



**LAW CENTRE-1  
FACULTY OF LAW  
UNIVERSITY OF DELHI**



**XIII LC-I – ALL DELHI (NCR) MOOT COMPETITION 2017**

**MOOT PROPOSITION**

1. Indesh is one of the largest democracies in the world with a population of more than 100 crores. With a huge market potential, it is the fast growing economy in the region and a top destination for foreign direct investments. The country has recently elected a new government, which signed numerous bilateral and multilateral treaties with other countries to attract further investments.
2. On 1 March 2014, the new government has entered into a bilateral investment treaty (BIT) with Winland, a Western-European country, for reciprocal promotion and protection of investments. A similar bilateral investment treaty was entered into with Poprica on 1 June 2014. The instruments of ratification have been exchanged between the leaders of respective countries and the treaties came into force on 14 November 2014. Since then, the inflow of foreign capital from Winland and Poprica to Indesh has been considerably increased.
3. BemonGlobal, a film production company from Winland, entered the Indeshian market in January 2015 to produce commercial cinemas. The company invested Rs.500 crore in the production of its first movie “Dictator” with a popular star of the country Indesh. The shooting and post-production works were completed by 10 October 2016. On releasing of the teaser on 15 October 2016, its viewership has created history in Youtube, Twitter, Facebook and other social media networks. With a huge fan base and enhanced expectation among public, the company predicted a massive success of the movie and thus directly handled theatrical distribution throughout the country.
4. The movie was scheduled for release on 09 November 2016 at 7 AM and announced online booking of tickets to begin by 25 October 2016. There was a huge protest among fans and common mass alleging that online booking enables the educated rich class to have easy access to tickets and ignores those who do not have access to internet. Further it was alleged that this would lead to sale of black-tickets by agents through bulk booking online. To bring the situation under control the Information and Broadcasting Regulatory

Authority of Indesh issued a notification restricting online sale of tickets only to ten percent for shows of first five days from the date of release, i.e. till 13 November 2016 and twenty percent from 14 November till 18 November 2016.

5. On 08 November 2016 at 8:00 pm, in an effort to curb black money in the country, the Government of Indesh declared that Rs.500 and Rs.1000 denomination will not be valid from 09 November 2016 onwards. Banks and Automatic Teller Machines (ATMs) were also shut down for the next three days. The Reserve Bank of Indesh issued a notification dated 08 November 2016, in the Official Gazette to that effect imposing stringent restrictions on banks as well as on public with regard to daily and weekly withdrawal and deposit limits of account holders. All business establishments and cinema theatres refused to accept the currency of 500 and 1000.
6. In the next ten days the country has witnessed people in long que before ATMs even at 3:00 am in the morning to withdraw money for day to day expenses. Public spending was automatically restricted to essentials and household expenses. New denomination of Rs.500 and Rs.2000 were introduced only after fifteen days. Normalcy returned and the situation was under control only after twenty days.
7. BemonGlobal did not have enough time to reschedule the release date considering the sudden announcement of the Government on demonetisation. The movie was released as scheduled and suffered a huge loss with only fifteen percent occupancy in theatres for the first fifteen days in an average. In the meantime some miscreants have released the pirated version of the movie on net. The company filed complaints and urged the government to curtail spreading of the pirated version, but in vain. As a consequence, the company encountered severe criticism from creditors and investors and literally came to the verge of bankruptcy.
8. BemonGlobal alleged that due to the measures adopted by the government and its failure to tackle the menace of piracy, the company lost 90 percent of its investment in the country and hence, the government must make compensation therefor. Both parties have entered into negotiation on 01 December 2016 but could not reach any meaningful solution until 31 January 2017.
9. On 03 February 2017, BemonGlobal filed a claim before an arbitration tribunal for investment dispute between the company and the government, through a third-party BIT i.e. bilateral investment treaty between the Government of the Republic of Indesh and the

Government of Poprica [through Article 4 of the original agreement, invoking Article 9 of the third-party treaty given in Annexure-II]. The three member arbitration tribunal has been constituted at The Hague as a neutral venue.

10. The teams are required to prepare and argue on the following issues:

- a. Whether the present dispute is a premature referral to the international arbitration tribunal?
- b. Whether the government restriction on online-booking and the RBI notification on demonetisation amount to an act *tantamount to expropriation*?
- c. Whether the Republic of Indesh failed to provide *fair and equitable treatment* and *full protection and security* to the investor under the BIT?

