

By Speed Post / Email

6 March 2017

To,
Advocate R. Balasubramanian,
A-6, Jangpura Extension
New Delhi – 110014
Mobile – 9968093041, 7530937603

Sub.: Response to your Reply dated 21st February 2017 with reference to our Notices to Republic of India under Agreement Between The Government Of The Republic Of India And The Government Of The United Arab Emirates (UAE) On The Promotion And Protection Of Investments (India-UAE BIPA)

Dear Sir,

We acknowledge the receipt of your above mentioned Reply dated 21st February 2017 (hereinafter referred to as “**your Reply**”) sent by you on behalf of your client, Department of Economic Affairs, Government of India / Ministry of Urban Development, Government of India (hereinafter referred to as “**your Client**”).

At the outset we shall like to clarify that the Notices referred to by you in your Reply were sent by us on behalf of the following Claimants: Strategic Infrasol Foodstuff LLC and The Joint Venture of Thakur Family Trust, UAE with Ace Hospitality Management DMCC, UAE (henceforth referred to either as “**the Claimants**” or as “**our Clients**”).

Our response, on behalf of our Clients, to your Reply is as follows:

At the outset we shall like to state that your Reply has been received well after expiry of the time period provided for responding to Notice of Arbitration under UNCITRAL Rules. Hence, your Reply illustrates the scant respect that Republic of India has shown for international obligations under bilateral treaty provisions.

We shall like to emphasize that we have not sent you any notice or correspondence on behalf of M/s Thakur Family Trust (TFT) UAE. It is necessary to correct your erroneous impression (as conveyed in the Subject of your Reply) that the Notices sent by us were on behalf of an Indian / UAE entity named by you. Kindly note that the Notices were sent by us on behalf of the Claimants mentioned above.

We thank you for acknowledging the various Notices sent by us to Republic of India vide the Reference list provided in your Reply. However, for the sake of completeness, we shall like to put on record the following Notice that was also issued by us on behalf of the Claimants and which is not included in the Reference list provided by you:

- Notice dated 8th December 2015 regarding application of UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration

We hope that you are in possession of the above notice dated 8th December 2015, a copy of which was also sent to UNCITRAL Secretariat (Transparency Registry), Vienna. In case a copy of the said Notice is not available with you, we shall be glad to provide a copy to you.

We have noted the processes undertaken at the Government of India regarding our notices. We have also noted that *"the Government of India does not consider it necessary or appropriate to give a paragraph wise reply to the notices"*. We shall like to state that it is not legally required for recipient of Arbitration Notice to give a paragraph-wise reply to the Notice of Arbitration. The stage of filing replies clearly comes when Arbitration Panel has been constituted and the matters raised by the Notice of Arbitration are under adjudication of the Arbitration Panel. However, your Client is required to comply with Article 4(1) of UNCITRAL Rules. We regret to note that your Reply fails to satisfy the requirements of Article 4(1) of UNCITRAL Rules and is hence incomplete and defective.

An impression has been conveyed by your Reply that the Government of India has the right to decide whether a matter is fit for arbitration under India-UAE BIPA. This is absolutely wrong. Government of India is not an adjudicating authority for an investment dispute. It would have been in compliance with Article 4(2)(a) of UNCITRAL Rules if you had only taken a plea about lack of jurisdiction. However, your reply seems to go beyond taking a plea and seems to be conveying a decision, which we most vehemently oppose.

Inter-ministerial Group constituted by Republic of India has overstepped its authority and applied its mind to a matter when all that it should have done is to take steps for appointment of arbitrator and compliance of obligations under India-UAE BIPA read with UNCITRAL Rules.

By deciding or adjudicating on matters beyond its authority, the Inter-ministerial Group and hence the Republic of India has denied “fair and equitable treatment” as promised to investors of UAE under Article 5(1) of India-UAE BIPA and has, hence, once again committed a breach of India-UAE BIPA.

The reasons given by you in your Reply are not worthy of any response from us since the same have been given by you / your Client without any authority of international and treaty law. Nevertheless, in the interest of clarity and with the spirit of better understanding we provide our para-wise responses to the reasons. The responses provided are without prejudice to our Clients’ rights in the matter.

Ref. (i) It is wrong for you to conclude that the dispute arises from a private agreement. The lands on which the projects are supposed to be coming up are government lands. Dispute has arisen on account of Republic of India recognizing the rights of X on the basis of forged documents while denying the rightful claims of the Claimants. Our Clients’ claims on Republic of India arise out of actions of organs of Republic of India and are hence covered by India-UAE BIPA.

