



भारत के महान्यायवादी
ATTORNEY GENERAL
INDIA

Supreme Court of India,
New Delhi, the 14th February, 2004

Dear Mr. Haldea :

I am enclosing herewith a copy of my letter dated 14/02/2004 addressed to the Finance Minister, Shri Jaswant Singh regarding your outstanding contribution in the Enron matter.

With regards,

Yours sincerely,

Soli J. Sorabjee

Mr. Gajendra Haldea
Chief Adviser & Head
Centre for Infrastructure & Regulation,
National Council for Applied Economic Research
New Delhi.



सत्यमेव जयते

भारत के महा न्यायवादी
ATTORNEY GENERAL
INDIA

Supreme Court of India
New Delhi, the 14th February, 2004

Dear Jaswant Singhji :

It has become customary in our country to criticize and run down the bureaucracy. Unfortunately, praise is not accorded when it is pre-eminently due.

As you may be aware, Dabhol Power Company (DPC) is invoking the GOI counter guarantee in respect of Dabhol Power Project. Normally, a guarantee becomes enforceable upon mere demand and courts do not injunct enforcement of guarantees because of disputes pending between the parties. Indeed, most of the guarantees have a clause which states that the demand under the guarantee would be conclusive proof that the sum is due and the guarantor is liable to pay.

Fortunately, the GOI counter guarantee has a clause which makes the amount payable to DPC only if the sum is "validly due". This expression is the backbone of our contention that the GOI's counter guarantee is conditional and until there is a determination by some court or tribunal that the sum is validly due to DPC, the guarantee is not enforceable.

On this basis, GOI filed a suit in the Delhi High Court and obtained an injunction restraining the DPC from proceeding with the arbitration in London regarding GOI's counter guarantee.

Frankly, I have not come across such a clause in any guarantee. During the conferences held in the matter, I was keen to know how this expression came to be incorporated in the GOI's counter guarantee and I found that it was owing to the efforts and good work done by Shri Gajendra Haldea, a former officer of your Ministry, that the exposure of GOI under the counter guarantee was substantially reduced. During negotiations with DPC, Shri Haldea insisted on the inclusion of this expression and modified the draft of the GOI's counter guarantee which was submitted by Enron. He also capped the termination liability of GOI to a maximum of \$300 million compared to a possible \$1400 million under the State guarantee and made other significant modifications.

Shri Haldea's contribution becomes all the more remarkable in view of the considerable clout that Enron wielded at that time. It would have taken exceptional brilliance, skill, integrity and courage of conviction to be able to modify the draft of the counter guarantee proposed by Enron.

I would humbly commend Shri Haldea for the recognition that is legitimately due to him.

With warm regards,

Yours sincerely,

Soli J. Sorabjee

Hon'ble Shri Jaswant Singh
Minister of Finance
Government of India,
North Block, New Delhi.