**Note:**

- (i) All laws in force in the Republic of Indesh are *parimateria* with the Republic of India.
- (ii) The teams are not expected to challenge the demonetisation policy of the government of Indesh.
- (iii) The teams are not to argue on quantum of compensation but only on liability issues.

**Disclaimer:** It is a hypothetical proposition and all names and materials used herein are fictitious and it neither intends nor attempts to hurt the feelings of anyone.

## **ANNEXURE-I**

### **AGREEMENT BETWEEN THE GOVERNMENT OF WINLAND AND THE GOVERNMENT OF THE REPUBLIC OF INDESH FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of Winland and the Government of the Republic of Indesh (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**

1. “investment” means 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:
  - a. Movable and immovable property as well as other rights such as mortgages, liens or pledges;
  - b. Shares in and stock and debentures of a company and any other similar forms of participation in a company;
  - c. rights to money or to any performance under contract having a financial value;
  - d. intellectual property rights, goodwill, technical processes and know-how in accordance with the relevant laws of the respective Contracting Party;
  - e. business, including concessions to search for and extract oil and other minerals;
2. “investor” means any national or company of a Contracting Party investing in the territory of the other Contracting Party;
3. “return” means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;

#### **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 of the Contracting Parties shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory in accordance with its laws and policy.
2. Investments of 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 other Contracting Party and shall in no way be subject to unjustified or discriminatory measures.

### **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 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.

### **ARTICLE 5**

#### **Expropriation**

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 genuine 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 a fair and equitable rate until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

### **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 disturbance in the territory of 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

### 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 the dispute can not be thus amicably settled as provided in paragraph 1 of this article within a period of six months, the investor may at his choice either submit the dispute:
  - a. For settlement, in accordance with the law of the Contracting Party which has admitted the investment, to that Contracting Party's competent judicial or administrative bodies; or
  - b. to an *ad hoc* Arbitration Tribunal, in compliance with the Arbitration Rules of the UN Commission on the International Trade Law, 1976;

## ARTICLE 8

### Entry into Force

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

In witness where of the undersigned, duly authorised there to by their respective Governments, have signed this Agreement. Done at Winland on this 14<sup>th</sup> day of November 2014 in two originals each in English.

Sd/-  
For the Government of the Republic of Indesh

Sd/-  
For the Government of Winland

Dr. PR Thulasidhass

## **ANNEXURE –II**

### **AGREEMENT BETWEEN THE GOVERNMENT OF POPRICA AND THE GOVERNMENT OF THE REPUBLIC OF INDESH FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of Poprica and Government of the Republic of Indesh (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**

4. “investment” means 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:
  - a. Movable and immovable property as well as other rights such as mortgages, liens or pledges;
  - b. Shares in and stock and debentures of a company and any other similar forms of participation in a company;
  - c. rights to money or to any performance under contract having a financial value;
  - d. intellectual property rights, goodwill, technical processes and know-how in accordance with the relevant laws of the respective Contracting Party;
  - e. business, including concessions to search for and extract oil and other minerals;
5. “investor” means any national or company of a Contracting Party investing in the territory of the other Contracting Party;
6. “return” means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;

#### **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**

3. Each of the Contracting Parties shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory in accordance with its laws and policy.
4. Investments of 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 other Contracting Party and shall in no way be subject to unjustified or discriminatory measures.

## **ARTICLE 4**

### **National Treatment and Most-Favoured-Nation Treatment**

3. 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 investments of investors of any third State.
4. 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.

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## **ARTICLE 6**

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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 disturbance in the territory of 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

### Settlement of Disputes between an Investor and a Contracting Party

3. 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.
4. If the dispute cannot be thus amicably settled as provided in paragraph 1 of this article within a period of one month, the investor may at his choice either submit the dispute:
  - a. For settlement, in accordance with the law of the Contracting Party which has admitted the investment, to that Contracting Party's competent judicial or administrative bodies; or
  - b. to an *ad hoc* Arbitration Tribunal, in compliance with the Arbitration Rules of the UN Commission on the International Trade Law, 1976;

## ARTICLE 8

### Entry into Force

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

In witness where of the undersigned, duly authorised there to by their respective Governments, have signed this Agreement. Done at Poprica on this 14<sup>th</sup> day of November 2015 in two originals each in English.

Sd/-  
For the Government of the Republic of Indesh

Sd/-  
For the Government of Poprica

[Drafted by Dr.Thulasidhass, Faculty, Moot Court Society, Law Centre 1]

Dr. PR Thulasidhass