

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of India and the Government of the Republic of Bulgaria, (hereinafter referred to as the Contracting Parties):

Desiring to create conditions favourable for fostering greater investment by investors of one State in the territory of the other State:

Recognising that the encouragement and reciprocal protection under International agreement of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both States:

Have agreed as follows,;

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" shall mean: (a) With respect to the Republic of India; - Natural persons deriving their status as Indian nationals from the law in force in India;

- Corporations, firms and associations incorporated or constituted or established under the law in force in any part of India:

(b) With respect to the Republic of Bulgaria: - A natural person who is a national of the Republic of Bulgaria in accordance with its applicable legislation;

- Any company, organization or association with or without juridical personality incorporated or constituted in accordance with the laws of the Republic of Bulgaria with a seat in its territory:

(2) The term "investment" shall mean every kind of asset invested, including changes in the form of such investment, in accordance with laws and regulations of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes: (a) Movable and immovable property as well as other right such as mortgages, liens or pledges;

(b) Shares, stocks, debentures or other forms of participation in companies;

(c) Claims to money or to any performance under contract having a financial value;

(d) Intellectual property rights, in accordance with the relevant laws of the respective Contracting Party:

(e) Business concession conferred by law, under a contract, or an administrative act of competent State authorities.

(3) The term "returns" means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;

(4) The term "territory" means: (a) In respect of the Republic of India: the territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign right or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

(b) In respect of Bulgaria: the territory under the sovereignty of the Republic of Bulgaria including the territorial sea, as well as the continental shelf and the exclusive economic zone, over which the Republic of Bulgaria exercises sovereign rights or jurisdiction in conformity with international law.

Article 2. Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement.

Article 3. Promotion and Protection of Investment

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

(2) Investment and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

Article 4. National Treatment and Most-favoured-nation Treatment

(1) Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State.

(2) In addition, each Contracting Party shall accord to investors of the other Contracting Party, including in respect of returns on their investments, treatment which shall not be less favourable than that accorded to investors of any third State.

(3) The provisions of paragraphs (1) and (2) above shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs unions, free trade area, economic communities or similar international agreement to which it is or may become a party, or

(b) Any matter pertaining wholly or mainly to taxation.

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 other Contracting Party except for a public purpose in accordance with law on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at the rate applicable in the territory of that Contracting Party until the date of payment. shall be made without unreasonable delay, be effectively realizable and be freely transferable.

(2) The investor affected shall have right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares

Article 6. Compensation for Losses

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

Article 7. Repatriation of Investment and Returns

(l) Each Contracting Party shall permit investors of the other Contracting Party, after the fulfillment of their fiscal obligations, the free transfer, without undue delay and on a non-discriminatory basis of all funds related to an investment in its territory. Such funds shall include, in particular, though not exclusively:

(a) Capital and additional capital amounts used to maintain and increase investments;

(b) Non operating profits including dividends and interest in proportion to their shareholdings:

(c) Repayments of any loan including interest thereon, relating to the investment:

(d) Payment of royalties and service fees relating to the investment:

(e) Proceeds received from sale of their shares;

(f) Proceeds received by investors in case of sale or partial sale or liquidation of the investments;

(g) The earnings of nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

(2) Nothing in paragraph (1) of this Article shall effect the transfer of any compensation under Article 6 of this Agreement.

(3) Currency transfer under paragraph (1) of this Article shall be permitted in the currency of the original Investment or any other convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

Article 8. Subrogation

Where one Contracting Party or its designated agency has guaranteed any indemnity against noncommercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims under this Agreement, the other Contracting Party agrees that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claim of such investors.

Article 9. Settlement of Disputes between an Investor and a Contracting Party

(1) Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) If such a dispute cannot be settled within six months from the date either Party to the dispute requested settlement through negotiations, the Parties to the dispute may by mutual consent submit the dispute to the competent court of the Contracting Party in whose territory the Investment was made. Alternatively, the dispute may be submitted by either Party to:

(a) The International Center for the Settlement of Investment Disputes (ICSID) set up by the Convention on Settlement of Investment Disputes between States and Nationals of other States done at Washington, March 18, 1965 in case both Contracting Parties are parties to the Convention. As long as this provision is not complied with, the dispute may be settled by mutual consent under the regulations of the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact - Finding Proceedings; or

(b) An adhoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law, 1976 (UNCITRAL), subject to the following modifications:

(i) The appointing authority under Article 7 of the Rules shall be the President, the Vice- President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting Party.

