

PCA Case No. 2022-34

**IN THE MATTER OF AN ARBITRATION PURSUANT TO THE RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW**

BETWEEN

**CC/Devas (Mauritius) Ltd.,
Telcom Devas Mauritius Limited and
Devas Employees Mauritius Private Limited**

Claimants

and

The Republic of India

Respondent

CLAIMANTS' STATEMENT OF CLAIM

23 April 2023

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND EXECUTIVE SUMMARY	1
II. FACTUAL BACKGROUND TO THE DISPUTE	8
A. Claimants Invest in India	8
1. Negotiations Leading Up To The Agreement.....	9
2. The Devas-Antrix Agreement.....	16
3. Claimants Make Substantial Investments To Develop The Devas Project	20
4. Devas Continues to Develop Its Technology and Conducts Successful Technology Trials With the Full Participation of the Indian Government	26
B. India Terminates The Agreement	28
C. Arbitrations Follow Termination Of Devas-Antrix Agreement And India Retaliates.....	33
1. The Arbitrations Trigger Retaliatory Investigations By Indian Authorities.....	33
2. India’s Losses Prompt It To Launch More Investigations.....	40
3. The ED Seizes Devas’s Funds And Raids Its Offices	51
4. The ED And CBI Continue Baseless And Harassing Investigations Against Devas Officers	55
D. India Leverages Investigations In Settlement Discussions.....	59
E. Adverse Decisions Prompt India To Intensify its Subversion of the ICC Award.....	61
F. India Liquidates Devas	63
1. Antrix Files Liquidation Petition	63
2. The NCLT provisionally liquidates Devas	65
3. The Liquidator Fires Devas’ Counsel Worldwide and Acts Against Devas’ And Its Shareholders Interests	68
4. Claimants Challenge the Provisional Liquidation	69
5. The Liquidation Proceedings Progress With Undue Haste.....	74
6. Antrix Opposes Devas’s Applications to Test Antrix’s Allegations	78
7. NCLT Issues Final Liquidation Order	84
8. The NCLAT Upholds The Final Liquidation, Acknowledging That It Was Done On “ <i>Prima Facie</i> ” Grounds.....	90

9.	The Supreme Court Upholds The Liquidation.....	100
G.	India Celebrates The Supreme Court Decision And Plans To Use It To Progress Criminal Investigations	108
H.	India Escalates Retaliation Following Initiation Of This Arbitration.....	110
1.	Claimants Initiate Arbitration	110
2.	India Attempts To Amend The Treaty.....	111
3.	India Attempts To Extradite Mr. Viswanathan.....	114
4.	The New Delhi High Court Sets Aside The ICC Award	115
5.	India Attempts To End This Arbitration.....	117
I.	Courts Outside India Reject Its Fraud Allegations	122
1.	The Canadian Courts Deny That The Supreme Court Decision Is Proof Of Fraud	122
2.	The Dutch Supreme Court Finally Rejected India’s Attempt To Set Aside The J&M Award.....	123
3.	The Federal Supreme Court of Switzerland Rejects India’s Fraud Allegations	124
4.	The German Court Rejects India’s Fraud Arguments	125
III.	THE TRIBUNAL HAS JURISDICTION	126
A.	India Has Consented To Arbitration.....	126
B.	Claimants Are Qualifying Investors	127
C.	Claimants Have Made Protected Investments	128
D.	The Tribunal’s jurisdiction is <i>res judicata</i>	132
IV.	INDIA HAS BREACHED ITS OBLIGATIONS UNDER THE BIT	134
A.	India Has Unlawfully Expropriated Claimants’ Investment.....	134
1.	Applicable Standard.....	134
2.	India Has Expropriated Devas	137
3.	India’s Expropriation was Unlawful.....	141
B.	India Has Failed To Accord Claimants Fair And Equitable Treatment And Denied Claimants Due Process.....	167
1.	Applicable Standard.....	167
2.	India’s Actions Are Unreasonable, Arbitrary And Discriminatory	179
3.	India’s Courts Disregarded Due Process of Law And Denied Claimants Justice	186
4.	India Breached Claimants’ Legitimate Expectations.....	188

C.	India Has Failed To Provide Claimants With Effective Means To Enforce Their Rights	191
1.	The Effective Means Obligation Is Incorporated By Virtue Of Article 4(5) Of The India-Kuwait Treaty.....	191
2.	Applicable Standard.....	192
3.	India Did Not Provide Effective Means Of Asserting Claims and Enforcing Rights	195
4.	Devas Adequately Utilized The Legal Means Available To It To Assert Claims And Enforce Rights In India	202
D.	India Has Failed To Provide Claimants With Full Protection And Security	205
1.	The Obligation To Provide Full Protection And Security Is Incorporated By Virtue Of Article 4(2) of the India-Lithuania Treaty and/or Article 3(2) of India-UK BIT and/or Article 3(2) of Germany-India BIT.....	205
2.	Applicable Standards	206
3.	India Did Not Accord Full Protection And Security To Claimants’ Investment Because It Failed to Guarantee A Legally Stable And Secure Environment.....	208
E.	India Has Failed To Allow Claimants To Freely Transfer Funds	211
1.	Applicable Standard.....	212
2.	India Restricted Free Transfer Of Claimants’ Funds	213
F.	India Has Breached The Treaty’s Arbitration Agreement.....	214
V.	CLAIMANTS ARE ENTITLED TO DAMAGES.....	217
A.	India Must Compensate Claimants For The Full Value Of Their Share Of The ICC Award.....	219
B.	India Must Compensate Claimants For The Additional Costs Incurred As A Result Of India’s Breach.....	220
C.	India Must Pay The Costs Of This Arbitration.....	220
D.	India Must Pay Claimants Moral Damages	221
VI.	REQUEST FOR RELIEF	224

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. CC/Devas (Mauritius) Ltd. (“**CC/Devas**”), Telcom Devas Mauritius Limited (“**Telcom Devas**”), and Devas Employees Mauritius Private Limited (“**DEMPL**”) (together, the “**Claimants**”), hereby submit their Statement of Claim (“**SOC**”) in the arbitration against the Republic of India (“**India**” or “**Government**” or “**Respondent**”) under the Arbitration Rules of the United Nations Commission on International Trade Law (1976) (the “**UNCITRAL Rules**”) initiated 2 February 2022.
2. This SOC is submitted pursuant to (i) Article 3 of the UNCITRAL Rules, and (ii) Article 8 of the 4 September 1998 Agreement Between the Government of the Republic of Mauritius and the Government of the Republic of India for the Promotion and Protection of Investments, entered into force 20 June 2000 (the “**BIT**” or “**Treaty**”).
3. This dispute arises from India’s outrageous maneuvers, over the course of almost ten years, to evade the significant debt it owes to Claimants and other investors under several arbitral awards. The origins of this dispute date back to the mid-aughts, when Antrix Corporation Limited (“**Antrix**”), then the state-owned commercial arm of the Indian Space Research Organization (“**ISRO**”), entered into a contract in 2005 with Devas Multimedia Private Limited (“**Devas**”) for the lease of radio spectrum on the “S-band” (the “**Devas-Antrix Agreement**” or the “**Agreement**”). The arrangement was simple: Antrix was to get necessary governmental and regulatory approvals for Devas and to build and launch satellites that would host Devas’s digital and multimedia technology. Devas was to pay Antrix a substantial sum of money in lease fees, more than Antrix had made from any other existing contract. Devas planned to use the S-band and Antrix’s satellites to bring its services to customers in India in what would have been a substantial victory for both sides. Antrix and India would receive significant investment in telecommunications infrastructure and could use the new satellite technology Antrix was to develop for Devas for other commercial purposes, and Devas would gain access to a large, emerging market. To both sides, the enterprise seemed incredibly promising.
4. Devas made its payments on time, but Antrix struggled to perform. From the execution of the Agreement in 2005 to its unlawful termination by Antrix in 2011, Devas personnel

labored on the project: it attracted outside investors, acquired licenses, developed the technology, and conducted successful experimental trials of its systems, all with the knowledge and with the approval of Antrix/ISRO and the other relevant Indian governmental authorities. By 2011, Devas was ready to roll out its services, by which time the political landscape in India had changed. Whereas previously, Indian Government officials were supportive of the Devas project, under severe political pressure, India, through Antrix, unlawfully terminated the Devas-Antrix Agreement.

5. As it was searching for an excuse to annul the Agreement, India commissioned several contemporaneous internal reviews of the Devas-Antrix Agreement. But those reviews did not turn up the results that India would have liked: they unanimously confirmed the significant value the Devas project would have brought to the country, the highly experienced and capable team that Devas had built to develop the project and the absence of any impropriety in the execution and performance of the Agreement. In the end, unable to find any impropriety with the Agreement, and on the advice of its Additional Solicitor General, India invoked *force majeure* grounds to terminate the Agreement, arguing that its military needed the spectrum that had been leased to Devas.
6. A number of international arbitration proceedings followed against Antrix and India, and Devas and its investors prevailed in every one of those arbitrations (the “**Arbitrations**”). Devas won a substantial victory against Antrix for wrongful termination of the Agreement in an ICC arbitration in 2015 (the “**ICC Arbitration**”), later confirmed by a United States district court in a judgment for nearly USD 1.3 billion (the “**ICC Award**”). Three of Devas’s Mauritian shareholders, the Claimants in this Arbitration, prevailed in an arbitration under the BIT (the “**Initial BIT Arbitration**”), establishing jurisdiction and India’s liability under the BIT (the “**J&M Award**”), ending in an award on quantum in October 2020 for USD 111 million, plus interest, and USD 10 million in attorneys’ fees, plus interest (the “**Quantum Award**”). And Deutsche Telekom (“**DT**”), one of Devas’s major institutional investors, won an investment treaty arbitration (the “**DT Arbitration**”) and was awarded USD 93.3 million in damages, plus interest, costs, and fees (the “**DT Award**”). In all these Arbitrations, Antrix and India argued that the termination was

justified on *force majeure* grounds; not once did they argue that the Agreement or its performance was tainted with fraud.

7. That should have been the end of it. But rather than accept its losses and pay its debts, India has deployed every imaginable tactic within its sovereign powers to avoid liability and to retaliate against Devas. India has opened numerous criminal and financial investigations against Devas and its investors and employees, cooking up false allegations of “*fraud*” based on stale and uncontroversial facts, which India has known for a decade and a half. This included, for example, the incorporation of Devas a few months before the Agreement was signed, notwithstanding the fact that Devas was created specifically for the purpose of entering into an Agreement that had been reached after almost two years of arms-length negotiations between the parties. Moreover, India failed to question any of Devas’s or the Claimants’ witnesses in the Arbitrations who had testified on the execution and performance of the Agreement on these fraud allegations. Instead, contemporaneously with the Arbitrations, the investigations manufactured evidence to feed themselves: India’s Enforcement Directorate (“**ED**”), which investigates economic crimes, launched an investigation based on statements from Devas employees that the ED coerced from them under severe duress and without access to counsel. And the Central Bureau of Investigation (“**CBI**”), which investigates crimes at a national level, concocted allegations based on verbatim statements that it supposedly procured from completely different witnesses. Unsurprisingly, both the ED and CBI have been roundly denounced by human rights activists and the free press as cudgels that an increasingly authoritarian Government regularly uses to dismantle opposition.
8. Given their lack of legitimacy and plainly retaliatory nature, India chose not to invoke these investigations to defend itself in the Arbitrations or enforcement of the ICC Award. Instead, India first attempted to use their existence to stay the Initial BIT Arbitration, which that tribunal rejected. India then attempted to use the investigations as a bargaining chip, offering to drop them if Claimants ended the Arbitrations and enforcement actions. Belying their lack of faith in the ongoing investigations, Antrix’s counsel, who also represented India in the Arbitrations, called the “*allegation of misconduct on the part of Devas*” “*a red*

herring” and asked the U.S. court enforcing the ICC Award “*not [to] follow [them] . . . down the rabbit hole.*”¹

9. India’s posture however abruptly changed when the Initial BIT Tribunal rendered the Quantum award against India of over USD 100 million, and a U.S. court confirmed the ICC Award, entering judgment for Devas just short of USD 1.3 billion. India then upped the ante, putting itself “*on a war footing*” against Devas.²
10. In a blatant abuse of its sovereign powers to rid itself of its substantial debt to Claimants, India laundered the CBI’s and ED’s “*fraud*” allegations into *prima facie* “*findings*” through a summary liquidation of Devas that denied the company the due process protections it would otherwise be afforded in a typical civil or criminal proceeding. First, Antrix repurposed the allegations underlying the CBI and ED’s investigations into a petition seeking Devas’s liquidation. Within a matter of days, and with no notice to Devas, India granted Antrix, which India fully owns, authorization to liquidate Devas on the basis of fraud allegations that Antrix copied wholesale from the CBI’s and ED’s investigation documents, even though these investigations had never been aired before any civil or criminal courts even to frame charges, much less to obtain convictions. Yet within hours of receiving its parent’s authorization, Antrix applied to a provincial companies tribunal with little experience in addressing matters of fraud, the National Companies Law Tribunal (“**NCLT**”) to wind up Devas. The NCLT, in turn, wound up Devas in less than 24 hours, without even giving Devas any opportunity to file a written response to the more than 2,000 pages of documentation submitted by Antrix. On Antrix’s urging, the NCLT acted with such haste specifically to halt enforcement of the ICC Award. Indeed, the first action of the Government functionary now in charge of Devas, the “**Liquidator**”, was to, without explanation, fire Devas’s worldwide counsel, including its counsel involved in enforcing the ICC Award.
11. The remainder of the liquidation likewise progressed at lightspeed. Even though the fraud allegations were vigorously contested by Claimants, the NCLT did not allow Claimant

¹ Exhibit C-050, Official Transcript, 14 October 2020, p. 32.

² Exhibit C-052, Inter-Ministerial Monitoring Committee Directive, 4 November 2020.

DEMPL to participate in the proceedings. The NCLT only allowed a former director of Devas to challenge the liquidation, but denied his request for a trial, precluding even the cross examination of the very Antrix officials on whose affidavits Antrix had petitioned for Devas's winding up. In its rush to reach a predetermined result aimed specifically at stopping the enforcement of the ICC Award, which the NCLT feared would be “*not fair*” or in the “*public interest*”,³ the NCLT did away with express statutory requirements such as notice and advertisement of the liquidation. The NCLT failed to address any of the exculpatory arguments and evidence offered by Devas's former director, and instead uncritically adopted Antrix's allegations wholesale. The NCLT decision, which Claimants urge this Tribunal to read in full, makes little sense and lacks any rational basis. For example, the NCLT finds “*basic facts*” such as the conduct of the ICC Arbitration as indicative of fraud in the incorporation of Devas.⁴

12. Devas's former director and Claimant DEMPL appealed the NCLT's decision before its appellate tribunal (the National Companies Law Appellate Tribunal, or “NCLAT”) and the Supreme Court but were met with equally absurd decisions that betrayed their underlying objective—to forestall enforcement of the ICC Award. The NCLAT purported to invent new grounds of “*fraud*”, which the NCLT had not found. The NCLAT further admitted that it and the NCLT had only made *prima facie* determinations of fraud, accepting Antrix's submissions at face value, yet considered it was abusive of Devas to ask for a trial and cross examination of Antrix's officials making these allegations.
13. India's Supreme Court rubber-stamped the *prima facie* “*fraud findings*” of these tribunals, overlooking every obvious issue with those so-called “*findings*”—that they were not raised when they could and should have been in the Arbitrations, that they are mere allegations with no criminal charges or process to test them, that they are demonstrably untrue, as well as overlooking the procedural deficiencies both in the liquidation process as well as the galling injustice of making fraud findings without as much as a trial. Instead, the Supreme Court bewilderingly adopted the lower tribunals' fraud determinations, relabeling Antrix's

³ Exhibit C-078, NCLT Final Liquidator Order, PDF p. 79.

⁴ Exhibit C-078, NCLT Final Liquidator Order, PDF pp. 71-76.

allegations as “*undisputed facts*”,⁵ even though Devas’s former director had vigorously contested each and every one of them.

14. India then used the tribunals’ summary findings, which now had the Supreme Court’s stamp of approval, to propel the CBI’s and ED’s proceedings that had otherwise languished due to the complete absence of evidence. Soon after the Supreme Court’s decision on liquidation, the Finance Minister of India applauded the decision and declared her intention to use it in ongoing civil and criminal proceedings, effectively circumventing the requirement for a trial to determine issues of fraud. Indeed, the New Delhi High Court accepted the Supreme Court’s rubber-stamp of the fraud allegations as *res judicata* to set aside the ICC Award (the “**Set Aside Decision**”), without conducting any independent trial or inquiry.
15. To be sure, although India has accused Devas in these proceedings of committing “widespread fraud,” it has assiduously avoided testing them before judicial body outside India and, indeed, no court outside of India has credited the Indian Supreme Court’s supposed “findings” of fraud. For example, even with the Set Aside Decision in hand, Antrix and India do not dare file a motion in the United States district court to vacate the judgment confirming the ICC Award because they know that to do so would mean addressing their allegations before an impartial judge in a neutral venue. And the Canadian, German and Swiss courts have all refused to find fraud on the basis of the severely deficient Indian Supreme Court decision.
16. Yet, after every loss, India ramped up its efforts to harass and punish Devas’s investors, including Claimants and their employees, for attempting to collect on India’s debts. After Claimants initiated this Arbitration, India has gone scorched earth. It first sought to extradite Devas’s founder and CEO, Mr. Ramachandran Viswanathan, on charges unsupported by real evidence, and continues to expedite the criminal prosecution of Mr. Viswanathan in India. Then, just a week before Claimants were to file their Statement of Claim, India made a stunning attempt to fully circumvent this Tribunal’s authority: without any warning, India sought and obtained an *ex parte* order from a Mauritius court purporting

⁵ Exhibit C-088, Judgment of the Indian Supreme Court, ¶12.7.

to enjoin Claimants from pursuing this Arbitration. Despite this Tribunal's binding Interim Measures Award, India has refused to withdraw its injunction application before Mauritian courts and refuses to participate in this Arbitration, threatening Claimants with sanctions for doing so. Now, less than a month later, the Mauritian Government, clearly acting at India's behest, has suspended Claimants' business licenses with no prior notice, citing the year-old Indian Supreme Court decision. Less than three business days after suspending Claimants' licenses, in what is a near mirror image of India's liquidation of Devas, Mauritian authorities have declared their inquiry is complete and have asked Claimants to show cause as to why their licenses should not be permanently revoked. It is indisputable that India is trying, by any means possible, to escape review of its actions by this Tribunal.

