AGREEMENT BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

The Government of the Russian Federation and the Government of the Republic of India (hereinafter referred to as the Contracting Parties);

Desirous of creating conditions favourable for greater investments by investors of one Contracting Party In the territory of the State of the other Contracting Party;

Recognising that the promotion and mutual protection of such investments will be conducive to the stimulation of business initiative and will increase prosperity In both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means every kind of asset, including Intellectual property rights. Invested by an investor of one Contracting Party in the territory of the State of the other Contracting Party in accordance with the laws of the State of that Contracting Party, in particular:

a. Movable and Immovable property, as well as related rights in rem;

b. Shares, stock and any other form of participation in a company, enterprise, corporation, firm, association or other legal entity;

c. Claims based on rights to money or to any performance under contract having a financial value;

2. The term "investor" means with regard to each Contracting Party:

a. Any natural person having the citizenship of the State of that Contracting Party In accordance with its laws;

b. An legal entity, including a corporation, company, firm, enterprise or association incorporated or constituted in the territory or the State of that Contracting Party in accordance with its laws;

3. The term "returns" means the monetary amounts yielded by an investment such as profits, Interest, dividends, royalties and other fees;

4. The term "territory" means: the territory of the Russian Federation or the territory of the Republic of India Including the land territory, Internal waters and territorial sea, air space above as well as the Elusive Economic Zone and Continental Shelf within which the respective State has and exercises sovereign rights and jurisdiction in accordance with Its laws and International law including the 1982 United Nations Convention on the Law of the Sea.

Article 2. Applicability of the Agreement

1. The provisions of this Agreement shall apply to all Investments made on or after 1st January 1987, by investors of either Contracting Party in the territory of the State of the other Contracting Party.

2. The provisions of this Agreement shall not apply to taxation matters.

Article 3. Promotion and Mutual Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make Investments in the territory of its State, and shall admit such investments in accordance with its laws and regulations.

2. Investments of the Investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the State of the other Contracting Party.

3. The provisions of this Agreement shall not preclude the application by either Contracting Party of measures necessary to safeguard its essential security interest, or to the prevention of diseases and pests in animals or plants.

Article 4. Treatment of Investments

1. Each Contracting Party shall grant to investments made in the territory of its State by investors of the other Contracting Party treatment no less favourable than that which it accords to investments of its own investors or to Investments of Investors of any third State. The same treatment shall also be granted with respect to the management, maintenance, use, enjoyment or disposal of investments.

2. Each Contracting Party reserves the right to make or maintain exceptions from national treatment granted in accordance with paragraph 1 of this Article, in accordance with the laws and regulations of its State. However, any new exception shall not apply to investments made in the territory of Its State by investors of the other Contracting Party before the entry Into force of such exception.

3. The most favoured nation treatment granted in accordance with paragraph 1 of this Article shall not apply to advantages and privileges which:

a. Any of the Contracting Parties is providing or may provide in future in connection with its participation In a common market, free trade area, a customs union or economic union;

b. The Russian Federation Is providing or may provide In future by virtue of agreements with the States that constituted the former Union of Soviet Socialist Republics.

Article 5. Expropriation

1. Investments of Investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation) In the territory of the State of the other Contracting Party except for a public purpose in accordance with the laws and regulations of the State of the latter Contracting Party, on a non-discriminatory basis, and against compensation.

2. The compensation provided for in paragraph 1 of this Article shall be equivalent to the market value of the investment Immediately before the date on which the actual or impending expropriation becomes public knowledge. The compensation shall be paid without undue delay. It shall carry interest from the date of expropriation until the date of payment at the commercial rate established on a market basis.

3. The investor whose investments have been expropriated shall have a right under the laws and regulations of the Contracting Party making the expropriation for a review of his case of expropriation by a judicial or other independent authority of the State of that Contracting Party.

Article 6. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the State of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, civil disturbances or other similar circumstances, shall be accorded by the latter Contracting Party treatment, as regards compensation, restitution, indemnification or other forms of settlement, no less favourable than that which the latter Contracting Party accords to Its own investors or to Investors of any third State.

Article 7. Transfer of Payments

1. Each Contracting Party shall, in accordance with the laws and regulations of Its State, ensure to investors of the other Contracting Party, the free transfer of payments In relation to Investments, and In particular the transfer of:

a. Initial capital and additional amounts to maintain or increase the investment;

b. Returns;

c. Funds in repayment of loans, connected to an investment;

d. Proceeds of sale or liquidation of the whole or any part of the Investment;

e. Compensation, according to Article 5 and 6 of this Agreement;

f. The unspent earning of citizens of the State of the other Contracting Party who work In connection with the investment In the territory of the State of the former Contracting Party.

