

THE HONORABLE THOMAS S. ZILLY

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON**

DEVAS MULTIMEDIA PRIVATE LTD.,

Petitioner,

and

DEVAS MULTIMEDIA AMERICA, INC.;
DEVAS EMPLOYEES MAURITIUS PRIVATE
LIMITED; TELCOM DEVAS MAURITIUS
LIMITED; and CC/DEVAS (MAURITIUS)
LTD.,

Intervenors,

v.

ANTRIX CORP. LTD.,

Respondent.

Case No. 2:18-cv-01360-TSZ

**OPPOSITION TO
INTERVENORS' COMBINED
MOTION FOR ORDERS TO
REGISTER THE JUDGMENT
NATIONWIDE UNDER 28 U.S.C.
§ 1963 AND 28 U.S.C. § 1610(c)**

**NOTE ON MOTION CALENDAR:
DECEMBER 3, 2021**

ORAL ARGUMENT REQUESTED

Petitioner Devas Multimedia Private Ltd. (“Devas”), by and through its undersigned attorneys, submits this Opposition to Intervenors’ Combined Motion for Orders to Register the Judgment Nationwide Under 28 U.S.C. § 1963 and 28 U.S.C. § 1610(c). Devas opposes Intervenors’ attempt to usurp Devas’s exclusive right to the judgment issued by this Court in favor of Devas (“the Judgment”) and to circumvent the authority of the court-appointed liquidator.

1 Although Intervenors cast this as a straightforward procedural motion, what they are
 2 really requesting is this Court's blessing to open proceedings in multiple U.S. jurisdictions,
 3 purportedly on behalf of Devas, while Devas is (temporarily) stayed from enforcing the Award
 4 by order of the Supreme Court of India. If the Intervenors' motion were granted, Intervenors
 5 would have a path to seize the reins of this dispute from Devas's court-appointed liquidator,
 6 which wields the sole authority to represent Devas under Indian law. Worse, because these
 7 actions by Devas's shareholders and wholly-owned subsidiary could be construed as a violation
 8 of the Indian Supreme Court's stay order, it could jeopardize Devas's legal position in litigation
 9 against Antrix in India, the primary jurisdiction for this dispute and likely location of most
 10 recoverable assets. Devas cannot support a course of action that could jeopardize its legal
 11 position by circumventing a stay order issued by the Indian Supreme Court.

12 Registration is even more inappropriate because Intervenors fail to answer basic
 13 questions about how they intend to execute the Judgment and what they intend to do with any
 14 assets recovered. The Court should decline to issue a blank check that could permit the
 15 Intervenors to claim funds in their own names, use the proceeds to pay for their other litigation,¹
 16 withhold recovered assets from the liquidation process and Devas's creditors and other
 17 stakeholders, or use dubious attachments to disrupt what should be an orderly process carried
 18 out by the Indian judicial system.

19 In sum, the Court should deny Intervenors' Motion, without prejudice to Devas's right
 20 to request registration of the Judgment once the Indian courts permit enforcement.

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 24 ¹ Intervenors are also pursuing claims against the Government of India under bilateral investment treaties,
 25 and there are related proceedings in the district courts of the District of Columbia (*CC/Devas (Mauritius)*
 26 *Ltd et al v. Republic of India*, No. 1:21-cv-00106) and the Southern District of New York (*CC/Devas*
 27 *(Mauritius) Ltd et al v. Air India, Ltd.*, No. 1:21-cv-05601). Devas is concerned that the Devas
 Shareholders may use Devas assets to fund the Shareholders' other litigation, to which Devas is not a
 party. Indeed, this may already have occurred; Devas was previously represented by the same counsel
 that represented the Devas Shareholders in connection with their bilateral investment treaty claims. (*See*
 Dkt. 68-16 at 9-12).

