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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 17.02.2017**

% **W.P.(CRL) 2572/2016**

RAHUL SARAF

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with  
Mr. Chayan Sarkar, S.K. Singhi and  
Arjit Pratap Singh, Adv.

versus

UNION OF INDIA & ANR

..... Respondent

Through: Mr. Anil Soni, CGSC with  
Ms.Priyanka Singh for UOI  
Mr. Nikhil Goel and Mr. Ashutosh  
Ghade for CBI

**CORAM:  
HON'BLE MR. JUSTICE VIPIN SANGHI**

**VIPIN SANGHI, J. (OPEN COURT)**

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to seek the setting aside/ quashing of the request for legal assistance dated 18.09.2015 issued by the Russian Federation to the Union of India. The petitioner also seeks a restraint against respondent No.1 and 2 i.e. Union of India and the CBI from taking any action or steps in pursuance of the said letter of request dated 18.09.2015. The petitioner

seeks a direction that coercive steps be not taken against the petitioner. Another relief sought by the petitioner is to call upon the respondent no.1 to furnish all documents relating to Criminal Case No.385014 filed before the Investigative Department of Major Investigations, Directorate of Russian Federation, Moscow pursuant to the Letters Rogatory from the Govt. of Russian Federation.

2. The background in which the present petition has been preferred is that a Joint Venture Agreement (JVA) was executed on 29.01.2008 between the Federal Agency for the Federal Property Management of the Russian Federation (referred to as Rosimushchestvo), a public joint stock holding company Technochim-holding and Saraf Agencies Pvt. Ltd., Titanium Mineral Products Ltd. (TMPL) in relation to a titanium project to be executed in the State of Orissa. Accordingly, a joint venture entity, namely, Titanium Products Pvt. Ltd. (TPPL) was incorporated in the State of Orissa on 28.03.2008.

3. It appears that disputes arose between the JV partners. According to the petitioner, the said disputes are presently pending in International Commercial Arbitration. The petitioner – Rahul Saraf, admittedly, was a director of the JV Company.

4. It appears that under the *“Treaty Between The Republic of India And The Russian Federation On Mutual Legal Assistance In Criminal Matters”* dated 21.12.1998, a request for legal assistance was received from the Russian Federation dated 18.09.2015 bearing No.201/4-107-2015. This letter of request for legal assistance, inter alia, stated that the fourth

investigative department of the Major Investigations Directorate of the Chief Investigative Directorate of the Investigative Committee of the Russian Federation for Moscow is currently investigating Criminal Case No.385014 initiated on 06.03.2015 for an offence under Article 201(1) of the Russian Criminal Code. The same also recites the facts relating to the execution of the JVA and the constitution of the JV company, i.e. TPPL. It alleges breach of the JVA by the Indian party, and asserts that the failure of the Indian party caused financial damages to the Russian Federation. This request for legal assistance, inter alia, states:

*“In the course of TPPL’s activities, the Indian Party used shareholders’ rights and authorities of members of the Board of Directors contrary to the company’s legitimate interests, which caused financial damage to the Russian Federation.*

*Thus, on October 15, 2008 in order to organise the Joint Venture operation the Government of Orissa and TPPL represented by S. Shroff signed the Memorandum of Understanding under which the Government of Orissa and the Joint Venture have agreed on provision of a land plot in the State of Orissa to the Joint Venture for placing of manufacturing facilities.*

*Further, in breach of the existing obligations, at the Indian Party’s initiative, two land plots (34.095 acres in Chatrapur, Ganjam district, State of Orissa, India) were leased not to TPPL, but to its minority shareholder SAPL, whose representatives were paid a fee amounting to at least Rs.20,531,937 for facilitation of permissions and approvals by the Indian officials and formalities related registration of the leasehold. However, SAPL further entered into a direct lease agreement with Odisha Industrial Infrastructure Development Corporation (“IDCO”) for a land plot that was to be leased directly to TPPL as per the Memorandum of Understanding between TPPL and the Government of Orissa of October 15,*

2008.

