



7TH NATIONAL LAW SCHOOL INTERNATIONAL

ARBITRATION MOOT PROBLEM

1. It was evident that the world would never be the same again. With every person looking over his shoulder, many governments were willing to go to any extent to re-instill a feeling of security in their citizens and avoid any further embarrassment at the hands of non-state actors who struck without warning. For the state of Rescindia, an emerging economy located in South Asia, such resolve crystallized when the entire citizenry witnessed a brutal three-day long siege in the heart of the country's commercial capital on November 22, 2006. Amidst such a grave threat to the basic rights of the people of the largest democracy in the world, the Government of Rescindia realised that a purely reactionary policy would no longer protect its citizens.

2. Apart from their independent deficiencies, the most pressing concern brought up from time to time, was the absolute lack of coordination and cooperation between the numerous agencies that constituted the intelligence network of Rescindia –the Rescindian Research and Analysis Wing for external intelligence; Rescindian Intelligence Bureau for internal intelligence; the National Technical Research Organisation; and the Rescindian Joint Cypher Bureau. In response to the siege, the Rescindian National Intelligence Act, 2006 [NIA Act] was promptly passed through both houses of the Parliament. As per the Statement of Objects and Reasons, the Act was intended to serve as a “Comprehensive legislation to deal with all aspects of *national security* owing to external and internal elements given the blurring distinction between the two”. As per this Act, all the aforementioned agencies were to henceforth function as wings of the National Intelligence Agency [“NIA”] under the supervision of different ministries and

ultimately the Prime Minister's Office. Further, as per Section 19 of the NIA Act, the Central Government was empowered to frame rules and issue notifications with respect to the functioning of the agency or any of its wings. It was hoped that such a centralised framework operating under the aegis of the Prime Minister's Office would effectively counter the drawbacks that were present in the system.

3. In January 2007, Mr. Poosan Sassiya was deputed as the Chairperson of the Policy Department of the NIA which was responsible for overseeing and coordinating the policy for all the wings of the NIA. Upon learning of his deputation, Mr. Sassiya's excitement knew no bounds. His motivation to train in the field was rooted in an early exposure to and fascination for strategic affairs, artificial intelligence and state conspiracy theories. He was of the firm belief that in today's world, with the transformation of the nature of the enemy, a complete overhaul of the intelligence structure was urgently required. It was essential to find a way to be able to decipher and establish patterns in the working and psyche of these new enemies that, at the moment, were most precarious owing to their unpredictability, absence of structure and lack of context. He knew the answer lay in technology-intensive intelligence and surveillance techniques. His new assignment allowed him to apply these techniques to successfully prove his theories.

4. An advisory committee consisting of the officials of different ministries – the Ministries of Home Affairs, External Affairs, Defence, Science and Technology, and the Prime Minister's office - was constituted and designated to carry out a supervisory role over the NIA as per Section 21 of the NIA Act. The NIA was to report to this advisory committee ["Consultative Committee"] every three months.

5. On January 5, 2007, in the first consultative meeting of NIA and the Consultative Committee immediately following the attack, a top-level official of the Home Ministry pointed out that the demand for "*impenetrable internal security was the unequivocal demand of the people of Rescindia*", irrespective of the cost and compromises that had to be incurred in the process. He vehemently stressed on the creation of a National Security Guard [NSG] consisting of highly trained special operatives. Mr. Poosan Sassiya put forth the proposal of creating a comprehensive system of surveillance as opposed to only an efficient task force. The Secretary of the External Affairs Minister chimed in to point out that given Rescindia's locational proximity/vulnerability to such attacks and the compelling need to safeguard its status as a foreign investment hub, Rescindia must take the lead in trying to create such a foolproof system. It was a unanimous view at the meeting that such a system should be one of its kind unmatched by other nations for

otherwise it would not be foolproof. As a result, a decision was taken to actively consider developing and/or acquiring such technology. Mr. Sassiya was entrusted with the task of organising a team to set the wheels in motion for this project and report back at the Consultation every three months.

6. Through his vast network of contacts, Sassiya was able to identify the lone individual who was rumoured to be a few steps away from developing such surreal and superior technology, a Mr. Rob Seaborne - a software engineer whose genius was discovered with his early admission at the coveted Middle-Earth Institute of Technology [MIT], from which he had graduated in record time and with flying colours. Mr. Seaborne was a resident of the world's most developed nation, United Kingdom of Sumaliand and All [UKSA]. After his graduation, he was offered important positions at some of the most renowned technology firms in the world. While his ingenuity justified his reclusive and arrogant behaviour, he found it difficult to be able to treat his co-workers as equals and work in a team environment. Moreover, he felt constantly dissatisfied as he yearned for the ability to create a society that would finally acknowledge the good that could come of idle hacking - to prevent harm at any possible scale. In September 2001, he became his own employer by incorporating a company called Nobel Technologies Pvt. Ltd. ["NT"] in UKSA.

7. Rob discovered the solution he sought in an unsolicited comment from his five-year-old niece, Peebrofa, on Christmas of 2003, about Santa's ability "to see everything". He began to conceive of the possibility of a machine that could be omniscient in the same way, a machine that would converge the different technological 'eyes' that existed everywhere, such as public surveillance cameras, to develop a unified line of thought with respect to any person(s). By December 2006, Mr. Seaborne, was in talks with the Police Departments in different states of UKSA to apply this system to track crimes. There were also some rumours amongst intelligence agencies that the UKSA already had such a system which was being used to track terrorist activities post the terrorist attack in UKSA in 2001 that had left in indelible fear in the minds of all. It was also widely known that the only persons capable of creating something of this magnitude were Seaborne and his employees at NT.

8. By March 2007, Mr. Poosan Sassiya was able to establish contact with Mr. Seaborne through a common friend, Mr. Aaron Lyman, who was a regular fellow attendee at Comicons across the world. At their first meeting in March 2007, Seaborne and Sassiya instantly bonded on this shared understanding about the potential of the

politically and socially informed use of technology. Sassiya explained how he wanted to reform the NIA into an organisation with a similar outlook on technology as NT. Enraptured by the kind of technological feat achieved by Seaborne in this regard, he quickly inquired about the possibility of increasing the scale on which Seaborne's system operated, beyond domestic crimes, to cover even crimes of national security.

