

**REQUEST FOR ARBITRATION**

**UNDER THE INVESTMENT INCENTIVE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND THE GOVERNMENT OF INDIA  
19 NOVEMBER 1997**

**- BETWEEN -**

**THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
(Claimant)**

**- AND -**

**THE GOVERNMENT OF INDIA  
(Respondent)**

**November 4, 2004**

UNDER THE INVESTMENT INCENTIVE AGREEMENT  
BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF INDIA

_____	)
Government of the	)
UNITED STATES OF AMERICA	)
c/o Office of the Legal Adviser	)
U.S. Department of State	)
Washington, D.C. 20520	)
United States of America	)
	)
Claimant,	)
	)
and	)
	)
GOVERNMENT OF INDIA	)
Honorable Manmohan Singh	)
Prime Minister	)
c/o Ministry of External Affairs	)
South Block	)
New Delhi 110001	)
Republic of India	)
	)
Respondent.	)
_____	)

**REQUEST FOR ARBITRATION**

1. Pursuant to Article 6 of the Investment Incentive Agreement (“Bilateral Agreement” or “Agreement”)<sup>1</sup> between the Government of the United States of America and the Government

<sup>1</sup> Signed on November 19, 1997 and entered into force on April 16, 1998. A copy of the Bilateral Agreement is attached hereto as Exhibit 1. Article 7(a) of the Bilateral Agreement provides that the Bilateral Agreement shall “replace and supersede the agreement between the United States of America and India on the Guaranty of Private Investments effected by exchange of notes signed at Washington on September 19, 1957 as supplemented by exchanges of notes signed at Washington on December 7, 1959 and at New Delhi on February 2, 1966 (the ‘Prior Agreement’).” Article 7(a) further provides that any matter related to Investment Support provided under the Prior Agreement shall be resolved under the Bilateral Agreement, unless raised prior to entry into force of the Bilateral Agreement.

of India, the Government of the United States of America (“USG” or “Claimant”) hereby requests arbitration of disputes with the Government of India (“GOI” or “Respondent”) arising from actions attributable to the GOI and for which the GOI is responsible with respect to the investments of the foreign investors and lenders to the Dabhol Power Project (“Dabhol Project” or “Project”), a multi-billion dollar, 2,184 MW combined-cycle power generation plant, regasification plant, and related port facilities located near the village of Dabhol in the State of Maharashtra, India (hereinafter the “Dispute”). Due to the unlawful actions and omissions of the GOI, directly and through its political subdivisions, agencies and instrumentalities (hereinafter collectively referred to as the “Indian Government”) – which actions or omissions are attributable to the GOI and for which the GOI is responsible under established principles of public international law – the Dabhol power plant sits idle; the Project operating company (“Dabhol Power Company” or “DPC”) is in receivership; the Project investors (General Electric, Bechtel and Enron, collectively, the “Investors”) have lost their entire multi-billion dollar investment; the Project lenders (including the Bank of America) hold nearly \$2 billion in worthless, non-performing loans, including direct loans totaling over \$190 million with accrued interest and costs made by the Overseas Private Investment Corporation (“OPIC”), a U.S. Government agency; and OPIC, as Project insurer, has paid out over \$110 million on political risk insurance policies covering the Investors and the Bank of America against the risk of expropriation of their interests in the Project. These concerted actions of the Indian Government have effectively deprived DPC and its Investors and Lenders of their fundamental rights, interests, use, benefits and control of their investments in the Dabhol Project in violation of the GOI’s obligations under public international law.

2. Claimant hereby initiates arbitration proceedings against the GOI under the Bilateral Agreement with respect to OPIC's losses under its political risk insurance policies extended to investors and lenders to the Dabhol Project. If the GOI has not resolved this Dispute before December 1, 2004, Claimant intends to supplement these claims, by amendment of this Request for Arbitration or otherwise, to include its losses arising from OPIC's direct loans to the Project. Claimant expressly reserves the right to clarify, supplement, expand or otherwise revise the factual bases and claims for relief set forth herein during the course of these arbitration proceedings, in accordance with the Bilateral Agreement.

