

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION
RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL
TRADE LAW (UNCITRAL) AND THE AGREEMENT BETWEEN BOSNIA AND
HERZEGOVINA AND THE REPUBLIC OF INDIA FOR THE PROMOTION AND
PROTECTION OF INVESTMENTS (BIT)**

NAVEEN AGGARWAL, NEETE GUPTA, and USHA INDUSTRIES, INC.

Claimants

v.

BOSNIA AND HERZEGOVINA,

Respondent

CLAIMANTS' NOTICE OF ARBITRATION

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I. INTRODUCTION AND SUMMARY

1. Pursuant to Articles 3 and 20 of the Arbitration Rules of the United Nations Commission on International Trade Law, RESOLUTION 31/98 Adopted by the U.N. General Assembly on December 15, 1976, as revised in 2010 and 2013 (“UNCITRAL Arbitration Rules”), and Article 9 of the Agreement Between Bosnia And Herzegovina And The Republic Of India For The Promotion And Protection Of Investments (the “BIT”),¹ Claimants NAVEEN AGGARWAL, NEETE GUPTA (collectively, the “Individual Investors”), and USHA INDUSTRIES, INC. (collectively, with the Individual Investors, the “Investors”) hereby submit their Notice of Arbitration against the Government of Bosnia and Herzegovina (“Bosnia,” “Government,” or “Respondent”) under the UNCITRAL Arbitration Rules. A summary of the key facts involved in this dispute, which are elaborated in greater detail below, is as follows.

2. In late 2015, with the encouragement of the Bosnian Ministry of Finance, Investors purchased newly issued shares of Krajina osiguranje a.d. Banja Luka (“Krajina” or the “Company”), a state-owned insurance company in Republic Srpska that was seeking additional capital through private investment. Mr. Aggarwal² and Ms. Gupta each paid approximately \$2 million for their individual shares, giving each of them control of a little more than 25% of the total outstanding shares of Krajina.

3. Respondent actively sought the investments by Investors in the Company. The Company, which was majority-owned and controlled by the state, had issued a prospectus which contained representations about its financial condition and performance. Investors relied

1 The Agreement Between Bosnia And Herzegovina And The Republic Of India For The Promotion And Protection Of Investments, dated 12 September 2006 (Exh. C-1).

2 Mr. Aggarwal holds his shares for the ultimate beneficial interest of Usha Industries pursuant to an agreement dated 1 December 2015 (Exh. C-2).

both on this prospectus and the assurances from the Government in deciding to purchase shares in the Company.

4. Subsequent to the independent purchase of their shares, Investors learned that the Company's prospectus had been filled with purposeful misrepresentations. These falsehoods were especially troubling both because this was an entity controlled by Respondent, and because Respondent's regulators had affirmatively approved the prospectus. Respondent appears to have been actively seeking Indian investment for the Company, rather than domestic investment, providing further proof that Respondent was aware that the prospectus was fraudulent.

5. After learning that they had been defrauded, Investors sought redress against the Company through the Bosnian judicial system. Investors obtained a judgment against the Company in Bosnian court for fraud with respect to the prospectus. The Company did not appeal the judgment.

6. This judgment confirmed that the Company's prospectus, created by the state-owned company and vetted and approved by the Government, was fraudulent and that Investors were victims of this fraud at the hands of Respondent and its officials.

7. Investors presented the judgment to Respondent's officials and requested that these officials take action to investigate and remedy this fraud. Investors sought to ensure that the wrongdoers within the Government were held liable for this fraud and sought an accordant remedy for this wrongdoing.

8. Astonishingly, instead of assisting to remedy the fraud, Respondent's officials undertook a series of punitive actions designed to extinguish the value of Investors' investment in the Company. Respondent began a series of harassing actions against the Investors.

Respondent then took affirmative action to prevent Investors from exercising any meaningful rights of ownership with respect to the Company. Investors were prevented from managing the Company, despite their majority ownership, and were denied the benefits of their investments, due to the wrongful conduct of Respondent. These actions rendered Investors' shares essentially worthless.

9. Respondent's actions caused significant damage to Investors, who had just begun to implement a business plan to grow the Company, including both manifest efforts to begin to sell agricultural insurance in Bosnia and to expand operations into the Federation market within Bosnia. These efforts would have substantially increased the profitability of the Company. By refusing to let Investors manage the Company -- as majority owners -- in a commercially reasonable manner, Respondent caused significant economic harm to the Company and to Investors.