9. Within a few weeks of this meeting, Seaborne called Sassiya's office at NIA to discuss the possibility of tweaking the system in a way to function at a much larger scale and towards the particular ends of ensuring security in Rescindia. He thought it was possible to create a machine that would go beyond the traditional public sources such as surveillance cameras, to audio sources such as phone conversations, voicemail; text sources such as e-mails, social media, search history; etc. which would be stored in a larger data repository based on a hadoop cluster for long term analysis and mining along with the usual system of using memory streams to make instantaneous decisions. The efficacy of this system would lie in the algorithms it would use to carry out pattern analysis, social network analysis, sentiment analysis, path analysis and affinity analysis to classify all actions on the basis of their relevance or irrelevance to the crime in question, say terrorist activities. The scale and end of such surveillance would be determined by the nature and geographical extent of data intercepted through these feeds. Seaborne cautioned that he wasn't certain about whether this would work and that it would require significant investment to confirm the sustainability of such scaling up but if it did, it would indeed be the most efficacious crime solving machine.

10. Unfortunately, for Mr. Sassiya, his retirement was fast approaching and the head of the NIA then was Mr. Dhond Dodutt, a person educated at the Jabardast Nintelligent University (JNU) and his Ph.D. thesis was a detailed argument for situating the right to privacy in the Rescindian context of telephone tapping and manual surveillance back in the 1970s. Naturally, he was uncomfortable with Sassiya's ideas and created a lot of bureaucratic hurdles for this association. In December 2007, both Mr. Sassiya and Mr. Dodutt retired from the NIA with the idea of the surveillance system still in its formative stages. The new Chairperson of the Policy Department and the head of the NIA were Mr. Wadhawan and Mr. Krishna respectively, popularly known as W & K. Both had been trained by Mr. Sassiya and believed him to be their *guru* and godfather at the agency. In fact, others at the agency, jealous of W & K's progress, speculated that Mr. Sassiya had pulled a lot of strings to get "his men in charge."

11. On his retirement, Mr. Sassiya received numerous offers from various private sector enterprises where he would be compensated at generous terms. From corporate security companies to technology companies, everyone wanted to avail of his experience and goodwill with the Rescindian government. For him, however, Seaborne's offer in 2008, to be Vice President, Marketing, of NT stood out. Unusually for the industry, not only was he getting an exorbitant salary but also a 15% commission on the profits made on every client's account that he would procure. Sassiya, motivated by the vision that he shared with Seaborne, joined the company immediately. He was also given a villa near the headquarters of NT and full access to familiarise himself with the past projects and ongoing research activities of NT.

12. Without any further ado, Sassiya also set up a meeting with W in February 2008, to revive plans for a surveillance system that he had pioneered while at NIA. Mr. W was invited to the headquarters of NT at NT's expense, where he was booked at the Honnu Residency, the most luxurious hotel in all of UKSA. When Sassiya gave Mr. W a demonstration of NT's technology and told him of the effectiveness of such a system for the intended use, Mr. W, already enamoured by his *guru*, was immensely impressed and promised to get back to him in a short time.

13. Upon his return to Rescindia, W called Mr. Sassiya and informed him that the Government of Rescindia would indeed be interested in supporting the development of such technology and that he would discuss the possibility of something like this with his seniors at NIA and revert with some good news soon. Mr. Sassiya promptly sent him the proposal prepared specially for the Government of Rescindia by Mr. Seaborne.

14. Mr. Seaborne's proposal listed various permutations and combinations of the data to be intercepted and the different bases of sorting using different algorithms that the machine would be able to undertake to highlight the various uses the system can have. W made an extremely persuasive presentation to the Consultative Committee explaining that investment in making this system flexible would mean that the system could be used to monitor data feeds from the world over to monitor terrorist activities. While every member at the meeting marveled at the prospect of being the first country to be able to utilise a machine with such unparalleled capabilities, they expressed reluctance owing to the unique legal and moral issues that such "interceptions" would give rise to. Ms. Bhagyavahini Mende, the Secretary in the Ministry of Science and Technology, vehemently underlined this concern. Upon consultation with the Law Ministry, it was reasoned that the Government would have to consider significant legal changes to

increase the scope of what was permissible to make the use of such a system less suspect. It was suggested by and agreed by everyone present that since time was of the essence, both - the legal changes and development of the technology must go on simultaneously instead of sequentially. Accordingly, the Rescindian Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2008 came into force on March 28, 2008.¹

15. In April 2008, the President of Rescindia promulgated an ordinance wherein a trust, National Secure Trust, was established with separate legal personality.² The trust was set up in order to utilise government funds for the purpose of amelioration and welfare of the people of Rescindia including advancements in the field of science and technology. Ms. Mende, was designated the secretary of the Board of trustees.

16. After taking charge, Ms. Mende contacted Mr. Sassiya who instantly took the call from the Secretary of Science and Technology Ministry of Rescindia, glad to hear from her after the radio silence from the Rescindian side. She stated that Rescindia was looking forward to be able to invest in Mr. Seaborne's genius in pursuance of public interest. Ms. Mende invited Mr. Sassiya and Mr. Seaborne to come to Rescindia to discuss the matter further. The Ministry of External Affairs promptly booked their tickets and their stay was arranged at the ministry's guesthouse. During their visit to Rescindia in May 2009, Mr. Sassiya introduced Mr. Seaborne to members of the Cabinet of Ministers, his old acquaintances, who discussed the problems encountered by different departments of the executive while dealing with matters of national security. Seaborne also delivered a lecture on the importance of technology in public policy at the renowned Indigenous Institute of Technology [IIT] at the Prime Minister's request.

17. Ms. Mende, Mr. W, Mr. Sassiya, and Mr. Seaborne spent many breakfast meetings in the capital city of Rescindia, Resolveville, going into every excruciating detail of the proposed project. These queries ranged from how the machine would be able to differentiate between routine crimes and acts of national security to the security issues created by the machine itself - the possibility of the machine being hacked by its targets and enemy states and the question of access to Rescindia's sensitive information. In this regard, Ms. Mende was also particularly concerned about other States having the same technology. In her opinion, this led to the possibility of their intelligence agencies getting

¹ These provisions are in *pari materia* with the Indian rules provided under [http://deity.gov.in/sites/upload_files/dit/files/GSR313E_10511\(1\).pdf](http://deity.gov.in/sites/upload_files/dit/files/GSR313E_10511(1).pdf).

² The trust was registered under the Rescindian Societies Registration Act, 1860 and thus had separate legal personality.

familiar with, and being able to hack, similar systems in other nations like Rescindia. According to Ms. Mende, this was a 'deal breaker'.