*Subsequently, SAPL, in violation and disregard of the agreements reached and acting contrary to the Joint Venture's interests, suggested that TPPL should sublease the land plots meant for placing the manufacturing facilities at a rate 12 times higher than the one paid for the lease by the shareholder.*

*Due to the said actions, TPPL was never granted leasehold to the land plots for placing of the manufacturing facilities, which eliminated the possibility to arrange manufacturing and resulted in the titanium dioxide and other titanium products project implementation being frustrated, which caused an extremely large financial damage to the Russian Federation.*

*Moreover, in 2011, unidentified representatives of the Indian Party acted in violation of the TPPL's Articles of Association and contrary to the company's legal interests, having received access to its accounts, disposed of the company's funds without approval from TPPL's Board of Directors. In addition, the funds were disposed of without notifying of the Russian Federation in such a way that benefitted the Indian Party, particularly the Indian SRI's mutual fund, as well as TMPL and SAPL, namely: at an unidentified period of time the funds contributed by the Russian Federation to TPPL's authorised capital were transferred to the Indian SRI's mutual fund; on December 22, 2009 funds amounting to Rs.288.7 million were transferred from the TPPL's account to that of TMPL; on March 1, 2010 funds amounting to Rs.250 million were transferred from the TPPL's account to that of SAPL; and on November 23, 2010 funds amounting to Rs.1,101.7 million were transferred from the TPPL's account to that of SAPL.*

*Also, on March 10, 2011, moneys amounting to an equivalent of USD 20,000,000 were transferred from the TPPL's account to that of SAPL without approval by the company's Board of Directors and without notifying of the Russian Party. Further, on March 30, 2011, part of the said funds amounting to an equivalent to USD 15,000,000 was transferred from the SAPL's*

*account to that of Forum Projects Private Limited founded by S.M. Shroff and managed by R. Saraf, the Indian members of the Joint Venture's Board of Directors.*

*Moreover, as per the information obtained in the course of investigation, movement of the funds received from the Russian Party could be carried out on the following TPPL's accounts:*

*1. Central Bank of India, 4 & 4/1, Red Cross Place, Kolkata 700001, Account No.3021149752, Fixed Deposits;*

*2. UCO Bank, 10, BTM Sarani, Kolkata 700001, Fixed Deposits;*

*3. Central Bank of India, Burrabazar Branch, 178, Mahatma Gandhi Road, Kolkata 700007, Account No.3020575203, Fixed Deposits;*

*4. State Bank of India, Industrial Finance Branch, Account No.30368694587, 11, Constantia House, Dr U.N. Bramachari Street, Kolkata 700017;*

*5. Central Bank of India, Plot 95, Unit III, Janpath, Bhubaneswar 751001, Orissa, Account No.3020713358;*

*6. State Bank of India, IDCO Tower Branch, Bhoi Nagar, Rupali Chhak, Bhubaneswar 751022, Orissa, Account No.30376327913;*

*7. VTB Bank, Taj Mahal Hotel, The Lobby Mezz Floor, No.1, Mansingh Road, New Delhi 110011, Account No.408073560006 20000006.*

*In order to establish the facts of importance for investigation of the criminal case, it became necessary to examine the TPPL Indian shareholders S.M. Shroff and R. Saraf, and to obtain information on account on movement of the funds on the TPPL accounts with Indian banks.*

*In view of the above, relying on the Treaty between the Republic of India and the Russian Federation on Mutual Legal*

*Assistance in Criminal Matters dd. December 21, 1998, and Art. 453 and 454 of Russian Criminal Procedure Code,”.*

5. Upon receipt of the request for legal assistance, it appears that the Central Govt. required the CBI to act in terms of the treaty and, consequently, the CBI issued notices under Section 160 Cr PC dated 14.07.2016 and 04.08.2016 to the petitioner. Upon receipt of the said notices, the petitioner approached this court vide W.P. (Crl.) No. 2422/2016, which was disposed of by this court on 22.08.2016. The grievance of the petitioner taken note of in the order dated 22.08.2016 reads as follows:

*“The submission of Mr. Nandrajog, learned senior counsel for the petitioner is that the petitioner is completely in the dark with regard to the nature, purport and content of the case initiated in Russia, which is under investigation. The petitioner is not aware as to whether or not the petitioner is an accused in the said proceedings. Moreover, the petitioner is also not aware as to what bearing the investigation may have on the on-going arbitration between SAPL and the Russian counterparts, as noticed above.*

*Mr. Nandrajog submits that the Indian and Russian Federation have entered into a treaty on mutual legal assistance in criminal matters. He has referred to Article 13 of the said treaty and in particular to Article 1.1, 1.2, 1.3 and 2.4 thereof, which reads as follows:*

“ *Part III – Procedure*

*Article 13*

*Contents of requests*

1. *In all cases requests for assistance shall include:*

1.1 *the competent authority conducting the investigation, criminal prosecution or proceedings to which the request relates;*