(ii) The parties shall appoint their respective arbitrators within two months.

(iii) The arbitral award shall be made in accordance with the provisions of this Agreement and shall be binding on the parties to the dispute.

(iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

(3) For the purpose of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application

of an investment agreement between a Contracting Party and an investor of the other Contracting Party: (b) an alleged breach of any right conferred or created by this Agreement with respect of an investment.

(4) The award shall be final and binding on the parties to the dispute.,

Article 10. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through negotiation.

(2) If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two member shall then select a national 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.

(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 any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national 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 national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decisions 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 cost of the Chairman and the remaining costs shall be borne in equal parts 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, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedures.

Article 11. Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-citizens, permit natural persons of the other Contracting Party and personnel employed by companies of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

Article 12. Applicable Laws

(1) Except as otherwise provided in this Agreement, all investments shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

(2) Notwithstanding paragraph (1) of this Article nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non discriminatory basis.

Article 13. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement, contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 14. Entry Into Force

This Agreement shall be subject to ratification and shall enter into force on the date of exchange of Instruments of Ratification.

Article 15. Duration and Termination

(1) This agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date of receipt of such written notice.

(2) Notwithstanding termination of this Agreement pursuant to paragraph (1) of this Article, the Agreement shall continue to be effective for a further period of ten years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done at New Delhi on the 26 day of October, 1998 in two originals each in the Hindi, Bulgarian and English languages, all texts being equally authentic. In case of any divergence the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA

Protocol

The Government of the Republic of India and the Government of the Republic of Bulgaria hereinafter referred to as the "Contracting Parties",

Discussing the intentions of Bulgaria to amend the Agreement between the Government of the Republic of India and the Government of the Republic of Bulgaria for the promotion and protection of investments, signed in New Delhi on 26th October 1998, (hereinafter referred to as "the Agreement"), in order to comply with its obligations as a Member State of the European Union,

Recognising that certain amendments to the Agreement are necessary to comply with these obligations,

Have agreed to conclude the following amending Protocol thereto:

I. Para 3 of Article 4 shall be replaced with the following:

"The provisions of paragraphs (1) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other and their investments the benefits of any treatment, preference or privilege, resulting from:

(a) Any existing or future customs, economic and monetary union or a common market in a free trade area or a regional economic organization or similar international agreement to which it is or may become a party, or

(b) Any obligation which is binding on that Contracting Party by virtue of its membership to the above mentioned customs union, economic and monetary union or common market, or

(c) Any matter pertaining wholly or mainly to taxation."

II. Para 4 in Article 7 shall be added as follows:

"(4) Nothing in paragraph (1) of this Article shall prevent either Contracting Party from applying or enforcing, in good faith and in an equitable and non-discriminatory manner, their laws and regulations aiming for:

a) Issuing, trading or dealing in securities, futures, options, or derivatives;

b) Adoption of safeguard measures, for a reasonable period of time, which may be taken in exceptional circumstances such as serious macroeconomic difficulties or serious difficulties for the balance of payments for the host Contracting Party or for any customs, economic and monetary union, common market, free trade area or regional economic organization, to which it is or may become a party;

c) Implementation of any obligation which is binding on that Contracting Party by virtue of its membership to any customs union, economic and monetary union, common market, free trade area or regional economic organization;

d) Enforcing decisions taken in criminal and adjudicatory proceedings".

III. A new Article 14bis shall be added as follows:

Mutual Consultations

The Contracting Parties may, if necessary, consult each other on matters concerning any amendment of this Agreement. The amendments shall be made by consensus and shall enter into force on the date of receipt of the last notification by which the Parties shall communicate each other that their internal legal procedures for its entry into force have been completed and shall remain in force so long as the Agreement shall remain in force

IV. This Protocol shall form an integral part of the Agreement and shall be subject to constitutional procedures required by the national laws of the Parties.

V. This Protocol shall enter into force on the date of receipt of the last notification by which the Parties shall communicate each other that their internal legal procedures for its entry into force have been completed and shall remain in force so long as the Agreement shall remain in force.

IN WITNESS WHEREOF, the undersigned being duly authorized by their Governments have signed this Protocol.

Done at New Delhi on 12th September 2007, in two originals, each in Hindi, Bulgarian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA

P. Chidambaram Minister of Finance

Petar Dimitrov

Minister of Economy and Energy