Ref. (ii) The allegation of “treaty shopping” is ridiculous, baseless and uncalled for. You have referred to some individual named Mr. Nitesh J Thakur and some Indian entity named Thakur Family Trust. These references are baseless, irrelevant and are clearly meant to subvert the legal processes under India-UAE BIPA. We shall like to clarify that we do not represent and have no authority to write / speak on behalf of either Mr. Nitesh J Thakur or Thakur Family Trust.

Ref. (iii) The issue mentioned is clearly one that will need to be adjudicated upon by the Arbitration Panel. However, for the purpose of record, we shall like to state that the dispute is an ongoing one and is not one that relates to some “*Measure applied to an investment before the entry into force of*” India-UAE BIPA. Your contention appears to stem out of an erroneous understanding of the nature of the dispute as stated in (i).

- Ref. (iv)** Once again, the issue mentioned is clearly one that will need to be adjudicated upon by the Arbitration Panel. Your interpretation of Article 1(8) of India-UAE BIPA is denied since it is against the well-accepted principles of interpretation and is without any legal basis.
- Ref. (v)** Once again, the issue mentioned is clearly one that will need to be adjudicated upon by the Arbitration Panel. It is important to restate that we have denied that the issues being pressed arise from private actions. As stated earlier, the issues arise from executive actions of Republic of India.
- Ref. (vi)** It is denied that the matter is pending in any court in India. The Claimants have not approached any court or authority in India including the Honourable Bombay High Court in relation to the matter described in the Notices. The Claimants are also not defending any matter before any court or authority in India including the Honourable Bombay High Court in relation to the matter described in the Notices.
- Ref. (vii)** The Claimants are not under the jurisdiction of Indian tax authorities and hence there can be no investigations pending against the Claimants under Indian Income Tax laws. The Notices issued by us do not seek to challenge any tax investigations against the Claimants since there are no such pending investigations to the best of knowledge of the Claimants.
- Ref. (viii)** Whether a case has been made out or not for invoking of India-UAE BIPA is a matter to be decided by the Arbitration Panel and not by the Republic of India. It may be worthwhile to mention here that in the famous case, White Industries Australia Limited versus Republic of India, it was argued by the Republic of India that the matter did not fall under the relevant treaty provisions; and the Arbitration Panel had rejected the pleadings of Republic of India and considered the case to be covered under the relevant treaty.

Your declaration that, *“there is no need to consider the aforementioned Notices on merits. The disputes mentioned in the notices cannot be addressed under the BIPA”*, is erroneous and is based on wrong understanding of international law, treaty

provisions and facts of the matter. Your declaration amounts to further denial of “*fair and equitable treatment*” to the Claimants.

We once again confirm and reiterate our Clients’ commitment to pursue the matter through the arbitration procedure provided under Article 10(5) of India-UAE BIPA.

We hereby serve notice on your Clients through you to include the wrongs relating to denial of “*fair and equitable treatment*” as mentioned hereinabove in the disputes already stated in our Notices served in the past.

Our Clients have noted that your Client has not appointed an arbitrator as required under India-UAE BIPA read with the UNCITRAL Rules. We once again serve notice through you on Republic of India to appoint an arbitrator as required in response to our Notices. In case your Client does not appoint an arbitrator within **sixty (60) days** of receipt of this Response, we shall presume that your Client is not interested in appointing an arbitrator and we shall proceed to take further steps as provided under UNCITRAL Rules for appointment of arbitrators.

We hereby serve notice on you to acknowledge this Response and convey whether your Client is interested in appointing an arbitrator under India-UAE BIPA read with UNCITRAL Rules. This Response as well as your Reply are being treated by us as public documents and are not confidential.

Thanks & regards,

For **Anil Chawla Law Associates LLP**



Yogita Pant
Advocate
Partner

C.C.:

1. UNCITRAL Secretariat (Transparency Registry), Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria; E-mail: Transparency.Registry@uncitral.org
2. The Embassy Of The United Arab Emirates,
12, Chandragupta Marg, Chanakyapuri,
New Delhi - 110 021 (INDIA)
Phone: 011-26111111
3. The Claimants, 601, Winchester Apartment, Winchester Grand, Mankhool Road,
Dubai, P.O.Box No-29016, United Arab Emirates
E-mail thakurfamilytrust21@gmail.com
4. The Secretary,
Department of Economic Affairs, Ministry of Finance,
Government of India,
North Block,
New Delhi – 110 001, INDIA
Phone: 011-2309 2810 / 2309 2510
5. The Secretary,
Department of Commerce, Ministry of Commerce and Industry,
Government of India,
Udyog Bhawan,
New Delhi 110 107, INDIA
Phone: 011-23062261
6. The Secretary,
Ministry of Urban Development,
Government of India,
Nirman Bhawan, Maulana Azad Road,
New Delhi-110011, INDIA
Phone: 011-23062377