**I.**

**THE PARTIES**

3. Claimant, the Government of the United States of America, is a Party to the Bilateral Agreement. OPIC is an agency of the Government of the United States of America that was created to "mobilize and facilitate the participation of the United States private capital and skills in the economic and social development of less developed countries and areas . . . ." 22 U.S.C. §2191 (1994). In fulfillment of this mission, OPIC provides financing and credit guarantees to eligible projects in developing countries and political risk insurance to qualified investors, protecting them against political violence, inconvertibility and expropriation.

4. Claimant's address for purposes of this proceeding is:

Executive Director (L/EX)  
Office of the Legal Adviser  
Department of State  
Washington, D.C. 20520  
United States of America

5. All correspondence and notices to Claimant should be delivered to its counsel at the following addresses:

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Facsimile: 202-654-4241

6. Respondent, the Government of India, is the national government of the Republic of India and is a Party to the Bilateral Agreement.

7. Respondent's address for purposes of this proceeding is:

Government of the Republic of India  
Honorable Manmohan Singh  
Prime Minister  
c/o Ministry of External Affairs  
South Block  
New Delhi 11001  
Republic of India

## II.

### THE ARBITRATION AGREEMENT

8. Under Article 1(b) of the Bilateral Agreement, OPIC is recognized as an "Issuer" of "Investment Support," which is defined to include debt investments, investment guarantees and investment insurance. Under Article 3(b), the GOI is obligated to recognize the transfer to OPIC of "the right to exercise the rights and assert the claims" of any person or entity to which OPIC has made a payment "as Issuer of Investment Insurance or an investment guaranty in connection with any Investment Support." OPIC made political risk insurance payments totaling over \$110 million (including interest and costs) to the Investors and to the Bank of America and received, in return, assignments of certain rights, interests and claims to pursue recovery against the GOI under the Bilateral Agreement. Under Article 6(c), disputes involving claims of OPIC "in connection with acts attributable to the Government of India which involve questions of liability

under public international law” may be brought under the procedures for dispute resolution between the GOI and USG. As a result of the actions or omissions attributable to the GOI, directly and through its political subdivisions, agencies or instrumentalities, DPC and its Investors and Lenders have been stripped of their fundamental rights and interests in their investments in the Dabhol Project. These acts and omissions violated established principles of public international law, render the GOI liable for reparation therefore and, hence, are arbitrable under Article 6(c) of the Bilateral Agreement.

9. All threshold requirements to arbitration have been satisfied. Article 6(a) of the Bilateral Agreement permits the parties to submit a dispute to arbitration “. . . six months following a request for negotiations . . . [if] the two Governments have not resolved the dispute.” Over one year ago, on October 10, 2003 at the latest, the U.S. Embassy delivered to the Indian Ministry of Finance a request that the GOI commence negotiation of this dispute with OPIC, including its claims for losses arising from OPIC’s political risk insurance policies extended to investors and lenders to the Dabhol Project. The GOI declined negotiation. On or about November 18, 2003 and again on or about December 30, 2003, OPIC reiterated its desire to seek an amicable settlement of this dispute. Again, the GOI refused to negotiate. On or about June 1, 2004, OPIC President Peter S. Watson invited the GOI’s new Minister of Finance, the Honorable Palaniappan Chidambaram, to seek a mutual resolution of the dispute. President Watson also notified Minister Chidambaram of OPIC’s additional “direct losses arising from two of its own unpaid loans extended to the Project.” President Watson invited the GOI to meet to resolve all of OPIC’s claims and losses. Finally, on July 16, 2004, President Watson notified Prime Minister Singh that the U.S. Government was “exploring imminent action” under the Bilateral Agreement in the absence of meaningful progress with respect to the dispute. Having

received no favorable response to these negotiation initiatives, Claimant now exercises its rights to initiate arbitration of its claims arising from OPIC's political risk insurance losses, with the express intent of supplementing its claims for relief to include losses under OPIC's loans if this dispute is not resolved before December 1, 2004.