1.2 *a description of the nature of the investigation, criminal prosecution or proceedings, including a copy or summary of the relevant facts and laws;*

1.3 *the purpose for which the request is made and the nature of the assistance sought; and*

1.4 *xxx xxx xxx xxx xxx xxx xxx xxx xxx*

2. *Requests for assistance shall also contain the following information:*

2.1 *xxx xxx xxx xxx xxx xxx xxx xxx xxx*

2.2 *xxx xxx xxx xxx xxx xxx xxx xxx xxx*

2.3 *xxx xxx xxx xxx xxx xxx xxx xxx xxx*

2.4 *in the case of requests to take evidence from a person, information as to whether that evidence is required to be sworn, affirmed, or otherwise taken in conformity with the law of the Requested Party, and a description of the subject matter of the evidence or statement sought ... ..;*

*Mr. Nandrajog submits that the petitioner cannot be expected to compromise his position in relation to any criminal proceedings, and he is entitled to protection of his rights under Article 20(4) of the Constitution of India. It is argued that merely because the criminal proceedings have been initiated in Russia, the petitioner cannot be worse off than he would have been had the case been initiated in Indian Courts as, in that situation, he would at least know the nature of the case and the allegations, if any, made against him as an accused, if at all”.*

6. The said petition was disposed of on the statement made on behalf of the CBI by the learned counsel that the respondents had no objection to

provide the gist of the case, which is contained in the background note in the first three and half pages of the said request for legal assistance. However, the respondent was not willing to share the interrogatories in advance with the petitioner, on the ground that the said interrogatories would have to be answered by the petitioner upon his personal appearance. The petitioner agreed to receive the said background note while reserving his right to decide his future course of action after perusing the same. Consequently, the portion of the said letter of request for legal assistance dated 18.09.2015 was provided to the petitioner, which contains the factual matrix and the substance of the allegations made against the petitioner.

7. After receipt of the said extract from the request for legal assistance, the petitioner has once again approached this court to seek the aforesaid reliefs by the present writ petition, primarily on the same premise that the petitioner is left in the dark about the complete facts/ documents/ allegations/ accusations made against him, and he cannot be compelled to answer questions without knowing, in entirety, the said particulars.

8. Mr. Nandrajog submits that by virtue of Section 166B Cr PC, when a request from a court or authority in a country or place outside India is received for examination of any person, or production of any document or thing in relation to an offence under investigation in that country or place, the Central Govt may, inter alia, send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner as if the offence had been committed within India. He submits that it is under the authority derived from the said provision that the CBI has issued notices under Section 160 Cr PC to the petitioner.

9. Mr. Nandrajog submits that since the investigation is to be carried out in the same manner as if it were an offence committed in India, the petitioner is entitled to the same protection as would be available in respect of a case/ FIR registered in India. He submits that the petitioner is completely at sea as to whether, or not, the petitioner is an accused, and is not even aware as to who is the complainant and on what basis the aforesaid criminal case has been registered in the Russian Federation. He submits that the petitioner cannot be required to answer any queries that may have received from the Russian Federation, unless the petitioner knows whether, or not, he is accused of a particular offence, and the role attributed to him.

10. In support of this submission, he places reliance on the judgment of the Supreme Court in *Youth Bar Association of India v. Union of India & Anr.*, (2016) 9 SCC 473, wherein the petitioner had sought the issuance of a writ, directing the UOI and States to upload each and every FIR registered in all police stations within the territory of India on the official website of the police of all the States as early as possible, preferably within 24 hours of the time of registration. While dealing with the said petition, the Supreme Court had issued directions which are contained in para 11 of the judgment. Mr. Nandrajog has specifically refers to directions contained in para 11.1, 11.2 and 11.4, which reads as follows:

*“11.1 An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.*

*11.2 An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through*

*his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.*

*11.4 The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, 6 offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location”.*

11. Mr. Nandrajog submits that if the FIRs were to be registered in India, the petitioner would be entitled to the aforesaid protections. The petitioner cannot be compelled – merely because a criminal case is registered in the Russian Federation, and in purported compliance of the obligation under the aforesaid treaty the CBI is required to carry out the investigation, answer the queries raised by the Russian Federation, in breach of the constitutional protections to which the petitioner is entitled as an accused in India. He submits that under Article 3.1 of the treaty, the UOI may refuse the assistance sought by the Russian Federation, if, in the opinion of the requested party i.e. the Central Govt, the execution of the request would impair its sovereignty, security, public order “*or any other essential public*

*interest*". Mr. Nandrajog submits that the aforesaid expression is wide enough to encompass the aspect of violation of the fundamental rights of the petitioner. He submits that the UOI should have refused assistance in the present case on the ground that, unless the complete documentation in relation to the said criminal case is placed before it, the request cannot be entertained as it would breach the petitioner's fundamental rights as an accused.