17. In retaliating against Devas through initiating a host of criminal investigations against it and its ex-employees, in orchestrating a hostile takeover of Devas, in working to frustrate global enforcement efforts, in setting aside the ICC Award, in seeking to deprive Claimants the value of their investment and in violating this Tribunal's Interim Measures Award, India has egregiously breached its BIT obligations. For the reasons that follow, the Tribunal should grant Claimants' request for relief.
18. This SOC proceeds in four parts. Claimants (i) set out the factual background of the case (ii) establish this Tribunal's jurisdiction; (iii) set out India's breaches of the Treaty; and (iv) provide the damages due to the Claimants.
19. This SOC is accompanied by witness statements from the following individuals:
 - a. Mr. Ramachandran Viswanathan;
 - b. Mr. Lawrence Babbio; and
 - c. Mr. Gary Parsons.
20. In addition, Claimants submit an expert report of Berkeley Research Group on the quantum of Claimants' damages.

II. FACTUAL BACKGROUND TO THE DISPUTE

A. Claimants Invest in India

21. As the Initial BIT Tribunal (and DT Tribunal) concluded, Claimants (and DT, under identical circumstances) invested in India between 2006-2009, through Devas, which had an Agreement with Antrix to build out India's telecommunications infrastructure and deliver digital multimedia services to the Indian people. The Initial BIT, DT and ICC tribunals all found, *inter alia*, that:

- a. Devas and Antrix had entered into the Agreement following a thorough, arms-length negotiations process;⁶
- b. The Agreement was sound and its terms were enforceable;⁷
- c. India unlawfully terminated the Agreement;⁸ and
- d. Devas had undertaken significant efforts to implement the Agreement, such that the Project would have been successful but for India's unlawful termination.⁹

22. As these facts were found by the Initial BIT Tribunal adjudicating a matter between (i) the same parties, (ii) addressing the same events; and (iii) proceeding under the same BIT, they are *res judicata*.¹⁰ Thus, the events described below and in section II.B are offered solely as context and to make clear the false, pretextual and retaliatory nature of India's fraud allegations.

⁶ See **Exhibit C-033**, ICC Award, ¶¶ 58-73; **Exhibit C-036**, J&M Award, ¶¶ 71-83; **Exhibit C-045**, DT Award, ¶¶ 54-62.

⁷ See **Exhibit C-033**, ICC Award, ¶¶ 65-82; 307-11; **Exhibit C-036**, J&M Award, ¶¶ 192-210 (“*The Devas Agreement was a valid contract between Devas and Antrix, a State-owned commercial corporation.*”); **Exhibit C-045**, DT Award, ¶¶ 174-81 (“*Devas had a binding agreement contemplating the lease of valuable satellite spectrum*”).

⁸ See **Exhibit C-033**, ICC Award, ¶¶ 307-11; **Exhibit C-036**, J&M Award, ¶¶ 315-74; **Exhibit C-045**, DT Award, ¶¶ 337-90.

⁹ See **Exhibit C-033**, ICC Award, ¶¶ 312-92; **Exhibit C-049**, Quantum Award, ¶¶ 355-86.

¹⁰ See *infra* § III.D; **Exhibit CL-031**, *Interpretation of Judgments Nos. 7 & 8 (The Chorzów Factory)*, 1927 P.C.I.J. (ser. A) no. 13, PDF p. 41 (dissenting opinion of Judge Anzilotti) (16 December 1927). Judge Anzilotti's Latin terms were translated by the tribunal in **Exhibit CL-032**, *Trail Smelter Case (United States of America v. Canada)*, 3 R.I.A.A. 1938, 1952 (11 March 1941) to mean “*parties, object, and cause.*”

1. Negotiations Leading Up To The Agreement

23. Claimants' investment was born when investors led by Ramachandran Viswanathan, a veteran of the consulting company McKinsey, and WorldSpace Inc., a provider of satellite radio, spotted an opportunity to help India commercialize the “*S-band*” spectrum that it was in danger of losing for disuse.¹¹ The S-band is a small but very important portion of the electromagnetic spectrum because signals in that band propagate well, are resistant to weather-related fading, and can be received by mobile devices and laptops that are not directly pointed at the satellite.¹² Because of these properties, the S-band is ideal for applications involving hybrid satellite-terrestrial networks, such as satellite radio.¹³ Mr. Viswanathan and Devas's other founders saw an opportunity to go even further, and use the S-band to provide a full spectrum of multimedia services.¹⁴
24. S-band spectrum is allocated on a country by country basis by the International Telecommunications Union (“**ITU**”), a United Nations agency charged with allocation of electromagnetic spectrum as well as orbital slots for satellites.¹⁵ Once the ITU allocates orbital slots and spectrum to a country, that country is free to distribute the slots and spectrum internally in accordance with its own internal laws and policies.¹⁶ The ITU, however, maintains a “*use it or lose it*” policy whereby member states have seven years from the date of the initial coordination request to build and bring into operation the satellite in the designated orbital slot.¹⁷

¹¹ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 4; **Exhibit C-036**, J&M Award, ¶¶ 75-76.

¹² See First Witness Statement of Gary Parsons, 20 January 2023, ¶ 18; **Exhibit C-036**, J&M Award, ¶ 72.

¹³ See **Exhibit C-036**, J&M Award, ¶ 80.

¹⁴ See **Exhibit C-036**, J&M Award, ¶¶ 75, 123.

¹⁵ See **Exhibit C-033**, ICC Award, ¶¶ 51-52, 56; **Exhibit C-036**, J&M Award, ¶¶ 71-74, 298 n. 386 (citing **Exhibit C-444**, Letter from DOS to Space Commission, 2 July 2010 (“*ISRO initiated serious discussions in early 2003 for introduction of Satellite-based Digital Multimedia in the country, especially taking note of the fact that the allocation of the S-band spectrum for ISRO/DOS . . . would expire by September 2010 unless [DOS/ISRO] place S-band Satellites in the orbit and demonstrate that necessary advance actions to build the Satellites have been taken.*”)).

¹⁶ See **Exhibit C-036**, J&M Award, ¶ 73.

¹⁷ **Exhibit C-033**, ICC Award, ¶ 56; **Exhibit C-036**, J&M Award, ¶ 74, 298, fn. 386.

25. For the last three decades, India has had approval from the ITU to use certain frequencies in the “*S-band*,” for satellite services from designated orbital slots.¹⁸
26. In the early 1970s, the Indian Government assigned its issued orbital slots in the S-Band to its Department Of Space (“**DOS**”) for use in space applications, and commercial and governmental services.¹⁹ In 1997, India approved the Satellite Communication Policy Framework (“**SATCOM Policy**”), confirming that the S-band in India was to be used for satellite based communication services.²⁰ With the “*specific goal[]*” of “[e]ncouraging the private sector investment in the space industry in India and attracting foreign investments in this area,”²¹ the SATCOM Policy called on DOS and its subsidiary agency, the Indian Space Research Organisation (“**ISRO**”), to build and lease satellite capacity for both public and private usage.²² The SATCOM Policy specifically:
- a. encouraged DOS/ISRO to lease capacity on its satellites to private and non-governmental actors to allow private industry to develop space-based technologies for the benefit of the Indian economy and public;²³
 - b. advocated for large-scale private investment in the building and operating of Indian-designed and launched satellites;²⁴

¹⁸ See **Exhibit C-158**, Modified coordination filing for 83E, 16 December 2005. See also **Exhibit C-036**, J&M Award, ¶ 71.

¹⁹ See **Exhibit C-033**, ICC Award, ¶¶ 53-54; **Exhibit C-036**, J&M Award, ¶ 74.

²⁰ See **Exhibit C-286**, Satellite Communication (SATCOM) Policy Framework, 1997, pp. 1-2. See also **Exhibit C-036**, J&M Award, ¶ 482.

²¹ **Exhibit C-286**, Satellite Communication (SATCOM) Policy Framework, 1997. See also **Exhibit C-033**, ICC Award, ¶ 58; **Exhibit C-036**, J&M Award, ¶ 482.

²² See **Exhibit C-286**, Satellite Communication (SATCOM) Policy Framework, 1997, p. 1 (“*The Frame-work . . . is as follows: (i) Authorise INSAT capacity to be leased to non-government (Indian and foreign) parties following certain well defined norms*”). See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 28.

²³ See **Exhibit C-286**, Satellite Communication (SATCOM) Policy Framework, 1997, p. 1 (“*Making available the infrastructure built through INSAT to a larger segment of the economy and population is another corner stone of the Policy.*”). See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 28.

²⁴ See **Exhibit C-286**, Satellite Communication (SATCOM) Policy Framework, 1997, p. 1 (specific goal of “[e]ncouraging the private sector investment in the space industry in India.”). See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 28.

- c. provided for a role for foreign direct investment in India's satellite program;²⁵ and
 - d. advocated for the leasing of bandwidth on Indian satellites by third party investors.²⁶
27. In 2000, the Indian Government adopted the “*norms, guidelines and procedures*” by which DOS could grant private actors spectrum space.²⁷ Section 2.6.2 of these norms stated that DOS could allocate the capacity by any of the following means: “*the form of auction, good faith negotiations, first come first served basis or any other equitable method.*”²⁸
28. In 2001, the Indian Government ordered DOS to return some of its allocated spectrum and transferred that spectrum to the Department of Telecommunications (“**DOT**”) for terrestrial use because the DOS had not and did not plan to efficiently use it.²⁹ Following this loss, DOS/ISRO was actively seeking ways to use its remaining S-Band to ensure it did not lose it.³⁰
29. In 2003, Mr. Viswanathan—who, after leaving WorldSpace had founded a boutique consulting firm, Forge Advisors—learned that the Indian Government was looking for ways to make commercial use of its S-band spectrum.³¹ Mr. Viswanathan “*thought that*

²⁵ See **Exhibit C-286**, Satellite Communication (SATCOM) Policy Framework, 1997, p. 1 (specific goal of “*attracting foreign investments in this area.*”). See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 28.

²⁶ See **Exhibit C-286**, Satellite Communication (SATCOM) Policy Framework, 1997, p. 2 (“*Satellite broadcasting . . . may be licensed.*”). See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 28.

²⁷ **Exhibit C-286**, Satellite Communication (SATCOM) Policy Framework, 1997, pp. 3-17.

²⁸ **Exhibit C-286**, Satellite Communication (SATCOM) Policy Framework, 1997, p. 6. See also **Exhibit C-287**, Note for the Cabinet from the Department of Space with an enclosed copy of the Satellite Communication Policy, 15 May 1997, p. 4 (“*The fundamental aim of the Policy Framework . . . is to develop a healthy and thriving communications satellite and ground equipment industry . . . Making available the infrastructure built through INSAT to a larger segment of the economy and population is another corner stone of the Policy. Encouraging the private sector investment in the space industry in India and [sic] attracting foreign investments in this area are other specific goals.*”).

²⁹ Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶¶ 3-4. See also **Exhibit C-033**, ICC Award, ¶¶ 59-60; **Exhibit C-036**, J&M Award, ¶ 74.

³⁰ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 4. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 27.

³¹ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶¶ 5-7. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶¶ 11-12.

*Forge Advisors might be able to assist DOS/ISRO by providing consulting and advisory services to them.*³² Mr. Viswanathan, together with Dr. M. G. Chandrasekhar, a former colleague from WorldSpace, who had served as a Scientific Secretary of ISRO, met with the then-Chairman of the Space Commission, Secretary of DOS, Chairman of ISRO, and the executive director of its commercial arm, Antrix (the same person held all four titles simultaneously), Dr. Kasturirangan.³³ After a series of discussions from early to mid-2003 that included presentations to ISRO and Antrix officials in March and May 2003, ISRO/Antrix and Forge Advisors executed a non-binding Memorandum of Understanding on 28 July 2003 (“MOU”), envisioning “*an advisory relationship as an initial step toward building a strategic partnership.*”³⁴

30. In March 2004, Mr. Viswanathan gave a presentation to ISRO/Antrix officials entitled “*Proposal for Indian Joint Venture to Launch DEVAS.*”³⁵ Mr. Viswanathan followed up this presentation with a 15 April 2004 letter elaborating on the Devas proposal, which contemplated that ISRO would build and launch a “*state-of-the-art communications satellite capable of delivering those services, while Forge Advisors would construct and operate the DEVAS system.*”³⁶ The system would provide satellite derived video, audio, information, and telematic services in a mobile environment, offering “*high speed*

³² Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 6. *See also* **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 36.

³³ *See* Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 3, 5-7; **Exhibit C-036**, J&M Award, ¶ 69 and PDF p. 10.

³⁴ **Exhibit C-001**, Memorandum of Understanding between Forge Advisors, LLC and Antrix Corp., Ltd., 28 July 2003, p. 1. *See also* Notice of Arbitration, 2 February 2022, ¶ 20; **Exhibit C-036**, J&M Award, ¶ 75; **Exhibit C-033**, ICC Award, ¶ 61; Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 12.

³⁵ **Exhibit C-156**, Proposal from Forge Advisors to Antrix for Indian Joint Venture to Launch DEVAS, 22 March 2004. *See also* Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 10; **Exhibit C-033**, ICC Award, ¶ 62; **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 40.

³⁶ Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 11; *see also* **Exhibit C-157**, Letter from R. Viswanathan to K.R. Sridhara Murthi & A. Bhaskaranarayana, 15 April 2004. *See also* **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 41.

internet/data downloads”³⁷ at a time when broadband services were in their infancy in India.

31. In May 2004, Mr. Viswanathan held a series of meetings with about a dozen high-ranking representatives of DOS, ISRO, and Antrix in Bangalore to discuss the joint venture proposal and how each side would assume certain responsibilities based on their core competencies.³⁸
32. That same month, while Antrix was considering a partnership with Forge Advisors, a committee was appointed to consider the merits of any proposed agreement between Antrix and Forge Advisors. Dr. K.N. Shankara, the Director of the Space Application Centre led the committee (the “**Shankara Committee**”).³⁹ The Shankara Committee held detailed discussions with Forge Advisors personnel and reviewed the technical and financial aspects of the agreements under discussion by Forge and Antrix.⁴⁰
33. On 18 June 2004, Mr. Viswanathan sent a letter to then-Antrix Executive Director Mr. K. R. Sridhara Murthi with proposed terms for a joint venture.⁴¹ The letter proposed that ISRO

³⁷ **Exhibit C-157**, Letter from R. Viswanathan to K.R. Sridhara Murthi & A. Bhaskaranarayana, 15 April 2004, PDF p. 19; **Exhibit C-036**, J&M Award, 76; **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 41.

³⁸ These included: (i) Dr. G. Madhavan Nair, who succeeded Dr. Kasturirangan as the Chairman of the Space Commission, Secretary of DOS, and Chairman of Antrix; (ii) Mr. S. K. Das, Additional Secretary and Secretary (Finance) for DOS, and then-Member (Finance) of the Space Commission; (iii) Mr. S. V. Ranganath, Joint Secretary, DOS, then Additional Secretary, DOS; (iv) Mr. R. G. Nadadur, Joint Secretary, DOS, then Additional Secretary, DOS; (v) Mr. K. R. Sridhara Murthi, Antrix Executive Director; (vi) Dr. K. N. Shankara, Director of the Space Applications Centre of ISRO, then-Director of ISRO Satellite Centre and then-Member of the Space Commission; (vii) Mr. Appanna Bhaskarnaryana, Director SCP/FMO of ISRO and then-Scientific Secretary of ISRO; (viii) Mr. V. R. Katti, Program Director of GEOSTAT of ISRO; (ix) Mr. M. Y. S. Prasad, Director of the Master Control Facility of ISRO; (x) Mr. M. N. Sathyanarayana, Executive Director of Space Industry Development of ISRO; and (xi) Mr. P. S. Datta, Antrix’s Business Development Manager. See **Exhibit C-002**, Meeting Minutes and Next Steps ISRO/Antrix and Forge Advisors Discussions, Bangalore, May 2004. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 45.

³⁹ A “*High Power Committee*” constituted in 2004 at the direction of the chairman of ISRO—and chaired by Dr. K.N. Shankara—to “*review the technical feasibility, risk mitigation, time schedule, financial and organizational aspects of the Devas project.*” See **Exhibit C-036**, J&M Award, ¶ 81.

⁴⁰ See **Exhibit C-006**, Report of the ISRO/Antrix Committee on Lease of Space Segment Capacity on ISRO/Antrix S-band Spacecraft to Devas Multimedia Pvt. Ltd., January 2005, p. 11. See also **Exhibit R-0006**, Report of the High Powered Review Committee on Various Aspects of the Agreement Between Antrix & Devas Multimedia Pvt. Ltd., March 2011 (the “**Chaturvedi Report**”), ¶¶ 3.1.4.1-3.1.4.2; **Exhibit C-036**, J&M Award, ¶¶ 81-82.

