

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RECEIVED

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H. HALL ... NOTON

U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :  
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 :  
 Plaintiff, :  
 :  
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 :  
 GAUTAM SENGUPTA, :  
 :  
 :  
 Defendant. :  
 :  
 \_\_\_\_\_ :

CRIMINAL NO.

VIOLATION:

18 U.S.C. § 371

15 U.S.C. § 78dd-3

**PLEA AGREEMENT**

1. In compliance with Rule 11 of the Federal Rules of Criminal Procedure, the parties acknowledge the following agreement between the United States Department of Justice and the defendant, GAUTAM SENGUPTA, and the defendant's attorney, William Brennen, Esq. Pursuant to plea negotiations herein, the United States and the defendant, GAUTAM SENGUPTA, have mutually examined the relative merits of the above case and have agreed to resolve the case according to the terms and conditions contained in this Plea Agreement.

**I. NEGOTIATED PLEA**

2. The defendant GAUTAM SENGUPTA will waive formal indictment and enter a plea to a two count information charging, in Count One, a violation of 18 U.S.C. § 371 conspiracy to commit wire fraud and, in Count Two, a violation of the Foreign Corrupt Practices Act, 15 U.S.C. 78dd-3. The defendant admits that he is guilty of these offenses and agrees to so advise the court. The United States agrees to not

charge the defendant with any other crimes that arise out of the facts set forth in the Statement of Facts filed herewith subject to section VIII, herein.

## **II. PENALTY**

3. The defendant understands and agrees that the statutory maximum sentence for the counts to which he is pleading guilty is a term of imprisonment up to five years, followed by a term of supervised release of three years; a maximum fine of \$250,000, and a special assessment of \$100.00 for each felony count, pursuant to 18 U.S.C. § 3013(a)(2)(A).

4. The defendant understands that the length of a prison term, if any, and the amount of a fine and restitution if any, are matters within the sound discretion of the sentencing judge. The defendant understands that his sentence will be decided by the court and that neither the government nor his attorney can predict what his sentence will be.

## **III. RESTITUTION**

5. Pursuant to 18 U.S.C. § 3663 (a)(3), the defendant and the government agree that the amount of loss in this case is \$127,000 and the defendant agrees to pay full restitution of this amount for all damage that resulted from his violations of the statutes listed in Section I herein. The United States and the Defendant agree that the Defendant has made such restitution, and The World Bank, Mr. Sengupta's former employer, has represented to the Department of Justice that it has no further claim against the defendant.

#### **IV. COOPERATION**

##### **A. Defendant's Obligations**

6. The defendant agrees to disclose completely and truthfully all information regarding his activities and those of others in all matters about which he has knowledge or hereafter acquires knowledge and concerning any matter about which the United States, The World Bank, or the Government of Sweden may inquire. Defendant agrees to accompany agents of the United States, The World Bank, or the Government of Sweden to any location in order to accomplish that purpose. Further, defendant agrees to appear and testify truthfully before the Grand Jury and/or at any trial or other court proceeding upon request of the United States or the Government of Sweden. Defendant agrees to answer all questions completely and truthfully and must not withhold any information.

7. Defendant agrees not to attempt to protect any person or entity through false information or omission, or to falsely implicate any person or entity. Defendant must not commit any crimes whatsoever. Defendant agrees to furnish to the United States any documents in defendant's custody or possession or under defendant's control that are relevant to the investigation. Defendant's obligation to cooperate commences with defendant's signing of this plea agreement.

##### **B. The Government's Obligations**

8. In exchange for the defendant's plea of guilty and agreement to cooperate as set forth above, the United States agrees not to prosecute defendant for any violations of federal law in connection with the same facts giving rise to this plea

other than as set forth in section I, above. This agreement to forego further prosecution does not apply to any charges that may be brought by the Internal Revenue Service, U.S. Department of Treasury, or the Tax Division of the United States Department of Justice under Title 26, United States Code. Further, the agreement does not limit in any way the right or ability of the United States to investigate or prosecute crimes based on facts which are not part of the agreed facts as set forth in the Statement of Facts.