18. They assured them that all these problems would be tackled through the design of the project itself and proper programming. Mr. Sassiya assured Ms. Mende that the technology has not been sold to any other State in the past. While Mr. Seaborne had previously worked with State police departments in the UKSA for crime detection, something on this scale had not been attempted by either NT or Mr. Seaborne. In fact, as a measure of their goodwill, he allowed independent due diligence of their previous completed projects subject to national security interests of other nations that NT had worked with. With respect to security issues, the machine would have an extremely strong firewall system to ward off security breaches; moreover, the machine would automatically delete redundant information every twenty-four hours and had the option of self-destructing and self-relocating the system. However, Mr. Seaborne mentioned he would only be certain of the efficacy of all these measures later in the course of this project. Ms. Mende was initially apprehensive of this wait-and-watch attitude but she eventually came on board with some positive reinforcement from Mr. W about Mr. Seaborne's capabilities. In turn, Mr. Sassiya unequivocally agreed to Ms. Mende's stipulation that upon the conclusion of the creation and testing of the machine, NT would relinquish all contact with the machine in light of the sensitive information that it would be a repository of.

19. In the subsequent meetings at the office of Ms. Mende, Ms. Mende, W and K discussed the viability of the project and other alternatives. They rejected a similar proposal by Alfred Technologies because the agency had concrete information that Alfred Technologies had built a similar surveillance system for the Baltic state of Qumar. Further, the intelligence agencies did not find the rumors regarding a similar surveillance system in the UKSA to be substantiated. There were rumours that NT had approached the UKSA government but the talks had not achieved fruition. In any event, extensive independent due diligence of NT's projects indicated that no similar project was either completed or ongoing. W & K also convinced Ms. Mende that she was placing undue importance on the aspect of uniqueness and that Mr. Sassiya's assurances were sufficient. 'What other alternative did they really have?', they asked her. All of them agreed that it was not viable to entrust the Indigenous Space Research Organisation (ISRO) or the Technical Research Wing (TRW) of the NIA with the task as they did not have adequate

expertise in the area; and while there were some brilliant minds at ISRO and TRW, there would be no guarantee for a timely delivery of the system.

20. Satisfied that there were no other viable alternatives that catered to their various expectations, Ms. Mende put forth the proposal she had in mind. It was important for Mr. Seaborne to be exposed to the Rescindian political, social and economic context to devise the technology in a manner that would complement Rescindia's unique needs. She thus suggested that a company be incorporated in Rescindia with Mr. Seaborne's company and the Trust as equal shareholders. Ms. Mende explained privately to W and K that this would also result in ease of dispensation of funds from Rescindia and constant monitoring by the Government. Mr. Seaborne deferred any decision until he conferred with his lawyers at a leading global law firm, headquartered in UKSA with a strong international presence, about the soundness of the investment. With the vote of confidence from his lawyers, Mr. Seaborne received the Shareholder's Agreement ["SHA"] from Ms. Mende (Annexure I). The Agreement was signed by Mr. Seaborne, Managing Director of Noble Technologies and Ms. Mende as Secretary. An agreement by which the Government of Rescindia agreed to act as a guarantor for the Trust in the event of its defaulting on the obligations delineated in the SHA was also entered into. This agreement was signed by Mr. Seaborne and the appropriate representative of the Government of Rescindia. [Annexure VI]

21. The new company was incorporated as Noble Technologies Rescindia and was registered with the Registrar of Companies on September 16, 2009. The project was referred to as Project "World I - 1NaB". Since Mr. Seaborne and Mr. Sassiya would be spending a considerable amount of time in Rescindia, a suite in a government guest house wherein they were registered as guests of Ms. Mende, was reserved for them for the next two years. After a few initial hiccups, the company and the project practically ran on autopilot mode from the Rescindian side. A performance review in October 2010 revealed that Phase I of the project had successfully been completed and Phase 2 was under way.

22. Moreover, with the simultaneous enactment of several statutes that permitted warrantless surveillance and increased security, the paranoia that had become synonymous with national security and terrorism became more contained. Much to the chagrin of the incumbent Sadress Party of Rescindia, attention was diverted to the ways in which its members, ministers and officers had benefited at the expense of the general welfare of the common man. Gradually with the unravelling of each scam and sting

operation, the reign of the Sadress Party came to be associated with bribes, personal favours and kickbacks. What the Sadress Party had not expected this time around was a real organising force that would be able to cohesively demonstrate the displeasure of the Rescindian people and thus make the Sadress Party accountable to its voters. This organising force originated in a single man, A.K. Jhaaduwalla, who had left the Rescindian Bureaucratic Service extremely disillusioned with the way the system worked. His movement to agitate and pressurise the Government to enact and implement anti-corruption legislations from the outside soon became the most important barometer of public sentiment. Mr. Jhaaduwalla was further motivated by such overwhelming public support to lead through more traditional methods. In June 2010, he announced the formation of his party Simpletons' Will Against the Government [S.W.A.G] and announced its intention to run for the legislative election in Resolveville, the national capital territory of Rescindia, due in January 2011. Contributions, volunteers, members poured in from different parts of the country and different walks of life. An important component of their strategy included enumerating the apathy of the Government towards the common man not only in terms of the money appropriated by corrupt departments but also the haphazard and non-prioritised spending on redundant projects that was ploughed away from the welfare of citizens. His remarks, such as “the Sadress party in sending one ‘machine’ to Mars let three hundred thousand persons below the poverty line go hungry”, were consistently replayed across all TV channels. In turn, the main campaign strategy of S.W.A.G party was the employment of welfare schemes by an *accountable government*.

23. With the anti-Sadress sentiment abound, the S.W.A.G. party swept its way into the State Legislative Assembly in Resolveville winning 75% of the seats polled. Thus began the greatest political experiment of independent Rescindia. Indeed, it was difficult for the S.W.A.G. members to overcome their ‘anarchist’ mentality and utilise the constitutional route to interact with different organs of the state as well as the centre-based administration. Even so, with strength in numbers, the many simpletons of Rescindia continued to remain ardent supporters of S.W.A.G. and felt ready to ring in the S.W.A.G. Government on a national level. Nonetheless, S.W.A.G. too was wary of the need to have more concerted economic planning measures that would prevent policies so heavily reliant on pure transfer-based welfare schemes from posing a burden on the government treasury. Meanwhile, during the election campaign, Ms. Mende found that the cost estimates for the Project were reporting a gradual increase with each passing

quarter so much so that by January 2013, the cumulative cost had exceeded the funds available with the trust. With the completion of Phase II of the Project World I - 1NaB, NT sent an exercise notice as per Article 9 of the SHA on February 10, 2013. A worried Ms. Mende called on W & K to inform them of the change in circumstance. On February 15, 2013, a resolution was passed by the Board of Trustees to stall exercise of call options under Article 9 of the SHA despite demands being made by Mr. Seaborne.