10. Article 6(b) of the Bilateral Agreement provides for arbitration by three arbitrators. Each government Party is required to identify an arbitrator within three months of the Respondent's receipt of the Request for Arbitration. These two arbitrators are then required to identify the President of the Tribunal, whose appointment is subject to acceptance by the two governments. The Secretary-General of the Permanent Court of Arbitration in The Hague is designated as appointing authority in the event that either Party fails to make its appointment on time or if the Parties cannot agree upon a President of the Tribunal. Claimant plans to appoint its arbitrator within the stipulated time frame.

### III.

#### **FACTUAL BACKGROUND**

##### **A. Commencement of the Dabhol Project.**

11. Starting in the early 1990s, India began soliciting foreign investment in its power sector to overcome severe shortages, particularly in the State of Maharashtra, home to India's largest city, Mumbai. Based on these inducements and support by the Government of the State of Maharashtra ("GOM") and the GOI, the Investors agreed to form DPC, an Indian company, to develop, construct and operate a two-phase, project-financed power plant and related facilities. Phase I, which ultimately was completed and began operating in May 1999, consisted of a 740 MW power plant. Phase II, which was ninety percent complete when the entire project ground to

a halt in May 2001, consisted of a 1,444 MW gas-fired power plant and a regasification facility to convert liquefied natural gas (“LNG”) to useable fuel.

12. The Investors contributed hundreds of millions of dollars for Phases I and II, with Enron originally taking an eighty percent equity position in DPC, and General Electric (“GE”) and Bechtel each holding ten percent. Following a restructuring of DPC in the mid-1990s, Enron’s interest was reduced to approximately sixty-five percent. The Maharashtra State Electricity Board (“MSEB”) – an administrative subdivision controlled by the GOM and, under law, the power plant’s sole permissible customer – took a minority shareholding interest (approximately fifteen percent) in DPC. This shareholding interest was held in the name of MSEB’s wholly-owned subsidiary, Maharashtra Power Development Corporation Limited (“MPDCL”).

13. A group of GOI-controlled financial institutions (“Indian Financial Institutions” or “IFIs”), non-Indian banks (“Offshore Lenders”), including the Bank of America and OPIC and export credit agencies (collectively, the “Lenders”), contributed approximately \$2 billion in secured loans to the Project for Phases I and II. OPIC, itself, made \$100 million in secured loans for Phase I and \$60 million in secured loans for Phase II.

14. As a project-financed project, DPC was wholly dependent upon a steady cash flow to be generated by the continuous sale of energy from the Project to service the loans, pay off trade creditors and provide a return on the investments of its shareholders. To ensure this cash flow and protect their investments and the loans of the project lenders, GE, Bechtel and Enron, through DPC, entered into a series of Project Agreements (some of which are identified below) that erected a multi-layered set of safeguards.



15. First, DPC was assured a continuous cash flow by signing a Power Purchase Agreement (“PPA”) with MSEB. Under the terms of the PPA, if MSEB defaulted on its payment obligations, DPC could terminate the PPA and transfer the facility to MSEB in exchange for a previously-agreed buy-out price called the “Transfer Amount.” This Transfer Amount – which was calculated in 2001 to exceed \$6.5 billion – represents the parties’ agreement as to how the market value of DPC would be determined in the event of MSEB’s breach of the PPA.

16. Second, due to the intimate involvement of Indian governmental bodies in the Project, the parties agreed to include in the Project Agreements (including the PPA) express commitments to mandatory arbitration *outside India* of disputes that could arise under these agreements of the kind that underlie this claim. The MSEB, GOM, and GOI all bound themselves to neutral international arbitration outside India as the forum to resolve the disputes that underlie this claim and, thereby, precluded the Indian Government, including its courts, from interfering with this choice of forum.