9. If defendant fully complies with all the terms and conditions of this agreement, your client's cooperation or lack thereof, will be evaluated by the Departure Guideline Committees of the Fraud Section, U.S. Department of Justice and the United States Attorney's Office for the District of Columbia. If, after evaluating the full nature and extent of your client's cooperation, the Departure Guideline Committees determine by consensus that your client has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, then the Fraud Section will file a departure motion pursuant to 18 U.S.C. § 3553(e) and Section 5K1.1 of the Sentencing Guidelines. Your client understands that this determination is in the sole discretion of the Departure Guideline Committees and that nothing in this agreement may be construed to require the Department of Justice to file such a motion. The United States reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the court at the time of sentencing, however the government's recommendation will not be based upon the outcome of any trial in this matter. The

defendant and his attorney are free to make a recommendation to the court concerning an appropriate sentence at time of sentencing. The defendant understands, however, that the ultimate sentence to be imposed in this matter rests exclusively within the discretion of the court.

## V. ELEMENTS OF THE OFFENSE

10. Title 18 U.S.C. Section 371 reads in pertinent part:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

In order for the defendant to be found guilty of this charge, the Government must prove each of the following elements beyond a reasonable doubt:

First: That two or more persons agreed to promote or facilitate the commission of a crime against the United States, *to wit:* wire fraud.

Second: The defendant knowing the purpose of the agreement, willfully joined in the agreement.

Third: That one of the participants to this agreement committed one or more overt acts in furtherance of the criminal purpose of the agreement.

11. Title 15, U.S.C. Section 78dd-3 reads in pertinent part:

It shall be unlawful for any person...while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of

the giving of anything of value to (1) any foreign official for the purpose of (A)(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or (B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality in order to assist such person in obtaining or retaining business for or with, or directing business to, any person....

In order for the defendant to be found guilty of this charge, the Government must prove each of the following elements beyond a reasonable doubt:

First, the defendant acted within the territory of the United States;

Second, that he used the mail or any means or instrumentality of interstate commerce, or did any other act in furtherance of an unlawful act under the statute;

Third, he acted corruptly and willfully;

Fourth, he offered, paid, promised to pay, or authorized the offer, promise or payment of any money or anything of value;

Fifth, knowing that all or a portion of the payment would be offered, given, or promised, directly or indirectly to a foreign official;

Sixth, that the payment was for one of three purposes:

---to influence any act or decision of the foreign official in his official capacity; or

---to induce the foreign official to do or omit to do any act in violation of that official's lawful duty; or

---to secure any improper advantage

Seventh, in order to assist the defendant in obtaining or retaining business for, or with, or directing business to, any person.

## **VI. SENTENCING FACTORS**

12. The Government and the defendant agree that the defendant's conduct was neither an aggravating role nor mitigating role as defined by U.S.S.G. §§ 3B1.1 and 3B1.2. The Government and the defendant further agree that the defendant did not abuse a position of trust or use of special skill as defined by U.S.S.G. § 3B1.3.

13. The defendant understands however that a sentencing guideline range for this case will be determined by the court pursuant to the Sentencing Reform Act, 18 U.S.C. §§3551-3742 and 28 U.S.C. §§991-998. He further understands that the court will impose a sentence within that range unless the court finds that there is a basis for departure because aggravating or mitigating circumstances exist which were not adequately taken into consideration when the guidelines were formulated and which should result in a sentence different from the guideline range.

14. The defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was part of a pattern of criminal conduct from which he derived a substantial portion of his income.

15. In determining the factual basis for the sentence, the court will consider this agreement, together with the results of the presentence investigation, and any other relevant information, subject to the limitations in Sentencing Guideline §1B1.8(a). The defendant understands that the court is not bound to follow the recommendations

of the United States. If the court declines to sentence the defendant as recommended by the United States, the defendant cannot, for that reason alone, withdraw his guilty plea.

16. The defendant understands that neither the United States, his lawyer, nor the court can make a binding prediction of, or promise him, the guideline range or sentence that ultimately will apply to his case. The defendant agrees that no one has made such a binding prediction or promise.

17. The United States has no objection to the defendant remaining on bond pending sentencing.

#### **VII. TAXES**

18. The defendant also agrees to file within 90 days true and correct federal tax returns, if necessary, for any taxable year affected by the offenses alleged in the indictment and to pay for all taxes, interest and penalties for those years within a reasonable time to be agreed upon with the Internal Revenue Service.

19. The defendant also agrees to make all books, records and documents available to the Internal Revenue Service for use in computing defendant's taxes, interest, and penalties for any taxable year.