24. In May 2013, as expected, the Sadress Party cleared out their offices in the House of the People to make way for another unprecedented win for the S.W.A.G. Party. Ever empowered and determined to learn from the mistakes he made in the state legislature, Prime Minister Jhaaduwala started by carrying out an intensive stock-taking exercise before initiating any long term planning measure. A series of meetings wherein each government reported upon the sources of their expenditure were carried out and was attended by the cabinet ministers. The NIA briefing on June 1, 2013, was especially important for the uninitiated Mr. Jhaaduwala on matters of national security. Ms. Mende's personal secretary was also present at this meeting. Mr. Jhaaduwala found it hard to stomach that a project such as this had been kept clandestine all this while. Moreover, based on revised estimate the project, it was revealed that the project would require close to RNR 200,00,00,000 annually for its upkeep and utilisation. Upon hearing arguments of all officials present, Mr. Jhaaduwala was still not persuaded on a cost benefit analysis that such technology was essential.

25. The morning of July 6, 2013 witnessed an explosion in the global trust deficit. A former member of the intelligence agency of UKSA, Edward Sundown revealed the unabashed and extensive network of surveillance in the UKSA that involved interception of all kinds of private data for issues of national security.

26. Following such revelations the President of UKSA delivered an effective address calling for global reform of surveillance laws. Mr. Jhaaduwala's confidence grew manifold to see that even the President of an important developed country was reconsidering the fate of such projects.

27. Mr. Jhaaduwala's speechwriter, Mr. Tobin Zaleegar, came up with an appropriate way to let the public know of the Government's decision on August 15, 2013:

“Today, there is no denying that we live in a highly interconnected world which makes us even more vulnerable. Rescindia is in a unique position in that apart from its location related vulnerability, it had innumerable problems in its domestic sphere - economic disparity, social inequality and tensions - all of which

are their own brand of terrorism. Therefore, it is important that we first resolve to clean up our own problems before we move ahead to such global systems. If every government were able to do the same, the problem of terrorism would automatically be extinguished. Nevertheless, the answer does not lie in the use of illegal surveillance technologies that transgress upon the basic rights of privacy and personal liberty in the guise of the discretionary concept of national security. As representatives of the common man, the S.W.A.G. Government, was created to resist this uncle Sam attitude and therefore we are proud to hereby declare that, in a departure from the shameful trend of preceding governments, we will never adopt the use of such illegal surveillance towards citizens of Rescindia or any other country and we wholeheartedly support the initiation of the global effort to reform the use of such laws.”

28. With the onset of September 2013, and the payment of returns becoming due as per Article 9 of the SHA, the board of trustees and the secretary were sent the exercise notice to exercise the call option yet again. However, this notice too went unanswered.

29. After Sundown’s expose, a group of computer hackers in the UKSA, called Must Cherish *free* Speech [MCS], presumably with the help of Sundown who was in exile then, published a set of blog posts that revealed the existence of an extensive surveillance system in the UKSA. In these blog posts, which contained reference to various cables and meetings, one cable contained correspondence between the intelligence agency of UKSA and NT about the progress of the surveillance project. Another cable was between Professor X, an employee of NT at the time and a senior intelligence official of UKSA requesting for access codes to the country’s CCTV network. A few investigative news reports also reported that it was possible the Republic of Rescindia had also planned such illegal surveillance.

30. Swiftly, the Ministry of Home Affairs, exercising its power under Section 19 of the NIA Act issued a notification that declared any “Programme that employs mining of private data for mass surveillance” as an illegal activity. [Annexure IV]

31. In light of recent reports encircling the world, the Secretary of the Board of trustees of NST sent a strongly worded letter to NT stating that in view of the fraud practiced on the Trust with respect to the exclusivity of Project World I – 1NaB, it had decided to rescind the contract and as a result had decided not to respond to the exercise notice sent as per Article 9 of the SHA. Moreover, the recent decision of the government

rendering mass surveillance of private data illegal, the very purpose of the contract had been frustrated and therefore, the obligations of each party stood discharged.

32. Noble Technologies immediately replied clarifying that it had not sold the same technology to any other State. There had been no project of a similar nature that was completed by NT. In any event, that was not the essential condition on which Rescindia had entered into the contract. Making it seem so was only an afterthought for evading liability from the contractual payments. In addition to this, the government could not claim the discharge of their liability under the contract as the contract was for the creation of technology which had multiple purposes including surveillance using only publicly available data as well as for different crimes. Therefore although the technology could indeed be put to illegal uses but such use had to be determined by its users and not its makers. The subject matter of the contract or the purpose of the SHA could not be said to have been frustrated by the recent notification issued by the Government of Rescindia as the purpose of the contract was the use of the machine for general surveillance purposes and not only in the manner and purposes now deemed illegal in Rescindia. Moreover, in the present case there could be no distinction between the government and the trust and therefore, the government could not claim frustration induced by its own actions. Finally, Noble Technologies reiterated its demands for the contractual payments that it was entitled to. It pressed for an immediate resolution failing which it would initiate arbitration proceedings.

33. A most attractive feature of the S.W.A.G. Party's Government was the accessibility of Mr. A.K. Jhaaduwalla. Any member of the public could write to him and complain about any wrongdoing by a public servant. In October, Mr. Jhaaduwalla in his weekly press conference managed by Ms. Ceejaywati, Mr. Jhaaduwalla stated that, among others, he had received complaints about gratification being taken by public servants in key ministries such as defence, science and technology and home affairs at the expense of national security. He felt that there was merit in these complaints and he has referred the matter to the anti-corruption department and further that if enough evidence were found an FIR would follow. A leading newspaper for some (tabloid for most), the Times of Rescindia reported upon 'investigation' that the suspects under these investigations included W and K. Needless to say, both W and K rubbished these reports and went on administrative leave for an indefinite period.

34. Amidst more rising pressure, the Government of Rescindia issued a press release in November 2013 clarifying the scope of the Rescindian Information Technology

(Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2008 and the powers available to the government therein.

35. Around the same time, the renewal of the ordinance creating and registering the trust was omitted to be taken up in the winter session of the House of People. Ms. Mende replied informing NT that the trust had now dissolved and she was only replying in her personal capacity since the situation was now beyond her control.