17. Third, as further assurance of cash flow, DPC entered into financial guarantees with both the GOM (“GOM Guarantee”) and the GOI (“GOI Counter-Guarantee”). The GOM Guarantee unconditionally guaranteed MSEB’s payment obligations under the PPA, including the monthly payments for its purchases of power under the PPA and the Transfer Amount. In the event that MSEB and GOM both defaulted on their Phase I obligations, the GOI Counter-Guarantee provided a guarantee by the Government of India of all MSEB’s debts to DPC, subject to a cap.

18. Fourth, DPC signed a State Support Agreement and, later, a Supplemental State Support Agreement (collectively, the “State Support Agreements”) with the GOM whereby the

GOM committed itself to support the Project and to protect DPC from discriminatory treatment, expropriation, confiscation or nationalization. The GOM also promised under these State Support Agreements to help DPC obtain all necessary approvals and permits from state and local agencies and to refrain from any actions that could prejudice the interests of DPC, the Lenders or the Investors.

19. Fifth, MSEB established both a letter of credit and an escrow account for the benefit of DPC as security arrangements to protect DPC's access to funds in the event that MSEB defaulted on its payment obligations under the PPA.

**B. OPIC's Support for the Project.**

20. To provide an additional layer of security for their respective investments and loans to DPC, GE, Bechtel, Enron and the Bank of America asked OPIC to support the Dabhol Project as a lender, investment insurer and U.S. Government development agency. OPIC entered into political risk insurance contracts with GE, Bechtel, Enron and the Bank of America, providing coverage for their equity stakes and loans against political violence, inconvertibility and expropriation. OPIC also lent \$160 million to DPC for Phases I and II of the Project. In keeping with its role as a development agency, OPIC worked diligently to try to facilitate a successful completion of the Project. Once that became impossible, however, OPIC began working toward the successful resolution of all legitimate stakeholder interests in the Project.

**C. The Indian Government's Initial Interruption and Eventual Destruction of the Dabhol Project.**

21. After several years of negotiations, raising capital and obtaining required Indian Government approvals and execution of the Project Agreements, construction on Phase I of the Project began on March 1, 1995. Almost immediately, the Dabhol Project, and its foreign Investors and Lenders, became a political target in the March 1995 Maharashtra state elections.

Several non-incumbent political parties lined up in opposition to foreign investment in the power sector and defeated the Congress Party, which had ruled the State of Maharashtra for nearly fifty years. After the election, the new BJP/Shiv Sena ruling coalition appointed a well-known opponent of the Dabhol Project – Deputy Chief Minister Gopinath Munde<sup>2</sup> – to lead a commission to review the Project. The Munde Commission recommended that the project be terminated.

22. In August 1995, the GOM, acting through MSEB, directed DPC to cease construction and abandon the Project. DPC, however, exercised its right to international arbitration and commenced an arbitration proceeding in London against the GOM on the basis of the GOM's breach of its contractual commitments. The GOM unsuccessfully challenged the jurisdiction of the arbitral tribunal. Once the arbitration panel ruled in favor of its own jurisdiction and the GOM realized that it could not have the dispute heard in Indian courts, the GOM modified its position. The GOM entered into an amended and strengthened PPA,<sup>3</sup> a Supplemental State Support Agreement and agreed to a consent award accepting, without reservation, the validity and enforceability of the PPA, including its mandatory arbitration commitment. Project construction then resumed.

23. Political pressures once again overwhelmed the Project as a result of the next Maharashtra state elections in 1999. Several opposition parties came to power after vigorously campaigning against foreign investment and the Dabhol Project. Another commission, the "Gadbole Committee", led by a known opponent of the Project was established to study the Project and, predictably, recommended its cancellation.

