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English High Court Confirms That India's Ratification of the New York Convention Was Not a Waiver of Its Sovereign Immunity

Client Alerts

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The threshold for challenging awards and their enforcement in the UK remains high, a key reason why London remains one of the busiest arbitration venues in the world and a key jurisdiction for the enforcement of arbitral awards, including those against state entities. As such, there are several prominent enforcement cases pending in England which are testing the scope of the State Immunity Act 1978 (the "**SIA**"). In the latest decision,[1] Sir William Blair, sitting as a Judge of the High Court, has confirmed that India did not waive its right to claim state immunity by reason of having ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "**NY Convention**").

Case background

The case arises out of a contractual arrangement between Devas Multimedia Private Limited and Antrix Corporation Limited. Antrix is an Indian company wholly owned by the Government of India which contracted with Devas for the lease of a proportion of India's S-Band spectrum on two Indian satellites to be operated by the Indian Space Research Organization. India eventually terminated the contract, which led to an arbitration under the contract, with Devas eventually being awarded $652 million (US) in damages, and to enforcement and annulment proceedings in the Indian and Dutch courts.

Investors in Devas also brought an investment treaty arbitration against India under the India/Mauritius Bilateral Investment Treaty (the "**BIT**"), under the UNCITRAL Rules seated in The Hague. The Devas investors eventually obtained an award now said to be worth €195 million. The recent English High Court decision arises from an application to enforce this BIT award.

The BIT award is currently also the subject of proceedings in the Netherlands, where India seeks to have the award annulled on the basis that there was no binding arbitration agreement. India argues that the investment which is the subject of the claim did not meet the legality requirements of the BIT, so that India's offer to arbitrate in Article 8 of the BIT did not apply and the Tribunal did not have jurisdiction to arbitrate the Claimants' claims (the "**BIT jurisdiction argument**").

India's claim to sovereign immunity in the UK

India also raises the BIT jurisdiction argument in the English courts where they are challenging the enforcement of the BIT award. In the UK, pursuant to section 9 of the SIA, states are immune from the jurisdiction of the courts save where the state has agreed to arbitration, in which case the state has no immunity with respect to court proceedings related to the arbitration. This is known as the *arbitration exception to immunity*. India therefore relies on its BIT jurisdiction argument to claim immunity from enforcement of the BIT award in the English courts. However, given that the BIT jurisdiction argument is pending in the Netherlands already, India has applied for a stay of the English proceedings until the issue is resolved in the Netherlands. The question of whether the Devas investors can rely on the arbitration exception to India's sovereign immunity in the UK is therefore likely to be delayed for some time.[2]

To avoid this delay, the Devas investors raised a novel argument based on section 2 of the SIA and the NY Convention. Section 2 provides a further exception to immunity where the state has submitted to the jurisdiction of the UK courts by prior written agreement. The Devas investors argue that India's ratification of the NY Convention (which provides in article III that "*Each 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*") amounts to such a prior written agreement to submit to the jurisdiction of the UK courts, being "*the territory where the award is relied upon*."

This argument under section 2 of the SIA has never been raised in the UK before. However, the Devas investors have pointed to the recent decision of the English Court of Appeal in the joint appeal of the *Infrastructure Services v. Spain* and *Border Timbers v. Zimbabwe* cases.[3] In that joint appeal, the Claimants successfully argued that, by ratifying the ICSID Convention, states had by prior written agreement submitted to the jurisdiction of the UK courts and therefore, pursuant to section 2 of the SIA, could not oppose the enforcement of ICSID awards against them on the grounds of state immunity. This case therefore provided useful precedent supporting the Devas Claimants' argument that the ratification of the NY Convention also amounted to submission to the UK courts.[4]

The court's decision

The English High Court disagreed. Although he did not wish to "*in any way contradict the enforcement friendly aspect of the NY [Convention], which is its purpose, and the reason for its success, and which has been consistently upheld in English law,*" Sir William Blair found that the drafters of the NY Convention had never intended to preclude immunity-based arguments. Article III of the NY Convention required contracting states to "*recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon*." This reference to the "*procedure of the territory*" where enforcement is sought preserved the right of state parties to rely on the procedural defense of state immunity where it was available

in the state of enforcement. Accordingly, as a matter of English law, it could not be said that India had waived its immunity by simply having ratified the NY Convention.

It is important to recognize that this decision was on a very narrow question of sovereign immunity law concerning the interplay of the NY Convention and the SIA. It says nothing about the approach of the English courts to enforcing either ICSID or NY Convention awards, nor does it in any way broaden the scope for challenging enforcement of arbitral awards under those conventions. The UK remains an arbitration friendly, non-interventionist jurisdiction and the threshold for challenging awards and their enforcement remains high.

In any event, the Devas investors have already indicated their intention to appeal this decision, so it is expected that the Court of Appeal will have more to say on the issue.

Jenner & Block has an integrated team of dedicated international arbitration lawyers across our London and US offices, who combine top-tier legal analysis, skillful advocacy, and decades of experience representing clients in complex arbitrations and enforcement matters around the world. Please contact James Rogers (jrogers@jenner.com), Kenneth Beale (kbeale@jenner.com), Wade Thomson (wthomson@jenner.com) or Ashutosh Ray (ray.ashutosh@jenner.com) if you have any questions about our work in this area.

Footnotes

[1] *CC/Devas (Mauritius) Ltd and others v. The Republic of India* [2025] EWHC 964 (Comm)

[2] The situation is not dissimilar to that faced by the English Court of Appeal, considering an application to enforce the $63 billion (US) Yukos awards, which we recently reported on. (*Hulley Enterprises Limited; Yukos Universal Limited; and Veteran Petroleum Limited v. the Russian Federation*, [2025] EWCA Civ 108). In that case, the English Court of Appeal not only stayed proceedings in England pending the resolution of jurisdiction arguments in annulment proceedings in the Dutch courts, but went on to find that the decision of the Dutch courts gave rise to an issue estoppel which bound the English courts.

[3] *Infrastructure Services Luxembourg S.A.R.L. and Energia Termosolar B.V. v. the Kingdom of Spain; and Border Timbers Limited and Hangani Development Co. (Private) Limited v. the Republic of Zimbabwe* [2024] EWCA Civ 1257.

[4] For those not familiar with the distinction, investor/state arbitration awards rendered under the ICSID Convention are subject to enforcement pursuant to the ICSID Convention. They are not subject to enforcement pursuant to the NY Convention. As the Devas investor/state arbitration was conducted under the UNCITRAL rules and seated in the Netherlands, it was subject to the NY Convention regime.

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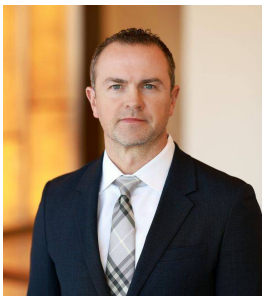

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