

# India faces US\$85 billion claim from UAE investors

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*One of the two proposed property developments in Mumbai.*

Members of a consortium based in the United Arab Emirates have launched a US\$85 billion treaty claim against India over allegations that the state's cooperation in a fraud deprived them of their interest in two Mumbai real estate development projects.

The claim is the largest ever made against India and among the largest investment treaty claims ever, surpassed, of course, by the claim made by investors in the Yukos Oil Company against Russia, which was originally for US\$114 billion.

On 8 October, Strategic Infrasoil Foodstuff and a joint venture between the Thakur Family Trust and ACE Hospitality Management in Dubai served a notice of arbitration on India under the 2013 India-UAE bilateral investment protection agreement. It follows a notice of dispute served on the state in February, which allowed for a six-month window for the parties to resolve the dispute amicably.

The proceeding will be seated in London and administered by the LCIA under UNCITRAL rules.

News of the claim emerged this week, as India celebrates Diwali. The claimants are represented by **Anil Chawla** and **Yogita Pant**, senior partner and partner of Anil Chawla Law Associates in the Indian city of Bhopal, which is capital of the central province of Madhya Pradesh.

They say they were instructed after advising the claimants' previous counsel, Dubai and Boston-based practitioner **Siraj Ahmed**, on legal issues arising from the drafting of the notice of dispute. "The client saw our capabilities and approach," Chawla says.

While Bhopal is not a traditional location for international lawyers, the firm says that it has clients all over the world and has published widely-read legal guides on international law.

India has yet to appoint external counsel but has previously taken counsel from Curtis Mallet-Prevost Colt & Mosle and Foley Hoag, along with Delhi-based law firms.

In a press release, the claimants say the claim will put focus on the activities of “an Indian business group which often claims to follow high ethical standards” – Mumbai-based Shapoorji Pallonji, founded by Irish-Indian construction tycoon Pallonji Shapoorji Mistry.

In 2006, the UAE claimants entered into an oral agreement with Shapoorji Palonji (SP) under which the Indian group was to provide financing and construction services for two real estate projects in Mumbai that the claimants had been developing since 1998, in exchange for a 50 per cent share of the profits.

The real estate projects were on prime state-owned land: 1,308 acres of salt flats in eastern Mumbai and 56 acres in northern Mumbai that were already occupied by tenants and slum dwellers.

According to the claimants, it took 12 years to obtain the required approvals for the developments and to get the existing residents to give up opposition and “share [their] vision”, at a cost of over US\$41 million.

The claimants allege that a year after entering the 2006 agreement, when almost all the hurdles facing them had been crossed, SP began submitting forged documents to the governments of India and Maharashtra to “overthrow” the claimants and “maliciously acquire control of the projects. The notice of arbitration is accompanied by a bundle of exhibits of nearly 1,000 pages, including the alleged forged documents and expert reports in relation to them.

The claimants say that the Indian and Maharashtra governments cooperated with SP’s “dirty tricks” and knowingly accepted the forged documents.

They say that in treating the forged documents as “truthful and sacrosanct,” the state breached the fair and equitable treatment obligation in the BIT and became party to an expropriation of their rights in the projects.

The claimants also allege that India expropriated its assets through a bank’s seizure of US\$5.8 million in compliance with a court order made against them under a local money laundering act.

In addition to its request for US\$85 billion in damages, the claimants seek an order for restitution, requiring India to release the confiscated assets, restore the consortium’s rights in the projects and take steps to punish the alleged “criminal actions” of SP.

The claimants further seek an interim injunction halting all work on the projects pending the outcome of the case and requiring India to investigate the alleged forgery of documents.

They allege that they are not alone in suffering losses as a result of India’s actions. The UAE government has been deprived of US\$9 billion of taxation which was its “rightful due.”

In the past, SP is known to have been represented by Dentons but members of the firm has yet to respond to requests for comment.

*Strategic Infrasol Foodstuff LLC and The Joint Venture of Thakur Family Trust UAE with Ace Hospitality Management DMCC UAE v India*

Counsel to the claimants

- Anil Chawla Law Associates

Senior partner **Anil Chawla** and partner **Yogita Pant** in Bhopal

- **Siraj Ahmed** in Boston\*

\*Until February 2015

Counsel to India

Not yet appointed