10. Respondent's actions and inactions, as described above and below, and as will be laid out more fully in Investors' Statement of Claim, are violations of its obligations under the BIT including:

- Respondent's obligation to provide Investors "at all times ... fair and equitable treatment" as set forth in Article 3 of the Treaty;
- Respondent's obligation to provide Investors National Treatment and Most Favored Nation Treatment as set forth in Article 4 of the Treaty; and
- Respondent's promise that investments "shall not be nationalized, expropriated or subject to measures having effect equivalent to nationalization or expropriation" as set forth in Article 5 of the Treaty.

11. Investors have incurred damages of not less than US\$40 million (forty million U.S. dollars) as a direct result of Respondent's breaches of the BIT.

II. THE PARTIES

Claimants

12. Claimant Neete Gupta is an Indian national currently residing at 127/1 Mehrauli, New Delhi 110030 India.

13. Claimant Naveen Aggarwal is both an Indian national and a U.S. citizen currently residing at 158 Greenfield Dr., Bloomingdale IL 60108 USA.

14. Claimant Usha Industries is a corporation organized and domiciled in India. Usha Industries is a chemical company with its main office located at 5187 Naya Bazar, New Delhi 110006 India.

15. Claimants in this arbitration are represented in this arbitration by:

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16. All communications in connection with this arbitration should be directed to the above-named counsel.

The Respondent

17. Respondent in this arbitration is Bosnia and Herzegovina. Service of this Notice of Arbitration can be made on Bosnia and Herzegovina using the following contact details:

Minister Josip Grubeša

Ministry of Justice, Bosnia and Herzegovina
1 Trg BiH Street, 71 000 Sarajevo
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Tel: + 387 33 223 501
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III. CONSENT TO ARBITRATION

18. Respondent has consented to arbitration involving investments with Indian nationals pursuant to Article 9 of the BIT, which provides in relevant part that

“Should the investor choose not to invoke the dispute settlement procedure provided under paragraph 2 of this Article or where a dispute is referred to conciliation but conciliation proceedings are terminated other than by signing of a settlement agreement, the dispute may be referred to arbitration [by the investor].”

Article 9 continues by providing that the investor can submit the dispute

“to an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976 (UNCITRAL)”

Thus, Article 9 contains Respondent’s consent to arbitration for disputes with Indian investors arising under the BIT.

19. Claimants’ consent to the arbitration is accomplished by Claimants’ initiation of this arbitration against Respondent.

IV. JURISDICTION

20. The BIT contains several requirements for jurisdiction. The dispute described in this Notice of Arbitration satisfies these jurisdictional requirements.

21. **First**, Claimants have an investment that satisfies Article 1(1) of the BIT.

Article 1(1) defines an “investment” as, among other things:

- “shares in and stock and debentures of a company and any other similar forms of participation in a company;

- “rights to money or to any performance under contract having a financial value”

22. On December 18, 2015, Neete Gupta purchased 3,445,077 shares in the Bosnian insurance company Krajina osiguranje a.d. Banja Luka. Neete Gupta continues to retain title to those shares despite the fact that Respondent has deprived those shares of value.

23. On December 18, 2015, Naveen Aggarwal purchased 3,454,922 shares in the Bosnian insurance company Krajina osiguranje a.d. Banja Luka. Naveen Aggarwal continues to retain title to those shares despite the fact that Respondent has deprived those shares of value.

24. Pursuant to an agreement dated 1 December 2015, Usha Industries has a beneficial interest in the shares held by Naveen Aggarwal. Usha Industries also has rights with regard to the performance of the shares held by Naveen Aggarwal.

25. **Second**, the Investors here are “investors” in accordance with the BIT. The BIT defines investors as “any national or company of a Contracting Party”, i.e., India. The BIT provides that “national” means:

“in respect of India: any person deriving her/his status as Indian national from the law in force in India.”

The BIT further provides that a “company” means:

“in respect of India: any corporation, **firm** or association incorporated or constituted or established under the law in force in any part of India.”

26. Neete Gupta is an Indian national. She lives in India and holds an Indian passport. Ms. Gupta purchased the shares upon receiving approval from Insurance Agency and holds the shares as of the effective date of this Notice of Arbitration.