12. Mr. Nandrajog further submits that under Article 13 of the treaty, clause (1.2) and (1.3) provides that in all cases request for assistance shall include a description of the nature of the investigation, criminal prosecution or proceedings, including a copy or summary of the relevant facts and laws, as well as the purpose for which the request is made and the nature of the assistance sought. He submits that the said requirements of the treaty are not met by the Letter of Request for legal assistance presently sent by the Russian Federation. He further submits that under clause (3) of Article 13, it was open to the Central Govt to take a stand that the information contained in the request is not sufficient to enable the request to be dealt with, and seek additional information from the Russian Federation. However, the Central Govt, without application of mind, required the CBI to proceed to entertain the request in the present case.

13. During pendency of this petition, the petitioner also moved an application – being CrI.M.A. No. 17132/2016, to seek stay of operation of the notices Nos.8624 and 8625 dated 06.10.2016 issued by the CBI, requiring the petitioner to submit information and documents and appear before it on 17.11.2016. This application was, however, withdrawn by the

petitioner. It was made clear by this court that if any questions were put to the petitioner, incriminating him, it would be open to the petitioner to defend his rights as available in law. It was further ordered that in case the petitioner appears, it shall be open to him take his counsel along with him. It is informed that the petitioner has thereafter appeared on three occasions.

14. On the other hand, the submission of Mr. Goel, learned counsel for the respondent/ CBI is that the respondent is merely fulfilling its obligations under the treaty. Learned counsel for the respondent submits that reliance placed on the judgment in *Youth Bar Association of India* (supra) is misplaced inasmuch, as, that was a case where the only aspect considered by the Supreme Court was in relation to uploading of the FIRs on the websites of the Union and States in a time bound manner, and the same related to cases/ FIR registered within the territory of India. In the present case, the criminal case has been registered in the Russian Federation and the letter of request received by the respondent, by itself, contains the sufficient disclosures which indicate that the petitioner is an accused in the said case.

15. Pertinently, during the pendency of this petition, the respondents have also received another set of documents from the Russian Federation called “Note Verbale” No.175 dated 08.02.2016. The complete document has been placed on record, and also provided to the petitioners.

16. Mr. Goel submits that even if the petitioner had any outstanding grievance, on account of the information contained in the letter of request for legal assistance allegedly not being complete, the same cannot survive upon receipt of the said Note Verbale. He points out that the said Note

Verbale not only contains the Indictment Order dated 06.06.2016, but also the specific queries that the petitioner is expected to answer. Mr. Goel further submits that the CBI is not interested in personally interrogating the petitioner, and the CBI would be satisfied if the queries – which have already been provided to the petitioner along with Note Verbale, are answered by him in writing and the answers provided to the CBI for onward transmission to the Russian Federation.

17. Having heard learned senior counsel for the petitioner and learned counsel for the respondent, I am of the view that no grievance of the petitioner survives - even if one existed at the time when the petition was preferred, in view of the communication of the Note Verbale to the petitioner which contains not only the Indictment Order, but also set of queries that the petitioner is expected to answer.

18. A perusal of the indictment order clearly discloses that the petitioner is an accused in the said Criminal Case no.385014 pending in the Russian Federation. The indictment order, in its relevant part, reads as follows:

*“On June 12, 2008 as instructed by the Russian Ministry of Finance, the State Corporation “Bank for Development and Foreign Economic Affairs” (hereinafter – “Vnesheconombank”) transferred to 50% of the Russian share, i.e. Rs.2,500,000,000 (two billion five hundred million), which is about USD 58 000 000 (fifty-eight million) as the first payment to the TPPL’s current account.*

*Unlike the Russian Federation, the Indian shareholders (these companies are controlled by Indian nationals S.M. Shroff and his son R. Saraf), invested only an amount equivalent to USD 33,333 in the joint venture, accounting for about 1-2% of the*

*amount they were required to contribute to the share capital. Thus, the Indian Party failed to fulfil the necessary conditions for obtaining of a share certificate. According to available data, the companies were lacking any funds.*

