सत्यमेव जयते

Ministry of Environment
Forests and Climate Change

NATIONAL BIODIVERSITY AUTHORITY

PROCEEDING OF THE 48th AUTHORITY MEETING

29th October 2018

Venue

Conference Hall,
National Biodiversity Authority,
Chennai

Proceedings of the 48th Authority Meeting of the National Biodiversity Authority held on 29-10-2018.

The forty eighth Authority meeting of the National Biodiversity Authority (NBA) was held on 29th October 2018 at the Conference Hall, National Biodiversity Authority, Chennai and was chaired by Dr. B. Meenakumari, Chairperson, NBA. The list of participants is placed at **Annex-I.**

At the outset, the Chairperson, NBA extended a warm welcome to the members and briefed about the activities of NBA from the last authority meeting which included participation in national and international workshops/ conferences. It was informed that NBA also during the period celebrated 15th Foundation day and Swatch Bharath initiatives on 1st and 2nd October 2018 respectively.

The Secretary, NBA then apprised about the status of ABS applications received, trends in receipt of application and their disposals.

Thereafter, the agenda items were considered as under:

48.01: Confirmation of Proceedings of the 47th Authority meeting

The draft proceedings of the 47th Authority meeting of the National Biodiversity Authority held on 26th September, 2018 at Chennai was circulated to the Members vide email dated 12th October, 2018 for seeking their comments. In response, Prof. Umesh Rai and Dr. Darshan Shankar have informed no comments on the draft

Decision: The members confirmed the proceedings of the 47th Authority Meeting.

Action: Secretary, NBA

48.02 Action taken report of the 47th Authority meeting

Action on most of the items has been taken and action on the remaining items is in progress.

Decision: Members noted the action taken.

Action: Secretary, NBA

48.03: Proceedings of the 50th Meeting of Expert Committee on Access and Benefit Sharing on ABS held on 10th & 11th September 2018 at NBA, Chennai.

The 50th meeting of the Expert Committee on Access and Benefit Sharing (EC on ABS) was held on 10th & 11th September 2018 at the National Biodiversity Authority, Chennai. A total of 61 applications were placed before the EC for examination.

To mark the occasion of 50th meeting of the EC on ABS on 11th Sep 2018, the EC Chairman along with many experts like Dr.R.S.Rana, Shri Ramesh G.Kalaghatgi, Former EC Chairmen and Dr.T.P Rajendran, Co-chair Dr K Venkataraman Former Secretary, NBA participated in the meeting and shared their experiences with the NBA and gave valuable inputs to strengthen the implementation process of the BD Act.

Decision: The Authority approved the recommendations of the EC on ABS.

Action: Secretary, NBA

48.04 Proceedings of the 51st Meeting of Expert Committee on Access and Benefit Sharing on ABS held on 15th & 16th October, 2018 at NBA, Chennai

The 51st meeting of the Expert Committee on Access and Benefit Sharing (EC on ABS) was held on 15th & 16th October, 2018 at the National Biodiversity Authority, Chennai. A total of 93 applications were placed before the EC for examination. The representatives of three (3) applicants appeared before the EC and clarified their position on their applications.

It was decided in the EC that, in the light of the Office Memorandum dated 10th September 2018 from the MOEF&CC, while examining ABS applications during the 100 days' time of the OM, the applications will be considered and, suitable recommendation made on a case by case basis.

The EC has recommended 26 cases to be considered under the O.M. dated 10th September 2018. While considering the recommendation of EC, members suggested that the benefit sharing in all such cases may be kept at 1%, 5% and 5% on the commercial utilization of the process/ product/ innovation; on the fee received in any form including the licensee/assignee; of the royalty received annually from the assignee/licensee respectively. It was also discussed with regards to patent applications pertaining to Section 3(2) entities where necessary approvals under section 3(1) has not been obtained, the members suggested that the applicants shall have to get approval under Section 3(1) before considering these Form III applications under Section 6.

