

IN THE MATTER OF AN ARBITRATION TO
BE HELD UNDER BILATERAL INVESTMENT
TREATIES BETWEEN FINLAND AND EGYPT
DATED 5 MAY 1980 AND 3 MARCH 2004 AND
UNCITRAL ARBITRATION RULES (1976)

BETWEEN

MOHAMED ABDEL RAOUF BAHGAT

CLAIMANT

AND

THE ARAB REPUBLIC OF EGYPT

RESPONDENT

NOTICE OF ARBITRATION

Mr Subir Karmakar
Balsara & Co. Ltd,
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3-4 Holborn Circus
London
EC1N 2HA
Telephone: 00 44 20 7797 6300
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Prof. Andrew Newcombe
c/o Faculty of Law,
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Email: newcombe@uvic.ca

Solicitors and Attorneys acting for the Claimant

3rd November 2011



Balsara & Co
S O L I C I T O R S

Our reference SK/MOH0041
Your reference

Date 3rd November 2011

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His Excellency Field Marshall Mohamed
Hussein Tantawi
The Supreme Council of Armed Forces
23, Khaleefa Al-maamon
Kobri El Kobba
Cairo
Egypt

Copy to

His Excellency The Prime Minister of the
Arab Republic of Egypt Dr. Essam Sharaf
Magles El Shaab St.,
Kasr El Aini St.,
Cairo
Egypt

By courier

Your Excellency

**Re : Mohamed Abdel Raouf Bahgat v The Arab Republic of Egypt –
Notice of Arbitration**

1. As you know we represent Mohamed Abdel Raouf Bahgat (“Mr Bahgat”) who was at all material times, and remains to this day, a Finnish national.
2. We refer to our letter dated 8 July 2011 (a copy of which is attached herewith), which identifies the circumstances in which Mr Bahgat made investments into Egypt protected in accordance with the two bilateral investment treaties entered into between Egypt and Finland on 5 May 1980 and 3 March 2004. In this letter, as in the letter dated 8 July 2011, the first bilateral investment treaty signed on 5 May 1980 is referred to as “BIT 1” and the second bilateral investment treaty signed on 3 March 2004 is referred to as “BIT 2”.
3. As we pointed out in our letter dated 8 July 2011, BIT 1 came into force on 22 January 1982 and BIT 2 came into force on 5 February 2005.
4. In our letter dated 8 July 2011 we also identified the circumstances in which Mr Bahgat’s investments made in Egypt, and his legitimate expectations to earn substantial and recurring returns on his investment during the lifetime of the project, were utterly decimated by Egypt’s failure to abide by its treaty obligations undertaken under BIT 1 and BIT 2.

5. In our letter dated 8 July 2011, we formally invited Egypt to resolve the dispute amicably (as per Art. 9(1) of BIT 2) and in addition, and in the alternative, we formally invited Egypt to enter into negotiations with a view to settling this dispute amicably (as per Art. 7(1) of BIT 1).
6. We advised you that if Egypt failed to settle Mr Bahgat's claims within three months Mr Bahgat would invoke investor-state arbitration under Art 9(2)(d) of BIT 2 for violations of both BIT 1 and BIT 2. In addition, and in the alternative, we said that Mr Bahgat would also invoke investor-state arbitration under Art. 7 of BIT 1 in respect of violations of BIT 1.
7. We note with regret that Egypt has failed to engage in negotiations and accordingly, as Mr Bahgat's claim for damages and compensation remain unmet and unresolved to this day, Mr Bahgat demands that this dispute be referred to arbitration. Please accept this letter as Mr Bahgat's Notice of Arbitration, being served as per Art. 3(1) of the UNCITRAL Arbitration Rules (1976).
8. In accordance with Article 3(1)(b) of the UNCITRAL Arbitration Rules (1976), Mr Bahgat's address is:

Mr Mohamed Abdel Raouf Bahgat
c/o Balsara & Co. Ltd.,
Fourth Floor,
Thavies Inn House,
3-4 Holborn Circus,
London EC1N 2HA
Telephone – 00 44 20 7797 6300
Fax – 00 44 20 7797 6315

9. In accordance with Article 4 of the UNCITRAL Arbitration Rules (1976), all correspondence and communications in relation to this claim/dispute should be addressed to his representatives at the following addresses:

Mr Subir Karmakar
Balsara & Co. Ltd.,
Fourth Floor,
Thavies Inn House,
3-4 Holborn Circus,
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Telephone – 00 44 20 7797 6300
Fax – 00 44 20 7797 6315
Email – Subir.karmakar@balsara.co.uk

And to

Prof. Andrew Newcombe
c/o Faculty of Law, University of Victoria

PO Box 2400 STN CSC
Victoria, British Columbia
Canada, V8W 3H7
Telephone – 00 1 250 721 8161
Fax – 00 1 250 721 8146
Email – newcombe@uvic.ca

10. The Respondent to this claim is The Arab Republic of Egypt being the “Contracting State” under BIT 1 and “Contracting Party” under BIT 2 where Mr. Bahgat made his investment. The contact details of Egypt are the respective addresses of the two recipients to whom this letter is being sent.