1 **I. BACKGROUND**

2 This is an action to enforce an arbitration award issued by an arbitral tribunal in favor of
 3 Devas, a company headquartered in India and organized under the laws of India, against Antrix,
 4 another Indian company. (*See* Dkt. 1 at 9-12). On October 27, 2020, this Court issued the
 5 Judgment in favor of Devas in the amount of US\$ 562.5 million, plus pre-Award, post-Award
 6 and post-judgment interest. (Dkt. 49). Antrix has appealed that judgment to the Ninth Circuit
 7 (Dkt. 53).

8 Antrix has also moved to set aside the Award in the courts of India, which have primary
 9 jurisdiction over the Award. (*See* Dkt. 42 ¶ 3). That dispute is being heard in the Delhi High
 10 Court, where the parties are currently litigating issues regarding the status of the Devas
 11 Shareholders as intervenors and a potential amendment to Antrix’s initial set-aside petition to
 12 raise grounds of fraud.

13 On May 25, 2021, the National Company Law Tribunal, an Indian court with jurisdiction
 14 over corporate law matters, issued a final order to put Devas into liquidation. (Dkt. 131-1 ¶ 3;
 15 116-4). That decision was affirmed by the National Company Law Appellate Tribunal
 16 (“NCLAT”) in a 357-page opinion on September 8, 2021. (*See* Ex. 1 to Ex. A attached hereto).
 17 The Devas Shareholders have appealed that decision to the Indian Supreme Court, and a decision
 18 is expected in the next few months.

19 The National Company Law Tribunal also appointed an Official Liquidator over Devas.
 20 The Official Liquidator is an officer of the Indian courts who has performed hundreds of
 21 corporate liquidations in his career. (*See* Dkt. 131-1 ¶ 2).² The Official Liquidator is charged
 22 under Indian law with responsibility for the orderly liquidation of Devas, which includes the
 23 exclusive authority to pursue claims on behalf of the corporation, including execution against
 24 the Judgment. (*Id.* ¶¶ 4-8).

25 However, Devas is currently barred from pursuing enforcement of the Judgment by order
 26 of the Indian Supreme Court in connection with Antrix’s set-aside proceeding. (*Id.* ¶ 13). That

27 ² For convenience, the declaration of the Official Liquidator (Dkt. 131-1) is attached hereto as Exhibit B.

1 order precludes Devas from seeking post-judgment discovery from Antrix, or actually executing
2 against the Award, until such time as the Indian courts lift the stay. (Dkt. 131-1 ¶ 13).

3 On February 24, 2021, Intervenors filed a motion to intervene in these proceedings.
4 (Dkt. 64). Intervenors are (i) shareholders of Devas (the “Devas Shareholders”), and (ii) a
5 wholly-owned Delaware subsidiary of Devas, Devas Multimedia America, Inc. (“DMAI”),
6 which is still operating under the control of the Devas Shareholders. The Devas Shareholders
7 are actively contesting the liquidation of Devas in the Indian Courts, but do not dispute that,
8 absent further order of the Indian courts, the Official Liquidator has the sole power under Indian
9 law to pursue claims on behalf of Devas. (*See* Dkt. 69 at 5).

10 The Court granted the original motion to intervene because Devas, as Petitioner, was
11 temporarily left without counsel during the transition of management to the Provisional
12 Liquidator. (*See* Dkt. 76 at 6). While the Court found that the Intervenors’ *claims* in this
13 litigation were identical to Devas’s (i.e., for confirmation of the Award and affirmance of the
14 Judgment on appeal), the Court did not find that Intervenors held any current interest in the
15 Judgment. (*See* Dkt. 76 at 6). Indeed, the Court expressly denied substitution of Devas by
16 DMAI and expressed “serious doubts about whether [Devas], in executing the Collection
17 Services Agreement, transferred to DMAI any interest in the Award or the claims giving rise to
18 this action.” (Dkt. 108 at 11; Dkt. 133 at 9).