⁴¹ See **Exhibit C-003**, Letter from Ramachandran Viswanathan to K.R. Sridhara Murthi, 18 June 2004.

and Antrix would receive 10 percent equity in the joint venture with the option to acquire an additional 10 percent at a discount to terms offered to the first round of institutional investors, in exchange for launching the satellite capable of accommodating Devas's broadcasting technology.⁴² In addition, Devas would pay a lease fee of USD 9 million a year for use of the satellite, and three milestone payments totaling USD 10 million.⁴³

34. However, on the advice of the Shankara Committee, India rejected Forge's joint venture proposal, in favor of a lease arrangement where Antrix and ISRO would lease capacity to Devas at higher rates rather than buying equity.⁴⁴ This arrangement was more typical of Antrix's other business deals and enabled Antrix to trade potential upside in the business for higher, guaranteed lease fee payments. The lease arrangement also protected ISRO and Antrix from any risk that the Devas project would not work out: as long as Devas timely made its lease payments, the spectrum would be in use and revenue would be generated that far exceeded any other commercial contract by Antrix to that date. At no point did any Indian official indicate that a lease agreement would violate India's SATCOM Policy. In fact, DOS had institutional incentives to put its unused—and, to DOS, unusable—spectrum to commercial use.⁴⁵
35. Negotiations thus began anew with the objective of reaching a leasing agreement. On 20 September 2004, Mr. Viswanathan wrote to high level DOS/ISRO/Antrix officials, informing them that Forge had created a US company, Devas LLC, to aid with the discussions.⁴⁶ Mr. Viswanathan proposed that Devas LLC could sign a binding term sheet with Antrix, forming the basis of a final agreement which Antrix could sign with an Indian

⁴² See **Exhibit C-003**, Letter from Ramachandran Viswanathan to K.R. Sridhara Murthi, 18 June 2004. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 46.

⁴³ See **Exhibit C-003**, Letter from Ramachandran Viswanathan to K.R. Sridhara Murthi, 18 June 2004. . See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 46.

⁴⁴ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 18; **Exhibit C-033**, ICC Award, ¶ 65. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 47.

⁴⁵ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 14. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 27.

⁴⁶ See **Exhibit C-289**, Letter from R. Viswanathan to K.R. Sridhara Murthi & A. Bhaskarnarayana, 20 September 2004, p. 2. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 48.

entity that Forge would later establish.⁴⁷ Antrix however declined the proposed terms, and asked to renegotiate a number of items including fees, apparently in an effort to hew more closely to their core competencies of building satellites.⁴⁸

36. On 27 September 2004, Mr. Viswanathan wrote to ISRO, expressing his frustration at Antrix's attempts to renegotiate what he considered were settled points, and inviting the parties to "*get negotiations back on track.*"⁴⁹
37. On 2 October 2004, Mr. Viswanathan gave a presentation to Dr. G. Madhavan Nair, who had succeeded Dr. Kasturirangan as the Chairman of the Space Commission, Secretary of DOS, Chairman of ISRO, and executive director of Antrix, on "*Progress Update on Devas.*"⁵⁰ The presentation noted the rapid evolution of the satellite-terrestrial architecture and argued that as technology evolved, Devas's satellite-terrestrial architecture could be scaled in similar fashion.⁵¹ Mr. Viswanathan stressed that "*it was understood that the goals of both parties was to develop a cutting-edge satellite communications system that would show the world how far India's space program had come.*"⁵² Both parties thus recognized at the time that the contemplated services would use the newest technology as it developed.⁵³

⁴⁷ See **Exhibit C-289**, Letter from R. Viswanathan to K.R. Sridhara Murthi & A. Bhaskarnarayana, 20 September 2004, p. 2. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 48.

⁴⁸ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 18. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 49.

⁴⁹ **Exhibit C-290**, Letter from R. Viswanathan to K.R. Sridhara Murthi & A. Bhaskarnarayana, 27 September 2004, p. 1. See also Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 20. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 49.

⁵⁰ **Exhibit C-091**, Devas Presentation to Chairman, ISRO titled, "Progress Update on Devas," 2 October 2004. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 50.

⁵¹ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 21; **Exhibit C-091**, Devas Presentation to Chairman, ISRO titled, "Progress Update on Devas," 2 October 2004. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 50.

⁵² Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 21. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 50; **Exhibit C-332**, Innovative Satellite System Serving Critical Needs of the Nation, Presentation to T.K.A. Nair, Principal Secretary to the Prime Minister, 27 August 2010 (describing expected benefits to India).

⁵³ See **Exhibit C-049**, Quantum Award, ¶¶ 364-65.

38. Negotiations over the lease agreement with Antrix/ISRO continued through October and November 2004, with almost daily discussions between Forge and Antrix/ISRO leadership.⁵⁴

2. The Devas-Antrix Agreement

39. Antrix's Board of Directors approved the final deal terms with Devas in December 2004.⁵⁵ In January 2005, the Shankara Committee concluded that a partnership with Forge Advisors represented a "*significant opportunity*" for ISRO, Antrix, and India.⁵⁶ But although the Shankara Committee found that "*mobile multimedia broadcasting satellite services such as Devas will be one of the major leading drivers of growth in the satellite industry for several decades to come,*"⁵⁷ the technology was "*new*" and "*state-of-the-art.*"⁵⁸ Accordingly, "[a]ttendant with these opportunities are the risks of the initial investment that ISRO and Antrix have to make into the project," and these risks had been "*mitigated*" through contractual terms such as upfront lease payments.⁵⁹

40. The Shankara Committee moreover provided a list of alternative uses for the S-band spectrum in case Devas failed as a business, could not develop its technology, or otherwise could not make the lease payments.⁶⁰ Thus, Antrix and ISRO worked to negotiate a contract in which it made little difference to Antrix or ISRO whether the Devas technology worked. Ultimately, the Shankara Committee recommended that "[i]n light of the overall attractiveness of the Devas project and the specific terms outlined above that have been

⁵⁴ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 22. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 51.

⁵⁵ See **Exhibit C-023**, Report on GSAT-6, submitted by Dr. B.N. Suresh, May 2010, delivered 7 June 2010 ("**Suresh Report**"), p. 7, ¶ 4. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 52.

⁵⁶ **Exhibit C-006**, Report of the ISRO/Antrix Committee on Lease of Space Segment Capacity on ISRO/Antrix S-band Spacecraft to Devas Multimedia Pvt. Ltd., January 2005 ("**Shankara Report**"), p. 11. See also **Exhibit C-036**, J&M Award, ¶¶ 81-82.

⁵⁷ **Exhibit C-006**, Shankara Report, p. 12.

⁵⁸ **Exhibit C-006**, Shankara Report, p. 11.

⁵⁹ **Exhibit C-006**, Shankara Report, p. 11.

⁶⁰ **Exhibit C-006**, Shankara Report, p. 11.

*agreed to, the Committee recommends that Antrix can enter into the definite Agreement with Devas.”*⁶¹

41. Accordingly, on 28 January 2005, Antrix and Devas executed the Agreement for the Lease of Space Segment Capacity on ISRO/Antrix S-Band Spacecraft by Devas Multimedia Pvt. Ltd. (the “**Devas-Antrix Agreement**”).⁶² Indian officials insisted that any agreement between Antrix and Devas would be governed by Indian law.⁶³ Accordingly, Forge incorporated an Indian company, Devas, to enter into the lease arrangement.⁶⁴ In keeping with standard business practice, the Devas Board of Directors (“**Devas Board**”) passed a resolution authorizing an article clerk, Mr. Gururaj, to sign the contract on the Board’s behalf and as its agent.⁶⁵ Antrix raised no objections to Mr. Gururaj signing the Agreement. Indeed, the Agreement, its terms, the signees and all documentation relating to the negotiations leading up to the Agreement were on the record of all three Arbitrations and discussed extensively during those Arbitrations, but Antrix/India raised no issues whatsoever with the negotiations leading up to the Agreement, the circumstances of its execution or the fairness of its terms.
42. Under the Devas-Antrix Agreement, Antrix was required to (i) manufacture, launch, and operate a primary (“**PS1**”) and secondary satellite (“**PS2**”) system that would be the basis for a hybrid satellite-terrestrial Devas system; and (ii) lease transponder capacity in the S-band on these satellites for the same purpose.⁶⁶ Devas was to pay Antrix up-front capacity reservation fees of about USD 20 million (compared with the USD 10 million in three separate milestone payments proposed in the joint venture proposal), and yearly lease fees of about USD 9 million, rising to USD 11.25 million when Devas became cash flow

⁶¹ **Exhibit C-006**, Shankara Report, p. 2 (*emphasis added*).

⁶² See **Exhibit C-036**, J&M Award, ¶ 84.

⁶³ See **Exhibit C-006**, Shankara Report, p. 11.

⁶⁴ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 24. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶¶ 52-53.

⁶⁵ See **Exhibit C-292**, Copy of the Minutes of the First Meeting of the Board of Directors of Devas Multimedia Pvt. Ltd., 15 January 2005.

⁶⁶ See **Exhibit C-007**, Devas-Antrix Agreement, p. 1 and art. 3. See also **Exhibit C-036**, J&M Award, ¶ 86.

positive (compared with a flat USD 9 million proposed in the joint venture proposal).⁶⁷ The lease was for 12 years and could be renewed for a further 12 years upon mutual agreement.⁶⁸ Thus, Antrix stood to receive approximately USD 256 to 310 million in fees, with India estimating the internal rate of return of the two satellites to be 13.8%.⁶⁹

43. The Agreement required Antrix to obtain “*all necessary Governmental and Regulatory Approvals relating to orbital slot and frequency clearances, and funding for the satellite to facilitate DEVAS services*” and to “*provide appropriate technical assistance to DEVAS on a best effort basis for obtaining licenses and Regulatory Approvals from various ministries so as to deliver DEVAS services via satellite and terrestrial networks.*”⁷⁰ It also required Antrix, “*through ISRO/DOS,*” to obtain “*clearances from National and international agencies (WPC, ITU, etc.) for use of the orbital slot and frequency resources*” necessary to provide the leased capacity.⁷¹
44. Devas represented, in the Agreement, that it was “*developing a platform capable of delivering multimedia and information services via satellite and terrestrial systems to mobile receivers, tailored to the needs of various market segments.*”⁷² Devas also warranted that it “*has the ability to design Digital Multimedia Receivers (“DMR”)*”, “*has the ability to design Commercial Information Devices (“CID”)*,” and “*has the ownership and right to use the Intellectual Property used in the design of DMR and CID.*”⁷³ Indeed, at the time,

⁶⁷ See **Exhibit C-033**, ICC Award, ¶ 67; **Exhibit C-036**, J&M Award, ¶ 90; **Exhibit C-045**, DT Award, ¶ 60.

⁶⁸ See **Exhibit C-007**, Devas-Antrix Agreement, art. 3(a), (l).

⁶⁹ See **Exhibit C-033**, ICC Award, ¶ 68. On the low end, these numbers include USD 20 million in upfront payments for each of PS1 and PS2 (should Devas exercise its option for PS2, which it did) and, at minimum, USD 9 million yearly over the 12-year life of the lease. Added together, this equals USD 256 million; the Indian Government calculated that this would earn a 13.8 percent internal rate of return, which the Chaturvedi Report called “*reasonable.*” See **Exhibit R-0006**, Chaturvedi Report, PDF pp. 44-45.

⁷⁰ **Exhibit C-007**, Devas-Antrix Agreement, art. 3(c). See also **Exhibit C-036**, J&M Award, ¶ 91.

⁷¹ **Exhibit C-007**, Devas-Antrix Agreement, art. 12(a). See also **Exhibit C-036**, J&M Award, ¶ 91.

⁷² **Exhibit C-007**, Devas-Antrix Agreement, p. 1 (*emphasis added*).

⁷³ **Exhibit C-007**, Devas-Antrix Agreement, art. 12 (*emphasis added*). A DMR was meant to be a multimedia satellite receiver containing an LCD screen, audio output, and antenna that could be installed in cars, buses, and trucks with a suite of video and audio channels, as well as email, SMS messaging, map navigation, emergency calling, and other services. See **Exhibit C-156**, Proposal from Forge Advisors to Antrix for Indian Joint Venture to Launch DEVAS, 22 March 2004, slide 8. CIRs were meant to leverage Devas’s core platform and be of use in more commercial settings, such as rail containers, commercial rail passenger travel, and truck fleets, among others. See **Exhibit C-156**, Proposal from Forge Advisors to Antrix for Indian Joint Venture to Launch DEVAS, 22 March 2004, slide 10.

Devas had preliminary designs for DMRs which Devas had communicated to Antrix and ISRO.⁷⁴ Moreover, the necessary technologies required to design DMRs and CIDs were in the public domain.⁷⁵ Notwithstanding Devas’s existing capabilities, the Agreement did not specify the technologies involved in DMR and CID development or the associated intellectual property rights because the specific nature of the technology was expected to evolve over time and Devas sought to use the most recent technology for its system.⁷⁶

45. On 1 December 2005, the Union Cabinet, the executive organ of the Government of India that functions as the senior decision making body of the executive branch, approved undertaking the design, development and launch of the first satellite. In a press release, India extolled the benefits of the services contemplated by the Agreement including “[a] *state-of-the art National Satellite System with coverage exclusively devoted to [the] entire population of India*”, and noting that “[t]he successful accomplishment of the Project would also enable ISRO/DOS to become a leader in this growing worldwide satellite digital multimedia broadcasting (S-DMB) services to mobile vehicles and cellular phones and thus provide India access to these markets globally.”⁷⁷
46. The Devas-Antrix Agreement became fully binding and effective on 2 February 2006, when Antrix wrote to Devas confirming that Antrix had “*received the necessary approval for building, launching and leasing*” the first satellite.⁷⁸

⁷⁴ **Exhibit C-091**, Devas Presentation to Chairman, ISRO titled, “Progress Update on Devas”, 2 October 2004. *See also* First Witness Statement of Gary Parsons, 20 January 2023, ¶ 44. *See* **Exhibit C-094**, Initial BIT Arbitration, Reply Witness Statement of Ramachandran Viswanathan, 17 March 2014, ¶ 33.

⁷⁵ *See* First Witness Statement of Gary Parsons, 20 January 2023, ¶ 45.

⁷⁶ *See* Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 21; First Witness Statement of Gary Parsons, 20 January 2023, ¶ 20 (describing evolution of Devas technology); **Exhibit C-094**, Initial BIT Arbitration, Reply Witness Statement of Ramachandran Viswanathan, 17 March 2014, ¶¶ 28-35.

⁷⁷ **Exhibit C-293**, Press Release, Press Information Bureau, Government of India, Multimedia Mobile S-Band Satellite Mission, 1 December 2005.

⁷⁸ **Exhibit C-008**, Antrix Letter to Devas, 2 February 2006. *See also* **Exhibit C-007**, Devas-Antrix Agreement, art. 3(c) (“*ANTRIX shall be responsible for obtaining all necessary Governmental and Regulatory Approvals . . .*”).

3. Claimants Make Substantial Investments To Develop The Devas Project

47. To develop its business, Devas had to find investors. Mr. Viswanathan reached out to a number of large private equity and venture capital firms with relevant experience. Ultimately, two firms' Mauritian subsidiaries chose to invest in Devas: (i) CC/Devas, a subsidiary of Columbia Capital; and (ii) Telcom Devas, a subsidiary of Telcom Ventures.⁷⁹ Both firms had substantial experience in the satellite telecommunications industry. Columbia Capital is “a venture capital firm focused exclusively on...emerging companies in the wireless communications industry and to the development of new wireless systems and technologies”.⁸⁰ Telcom Devas was headed by Dr. Rajendra Singh, who had—along with Gary Parsons, another future investor and member of the Board—pioneered “interference mitigation” techniques to allow both satellite and terrestrial communications components to coordinate with each other efficiently using the same frequencies in space and on the earth’s surface.⁸¹ This technology permits users in dense urban environments, such as India, to receive satellite signals in a commercially feasible manner, and thus plays a key role in an integrated satellite telecommunications architecture (i.e., an integrated satellite system), such as that contemplated by the Devas-Antrix Agreement.⁸²
48. Before signing a share subscription agreement with Devas, however, the prospective investors requested confirmation from the Indian Government that it stood behind the Devas-Antrix Agreement.⁸³ Mr. Viswanathan accordingly arranged a trip to India, where the investors met with over a dozen high-level representatives of ISRO and Antrix, all of whom assured the investors that the Indian Government was committed to the Devas

⁷⁹ See **Exhibit C-036**, J&M Award, ¶ 107.

⁸⁰ **Exhibit C-182**, Initial BIT Arbitration, Witness Statement of Arun Gupta, 26 June 2013, ¶ 7.

⁸¹ See **Exhibit C-368**, *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited and Telcom Devas Mauritius Limited v. The Republic of India*, PCA Case No. 2013-09, Witness Statement of Rajendra Singh, 26 June 2013, ¶ 16.

⁸² See **Exhibit C-033**, ICC Award, ¶ 63; **Exhibit C-036**, J&M Award, ¶ 76.