27. Naveen Aggarwal is likewise an Indian national. Among other claims to Indian

nationality, Mr. Aggarwal was born in India and has the benefits and privileges of an “Overseas Citizen of India”. Mr. Aggarwal purchased the shares upon receiving approval from Insurance Agency and holds the shares as of the effective date of this Notice of Arbitration.

28. **Third**, the Investor’s investment is within the scope of the BIT. Article 2 provides that the BIT applies to investments in existence as of the date of the entry into force of the BIT and to investments made thereafter. Investors made their investment in December 2015. The BIT entered into force on 13 February 2008. Thus, the investments are within the scope of the BIT.

29. **Fourth**, the Investors have a dispute against Respondent. As discussed above and below, Respondent has breached several of its obligations arising out of the BIT by its actions and inaction with respect to Investors. Although there is no “waiting period” required to bring this UNCITRAL *ad hoc* arbitration, Investors have made repeated efforts, directly and indirectly, to resolve this matter with Respondent. These efforts culminated in a letter from counsel for Investors dated 30 May 2017 outlining the various claims and seeking action by Respondent to remedy the situation. Although Respondent acknowledged receipt of the letter, Respondent took no action to resolve the dispute.

V. KEY FACTS SUPPORTING THE CLAIM

30. Krajina is an insurance company located in Republic Srpska in Bosnia and Herzegovina. Republic Srpska is one of two constitutional and legal entities of Bosnia and Herzegovina (the other being the Federation of Bosnia and Herzegovina). The Government caused Krajina to issue new shares in late 2015 as part of an ongoing effort to privatize Krajina. Prior to the sale of these shares, a Bosnian government investment fund owned 68% of the shares of Krajina.

31. In September 2015, the Republic Srpska Securities Commission (“SC”) (which is part of the Bosnian Ministry of Finance) issued a prospectus for the issuance of additional shares in connection with the recapitalization of Krajina. Republic Srpska Insurance Agency (“IA”) (which is also part of the Ministry of Finance) also approved the material disclosures contained in the offering prospectus. The Indian ambassador to Bosnia communicated with Investors separately to inquire whether they would have interest in investing in the Company. Investor Aggarwal sought and attended meetings with the IA and the Ministry of Finance to discuss the investment and the financial state of the Company. Respondent repeatedly encouraged an investment by Aggarwal in Krajina during these meetings and subsequent phone calls. Investor Gupta conducted her own due diligence in the investment, and made her own decision to invest. Investors did not communicate with each other about the investment prior to their independent decisions to invest in the Company.

32. In late 2015, the individual Investors each separately applied to purchase the shares in Krajina. Respondent approved each Investor separately to purchase the shares and emailed approval to both Investors. Investors each separately agreed to purchase the shares in Krajina. Although the individual Investors know each other and have had prior business dealings, they had no current business or family relationship.

33. Immediately upon purchase of the shares, Investors began implementation of a plan to grow and expand the business of Krajina. Krajina was already licensed to issue agricultural insurance in Bosnia, a needed and valuable service, but needed reinsurance support to do so. Accordingly, Investors began taking substantial and demonstrative business efforts to issue and to market agricultural insurance in Bosnia.

34. In January 2016, Investors discovered material fraud contained in the prospectus

for Krajina. Krajina had significantly understated the amount of assets owned by the Company and significantly understated liabilities associated with pending litigation and other claims. These was not a simple error or oversight but instead was a fundamental misstatement that changed completely the nature and value of the investment.

35. The prospectus from the state-owned entity was approved by the Bosnian Ministry of Finance, and by the Securities Commission and Insurance Agency.

36. On March 21, 2016, the general counsel of Krajina sent a letter to Investors on Company letterhead confirming details of the prospectus fraud. This letter stands as an internal acknowledgement from the Company that the prospectus contained material misrepresentations.

37. In March 2016, Investors filed suit against Krajina in commercial court in the city of Trebinje seeking damages for fraud in the prospectus.

38. On April 11, 2016, the IA inexplicably sought to cancel the shares of the Company purchased by Investors, alleging that the capital increase in the Company was not appropriately registered with the Bosnian government (it was in fact appropriately registered). Even had it not been properly registered, this action was clearly punitive as it was taken against Investors after they made claim of this government abuse. In addition, Investors are unaware of other examples where domestic investors or other foreign investors from places other than India faced similar allegations.

