



School of Law, Manipal University Jaipur in collaboration with Ranka Public Charitable Trust presents

# 7TH MANIPAL RANKA INTERNATIONAL MOOT COURT COMPETITION-2021

2nd - 3rd October 2021



<u>mootcourt.society@muj.manipal.edu</u>

### About the Event

The organizers of the event recognized the need for a virtual platform at this time of Pandemic, where law students can be a part of a platform where they can draft, plead and showcase their mooting skills.

This Competition is conceived with the aim of promoting & developing skills about the procedure followed by the appellate court and testing the knowledge of the law students across the nation.

The organizers are positive that the participants will show zeal and enthusiasm in this event and will get to experience powerful arguments from the law students who are on the path of becoming the established advocates of the coming time.



### About the University

Manipal University Jaipur (MUJ) was launched in 2011 on an invitation from the Government of Rajasthan, as a self-financed State University. MUJ has redefined academic excellence in the region, with the Manipal way of learning; one that inspires students of all disciplines to learn and innovate through hands-on practical experience.

The multi-disciplinary university offers career-oriented courses at all levels, i.e., UG, PG, and doctoral, and across diverse streams, including Engineering, Architecture, Planning, Fashion Design, Interior Design, Fine Arts, Hospitality, Humanities, Journalism and Mass Communication, Basic Sciences, Law, Commerce, Computer Applications, Management, etc. Some PG programs are also available in the research mode.

MUJ boasts of best-in-class infrastructure, including state-of-theart research facilities and a modern, digital library. In line with Manipal University's legacy of providing quality education to its students, the campus uses the latest in technology to impart education.



### About the Department

Manipal University Jaipur (MUJ) is Rajasthan's First NAAC A+ accredited institution with a special emphasis on research and interactive teaching with the strength of 9000 students. School of Law started in the year 2014 has grown in leaps and bounds and has a strength of 700+ students at present.

The Manipal University Jaipur forayed into the field of legal education by introducing Integrated BA LL. B (Hons), BBA LL. B(Hons), Bachelor of Law (LL. B), Master of Law(LL. M), and Ph.D. programs in the study. As an institution of excellence School of Law is dedicated to fostering and inculcating the intellectual and ethical values in the students.

The School of Law is committed to the evolution of law as an instrument of social change, efforts are being made to expose students to practical realities.

The teaching methods adopted for the programs offered involve lectures, discussions, case studies, Moot Courts, and project work that will facilitate students to promote multi-disciplinary inquiry and practical appreciation of problems.

The School has been approved by the BAR Council of India.



### BEFORE THE INTERNATIONAL CENTER FOR SETTLEMENT OF INVESTMENT DISPUTE

#### IN THE MATTER OF:-

ARBITRATION CASE NO. 1/ICSID/BIT/2021

CROSSLINK NORTH WEALTHNET INTELLI VENTURES
...RESPONDENT

## VERSUS THE REPUBLIC OF TERRA DO BRASIL ...APPLICANT

#### **COMPROMIS**

"Courage taught me no matter how bad a crisis gets ... any sound investment will eventually pay off."

By - Carlos Slim Helu

"Financial peace isn't the acquisition of stuff. It's learning to live on less than you make, so you can give money back and have money to invest. You can't win until you do this."

By - Dave Ramsey

"Investing should be more like watching paint dry or watching grass grow. If you want excitement, take \$800 and go to Las Vegas."

By - Paul Samuelson

#### **FACTUAL BACKGROUND:**

Crosslink North Wealthnet Intelli Ventures ("hereinafter referred as CNWIV"), a Indiana national commenced the arbitration against the Republic of Terra Do Brasil, claiming violations of the BIT that affected his investment in Intelli Wealthnet North Crosslink Terra Do Brasil ("hereinafter referred as IWNCTDB"), a Brasilian company involved in the purchase and exportation of Oil Seeds & Oleaginous Fruits, primarily for South America. CNWIV is a 90% indirect shareholder of IWNCTDB, having an investment of Rs. 40,00,00,000/ i.e. 27,151,200 BRL.