36. NT's lawyers advised that suing the Government under the Guarantee Agreement would be a futile exercise, especially given the delays which plagued the judicial system in Rescindia. With no other practical option left, NT initiated arbitration proceedings against the Government of Rescindia claiming it was liable to be sued under the SHA seeking to recover contractual payments and loss of profits as a consequence of a breach of Article 9 in the SHA. Noble Technologies also asserted its claim under Article 9 of the Bilateral Investment Treaty between UKSA and Rescindia. In the Request for Arbitration, Noble Technologies nominated Mr. Abraham as its arbitrator.

37. In its response to the Notice of Arbitration, the Government of Rescindia nominated Mr. Burrows as its arbitrator. It expressly specified that its nomination of the arbitrator was without prejudice to its challenge to the maintainability of Noble Technologies' claims.

38. Decrying the initiation of arbitration as a litigious, dilatory and an act in bad faith, the Government of Rescindia objected to the Arbitral Proceedings. Apart from disputing the case of the Claimants on merits, the Government of Rescindia argued that claims arising out of two separate contractual instruments could not be made in a single arbitration. It further contended that there was no privity of contract between Noble Technologies and the Government of Rescindia. Further, and in any event, since the dispute was inextricably linked with questions of fraud and allegations of bribery, claims were not arbitrable and must be advanced in a domestic Court.

39. As a result, the Government of Rescindia filed its objection under Article 6(4)(ii) of ICC Rules of Arbitration (in force as from 1 January 2012) of the proceedings under the SHA and BIT. The ICC Court was *prima facie* satisfied this matter would proceed pursuant to Article 6 of the Rules and referred the determination of the Request to the ICC Tribunal constituted.

40. Mr. Abraham and Mr. Burrows chose Mr. Patel as the Presiding Arbitrator. The Arbitral Tribunal was duly constituted and met *vide video* conferencing on 23 January, 2014 to pass its first procedural order to be found in Annexure III.

[Note: The laws of Rescindia and UKSA are in pari materia with the laws of India and the United Kingdom respectively]

ANNEXURE I
SHARE HOLDER'S AGREEMENT

THIS AGREEMENT made at Terminatville, Rescindia on this 16 day of September 2009 by and between:

1. Noble Technologies Pvt Ltd, a company incorporated under the laws of the United Kingdom of Sumaliland and All and having its registered office at Great Sumali (hereinafter referred to as "NT," which expression shall be deemed to mean and include its successors and permitted assignees);

AND

2. National Secure Trust, a trust registered under the Rescindian Societies Registration Act, 1860 and having its registered office at Performanceville, Rescindia (hereinafter referred to as "NST," which expression shall be deemed to mean and include its successors and permitted assignees);

WHEREAS

1. NT is in the business of research & development, process development and technology transfer in the field of security. NST has been created for the investment of funds to precipitate the advancement of science and technology.

2. NT and NST have caused the Company "Noble Technologies Rescindia" ["NTI"] to serve as their joint venture vehicle for research and development to develop technology and intelligence development processes to effectively manage security in Rescindia.

3. NT and NST have agreed that their respective rights and obligations as Shareholders in NTI shall be regulated by the provisions of this Agreement and the Articles.

IT IS AGREED as follows:-

ARTICLE 1: DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement (including the Recitals)

"Agreement" means this Shareholders Agreement and all the Annexures to this Agreement.

"Articles" means Articles of Association of the Company.

“Affiliate” means: (a) any entity, which controls, is controlled by, or is under the common control of any of the Parties and/or (b) any Relative or associate or acquaintance of any of the Parties.

“Agreed Form” means, in relation to any document, the form of that document which has been mutually agreed between the Parties and initialed for the purpose of identification by or on behalf of the Parties.

“Board” means Board of Directors of the Company including the Managing Director.

“Board Meeting” means meetings of the Board held pursuant to Article 4.

“Business” means manufacture and process development, import, distribution, research and development, sale of the Products

“Equity Shares” means the equity shares of the Company, presently having a face value of RNR 10 per equity share.

“Effective Date” means the date of execution of this Agreement.

“Facility” means the research and development facility of the Company at Performanceville, Rescindia and/or any other location decided by the Company at a later date for research and development, manufacturing, manifesting, selling, marketing and distribution of the Products.

“Intellectual Property Rights” (IPR) includes trademarks, trademark registrations, trade names, and applications therefor, service marks, service names, copyrights, copyright registrations and applications therefor, designs, patents, patent applications, inventions, database rights, trade secrets and know-how, software programs, right to creative or original works and/or any other intellectual property rights in relation to the Products, the Proprietary knowledge, and the Technical Knowhow.

“Law” includes all statutes, enactments, acts of legislature or Parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directives and orders of a relevant Government, statutory authority, regulatory agency, tribunals, board, court or recognised stock exchange.

“Material Breach” means any breach of this Agreement or the Related Agreements by any of the Parties and so determined and held by an arbitral tribunal or court or any other judicial or quasi-judicial authority.

“Person” includes any legal or natural person, any association thereof, partnership, firm, trust, company, government, local authority, department or other body (whether corporate or unincorporated). “Products” shall mean the technological processes developed to identify, classify and predict threats to state security.

“Proprietary knowledge” shall mean the exclusive Technical Knowhow and full ownership rights of NT in respect of the technological processes involved in data collection, data assimilation and storage and algorithms for data analysis.

"this Agreement", "hereto", "herein", "hereby", "hereunder", "hereof", and similar expressions refer to this Agreement and not to any particular section, subsection, paragraph, or other portion of this agreement.

ARTICLE 2 - REGISTERED OFFICE

Registered Office:

The Parties agree that the registered office of the Company shall be at Performanceville, Rescindia

ARTICLE 3 - THE BUSINESS OF THE COMPANY

(1) The Company shall carry on the business of research and development of technology to create surveillance systems to ensure security of states.

(2) The Parties agree to exercise their respective rights hereunder and as a Shareholder so as to ensure that:-

(a) the Company performs and complies with all obligations on its part under this Agreement and complies with the restrictions imposed upon it under the Articles.

(b) the Business is conducted in the best interests of the Company and Rescindia and on sound commercial principles, in accordance with the Management Policy (or any amendment or modification of the same), in accordance with Law, on arm's length terms and in accordance with the highest standards of corporate governance.

