

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CC/DEVAS (MAURITIUS) LTD, et al.,

*Petitioners,*

v.

REPUBLIC OF INDIA,

*Respondent.*

**Civil Action No. 1:21-cv-00106-  
RCL**

**DECLARATION OF LAWRENCE T. BABBIO JR. IN SUPPORT OF PETITIONERS’  
OPPOSING POINTS AND AUTHORITIES TO RESPONDENT’S MOTION TO STAY  
AND MOTION TO DISMISS**

I, Lawrence Babbio Jr., declare as follows:

1. I have a Bachelor’s of Engineering in electrical engineering from the Stevens Institute of Technology, and a Master’s of Business Administration in Finance from New York University. I spent the bulk of my professional career in the telecommunications industry both in the United States and abroad. I spent four decades working for and with Verizon, ultimately becoming its Vice Chairman and President until I retired from that position in 2007. Since 2007, I have been a member of the Board of Directors of Petitioner Devas Multimedia Private Ltd. (“Devas”). In 2012, I was appointed Chairman of Devas Multimedia Services Ltd., though in recent months Devas’s leadership including its Board of directors has been stripped of its authority pursuant to orders by the Indian National Company Law Tribunal (“NCLT”).

2. The facts set forth in this Declaration are personally known to me, and, if called as a witness, I could and would competently testify to them. Where I rely on information provided

by others, I identify the source of information which is true to the best of my knowledge, information and belief.

3. I became involved as an investor in Devas in 2007 when I joined its board of directors in 2007. At the time, Devas was a new company seeking to bring a variety of new multimedia platforms to India, particularly through satellite medium. I had just retired as the Vice Chairman and President of Verizon, and I hoped to bring my decades of experience in telecommunications to help Devas succeed. Similar to my fellow board members, I own a certain portion of the equity in Devas.

4. I have spent nearly fourteen years on the Devas board and am familiar with Devas's corporate structure. Specifically, Devas is owned by multiple Mauritian entities, CC/Devas (Mauritius) Ltd. ("CC/Devas"), Devas Employees Mauritius Private Limited ("DEMPL") and Telcom Devas Mauritius Limited ("Telcom Devas") (together the "Petitioners"). CC/Devas holds 17.06 percent, DEMPL holds 3.48 percent and Telcom Devas holds 17.06 percent of Devas's shares. Each of these companies therefore has a substantial economic interest in Devas and Devas's assets. As Mauritian entities investing in Indian property, each of these companies received protection from the Bilateral Investment Treaty between Mauritius and India ("BIT"). ECF No. 1-8. After India expropriated Petitioners' investment in Devas in violation of the BIT, a three-member arbitral tribunal was constituted in accordance with UNCITRAL Rules (the "Tribunal"). The Tribunal issued an Award on Jurisdiction and Merits (the "Merits Award") on July 25, 2016, ECF No. 1-6, and the Award on Quantum (the "Quantum Award") on October 13, 2020, ECF No. 1-4. The Quantum Award awarded Petitioners over \$110 million. *Id.* ¶ 663.

5. In my role as a board member of Devas, I keep up on legal proceedings relevant to the company, including legal proceedings related to the arbitration award won by Devas against

Antrix, which was administered by the International Chamber of Commerce (“ICC Award”) and its enforcement. I am also familiar with Antrix’s efforts to set aside the ICC Award in India, and various retaliatory investigations and other measures that the Indian government has taken against Devas and its officers and employees.

**India’s Initial Retaliatory Measures**

6. Ever since Devas initiated the ICC Arbitration against Antrix, followed by the Petitioners’ action against India under the BIT, India’s various agencies have taken a number of retaliatory actions against Devas and its employees.

7. India’s Registrar of Companies (“ROC”) targeted Devas as early as 2011, when Devas filed for arbitration against Antrix, by initiating an investigation into Devas and attempting to cancel Devas’s registration and wind up the company. Devas applied to the High Court of Delhi, which issued interim orders in 2011 and 2012 enjoining the ROC from taking any coercive actions against Devas.