39. Following this punitive and retributive action by Respondent, the independent auditor of the Company refused to delete the shares of Investors.

40. On April 16, 2016, Investors' Bosnian counsel wrote to the IA, asking the IA to commence an investigation into the prospectus fraud. Investors' counsel also filed a complaint with state prosecutors seeking action concerning the fraud. Both entities refuse to take any

action and instead, again with the sole purpose to harass and provide retribution against Investors, initiated criminal investigations against the individual Investors.

41. On May 16, 2016, despite these retributive actions against Investors, the Trebinje court confirmed fraud in the offering prospectus and finds that the share price paid by Investors was dramatically inflated above its true value. The court found that Investors should have only paid .15 KM per share, rather than the 1.0 KM per share that was paid. The Company did not appeal this judgment.

42. On July 16, 2016, upon final judgment from the Trebinje court, rather than admit fault and try to remedy the fraud, the IA raided the offices of the Company. The IA also issued an order appointing an emergency administrator for the Company and suspended the rights of shareholders to manage the business for 90 days. The putative justification for appointment of the administrator was the IA's alleged lack of awareness of the Trebinje court proceeding and the claimed financial distress of the company. This order entirely prevented Investors, who owned the majority of the Company, from managing the business.

43. The emergency order was supposed to last for three months but was extended for a second three-month period. All ownership rights of the Investors remained suspended during this six-month period and the administrator fails to take action to maintain the existing business, much less take action to expand the business or to issue agricultural insurance. During this period, revenue of Krajina was dramatically diminished, as policyholders were routed to the ATOS Insurance Company, which is beneficially owned by the head of the Ministry of Finance.

44. Significantly, Investors were unable to execute a reinsurance agreement relating to agricultural insurance despite completion of the commercial terms for that transaction. Insurance Agency also denied an application to expand into Federation market, stopping

growth.

45. During this suspension, the IA asked Mr. Aggarwal to agree to waive the Trebinje court decision in return for a rescission of the suspension order. State media announced that Investors would be arrested if they would travel to Bosnia.

46. The administrator continued to take actions against the interests of Investors. The administrator filed a claim in Banja Luka court, wrongly asserting that the Trebinje court did not have appropriate jurisdiction to consider the prospectus claims against the Company. Not surprisingly, the Banja Luka court agreed with Respondent's administrator.

47. On October 25, 2016, the SC issued an order declaring the individual Investors to be "connected" parties pursuant to Bosnia's securities law. Pursuant to Bosnian securities law, if "connected" shareholders own more than 50% of a company, they must make a tender offer for all outstanding shares. The SC order demanded that individual Investors make an offer to purchase all outstanding shares of the Company at a 20% premium above the price that Investors paid for their shares. This was completely inexplicable given that Respondent allowed the prospectus to be fraudulently issued.

48. Investors are not connected parties under Bosnian law. The only "connection" between them is that they know each other and are both Indian. The Investors are aware of no other situations where non-related investors were deemed to be connected because they shared the same nationality or knew each other. In addition, to the extent that Investors were "connected", which they were not, this would have been the same situation when Investors were encouraged to purchase and purchased the shares from the Government.

49. The Investors appealed this decision to the court in Banja Luka, which adopted the SC decision almost verbatim. SC and IA refused to act in accordance with Bosnian law, and

unlawfully froze Investors' shares, deprived them of all shareholders' rights.

50. Investors are unable to exercise any shareholders' rights associated with their ownership. Business of the Company has now been steered to other companies or lost forever. The fraud against the Investors done by Respondent is now complete.

VI. LEGAL ARGUMENTS SUPPORTING THE CLAIM

51. Respondent's actions and inactions described above violate several of its obligations under the BIT.

Fair and Equitable Treatment

52. Article 3 of the BIT provides that:

“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.”

Respondent has violated Article 3 with respect to the Investors' investment by, among other thing, subjecting the share ownership to arbitrary and discriminatory treatment, violating Investors' legitimate investment backed expectations, and denying the Investors justice with respect to their investment. Respondent sought to destroy Investors' investment through the measures described above.