19 Subsequently, in light of the fact that Devas remained temporarily stayed from pursuing
20 discovery in aid of execution of the Judgment, this Court granted Intervenors the right to pursue
21 post-judgment discovery against Antrix. (Dkt. 133 at 8). The Court ruled that, under the
22 “permissive rules governing post-judgment discovery,” the “future, contingent interests” that
23 Intervenors (excluding DMAI) held in the Judgment as stakeholders in the liquidation of Devas
24 were sufficient for purposes of Fed R. Civ. P. 69(a). (*Id.*) The Court also ruled that DMAI was
25 a “judgment creditor” “within the meaning of Federal Rule of Civil Procedure 69(a)(2)” based
26 upon the contractual language of a Collection Services Agreement between DMAI and Devas
27 (the “Collection Services Agreement”) and was thus entitled to conduct post-judgment

1 discovery. (*Id.* at 10). The Court further stated, for purposes of whether to grant discovery, that
2 it was persuaded that the Collection Services Agreement assigned DMAI a legal right to enforce
3 the judgment, and thus that DMAI could avail itself of Washington State’s legal processes for
4 collection of the Judgment. (Dkt. 133 at 9). Intervenors now seek to parlay these rulings into
5 an order permitting nationwide registration of the Judgment and execution by the Devas
6 Shareholders and DMAI.

7 **II. INTERVENORS ARE NOT ENTITLED TO REGISTER, MUCH LESS** 8 **EXECUTE, THE JUDGMENT**

9 Intervenors claim that that “the Court has already concluded that the Intervenors have a
10 legal right to pursue enforcement of the Judgment.” (Dkt. 142 at 5). That is incorrect. The
11 Court has granted Intervenors the authority to intervene in this action for the purposes of seeking
12 post-judgment discovery, but it has not granted Intervenors the authority to actually collect on
13 the Judgment, and certainly not in their own names. Nor has it treated the Intervenors as a single
14 entity with identical rights, as Intervenors seek to do in their motion. Rather, the Court has
15 distinguished between the rights of the Devas Shareholders and the rights of DMAI.

16 Both the Devas Shareholders and DMAI lack authority to register or execute against the
17 Judgment. The Devas Shareholders lack standing because they have a purely derivative interest
18 in the Judgment. And while DMAI purportedly has rights to collect *on Devas’s behalf* under
19 the Collection Services Agreement, that very agreement binds DMAI to adhere to the
20 instructions and requests of Devas, not the Devas Shareholders. (Dkt. 68-20 § 2.3 (“[DMAI]
21 agrees that it shall at all times adhere to the instructions, requests, and policies of [Devas]
22 regarding any activities relating to the performance of Collection Services under this
23 Agreement.”). And Devas, which is currently stayed from enforcement by the courts of India,
24 has not instructed or requested DMAI to register or take steps to collect on the Award.

25 **A. The Devas Shareholders lack good cause to register the Judgment because** 26 **they lack standing to do so.**

1 The Devas Shareholders lack good cause to move to register the judgment because they
 2 lack standing to either register or execute in their own names. “A basic tenet of American
 3 corporate law is that the corporation and its shareholders are distinct entities. An individual
 4 shareholder, by virtue of his ownership of shares, does not own the corporation’s assets.” *United*
 5 *States v. Bennett*, 621 F.3d 1131, 1137 (9th Cir. 2010) (internal quotation marks omitted). The
 6 assets of the corporation are its property while the shares of the corporation are the shareholders’
 7 property; the shareholder has no right to the corporation’s property unless the corporation makes
 8 a distribution. *Id.* Accordingly, “[w]ell-established principles of corporate law prevent a
 9 shareholder from bringing an individual direct cause of action for an injury done to the
 10 corporation or its property by a third party.” *United States v. Stonehill*, 83 F.3d 1156, 1160 (9th
 11 Cir. 1996). Shareholders’ rights in a company’s claim or judgment are derivative and indirect,
 12 and shareholders may not assert them on behalf of the company. *See id.* at 1160–61 (“Therefore,
 13 the causes of action against Tiburon belong solely to the Pine Street Corporation. Appellants’
 14 injuries are merely incidental to the injury caused to the corporation by Tiburon.”). As the
 15 Judgment belongs to Devas, it is Devas’s property, and the Devas Shareholders have no right to
 16 control or exert authority over Devas’s asset.³