8. The Enforcement Directorate (“ED”) of the Ministry of Finance commenced an investigation into Devas in 2011, shortly after Devas initiated arbitration proceedings against Antrix. The ED has since launched additional investigations into Devas. In early January 2017, it froze Devas’s Indian mutual fund investments and bank accounts as well as the bank accounts of several Devas personnel. That same month, the ED raided Devas’s Bangalore offices and detained Devas personnel overnight for interrogation. These personnel were denied access to counsel and coerced into signing written statements prepared by the ED, which were retracted after they were released from the illegal custody. In January 2019, the ED then purported to issue a \$220 million penalty order against Devas, its investors (including Petitioners), and present and former directors/officers.

9. India's Central Bureau of Investigation ("CBI") launched an investigation into Devas, two of its officers, and other former officials at Antrix and the Department of Space in 2015, just months before the ICC Award was issued. The CBI issued a so-called "charge sheet" listing allegations against these individuals in August 2016 and accusing Devas as an accessory to a crime because the Devas-Antrix Agreement was not financially advantageous to India in hindsight. This was followed by a supplementary charge sheet in January 2019. On January 6, 2020, Devas filed for a deferment of arguments of charges until the conclusion of the CBI's investigation and on other grounds.

#### **Set Aside Proceedings of the ICC Award in India**

10. The ICC arbitral tribunal rendered the ICC Award on September 14, 2015. Thereafter, Devas sought to confirm the ICC Award before the District Court of the Western District of Washington. At the same time, Antrix sought to set aside the ICC Award in Bangalore. At the time that the Washington court confirmed the ICC Award, the question of where the set aside proceedings against the ICC Award must occur—New Delhi or Bangalore—was before the Indian Supreme Court. On November 4, 2020, the Indian Supreme Court resolved that Antrix's petition to set aside the Award should be adjudicated before the High Court of Delhi. Attached hereto as **Exhibit 1** is a true and correct copy of the Indian Supreme Court's decision. The Indian Supreme Court determined that the award "shall be kept in abeyance till the Delhi High Court decides the application for stay" by Antrix. *Id.* at 5. The Indian Supreme Court further noted that Devas "will be entitled to seek a deposit of the sum awarded or part thereof before the Delhi High Court." *Id.*

11. On the same day, November 4, 2020, the Indian Ministry of Law and Justice enacted a special ordinance amending the Indian Arbitration and Conciliation Act of 1996 ("Arbitra-

tion Act”). Attached hereto as **Exhibit 2** is a true and correct copy of the Arbitration and Conciliation (Amendment) Ordinance, 2020 (“Ordinance”). The Ordinance amended the Arbitration Act to provide that, “where the Court is satisfied that a prima facie case is made out . . . that the arbitration agreement or contract which is the basis of the award . . . was induced or effected by fraud or corruption, it shall stay the award unconditionally.” *Id.* art. 2(a). The Ordinance has retrospective effect. *Id.* art. 2, expl.

12. The Indian Supreme Court did not express any view on the constitutionality or applicability of the special ordinance in its decision regarding the venue for Antrix’s set aside proceedings. *See* Ex. 1.

13. Indian authorities appear to have issued the Ordinance with the Award in mind. Mukul Rohatgi, the former Attorney General of India, stated that “[t]he timing of this ordinance is very suspicious” as it was issued “at a time when the Delhi High Court will start the enforcement hearings in the Devas Multimedia-Antrix Corporation matter.” His remarks were published in an article by Payaswini Upadhyay, *A Change to the Arbitration Law Whose Purpose Is Unclear*, Bloomberg Quint (Nov. 24, 2020), a true and correct copy of which is attached hereto as **Exhibit 3**. Mr. Rohatgi went on to opine that, “[t]he ordinance was probably issued and signed a few days before the Devas-Antrix hearing at the Supreme Court.” *Id.* at 1.