IWNCTDB commenced its operations in March 2020 and between 2020 and 2021 was among the 12 largest exporters of Oil Seeds & Oleaginous Fruits in the Republic of Terra Do Brasil, with sales greater than Rs. 50,00,000/- i.e. 339,390.00 BRL per year. IWNCTDB's business model consisted of contracting with, and financing, Oil Seeds and Oleaginous Fruits merchants for the purchase of raw materials. Such raw material would be delivered directly by Oil Seeds and Oleaginous Fruits merchants to third-party transforming plants, with which IWNCTDB contracted for the production of the final product of Oil Seeds and Oleaginous Fruits. The produced final product of Oil Seeds and Oleaginous Fruits was warehoused at the third-party plants until ready for export. Thus, IWNCTDB never handled any products directly and served primarily as a coordinating and financing agent. IWNCTDB's comparative advantage in the industry consisted of access to financing from CNWIV's network of personal relationships with businesses and individuals. While IWNCTDB did not obtain financing from Brasilian banks, it used Brasilian banks to conduct its transactions, including the receipt of loans from abroad, the execution letters of credits from buyers abroad, and generally keeping track of its payments, costs, and accounts receivables.

In 2021, Brasilian's taxing authority, the Secretaria Especial da Receita Federal do Brasil ("hereinafter referred as SERFB"), commenced an audit of IWNCTDB, which was conducted with the company's cooperation. The audit appeared to be routine in nature and stemmed from IWNCTDB's requests in the prior two years of refunds of certain amounts paid in connection with sales taxes. During the audit, SERFB concluded that IWNCTDB's books did not adequately reflect values for the raw material used in the production of the final product of Oil Seeds and Oleaginous Fruits.

IWNCTDB therefore, pursuant to the Brasilian tax code, utilized a "presumed basis" in its analysis rather than a basis based on IWNCTDB's books and records. Based upon the presumed basis, SERFB concluded that IWNCTDB had underreported sales volumes. SERFB, therefore, imposed back taxes and fines totaling approximately Rs. 50000000/- i.e. 3,395,053.74 BRL.

Shortly after the audit, SERFB also imposed interim measures which had the effect of attaching certain limited assets of IWNCTDB and directing all Brasilian banks to retain any funds passing through them in connection with IWNCTDB's transactions. SERFB is permitted under Brasilian law to impose interim measures to ensure the payment of tax debts in "exceptional circumstances", namely when the debtor has been uncooperative (by for example, failing to disclose material information) or when efforts to obtain payment of the tax debt would otherwise be unsuccessful. The report prepared by IWNCTDB's SERFB auditor in support of the request for interim measures premised the request on IWNCTDB's "irregular behavior." The only behavior cited was SERFB's determination that IWNCTDB's books had failed to accurately reflect the company's total sales volume. A second report was subsequently submitted by IWNCTDB's SERFB auditor, which also premised the request on the failure to accurately reflect sales volumes and only modified the specific subsection of the Tax Code upon which the auditor based the request. Neither report provided specific support for the auditor's conclusions. Furthermore, SERFB's executing division in charge of imposing interim measures (a divisão do controle da lei e da carga) did not make any requests for additional information from the auditor before imposing the requested measures.

IWNCTDB challenged both SERFB's audit determinations and its imposition of interim measures via administrative and judicial procedures available under Brasilian law. IWNCTDB commenced an administrative procedure requesting SERFB to lift the interim measures on the basis that SERFB had not adequately justified such measures. SERFB rejected IWNCTDB's application but reduced its calculation of back taxes. IWNCTDB also challenged SERFB's decision before the Fiscal Tribunal, which affirmed the interim measures but further reduced the amount of back taxes to approximately Rs. 20000000/- i.e. 1,358,220.47 BRL and ordered SERFB to recalculate certain additional amounts.

Following the imposition of SERFB's interim measures, IWNCTDB was unable to utilize Brasilian banks for its transactions. IWNCTDB's sales subsequently decreased dramatically and ultimately, IWNCTDB commenced a debt restructuring proceeding in May 2021, which had the effect of suspending the interim measures and permitted IWNCTDB to continue operating.