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<sup>2</sup> Mr. Munde had earlier publicly threatened to throw the Dabhol Project "into the Arabian Sea." Lyla Bavadam, *Power Politics*, Frontline, Sept. 10, 1999.

<sup>3</sup> In an effort to mollify opposition to the Dabhol Project – which had become a *cause celebre* for opponents to foreign investment in India – Enron sold an approximately fifteen percent shareholding interest in DPC to MPDCL, MSEB's controlled subsidiary.

24. Beginning in late 2000 and continuing through mid-2001 and beyond, the GOM, in concert with the MSEB, GOI, MDPCL, and other governmental entities, carried out a multi-pronged strategy to cripple the Project and fatally destroy the investments of the DPC Investors and Lenders. This strategy had the effect of expropriating the interests of all investors in the Dabhol Project.

25. First, MSEB breached the PPA by failing to pay on time, in full, and, eventually, at all. A few months later, MSEB, at the direction of the GOM, expressly repudiated the PPA, refused to purchase any further power from DPC and further refused to increase the escrow account and letter of credit required to bring the Phase II expansion into service. Through these acts, carried out for non-commercial reasons, the Indian Government took away what was, under Indian law, DPC's only permissible customer, and deprived DPC of its most important economic assets; namely, the cash flow promised by the PPA and the back-up security offered by the escrow accounts and letters of credit.

26. Second, when DPC sought payment and enforcement by the GOM of the GOM Guarantee and the State Support Agreements and payment by the GOI of the GOI Counter-Guarantee, both the GOM and GOI refused. The GOM and the GOI thereby breached their explicit contractual duties to guarantee MSEB payments and support the Project as well as their duties under public international law to protect DPC from expropriation and other unlawful treatment and the GOM's explicit contractual duties under the State Support Agreements to do the same.

27. Third, when DPC exercised its right to commence an arbitration case in London against MSEB in April 2001, seeking relief from MSEB's violations of the Project Agreements and from the impending destruction of the Project, MSEB sought refuge before the Maharashtra

Electricity Regulatory Commission (“MERC”). MERC was a new government agency created in 1999, after the Project Agreements had been signed and the Project had commenced. MERC is a GOM-controlled state agency, whose members are appointed and whose policies are set by the GOM. In the run-up to the formation of MERC, both the Advocate General of the State of Maharashtra and MSEB’s outside solicitors opined that the international arbitration provisions of the Project Agreements were binding and enforceable obligations. In addition, MERC has determined in other cases that its jurisdiction does not encompass PPAs entered into prior to its formation in 1999. Nonetheless, in May 2001, MSEB asked MERC to assert exclusive jurisdiction over its disputes with DPC, and to enjoin the pending arbitration proceedings in London. MERC granted the injunction. This injunction, which has been repeatedly continued and sustained by the Indian courts and remains in effect to this day, prevents DPC from exercising the most important remedy – international arbitration – to protect its investment in the Dabhol Project.

28. Fourth, the GOM, GOI and Indian courts, along with MSEB and MERC, have systematically subverted, by design or effect, the international dispute resolution protections set forth in the PPA, GOM Guarantee, State Support Agreements and GOI Counter-Guarantee. DPC commenced UNCITRAL arbitration proceedings in London against the GOM, GOI and MSEB. In response, the GOM, GOI and MSEB breached their contractual and international law obligations with respect to international arbitration by seeking and obtaining injunctions from the Indian courts preventing DPC from obtaining a fair, swift and neutral resolution of the disputes that have enveloped the Project. Had these arbitration cases been allowed to proceed when commenced – as was promised under the Project Agreements – the rights and obligations of the

parties could have been determined in time to prevent the ultimate destruction of the Project and the total expropriation of the interests therein.