11. Mr Bahgat is entitled to invoke investor-state arbitration under Art. 9 of BIT 2 with respect to “any dispute arising from an investment”. Article 9(2) provides that:

“If the dispute has not been settled within three (3) months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted:

(d) to any ad hoc arbitration tribunal which unless otherwise agreed on by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).”

12. As described in our letter of 8 July 2011, Mr Bahgat is an “investor” who made an “investment” under BIT 2 and is hereby invoking his right to submit this dispute to arbitration under Art. 9 (2)(d) of BIT 2 in respect of Egypt’s breaches of both BIT 1 and BIT 2 or, in the alternative, BIT 2 only.

13. Further, Mr Bahgat qualifies as a “national” who made an “investment” under BIT 1 and is also entitled to invoke investor-state arbitration under Art. 7 of BIT 1 in respect of “Any dispute which may arise between a national or a company of one Contracting State and the other Contracting State in connection with an investment on the territory of that other Contracting State....”. Art. 7(2) of BIT 1 provides that:

“If the dispute cannot be resolved in accordance with the provisions of the preceding paragraph, any of the parties concerned may demand that the dispute be submitted to arbitration in accordance with the following procedure:...”

14. Without prejudice to the contents of paragraph 12 above, Mr Bahgat is hereby invoking his right to demand that all his claims under BIT 1 be submitted to arbitration under Art. 7(2) of BIT 1.

15. The general nature of the claims and the circumstances in which they arose are set out in the attached letter dated 8 July 2011, which is incorporated by reference into this Notice of Arbitration, along with the letter’s annexes. The presentation of the claims in this Notice of Arbitration is without prejudice to the fuller statement of the claims to be set

out in due course in the Statement of Claim to be served in accordance with Art. 18 of the UNCITRAL Arbitration Rules (1976) or other rules agreed to by the Parties.

16. Our letter dated 8 July 2011 gave an indication of the amount Mr Bahgat is currently claiming as damages. Mr Bahgat is currently claiming damages and compensation for an amount not less than US \$311 million plus the full legal costs and expenses to pursue his claims, the costs of the arbitration and pre-award and post-award interest as deemed applicable by the tribunal. Mr Bahgat retains the right to vary his claims in accordance with Article 20 of the UNCITRAL Rules.
17. Mr Bahgat seeks an arbitration award from the tribunal awarding him damages and compensation in respect of all the losses caused to Mr Bahgat and arising from the several breaches of treaty obligations committed by Egypt including its illegal expropriation of Mr Bahgat's investments and the destruction of his legitimate expectations of earning recurring and substantial investment returns over the years during the life time of the Aswan steel project. Mr Bahgat will also seek any other remedy which the tribunal may deem necessary and fit in the circumstances of this case.
18. Mr Bahgat proposes that the arbitration tribunal be constituted of three arbitrators with each party appointing one arbitrator each and the two thus appointed arbitrators appointing the third arbitrator. This is in line with the contents of Art. 7(2)(a) of BIT 1 and Art. 9(2)(d) of BIT 2.
19. Mr Bahgat also proposes that the language of the arbitration be English as per the requirement of Art 7(d) of BIT 1.
20. Mr Bahgat also proposes that the arbitration be held in London and that the parties agree to the London Court of International Arbitration (more popularly known as the LCIA) as being the designated appointing authority.
21. In the absence of agreement between Mr Bahgat and Egypt regarding the appointing authority, Art. 7(2)(b) of BIT 1 provides that the International Centre for Settlement of Investment Disputes (ICSID) is to effect the necessary designation. Further, under BIT 2, the UNCITRAL Arbitration Rules (1976) will apply by default and, accordingly, under Art. 7(2)(b) of the UNCITRAL Arbitration Rules, Mr. Bahgat may request the Secretary-General of the Permanent Court of Arbitration to designate an appointment authority. In the absence of agreement, and in order to ensure an orderly and consistent appointment process in accordance with the procedures under both BITs, Mr Bahgat will request that the Secretary-General of the Permanent Court of Arbitration to designate ICSID as the appointing authority under BIT 2.
22. Mr Bahgat has appointed the following named person as his party-appointed arbitrator:

Professor W. Michael Reisman
Yale Law School
P.O. Box 208215
New Haven, CT 06520
United States.
Tel – 00 1 203 4324962
Fax- 00 1 203 4327247

Email – Michael.reisman@yale.edu

23. We look forward to receiving notification of your appointment of an arbitrator in due course.

We remain, Your Excellency, most obliged for your kind attention.

Yours truly,

Balsara & Co.
Balsara & Co. Ltd.