The Claimant CNWIV, the 90% shareholder of IWNCTDB, thereafter commenced an ICSID arbitration claiming that SERFB's audit determinations and interim measures constituted an unjustified indirect expropriation of its investment, in violation of the BIT. CNWIV sought over Rs. 250000000 i.e. 16,970,893.61 BRL based on the projected cash flow of IWNCTDB, in addition to Rs. 2000000 i.e. 135,691.39 BRL for moral damages, plus interest (at a rate of 24%) and fees and costs. Total damages demanded therefore approximated Rs. 150000000/- i.e. 10,183,892.94 BRL.

#### ORDER(s):-

<u>a) Decision dated 1st August 2021:-</u> That the International Centre for Settlement of investment disputes (ICSID) did have jurisdiction and the tribunal competence to try the expropriation dispute filed by Crosslink North Wealthnet Intelli Ventures under the Agreement between the Republic of Indiana and the Republic of Terra Do Brasil concerning the encouragement and reciprocal protection of investment of 25 January 2020 ("Investment Cooperation And Facilitation Treaty Between The Republic Of Terra Do Brazil And The Republic Of Indiana")

#### b) Award dated 15th August 2021:-

- 1) To declare the existence of a measure tantamount to expropriation breaching the terms of the Indiana-Terra Do Brasil BIT, taken by the Republic of Terra Do Brasil against Crosslink North Wealthnet Intelli Ventures investment;
- 2) To order the Republic of Terra Do Brasil to pay Crosslink North Wealthnet Intelli Ventures investment the sum of Rs. 10,00,00,000/- i.e. 6,790,675.82 BRL as compensation for the application of the measure tantamount to expropriation;

September 2021 Crosslink North Wealthnet Intelli Ventures requested the lifting of the provisional stay of enforcement of the award by the ad hoc Committee.

- **3**) To order the Republic of Terra Do Brasil to pay interest on the amount determined in the previous part, accruing from 23rd October 2015 until the date of effective payment, at the average monthly rate published by the Reserve Bank of India, which as of the date of the award amounted to Rs. 75,00,000/- i.e. 509,336.44 BRL;
- 4) To order each party to bear its own costs and attorneys' fees and that common expenses incurred in connection with the arbitration be divided equally between the Parties; and
- 5) To dismiss all other claims presented by the Parties.

#### **STAY OF ENFORCEMENT:-**

a) In accordance with Rule 54(2) of the ICSID Arbitration Rules, enforcement of the Award was provisionally stayed on 1st September 2021 by the Secretary-General of ICSID. On 3rd September 2021 Crosslink North Wealthnet Intelli Ventures requested the lifting of the provisional stay of enforcement of the award by the ad hoc Committee.

The ICSID Secretariat vide letter dated 5th September 2021 informed the parties that the ad hoc Committee had decided to continue the provisional stay of enforcement of the award until it had given each party an opportunity to present its observations, as envisaged in Rule 54(4) of the ICSID Arbitration Rules. In the same letter, the ad hoc Committee also invited the Republic of Terra Do Brasil to submit its observations on Crosslink North Wealthnet Intelli Ventures application for the lifting of the provisional stay of enforcement of the Award.



#### **HEARING:-**

a) The hearing on the lifting of the provisional stay of enforcement of the award along with annulment will be schedule at the <u>International Center for Settlement of Investment Dispute</u>, New York on 10th September 2021. 4 Members of the ad hoc Committee along with ICSID Secretariat, representing attorneys of the Republic of Terra Do Brasil and Crosslink North Wealthnet Intelli Ventures, experts, interpreters, and court reporters will be a part of the proceeding.

In accordance with ICSID Arbitration Rules 38(1) and 53, the annulment proceeding will be closed on 10th September 2021 and parties would be notified of the decision on the lifting of the provisional stay of enforcement of the award along with Annulment through ICSID Secretariat.

#### **ISSUE:-**

a) 4 members of the ad hoc committee will consider the following issue(s) at the time of the proceeding:-

**Issue No. 1** – Lifting of the provisional stay of enforcement of the award dated 15th August 2021.

**Issue No. 2** – Annulment.

**Issue No. 3** - Relief(s) sought.

#### **NOTE:-**

- Participants are requested to argue on the side of the Applicant as well as on the side of the Respondent before the "International Center for Settlement of Investment Dispute" pertaining to the above problem and further elucidate the arguments with appropriate case laws and inputs.
- The relevant laws for the above problem are referred to in Annexure 2.
- This Moot Problem has been formulated solely for the purpose of this competition for furthering the academic exercise only.



