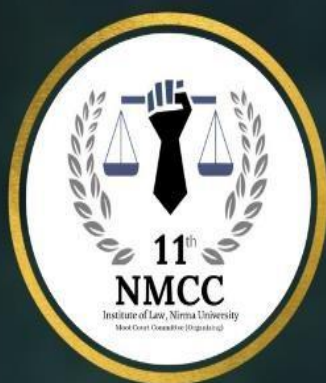


11th INSTITUTE OF LAW NIRMA UNIVERSITY NATIONAL MOOT COURT COMPETITION



22nd - 24th APRIL 2022

MOOT PROPOSITION

MOOT COURT COMMITTEE (ORGANIZING), ILNU

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MOOT PROPOSITION

1. **Devenlok** is a landlocked country having gained its independence in 1951. Motivated by the founding principles of India, it adopted the **Indian Constitution** and Indian laws as enacted from time to time as pari materia. At the time of independence, literacy rate of Devenlok was 3.7 per cent. However, with time, significant increase took place in the literacy of the country and today its literacy rate stands at 78 per cent with high proficiency of people having the knowledge and understanding of mobile technology.
2. Irrespective of low literacy rate, general populous of Devenlok are always known to have a far greater financial understanding. Trading and business community had significant presence in the society and local unorganised trading centres were common wherein merchant trading of commodities used to take place.
3. In 1957, the Government of Devenlok established the first stock exchange i.e., **Devenlok Stock Exchange** for economic development of the country. Amongst other things, a stock exchange channelizes the savings of the people and making them available for investment purposes. Pursuant to establishment of Devenlok Stock Exchange, three major private stock broking entities i.e., **Narayan Broking, Tiwari Financials Pvt Ltd and Sarkar Stocks Partners** were also formed. The role of a stock broker is to evaluate the performance of shares and securities on the stock market, and provide recommendations to its clients and purchase/sale shares on behalf of its clients for brokerage charges. The detailed responsibilities of a stock broker are as below:
 - a. Providing accurate investment advice to clients.
 - b. Accurately evaluating financial reports.
 - c. Managing clients' investment portfolios.
 - d. Providing regular updates to clients regarding the status of their investment portfolios.
 - e. Informing clients of new investment opportunities within the stock market.
 - f. Analyze the current and new data to amplify customer understanding as well as an upper hand.

4. By 1975, Narayan Broking, Tiwari Financials Pvt Ltd and Sarkar Stocks Partners enjoyed 98 per cent collective market share in the industry. However, with the efflux of time, the collective market share declined to 73 per cent on account of joining of a few more individual and institutional stock brokers.
5. In 1991, Devenlok implemented a liberalisation policy, and more and more people started to look at stock market with immense possibility and opportunity. Considering the immense credibility of Narayan Broking, Tiwari Financials Pvt Ltd and Sarkar Stocks Partners, people continued to associate with them and as such they were able to hold a collective market share of 78 per cent.
6. Computer technology has been the primary force of development of **Yashgarh**, a neighbouring country of Devenlok. With the growth of internet and on the backs of its computer scientists, several companies were set up in Yashgarh catering to the industry of Indexed Data Aggregation. These companies are known for collecting huge amount of data available from online and offline sources to further sell it to various users by sorting and placing it through their search engine indexing method. One of their primary customers is the stock brokers including Narayan Broking, Tiwari Financials Pvt Ltd and Sarkar Stocks Partners, who use such data to provide efficient services to their clients.
7. In 2010, countering the advancement of reach of data aggregators located in Yashgarh, **Patel Data** was set up in another country, i.e., Swarooppur¹. With its unique Internet of Things (“IoT”), data sets were collected and analysed by Patel Data along with indexing of publicly available data. Apart from Patel Data and companies situated in Yashgarh, only 2 -3 more small firms are globally present in the market of Indexed Data Aggregation.
8. With the arrival of new online technology and ease of market trading, more individuals started to trade directly into the market, because of which the reliance on Narayan Broking, Tiwari Financials Pvt Ltd and Sarkar Stocks Partners started decreasing. As a result, seizing the opportunity, all three of them embraced mobile technology and floated their online App based trading facility by 2011, whereby the customers could

¹ The laws of Swarooppur are *mutatis mutandis* with the laws of India.

directly trade through their online App by paying brokerage charges. All three of them, used to purchase indexed data from companies located in Yashgarh and with their long expertise in financial markets and their individually developed algorithms, the purchased data were analysed for instant market predictions to make it available for their users upon payment of subscription fees.

