

**R BALASUBRAMANIAN**  
ADVOCATE  
Supreme Court of India  
OFF/ A-6, Jangpura Extn.  
New Delhi  
MOB 9968093041

BY REGISTERED POST

Dated: 21<sup>st</sup> February 2017

To

Anil Chawla Law Associates LLP

MF-104, Ajay Tower

E5/1 (Commercial) Arera Colony

Bhopal-462 016

Subject:- Reply to notices relating to M/s Thakur Family Trust (TFT) UAE under the Bilateral Investment Promotion and Protection Agreement (BIPA) between Government of India and Government of United Arab Emirates signed on 12.12.2013 and under Article 27 of the Double Taxation Avoidance Agreement (DTAA) between India and UAE.

Reference: (1) Notice of Dispute and request of amicable settlement dated 01.02.2015 under Article 10 of the India-UAE BIPA.

(2) Notice of the intent to submit to Arbitration and Notice of Arbitration dated 08.10.2015.

(3) Notice (Undated) under Article 12 of the India-UAE BIPA for permission to enable family members of M/s Thakur Family Trust (TFT) to leave India.



(4) Notice dated 21.10.2015 for prompt and immediate issuance of as per provisions of Article 7 (2) of India UAE BIPA and to fix an amount of compensation /loss to UAE Resident Trust" as per Article 7 (1) of BIPA due to illegal blocking and freezing of BIPA investment/Trust investment.

(5) Notice dated 12.01.2016 regarding original documents in possession of the investor and their associates.

(6) Second Notice dated 20.05.2016 of Intent to submit to Arbitration and Notice of Arbitration under UNCITRAL.

Dear Sir,

The aforementioned notices and documents, received from my client i.e. in the Department of Economic Affairs, Government of India/ Ministry of Urban Development, Government of India were placed before the undersigned. Under instructions and on behalf of my client mentioned herein above the following reply is hereby sent to you.

In order to examine the aforementioned notices and documents, an inter-Ministerial Group with representations from the Government of India Ministry of External Affairs, Department of Economic Affairs, Department of Revenue, Department of Legal Affairs, Ministry of Urban Development and representation of



Chief Secretary, Government of Maharashtra, was constituted under the chairmanship of Secretary, Ministry of Urban Development.

Based on the examination of the aforementioned notices and documents from all angles relevant to the matter, by the Inter-Ministerial Group specifically constituted for this purpose, the Government of India does not consider it necessary or appropriate to give a paragraph wise reply to the notices. This is for the reason that :-

- (i) That the notices as mentioned above arise from an oral partnership agreement between M/s Thakur Family Trust and another private party, and essentially the dispute is one between two private parties. Thus, the Government of India is not involved in the lis sought to be raised and since no action/measure taken by the Government of India is apparent through the notices, the same does not need to be addressed by the Government.
- (ii) This is a case of treaty shopping by establishing a corporate vehicle in the United Arab Emirates to gain access to the India-UAE BIPA, as both Mr. Nitesh J. Thakur and Thakur Family Trust are India entities, and there can be no nexus established between the Indian and the UAE entity at the time of entering into the oral agreement.

- (iii) India-UAE BIPA was signed on 12.12.2013 and came into force on 21.08.2014, the disputes as brought out in the notices pertain to a period much earlier than the signing of the BIPA. As per Article 2 of the BIPA, it shall not apply to any dispute arising out of any measure applied to an investment before the entry into force of the BIPA.
- (iv) The BIPA only applies in respect of a "measure", which is defined in Article 1 (8) as "any form of binding action under any law, rule or regulation and applied directly to an investment". In other words it does not apply to actions that have achieved finality within the concerned Ministry/ Department.
- (v) The disputes settlement provision of the BIPA under Article 10 (2) only covers the actions taken by the Central Government or State Governments while exercising their executive powers in accordance with the Constitution of India. In the present notices the issues being pressed and challenged stem from complaints made by private parties, and would be subject to the final outcome before a competent Court of Law in India.
- (vi) As per Article 10 (4) of the India -UAE BIPA, an investor has three choices in respect of a dispute (i) ICSID arbitration, if both parties are members; (ii)



arbitration under UNCITRAL rules, and (iii) the competent court of the Host State. Once the investor has submitted disputes under any of the forgoing provisions, that choice would be final binding on that investor. In this regard, it is reiterated that the disputed being pressed in the notices have been and continue to be the subject matter of adjudication before the Courts in India, including but not limited to the Hon'ble Bombay High Court.

(vii) The notices aim to challenge the tax investigations initiated against the investor, under the provisions of the BIPA. However, the BIPA specifically excludes its application to taxation issues under Articles 2 (3) of the BIPA.

(viii) No case has been made out by TFT-UAE on violation of any provisions of BIPA by my client i.e. the Government of India, the aforementioned notices and documents are confined to making claims, without providing any evidence and hence BIPA has been wrongly invoked.

In view of the above, there is no need to consider the aforementioned Notices on merits. The disputes mentioned in the notices cannot be addressed under the BIPA.

Please take notice that in view of the above I am under instructions from my client that your notices are devoid of merit. Therefore, any action if taken by you against my client



in furtherance of your notices, the same will be suitably defended at your cost and peril.

Please take further notice that this notice reply is required to be acknowledged by you and a copy of the reply has been kept in office file for the purpose of records.

  
**R. BALASUBRAMANIAN**  
ADVOCATE

Copy to:-

Ministry of Urban Development,  
Government of India,  
Nirman Bhawan, New Delhi