#### **ANNEXURE – 1**

**ARBITRATION CLAUSE:** - Clause 48 of the settlement agreement contained the dispute resolution clause which reads as follows:-

#### 48. Governing Law and Settlement of Dispute

- **48.1** Any dispute or difference arising out of or relating to this contract shall be resolved by the Parties in an amicable way. (A minimum of 30 days shall be used for resolving the dispute in amicable way before same can be referred to arbitration).
- **48.2** In case no settlement can be reached through negotiations, all disputes, controversies or differences shall be referred to and finally resolved by Arbitration at *International Center for Settlement of Investment Dispute* in the English language, in accordance with the Rules of Arbitration of the *International Center for Settlement of Investment Dispute*, which Rules are deemed to be incorporated by reference into this clause. The Arbitration Award shall be final and binding on both the parties.
- **48.3** The Agreement (together with any documents referred to herein) constitutes the whole agreement between the parties and it is hereby expressly declared that no variation and/or amendments hereof be effective unless mutually agreed upon and made in writing."
- **48.4** The number of arbitrators shall be three. All arbitrators are to be appointed by the *International Center for Settlement of Investment Dispute* and should have good knowledge in the field of International Investment and Arbitration Law.
- 48.5 The seat of the arbitration shall be in the <u>International Center for Settlement</u> of <u>Investment Dispute</u>, New York.

#### ANNEXURE – 2

#### RELEVANT LAWS, RULE & REGULATIONS AND TREATIES:-

- Provision Of International Center For Settlement Of Investment Dispute Convention
- Investment Cooperation And Facilitation Treaty Between The Federation Republic Of Brazil And The Republic Of India
- Indian Laws
- Brazil Laws
- And All Relevant Laws, Rule & Regulations, Convention, Treaties Etc.



### Rules and Regulations

#### 1. Aim and purpose

- (i) To give exposure to students pursuing the law course to the environment of the court system in India and to hone their advocacy skills.
- (ii) To provide a real-life experience cum training in doing cutting edge research, presenting groundbreaking arguments, and contributing to the development of jurisprudence in concerned areas of law.

#### 2. Date and Venue

October 2nd and 3rd, 2021 on Virtual Platform.

#### 3. Team composition and eligibility criteria

- (i) Each team shall comprise of three (3) members ONLY i.e. Two (2) speakers and one (1) researcher.
- (ii) Arguments shall be in English only.
- (iii) The competition is open for bonafide students pursuing fiveyear and three-year LLB programs.
- (iv) Each Law College/ University shall be eligible to send one team. The team should not disclose the identity of their institution in course of proceedings in the courtrooms; such disclosure shall invite penalties including disqualification.
- (v) Each team shall be provided with the team code by draw of lots followed by the exchange of memorials.

### Rules and Regulations

#### 4. Registration

- (i) The Registration form completed with all Team Details must be submitted online via the link: <a href="https://forms.gle/pDeSKTHonRFoHDre9">https://forms.gle/pDeSKTHonRFoHDre9</a>
- (ii) A registration fee of Rs.1000 INR (National Participants) or 30USD (International Participants) is to be paid via <a href="https://www.payumoney.com/customer/users/paymentOptions/#/">https://www.payumoney.com/customer/users/paymentOptions/#/</a> 1011F8DA7C0FCB5EC870FBB52B99DD08/Competition2020/2 12904
- (iii) No change in the names of the participants shall be permitted after the receipt of the Registration Form, except at the sole discretion of the Organizers.
- (iv) Teams should clearly mention the participants' name, contact no. including year/semester of study.

#### 5. Dress Code

The participants shall follow the below-mentioned dress code at the time of their presentation:

- (i) Females: white salwar kurta & Dupatta or white shirt and black trousers along with black coat and tie.
- (ii) Males: white shirt, black trousers, black tie along with black coat.

The dress code for all the functions at the competition shall be western formals for gentlemen and western or Indian formals for ladies.

### Competition Rounds

There shall be a preliminary round, quarter-final, semi-final, and a final round spreading over a period of 2 days.