9. **Aditya Singh Rajput** is a pioneer of free market economy and believes in open internet which is accessible to all. In 2017, Aditya Singh Rajput, became 40 per cent shareholder with voting rights in Patel Data and with his arrival, Patel Data also started to deal in financial data. Simultaneously, Aditya Singh Rajput established **Rish Investment Strategies** in Devenlok and floated its online app for sharing financial news, stock predictions and investment consultancy developed through indexed data provided by **Patel Data**. Rish Investment Strategies were providing free access to its entire catalogue of financial news, stock predictions and investment consultancy on its application.
10. By 2021, userbase of Rish Investment Strategies were significantly increased with around every 1 of the 4 online traders using its services. However, considering Rish Investment Strategies was providing its services for free, a very low income was being earned by it, arising out of advertisements and other mediums. Despite the growth of consultancy services provided by Rish Investment Strategies, online apps of Narayan Broking, Tiwari Financials Pvt Ltd and Sarkar Stocks Partners were still preferred for trading stocks.
11. In February 2022, due to unavoidable circumstances, Yashgarh entered into a war with its another neighbouring country. As a result, on 24 February 2022, international economic sanctions by several countries including Devenlok were imposed upon Yashgarh and companies situated therein. As such, any trade, including sale and purchase of goods and services, from and to, Yashgarh was banned until the sanctions are lifted. It created a huge hue and cry across the world and diplomatic talks were initiated with the objective of easing the situation.
12. Around the same time, Rish Investment Strategies started a new pricing mechanism for its services, though in comparison, its rates were still cheaper to the monthly

subscription of the apps of Narayan Broking, Tiwari Financials Pvt Ltd and Sarkar Stocks Partners. Further, on 22 February 2022, Aditya Singh Rajput announced that Rish Investment Strategies would soon be floating service of trading shares through its online app platforms.

13. Soon thereafter, Aditya Singh Rajput went on his annual vacations, giving his proxy voting right through executing MGT-11 form to another shareholder of Patel Data i.e., Abhay Singh² for the upcoming shareholders meeting on 28 February 2022, agenda of which was already in circulation to the concerned stakeholders.
14. With the sanctions being imposed on trade from Yashgarh, Narayan Broking, Tiwari Financials Pvt Ltd and Sarkar Stocks Partners approached Patel Data on 26 February 2022, to purchase its data for running their stock prediction feature however upon discussing the proposal with its shareholders on 28 February 2022, Patel Data refused to sell its data to Narayan Broking, Tiwari Financials Pvt Ltd and Sarkar Stocks Partners.³
15. Alleging restraint market practice, by denying access to essential facility, Narayan Broking, Tiwari Financials Pvt Ltd and Sarkar Stocks Partners filed a complaint under Section 19 of the Competition Act, 2002 (“Act”) against Patel Data, Rish Investment Strategies and Aditya Singh Rajput. It was alleged by the said three Informants that Patel Data violated Section 3(4)(d) and Section 4 of the Act through its unfair and discriminatory practice by denying the market access to them on account of not providing the indexed data which is required for the said three stock brokers to provide stock prediction and investment consultancy to their customers. Further, it was alleged that Rish Investment Strategies also abused its dominant position in the market of stock prediction and investment consultancy by providing the same at cheaper prices.
16. Competition Commission of Devenlok, upon being satisfied with the complaint forming a prima facie case against Patel Data, Rish Investment Strategies and Aditya

² Abhay Singh holds 11 percent shares along with voting rights in Patel Data.

³ During the shareholders meeting on 28 February 2022, the proposal of Narayan Broking, Tiwari Financials Pvt Ltd and Sarkar Stocks Partners was presented in addition to the agenda floated earlier. The said proposal was rejected by 75% shareholders including Abhay Singh voting for himself and Aditya Singh Rajput.

Singh Rajput under Section 3(4), Section 4 and Section 48 of the Act, directed its Director General to conduct investigation.