⁸³ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 37. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 78.

project.⁸⁴ With this assurance, Columbia Capital and Telcom Ventures agreed to invest in Devas, and Devas filed a request for permission to have foreign investors invest in Devas with the Foreign Investment Promotion Board (“FIPB”).⁸⁵ The application described the scope of the Devas project as: “*developing fixed, mobile, and wireless technologies, development of appropriate terminals, establishment of required infrastructure for delivery of Internet services, and tie up with multimedia - audio, video, and data - content providers, and subscriber acquisition.*”⁸⁶

49. On 16 March 2006, Devas and its founders signed a share subscription agreement with Claimants CC/Devas and Telcom Devas.⁸⁷ Under the share subscription agreement, CC/Devas and Telcom Devas each agreed to invest USD 7.5 million in return for 19.001 percent of all Devas shares each.⁸⁸
50. The Devas Board approved the 16 March 2006 Series A share subscription agreement on 16 March 2006.⁸⁹ On 18 May 2006, the FIPB approved the investment by CC/Devas and Telcom Devas.⁹⁰ The parties closed on 11 May 2006.
51. With this capital, on 21 June 2006, Devas made the first installment of the Upfront Capacity Reservation Fee of approximately USD 3.5 million (INR 29,18,67,000) for the first satellite

⁸⁴ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 37. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶¶ 78-79.

⁸⁵ See **Exhibit C-021**, Submission for Issuance and Allotment of Shares, 11 June 2009, PDF p. 3 (chart setting forth FIPB approval history) (attachment to Letter from Ministry of Finance, FIPB Unit (Saxena) to Devas, 29 September 2009). See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 80.

⁸⁶ See **Exhibit C-305**, FIPB Application, 2 February 2006. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 80.

⁸⁷ See **Exhibit C-302**, Share Subscription Agreement Among Devas Multimedia Private Ltd., the Founder Named in Schedule I and the Investors Named in Schedule II, 16 March 2006. See also **Exhibit C-036**, J&M Award, ¶ 107.

⁸⁸ **Exhibit C-302**, Share Subscription Agreement Among Devas Multimedia Private Ltd., the Founder Named in Schedule I and the Investors Named in Schedule II, 16 March 2006, schedule 2. See also **Exhibit C-036**, J&M Award, ¶ 107.

⁸⁹ See **Exhibit C-303**, 10th Board of Directors Minutes, Devas Multimedia Pvt. Ltd., 16 March 2006. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 83.

⁹⁰ **Exhibit C-304**, FIPB Approval No. FC II. 107(2006)/43(2006) from the Dept. of Economic Affairs, Indian Ministry of Finance to Devas Multimedia Pvt. Ltd., 18 May 2006. See also **Exhibit C-036**, J&M Award, ¶ 200.

under the Devas-Antrix Agreement.⁹¹ The investment also brought on board the deep expertise of personnel at both venture capital firms.⁹² Subsequently, in late 2006 and early 2007, additional senior personnel with substantial telecommunications experience invested in Devas and joined its Board. These included Larry Babbio, the Vice Chairman of Verizon Communications Inc., where he had helped roll out one of the largest and most successful wireless communication systems in the world,⁹³ and Gary Parsons, the founder of XM Radio, and a pioneer in using satellite spectrum to provide on-the-ground communications services.⁹⁴ Both personally invested in Devas through Claimant DEMPL as well.⁹⁵

52. The capital infusion and addition of terrestrial and satellite telecommunications leaders to its Board allowed Devas to further develop its technology. Devas, through its U.S. subsidiary Devas Multimedia Americas Inc. (“DMAI”), entered into vendor contracts with a number of technical companies that provided components and services for the development of a wireless network.⁹⁶ These contracts included:

- a. Agreements between DMAI and Alcatel-Lucent on 23 July 2009, 28 June 2010, and 9 July 2010 for the provision of technical consulting services and support for the experimental trials conducted by Devas to test its wireless network technology.⁹⁷

⁹¹ See **Exhibit C-306**, Payment of 1st Installment of Upfront Capacity Reservation Fee from Devas to Antrix, 21 June 2006. See also **Exhibit C-036**, J&M Award, ¶ 107.

⁹² See **Exhibit C-311**, Minutes of the 13th Meeting of the Board of Devas Directors, 19 May 2008, pp. 1-2 (noting the appointment of Dr. Singh and Mr. Gupta to the Board). See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 88.

⁹³ See First Witness Statement of Lawrence T. Babbio, Jr., 20 January 2023, ¶ 3. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 91.

⁹⁴ See First Witness Statement of Gary Parsons, 20 January 2023, ¶ 10. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 91.

⁹⁵ See First Witness Statement of Lawrence T. Babbio, Jr., 20 January 2023, ¶ 4; First Witness Statement of Gary Parsons, 20 January 2023, ¶ 16. See also **Exhibit C-308**, Share Subscription Agreement Among Devas Multimedia Private Limited, The Founders Named in Schedule I, and The Investors Named in Schedule II, 11 June 2007. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 91.

⁹⁶ See, e.g., **Exhibit C-315**, Devas Multimedia, Presented to A. Bhaskarnarayana, ISRO and K.R. Sridhara Murthi, Antrix, 15 December 2018, slide 10 (summarizing vendor contracts that were “underway”).

⁹⁷ See **Exhibit C-297**, Alcatel USA Quotation & Order Form, 23 July 2009; **Exhibit C-298**, Devas-Alcatel Deutschland AG Agreement for Trial of LTE Equipment, 9 July 2010; **Exhibit C-299**, Devas-Alcatel India Ltd.

- b. A development and licensing agreement between DMAI and Elektrobite on 15 June 2009 for the delivery of Digital Video Broadcasting Satellite to Handheld (“DVB-SH”) access port devices, which would have enabled Devas-operated handheld devices such as mobile phones to receive satellite transmissions.⁹⁸
 - c. An agreement between DMAI and Quantum SPA dated 17 May 2011, which built on a 25 May 2010 research and development agreement between Devas and Quantum SPA for the development and supply of a turn-key system for wireless services on trains, cars, and buses.⁹⁹ Quantum held the licenses and intellectual property necessary for designing and supplying the systems, which Devas contracted to use for its services on a fully-paid, non-terminable basis.¹⁰⁰
53. Building out India’s telecommunications infrastructure required significant investments and expertise. Accordingly, on 11 June 2007, CC/Devas and Telcom Devas invested approximately USD 7.5 million each in exchange for Series B Preference Shares.¹⁰¹ Devas duly applied for and received approval from the FIPB for this investment as well.¹⁰² This additional investment allowed Devas to pay Antrix a second installment of the Upfront Capacity Reservation Fee, allowing Devas to exercise its option under the Devas-Antrix Agreement to order a second satellite from Antrix and ISRO.¹⁰³

Agreement for the Performance of Services for Devas Multimedia Service Soft Launch, 28 June 2010. *See also* **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 93.

⁹⁸ *See* **Exhibit C-296**, DMAI-Elektrobite Development and Licensing Agreement, 15 June 2009. *See also* **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 146.

⁹⁹ *See* First Witness Statement of Gary Parsons, 20 January 2023, ¶ 39(b). *See also* **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 146.

¹⁰⁰ *See* **Exhibit C-402**, R&D Services Agreement between Quantum SPA and Devas, 25 May 2010, cl. 6.3.

¹⁰¹ *See* **Exhibit C-308**, Share Subscription Agreement Among Devas Multimedia Private Limited, The Founders Named in Schedule I, and The Investors Named in Schedule II, 11 June 2007. *See also* **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 98.

¹⁰² *See* **Exhibit C-252**, Amendment No. 1 to FIPB approval No. FC.II. 107(2006)/43(2006), 19 May 2008, pp. 1, 3 (noting “no need for any prior approval for increase in amount of foreign equity if there is no change in the already approved percentage of foreign equity.”). *See also* **Exhibit C-036**, J&M Award, ¶ 200.

¹⁰³ *See* **Exhibit C-007**, Agreement for the Lease of Space Segment Capacity on ISRO/ANTRIX S-Band Spacecraft by Devas Multimedia Pvt. Ltd., 28 January 2005, recitals, “ANTRIX has agreed to . . . make available to DEVAS . . . an option to gain additional capacity on Primary Satellite 2 (“PS2”) to be manufactured for similar services”); **Exhibit C-036**, J&M Award, ¶ 86.

54. Having secured its rights to the satellites, Devas sought out a strategic partner with expertise to roll out the terrestrial cellular network services within India.¹⁰⁴ Because no network in India could offer this service at the time, Devas approached numerous American and European networks. This included a visit to, among others, AT&T in Texas and advanced discussions with T-Mobile.
55. After several meetings, DT, T-Mobile's parent company, expressed interest in an investment. Several members of DT's mergers & acquisitions reviewed Devas's business model in detail.¹⁰⁵ Once DT was comfortable with the viability of the Project, DT representatives went to India to meet with Antrix and ISRO to seek assurances.¹⁰⁶
56. Ultimately, on 19 March 2008, DT made a significant investment of USD 75 million in Devas through a Singaporean subsidiary, DT Asia.¹⁰⁷ This provided Devas with a significant win: in addition to the significant capital infusion, Devas could access DT's personnel and relationships with vendors and suppliers for prices that were the best in the industry.¹⁰⁸ Further to its investment, DT appointed Augusto Pellarini, a long-time financial specialist, as Chief Financial Officer ("CFO") of Devas. Devas also applied for and received approval from the FIPB of DT's investment and the capital structure changes that resulted from it.¹⁰⁹
57. Over the next year, DT acted as a strategic investor, providing services along with its capital. DT committed some of its best engineers to the project, and developed plans to

¹⁰⁴ See First Witness Statement of Lawrence T. Babbio, Jr., 20 January 2023, ¶ 12. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 100.

¹⁰⁵ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 50; **Exhibit C-045**, DT Award, ¶ 50. See also **Exhibit C-036**, J&M Award, ¶ 108.

¹⁰⁶ See **Exhibit C-045**, DT Award, ¶ 67.

¹⁰⁷ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 51. See also **Exhibit C-049**, Quantum Award, ¶ 539 (describing DT investment as an "arms-length transaction entered into after extensive due-diligence by the parties"); **Exhibit C-312**, Class C Equity Share Subscription by Deutsche Telekom Asia Pte Ltd., 19 March 2008.

¹⁰⁸ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 51. See also **Exhibit C-093**, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶ 108.

¹⁰⁹ See **Exhibit C-253**, Amendment No. 2 to FIPB approval No. FC.II. 107(2006)/43(2006), 7 August 2008. See also **Exhibit C-036**, J&M Award, ¶ 200; **Exhibit C-045**, DT Award, ¶ 167; **Exhibit C-313**, Third Amended and Restated Shareholders' Agreement of Devas Multimedia Pvt. Ltd., 18 August 2008.

build up India’s telecommunications infrastructure—including developing a plan for the number of towers needed in major cities and the coverage of each tower based on the number of expected subscribers.¹¹⁰ In addition, DT leveraged its networks and purchasing power to deliver better telecoms and IT unit prices compared to what Devas would have been able to get on a standalone basis.¹¹¹

58. While Devas continued to develop its technology, with DT’s assistance, Antrix could not finish its satellite by June 2009—the latest time allowed by the Devas-Antrix Agreement given the timing of Devas’s payment of the Upfront Capacity Reservation Fee.¹¹² Although Devas would have been entitled to damages for the delay at that point, Devas elected not to pursue them because, based on India’s assurances, it believed that the delay would be relatively short.¹¹³
59. In mid-2009, Devas implemented an equity incentive plan for key employees through which DEMPL purchased shares in Devas.¹¹⁴ DEMPL purchased a second tranche of shares in 2010.¹¹⁵
60. Also, in July 2009, Devas made a capital call so that the business would have sufficient capital on hand for a seamless rollout of services once the satellite launched.¹¹⁶ CC/Devas, Telcom Devas and DT Asia all answered the call and on 14 September 2009, Devas sought

¹¹⁰ See **Exhibit C-160**, Initial BIT Arbitration, Witness Statement of Dr. Kim Kyllesbech Larsen, 13 January 2017, ¶ 40; **Exhibit C-049**, Quantum Award, ¶ 361 (noting that DT “*followed through on its promise to contribute valuable expertise, manpower, contacts, and goodwill.*”)

¹¹¹ See **Exhibit C-160**, Initial BIT Arbitration, Witness Statement of Dr. Kim Kyllesbech Larsen, 13 January 2017, ¶ 42; **Exhibit C-049**, Quantum Award, ¶¶ 361-362.

¹¹² See **Exhibit C-036**, J&M Award, ¶ 110.

¹¹³ See **Exhibit 033**, ICC Award, ¶ 83; **Exhibit C-036**, J&M Award, ¶ 93. See also **Exhibit C-330**, Letter from R. Viswanathan to K.R. Srdihara Murthi, 20 July 2010 (summarizing Devas’s accomplishments and expressing disappointment about the delays).

¹¹⁴ See **Exhibit C-021**, Share Subscription Agreement among Devas Multimedia Private Limited and the Investor Named in Schedule I, 2 September 2009. See also **Exhibit C-036**, J&M Award, ¶ 111.

¹¹⁵ See **Exhibit C-020**, Letter from Devas Multimedia Pvt. Ltd. to Foreign Investment Promotion Board, 14 September 2009. See also **Exhibit C-036**, J&M Award, ¶ 111; **Exhibit C-168**, Share Subscription Agreement among Devas Multimedia Private Limited and the Investor Named in Schedule I, 15 June 2010.

¹¹⁶ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 66. See also **Exhibit C-036**, J&M Award, ¶ 111.

approval for a new round of investment from the FIPB.¹¹⁷ The FIPB approved the investment on 29 September 2009,¹¹⁸ and on the same day, Claimants CC/Devas and Telcom Devas and DT Asia entered into a share subscription agreement with Devas.¹¹⁹

4. Devas Continues to Develop Its Technology and Conducts Successful Technology Trials With the Full Participation of the Indian Government

61. Devas used this additional capital to further develop its technology and also to obtain licenses and approvals necessary for performing experimental trials of its technology. Devas secured (i) a license from the Ministry of Telecommunications to provide internet services (“ISP licence”),¹²⁰ followed by approval to provide internet protocol television services (“IPTV”),¹²¹ which allowed Devas to provide a portfolio of services including digital television, video on demand and other types of entertainment to users;¹²² and (ii) import and trial licenses from the Department of Telecommunication’s Wireless Planning and Coordination Wing (“WPC licenses”) to carry out field trials of its technology.¹²³

¹¹⁷ See **Exhibit C-020**, Letter from Devas Multimedia Pvt. Ltd. to Foreign Investment Promotion Board, 14 September 2009. See also **Exhibit C-036**, J&M Award, ¶¶ 111, 200. See also **Exhibit C-327**, Amendment No. 4 to FIPB Approval No. FC.II. 107(2006)/43(2006), 17 September 2009.

¹¹⁸ See **Exhibit C-021**, Letter from Foreign Investment Promotion Board to Devas Multimedia Pvt. Ltd. (with attachment Submission for Issuance and Allotment of Shares), 29 September 2009. See also **Exhibit C-036**, J&M Award, ¶¶ 111, 200.

¹¹⁹ See **Exhibit C-328**, Share Subscription Agreement Among Devas Multimedia Pvt. Ltd. and The Investors Named in Schedule I, 29 September 2009, Schedule I (showing investment amounts). See also **Exhibit C-036**, J&M Award, ¶¶ 111, 200; **Exhibit C-049**, Quantum Award, ¶ 363.

¹²⁰ See **Exhibit C-012**, License Agreement for Provision of Internet Services between the Government of India and Devas Multimedia Pvt. Ltd., 2 May 2008, art. 2.2(ii). See also **Exhibit C-036**, J&M Award, ¶¶ 109, 181; **Exhibit C-049**, Quantum Award, ¶ 363.

¹²¹ See **Exhibit C-324**, IPTV Approval from Department of Telecom, Ministry of Communication & Information Technology, Government of India, 31 March 2009. See also **Exhibit C-036**, J&M Award, ¶¶ 109, 181; **Exhibit C-049**, Quantum Award, ¶ 363.

¹²² See **Exhibit C-033**, ICC Award, ¶ 84.

¹²³ See **Exhibit C-016**, License to Import Wireless Transmitting and/or Receiving Apparatus into India, 26 March 2009; **Exhibit C-019**, License to Establish, Work and Maintain an Experimental Wireless Telegraph Station in India for Devas Multimedia Pvt. Ltd. from the Department of Telecommunications, Ministry of Communications & IT, Government of India, 7 May 2009. See also **Exhibit C-036**, J&M Award, ¶¶ 109, 111; **Exhibit C-049**, Quantum Award, ¶ 363.

62. Devas continued to make timely payments under the Devas-Antrix Agreement¹²⁴ and, having obtained the necessary licenses, conducted successful field trials of its technology.¹²⁵ Specifically, from June 2009 to September 2009, Devas, Antrix, ISRO, and DOS conducted successful trials and demonstrations of Devas’s technology in Bangalore. These trials used an existing INSAT satellite and Devas’s hybrid network architecture, which was supplied by Alcatel-Lucent, to test the Devas system’s capabilities, including its mobile multimedia and broadband services.¹²⁶
63. Top Antrix personnel attended these September 2009 trials, including Dr. Nair, then the head of the Space Commission, DOS, ISRO, and Antrix, and Dr. K Radhakrishnan, Dr. Nair’s successor in those positions. Both Dr. Nair and Dr. Radhakrishnan also attended a ceremony at the end of the trials that Devas held in its Bangalore offices to celebrate the trials’ success.¹²⁷ At the trial, Dr. Radhakrishnan stated that the cooperation between Devas and Antrix was “*great*” and that he was “*looking forward to the launch*” of the first of the two planned satellites.¹²⁸
64. In the summer of 2010, Devas held further technical trials in Germany and China. In Germany, the trials were conducted on DT’s platform to demonstrate the TD-LTE and DVB-SH wireless ecosystems Devas was developing in partnership with Alcatel Lucent.¹²⁹ In China, Huawei Technologies demonstrated their TD-LTE and CMMB ecosystem.¹³⁰ Like the trials in Bangalore, both these trials were effective, successful and further demonstrated the viability of Devas’s technology.¹³¹

¹²⁴ See **Exhibit C-036**, J&M Award, ¶ 208. See also **Exhibit C-306**, Payment of 1st Installment of Upfront Capacity Reservation Fee from Devas to Antrix , 21 June 2006; **Exhibit C-309**, Payment of First Installment of Upfront Capacity Reservation Fee for PS2 from Devas to Antrix , 18 June 2007.

