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Ratification of the New York Convention Does Not Constitute a Waiver of State Immunity According to the Commercial Court in London

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On 17 April 2025, in *CC/Devas (Mauritius) Ltd and Others v. the Republic of India* [2025] EWHC 964 (Comm), the Commercial Court in London handed down a landmark judgment that is reverberating in the arbitration world around the globe. The court held that India's ratification of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention" or "NYC") is not a waiver of state immunity to the enforcement of two arbitral awards—*Devas v. India* (Award on jurisdiction and merits dated 25 July 2016) and *Devas v. India* (Award on quantum dated 13 October 2020) (together the "BIT Awards")—against the Republic of India ("India"). The following question was put before the Court:

Whether, for the purposes of enforcement of [the "BIT Awards"], India has submitted to the adjudicative jurisdiction of the English Courts by prior written agreement within the meaning of s.2(2) of the State Immunity Act 1978, by its ratification of the New York Convention 1958 and thereby (on the Fourth to Sixth Claimants' case) its consent under Article III to the English Court recognising and enforcing the Awards.

For the purposes of this case, the relevant provision of the New York Convention is Article III, which provides that "[e]ach Contracting State shall recognize arbitral awards as binding and enforce them *in accordance with the rules of procedure of the territory where the award is relied upon*, under the conditions laid down in the following articles." (emphasis added.)

Background

The dispute arose out of a contract (the "Devas Contract") concluded between Devas Multimedia Private Limited ("Devas") and Antrix Corporation Limited ("Antrix"), an Indian registered entity wholly owned by India. The Devas Contract contained an arbitration clause providing for arbitration in accordance with the rules and procedures of the International Chamber of Commerce or the United Nations Commission on International Trade Law.

India terminated the Devas Contract in February 2011, and in 2012, the Claimants (all shareholders of Devas) commenced arbitration proceeding against the Respondent (India) under the 1998 India-Mauritius Bilateral Investment Treaty (“India-Mauritius BIT”). The arbitration proceeding—*CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited v. Republic of India (I)*, PCA Case No. 2013-09—resulted in the BIT Awards that the Claimants are now trying to enforce. As of September 2024, the outstanding value of the Awards stood in excess of EUR 195 million.

In response to the Claimants’ effort to enforce the Awards, India claimed immunity under the UK State Immunity Act 1978 (“SIA”), sections 1, 2, and 17 of which provide:

1 General immunity from jurisdiction.

(1) A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act. [. . .]

2 Submission to jurisdiction.

(1) A State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of the United Kingdom.

(2) A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; [. . .]

17 Interpretation of Part 1.

[. . .]

(2) In sections 2(2) . . . above references to an agreement include references to a treaty, convention or other international agreement. (emphasis added)

The Claimants’ Arguments

Under section 2(2) of the 1978 Act, a State loses its adjudicative immunity if by prior agreement it has submitted to the jurisdiction of the English courts. The question before the court was whether Article III of the New York Convention satisfies the requirements of prior agreement to submit to the jurisdiction of the courts under section 2(2) of the 1978 Act. The Claimants argued that the question before the court should be answered in the affirmative because [Article III of the New York Convention](#) constitutes an express consent from India that the UK courts should recognise as binding. Consequently, the Claimants urged the court to: (i) enforce the BIT Awards falling within the scope of the New York Convention; and (ii) consent to the UK courts having adjudicative jurisdiction to do so. For support, the Claimants relied in part on *Infrastructure Services Luxembourg v. Spain*, a case that focused on [Article 54\(1\) of the ICSID Convention](#), which is similarly worded as [Article III of the New York Convention](#). In *Infrastructure Services Luxembourg v. Spain*, the court held that Article 54 of the ICSID Convention falls within “prior written agreement” for the purposes of the 1978 Act. According to the court in *Infrastructure*

Services Luxembourg v. Spain, for there to be an agreement in writing and, therefore, an express submission to the jurisdiction under [section 2\(2\) of the SIA](#), it is not necessary to use the term “waiver” or “submit” if the implication of waiver or submission is clear from the words expressly used.