Decision: 1. The Authority approved the recommendations of the EC on ABS.

2. The benefit sharing of the 26 cases (Annexure 2) shall be 1%, 5% and 5% on the commercial utilization of the process/ product/ innovation; on the fee received in any form including the licensee/assignee; of the royalty received annually from the assignee/licensee respectively in all such cases where the approval is granted under the light of O.M. dated 10th September 2018.

3. The applicants who are to apply in Form I may be intimated.

Action: Secretary, NBA

48.05 To consider cases where the patent has been granted after the approval of the Authority but before the agreement was signed by NBA

Rule 18(5) of the BD Act 2002 requires that prior approval of NBA for any Intellectual Property Right for an invention based on any research or information on a biological resource obtained from India shall be in the form of a written agreement. There are some cases where Authority had approved the Form III but the signing of the agreements was delayed due to discussions between the applicant and NBA. In the meantime, patent applications were granted in foreign jurisdictions/ countries

As per the decision taken in the 40th Authority meeting (Agenda item No. 40.03 & 40.04), it had directed NBA secretariat to sign the agreement even after the patents were granted after considering CSIR application (Application No. 133-A30) as a special case. Details of the 17 cases of applications of CSIR were placed before the Authority for consideration. Similar decision is taken for all

other such cases where the patents were granted in foreign jurisdictions/ countries.

It was also brought to the notice of the members that the Authority has considered 30 cases pertaining to CSIR where in principle, applicants has been granted but patents have been granted without approval of NBA i.e. signing of agreements. The members agreed that in case where patents are granted after in principle approval by the Authority, the Secretariat may convey the approval of the Authority to the applicant by signing the agreement.

Decision: The Authority decided that the Secretariat may sign the agreement in all such cases where the patents are granted after the in principle approval by the Authority.

48.06: Dealing with O.M. dated 20-09-3028 issued by MOEF&CC

The above OM was placed in the 47th Authority meeting as Agenda item no. 47.10 and the Authority has asked to constitute a committee to scrutinize and categorize the ABS Applications. A committee of experts was constituted vide office order No.. NBA/Law Gen/28/51/18-19/2422 dated 10-10-2018. The Committee met on two occasions (3 days) and examined 112 applications pertaining to 45 applicants and the recommendations of the committee was placed before the Authority for consideration.

. The 45 applicants pertaining to 112 applications were invited for hearing in the Authority, of which 18 presented themselves (Annexure 2) and nine (9) applicants have sought for a new date to present their case. After considering,

recommendations of the committee of experts constituted by NBA to scrutinize these cases for scientific evidence, Member discussed about the benefit sharing in cases were patents have been granted elsewhere without the prior approval of NBA. Members opined that higher benefit sharing percentage can be fixed. Secretary NBA explained that the EC on ABS follow a sectoral approval and whenever traditional knowledge is involved, it usually doubles the benefit sharing percentage. After discussion, the members agreed that the benefit sharing may be kept at 1%, 5% and 5% on the commercial utilization of the process/ product/ innovation; on the fee received in any form including the licensee/assignee; of the royalty received annually from the assignee/licensee respectively.

Members also discussed about the compliance of the provisions of the BD Act in future by each of the applicant whose applications have been considered under the O.M. dated 10th September, 2018. The Authority also directed the applicants to spread awareness of the regulatory requirement under the BD Act and it shall be institutionalised to ensure the same and an undertaking should be obtained from the applicants that the provisions of the BD Act shall be complied in future. Dr. Darshan Shankar suggested that NBA can develop a logo for NBA compliance which the applicants can display in their respective organisation regarding the compliance of the BD Act.

There were applications under Form III for 15 IPR by 3(2) entities who have failed to get approval under Section 3(1) to access the bio resources from India for doing research. Members suggested that the applicants in all such

cases shall seek the approval of NBA under Section 3(1) and inform them to submit application under Section 3(1).