### **India’s Retaliatory Measures After The US Judgment**

14. On November 4, 2020, the same day the Western District of Washington entered judgment on the ICC Award in the amount of almost \$1.3 billion, Antrix and India intensified their attacks against Devas, the holder of the ICC Award, its officers, directors and shareholders. On November 4, 2020, the Commissioner of Income Tax for India sent a memo to India’s Income-tax Appellate Tribunal, informing it of the creation of an “Inter-Ministerial Monitoring Committee

. . . constituted with the approval of Hon'ble Finance Minister to expedite the statutory proceedings pending in the case of M/s. Devas Multimedia Pvt. Ltd., on a war footing so as to reach conclusion and finality in such cases at the earliest." ECF No. 1-22. As set forth in the memo, this Committee, the "IMCC," would "monitor[] the progress on a daily basis" and meet "on a weekly basis." The Committee requested expedited treatment of various harassing tax proceedings against Devas and its principals. *See id.*

15. On November 9, 2020, the ROC filed an urgent application before the High Court of Delhi to expedite hearings to challenge the court's 2011 and 2012 orders "restrain[ing] [ROC] from taking any coercive steps against" Devas. A true and correct copy of the ROC's application is attached hereto as **Exhibit 4**. The ROC alleged that its investigation of Devas was not complete and "various other irregularities with respect to [Devas] have also come to light." *Id.* ¶¶ 5–6.

16. On November 18, 2020, the Delhi High Court dismissed the ROC's request for an early hearing noting that "[n]o ground is made out to take up this writ petition for hearing out of turn." A true and correct copy of the Delhi High Court's decision is attached hereto as **Exhibit 5**.

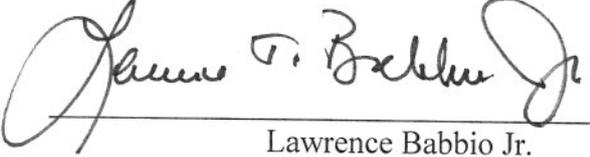
17. On November 27, 2020, the ROC filed a further application listing several additional grounds justifying its purported urgency. A true and correct copy of the ROC's supplemental application is attached hereto as **Exhibit 6**.

18. On December 9, 2020, the Delhi High Court issued an order pursuant to a videoconference hearing where the Additional Solicitor General of India, Mr. N. Venkataramana, appeared on behalf of the ROC. A true and correct copy of the Delhi High Court's order is attached hereto as **Exhibit 7**. A week later, on December 16, 2020, the Delhi High Court set a hearing date for February 16, 2021 for the matter. A true and correct copy of the Delhi High Court's decision is attached hereto as **Exhibit 8**.

19. On January 18, 2021, Antrix filed a petition to wind up its own award-creditor, Devas, before the Bengaluru division of the National Company Law Tribunal (“NCLT”) on newly formulated grounds that the Devas Antrix Agreement had been obtained fraudulently and that an immediate wind-up of Devas was an appropriate remedy. A true and correct copy of Antrix’s petition is attached hereto as **Exhibit 9**. Antrix never raised these fraud allegations during the Arbitration or in confirmation proceedings in the Western District of Washington. India never levelled these charges against Devas in the BIT Arbitration either. On the same day as the hearing on Antrix’s petition, January 19, 2021, the NCLT issued an order appointing a Provisional Liquidator who is appointed to his position by the Central Government of India and is under its supervisory authority. A true and correct copy of the NCLT’s order is attached hereto as **Exhibit 10**. The Provisional Liquidator was instructed “to forthwith take into his or its custody or control all property, effects and actionable claims” of Devas. Ex. 10, ¶ 11. Since then, the NCLT has officially liquidated Devas. A true and correct copy of the final liquidation order is attached hereto as **Exhibit 11**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 15, 2021

  
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Lawrence Babbio Jr.