The Claimants also argued that awards against States are not excluded from the ambit of the [New York Convention](#) and that the only limitation on awards subject to Article III is that they must constitute “foreign” arbitral awards within the meaning of Article I of the Convention. According to this line of argument, “all States consented to the recognition and enforcement in other States of all arbitral awards seated abroad including awards rendered against States.” Overall, the argument is that state immunity is fundamentally inconsistent with the object and purpose of the [New York Convention](#) because it interferes with the effectiveness of arbitral awards and gives rise to delays and inefficiencies.

The Judgment

The court started by noting that the case raised several interrelated issues, including: (i) whether ratification of [Article III of the New York Convention](#) is, on its own, an “express,” “unequivocal,” and “unmistakable” waiver of state immunity; (ii) whether the reference to “rules of procedure” in Article III preserves state immunity in its own terms; and (iii) whether the [New York Convention](#) only applies to States in relation to private law disputes.

The court clarified that regarding waiver of state immunity by treaty, the applicable test in English law is as stated by the House of Lords in *R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 3)*, and is that waiver of state immunity by treaty must always be express. On whether India’s ratification of the [New York Convention](#) amounts to consent by way of “prior written agreement” for the purposes of [section 2\(2\) of the SIA](#), the court held that it did not. According to the [court](#):

Article III of the NYC preserves state immunity by its own terms, because the obligation on a “Contracting State” is expressed to be “in accordance with the rules of procedure of the territory where the award is relied upon.” It is established in English law that “State immunity is a procedural rule going to the jurisdiction of a national court. It does not go to substantive law[.]”

The court offered several reasons for its holding.

First, relying on the *travaux préparatoires* in respect of the [New York Convention](#), the court reasoned that it was not the intention of the drafters of the treaty to preclude immunity-based arguments in enforcement actions against States.

Second, the court concluded that [Article III of the New York Convention](#) preserves state immunity by its own terms, because the obligation on a “Contracting State” is expressed to be “in accordance with the rules of procedure of the territory where the award is relied upon.” Citing *Jones v Saudi Arabia*, the court stated that it is established in English law that state immunity “is a procedural rule going to the jurisdiction of a national court” and “does not go to substantive law.”

Third, applying the test for waiver in English law, the court decided that the ratification of the [New York Convention](#) is not, on its own, a waiver of state immunity by India. According to the court, “[a] waiver of state immunity by treaty or convention must always be express, and expressed in a clear and recognisable manner, as by an unequivocal agreement.”

Lessons

The case is important for at least three reasons.

First, this case highlights the challenges associated with enforcing international arbitral awards. In this case, the court acknowledged the extraordinary delays that had occurred in enforcement and India’s efforts to thwart the enforcement of the BIT Awards.

Second, the case underscores the fact that BITs can have serious impact on domestic policymaking and that States must pay very careful attention to the international investment agreements that they sign and ensure that they provide themselves with adequate domestic regulatory space in these agreements. As a sovereign State, India had the right to limit the scope of investor-State arbitration from the [1998 India-Mauritius BIT](#) or exclude it completely, but did not do so. Had India limited the scope of investor-State dispute settlement in the 1998 India-Mauritius BIT or excluded it altogether, this case would not have arisen. While observing that India’s effort to avoid honouring the BIT awards “may [. . .] be explained by the fact that it regards the issues as going to its vital national interests,” the court acknowledged that “it is an aspect of the BIT that [India] entered into that there is no expectation on the part of the parties that a court will go behind the arbitration awards.” On this point, it must be noted that Principle 9 of the [United Nations Guiding Principles of Business and Human Rights](#) encourages States to “maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.”

Third, the case also underscores the fact that the effects of BITs can be felt long after they are terminated. The India-Mauritius BIT implicated in this case was [concluded in 1998, entered into force in 2000, and terminated in 2017](#). In effect, although now terminated, the [India-Mauritius BIT](#) is still rearing its head nearly thirty years after it was concluded. The inevitable conclusion is that, given the longevity of BITs, States must pay careful attention to the terms of the international investment agreements that they negotiate and ratify.

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