All the applicants were advised to take proactive steps to educate their staff, partners and collaborators about the provisions of the Act. It was decided that in all the cases, the applicants shall organize awareness programs with regards to with compliance to BD Act and submit a report to NBA.

In case Form I application where approval is sought to do research of bio resource obtained from India by industries, an upfront payment as per the approved guidelines may be included while communicating the approval.

In case of Bioseed Research India Private Limited (Application No. 621-Form IV) procured five (5) Kg of rice in 2012 from Acharya NG Ranga Agricultural University to transfer the rice to an organization in Netherlands. But for certain reasons the transfer did not happen and the rice was discarded. The Authority asked the applicant to sign an Affidavit with NBA that the rice material procured was not utilized for any purpose and the case can be closed.

At their request, M/s, Bharat Biotech International Ltd (Application Nos. 1649, 918, 938, 1030 and 1446-Form III) was deferred to the next Authority meeting for unavailability of information on the applications. Livie Bio Pesticides Ltd (Application No. 1440-Form III) and Tata Chemicals Pvt. Ltd (Application No. 620, 618, 619& 617- Form-I) were asked to provide the status of commercialization.

M/s Dabur India Limited (Application Nos. 1472-Form-I) accessed 142 bio resources in 2016-17 that goes into 350 products. The representative of Dabur India Limited requested that the benefit sharing may be on the purchase price of the bio resource than on the ex-gross factory price. Dr. Dinesh Misra opined that the benefit sharing should be on the end product as the mere presence of the bio resource adds value to the final product. Dr. Atmanand was of the opinion that benefit sharing should be proportionate to the input cost of the bio resources. Dr. Darshan Shankar observed that these are AYUSH based industries which needs support and encouragement. These products have multi-level composition and usually include a significant proportion of inputs which are of non-bio resource origin. Secretary, NBA pointed out that benefit sharing of commercial utilization has two options as per the ABS guidelines while granting approval; it has to be mutually agreed. In the instant case, since large quantity of bio resources are accessed and conservation of these bio resources is a matter of utmost priority to ensure sustainable supply. He pointed out that so far NBA has not considered any benefit sharing on the purchase price and was apprehensive whether in other cases of commercial utilization such as access to microbial cultures the benefit sharing on purchase price would become insignificant.

Chairperson, NBA is of the opinion that the purpose of legislation is to encourage more users of the bio resources to comply with the provisions of the BD Act. After detailed discussion, it was decided in the instant case to charge benefit sharing on the purchase price of the bio resource.

Decision: 1. The Authority approved the Form III applications with the Benefit sharing kept at kept at 1%, 5% and 5% on the commercial utilization of the process/ product/ innovation; on the fee received in any form including the licensee/assignee; of the royalty received annually from the assignee/licensee respectively given in Annexure 2.

2. After detailed discussion, it was decided Dabur India Limited in the instant case (Application No. 1472-Form I) may be charged of benefit sharing on the purchase price of the bio resource for the year 2016-17 only. The basis of the benefit sharing will be reviewed for subsequent applications

3. The applicants shall furnish an undertaking that provisions of BD Act shall be compiled with in the future.

4. The clauses in the approvals (agreements) may be modified appropriately by the NBA Secretariat.

5. It was also decided that NBA may go ahead with the implementation of the decision without waiting for the finalization of the proceedings.

Action: Secretary, NBA

48.07: Items for information

1. Designated Repositories:

NBA constituted a Core Expert Group (CEG) to develop guidelines for eligibility conditions/parameters for identification of repositories under section 39 of the BD Act in accordance with the decision taken in the 42nd Authority meeting

of NBA. The CEG developed a draft Criteria for designation of national repositories and recommended the same to the Authority for consideration. The Authority in its 46th meeting considered the recommendations and directed NBA to write to the notified repositories and seek details of deposits held by them. NBA vide letter dated 05.10.2018 communicated the Criteria for designation of national repositories such as details of specimens held by them which were deposited and focal point for corresponding with NBA as required in the guidance issued in this regard.

