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By ECF

Hon. Paul G. Gardephe
U.S. District Court, Southern District of New York
40 Foley Square, Room 204
New York, N.Y. 10007

Re: *CC/Devas (Mauritius) Ltd. et al. v. Air India, Ltd.*, 21-cv-05601

Dear Judge Gardephe:

Air India respectfully submits this letter in response to the letter filed yesterday by CC/Devas Mauritius Ltd., Devas Employees Mauritius Ltd., and Telcom Devas Mauritius (collectively, "Devas"). Dkt. 43.

For the second time, Devas has made an unauthorized filing that has no bearing on any of the motions pending—or even previewed—before this Court. *See* Dkt. 38 (responding to last week's letter). In the latest edition, Devas informs the Court of a ruling in Canada that Devas claims holds that Air India is the "alter ego" of India. As noted below, Devas' description of the Canadian ruling, which Air India has already sought to appeal, is grossly inaccurate. But even if the Canadian court had made such a ruling, it would have zero bearing on either Air India's pending motion to stay discovery (Dkt. 33), Devas' pending motion to expedite discovery (Dkt. 30), or Air India's previewed motion to dismiss (Dkt. 17). Rather, as set forth in Air India's prior briefing, Air India has threshold immunity and legal defenses that preclude this Court's jurisdiction even *assuming* that Air India is the alter ego of India. *See* Dkt. 33 at 17-20 (inviting Court to assume "alter ego" status for purposes of resolving threshold immunity and legal defenses); Dkt. 36 at 13-14 (same). To avoid vitiating Air India's presumptive immunity from suit, those threshold defenses must be resolved *before* the parties join issue—and potentially take discovery—on whether, as a matter of fact, Air India is India's alter ego. *Id.* A Canadian court's purported ruling on "alter ego" thus is entirely irrelevant to whether discovery should be stayed, whether it should be expedited, or even on whether Air India's previewed motion to dismiss on threshold defenses should be granted.

Air India nevertheless is compelled to respond—despite its presumptive immunity from the burdens of litigation, *see* Dkt. 33 at 5-7—to correct some of the inaccuracies set forth in Devas' latest irrelevant letter.

Devas claims that Air India has "argued here" that Devas' alter ego allegations are legally insufficient. Dkt. 43 at 1. Given that Air India has repeatedly asked this Court to *assume the opposite* for purposes of resolving the pending and previewed motions, Devas' misstatement is unsurprisingly unsupported by any citation to the record here.

Devas also claims that the Canadian court ruled that Air India "[***is***] the alter ego[] of the Republic of India." *Id.* (alterations in original; emphasis added). The Canadian court did no such

thing. Instead, it concluded that, under Canadian law, Devas' pleadings were sufficient to authorize the grant of *ex parte* applications for pre-judgement seizure of certain assets belonging to Air India, while noting that it was "only called upon the verify the sufficiency of the allegations" of alter ego, "not their veracity," and that its finding "does not necessarily mean that [Devas] will subsequently manage to prove such a position on the merits or at the veracity challenge should there be one." Dkt. 43, Ex. A ¶¶ 60, 64.[1]

In any event, this Court has no occasion to pass on the meaning of the Canadian court's judgment or its potential impact on a hypothetical alter ego determination by this Court at some point in the future. *If* Devas overcomes the Republic of India's immunity defenses (which Air India shares); and *if* Devas then overcomes Air India's independent immunity and legal defenses to be set forth in its previewed motion to dismiss; and *if* the Court then determines that the contested issue of Air India's alter ego status must be resolved; *then* the parties can brief the effect, if any, of the Canadian court's preliminary ruling (which, as noted, Air India has sought to appeal).[2] Meanwhile, the Court should not countenance Devas' continuing efforts to impose on Air India, a presumptively-immune sovereign instrumentality, the burdens of responding to Devas' serial, unauthorized and irrelevant letters.

Respectfully submitted,
/s/ *Michael Shuster*
Michael Shuster

cc: Counsel of record via ECF

[1] Devas also wrongly claims that the Canadian court found that it was "entitled to enforce the arbitral awards in Canada." Dkt. 43 at 1. We understand that India has not even been served with process in the Canadian award enforcement proceedings, nor does it appear to have been served in the garnishment proceedings, *see* Dkt. 43, Ex. A ¶ 24. Thus, the enforceability of Devas' arbitral awards in Canada is far from being established.

[2] Notably, Devas has made no attempt whatsoever at a showing that Canadian law tracks U.S. law on foreign sovereign immunity or alter ego status. *If* Devas were able to overcome Air India's threshold immunity and other legal defenses, it would still have to carry its burden of establishing that the Canadian ruling is entitled to recognition in the United States and that it has preclusive or even persuasive effect here.