#### **VIII. BREACH OF AGREEMENT**

20. If the defendant has failed or should fail in any way to fulfill completely any of his obligations under this agreement, then the United States will be released from its commitment to honor all of its obligations to him. Specifically, the United States will be free to:



- A. Charge him with any offense including all crimes in connection with The World Bank that he has committed;
- B. Use against him in all of those prosecutions the information and/or documents that he himself has disclosed during the course of his cooperation including all statements given under the proffer agreement or any other statement defendant may make in discussions which are covered under Rule 11(e)(6). Defendant agrees to expressly waive objection to the use of any such statements, testimony or information to which defendant may otherwise be entitled to object in any federal prosecution, now or at any time in the future;
- C. Recommend to the court any sentence up to and including the maximum possible sentence;
- D. Refrain from making any motion for a downward departure for substantial assistance.

21. Since defendant's acceptance of this agreement terminates all plea discussions with the United States, any statements made by defendant after the date of defendant's acceptance of this agreement are not governed by Rule 11(e)(6) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence.

#### **IX. PROOF OF BREACH OF AGREEMENT**

22. Whether or not the defendant has violated the terms of this agreement shall be determined by the court at a hearing. At any hearing on the issue of breach, the defendant's disclosures and documents will be admissible and the United States will be required to establish the breach by a preponderance of the evidence.

#### **X. NO IMMUNITY FOR PERJURY**

23. Nothing in this agreement shall be construed to protect the defendant from prosecution for Perjury, or Making False Declarations or False Statements, in violation

of 18 U.S.C. §§1621, 1623, or 1001; Obstruction of Justice, in violation of 18 U.S.C. §§1503,1505, 1510, or 1512; or any other offense committed after the date of this agreement. The information and documents that he discloses to the United States pursuant to this agreement may be used against him in any such prosecution.

24. During his plea, the court may ask defendant to answer questions about the offense to which he pleads, and the facts contained in any stipulation which he has made with the United States. If he answers those questions untruthfully, his answers may later be used against him in a prosecution for perjury or false statement.

#### **XI. ACKNOWLEDGMENT**

25. The undersigned defendant, GAUTAM SENGUPTA, acknowledges by his signature below that he has read this Plea Agreement, that he understands the terms, conditions and the factual basis as set forth herein, that he has discussed these matters with his attorney, and that the matters set forth in this Plea Agreement, including those facts which support his plea of guilty, are true and correct.

26. The undersigned defendant acknowledges and understands that he is presumed to be innocent of the charge filed against him and the government has the burden to prove his guilt beyond a reasonable doubt at a trial. Further, defendant acknowledges that he has been advised, and understands, that by entering pleas of guilty he is waiving, that is, giving up, certain rights guaranteed to him by law and by the Constitution of the United States. Specifically, he is giving up:

- A. The right to proceed to trial by jury on the original charges, or to a trial by a judge if he and the United States both agree;

- B. The right to confront the witnesses against him at such a trial, and to cross-examine them;
- C. The right to remain silent at such trial, with such silence not to be used against him in any way;
- D. The right, should he so choose, to testify in his own behalf at such a trial;
- E. The right to compel witnesses to appear at such a trial, and to testify in his behalf; and
- F. The right to have the assistance of an attorney at all stages of such proceedings.

27. The undersigned defendant, his attorney, and the attorneys for the United States acknowledge that this Plea Agreement is the entire agreement negotiated by and agreed to by and between the parties, and that no other promise has been made or implied by either the defendant, his attorney, or the attorneys for the United States.

Respectfully submitted,

APPROVED:

Roscoe C. Howard, Jr.  
UNITED STATES ATTORNEY

DATE: 1-30-02

by: Peter Clark by DAB  
Peter B. Clark, Deputy Chief  
Fraud Section  
U.S. Department of Justice

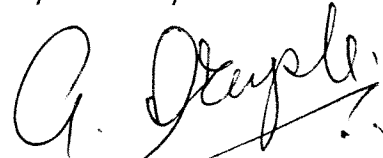
DATE: 1-30-02

David A. Bybee  
David A. Bybee, Trial Attorney  
Fraud Section  
U.S. Department of Justice

I have read this agreement and have carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. No other promises or inducements have been made to me other than those contained in this agreement. No

one has threatened me or forced me in any way to enter into this agreement. I am fully satisfied with the representation of my attorney.

DATE: 01/28/02



GAUTAM SENGUPTA  
Defendant

DATE: 01/28/02



William C. Brennan, Jr., Esq.  
Counsel for Defendant