29. Fifth, the Indian courts have repeatedly undermined DPC's rights to fair and impartial administration of justice through the international arbitral process by, among other acts or omissions, enjoining DPC's commencement or continuation of its international arbitration proceedings for over three and one-half years, resulting in the collapse of the Project, and by delaying requests and appeals by DPC, while executing related Indian Government requests with dispatch.

30. Sixth, without payments from MSEB and without payments from GOM or GOI under their guarantees, DPC was unable to meet its financial obligations and turned to one of its pre-arranged protections from MSEB's default; namely, the letter of credit established under the PPA. MSEB blocked this effort, however, by seeking and obtaining an Indian court order preventing DPC from drawing on the letter of credit.

31. Seventh, the GOI, through its owned or controlled IFIs, undermined DPC's right to transfer the Project back to MSEB in the event of its non-payment and to obtain the contractually negotiated Transfer Amount. Given the importance of a guaranteed cash flow to the Project, this pre-agreed remedy for MSEB's breach was critical for DPC. Nonetheless, the IFIs facilitated the evisceration of DPC's safeguards – and breached their contractual agreements with the Offshore Lenders in the process – by obtaining an Indian court order enjoining DPC from issuing the Final Termination Notice, which would have terminated the PPA and caused the Transfer Amount to become due.

32. Eighth, in March 2002, the IFIs further impaired the rights of DPC by successfully obtaining an Indian court order appointing an Indian receiver for DPC. The receiver seized

control over all DPC assets, including its bank accounts, records and even the plant itself.

Without access to DPC's accounts, the management chosen by the Investors could not continue to pursue DPC's actions against the Indian Government for the expropriation of the company and the Project. Nor could they operate the Project, complete Phase II or otherwise attempt to derive income from DPC's assets.

33. Last, MPDCL, the MSEB-controlled subsidiary that had obtained a minority stake in DPC in the mid-1990s, also interfered with DPC's efforts to avoid financial ruin. Since Spring 2002, MPDCL has undertaken various actions to prevent DPC's Board of Directors from meeting or from taking any actions to pursue its arbitral remedies. At the direction of GOM and MSEB, MPDCL has interfered with the functioning of DPC by preventing a quorum, by instigating legal proceedings challenging the Board's authority to act and, finally, by obtaining an Indian court order enjoining DPC from pursuing any arbitration cases against MPDCL, MSEB or GOM and from taking any further actions as a Board.

**D. OPIC Paid Its Insureds for the Indian Government's Expropriation of DPC.**

34. As a result of actions and omissions attributable to the Government of India identified above, the Investors and the Bank of America all submitted claims under their respective political risk insurance policies maintaining that their equity interests and loans had been expropriated by Indian Government authorities. OPIC delayed paying these claims until GE and Bechtel had obtained a decision from a distinguished American Arbitration Association ("AAA") panel,<sup>4</sup> which reviewed the facts outlined above. The AAA panel concluded that the "concerted acts" of the Indian Government, which "effectively destroyed the investment of [GE

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<sup>4</sup> The panel consisted of Judge Charles B. Renfrew, former Judge of the United States District Court for the Northern District of California and former Deputy Attorney General of the United States; David N. Kay OBE, Chairman, Corporate Department, Gardner, Carton & Douglas, and Honorary Legal Advisor to the British Consul General in Chicago; and Robert Layton, Director of the Center for International Law, New York Law School, and former Head of the Litigation Group, Jones Day.

and Bechtel] in the DPC,” amounted to a “total expropriation” in violation of established principles of international law. *Bechtel Enterprises International (Bermuda) Ltd. v. Overseas Private Investment Corporation*, AAA Case No. 50 T195 00509 02 (Sept. 3, 2003) at 24-26.

The Panel stated:

From its inception to the present day, the Project has been a political lightning rod. Its existence has been defined by the push and pull of Indian politics. The expropriatory events described above were the sole and direct consequence of political decisions and competing political forces within Maharashtra and India.