MANAGEMENT OF THE COMPANY

ARTICLE 4: BOARD OF DIRECTORS

(1) The Board shall be responsible for, establishing the policy, goals and organisational structure of the Company, for allocating resources and delegating authority to and monitoring the performance of the Company's management, to take appropriate actions and generally providing business direction to, and approving or disapproving the business strategy of the Company

(2) The Board of Directors should consist of 7 (seven) directors.

(3) NT and NS will appoint three directors each. The seventh director will be appointed by the six directors by consensus.

(4) NT and NS shall be entitled to nominate alternate directors to each of its Directors in the circumstances permitted by the Act and the Board shall ensure that such persons are appointed as the concerned directors' alternate directors.

(5) A nominee of NT shall be appointed as the Chairman of the Company. The Chairman shall draw such remuneration as is approved by the Board. The Chairman shall be ex-officio Chairman at the general meetings of the Company in accordance with applicable provisions of the Act and the Articles. At all Board Meetings if the Chairman is present he shall preside, and in his absence, the Board may elect one of them to be the chairman for that meeting.

(6) Save and except if it relates to a Specified Matter, in the event of a tie, the Chairman shall have a casting or a second vote at any meeting of the Board or at any meeting of the Shareholders.

(7) A nominee of NS shall be appointed as the Managing Director/Chief Executive Officer (CEO) of the Company, and shall draw such remuneration as is approved by the Board.

ARTICLE 5: MEETING OF THE BOARD

(1) Board Meetings shall be held at least four times in every year and at not more than three monthly intervals. Unless otherwise agreed by the Directors, 15 (fifteen) days' written notice shall be given to each of the Directors of all meetings of the Board, at the address notified from time to time by each Director to the Secretary. Each such notice shall contain, inter alia, an agenda specifying in reasonable detail the matters to be discussed at the relevant meeting, and shall be accompanied by all relevant papers/documents for discussion at such meeting and shall be sent by courier or by telefax or any other form of recorded delivery. A matter shall not be taken up at any Board meeting unless expressly specified in the agenda accompanying the notice or unless three fourths of the Directors present at a meeting agree otherwise. Provided however, subject to applicable Law, any other matter arising out of emergency may be raised with the prior approval of the Chairman of the Company.

(2) The quorum for any Board Meeting shall be constituted by three Directors present at the commencement of, and throughout the meeting. If no quorum is present, then the

meeting shall be adjourned to the same day of the forthcoming week, at the same place and at the same time.

(3) All Board Meetings shall be held at such place as may be agreed by all the Directors from time to time and, failing such agreement, shall be held at the Registered Office of the Company.

(4) Notwithstanding anything to the contrary contained in this Agreement, any action, decision or resolution regarding the Specified Matters shall be passed either by the Board or at the Shareholders' meetings or by circular resolution /

ARTICLE 6 - SHAREHOLDER MEETINGS

(1) Every notice convening a meeting of the Shareholders shall set out the agenda in full and with sufficient details of the business to be transacted thereat and no item or business shall be transacted at such meeting unless the same has been stated in full and in sufficient details in the notice convening the meeting. A copy of any documents to be reviewed or discussed at such meeting shall accompany such notice. Provided however, subject to applicable Law, any other matter arising out of emergency may be raised with the prior approval of the Chairman.

(2) The quorum for all general meetings of the Company shall include at least one authorised representative of NT and NS. If within half an hour of the time appointed for the meeting, a quorum is not present, the meeting shall be adjourned to the same day, 2 (two) weeks later at the same time and place. If at any such adjourned meeting, a valid quorum is not present within half an hour of the time appointed for such adjourned meeting, the members present shall constitute a quorum.

(3) Not less than 30 (thirty) clear days written notice of every general meeting shall be given to all Shareholders. A meeting of the Company may be called by giving shorter notice in the manner provided in the Act.

FINANCIAL AND OTHER MATTERS

Article 7 - FINANCE FOR THE COMPANY

(1) The authorised share capital of the Company shall be RNR 100 (hundred) million consisting of 10 (ten) million Equity Shares of RNR 10 each. The issued, subscribed and paid-up share capital of the Company shall be RNR 60 (sixty) million consisting of 6 (six) million Equity Shares of Rs.10 each, which shall be subscribed to for cash, at par, in the following manner:-

a) NT and its individual nominees 50% (fifty per cent) aggregating to 3 (three) million Equity Shares (“NT Shares”).

b) NS and its individual nominees 50% (fifty per cent) aggregating to 3 (three) million Equity Shares (“NS Shares”).

(2) The Parties shall subscribe to the NT Shares and NS Shares for cash at par by making the necessary remittances to the Company on or before the expiry of 365 days from the Effective Date.

ARTICLE 8- FINANCES OF THE COMPANY

(1) The Company shall maintain and prepare accounts in compliance with accounting standards as may be required under Law.

(2) The financial year of the Company shall be April 1 of each year to March 31 of the following year.

(3) The Company shall prepare and submit to all Directors within 4 (four) weeks from the expiry of each calendar quarter, a profit and loss account, balance sheet and cash-flow statement.

ARTICLE 9 –RETURN OF PAYMENT

(1) NST hereby agrees to grant an irrevocable put option to NT to sell its shares to NST in the following manner:

a. On the completion of phase II of the project or September 16, 2012 whichever is earlier, NT may exercise this option in respect of one million shares at a predetermined price of RNR 12 per share.

b. On the completion of Phase III of the project or September 16, 2013 whichever is earlier, NT may exercise this option in respect of:

i. Two million shares at a predetermined price of RNR 13 per share, if the option in sub-clause (a) was not exercised

ii. One million shares at a predetermined price of RNR 12 per share, if the option in sub-clause (a) was not exercised.

c. On the completion of the entire project, NT may exercise this option in respect of all the shares remaining with NT at a pre-determined price of RNR 15 per share.

(2) Upon the fulfillment of the accordant circumstance in Sub-clause (1), NT having decided to exercise the put option, shall send an exercise notice within 15 (fifteen) days

of the fulfillment of the accordant circumstances to NS informing NS of the decision to exercise the aforementioned option.

(3) Within 30 (thirty) days of the receipt of the exercise notice, NT and NS will duly execute the transfer detailed in the exercise notice.

ARTICLE 10 - ADOPTION OF ARTICLES

Within 30 days from the Effective Date, the Company will hold an EGM, where the Articles shall be adopted by the Shareholders.

