

Minutes of the 1st Inter-Ministerial Group (IMG) meeting on arbitration under BIPA by RAKIA, UAE held on 5.1.2017 at Shastri Bhawan, New Delhi under the chairmanship of Secretary (Mines), Shri Balvinder Kumar

[Total 3 pages: Minutes 2 pages & Annexure 1 page]

The 1st IMG meeting was held on 5.1.2017 under the chairmanship of Secretary(Mines) in his chamber, Shastri Bhawan, New Delhi. The list of participants is enclosed on Annexure.

2. At the outset, Secretary (Mines) welcomed the participants to the 1st meeting of the IMG setup to handle the matters in regard to the notice for arbitration served to the Indian Government by Ras-AI-Khaimah Investment Authority (RAKIA), United Arab Emirates (UAE) under the India-UAE, Bilateral Investment Promotion and Protection Agreements (BIPA) to the Indian Government.

[Action: All member Ministries & GoAP]

3. Secretary (Mines) explained that RAKIA, UAE has served notice of arbitration to Hon'ble Prime Minister of India, several ministries of Government of India viz. Ministry of Mines (MoM), Ministry of External Affairs (MEA) & Ministry of Environment, Forests & Climate Change and the State Government of Andhra Pradesh, invoking the article 10(5)(b) of India-UAE BIPA & Article 3 of United Nations Commission on International Trade Law (UNCITRAL) Rules, against the Indian Government vide their notice of arbitration dated 8.12.2016. They have mentioned that the trigger notice has been already served for dispute settlement on 29.04.2016.

[Action: All member Ministries & GoAP]

4. The representative of Government of Andhra Pradesh (GoAP), MD APMDC, informed that GoAP had entered into a memorandum of understanding dated 14th February 2007 with the Government of Ras-Al Khaimah (GoRAK) for a project relating to construction and operation of an alumina and aluminium refining plant in India ("MOU"). Under the MOU, GoAP agreed to direct Andhra Pradesh Mineral Development Corporation ("APMDC") to supply bauxite to ANRAK Aluminium Ltd ("ANRAK"), an Indian company incorporated for establishing Alumina and Aluminium Refinery and Smelter in the state of Andhra Pradesh. Citing that the dispute has arisen primarily in regard to the bauxite supply by APMDC to ANRAK, RAKIA has served an international arbitration notice seeking mainly to fulfil the commitment to supply bauxite to ANRAK or pay RAKIA the compensatory damages on total investment of US\$ 44.71 million made by RAKIA in ANRAK.

[Action: All member Ministries & GoAP]

5. It was informed by representative of GoAP that public agitation had escalated in the areas where mining was to be carried out and it has led to cancellation of the supply agreement by APMDC to ANRAK on 6.04.2016, based on the Government Order issued by GoAP. He also apprised that a matter in regard to this has been filed in the high court of AP by ANRAK. JS&FA (Mines) expressed that the legal right of the claimant to take the international arbitration route for dispute resolution, when the matter is already

under consideration of the domestic court would need to be ascertained. The invoking of the principle of fork in the road was raised in the meeting by the representative of Department of Economic Affairs (DEA), which would be required to be examined in consultation with the Department of Legal Affairs (DLA).

[Action: MoM, DEA, DLA, MEA & GoAP]

6. Secretary (Mines) asked the GoAP about the other available bauxite bearing areas available in AP which may be processed for grant to APMDC which may be used for supply of bauxite to ANRAK and to explore ways of settling dispute without prejudice.

[Action: MoM & GoAP]

7. The representatives of MEA, DLA & DEA raised their concerned about the liabilities in the matter in the light of the provisions of BIPA and about the need of quickly engaging the counsel to guide us further in the matter and expedite the appointment of arbitrator, with the time limits to avoid the case being remanded to the International Court of Justice for *suo motu* appointment of arbitrator on behalf of the Indian Government, which would jeopardize our interests in the arbitration. The representative of MEA stated that it appears from the notice that the last date for conveying the appointment of an arbitrator by India is 8 February, 2017. He further stated that these cases under international investment treaties require counsel team which have experience in the field of investment treaty cases and international law and the counsel team should ideally consist of an India law firm and a team of foreign counsels. In light of the urgency in the instant case the counsel team representing the Government side may be engaged most immediately. Following this a suitable arbitrator may be appointed in consultation with the counsel.

[Action: MoM, DEA, MEA & GoAP]

8. Secretary (Mines) stated that it is required that a legal opinion in the matter may be sought from the matter, for which APMDC may summarize the facts in the case along with the comments on the arbitration notice and state the points in law. Further, he asked that the process of engagement of legal counsel and arbitrator may be expedited simultaneously. Director, MoM sought that APMDC may provide the material to MoM in a weeks' time, so that the legal opinion from DLA may be expedited and sought MEA & DEA to mail the procedure and precedence of appointing the counsel and arbitrator.

[Action: MoM, DEA, DLA, MEA & GoAP]

9. The meeting ended with thanks to the chair.

Annexure

List of Participants of the 1st Inter-Ministerial Group meeting on arbitration under BIPA by RAKIA, UAE held on 5.1.2017 at Shastri Bhawan, New Delhi under the chairmanship of Secretary (Mines), Shri Balvinder Kumar

Ministry/Organization	Name	Designation	Email	Contact No.
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