¹²⁵ See **Exhibit C-033**, ICC Award, ¶¶ 86-87; **Exhibit C-036**, J&M Award, ¶ 109.

¹²⁶ See First Witness Statement of Lawrence T. Babbio, Jr., 20 January 2023, ¶ 17.

¹²⁷ See **Exhibit C-033**, ICC Award, ¶ 87; **Exhibit C-036**, J&M Award, ¶ 109 (noting that the trials “*successfully took place in Bangalore in September 2009 in the presence of Dr. Radhakrishnan*”).

¹²⁸ **Exhibit C-033**, ICC Award, ¶ 87; **Exhibit C-036**, J&M Award, ¶ 109.

¹²⁹ See **Exhibit C-033**, ICC Award, ¶ 108; **Exhibit C-036**, J&M Award, ¶ 111; **Exhibit C-045**, DT Award ¶ 386.

¹³⁰ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 69.

¹³¹ See **Exhibit C-033**, ICC Award, ¶ 108; **Exhibit C-045**, DT Award ¶ 386. See also **Exhibit C-036**, J&M Award, ¶ 111. See also **Exhibit C-247**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, ICC Case 18051/CYK, Witness

65. Accordingly, by the time India terminated the Agreement, Claimants' investments in Devas had allowed it to "successfully reach[] a number of milestones, including securing investment, management, vendors, licenses and a successful demonstration of the technology."¹³² All three arbitral tribunals have confirmed as much.¹³³

B. India Terminates The Agreement

66. While Devas was developing its services, in late 2009, political pressures led Antrix to seek ways to exit the Agreement. Specifically, an unrelated political scandal involving a series of allegations against government officials for improperly allocating 2G spectrum to preferred telecommunications companies in exchange for kickbacks put pressure on ISRO and Antrix, prompting Antrix to look for reasons to annul the Agreement.¹³⁴ As the Initial BIT Tribunal noted:

"The Tribunal is left with no doubt that, inside the Indian administration, during the discussions leading to the request to the CCS for the annulment of the Devas Agreement, a mix of factors was at play.

*First and foremost, the fear of a political scandal similar to the previous one relating to the attribution of 2G licenses and arising out of the publication of some articles on the subject in Indian media is a likely explanation of the sudden frenzy in June 2010 of the DOS, and of Dr. Radhakrishnan in particular, in agitating for and obtaining from the Space Commission in less than a month the decision to annul the Devas Agreement."*¹³⁵

67. Accordingly, between late 2009 and 2011, ISRO/Antrix commissioned several reviews of the Agreement from various technical and legal agencies within India to find a viable method to terminate the Agreement. None of these found any wrongdoing by Devas; rather,

Statement of Dr. Rajendra Singh, 19 February 2012, ¶ 54 (testifying that Dr. Radhakrishnan attended Devas's experimental trials and told Dr. Singh that the Devas-Antrix partnership was "great.").

¹³² Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 67.

¹³³ See **Exhibit C-033**, ICC Award, ¶¶ 108; **Exhibit C-036**, J&M Award, ¶¶ 109-11; **Exhibit C-049**, Quantum Award, ¶ 363 ("A willing buyer would also have noticed that Devas was able to meet certain important milestones between 2009 and February 2011"); **Exhibit C-045**, DT Award, ¶ 386.

¹³⁴ See **Exhibit C-025**, "Chronology of developments related to 2G spectrum case," The Hindu Times, 2 February 2011 (describing issuance of 2G licenses after agencies rule out auctioning spectrum, investigations into government officials, and resignations); **Exhibit C-033**, ICC Award, ¶¶ 97-100; **Exhibit C-036**, J&M Award, ¶ 322.

¹³⁵ See **Exhibit C-036**, J&M Award, ¶¶ 321-22 (emphasis added). See also ¶¶ 324-25.

several of them applauded Devas's credentials, the promise of the Project and Devas's efforts to implement it. Taking them in turn:

- a. Dr. Radhakrishnan, who had succeeded Dr. Nair at the end of October 2009 as the Chairman of the Space Commission, Secretary of DOS, and Chairman of ISRO/Antrix,¹³⁶ commissioned an internal review of all aspects of the Devas-Antrix Agreement by Dr. B. N. Suresh, Director of the Indian Institute of Space and Technology. A committee led by Dr. Suresh (the "**Suresh Committee**") worked over five or six months, between December 2009 and around April or May 2010, to complete a comprehensive review of the Devas-Antrix Agreement in which "[a]ll applicable documents were . . . scrutinized in detail." The Suresh Committee also held "[d]etailed discussions. . .with Antrix, SCPO and DOS officials on all aspects" of the "legal, commercial, procedural and technical aspects of th[e] contract."¹³⁷ In its final report, dated June 2010 (the "**Suresh Report**"), the Suresh Committee found no wrongdoing by Devas (or Antrix) and recommended that the Devas-Antrix Agreement should not be terminated.¹³⁸ Instead, the Report concluded that there was "**absolutely no doubt on the technical soundness of the digital multimedia services as proposed in this hybrid satellite and terrestrial system.**"¹³⁹ The Devas technology, the Suresh Report found, would use the "latest global technologies" to "enable the overall system to seamlessly deliver services through out India, both in rural and urban environments."¹⁴⁰ In addition, the Suresh Report concluded that "Antrix has been following the policy guidelines for leasing the transponder services to private service providers as per the Satcom

¹³⁶ See Notice of Arbitration, 2 February 2022, ¶¶ 33-35. See also **Exhibit C-036**, J&M Award, ¶ 316.

¹³⁷ **Exhibit C-023**, Suresh Report, p. 3. See also **Exhibit C-036**, J&M Award, ¶¶ 122-23.

¹³⁸ See generally **Exhibit C-023**, Suresh Report, pp. 16-17 (recommendations). The Suresh Report also includes a chronological table of the negotiations, execution, and performance of the Devas-Antrix Agreement, at pp. 6-8, that supports Claimants' narrative. See also **Exhibit C-036**, J&M Award, ¶¶ 122-23.

¹³⁹ **Exhibit C-023**, Suresh Report, p. 15 (emphasis added). See also **Exhibit C-036**, J&M Award, ¶¶ 122-23.

¹⁴⁰ **Exhibit C-023**, Suresh Report, p. 3. See also **Exhibit C-036**, J&M Award, ¶¶ 122-23.

policy,”¹⁴¹ noting that SATCOM Policy at the time was clear in allowing “*leasing satellite capacity by Antrix*” on a “*first come first serve basis*.”¹⁴²

- b. Dr. Radhakrishnan also consulted the DOT and Ministry of Law and Justice about whether the Agreement should be annulled. An advisor to the Minister for Law and Justice recommended termination in a note, citing “*new strategic needs[] which required accommodation in the S-band*.”¹⁴³ DOT advised that DOS’s spectrum was for “*strategic use [and] not to be shared with commercial applications*.”¹⁴⁴
- c. After these consultations, DOS wrote to the Space Commission seeking guidance.¹⁴⁵ The Space Commission, after deliberations, concluded “*strategic requirements including societal ones*” were to take priority and that DOS should “*evolve a revised utilization plan for GSAT-6 and GSAT-6A satellites, taking into account the strategic and societal imperatives of the country*.”¹⁴⁶
- d. Dr. Radhakrishnan next turned to the Additional-Solicitor General’s office for a rationale to annul the Devas-Antrix Agreement.¹⁴⁷ The Additional-Solicitor General advised Antrix that it could annul the Agreement pursuant to its *force majeure* clause on the basis that India’s decision to reallocate the spectrum would fall under the provision.¹⁴⁸
- e. On 9 February 2011, the Indian Prime Minister commissioned a “*High Powered Review Committee*,” led by B.K. Chaturvedi and Professor Roddam Narasimha (the “**Chaturvedi Committee**”).¹⁴⁹ The Chaturvedi Committee’s mandate was to report

¹⁴¹ **Exhibit C-023**, Suresh Report, p. 15. *See also* **Exhibit C-036**, J&M Award, ¶¶ 122-23.

¹⁴² **Exhibit C-023**, Suresh Report, p. 17. *See also* **Exhibit C-036**, J&M Award, ¶¶ 122-23.

¹⁴³ **Exhibit C-036**, J&M Award, ¶ 131.

¹⁴⁴ **Exhibit C-036**, J&M Award, ¶ 132.

¹⁴⁵ **Exhibit C-036**, J&M Award, ¶ 133.

¹⁴⁶ **Exhibit C-036**, J&M Award, ¶ 134.

¹⁴⁷ *See* **Exhibit C-336**, THE HINDU, *Additional Solicitor-General’s opinion on Antrix-Devas deal*, 11 February 2011. *See also* **Exhibit C-036**, J&M Award, ¶ 135.

¹⁴⁸ *See* **Exhibit C-036**, J&M Award, ¶¶ 135-37.

¹⁴⁹ *See* **Exhibit C-036**, J&M Award, ¶ 145. *See also* **Exhibit C-036**, J&M Award, ¶ 145.

on “*various aspects of the agreement between Antrix & M/s Devas Multimedia Pvt. Ltd.*”.¹⁵⁰ The Chaturvedi Committee was also commissioned to “*review the technical, commercial, procedural and financial aspects of the [Devas Agreement]*’, but it was also required to ‘*tak[e] into account the report of internal review conducted by [DOS],’ as well as the ‘review mandated by the Space Commission at its [...] meeting, held on July 2, 2010.*’”¹⁵¹ Like the Suresh Report before it, the Chaturvedi Report, issued in March 2011, found no wrongdoing by Devas or its officers, or even Antrix officials, who it found had acted “***consistently with its policies and past experience in developing various space-related technologies in different areas***” and thus “*sought a service provider who had technologies for “hybrid digital communications.”*”¹⁵² The Report also affirmed that “[c]oncerns on cheap selling of spectrum to Devas have no basis whatsoever.”¹⁵³ The Report further recognized the extraordinary competence of Devas officers¹⁵⁴ the difficulty that ISRO faced in acquiring the latest technology, and ISRO’s active search for a service provider for hybrid digital communications.¹⁵⁵ The Report nonetheless lamented that the Agreement allowed the “*entry of major foreign players*” in the Indian market even though “*technically this was permitted.*”¹⁵⁶ Though it found no malfeasance by DOS/ISRO/Antrix, the Report considered that the agency’s contracting processes were deficient and made recommendations to improve them.¹⁵⁷ Accordingly, the Report made recommendations such as moving

¹⁵⁰ **Exhibit R-0006**, Chaturvedi Report. *See also Exhibit C-036*, J&M Award, ¶ 145.

¹⁵¹ **Exhibit C-036**, J&M Award, ¶ 145.

¹⁵² **Exhibit R-0006**, Chaturvedi Report, PDF p. 38. *See also Exhibit R-0006*, Chaturvedi Report, PDF p. 38 (“*it was difficult to get technology from other sources and[] this was the major attraction of the [Forge Advisors] proposal.*”). *See also Exhibit C-036*, J&M Award, ¶¶ 147-52.

¹⁵³ **Exhibit R-0006**, Chaturvedi Report, PDF p. 6. *See also Exhibit C-036*, J&M Award, ¶¶ 147-52.

¹⁵⁴ *See Exhibit R-0006*, Chaturvedi Report, PDF p. 38 (Devas founders had “*excellent management credentials , too, with experience at institutions like the Wharton Business School and McKinsey.*”). *See also Exhibit C-036*, J&M Award, ¶¶ 147-52.

¹⁵⁵ *See Exhibit R-0006*, Chaturvedi Report, PDF p. 37 (“*options open to ISRO were limited*”), 29 (“*ISRO was looking for a service provider possessing technologies for hybrid digital communication.*”). *See also Exhibit C-036*, J&M Award, ¶¶ 147-52.

¹⁵⁶ **Exhibit R-0006**, Chaturvedi Report, PDF p. 47. *See also Exhibit C-036*, J&M Award, ¶¶ 147-52.

¹⁵⁷ Specifically, the Chaturvedi Report complained that:

“ANTRIX ... towards becoming a real corporation with distinct identity having a critical minimum full time staff drawn on placement-posting from ISRO/DOS” to improve efficiency.¹⁵⁸

68. Thus, India’s own reviews revealed no legitimate grounds to terminate the Agreement, and in fact had confirmed its enormous value to India and the soundness of Devas’s technology. Accordingly, ISRO/Antrix took the advice of India’s Additional Solicitor General and Ministry of Law and Justice and proceeded to terminate the Agreement on *force majeure* grounds instead.¹⁵⁹ On 25 February 2011, Antrix notified Devas that the Indian Government had decided that the spectrum leased to Devas should not be used for commercial purposes, which constituted *force majeure*, on the basis of which the Agreement was terminated.¹⁶⁰ Neither the Cabinet Committee on Security at the time it annulled the Agreement, nor Antrix nor India at any point during the Arbitrations that followed,¹⁶¹ alleged that any suspicion of fraud or impropriety with the Devas-Antrix Agreement or its implementation motivated India’s decision to annul the Agreement.
69. Instead, in the Arbitrations, India took the position that it sought to annul the Agreement because it wanted to reallocate the spectrum to its armed forces.¹⁶² India based its position on the 17 February 2011 decision of the Cabinet Committee on Security, presided over by the Prime Minister, which annulled the Agreement “[t]aking note of the fact that the Government policies with regard to the allocation of spectrum have undergone a change in the last few years and there has been an increased demand for allocation of spectrum

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- ISRO failed to sufficiently de-risk the Agreement by accepting financial penalties if it did not launch the satellites on time. **Exhibit R-0006**, Chaturvedi Report, PDF p. 39 (“ISRO took risk in selecting [Forge Advisors] and planning its satellite launch on unproven technological capabilities.”)
 - DOS failed to properly identify the Devas-Antrix Agreement in its request for approval from the Space Commission even though “it had not been the practice in the past to mention the specific agency or company with whom any contract/agreement had been made, and the notes were in general terms.” *Id.* PDF p. 48.

¹⁵⁸ **Exhibit R-0006**, Chaturvedi Report, PDF p. 58. See also **Exhibit C-036**, J&M Award, ¶¶ 147-52.

¹⁵⁹ See *supra* ¶¶ 67.b, 67.d.

¹⁶⁰ See **Exhibit C-159**, Letter from H.N. Madhusudhan to Devas, 25 February 2011. See also Notice of Arbitration, 2 February 2022, ¶¶ 33-35. See also **Exhibit C-036**, J&M Award, ¶ 146.

¹⁶¹ See *infra* ¶ 82. See generally **Exhibit C-036**, J&M Award.

¹⁶² See **Exhibit C-036**, J&M Award, ¶¶ 311-14.

*for national needs, including for the needs of defence...*¹⁶³ The Initial BIT Arbitration Tribunal ultimately found that India’s decision to annul the Agreement was based on a numbers of factors, including its own national security interests, but also “*purely political* [factors],”¹⁶⁴ and other “*objectives . . . which had nothing to do with national security.*”¹⁶⁵

C. Arbitrations Follow Termination Of Devas-Antrix Agreement And India Retaliates

70. As the three Tribunals later confirmed, Antrix’s wrongful termination of the Devas-Antrix Agreement constituted a breach of both the Devas-Antrix Agreement and India’s obligations under international law. Accordingly, soon after Antrix terminated the Devas-Antrix Agreement in February 2011, Devas, Claimants and DT all initiated, and then won, their respective Arbitrations against Antrix and India.¹⁶⁶ In response, Indian Government authorities pursued retaliatory, harassing criminal and civil investigations against Devas, its officers, and investors.

1. The Arbitrations Trigger Retaliatory Investigations By Indian Authorities

a) Antrix Retaliates By Initiating Investigations

71. Even though multiple prior reports by high level Indian Government officials had found no reason to suspect Devas or any of its officers of any wrongdoing whatsoever,¹⁶⁷ the prospect of imminent arbitration prompted Indian authorities to launch investigations that were plainly fishing expeditions.

¹⁶³ **Exhibit C-123**, CCS Decides to Annul Antrix-Devas Deal, Press Information Bureau, Government of India, 17 February 2011. *See also* **Exhibit C-036**, J&M Award, ¶ 146.

¹⁶⁴ **Exhibit C-036**, J&M Award, ¶ 330. *See also* ¶¶ 358-61.

¹⁶⁵ **Exhibit C-036**, J&M Award, ¶ 371.

¹⁶⁶ *See* **Exhibit C-033**, ICC Award, ¶ 401 (which ordered Antrix to pay Devas USD 562.5 million in damages for its wrongful repudiation of the Agreement); **Exhibit C-036**, J&M Award, ¶ 501 (which found that India had unlawfully expropriated Claimants’ investment in India); **Exhibit C-045**, DT Award, ¶ 424 (which declared that India had breached its obligation to afford DT fair and equitable treatment); **Exhibit C-049**, Quantum Award, 13 October 2020, ¶ 663 (which ordered India to pay Claimants damages over USD 111 million plus interest and USD 10 million in attorneys’ fees plus interest).

¹⁶⁷ *See supra* ¶ 67.