#### 1. Preliminary Round

- (i) In the preliminary round each team shall argue from one side (appellant/petitioner or respondent) as decided by draw of lot.
- (ii) The marks of the preliminary round shall be the cumulative total of the marks of both the speakers. The team shall be credited with a win in a preliminary round if their round total is more than the opposing team.
- (iii) TOP EIGHT (8) teams shall move to the quarter-finals on the basis of the CUMULATIVE marks of the preliminary round and the marks of the memorial of the side in which they have appeared.
- (iv) In case of a tie between two or more teams, the aggregate of the marks of memorials (appellant/petitioner and respondent) of the teams shall be counted. The team with the highest marks moves ahead.

#### 2. Quarter Final Round

- (i) Eight (8) teams shall compete in the quarter-final. Criteria for qualifying to quarter-finals have been mentioned in previous clauses.
- (ii) It shall be a knock-out round. The winner of each round shall move to the semifinal. Four (4) teams shall move to the semifinals.

### Competition Rounds

- (iii) The criteria of marking in this round are the aggregate total of the marks of both the speakers.
- (iv) In case of a tie between teams, in quarterfinals, the aggregate of the marks of memorials (appellant/petitioner and respondent) of the teams shall be counted. The team with the highest marks moves ahead.

#### 3. Semi-Final Round / Final Round

- (i) Four (4) teams shall compete in the semi-finals. The criteria of qualifying in the semifinals have been mentioned in previous clauses.
- (ii) It shall be a knock-out round. The winner of each round shall move to the Final.
- (iii) The criteria of marking in this round are the aggregate total of the marks of both the speakers.
- (iv) In case of a tie between teams, in semi-finals, the aggregate total of the marks of memorials (appellant/petitioner and respondent) of the teams shall be counted. The team with the highest marks moves ahead.
- (v) There shall be one (1) FINAL ROUND.
- (vi) The marking criteria in the Final Round is the same as that of the semi-final (clause 3. (iii).

### Memorial

- (i) All teams must submit Memorials/ Written Submissions for both sides. (Appellant/petitioner and Respondent).
- (ii) Participants are allowed to frame additional issues other than those provided in the moot proposition if desired.
- (iii) All teams must submit typed Memorials for both sides and the Memorials must fulfill all the following specifications;
- (iv) Memorials must contain the following:
  - Cover page / Cause title.
  - Index.
  - Index of Authorities.
  - Statement of Jurisdiction.
  - Synopsis of Facts.
  - Summary of Arguments.
  - Arguments / Pleadings.
  - Conclusion / Prayer.
- (v) The memorial shall not be of more than forty (40) pages and the Arguments shall not exceed more than twenty-five (25) pages
- (vi) The Memorial shall be typed on A4 size page in Font type: Times New Roman, Font size: 12, 1.5 line spacing & 1-inch margin on each side. Blue Book pattern shall be followed.
- (vii) The Cover Page of the Memorial must follow the following color scheme, Blue for the Applicant's Cover Page and Red for the Respondent Cover Page.
- (viii) The Memorial must not contain any Annexure/Photographs/ Sketches/Exhibits/Affidavits etc.

### Memorial

- (ix) Memorials that do not comply with the above-mentioned specifications will be penalized.
- (x) Identification of any type shall attract a severe penalty.

#### Marking criteria for memorials

- (i) Memorial from each side shall carry a total of hundred (100) marks.
- (ii) The following shall be the criteria for marking the memorials:

Sr.No	Marking Criteria	Marks Allocated
1	Knowledge of Facts	10
2	Knowledge of Law	10
3	Proper and Articulate Analysis	10
4	Evidence of Original Thought	10
5	Grammar and Style	10
6	Correct Format and Citation	10
7	Extent and Use of Research	20
8	Clarity and Organization	20
	Total:	100

(iii) A penalty of two (2) marks for each side of the memorial shall be entailed on each day's default in submissions of memorials.