2. Seeking Proposal from Andhra Pradesh Biodiversity Board:

The PCCF, Andhra Pradesh Forest Department vide letter dated 11.11.2016 submitted a revised proposal seeking financial assistance with a tune of Rs.100.55 Crores (i) For infrastructure investment, (ii) For annual infrastructure maintenance & manpower and (iii) For annual regeneration and conservation measures. They have requested for release of 75% of the total amount out of the benefit sharing amount realized on the access of Red Sanders wood, while the balance of 25% fund will be borne by the AP Government. As decided in the 40th Authority meeting NBA released a sum of Rupees three Crores as first installment to AP Forest Department for afforestation and conservation of Red Sanders.

Subsequent to the decision of the 40th Authority meeting of NBA, NBA vide letter dated 28.02.2017 released an amount of Rupees Three Crores to the Andhra Pradesh State Biodiversity Board to disburse the same to the Andhra Pradesh Forest Department, as a first instalment, for the purpose of afforestation,

regeneration and protection of Red Sanders forest areas and conservation of Red Sanders.

NBA vide letter dated 01.10.2018 requested the AP SBB to submit a proposal to NBA for seeking funds for carrying out the activities suggested in the report by the BMC / VSS/ EDC/ JFMCs/FPCs concerned of the 20% of the BS amount accrued as access of Red Sanders, as recommended by the Expert Committee. It was also requested that the SBB may advise the Andhra Pradesh forest department to submit a proposal to NBA through SBB for releasing the second installment of BS funds.

2. **Plant quarantine and Animal quarantine** – Compliance with provisions of the BD Act while exporting the biological resources:

In the 44th Authority meeting, the members pointed out that some of the firms are selling the biological resources through online portal for which compliance of the BD Act has to be ensured and the same needs to be monitored. Members directed the NBA to apprise the Plant Quarantine department and Animal quarantine department, about the provisions of the BD Act and its requirement for ensuring compliance of BD Act by the Parties, while exporting the biological resources. Accordingly, NBA vide letter dated 04.09.2018 & 11.10.2018 requested the Joint Secretary, Department of Animal Husbandry Dairying and Fisheries & Plant Protection Adviser, Directorate of Plant Protection, Quarantine & Storage respectively to involve the Animal Quarantine and Certification Service to ensure that export of the biological resources from

India is taking place with due approval of the NBA/ SBB as per the provisions of BD Act.

4. Awareness creation on the implementation of the BD Act

NBA is actively undertaking several initiatives for creating awareness amongst various stakeholders about the provisions of the Biological Diversity Act, 2002, Biological Diversity Rules, 2004 and Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014, through various initiatives, including advertisement in newspapers, electronic media such as radio programs / media workshops/ organizing meetings with different stakeholders, and sensitizing scientists, researchers, and academicians.

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ANNEXURE-1

List of Participants

Official Members

1. **Dr (Mrs) B.Meenakumari**
   Chairperson,
   National Biodiversity Authority, Chennai

2. Dr Sujata Arora
Adviser / Scientist 'G'
Ministry of Environment, Forest and Climate Change Government of India
Room No. V 235, Vayu Block, Second Floor
Indira Paryavaran Bhawan Jor Bagh Road
New Delhi-110 003

3. Shri. T. Rabikumar, IFS
Secretary,National Biodiversity Authority,
Chennai –600 113

Non-Official Members

4. Dr. Yogesh Shouche
Senior Microbiologist,
National Centre for Cell Science
Department of Biotechnology Lab,
University of Pune Campus,
University Road, Ganeshkhind,
Pune, Maharashtra – 411 007

