior intimation to the respective State Biodiversity Board. The State Government has also framed Rules in terms of the provisions of the Act under which, in certain cases/situations, the State Government is empowered to put restrictions on such activities.
16. Mr. Das, after receiving the relevant information regarding the situation that the Madni Group had created to commercially exploit the biological resource and to earn profit, addressed a letter to the Chief Minister of the State and the Minister of Forests raising concerns with respect to the commercial exploitation that was taking place as well as with respect to the rampant violation of the applicable laws. The Minister of Forests, under the guidance of the Chief Minister formed a committee to closely examine the situation and to offer suggestions on the course of actions that needs to be taken. The Committee, after closely examining the situation and documents, came to the conclusion that the Madni Group was trying to evade the applicable laws to gain profit and suggested that the State should impose restrictions on their activities and impose penalties.
17. Accordingly, the State Biodiversity Board issued a Final Warning-cum-Demand Letter to the Madni Group in July, 2021 by which, the Madni Group was given 30 days' time to take steps to execute their undertaking and regularise their activities in terms of the provisions of the Act and the Rules. Further, the Madni Group was also directed to furnish accounts to the State Biodiversity Board with respect to the trade in *Adong* and deposit an amount equal to 40% of the total trade that they have carried on for the period of May, 2020 to July, 2021.

The Final Warning-cum-Demand Letter also mentioned that the deposit would be used to compensate the local tribal communities who have been denied access to the areas where *Adong* is naturally found and who have also not received any benefit out of the activities being carried on by Madni Group.

18. The Madni Group, in response, issued another letter wherein, they claimed that the State Government has misinterpreted the laws and further, they also claimed that the provisions of the Act and the Rules are not applicable in the matter concerned.
19. The State Biodiversity Board, on 11<sup>th</sup> August, 2021 issued an Order by which the activities/operations carried on by the Madni Group was directed to be shut with immediate effect. The State Biodiversity Board also directed the District Administration of the respective Districts where the Madni Group had established facilities to seal and lock the premises of the Madni Group. The Order passed by the State Biodiversity Board revealed that it was passed in terms of Rule 20 (c) of the Rules. The Order also provided that the *Adong* which was already extracted and was in the different premises of Madni Group should be distributed by the local Biodiversity Management Committee of the respective areas to the members of the local community in order to ensure that the *Adong* already extracted do not get spoiled.
20. In the meantime, Mr. Das had also written a letter to the Chairperson of the Hon'ble National Green Tribunal (hereinafter referred to as "the NGT") in order to draw the attention of the respected Chairperson on the illegal activities that were being carried out by the Madni Group. The said letter also alleged that the Madni Group has been able to carry out the illegal activities at the behest of some Senior Officials of the State Government. The respected Chairperson, while taking strong note of the alleged illegalities, directed the Eastern Zone Bench of the NGT to initiate *suo-moto* proceedings on the alleged illegalities. The said case was registered as OA. No. 122/2021.
21. M/s. Healthvita Pvt. Ltd. and M/s. Natura Care Pvt. Ltd., two local entities who were engaged in the extraction of *Adong* and processing it and marketing capsules in the region,

filed two separate Miscellaneous Applications numbered as M. A. No. 195/2021 and M. A. No. 199/2021 seeking impleadment in OA. No. 122/2021 on the ground that the illegal operations of the Madni Group has resulted in loss to their business as they do not have access to certain forest areas as the exclusive right to extract *Adong* from such areas lies with the Madni Group. Further, the M/s. Healthvita Pvt. Ltd. and M/s. Natura Care Pvt. Ltd. have also filed documents which show that they were abiding by the provisions of the Act and Rules and were sharing the access and benefits with the local communities through the Biodiversity Management Committee.

22. On the other hand, the Madni Group, being aggrieved by the Order dated 11<sup>th</sup> August, 2021 issued by the State Biodiversity Board approached the Eastern Zone Bench of the NGT by filing an Original Application assailing the Order dated 11<sup>th</sup> August, 2021. The Madni Group also filed a Miscellaneous Application along with the original Application praying for grant of an interim stay of the Order dated 11<sup>th</sup> August, 2021 during the pendency of the Original Application. The Original Application and Miscellaneous Application were registered as OA. No. 126/2021 and M. A. No. 201/2021 respectively.
23. The pleadings are complete in the matters and both the matters have been tagged together and are listed for final hearing on 3rd June, 2022. Among other issues, the pertinent issues for consideration before the Hon'ble Tribunal are-
- a) Whether the Hon'ble NGT has appropriate jurisdiction to *suo-motu* initiate proceedings against any alleged illegality/violations?
  - b) Whether the Principal Bench of the NGT is placed at a superior position to direct one of the other Benches of the NGT to initiate *suo-motu* proceedings?
  - c) Whether under the scheme of the Act and the Rules, the State Government has the power to grant exclusive licence to an individual/entity to extract biological resources from specific areas?
  - d) Whether under the provisions of the applicable laws, an individual/entity is entitled to claim exceptions from not sharing the access and benefits with the local communities and the State?



- e) Whether the applicable laws envisage that an individual/entity compulsorily requires prior permission under the Act and Rules to extract biological resources?
- f) Whether the scheme of Access and Benefit sharing forms an integral part of the mechanism under the law and under no circumstances can an individual/entity, looking to commercially extract the biological resource, claim exemptions from sharing access and benefit?

The matter is listed for final hearing before the Hon'ble Eastern Zone Bench of the NGT on  
3/6/2022.

**NOTE:**

- Laws and the Constitution of India are *pari materia* to the laws and Constitution of India.
- The Supreme Court of India considers the precedents of the Supreme Court of India as binding.
- Participants may frame any other issue(s) and/or sub issue(s) in addition to the one's listed above.

\*This Proposition has been drafted by Irfan Hasieb, Advocate, Delhi High Court. Any attempt to contact the authors of the proposition will lead to immediate disqualification.

**(Disclaimer: All facts mentioned in the above proposition are purely fictitious and any resemblance to any person, place, situation is purely coincidental.)**