*Thus, on October 15, 2008 in order to organise the Joint Venture operation, the Government of Orissa and TPPL represented by S.M. Shroff signed the Memorandum of Understanding under which the Government of Orissa and the Joint Venture agreed on provision of a land plot in the State of Orissa to the Joint Venture for placing of manufacturing facilities.*

*Further, in breach of the existing obligations, at the initiative of the Indian Party represented by S.M. Shroff and R. Saraf, who were acting by fraud, two land plots (34.095 acres in Chatrapur, Ganjam district, State of Orissa, India) were leased not to TPPL, but to its minority shareholder SAPL.*

*Subsequently, SAPL, in violation and disregard of the agreements reached, and in breach of the Joint Venture's interests, suggested that TPPL should sublease the land plots meant for placing the manufacturing facilities at a rate 12 times higher than the one paid for the lease by the shareholder.*

*Due to the said actions, TPPL was never granted leasehold to the land plots for placing of the manufacturing facilities, which eliminated the possibility to arrange manufacturing and resulted in the titanium dioxide and other titanium products project implementation being frustrated, which caused an extremely large financial damage to the Russian Federation.*

*Moreover, in 2009 to 2011, S.M. Shroff and R. Saraf acted in violation of the TPPL's Articles of Association and in breach of the company's legal interests, having received access to its accounts, disposed of the company's fund without approval from TPPL's Board of Directors. In addition, the funds were disposed of without notification to the Russian Federation in such a way that benefitted the Indian Party, particularly, SAPL.*

*In 2009-2010, under unspecified circumstances, based on documents forged by the accomplices, with no coordination with the Board of Directors and without notifying of the Russian Party, S.M. Shroff, R. Saraf and their unidentified accomplices organised transfer of funds from the account of TPPL.*

*Moreover, on December 22, 2009, the amount equivalent to RUB 271378000000 (Rs.288,700,000) was transferred from the account of TPPL to the account of TMPL. Thereafter, on March 1, 2010 the amount of funds equivalent to RUB 235,000,000 (Rs.250,000,000) was transferred to the account of SAPL. Then, on November 23, 2010, the amount equivalent to RUB 1,035,598,000,000 (Rs.1,101,700,000) was transferred from the account of TPPL to the account of SAPL for the purpose of concealment of the funds and illegal personal mercenary enrichment; the said funds were subsequently transferred to the accounts of the companies under control of S.M. Shroff, R. Saraf and their unidentified accomplices.*

*By doing so, S.M. Shroff, R. Saraf and their unidentified accomplices, specified “expense recovery for development of the project and return of the money for the shares used” as the purpose of the transfer made, thereby misleading bank clerks as to the true criminal intents.*

*Thus, under unspecified circumstances, in unspecified time, but no later than on March 10, 2011 the amount equivalent to USD 20,000,000 (twenty million), which amounts to RUB 644,010,000 (six hundred forty four million ten thousand) at the Central Bank of Russia’s exchange rate on the relevant date, was transferred from the account of TPPL, with no coordination with the Board of Directors and without notifying of the Russian Party, based on documents forged by accomplices, to the account of SAPL controlled by S.M. Shroff, R. Saraf and further, on March 30, 2011 the part of the specified money in the amount equivalent to USD 15,000,000 (fifteen million), which makes at least RUB 448,465,500 (four hundred forty eight million four hundred six) at the Central*

*Bank Russia's exchange rate, was transferred from the account of SAPL to the account of Forum projects, a company founded by S.M. Shroff and managed by R. Saraf, members of Joint Venture's Board of Directors on behalf of the Indian party.*

*Thus, Sanvar Mull Saraf, in 2009-2010, acting jointly and in coordination with Rahul Saraf and other unspecified persons, by false pretenses, committed a fraud that is misappropriation of funds belonging to the Russian Federation on behalf of Federal Agency for State Property Management in especially large size that is committed an offence under Art. 159(4) of the Russian Criminal Code.*

*Based on the above and in reliance on Art. 171, 172 the Russian Criminal Procedural Code,*

**ORDERED TO:**

*Name Sanwar Mull Shroff born on January 12, 1935 in residents Kolkata, as a defendant in the criminal case and charge him with an offence under Art. 159(4) of the Russian Criminal Code, which he shall be made aware of'.*