ARTICLE 11 - PROTECTION OF PARTIES INTELLECTUAL PROPERTY RIGHTS

The Company acknowledges that NT and NS shall be making available to the Company, valuable Intellectual Property Rights and classified information by way of agreements or otherwise. The Company shall make its best endeavours to ensure that no unauthorised Person (including an employee who is not required to have such access on a 'need-to-know' basis) gains any access to such Intellectual Property Rights and classified information under any circumstances whatsoever. NT and NS have invested in the Company and agreed to make available such Intellectual Property Rights and classified information to the Company relying expressly upon this assurance of the Company.

ARTICLE 12 - GOVERNING LAW

This agreement shall be governed by, and construed in accordance with laws of UKSA, without regard to the conflict of law rules thereof.

ARTICLE 13 - JURISDICTION

The courts of competent jurisdiction at Rescindia shall have jurisdiction in relation to this Agreement.

ARTICLE 14- DISPUTE Resolution

(1) All disputes arising out of the present contract shall finally be settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

(2) The seat or legal place of the arbitration shall be Resolveville, Rescindia.

(3) The language to be used in the arbitral proceedings shall be English.

ARTICLE 15 -EXIT AND TERMINATION OF AGREEMENT

(1) This Agreement may be terminated by the consent of all the Parties expressed in writing.

ARTICLE 16 - CONFIDENTIALITY

Each Party shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement which relates to:-

- (i) the provisions of this Agreement;
- (ii) the negotiations relating to this Agreement
- (iii) the subject matter of this Agreement; or
- (iv) the other Parties.

ANNEXURE II

Agreement between the Government of the Republic of Rescindia & The United Kingdom Of Sumaliland and All for the Promotion and Protection of Investments

The Government of the Republic of Rescindia and the Government of the United Kingdom of Sumaliland and All (hereinafter referred to as the "Contracting Parties");

Desiring to create conditions favourable for fostering greater investment by investors of one State in the territory of the other State;

Recognizing that the encouragement and reciprocal protection under International agreement of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

ARTICLE 1: DEFINITIONS

For the purposes of this Agreement:

(a) "Companies" means:

(i) in respect of Rescindia: corporations, firms and associations incorporated or constituted or established under the law in force in any part of Rescindia;

(ii) in respect of the United Kingdom of Sumaliland and All: corporations, firms and associations

incorporated or constituted under the law in force in any part of the United Kingdom of Sumaliland.

(b) "Investment" means every kind of asset established or acquired including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

(i) movable and immovable property as well as other rights such as mortgages, liens or pledges;

(ii) shares in and stock and debentures of a company and any other similar forms of participation in a company;

(iii) rights to money or to any performance under contract having a financial value;

(iv) intellectual property rights, in accordance with the relevant laws of the respective Contracting Party;

- (v) business concessions conferred by law or under contract, including concessions to search for and extract oil and other minerals;
- (c) "Investors" means any national or company of a Contracting Party, which has made an investment in the territory of other Contracting Party;
- (d) "Nationals" means:
 - (i) in respect of Rescindia: persons deriving their status as Rescindian nationals from the law in force in Rescindia;
 - (ii) in respect of
- (e) "Returns" means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;
- (f) "Territory" means:
 - (i) in respect of Rescindia: the territory of the Republic of Rescindia including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of Rescindia has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law;
 - (ii) in respect of the United Kingdom of Sumaliland and All: Great Britain and Northern Sumalireland, including the territorial sea and any maritime area situated beyond the territorial sea of the United Kingdom of Sumaliland and All which has been or might in the future be designated under the national law of the United Kingdom of Sumaliland and All in accordance with international law as an area within which the United Kingdom of Sumaliland and All may exercise rights with regard to the sea bed and subsoil and the natural resources.

ARTICLE 2 - SCOPE OF THE AGREEMENT

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement.

ARTICLE 3 - PROMOTION AND PROTECTION OF INVESTMENT

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws and policy.

(2) 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.

Article 4 - National Treatment and Most-Favoured-Nation Treatment

(1) Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments of its own or investments of investors of any third State.

(2) In addition, each Contracting Party shall accord to investors of the other Contracting Party, including in respect of returns on their investments, treatment which shall not be less favourable than that accorded to investors of any third State.

(3) The provisions of paragraphs (1) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future customs unions or similar international agreement to which it is or may become a party, or

(b) any matter pertaining wholly or mainly to taxation.

ARTICLE 5 - EXPROPRIATION

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having an effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with law on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair and equitable rate until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

(2) The investor affected shall have right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

ARTICLE 6 - COMPENSATION FOR LOSSES

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbances in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

ARTICLE 7 - REPATRIATION OF INVESTMENT AND RETURNS

(1) Each Contracting Party shall permit all funds of an investor of the other Contracting Party related to an investment in its territory to be freely transferred, without unreasonable delay and on a non-discriminatory basis. Such funds may include:

- (a) Capital and additional capital amounts used to maintain and increase investments;
- (b) Net operating profits including dividends and interest in proportion to their shareholdings;
- (c) Repayments of any loan including interest thereon, relating to the investment;
- (d) Payment of royalties and services fees relating to the investment;
- (e) Proceeds from sales of their shares;
- (f) Proceeds received by investors in case of sale or partial sale or liquidation;
- (g) The earnings of citizens/nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

(2) Nothing in paragraph (1) of this Article shall affect the transfer of any compensation under Article 6 of this Agreement.

(3) Unless otherwise agreed to between the parties, currency transfer under paragraph (1) of this Article shall be permitted in the currency of the original Investment or any other

convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

ARTICLE 8 - SUBROGATION

Where one Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims under this Agreement, the other Contracting Party agrees that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claim of such investors.

ARTICLE 9 -SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY

- (1) Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.
- (2) Any such dispute, which has not been amicably settled within a period of six months, may be referred to Arbitration. The Arbitration procedure shall be as follows:
 - (a) If the Contracting Party of the Investor and the other Contracting Party are both parties to the convention on the Settlement of Investment Disputes between States and nationals of other States, 1965 and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes such a dispute shall be referred to the Centre; or
 - (b) under the Rules of Arbitration of the International Chamber of Commerce conducted by three arbitrators.
 - (i) The parties shall appoint their respective arbitrators within two months. The third arbitrator shall not be a national of either Contracting party.
 - (ii) The arbitral award shall be made in accordance with the provisions of this Agreement and shall be binding for the parties in dispute.
 - (iii) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

(iv) Such arbitration shall take place at Rescindia.

ARTICLE 10 - DISPUTES BETWEEN THE CONTRACTING PARTIES

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through negotiations.