17. Thereafter, Director General directed Aditya Singh Rajput to produce a copy of correspondences with Abhay Singh from 01 February 2022 to 28 February 2022. However, Aditya Singh Rajput failed to furnish the copies of correspondences and as such Competition Commission of Devenlok filed a criminal complaint requesting the Chief Metropolitan Magistrate of Daspur to initiate proceedings against Aditya Singh Rajput under Section 42(3) of the Act. Subsequently, Non Bailable Warrants were issued against Aditya Singh Rajput by Chief Metropolitan Magistrate of Daspur.
18. Against the order passed by the Chief Metropolitan Magistrate of Daspur, Aditya Singh Rajput approached the High Court of Daspur under Section 482 of the Code of Criminal Procedure, 1973 requesting for quashing of the criminal complaint filed by the Competition Commission of Devenlok. However, the High Court of Daspur rejected the petition filed by Aditya Singh Rajput.
19. Simultaneously, Competition Commission of Devenlok passed a final order under Section 27 and 48 of the Act holding Patel Data, Rish Investment Strategies and Aditya Singh Rajput liable under the Act for the alleged offences. Competition Commission of Devenlok found Patel Data as dominant in the market of Indexed Data Aggregation and considered it as the upstream market. Further it considered market of stock prediction and investment consultancy as downstream market, rendering Index Data as the essential commodity for the downstream market and found Rish Investment Strategies a dominant player in the downstream market.
20. Against the said order of Competition Commission of Devenlok, Patel Data, Rish Investment Strategies and Aditya Singh Rajput filed appeals under Section 53B before the National Company Law Appellate Tribunal (“NCLAT”) challenging the delineation of relevant market, dominance of parties in the market and alleged abuse and role of parties. It was further argued by Patel Data and Rish Investment Strategies that dominance in a market needs to be assessed for a significant period of time, and temporary dominance cannot be considered under the Act. The NCLAT clubbed the appeals and after hearing the parties vide its judgment/order dated 10 April 2022 upheld the final order passed by the Competition Commission of Devenlok.

21. Aggrieved by the judgment/order passed by the NCLAT, appeals were filed by Patel Data, Rish Investment Strategies and Aditya Singh Rajput before the Hon'ble Supreme Court under Section 53-T of the Act.
22. Simultaneously, Aditya Singh Rajput also filed a special leave petition (SLP) before the Hon'ble Supreme Court against the order passed by the High Court of Daspur rejecting his petition for quashing of criminal complaint filed by the Competition Commission of Devenlok.
23. The Supreme Court admitted the appeals and SLP and clubbed them for final hearing on the following issues:
- i. Whether Patel Data has indulged in anti-competitive conduct by not providing the essential indexed data?
 - ii. Whether the conduct by Rish Investment Strategies can be considered anti-competitive in light of the Competition Act, 2002?
 - iii. Whether Aditya Singh Rajput has contravened Section 48 of the Act?
 - iv. Whether the Competition Commission of Devenlok has the power to file a criminal complaint under Section 42(3) of the Act against Aditya Singh Rajput for the offences not covered under Section 42(2) of the Act?

24. **Nota Bene -**

Participants are free to raise any further issues as they prefer, in light of the aforesaid facts, however they are encouraged to add as many submissions in the aforesaid issues in detail using the entirety of aforesaid facts and also the available literature on the issue. However, the parties are not allowed to raise any separate issue other than what is provided in the Moot Proposition. Participants stand advised to devise a “litigation strategy”. The issues can be argued in alternative/without prejudice, be divided into sub-issues, and can be added to or amended upon. It is permissible to concede issue(s) at the time of oral arguments subject, however, to appropriate explanation readily available on the query of the bench. However, the written submissions must address all the issues. The moot problem is the way it is, with full application of the principle of “*as is, there is...whatever where is*”.

25. **Disclaimer-**

The facts in this Proposition are fictional. The parties’ names, their businesses, and their trademarks and registrations are not intended, and should not be understood, to refer to or reference any individual (living or dead) or any institution, extant or defunct. Any resemblance to any real person, organization, product or situation is purely coincidental. Conclusions of laws or facts within the proposition do not represent the opinion of the drafters or the Institute of Law, Nirma University (‘ILNU’) or any of its members. No inference should be drawn about any actual person, organization, product or situation on the basis of any facts or conclusions of law in this proposition. The proposition was drafted without knowledge of any person’s claims with respect to any trademarks or other claims of rights that are the same as or similar to those mentioned in the proposition, and the drafters and/or ILNU takes no position with respect to any person’s ownership of, or rights to, such trademarks or other claims of rights.



***This moot proposition has been jointly drafted by **Mr. Kamal Sharma** (Advocate) and **Mr. Ujjawal Satsangi** (Advocate). Both are alumnus of batch of 2016 of National Law University Odisha.

Mr. Kamal Sharma currently works at Corporate Legal Cell of UltraTech Cement Ltd. at Mumbai and he has a wide experience of dealing some of the important Competition Law matters.

Mr. Ujjawal Satsangi is a practising advocate and proprietor of Chambers of Ujjawal Satsangi. He regularly appears before Allahabad High Court and other tribunals located in the State of Uttar Pradesh.

(Any attempt by participants to connect with the drafters of the moot proposition will result in disqualification from this competition)