53. In sum, Respondent allowed or caused its state-owned entity to issue a fraudulent prospectus, approved and purportedly vetted the fraudulent prospectus, and then took a series of actions to destroy the investment of the victims (the Claimants). These arbitrary actions smack of unfairness and the heavy-handed machinations of the state.

National Treatment and MFN

54. Article 4 of the BIT provides as follows:

“1. Each Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party,

treatment which shall not be less favourable than that accorded either to investments and returns of its own investors or investments and returns of investors of any third State, whichever is more favourable.

“2. Each Contracting Party shall accord in its territory to investors of the other Contracting Party, as regards the expansion (to the extent the laws of the Contracting Party concerned permit), management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.”

Respondent has treated Investors’ investment significantly less favorable compared to domestic investment and other foreign investment. Most notably, Respondent has subjected the investment (*i.e.*, the individual investments by Ms. Gupta and Mr. Aggarwal) in question to being a connected investment, even though the investment is not connected either factually or legally.

55. To the extent that Respondent maintains that the investment here is “connected”, Respondent has not applied this rule to domestic investment and investment from other nations. Respondent’s animus against Indian investors shone through when its officials tore down an Indian flag located in the offices of the Company and on other occasions made disparaging remarks about Indian nationals.

Expropriation

56. Article 5 of the BIT provides for protection against expropriation. This provision includes protection against direct expropriation but also protection against “measures having effect equivalent to nationalization or expropriation”. If an investment is expropriated, as it was here, the Respondent can only expropriate “for a public purpose in accordance with law on a non-discriminatory basis and against fair and equitable compensation.”

57. Although Investors still own their shares as a legal matter, Respondent has

deprived all or almost all of the value of the Investors' shares. Investors have no benefits of ownership of their shares – *i.e.*, no right to control or even assist in controlling the Company, no right to cause the Company to engage in business, no right to receive the profits of the Company, etc. As such, Investors have been deprived completely of the actual benefits of ownership.

58. The expropriation was not for a public purpose. To the contrary, Respondent's actions were designed to cover up the fraudulent actions of its own officials and to steer business to other more favored insurance companies.

59. The expropriation was discriminatory. Respondent has not taken these same actions (for example, making the determination that Investors were connected investors) against domestic and other foreign investors.

60. Importantly, despite repeated requests, Respondent has not compensated Investors for the expropriation.

61. Accordingly, Respondent has expropriated Investors' investment and needs to compensate them.

Additional Substantive Protections

62. Investors reserve their right to import additional substantive protections and/or to take advantage of more robust protections that are extended to investors from other countries by operation of the MFN clause in Article 4(2) of the BIT. These protections include, among other things, full protection and security and an independent denial of justice claim.

VII. CONSTITUTION OF THE TRIBUNAL

63. In accordance with UNCITRAL Rule 4(c), Investors appoint Ian Laird, a Canadian national, from Crowell & Moring as their party-appointed arbitrator. Mr. Laird has

confirmed to counsel that he is and shall remain impartial and independent of the parties during the pendency of this arbitration.

64. According to Article 9(3.3)(b) of the BIT, Respondent has 60 days from the receipt of this Notice of Arbitration to appoint its party-appointed arbitrator.

VIII. RELIEF AND REMEDY SOUGHT

65. Without prejudice to its rights to amend, supplement, or restate the relief to be requested in the arbitration, Claimants request the Tribunal to:

(1) declare that Respondent has breached its obligations under the Agreement Between Bosnia And Herzegovina And The Republic Of India For The Promotion And Protection Of Investments and international law;

(2) award Claimants monetary damages of not less than US\$40 million (forty million U.S. dollars) in compensation for losses sustained as a result of Respondent's breaches of its obligations under the BIT and international law, including, inter alia, reasonable lost profits, direct and indirect losses (including, without limitation, loss of reputation and goodwill), losses of all tangible and intangible property, and moral damages;

(3) award all costs (including, without limitation, attorneys' fees and all other professional fees) associated with any and all proceedings undertaken in connection with this arbitration, including all such costs undertaken to investigate this matter and prepare this Notice of Arbitration, and all such costs expended by Claimants in attempting to resolve this matter amicably with Respondent before serving this Notice of Arbitration;

(4) award pre- and post-judgment interest at a rate to be fixed by the Tribunal;
and

(5) grant such other relief as counsel may advise or the Tribunal may deem appropriate.

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