(2) If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedures.

ARTICLE 11 - ENTRY AND SOJOURN OF PERSONNEL

A Contracting Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-citizens, permit natural persons of the other Contracting Party and personnel employed by companies of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

ARTICLE 12 - DENIAL OF BENEFITS

(1) A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party and to investments of that investor if persons of a non-Party own or control such investor and the denying Contracting Party:

(a) does not maintain diplomatic relations with such non-Party; or

(b) adopts or maintains measures with respect to such non-Party that prohibit transactions with the investor or that would be violated or circumvented if the benefits of this Agreement were accorded to the investor or to its investments.

(2) A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Contracting Party and persons of a non-Party, or of the denying Contracting Party, own or control the enterprise

ARTICLE 13 - APPLICABLE LAWS

(1) Except as otherwise provided in this Agreement, all investment shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

(2) Notwithstanding paragraph (1) of this Article nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non-discriminatory basis.

ARTICLE 14 - APPLICATION OF OTHER RULES

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by

investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

ARTICLE 15 - ENTRY INTO FORCE

This Agreement shall be subject to ratification and shall enter into force on the date of exchange of Instruments of Ratification.

ARTICLE 16 - DURATION AND TERMINATION

(1) This agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date on receipt of such written notice.

(2) Notwithstanding termination of this Agreement pursuant to paragraph (1) of this Article, the Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Resolveville, Riscindia on this 15 day of January 2001 in two originals each in the Hindi and English languages, both the texts being equally authoritative.

In case of any divergence, the English text shall prevail.

ANNEXURE III

PROCEDURAL ORDER NO. 1

in the arbitration between

Noble Technologies Inc.,

Claimant

v.

Government of Rescindia,

Respondent

I. Summary of the arbitral procedure so far.

1. The tribunal decided during a conference call on 24 January 2014 that the Presiding Arbitrator was authorized to make procedural decisions subject to later confirmation by the full tribunal.
2. A conference call was arranged for 28 January 2014 between the counsels of the two parties and the Presiding Arbitrator of the tribunal to discuss the arrangements for the arbitral procedure.
3. The counsels also agreed that they would not argue in the first stage of the arbitration any issues in regard to the quantum of damages arising out of the breach, if the tribunal were to decide that there had been such a breach. Similarly, they would leave to later the allocation of the costs of arbitration.

II. Orders

4. In light of the above discussions the Arbitral Tribunal makes the following orders in relation to the issues to be addressed by Counsel in their memoranda and the oral hearing as well as to the clarifications needed and the timing:

1. Whether the request for consolidation made can be upheld under the ICC Rules of Arbitration?
2. Whether there exists an arbitration agreement(s) between NT and the Government of Rescindia?
3. Whether the arbitral tribunal can arbitrate upon issues of fraud and corruption?

4. Whether the Shareholder's Agreement amongst National Secure Trust and Noble Technologies Inc. in relation to Noble Technologies Rescindia was rightfully terminated?
5. Whether the Government of Rescindia is in breach of its obligations under the Bilateral Investment Treaty between the Republic of Rescindia & The United Kingdom Of Sumaliland and All?

5. The factual issues that may need to be developed will be determined in accordance with the procedures found in the Rules of the 7th National Law School of India Arbitration Moot. In accordance with those Rules, clarifications may be submitted to the Moot Court Society by e-mail at nlsiamoot@gmail.com, by 2nd March 2014. The answers to the requests for clarification will be distributed in Procedural Order No. 2 as promptly thereafter as possible.

6. The following schedule was agreed:

Submission of memoranda: 6 April, 2014

First Oral Hearing: 18-20 April, 2014

(Signed)

Mr. P

Presiding Arbitrator

28 January 2014

Annexure IV

Ministry of Home Affairs, Rescindia

Notification No. 2934/2013

Resolveville, September 18, 2013

Whereas the Rescindian Central Government acknowledges and is committed to the observance of the civil liberties and privacy of its citizens.

Whereas the Rescindian Central Government is concerned about the threat to national security that exists, a balance between national security and the individual liberties of the citizens must be struck.

Whereas in exercise of the powers conferred by Section 19, National Intelligence Agency Act, the Central Government hereby declares any programme or system that entails mass electronic or non-electronic data collection, storage, search and analysis in light of national security illegal.

Any person, body corporate, public or private found guilty of the same will be adequately prosecuted.

Annexure V

Access to Sensitive Personal Information under New IT Rules Only with Checks and Balances: Clarifies Rescindian Department of Information Technology

Press release: 19929007/2013, November 9, 2013

The attention of Government has been drawn to news items appearing in a section of the media which have commented on some aspects of the Rules framed in 2008.

The Department of Information Technology, Ministry of Communications & IT, Rescindia clarify the position in this regard that these Rules do not provide free access to sensitive personal information. The nature and applicability of these Rules have been clearly specified. The Intent of Rules is to protect sensitive personal information and does not give any undue powers to Government agencies for free access of sensitive personal information. Wide public consultations were held before finalizing the Rules and the Rules have been duly endorsed by the Industry Association.

The Rules cast onus on the body corporate to provide policy for privacy and disclosure of information. Any such disclosure of sensitive personal data or information by body corporate to any third party shall require prior permission from the provider of such information. The Rules provide for inherent checks-and-balances in the form: (a) that the Government agencies must have been mandated under the law to obtain such information for the purpose of verification of identity, or for prevention, detection, investigation including cyber incidents, prosecution and punishment of offences and (b) that any such agency receiving such information has to give an undertaking that the information so obtained shall not be published or shared with any other person. The Government Agencies are required to follow lawful processes and procedures.

- Mr. Akay Chits
Minister of Communications and Information Technology

Annexure VI

Relevant provisions of the

Guarantee Agreement

Dated as of September 16, 2009

by and among

the Republic of Rescindia

and

Noble Technologies

Article 1

THIS GUARANTEE, dated as of September 16, 2009, (this "Guarantee"), is made by the Republic of Rescindia ("Guarantor"), in favor of NT ("shareholder") whereby the guarantor agrees to hereby, unconditionally and irrevocably, guarantee to the Buyer and its successors, endorsees, transferees and assigns the prompt and complete payment and performance by National Secure Trust when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations under the Shareholder's Agreement amongst National Secure Trust and Noble Technologies Inc. in relation to Noble Technologies Rescindia ("Master Agreement")

Article 9 - Jurisdiction

The courts of Rescindia will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Guarantee.