72. Six weeks after Devas notified Antrix of its rights under the Agreement,¹⁶⁸ including the right to initiate arbitration, on 1 June 2011, Dr. Radhakrishnan (in his alternate capacity as Secretary to India’s Department of Space) wrote to the Department of Corporate Affairs asking it to conduct an “*in depth*” examination into Devas’s finances and technological capacity.¹⁶⁹ He based this request on the Chaturvedi Report,¹⁷⁰ even though, as discussed above, this Report (as well as the others before and after it) had found no evidence of wrongdoing against Devas or its officers.¹⁷¹ That this was merely a fishing expedition designed to assist Antrix in a potential arbitration is made clear by Dr. Radhakrishnan’s final request, by which he sought information on:

*“Any other issue which is incidental to the main context of the investigation with reference to the relevant provisions of the Foreign Exchange Management Act, 1999, Prevention of Money Laundering Act, 2002, Companies Act, 1956; and other Legislation that may come to light during the courts [sic] of investigation.”*¹⁷²

73. On 29 June 2011, Devas initiated the ICC Arbitration against Antrix.¹⁷³ Just a few weeks later, on 11 August 2011, India’s Registrar of Companies (“**ROC**”), a branch of the Ministry of Corporate Affairs (“**MCA**”) responsible for the registration of companies under Indian law,¹⁷⁴ sent Devas a notice directing Devas to keep ready and allow inspection of, among other documents, its statutory registers and books of accounts.¹⁷⁵ The ROC’s notice provided no legal or factual basis for its request.¹⁷⁶

¹⁶⁸ See **Exhibit C-170**, Letter from Antrix to Devas, 15 April 2011; **Exhibit C-171**, Letter from Devas to Antrix, 18 April 2011, p. 2. See also **Exhibit C-036**, J&M Award, ¶ 156.

¹⁶⁹ See **Exhibit C-026**, Letter from Dr. Radhakrishnan to DK Mittal, Department of Corporate Affairs, 1 June 2011.

¹⁷⁰ **Exhibit C-026**, Letter from Dr. Radhakrishnan to DK Mittal, Department of Corporate Affairs, 1 June 2011.

¹⁷¹ See *supra* ¶ 67.e.

¹⁷² **Exhibit C-026**, Letter from Dr. Radhakrishnan to DK Mittal, Department of Corporate Affairs, 1 June 2011. (emphasis added)

¹⁷³ See **Exhibit C-027**, ICC Arbitration Request for Arbitration, 29 June 2011.

¹⁷⁴ See **Exhibit C-172**, § 609, Companies Act, 1956 (India); **Exhibit C-173**, § 396, Companies Act, 2013 (India).

¹⁷⁵ **Exhibit C-028**, *Devas Multimedia Pvt. Ltd. v. Union of India and Others*, High Court of Delhi at New Delhi, W.P.(C) No. 8554/2011, Writ Petition, 5 December 2011 (“**Devas Writ Petition in the High Court of Delhi**”), PDF p. 84.

¹⁷⁶ **Exhibit C-028**, *Devas Writ Petition in the High Court of Delhi*, 5 December 2011, PDF p. 8.

74. From that point onwards, the ROC inundated Devas with repeated and harassing demands for documents as part of its “*inspection*”.¹⁷⁷ ROC officers began appearing at Devas’s offices to inspect documents and question employees, often with less than a day’s notice.¹⁷⁸ After Devas protested this harassing conduct by letter on 24 August 2011, the ROC threatened to respond with the “*full force and might*” of its coercive powers.¹⁷⁹ Notwithstanding their harassing and disruptive nature, Devas (under protest) complied with the ROC’s requests.¹⁸⁰
75. Despite Devas’s cooperation, on 25 November 2011, the MCA notified Devas that the Central Government had ordered a statutory “*investigation*” into the company.¹⁸¹ Again, India provided no written legal or factual basis for the order.
76. Nor could it have. The MCA subsequently acknowledged that the investigation was entirely pretextual; instigated solely at Dr. Radhakrishnan’s request and explicitly to serve Antrix’s interest in the ICC Arbitration. In a letter to Dr. Radhakrishnan, the MCA stated:

“Kindly refer to [your] letter dated 1st June, 2011 addressed to my predecessor seeking investigation by this Ministry on four specific queries...to ascertain position, an investigation was ordered under section

¹⁷⁷ See **Exhibit C-028**, Devas Writ Petition in the High Court of Delhi, 5 December 2011, PDF p. 8-11.

¹⁷⁸ For example, on 29 November 2011, the ROC informed Devas that it would be coming to the company’s offices the following day at 11:00 a.m. for an investigation. The next day, ROC investigators arrived at Devas’s office and stayed there until 7:30 p.m., then came again the following day at 2:00 p.m. to further inspect books, ledgers and tax returns. In the late evening, the investigators then issued a summons requiring Devas’s secretary to appear at the ROC’s Bangalore office at 10:00 a.m. the following morning. **Exhibit C-028**, Devas Writ Petition in the High Court of Delhi, 5 December 2011, PDF pp. 10-11.

¹⁷⁹ See **Exhibit C-028**, Devas Writ Petition in the High Court of Delhi, 5 December 2011, PDF p. 30 (“*The Petitioner further states that during the course of the said inspection on 26 August 2011, the ROC expressly conveyed its extreme displeasure on account of the Petitioner’s written expression of its protest vide the Petitioner’s communication of 24 August 2011 making it clear that the said communication would be answered with the full force and might of the authority and powers of the ROC by invoking its coercive powers under Section 209A in order to, inter alia, compel each and every Director on the Board of the Petitioner to report to the Office of the ROC*”).

¹⁸⁰ See **Exhibit C-028**, Devas Writ Petition in the High Court of Delhi, 5 December 2011, PDF pp. 31.

¹⁸¹ See **Exhibit C-028**, Devas Writ Petition in the High Court of Delhi, 5 December 2011, PDF p. 65.

*235 of the Companies Act...it is hoped that the findings of the investigations meet the requirements of your Department.*¹⁸²

77. Seeking redress against India's blatant abuse, on 5 December 2011, Devas challenged the validity of its sham "*investigation*" before the Delhi High Court. The High Court ordered India to take "*no coercive steps*" against Devas "*for prosecution*".¹⁸³
78. This did not deter India. After the High Court's stay order, on 2 February 2012, the MCA advised Dr. Radhakrishnan to broaden his fishing expedition to include other investigative agencies, because "*it is possible that further investigation by some other agency may yield still more details on the relevant issues.*"¹⁸⁴
79. Thus, at the end of 2011 and in 2012, and notwithstanding the High Court's stay order, India's ED, Income Tax Department and Service Tax Department all simultaneously began investigations into Devas and its officers.¹⁸⁵ At this time, none of these agencies alleged, or even purported to investigate, any "*fraud*" or "*criminal conspiracy*" relating to the Devas-Antrix Agreement.¹⁸⁶
80. On 3 July 2012, Claimants commenced the Initial BIT Arbitration against India pursuant to the India-Mauritius BIT, claiming that India had unlawfully expropriated their investment and denied them fair and equitable treatment by cancelling the Agreement. On 2 September 2013, DT too initiated the DT Arbitration against India on similar grounds.¹⁸⁷
81. This prompted India to intensify its investigations to fish for anything of value to use in the Arbitrations. On 17 January 2014, the DOS wrote to the MCA stating:

"3. You may be aware that the commercial arbitration initiated by Devas against Antrix and that initiated by its foreign investors against the

¹⁸² **Exhibit C-174**, Letter from Ministry of Corporate Affairs to Dr. Radhakrishnan, 2 February 2012. (emphasis added)

¹⁸³ **Exhibit C-029**, Delhi Court Order, 7 December 2011; **Exhibit C-030**, Delhi Court Order, 29 May 2012.

¹⁸⁴ **Exhibit C-174**, Letter from Ministry of Corporate Affairs to Dr. Radhakrishnan, 2 February 2012.

¹⁸⁵ See **Exhibit C-028**, Devas Writ Petition in the High Court of Delhi, 5 December 2011, PDF p. 26; **Exhibit C-089**, Initial Arbitration Notice of Arbitration, 3 July 2012, PDF p. 6.

¹⁸⁶ See **Exhibit C-028**, Devas Writ Petition in the High Court of Delhi, 5 December 2011, PDF p. 47.

¹⁸⁷ **Exhibit C-045**, DT Award, ¶ 10.

Government are in progress. The outcome of the investigations by [the Ministry of Corporate Affairs] would be of use to the Government and Antrix in handling the arbitrations.

4. I shall be grateful, if you can advise the concerned to make out all efforts to... complete the investigation and send us a report on the outcome of the investigations.”¹⁸⁸

82. Predictably, the investigations turned up nothing of value that Antrix or India could use before an objective and independent international tribunal. Thus, despite four years of ongoing investigations by the MCA, ED, and Income Tax Department, Antrix and India made no allegation of “*fraud*” or “*criminal conspiracy*” to challenge the validity of the Devas-Antrix Agreement in the ICC, Initial BIT or DT Arbitrations.¹⁸⁹ Instead, Antrix’s case in the ICC Arbitration was that its termination of the Agreement was justified by principles of “*force majeure*” and legal “*impossibility*” because the armed sector required the spectrum that Antrix had leased to Devas.¹⁹⁰ Likewise, India’s primary case in the Initial BIT (and DT) Arbitration was that the armed sector’s alleged need for the spectrum was protected by the BIT’s “*Essential Security Interests*” provision.¹⁹¹
83. Nonetheless, the investigations within India marched on. On 1 May 2014, India’s Central Bureau of Investigation (“**CBI**”) – a special police force ordinarily tasked with investigating national-level fraud, corruption, economic crimes, and special crimes like terrorism¹⁹² – registered a “*Preliminary Enquiry*” against Devas. The CBI did not disclose what prompted the enquiry.

¹⁸⁸ **Exhibit C-179**, Letter from Department of Space to Ministry of Corporate Affairs, 17 January 2014 (emphasis added).

¹⁸⁹ See generally **Exhibit C-036**, J&M Award.

¹⁹⁰ See **Exhibit C-176**, *Devas Multimedia Private Limited v. Antrix Corporation Limited*, ICC Case No. 18051/CYK, Antrix’s Statement of Defence, 15 November 2013, ¶¶ 79, 90-92, 104; **Exhibit C-177**, *Devas Multimedia Private Limited v. Antrix Corporation Limited*, ICC Case No. 18051/CYK, Antrix’s Rejoinder, 1 August 2014, ¶ 6.

¹⁹¹ See **Exhibit C-178**, *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, And Telcom Devas Mauritius Limited v. The Republic of India*, PCA Case No. 2013-09, India’s Statement of Defence, 2 December 2013, ¶¶ 76-89, 99-120.

¹⁹² See **Exhibit C-285**, *Vineet Narain and Ors. v. Union of India and Ors.* (1998) 1 SCC 226, 18 December 1997, ¶ 30.

84. This enquiry alleged – for the very first time and on a “*prima facie*” basis – that Devas officers had engaged in a “*criminal conspiracy*” with officials of Antrix and the Indian Government to enter into the Devas-Antrix Agreement.¹⁹³ The “*facts*” to which the CBI pointed as supposed evidence of this criminal conspiracy were simply ordinary negotiations leading up to the Devas-Antrix Agreement. These negotiations had been detailed in the Arbitration proceedings, including with copious witness evidence from Mr. Viswanathan, yet India/Antrix never alleged they were improper in any way in the Arbitrations. Indeed, the purported “*evidence*” of a criminal conspiracy identified by the CBI included the following mundane facts that were on the record in the ICC and Initial BIT Arbitrations:¹⁹⁴

- a. Mr. Viswanathan meeting with ISRO/Antrix officials in 2003 and signing an MOU to discuss strategic areas of partnership. Mr. Viswanathan had testified about the MOU and the subsequent negotiation process in the ICC and Initial BIT Arbitrations, with no complaints from Antrix/India.¹⁹⁵
- b. Antrix’s representation in the Agreement that it would provide technical assistance to Devas to obtain the requisite licenses and regulatory approvals.¹⁹⁶ According to the CBI, this somehow showed that “*officials of Antrix were more than willing to help Devas by going out of way*”,¹⁹⁷ though Antrix/India had raised no such objections to this provision in the Arbitrations.¹⁹⁸
- c. After the Agreement was signed, the directors of Forge Advisors, took positions on Devas’s Board. According to CBI, this was “*against the spirit*” of the Shankara Committee’s recommendation that the Agreement be executed with an Indian

¹⁹³ **Exhibit C-032**, Complaint by Shri Sushil Dewan, Inspector of Police, CBI, 16 March 2015 (“**CBI Complaint**”), ¶ 1.

¹⁹⁴ *See supra* § II.

¹⁹⁵ *See Exhibit C-093*, Initial BIT Arbitration, Witness Statement of Ramachandran Viswanathan, 29 June 2013, ¶¶ 35-51

¹⁹⁶ *See supra* ¶ 43.

¹⁹⁷ **Exhibit C-032**, CBI Complaint, 16 March 2015, ¶ 7.

¹⁹⁸ *See supra* ¶ 82.

company,¹⁹⁹ but again Antrix/India did not challenge the composition of Devas's board during the Arbitrations.²⁰⁰

- d. The CBI alleged, without referring to any evidence, that Devas officials made “*false, wrong and incorrect*” representations about their technological capacity to Antrix, thereby receiving “*wrongful gain[s]*” worth millions of U.S. Dollars.²⁰¹ Antrix/India took no issue with the representations Devas had made regarding its technological capabilities during any of the Arbitrations. Indeed, they could not have given that multiple contemporaneous high-level Government reviews (such as by the Suresh and Chaturvedi Committees)²⁰² had previously found that that there was “*absolutely no doubt on the technical soundness of the digital multimedia services as proposed in [Devas's] hybrid satellite and terrestrial system*”,²⁰³ and that Devas comprised of officers who were “*well-qualified and experienced...in the field of technology management*”.²⁰⁴

85. The CBI also faulted ISRO/DOS/Antrix for apparently failing to secure internal approvals to enter into and following the Agreement.²⁰⁵ This allegation lacks credibility given the significant attention paid to the Devas-Antrix Agreement at the highest levels of the DOS

¹⁹⁹ **Exhibit C-032**, CBI Complaint, 16 March 2015, ¶ 8.

²⁰⁰ *See supra* ¶ 82.

²⁰¹ **Exhibit C-032**, CBI Complaint, 16 March 2015, ¶¶ 14-15.

²⁰² **Exhibit C-032**, CBI Complaint, 16 March 2015, ¶ 12.

²⁰³ **Exhibit C-023**, Suresh Report, p. 15 (emphasis added).

²⁰⁴ **Exhibit R-0006**, Report of the High Powered Review Committee on Various Aspects of the Agreement between Antrix & M/s. Devas Multimedia Pvt. Ltd., 12 Mar. 2011, ¶ 3.2.7.

²⁰⁵ Specifically, the CBI alleged that:

- Antrix kept the Space Commission and the ‘Cabinet’ “*in [the] dark*” about the Agreement in the months after it was signed, which showed that these regulatory bodies were being used as “*rubber stamps*”;
- Officials of ISRO/DOS and Antrix committed many unnamed “*omissions and commissions intentionally*” which facilitated the commission of these “*offences*”, which were purportedly investigated by various committees, including the Suresh Committee, the High Powered Review Committee, a “*High Level Team*” and India’s Comptroller and Auditor General; and
- That these “*omissions and commissions*” prompted Antrix to annul the Agreement in accordance with the decision of the Cabinet Committee on Security.

See Exhibit C-032, CBI Complaint, 16 March 2015, ¶¶ 1-16.

and the Indian Government.²⁰⁶ Even so, India was aware of all these supposed deficiencies at the time of the Arbitrations, and did not raise them before those Tribunals as reasons to undermine the Agreement or deem it non-enforceable.

86. Notably, that same month, in May 2014, there was a political shift in India. A political party, the Bharatiya Janata Party (“**BJP**”), was elected to power, defeating the incumbent Congress Party.²⁰⁷ The BJP later publicly admitted that it escalated the retaliatory campaign against Devas after it came to power.²⁰⁸

2. India’s Losses Prompt It To Launch More Investigations

87. By 2015, the ICC Arbitration proceedings were coming to a close. The final hearing was held from 15 to 20 December 2014, with the final award then due to be rendered on 31 March 2015.²⁰⁹
88. India proceeded to escalate and multiply the investigations against Devas with no valid basis, simply recycling and repackaging the same flimsy allegations in an attempt to convert law-abiding conduct related to carrying out the Devas-Antrix Agreement into criminal activity. On 16 March 2015, the CBI filed a “*First Information Report*” (“**FIR**”)²¹⁰ against Devas, its officers, some employees of Antrix and Indian governmental agencies.²¹¹ In an FIR, which is the starting point of a criminal investigation under Indian law, a police officer “*reduce[s] to writing*” information given by a person alleging the commission of a crime.²¹² The CBI’s FIR was premised on the “*complaint*” of a CBI official dated 3 March

²⁰⁶ See *supra* ¶ 45.

²⁰⁷ See **Exhibit C-180**, Jason Burke, “Narendra Modi’s landslide victory shatters Congress’s grip on India”, The Guardian, 16 May 2014, available at <https://www.theguardian.com/world/2014/may/16/narendra-modi-victory-congress-india-election>.

²⁰⁸ See *infra* ¶ 231.

²⁰⁹ See **Exhibit C-033**, ICC Award, ¶ 47(f).

²¹⁰ A preliminary information sheet prepared by the police when they receive information about the commission of a criminal offence. See **Exhibit C-181**, § 154, Code of Criminal Procedure, 1973 (India).

²¹¹ **Exhibit C-032**, CBI Complaint, 16 March 2015, p. 2.

²¹² See **Exhibit C-181**, § 154, Code of Criminal Procedure, 1973 (India).

