AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of India and The Federal Democratic Republic of Ethiopia.(hereinafter referred to as the "Contracting Parties");

Desiring to create favourable conditions for fostering greater investment by investors of one Contracting Party in the territory of the Other Contracting Party;

Recognising the need to encourage and protect investments by investors of the Contracting Parties and to stimulate the flow of investments and individual business initiative with the view of promoting the economic prosperity of the Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) investment shall mean every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

(i) movable and immovable property as well as other rights such as mortgages, liens or pledges;

(ii) shares in and stocks and debentures of a company and any other similar forms of participation in a company;

(iii) rights to money or to any performance under contract having a financial value;

(iv) intellectual property rights, in Accordance with the relevant laws of the respective Contracting Party;

(v) business concession conferred by law or under contract, including concessions to search for and extract oil and other minerals;

(2) "investor" shall mean any natural person or a legal entity of a Contracting Party;

(i) natural person is a person deriving his status as a national from the laws in force of that Contracting Party;

(ii) legal entity means an entity constituted or incorporated under the laws of each Contracting Party such as companies, corporations, firms and associations having its economic activity in the territory of that same Contracting Party.

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

(4) "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 rights or exclusive jurisdiction in accordance with its laws in force, the 1982 EJnited Nations Convention on the Law of the Sea and International Law.

(b) in respect of the Federal Democratic Republic of Ethiopia:

- The territory in which the Federal Democratic of Ethiopia exercises sovereign rights or jurisdiction in accordance with its legislation and International Law.

Article 2. Scope of the Agreement

This Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement. It shall, however, not be applicable to claims arising out of disputes occurred prior to its entry into force..

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) Investments 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 to investments made by its own investors or 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 one 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 or interest, with due process of 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. It shall, however, include interest at a fair and equitable rate until the date of payment and shall be made without unreasonable delay, be effectively realizable and freely transferable.

(2) The investor affected shall have right, under the laws 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.

Article 6. Compensation for Losses

Investors of one Contracting Party whose investments 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

(1) Each Contracting Party shall permit the transfer of funds related to an investment freely, without delay and on a non-discriminatory basis in accordance with its laws and regulations. Such funds may include:-

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

(b) net operating profits including dividends and interest in proportion to their share-holdings;

(c) repayments of any loan including interest thereon, relating to the investment;

(d) payment of royalties and services 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;

(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 affect the transfer of any compensation under Article 6 of this Agreement.

(3) Unless and otherwise agreed between the parties, 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.

Explanation: The phrase "in accordance with its laws and regulations" is not intended to limit the right to repatriate funds mentioned above in Article 7 but only to note the rules of procedure that the investor has to comply with.

Article 8. Subrogation

Where one Contracting Party or its designated agency has guaranteed any indemnity against non-commercial 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 a Contracting Party and an Investor of the other Contracting Party

(1) Any dispute between one of the Contracting Parties and an Investor of the other Contracting Party concerning an investment of the Investor in the territory of the former Contracting Party shall, as far as possible, be settled amicably between the parties concerned.

(2) If the dispute has not been settled within a period of six months from the date either party to the dispute requested amicable settlement, the dispute may be submitted for settlement to:

(a) the competent court of the Contracting Party in the territory of which the investment has been made; or

(b) an international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) If the parties fail to agree on the dispute settlement procedures as per para 2 above, it may be referred to:

(a) the International Center for Settlement of Investments Disputes (ICSID) established pursuant to the Convention on the Settlement of Investment disputes between States and Nationals of other states, opened for signature, at Washington, on March 18, 1965, if both Contracting Parties are members of this Convention and the investor consents to submit the dispute to the Center; or

(b) the International Center for Settlement of Investment Disputes under the Rules Governing Additional Facility for the Administration of Proceedings by the Secretariat of the Center (Additional Facility Rules); or

(c) an international ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) The arbitral awards shall be final and binding on both parties to the dispute and shall be made in accordance with the provisions of this Agreement.

(5) Any disputes arising out of action taken under Article 12 (applicable Laws) and all pre-establishment disputes shall be excluded from the purview of international arbitration.

Article 10. Settlement of 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.

Such an arbitral tribunal shall be constituted for each other the following way. Within two months of the receipt of the requtst for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members 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 q 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 and regulations, applicable from time to time relating to the entry and sojourn of noncitizens, 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 investment 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 no 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 enter into force 30 (Thirty) days after the later date on which the Contracting Parties have notified each other in writing that their constitutional requirement for entry into force of this Agreement have been fulfilled. The later date shall refer to the date on which the last notification letter is sent.

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 …….. on this day of….. 2007, in two originals each in the Hindi and English languages, both texts being equally authentic.

In case of any divergence, the English text shall prevail

Pranab Mukherjee

Minister of External Affairs

For the Government of the Republic of India

Seyoum Mesfin

Minister of Foreign Affairs

For the Government of the Federal Democratic Republic of Ethiopia