17 Consequently, the Devas Shareholders lack standing to register or execute the judgment
 18 in their own names. “Generally, a shareholder does not have standing to redress an injury to the
 19 corporation.” *Shell Petroleum, N.V. v. Graves*, 709 F.2d 593, 595 (9th Cir. 1983). The Ninth
 20 Circuit has explained that “[t]o have standing to maintain an action, a shareholder must assert
 21 more than personal economic injury resulting from a wrong to the corporation. A shareholder
 22 must be injured directly and independently of the corporation.” *Id.* (citations omitted); *see also*
 23 *Woods View II, LLC v. Kitsap County*, C10-5114BHS, 2011 WL 2491594, at *4–5 (W.D. Wash.

24 ³ That does not mean shareholders are without remedy when a corporation fails to pursue funds due to it.
 25 If the Devas Shareholders believe the Official Liquidator is not acting in good faith to pursue and distribute
 26 the assets of Devas, they have recourse in the Indian courts under Section 276 of the Indian Companies
 27 Act. To date, the Devas Shareholders have not filed such a proceeding, despite their repeated accusations
 regarding the good faith of the Official Liquidator in these proceedings. The text of Section 276 may be
 viewed at <https://ibclaw.in/section-276-of-the-companies-act-2013-removal-and-replacement-of-liquidator/>.

1 June 22, 2011), *aff'd*, 484 Fed. Appx. 160 (9th Cir. 2012) (same); *Finley v. Takisaki*, C05-
2 1118JLR, 2006 WL 1169794, at *2–3 (W.D. Wash. Apr. 28, 2006) (same).

3 Nor do the Devas Shareholders have authority under any prior order of this Court. This
4 Court permitted the Devas Shareholders to intervene, (Dkt. 76), but it did not allow the Devas
5 Shareholders to substitute themselves in place of Devas, (Dkt. 76). Nor did the Devas
6 Shareholders even move to substitute. (*See* Dkt. 76). And contrary to the Devas Shareholders’
7 assertion that the Court has already decided that they are “successors in interest” for purposes
8 of execution, the Court has never reached that conclusion. Instead, the Court explicitly based
9 its ruling on rule 69(a)(2), which governs discovery, and cited “the permissive rules governing
10 postjudgment discovery.” (*See* Dkt. 133 at 8 (“In light of the permissive rules governing
11 postjudgment discovery, the Court concludes that the future, contingent interests held by
12 Intervenor DEMPL, Telcom Devas, and CC/Devas in Petitioner’s assets (once Petitioner is
13 wound up and satisfies its creditors’ claims), including any interest in the Judgment, are
14 sufficient to show that these Intervenor are successors in interest for purposes of Federal Rule
15 of Civil Procedure 69(a)(2) and are therefore entitled to obtain discovery to enforce execution
16 of the Judgment.”)). While “future, contingent interests” may be enough for post-judgment
17 discovery, a present right to the judgment is required to register or enforce a judgment. *See In*
18 *re Estate of Ferdinand E. Marcos Human Rights Litig.*, 536 F.3d 980, 989 (9th Cir. 2008)
19 (“registering a judgment under § 1963 is the functional equivalent of obtaining a new judgment
20 of the registration court.”). And there can be no dispute that the Devas Shareholders lack any
21 such direct right.

22 **B. DMAI cannot register or execute the Judgment without Devas’s consent or**
23 **in an unlawful manner.**

24 DMAI also lacks good cause to register the judgment because it lacks any authority to
25 do so. DMAI relies upon the Collection Services Agreement to support its presence in this case.
26 Yet that Agreement bars DMAI from registration and execution of the Award in these
27 circumstances.