2015, comprised solely of the *prima facie* allegations in the Preliminary Enquiry registered by the CBI nearly a year before.²¹³

89. In parallel, on 31 July 2015, the ED registered an “*Enforcement Case Information Report*” (“**ECIR**”)²¹⁴ against Devas, its officers and investors, seeking their prosecution under India’s Prevention of Money Laundering Act (“**PMLA**”, and action, the “**PMLA Action**”).²¹⁵ The ED acknowledged that the ECIR was not based on an independent investigation or even new facts or materials, but on “*the FIR registered by CBI authorities*” “*which indicated*” that “*a prima facie case of money laundering appeared to have been made out*”.²¹⁶ Effectively, the ED alleged that because Devas had received money from foreign investors—duly approved by the FIPB at the time of the investments²¹⁷—and Devas had since spent some of those funds on foreign employees and vendors such as Alcatel-Lucent while the Agreement was in place, and lawyers after Antrix terminated the Agreement, this amounted to suspicion of money laundering.²¹⁸ Yet, Claimants had put the FIPB approvals on record in the Initial BIT Arbitration (as did DT in the DT Arbitration), and India took no issue with them as proof of the validity of Claimants’ (and DT’s) investments in those Arbitrations.²¹⁹ Likewise, Devas’s transactions with foreign employees and vendors were known to India during the Arbitrations, and India raised no issues with Devas’s activities, all of which simply reflected Devas’s efforts to implement the Devas Project.²²⁰

²¹³ **Exhibit C-032**, CBI Complaint, 16 March 2015, p. 4.

²¹⁴ An “internal document” containing allegations of criminality that is created by the ED before initiating penal action or prosecution.

²¹⁵ **Exhibit C-046**, Complaint Filed Under Section 45(1) r/w 3, 4 and 8(5) of the Prevention of Money Laundering Act, 2002, 10 July 2018, p. 9.

²¹⁶ *See* **Exhibit C-046**, Complaint Filed Under Section 45(1) r/w 3, 4 and 8(5) of the Prevention of Money Laundering Act, 2002, 10 July 2018, p. 12.

²¹⁷ *See supra* ¶ 50.

²¹⁸ **Exhibit C-046**, Complaint Filed Under Section 45(1) r/w 3, 4 and 8(5) of the Prevention of Money Laundering Act, 2002, 10 July 2018, pp. 34-36.

²¹⁹ *See, e.g.*, **Exhibit C-036**, J&M Award, ¶ 200; **Exhibit C-045**, DT Award, ¶ 167.

²²⁰ *See, e.g.*, **Exhibit C-033**, ICC Award, ¶ 348 (noting testimony that “*Devas established a network of suppliers and vendors*”).

90. It comes as no surprise that the new BJP Government employed the CBI and ED to pursue baseless criminal proceedings against Devas. The CBI and ED have been used extensively to target political opposition, journalists and activists.²²¹ Journalists and observers have

²²¹ **Exhibit C-189**, The Indian Express, *ED's list of political accused reads like a Opposition's who's who. Makes it harder for the agency to earn trust*, 3 June 2022, available at <https://indianexpress.com/article/opinion/editorials/enforced-directorate-7949693/> (noting that an “overwhelming majority of the politicians under probe” by the CBI and ED “belong to the ranks of the Opposition”); **Exhibit C-190**, Priyanka Chaturvedi, *Opinion: The ED Or “Extended Department” Of The BJP*, NDTV, 3 August 2022, available at <https://www.ndtv.com/opinion/the-ed-or-extended-department-of-the-bjp-3222299> (A politician from the State of Maharashtra alleging that the “CBI, IT, ED...have been reduced to political tools at the hands of the central government to silence any voices of opposition”); **Exhibit C-191**, Julio Ribeiro, *Former top cop Julio Ribeiro writes: CBI and ED have become political tools for the Centre*, The Indian Express, 23 September 2022, available at <https://indianexpress.com/article/opinion/cbi-ed-raids-opposition-bjp-julio-ribeiro-8167751/> (A former Police Commissioner and Indian Ambassador arguing that the BJP Government has been much more aggressive in arresting and prosecuting opposition leaders than previous governments); **Exhibit C-192**, Express News Service, *CBI-ED working to execute BJP's Operation Lotus: Manish Sisodia*, The Indian Express, 21 September 2022, available at <https://indianexpress.com/article/cities/delhi/cbi-ed-working-to-execute-bjps-operation-lotus-manish-sisodia-8164301/> (A politician from the Union Territory of Delhi alleging that the “ED-CBI has become a tool for carrying out BJP's ‘Operation Lotus’”); **Exhibit C-193**, PTI News Agency, *‘Centre using ED, CBI, I-T as ‘Trishul’ against non-BJP govts: CPI(M)’s Brinda Karat*”, The Indian Express, 19 November 2022, available at <https://indianexpress.com/article/india/centre-using-ed-cbi-i-t-as-trishul-against-non-bjp-govts-cpims-brinda-karat-8277961/lite/> (A politician from the State of Jharkhand accusing the BJP of “using the ED, CBI and income tax departments” as a “trident” “against governments of non-BJP parties” in the states); **Exhibit C-194**, Shivam Kumar Mishra, *In New India, govt is sleeping but ED, CBI working 24 hours, says Kharge*, Zee News, 26 October 2022, available at <https://zeenews.india.com/india/in-new-india-govt-is-sleeping-but-ed-cbi-working-24-hours-says-kharge-2526798.html> (An Opposition leader alleging that the CBI, ED and IT Departments are working “24 hours” a day to prosecute political opponents); **Exhibit C-195**, Express News Services, *TMC protests ‘use of ED, CBI against political opponents*, The Indian Express, 14 August 2022, available at <https://indianexpress.com/article/cities/kolkata/tmc-protests-use-of-ed-cbi-against-political-opponents-8088751/> (Noting protests by a political party in the State of West Bengal against the “use of ED, CBI against political opponents” by the Central Government); **Exhibit C-196**, PTI News Agency, *Modi govt misusing CBI, ED to silence opposition: Congress*, The Telegraph, 29 August 2022, available at <https://www.telegraphindia.com/india/prime-minister-narendra-modi-government-misusing-cbi-ed-to-silence-opposition-congress/cid/1883213> (An Opposition leader alleging that the Central Government can “arrest any leader, they can harass anyone using CBI and ED”); **Exhibit C-197**, Express News Service, *Oppn slams IT raids: ‘move to exterminate independent media’; govt’s ‘teen jamai: ED, IT, CBI*, The Indian Express, 8 September 2022, available at <https://indianexpress.com/article/political-pulse/oppn-slams-it-raids-move-to-exterminate-independent-media-govts-teen-jamai-ed-it-cbi-8138674/> (A politician from the State of Chattisgarh alleging that the Income Tax Department’s raids on three NGOs was “a deliberate move to exterminate all independent media”); **Exhibit C-198**, Dharmesh Thakkar, *Move over CBI, the ED is now the government's main tool against rivals*, The Free Press Journal, 22 August 2022, available at <https://www.freepressjournal.in/india/ed-is-now-the-governments-main-tool-against-rivals> (Arguing that the ED has been used to specifically target opposition leaders); **Exhibit C-199**, Telangana, *Why are the CBI and ED conducting raids only in non-BJP ruled states?*, 28 August 2022, available at <https://telanganatoday.com/why-are-the-cbi-and-ed-conducting-raids-only-in-non-bjp-ruled-states> (Arguing that the CBI and ED were conducting investigations of opposition parties only in States not governed by the BJP); **Exhibit C-200**, Rohit Kumar Singh, *BJP trying to intimidate Opposition with ED, CBI: RJD's Tejashwi Yadav*, India Today, 4 August 2022, available at <https://www.indiatoday.in/india/story/bjp-trying-to-intimidate-opposition-with-ed-cbi-rjd-s-tejashwi-yadav-1983916-2022-08-04> (A politician in the State of Bihar accusing the Central Government of weaponizing the CBI and ED); **Exhibit C-201**, Subhashish Mohanty, *Don't threaten us by using CBI and ED: BJD cautions BJP*, The Telegraph Online, 12 September 2022, available at <https://www.telegraphindia.com/india/dont-threaten-us-by-using-cbi-and-enforcement-directorate-biju-janata-dal-cautions-bjp/cid/1886004> (A politician in the State of Odisha accusing the BJP of weaponizing the CBI and ED); **Exhibit C-202**, Diksha Munjal, *Explained: The ED and CBI's cases against*

extensively studied the “*weaponization*” of India’s investigative agencies by the Central Government, including the CBI, ED and Income Tax Department (all of which also instituted investigations into Devas), particularly since the BJP’s election in 2014.²²² Despite the breadth of investigative power granted to the ED, a startlingly small minority of its actions (0.5%) actually result in criminal convictions.²²³ Even so, the mere institution of criminal proceedings constitutes intimidation and harassment on its own.²²⁴ Similarly

Amnesty International India and Aakar Patel, *The Hindu*, 13 July 2022, available at <https://www.thehindu.com/news/national/explained-the-ed-and-cbis-cases-against-amnesty-international-india-and-aakar-patel/article65626515.ece> (Explaining the CBI and ED’s simultaneous investigations of Amnesty India’s Chief Executive Officer).

²²² **Exhibit C-151**, Deeptiman Tiwary, *Since 2014, 4-fold jump in ED cases against politicians; 95% are from Opposition*, *The Indian Express*, 21 September 2022, available at <https://indianexpress.com/article/express-exclusive/since-2014-4-fold-jump-in-ed-cases-against-politicians-95-per-cent-are-from-opposition-8163060/> (Noting the “*rising perception*” that “*the “ED is now the new CBI” – from being first off the blocks to probe cases with political overtones to taking coercive action before any other Central agency makes a move*”); **Exhibit C-183**, Outlook, *Explained: The Birth And Evolution Of Enforcement Directorate As Indian State's Sword Arm*, Outlook India, 26 July 2022, available at <https://www.outlookindia.com/national/explained-the-birth-and-evolution-of-enforcement-directorate-as-indian-state-sword-arm-news-212141> (Noting that the allegation that the ED is the state’s swordarm “*stems from many cases that ED is pursuing against*” the Central Government’s political opponents); **Exhibit C-184**, Ajay K. Mehra, *The Uses (and Abuses) of Investigative Agencies*, *The Wire*, 12 November 2022, available at <https://thewire.in/government/cbi-ndia-enforcement-directorate-use-abuse> (studying instances where the Central Government has used the CBI and ED to further political goals); **Exhibit C-185**, P. Raman, *Modi’s Raid Raj: ‘Janampatri’ Has Emerged as Key Instrument of Power Against the Opposition*, *The Wire*, 25 March 2022, available at <https://thewire.in/politics/modis-raid-raj-janampatri-has-emerged-as-key-instrument-of-power-against-the-opposition> (Noting that the Central Government has significantly strengthened the capacities of its investigative agencies giving them “*constant instructions...as to whom to strike at and when*”); **Exhibit C-186**, Deeptiman Tiwary, *Opposition leaders in CBI net: History of the struggle to secure agency’s independence*, *The Indian Express*, 21 September 2022, available at <https://indianexpress.com/article/explained/corruption-cases-the-cbis-uneasy-history-8160916/> (Studying the CBI’s history of being used as a tool of the Central Government); **Exhibit C-187**, Vineet Narain, *Freeing the caged parrot*, *The Indian Express*, 23 September 2022, available at <https://indianexpress.com/article/opinion/columns/cbi-ed-must-be-reformed-if-they-are-not-to-be-used-as-instruments-of-intimidation-blackmail-by-governments-8167337/> (noting the “*continuing bias in the functioning of the CBI and ED*” towards the Central Government and suggesting various reforms so that they are “*not used as instruments of blackmail and intimidation by the government of the day*”); **Exhibit C-188**, Debasish Roy Chowdhury, *Modi’s India Is Where Global Democracy Dies*, *New York Times*, 24 August 2022, available at <https://www.nytimes.com/2022/08/24/opinion/india-modi-democracy.html> (Noting that the Central Government uses “*government machinery, disinformation and intimidation by partisan mobs to silence critics*”).

²²³ **Exhibit C-203**, NH Web Desk, *ED’s conviction rate 0.5%, just 23 out of 5422 charge sheets, Parliament informed*, *National Herald*, 26 July 2022, available at <https://www.nationalheraldindia.com/india/eds-conviction-rate-05-just-23-out-of-5422-charge-sheets-parliament-informed>; **Exhibit C-204**, M. K. Venu, “*With Low Conviction Rate, ED Is Nothing More Than a Caged Parrot That Can’t Get Anyone to Sing*”, 28 July 2022, available at <https://thewire.in/law/ed-low-conviction-rate-caged-parrot-that-cant-get-anyone-to-sing>.

²²⁴ **Exhibit C-191**, Julio Ribeiro, *Former top cop Julio Ribeiro writes: CBI and ED have become political tools for the Centre*, *The India Express*, 23 September 2022, available at <https://indianexpress.com/article/opinion/cbi-ed-raids-opposition-bjp-julio-ribeiro-8167751/> (A former Police Commissioner and Indian Ambassador arguing that under the new government “*‘regime’, People are charged, arrested and kept in custody under stringent laws that deny bail even to those who may turn out innocent. The very process of the law’s procedures becomes a punishment that has not been inflicted by a legitimate court.*”).

here, as explained further below, rather than present these criminal allegations in the context of an adversarial process in which it would have to prove them, India used them first to harass, then as a bargaining chip in an attempt to settle, and finally as means to summarily liquidate Devas.

91. On 14 September 2015, the three-member tribunal presiding over the ICC Arbitration, (which included Dr. Michael Pryles (Chairman), Mr. V.V. Veeder QC and Dr. A.S. Anand, former Justice of the Indian Supreme Court), issued a unanimous award concluding that Antrix wrongfully terminated the Devas-Antrix Agreement, and ordering it to pay Devas USD 562.5 million in damages plus interest (“**ICC Award**”).²²⁵ Specifically, the Tribunal found that Antrix had wrongfully terminated the Agreement, dismissing Antrix’s *force majeure* and impossibility defenses.
92. On 9 May 2016, the Initial BIT Tribunal informed the parties to expect the Jurisdiction and Merits Award in the Initial BIT Arbitration by “*no later than mid-July*” 2016.²²⁶ On cue, the ED’s other investigation – which had been pending for five years since 2011²²⁷ – suddenly kicked into gear.
93. On 31 May 2016, an ED officer filed a fresh complaint before the ED’s “*Adjudicating Authority*”²²⁸ claiming that Claimants’ and DT’s foreign investments into Devas from 2006 to 2011 violated the Foreign Exchange Management Act (“**First FEMA Action**”).²²⁹ Notably, India had raised no concerns regarding the validity of Claimants’ and DT’s foreign investments in either Arbitration. This was for good reason, given that the FIPB had duly authorized the investments. Indeed, the ED’s complaints made little sense. The ED complained that because the shareholder agreements were not governed by Indian law

²²⁵ **Exhibit C-033**, ICC Award, ¶ 401.

²²⁶ **Exhibit C-206**, *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, And Telcom Devas Mauritius Limited v. The Republic of India*, PCA Case No. 2013-09, Letter from Tribunal to the Parties, 9 May 2016.

²²⁷ *See supra* ¶¶ 79-81.

²²⁸ A body within the ED comprising of “members” appointed by the Central Government that exercises original and exclusive jurisdiction over PMLA complaints. *See Exhibit C-122*, Chapter III, Prevention of Money Laundering Act, 2002 (India).

²²⁹ **Exhibit C-175**, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, Complaint in File No. T-3/MISC/32-BGZO/2011-12, 31 May 2016.

and included an arbitration provision, “[i]t appears that the foreign Investors have willfully made [Devas] submit to foreign laws and foreign jurisdiction”.²³⁰ And the ED’s other complaint was that Devas was unable to provide the contemplated rates of return to the shareholders, making Claimants and DT “*permanent creditors to the company*”, turning a blind eye to the glaring fact that Devas was unable to meet the contemplated rates of return because Antrix had terminated the Agreement.²³¹ Yet on this basis, the ED claimed penalties running into tens of millions of U.S. dollars against Devas, its officers and investors.²³² One week later, on 6 June 2016, the Adjudicatory Authority issued a notice to these respondents, giving them thirty days to “*show cause*” as to why criminal proceedings should not be instituted against them in respect of these allegations.²³³

94. Devas challenged the constitutionality of the First FEMA Action complaint and show-cause notice up to India’s Supreme Court, on the grounds that: (i) the Indian agency responsible for approving foreign investments, the FIPB, had duly authorized every single investment made by Claimants and DT in Devas; and (ii) the ED had failed to even allege that Devas had unlawfully repatriated sums outside India, a crucial pre-requisite for alleging FEMA violations.²³⁴ The Supreme Court is yet to rule on Devas’s petition.²³⁵ Recognizing that these allegations were baseless, India did not raise them in the ongoing Initial BIT and DT Arbitrations.

²³⁰ **Exhibit C-175**, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, Complaint in File No. T-3/MISC/32-BGZO/2011-12, 31 May 2016, ¶ 5.1.17.

²³¹ **Exhibit C-175**, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, Complaint in File No. T-3/MISC/32-BGZO/2011-12, 31 May 2016, ¶¶ 5.5.5.

²³² **Exhibit C-175** *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, Complaint in File No. T-3/MISC/32-BGZO/2011-12, 31 May 2016, ¶¶ 5.6.1-5.6.8.

²³³ **Exhibit C-097**, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, File No. T-4/03/BGZO/SRO/2016, Show Cause Notice, 6 June 2016, p. 18.

²³⁴ See **Exhibit C-208**, *Devas Multimedia Private Limited v. The Assistant Director Directorate of Enforcement*, Special Leave Petition by Devas (Civil) No. 18742 of 2019, 26 July 2019, PDF pp. 17, 65.

²³⁵ See **Exhibit C-209**, Case Status, *Devas Multimedia Private Limited v. The Assistant Director Directorate of Enforcement*, Special Leave Petition (Civil) No. 18742 of 2019.