2. The transfer of payments provided for in paragraph 1 of this Article shall be effected without undue delay, In a freely convertible currency and at the rate of exchange on the date of transfer, applied in accordance with the foreign exchange regulations of the State of the Contracting Party In whose territory the investment has been made.

Article 8. Subrogation

Where one Contracting Party or its designated agency has granted a guarantee against noncommercial risks to an investment by Its investor with regard to his Investment In the territory of the State of the other Contracting Party, the latter shall recognise the rights of the first Contracting Party or its designated agency by virtue of subrogation to the rights, including claims, of the Investor, when payment has been made under this guarantee by the first Contracting Party or its designated agency. The subrogated rights shall not exceed the rights of the investor.

Article 9. Disputes between an Investor of One Contracting Party and the other Contracting Party

1. Disputes between an Investor of either Contracting Party and the other Contracting Party arising in relation to investments made in the territory of the State of the latter, concerning obligations under this Agreement, shall as far as possible be settled amicably including resort to, upon mutual agreement of the parties to the dispute, conciliation procedures under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL).

2. If a dispute cannot be settled in such a manner within six months from the date either party to the dispute requested In writing amicable settlement, unless otherwise agreed to by both partie, the investor concerned may submit the dispute to an ad-hoc International arbitration tribunal set up in accordance with the Arbitration Rules of UNCITRAL. In respect of such arbitration proceedings the following shall apply:

a. The arbitration tribunal shall consist of three arbitrators. Each party to the dispute shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a Chairman of the arbitration tribunal who shall be a citizen of a third State. The arbitrators shall be appointed within two months from the date when one of the parties to the dispute informs the other in writing of Its intention to submit the dispute to arbitration.

b. If the necessary appointments are not made within the period specified in (a) above either party to the dispute may, In the absence of any other agreement, request the President of the International Court of Justice to make such appointments.

c. The arbitral award shall be made in accordance with the provisions of this Agreement.

d. Each party to the dispute shall bear the cost of its own arbitrator and its representation in the arbitration proceedings. The cost of the Chairman in discharging his functions and the remaining costs of the tribunal shall be borne equally by the parties to the dispute. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties

Article 10. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the Interpretation or application of this Agreement should, if possible, be settled through negotiations.

2. If a dispute between the Contracting Parties cannot be settled within six months from the date either Contracting Party requested negotiations it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. The arbitral tribunal shall consist of three arbitrators. Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator and the arbitrators shall jointly select a citizen of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members of the tribunal.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make such appointments. If the President is a citizen of the State of either Contracting Party or if he is otherwise prevented from discharging the said function, the. Vice-President of the International Court of Justice shall be invited to make such appointments. If the Vice-President is a citizen of the State of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next In seniority who is not a citizen of the State of either Contracting Party shall be invited to make such appointments.

5. The arbitral tribunal shall reach Its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be borne equally by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties. The tribunal shall determine its own procedure.

Article 11. Applicable Law

To all investments, subject to this Agreement, shall be applicable the laws and regulations of the State of the Contracting Party in the territory of which such investments are made.

Article 12. Application of other Rules

If in accordance with the laws and regulations of the State of a Contracting Party or an international agreement to which both Contracting Parties are parties, treatment more favourable is accorded to investments of investors of the other Contracting Party than that which is provided for in this Agreement, the more favourable treatment shall apply.

Article 13. Entry Into Force, Duration and Termination of the Agreement

1. This Agreement shall enter into force on the date of receipt of the last written notification confirming the fulfilment of all necessary constitutional procedures by the Contracting Parties.

2. This Agreement shall remain in force for a period of ten years and shall continue in force until the expiry of twelve months from the date on which either Contracting Party gives written notice to the other Contracting Party of its intention to terminate this Agreement.

3. In respect of investments made prior to the date of termination of this Agreement, its provisions shall continue to be effective for a further period of fifteen years from this date.

Done at New Delhi on this 23rd Day of December. 1994 in two originals each in the Hindi, Russian and English, all texts being equally authoritative.

In case of divergence of interpretation, the English text shall be used.

For the Government of the Republic of India

For the Government of the Russian Federation