19. Since the CBI is satisfied with the receipt of a written reply to the said queries by the petitioner and does not require the petitioner, for his personal interrogation, the apprehensions expressed by the petitioner, and his grievance with regard to protection of his rights as an accused do not survive. The petitioner is now well aware of the fact that he is an accused in the said criminal case pending in the Russian Federation, and he is also clearly aware of the specific allegations made against him in the said case. It is upto the petitioner to answer the queries in the manner he considers appropriate. Even under the treaty obligation, the requesting party is not required to provide the entire case material to the other party i.e. the Indian State in the present case. Article 13 of the treaty is relevant and the same

reads as follows:

“

*Article 13*

**Contents of requests**

- 1. In all cases requests for assistance shall include:**
  - 1.1. the competent authority conducting the investigation, criminal prosecution or proceedings to which the request relates;**
  - 1.2. a description of the nature of the investigation, criminal prosecution or proceedings, including a copy or summary of the relevant facts and ' laws;**
  - 1.3. the purpose for which the request is made and the nature of the assistance sought; and**
  - 1.4. any time limit within which compliance with the request is desired.**
- 2. Requests for assistance shall also contain the following information:**
  - 2.1. where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;**
  - 2.2. where necessary, details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons therefor;**
  - 2.3. in the case of requests for the taking of evidence or search and seizure, a statement indicating the basis for belief that evidence may be found in the jurisdiction of the Requested Party;**
  - 2.4. in the case of requests to take evidence from a person, information as to whether that evidence is**

*required to be sworn, affirmed, or otherwise taken in conformity with the law of the Requested Party, and a description of the subject matter of the evidence or statement sought; .*

2.5. *in the case of lending of exhibits, the person or class of persons who will have custody of the exhibit, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;*

2.6. *in the case of making persons in custody available, the person or class of persons who will have custody during the transfer, the place to which the person in custody is to be transferred and the date of that person's return;*

2.7. *the need, if any, for confidentiality and the reasons therefor;*

2.8. *any other information that might be useful in order to execute the request.*

3. *If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional details be furnished.*

4. *A request shall be made in writing. In urgent circumstances or where otherwise permitted by the Requested Party, a request may be made by facsimile or other agreed means of electronic communication but shall be confirmed in original written form promptly thereafter.” (emphasis supplied)*

20. Thus, it is only a description of the nature of the investigation, criminal prosecution or proceedings, including a copy or summary of the relevant facts and laws, which are required to be provided by the requesting State. Pertinently, the stage in the said criminal case is still the stage of

“investigation”. The Russian Federation has desired legal assistance for the purpose of investigation. Even in the Indian context, the petitioner cannot demand any document/evidence from the investigating agency as a matter of right. (See *Maria Monica Susairaj V. The State of Maharashtra through CID, Unit-VIII*, MANU/MH/0994/2008). The petitioner is not required to depose on solemn affirmation. There is no “trial” underway yet. Though the petitioner claims that he is prejudiced on account of the complete case papers not being made available, he has not particularised either the information/ documents that he needs to be able to answer the queries, or the manner in which he will suffer any prejudice. A bald assertion made by the petitioner in this regard would not suffice.

21. The decision in *Youth Bar Association of India* (supra) relied upon by the petitioner, in my view, does not come to the aid of the petitioner. As noticed herein above, the said decision has been rendered by the Supreme Court in the context of cases/ FIR which are registered in the Indian territory. In the present case, the criminal case has been registered not in the Indian territory, but in the Russian Federation.

22. The queries raised by the petitioner with regard to the identity of the complainant, and also whether the allegations contained in the indictment order are complete by themselves, cannot be expected to be answered by the respondents. In my view, the said queries, in any event, appear to be irrelevant at this stage, and even if the petitioner considers the same to be relevant, it is open to the petitioner to structure his response to the queries raised appropriately. The petitioner cannot use the process undertaken by the respondents in pursuance of the aforesaid treaty as an opportunity to start

a reverse process of interrogating the respondents on aspects which do not concern them. The respondents cannot also be required to give any assurance to the petitioners, as to whether the allegations found in the indictment order are complete in themselves, or not.

23. For all the aforesaid reasons, I find no merit in this petition. Dismissed.

24. At this stage, Mr. Goel submits that in case the petitioner were not to answer the queries communicated to him along with the Note Verbale within two weeks, the respondents shall be compelled to take other steps in accordance with law. In case the petitioner chooses to answer the queries, the petitioner shall also fill in the form contained at internal page 96 of the Note Verbale, which is a part of the indictment order.

25. Dasti.

**VIPIN SANGHI, J**

**FEBRUARY 17, 2017**

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