The acts of MSEB, MERC, the GOM, the GOI, and IFIs and the Indian Courts depriving DPC of its fundamental rights under the Project Agreements have rendered the Sponsors’ equity in the Project valueless. DPC has been unable to meet its debt payments and has been placed in default and receivership because of the loss of its revenue stream from the PPA, as well as the failure of the GOM and the GOI to perform their respective guarantees.

*Id.* at 20-21. The Panel held that MSEB, the GOM and the GOI violated the PPA, the GOM Guarantee, the GOI Counter-Guarantee and the State Support Agreements “for political reasons and without any legal justification.” *Id.* at 24. Further, “MERC, MSEB, the IFIs and the Indian courts have enjoined and otherwise taken away Claimants’ international arbitration remedies under the PPA, all in violation of established principles of international law, in disregard of India’s commitments under the U.N. Convention as well as the Indian Arbitration Act.” *Id.* at 24-25. Finally, the AAA Award determined that these actions deprived the Investors of the fundamental rights and benefits of their investment in DPC. *Id.* at 25.

35. In early September 2003, the AAA Panel ordered OPIC to pay GE and Bechtel the maximum amount allowed under their respective policies. On or about October 8, 2003, OPIC tendered payments totaling \$63,656,126 in settlement of their claims and received, in return, assignments of certain rights, interests and claims. On or about September 30, 2003, OPIC



settled Bank of America's claim by paying \$27,613,586.10. Due principally to the bankruptcy proceedings involving Enron entities, OPIC's settlement with Enron was delayed until April 2004. OPIC paid \$20,390,000 in settlement of Enron's claims.

#### IV.

#### **ACTS AND OMISSIONS ATTRIBUTABLE TO THE GOI VIOLATED ESTABLISHED PRINCIPLES OF PUBLIC INTERNATIONAL LAW**

36. The GOI is accountable under Article 6(c) of the Bilateral Agreement for its breaches of public international law. The actions and omissions of the GOI, directly and through its subdivisions, agencies and instrumentalities, including the GOM, MSEB, MERC, MPDCL and the Indian courts, had the effect of depriving DPC and its Investors and Lenders of rights, interests, use, benefits and control of their investments. The Indian Government has prevented DPC from (i) earning revenues; (ii) drawing on an escrow account and a letter of credit; (iii) collecting from the GOM or the GOI under their guarantees; (iv) terminating its involvement in the Project and receiving the previously agreed buy-out payment; (v) seeking redress for the Indian Government's breaches of the Project Agreements in neutral international arbitral proceedings outside Indian courts; (vi) convening a Board of Directors meeting or otherwise operating or taking action as a corporate entity; and (vii) controlling its own assets, accounts, records or even the Project site itself. This series of actions or omissions, individually or when viewed cumulatively, destroyed DPC's ability to operate. The GOI is responsible under established principles of public international law for the injuries sustained by OPIC as a result of these actions and omissions by or attributable to the Government of India.

**1. The GOI Violated Public International Law by Expropriating OPIC's Rights, Interests, Use, Benefits and Control of the Dabhol Project Without Paying Compensation.**

37. The GOI is responsible under public international law for all injuries sustained by OPIC from the Indian Government's uncompensated expropriation of the investments of GE, Bechtel, Bank of America and Enron in the Dabhol Project. Through actions and omissions attributable to it as detailed above, the GOI has effectively deprived GE, Bechtel, Bank of America and Enron of their rights, interests, use, benefits and control of the Dabhol Project, and has not provided compensation in violation of public international law.

**2. The GOI Violated Public International Law by Denying DPC Justice.**

38. The GOI is responsible for all injuries sustained by OPIC arising from the Indian Government's denying DPC justice in violation of public international law. By way of illustration, but not limitation, the GOI, GOM and MSEB each agreed in the Project Agreements to resolve disputes with DPC involving the Dabhol Project in international arbitration proceedings outside India. The GOI, directly and through its subdivisions, agencies and instrumentalities, violated its public international law obligations by failing to submit disputes involving the Project to their designated fora and by taking measures to deny access to these agreed fora. These actions and omissions, which deliberately frustrated DPC's arbitral remedies, constitute a denial of justice under international law.