### Oral Submissions

- (i) Each team shall comprise of two (2) speakers, as has been specified earlier.
- (ii) Court language shall be English only
- (iii) Each team will have a maximum of thirty (30) minutes to present their Oral Submissions in Preliminary Round. No speaker will be permitted to address the Court for more than seventeen (17 minutes). This includes the time the speaker addresses the Court during the rebuttal/sur-rebuttal. The maximum time for rebuttal/sur-rebuttal is five (5) minutes.
- (iv) The maximum time allotted in quarter-finals, semi-finals, and final shall be forty-five (45) minutes for each team. No speaker shall be allowed to address the court for more than twenty-five (25) minutes. This includes the time the speaker addresses the court during rejoinder/sur-rejoinder.
- (v) At the commencement of each session of Oral Submissions each team must notify the Court Officer of the amount of time that the team reserves for their rejoinder/surrejoinder. A maximum of 5 minutes can be reserved for the rejoinder/sur-rejoinder.
- (vi) At the commencement of each session of Oral Submissions each team shall notify the Court Officer as to the division of time between the 2 speakers.
- (vii) If any speaker continues to speak after the completion of his/her time, he/she shall entail a penalty which shall be upon the discretion of the judges.
- (viii) The final decision as to the time structure and the right to rejoinder/sur-rejoinder will be that of the Bench Judges.

### Oral Submissions

- (ix) During the course of oral submissions the participants will not be permitted to make any audio/visual representation nor will they be allowed to use any other technical or mechanical device during their oral submissions.
- (x) If at any instance a submission is made with any material in violation of the above clause and if any pictures, sketches, photos, cartoons, caricatures, audio film, video film, projector-slide or a computer-generated image is submitted or presented to the court, the teams shall be disqualified from the competition forthwith.
- (xi) During the course of the Oral Submissions no speaker shall neither reveal his/her identity nor the identity of their University / College by any means whatsoever.
- (xii) Online Mooting Etiquettes: Only the respective team members, judges, bailiffs, and members of the organizing Moot Court Committee may be present in the online Courtroom. No faculty designate or observer of participating Colleges/Institutions/Universities shall be allowed to join the virtual mooting sessions. In the Virtual Court Rooms, all participants shall keep their videos turned on during the entire presentation session.
- (xiii) Internet Requirements: Participants are advised to use a stable internet connection (a 4G or a WiFi) during the virtual mooting sessions. They are also advised to use Laptops/Desktops and not Mobile Phones during oral pleadings. The organizers shall not be held responsible for any glitches arising out of poor network or other technical issues. However, the organizers shall provide a reasonable time (about 10 to 15 minutes) to come back to a virtual courtroom if a participant is logged out because of poor network connectivity.

### Oral Submissions

#### **Marking Criteria for the Arguments:**

- (i) Each Speaker will be marked on a total of 100 marks by each Bench Judge.
- (ii) The following will be the Marking Criteria and the Marks allocated to each Speaker by each Judge in the Round:

Sr. No.	Marking Criteria	Marks allocated
1.	Appreciation and Application of Facts.	10
2.	Identification and Articulation of Issues.	10
3.	Application of legal principles.	10
4.	Use of authorities and precedents	10
5.	Response to questions	10
6.	Presentation skills	10
7.	Clarity of thoughts and logical structure of arguments	10
8.	Poise and Demeanor	10
9.	Strategy	10
10.	Ingenuity	10
	Total:	100

(iii) The decision of the judges as to the Marks allocated to any team shall be final.



### Awards

#### Winning Team Award:

• The winning team will receive a trophy and a cash prize.

#### Runners-Up Award:

• The 1 st runners-up will get a trophy and a cash prize.

#### **Best Student Advocate:**

- The best student advocate will get a trophy and cash prize.
- The Second Best Student Advocate will get a trophy and cash prize.

#### **Best Memorial Award:**

• The best memorial awardee will get a trophy and cash prize.

A certificate for participation will be given to all the participants.



### Miscellaneous

- i. The organizers of this online Moot Court Competition may amend the Competition Rules. However, any such amendment shall be brought to the notice of the participating teams.
- **ii.** If there is any dispute in regard to the interpretations of the rules or with respect to any matter related to the competition which is not contemplated in the rules, the decision of the Organizers shall be final and binding



### Organizing Committee

#### **Convener**

Prof. NN Sharma
Dean, Faculty of Arts & Law

#### Organizing Secretary

Prof. Vijaylaxmi Sharma Director, School of Law

#### **Coordinator**

Dr. Sony Kulshrestha Associate Professor, Deptt. of Law

#### **Co-Coordinators**

Ms. Vini Kewaliya Mr. Prabhpreet Singh



### Contact

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### Thank You!!