1 Section 2.1 of the Collection Services Agreement specifies that Devas retained DMAI
 2 to collect on the Award “on behalf, and for the benefit, of [Devas].” (Dkt. 68-20, § 2.1). Section
 3 2.3 also obligates DMAI to “at all times adhere to the instructions, requests, and policies of
 4 [Devas] regarding any activities relating to the performance of Collection Services under this
 5 Agreement.” (Dkt. 68-20, §§ 2.2, 2.3). DMAI must also “conduct its activities under this
 6 Agreement in a lawful manner.” (Dkt. 68-20, § 2.3).

7 DMAI, however, is not seeking to register the Judgment at the instruction or request of
 8 Devas. Indeed, Devas is currently stayed from enforcement by the courts of India (where it is
 9 registered and incorporated), and thus could not request or instruct its subsidiary to take such an
 10 action. Rather, DMAI is currently taking direction solely from Devas’s shareholders, and is
 11 jointly represented with them by the same counsel in this action.⁴ Further, DMAI is not
 12 conducting its activities in a lawful manner given that it is flouting a stay order of the Indian
 13 Supreme Court, doing so in direct opposition to the position of its 100% parent, and seeking to
 14 usurp the statutory authority of Devas’s Official Liquidator, who has exclusive authority to
 15 represent Devas under the law of its jurisdiction of incorporation. (Dkt. 131-1 ¶¶ 4-8).

16 Finally, Devas reserves its right to challenge the existence and validity of the Collection
 17 Services Agreement, as it does not have access to basic corporate documents that would be
 18 required to determine whether the Collection Services Agreement is valid, and there are
 19 additional irregularities, such as the failure to disclose the agreement as a related party
 20 transaction. (*See* Dkt. 131-1 ¶ 11). However, because any authority of DMAI is based on the
 21 Collection Services Agreement, DMAI’s authority is either circumscribed by the Collection
 22 Services Agreement, or non-existent.

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 25 ⁴ Intervenor have previously taken the position that counsel for Devas cannot ethically represent it because
 26 Devas is in liquidation and the Official Liquidator seeks to liquidate it. This is nonsense; such a principle
 27 would bar counsel from representing any company in liquidation. It is unclear, however, how counsel for
 the Intervenor can justify representing both (i) the Devas Shareholders and (ii) a wholly-owned subsidiary
 of Devas, to which the Devas Shareholders clearly consider themselves adverse under its current
 management by the Official Liquidator.

1 **III. ALLOWING INTERVENORS TO EXECUTE THE JUDGMENT IN THEIR**
2 **OWN NAMES CONFLICTS WITH THE REQUIREMENTS OF THE NEW**
3 **YORK CONVENTION**

4 The Award at the heart of this proceeding is subject to the New York Convention. Under
5 the Federal Arbitration Act, the Court cannot apply state laws and procedures that conflict with
6 the Convention. *See* 9 U.S.C. § 208. As noted above, the Convention provides rights to seek
7 recognition and enforcement of foreign arbitral awards only to a “party” (i.e., a party to the
8 underlying arbitration). *See* New York Convention Arts. II, IV. This is not a case where the
9 Intervenors have third party rights under an arbitration clause, nor is it a case where they are the
10 legal successor to a party and thus arguably stand in its shoes for purposes of the New York
11 Convention. Rather, it is undisputed that the Intervenors were not parties to the underlying
12 arbitration, and could not have been parties, and that Devas still exists and has a right to the
13 Award. Allowing the Intervenors to now execute the Judgment in their own names would
14 conflict with the Convention and thus the Federal Arbitration Act by granting the Intervenors
15 rights beyond those granted by the New York Convention. Worse, it would undermine
16 principles of arbitration and international comity by allowing Intervenors who are not party to
17 any arbitration agreement to seize control of the Award while potentially subjecting Devas (the
18 actual party to the arbitration) to contempt or other adverse consequences in Indian court.
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20 **IV. CONCLUSION**

21 For the reasons set forth above, Devas respectfully requests that the Court deny
22 Intervenors’ Combined Motion for Orders to Register the Judgment Nationwide Under 28
23 U.S.C. § 1963 and 28 U.S.C. § 1610(c). Devas requests oral argument on this motion.
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3 Dated: November 29, 2021

Respectfully submitted,

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