**3. The GOI Violated Public International Law Through Breach, for Discriminatory, Governmental, Political or Other Non-Commercial Reasons, Amounting to Repudiation of Contractual Obligations Owed to DPC.**

39. The GOI is responsible under public international law for all injuries sustained by OPIC arising from the breach, for discriminatory, governmental, political or other non-

commercial reasons, amounting to repudiation of contractual obligations owed to DPC, including obligations arising under the PPA, the GOM Guarantee, the GOI Counter-Guarantee and the State Support Agreements, among others.

**V.**

**THE GOI IS LIABLE TO PAY REPARATIONS FOR THE UNLAWFUL ACTS AND OMISSIONS ATTRIBUTABLE TO IT**

40. As a result of the series of actions and omissions described above, the Investors and the Bank of America each submitted claims to OPIC demanding payment under their respective political risk insurance policies. In compliance with the AAA Award, OPIC paid GE and Bechtel in settlement of their claims. OPIC also settled the claims of Enron and the Bank of America under their respective policies. Under Article 3(b) of the Bilateral Agreement, as well as established principles of subrogation, the GOI is liable to reimburse OPIC for these payments, plus interest and costs, and otherwise to compensate OPIC to the fullest extent of the rights, interests and claims transferred to OPIC from the Investors and the Bank of America.

**VI.**

**REQUEST FOR RELIEF**

41. Claimant respectfully requests that the Tribunal issue an Award:
- a. Ordering the Respondent to pay Claimant damages, in excess of \$110 million, corresponding to the amount that OPIC paid to GE, Bechtel, Enron and the Bank of America in settlement of claims under their political risk insurance policies, plus compound interest from the dates of payment and OPIC's costs in administering the policies, including the costs of obtaining a decision from the AAA arbitration panel with respect to the GE and Bechtel policies;

- b. Ordering the Respondent to pay Claimant for any other damages necessary to compensate OPIC in full for the rights, interests and claims transferred to OPIC by the Investors in settlement of their respective political risk insurance policies;
- c. Ordering the Respondent to pay Claimant for the fees and expenses, including attorneys' fees, that OPIC has incurred or will incur to oppose the measures complained of in this Request for Arbitration;
- d. Ordering the Respondent to pay Claimant for all costs of this arbitration including, without limitation, attorneys' fees, panelist fees and disbursements.

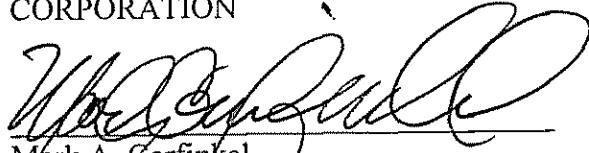
42. With regard to the amounts identified above, Claimant seeks an award of compound interest, from the date the Tribunal determines liability arose until the date of payment.

43. Claimant hereby reserves its right to clarify, supplement, expand or otherwise revise its damage claims during the course of this arbitration proceeding. As mentioned, Claimant intends to supplement its claims on or after December 1, 2004, to add OPIC's losses for the GOI's expropriation of its direct loans to the Dabhol Project, if the dispute is not resolved before then.

44. Claimant respectfully requests such further relief as the Tribunal deems appropriate.

Respectfully submitted,

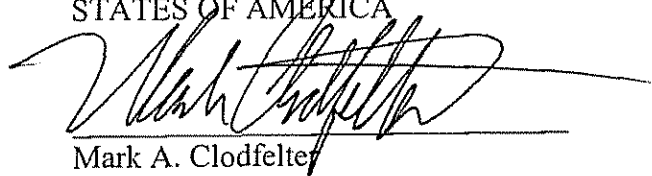
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