5. Dr P C Bhattacharjee, Retd.,
Professor & Head,
Department of Zoology,
A/3 Asiyana Housing Complex
Maligon,
Guwahati – 781011, Assam

6. Shri Darshan Shankar,
Chancellor,
Trans Disciplinary University, C/o
Foundation for Revitalization of Local
Health Traditions (FRLHT),
74/2, Jarakabande Kaval, Post Attur
via Yelahanka,
Bangalore - 560 064

7. Dr. M A Atmanand,
Director,
National Institute of Ocean
Technology,
Ministry of Earth Sciences,
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8 Dr. Dinesh Misra,
No. 65, Sector 8,
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Gujarat-382008

ANNEXURE-2

List of Applicants attended the Hearing

Sl No.	Applicant	Names	Application Nos	Numbers	Remarks
1	M/s. Sri Biotech laboratories ; Valagro Biosciences Ltd.	Fornara Luca; Rajesh Mandarapo	1564 & 1566 (*Form- I)*	2	Approved
2	M/s. Kopper Sustainable Solution Ltd.,	G. Babulreddy	1441 (*Form – I*)	1	Approved with upfront payment
3	M/s. Laila Impex	P.B. Gangadhar	1632, 1490 & 1018 *(Form – III)*	3	Approved
4	M/s.Pioneer overseas Corporation	Malathi Lakshmikumar; T. Srinivasa	576 (*Form- IV)* & 575 (Form-I)	2	**Recommendation to apply through Form I**
5	IGCEB	Dr.Syed Shams Yazdani (IGCEB)	1575 *(Form – III)*	1	**Recommendation to apply through Form I**
6	M/s. Dow Agro sciences	Malathi Lakshmikumar; B.Suresh Babu	1049, 1043, 1042, 995, 997, 999, 1001 &1041 (*Form-I)*	8	Approved
7	M/s. Gangagen Biotechnologies Pvt. Ltd	Aradhana Vipra	1887 (*Form-I)*	1	Approved
8	M/s Bharat Biotech International Ltd	M. Divya	1458, 1030, 1446, 930 & 918 (*Form – III)*	5	Deferred
9	M/s Livie Bio Pesticides Ltd	Arun Kumar (KRS Partners)	1440 *(Form – III)*	1	**Recommendation to apply through Form I**
10	M/s. Anthem Bioscience Pvt., Ltd.,	Dr. Sangesh; Dr. Satish	943 (*Form – I)*	1	-
11	M/s. Dabur India Limited	Dr. S. Badrinarayan; A.K. Sharma	1627, 1616, 1612, 1611, 1610, 1609, 1608, 1607*(Form-III)*	8	**Recommendation to apply through Form I**
12	M/s. Syngenta India Limited	Kapil; Surya Rao Ragali	1064 & 1176 *(Form – I)*	2	Approved
13	Dr.Suresh Patankar Balakrishna		1019 *(Form-III)*	1	Approved

14	CSIR	Dr. Shikha Rastogi; Dr. Ajayta Agarwal	2023, 2085,2029, 1958, 1954, 1952, 1947, 1945, 1934, 1933, 1931, 1928, 1910, 1908, 1900, 1898, 1895, 1894, 1803, 1760, 1758, 1730, 1686, 1685, 1683, 1600, 1597, 1595, 1594, 1175 *(Form- III)*	30	Approved
15	M/s. Tata Chemicals Pvt Ltd	Neeti Wilson; Sheetal Talwar; Ramesh Verma	620, 618, 619 & 617 *(Form-I)*	4	Approved
16	ICMR-NIRT	Dr. Srikanth Prasad Tripathy; Dr. H.K. Hemanth Kumar	1100 *(Form-III)*	1	Approved
17	M/s. Bioseed Research India Private Limited	Rajani Jaiswal	621 *(Form- IV)*	1	Approved
18	Indian Institute of Science	Brinda Varma	858 *(Form - III)*	1	Approved
	Total			**73**	