95. On 25 July 2016, the Initial BIT Tribunal (comprising of Marc Lalonde, P.C., O.C., Q.C., David R. Haigh, Q.C. and Justice Anil Dev Singh) issued the J&M Award.²³⁶ The Tribunal unanimously found that by annulling the Agreement, India had expropriated Devas's investment and that India had breached its obligation to accord fair and equitable treatment to Devas.²³⁷ The quantum of damages was to be decided in a separate phase of the proceedings.
96. In response, India confirmed to the media its intent to use the CBI and ED proceedings, the allegations of which it had so far refused to adopt in any of the Arbitrations, to frustrate the enforcement of the Arbitration Awards. Contemporaneous news reports confirmed that a "top source" had candidly revealed that India's strategy was "to recover from Devas the amount it hopes to earn through international arbitration. The possible course of action may include imposition of penalty on Devas, and prosecution of the company and all its directors under PMLA."²³⁸
97. The reports proved to be accurate. Just two weeks after the Initial BIT Tribunal rendered the J&M Award, on 11 August 2016, the CBI filed a criminal "charge sheet"²³⁹ against Devas, its employees, and a group of Indian Government officials who had been involved in the negotiation process.²⁴⁰

²³⁶ **Exhibit C-036**, J&M Award. By the date of the J&M Award, India had not committed its most egregious acts of harassment against Devas, its investors, and its employees. Although the Claimants in the J&M Award raised India's burgeoning pressure campaign to the Tribunal, at the time the Statement of Claim was filed in 2013, most of India's investigations were in their infancy. Accordingly, the Tribunal found that "the Tribunal has not received sufficient evidence to conclude that these measures were taken to punish the Claimants or Devas for exercising their respective rights." See **Exhibit C-036**, J&M Award, ¶ 472.

²³⁷ **Exhibit C-036**, J&M Award, ¶ 501

²³⁸ **Exhibit C-037**, Pradeep Thakur, *ED Moves to Prosecute Devas Under PMLA For FEMA Violation*, Times of India, 27 July 2016, available at <https://timesofindia.indiatimes.com/india/ed-moves-to-prosecute-devas-under-pmla-for-fema-violation/articleshow/53407579.cms>. See also **Exhibit C-090**, FP Staff, *ISRO's Antrix vs Devas: Countering ED probe on FEMA multimedia firm moves HIC*, Firstpost, 28 July 2016, available at <http://www.firstpost.com/business/antrixdevus-case-isro-may-face-l-bnfine-for-cancelling-deal-2916004.html> (Investigatory actions would "allow the government to recover from Devas, 'the amount [Devas/Claimants] hope[] to earn through international arbitration.'").

²³⁹ Under Indian law, a "charge sheet" is a report detailing the police's allegations after it "complete[s]" its "investigation", asking that the court take "cognizance" of these allegations and commence criminal proceedings against the named suspects. See **Exhibit C-181**, § 173, Code of Criminal Procedure, 1973 (India).

²⁴⁰ **Exhibit C-038**, Central Bureau of Investigation Charge Sheet, Brief Facts of the Case, 11 August 2016.

98. The CBI made criminal allegations against former Antrix, ISRO and DOS officers for wrongfully “concealing” the Agreement from India’s Space Commission and Union Cabinet in 2005,²⁴¹ and for manipulating the minutes of a government sub-committee meeting in 2009.²⁴² The CBI further alleged that Devas and its officers:
- a. Fraudulently incorporated Devas, based only on the fact that Devas had authorized a non-director (Mr. Gururaj) to sign the Agreement on its behalf in 2004-2005.²⁴³ Not only had India known about this fact for twelve years before the CBI charge sheet (and had not raised any objections about the signee), this allegation ignores the fact that companies are *routinely* incorporated with limited funds to allow for future capital infusion, and that companies *routinely* authorize non-directors (such as chartered accountants and lawyers) to complete the administrative task of signing a contract.²⁴⁴
 - b. Misrepresented Devas’s technological capabilities to Antrix/India from 2003 to 2004.²⁴⁵ The CBI omitted reference in the charge sheet to the various government committee reports that had specifically upheld Devas’s technological capacity and confirmed that the Agreement’s terms were fair and would have benefitted India.²⁴⁶
 - c. Obtained Antrix’s consent to sign the Devas-Antrix Agreement by criminally “conspiring” with certain Antrix officials.²⁴⁷ The CBI did not provide any evidence of a “conspiracy”, which, in any case, makes little sense: The CBI did not allege (nor could it have) that Devas, its officers, or its investors engaged in any bribery

²⁴¹ **Exhibit C-038**, Central Bureau of Investigation Charge Sheet, Brief Facts of the Case, 11 August 2016, ¶¶ 16(65), 16(75).

²⁴² **Exhibit C-038**, Central Bureau of Investigation Charge Sheet, Brief Facts of the Case, 11 August 2016, ¶¶ 16(110).

²⁴³ **Exhibit C-038**, Central Bureau of Investigation Charge Sheet, Brief Facts of the Case, 11 August 2016, ¶¶ 16(44)-(45).

²⁴⁴ See Second Witness Statement of Ramachandran Viswanathan, 20 January 2023 ¶ 28.

²⁴⁵ **Exhibit C-038**, Central Bureau of Investigation Charge Sheet, Brief Facts of the Case, 11 August 2016, ¶ 16(45).

²⁴⁶ See *supra* ¶¶ 83, 84.

²⁴⁷ **Exhibit C-038**, Central Bureau of Investigation Charge Sheet, Brief Facts of the Case, 11 August 2016, PDF pp. 1, 53-55.

or corruption with Antrix or Indian Government officials.²⁴⁸ The CBI offered no alternative explanation for why dozens of the most senior Antrix, ISRO and DOS officials²⁴⁹ would simultaneously seek to “*facilitate*” Devas if Devas were a wrongdoer and a fraudulent company.²⁵⁰

99. The CBI’s own documents reveal that its “investigation” was contrived. Remarkably, the CBI appears to have manufactured evidence to support its charge sheet as its supposed support for its charges were “*Witness Statements*” of different witnesses on different dates that are *verbatim*.²⁵¹
100. India’s own comments also revealed that the CBI’s charges lacked any factual basis and were contrived to impede the Arbitrations and their enforcement. As local news outlets reported, having lost the ICC Arbitration and finding itself on the hook for half a billion dollars to Devas, India had “*decided to nudge the [CBI] to speed up the ongoing criminal investigation in connection with the [Agreement because it] hopes to prove in court that the deal was scrapped . . . due to illegalities and irregularities in the contract.*”²⁵² Lawyers for India reportedly “*told the Prime Minister’s Office that unless a ‘clear case of malafide’ can be made out against Devas, the Antrix case for annulment of [the ICC] arbitration award will be weak.*”²⁵³
101. Thus, with the CBI’s bogus charge sheet in hand, on 27 October 2016, India filed an application to set aside the J&M Award in the seat of the Initial BIT Arbitration, the

²⁴⁸ **Exhibit C-038**, Central Bureau of Investigation Charge Sheet, Brief Facts of the Case, 11 August 2016, ¶¶ 16(2), 16(125).

²⁴⁹ *See supra* ¶¶ 31-38.

²⁵⁰ **Exhibit C-038**, Central Bureau of Investigation Charge Sheet, Brief Facts of the Case, 11 August 2016, ¶¶ 16(2), 16(125).

²⁵¹ *See* Annex 1 to this Memorial.

²⁵² **Exhibit C-034**, Maneesh Chhibber, *Antrix-Devas deal: Government to field top lawyers in Delhi High Court*, The Indian Express, 9 October 2015, available at <https://indianexpress.com/article/india/india-news-india/antrix-devas-deal-government-to-field-top-lawyers-in-delhi-high-court/>.

²⁵³ **Exhibit C-034**, Maneesh Chhibber, *Antrix-Devas deal: Government to field top lawyers in Delhi High Court*, The Indian Express, 9 October 2015, available at <https://indianexpress.com/article/india/india-news-india/antrix-devas-deal-government-to-field-top-lawyers-in-delhi-high-court/>.

Hague.²⁵⁴ In its application, India explicitly relied on the charge sheet’s allegations to set aside the J&M Award, arguing that “*if the Devas Contract was procured in the manner alleged in the Charge Sheet, then it would not qualify as an “investment” ...as it would be void ab initio under Indian law.*”²⁵⁵

102. However, India chose not to raise the fraud allegations as substantive defenses in the quantum-phase of the Initial BIT Arbitration. Instead, it attempted to use the charge sheet to stay the Initial BIT Arbitration pending the outcome of the CBI investigation.²⁵⁶
103. The Initial BIT Tribunal squarely rejected India’s desperate gambit to stall the issuance of an adverse award, noting that the “*CBI Charge Sheet contains no charge against any of the Claimants in the present case,*” and “*although Messrs. Viswanathan, Chandrasekhar and Venugopal were witnesses in the present arbitration . . . no evidence of wrongdoing on their part or on the part of Devas Multimedia Private Ltd. was adduced.*”²⁵⁷ The Initial BIT Tribunal also saw through India’s misleading attempt to characterize the CBI charge sheet as being a “*recent*” development, noting that “*the CBI investigation was initiated in 2014 and its Charge Sheet was issued on 11 August 2016. The Respondent was therefore aware of its contents*” well before it filed the stay application.²⁵⁸
104. Following this decision, India made no further attempts to adduce evidence or arguments relating to any of the allegations the CBI and ED had made against Devas or its officers in the Initial BIT Arbitration. In fact, India had another opportunity to cross examine the very individuals the CBI and ED had implicated, including the alleged “*major beneficiary*” Mr.

²⁵⁴ **Exhibit C-388**, *Republic of India v. CC/Devas (Mauritius) Limited and Others*, C/09/529140, Writ of Summons, 27 October 2016.

²⁵⁵ **Exhibit C-388**, *Republic of India v. CC/Devas (Mauritius) Limited and Others*, C/09/529140, Writ of Summons, 27 October 2016, ¶ 256.

²⁵⁶ **Exhibit C-039**, Respondent’s Letter to the Tribunal, 27 October 2016, p. 4.

²⁵⁷ **Exhibit C-040**, 21 December 2016 UNCITRAL Arbitration Procedural Order No. 7, ¶¶ 16-17.

²⁵⁸ **Exhibit C-040**, 21 December 2016 UNCITRAL Arbitration Procedural Order No. 7, ¶ 19.

Viswanathan,²⁵⁹ at the final hearing on quantum held from 16 to 21 July 2018, but did not question them about any fraud allegation whatsoever.²⁶⁰

105. Antrix too sought to use the charge sheet to its advantage. On 10 November 2016, Antrix amended its petition to set aside the ICC Award before Indian courts (the ICC Arbitration was seated in New Delhi) to include the allegations of fraud.²⁶¹ Though purportedly an “*amendment*”, Antrix now pled an entirely new basis to set aside the ICC Award, i.e., that the CBI and ED’s allegations (that had yet to be tested in court) meant that the Agreement itself was “*fraudulent, illegal and contrary to law and null and void*” and that, accordingly, the ICC Award “*which is purported to be based on the substantive terms of the contract that were obtained through the aforementioned fraud...is patently illegal and contrary to public policy and the fundamental policy of Indian law.*”²⁶²
106. Devas responded to Antrix by noting that this application was not an “*amendment*” at all, but a “*new case*” that was not legally maintainable, filed by Antrix solely to “*protract[] the proceedings*” and “*prejudice*” the court against Devas.²⁶³ The charge sheet was simply an “*report by a police officer*” disclosing his “*opinion*” that, by the explicit terms of Indian law, did not prove the commission of an offence.²⁶⁴ Devas also pointed out Antrix’s failures to raise these allegations in the ICC Arbitration, precluded it from raising them now.²⁶⁵

²⁵⁹ **Exhibit C-038**, Central Bureau of Investigation Charge Sheet, Brief Facts of the Case, 11 August 2016, ¶ 16 (126).

²⁶⁰ See generally, **Exhibit C-100**, *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, And Telkom Devas Mauritius Limited v. The Republic of India*, PCA Case No. 2013-09, Final Agreed Transcript of Hearing, 16 July 2018, pp. 145-284 (Transcript of Cross Examination of Mr. Viswanathan by India).

²⁶¹ **Exhibit C-429**, *Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd. and Others*, Court of Addl. City Civil Judge at Bangalore Arbitration Suit No. 174 of 2015, Antrix Application, 10 November 2016.

²⁶² **Exhibit C-429**, *Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd. and Others*, Court of Addl. City Civil Judge at Bangalore Arbitration Suit No. 174 of 2015, Antrix Application, 10 November 2016, pp. 3-4.

²⁶³ **Exhibit C-430**, *Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd. and Others*, Court of Addl. City Civil Judge at Bangalore Arbitration Suit No. 174 of 2015, Devas’s Objections to Application under Order VI Rule 17, 5 January 2017, ¶ 4.

²⁶⁴ **Exhibit C-430**, *Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd. and Others*, Court of Addl. City Civil Judge at Bangalore Arbitration Suit No. 174 of 2015, Devas’s Objections to Application under Order VI Rule 17, 5 January 2017, ¶¶ 39-41.

²⁶⁵ **Exhibit C-430**, *Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd. and Others*, Court of Addl. City Civil Judge at Bangalore Arbitration Suit No. 174 of 2015, Devas’s Objections to Application under Order VI Rule 17, 5 January 2017, ¶ 44.

107. Notably, Antrix did not raise the charge sheet or any other investigation as defenses outside India, specifically in the ongoing proceedings before a U.S. judge overseeing confirmation of the ICC Award.²⁶⁶ Rather, after Devas brought India’s harassment to the attention of the U.S. court,²⁶⁷ Antrix sought to brush them aside. At a hearing before the U.S. court, Antrix’s counsel called the “*allegation of misconduct on the part of Devas*” “*a red herring*” and asked the court “*not [to] follow [them] . . . down the rabbit hole.*”²⁶⁸

3. The ED Seizes Devas’s Funds And Raids Its Offices

108. While India deliberately chose to avoid raising its baseless fraud allegations before neutral adjudicatory bodies outside India, it doubled down on its retaliatory campaign within Indian borders during the pendency of the Initial BIT Arbitration. In January 2017, the ED, now in connection with its PMLA Action, froze Devas’s Indian mutual fund investments and bank accounts, as well as the bank accounts of several Devas personnel.²⁶⁹

109. In a shocking abuse of its power, on 23 January 2017, the ED raided Devas’s Bangalore offices and unlawfully detained Devas’s employees, forcing them to sign false statements. On that day, three ED officials stormed into Devas’s office, and without producing an identity card or warrant, searched the premises.²⁷⁰ Further, the officers did not provide any seizure memo identifying which documents would be seized: they simply carried volumes of documents away from the office.²⁷¹

²⁶⁶ See, e.g., **Exhibit C-366**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18- cv-1360, Antrix’s Motion to Dismiss and Opposition to Petition to Confirm Foreign Arbitral Award (Dkt. No. 13), 19 November 2018.

²⁶⁷ See **Exhibit C-301**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18- cv-1360, Declaration of Syed Omar Bilal Ahmad In Support Of Opposition to Respondents Motion to Dismiss and Reply on Petition to Confirm Foreign Arbitral Award, 21 December 2018, pp. 2-4 (bringing on record the “*Harassment of Devas and its Personnel by the Indian Government*”).

²⁶⁸ **Exhibit C-050**, Official Transcript, 14 October 2020, p. 32.

²⁶⁹ See **Exhibit C-211**, Letters from DHFL Pramerica Asset Managers Private Limited, Reliance Nippon Life Asset Management Limited, IDFC Asset Management Company Limited and Canara Bank to Enforcement Directorate, January 2017.

²⁷⁰ **Exhibit C-041**, Letter from Nandish Patel to Enforcement Directorate, 28 January 2017, ¶¶ 2-3.

²⁷¹ **Exhibit C-041**, Letter from Nandish Patel to Enforcement Directorate, 28 January 2017, ¶¶ 3-4.

110. The ED additionally questioned Devas employees on site for over four hours and held three employees overnight at the ED’s offices to question them, for over 15 hours. A fourth individual, not detained, was ordered to return the next day and interrogated for over 11 hours.²⁷² The ED seized the Devas employees’ cell phones and refused to let them communicate with anyone outside—including with counsel and family members. Before being permitted to leave, each individual was pressured, under threat of arrest, to sign a statement prepared by the ED. The ED officers refused to allow the Devas officials to make changes to the statements or provide them with a copy.²⁷³
111. Shortly after the Devas personnel were released, they retracted their coerced statements:
- a. Mr. Venugopal, an employee and director of Devas, retracted his coerced statement on 11 February 2017.²⁷⁴ He noted that the ED had ordered him to come to their office, without a summons, and kept him overnight, during which time he was not allowed to contact his family or his lawyers.²⁷⁵ The ED official who interrogated him noted his “*personal details, [his] wife’s details, and details of [his] family members (including those of [his] siblings and their spouses).*”²⁷⁶ The ED official questioning Mr. Venugopal “*arbitrarily refused to accept*” many of his answers “*and brushed aside the explanations*” he provided.²⁷⁷ For almost 15 hours, the ED interrogated him, hurling threats and insults, and claimed they were “*acting at the direction of highest authorities in New Delhi.*”²⁷⁸ At the end of the interrogation, Mr. Venugopal was forced to sign a statement that he was not allowed to read, and was “*forced to add a handwritten note to the statement stating that [he] had not been coerced into signing the statement.*”²⁷⁹ Mr. Venugopal explained that he gave

²⁷² **Exhibit C-041**, Letter from Nandish Patel to Enforcement Directorate, 28 January 2017, ¶ 6.

²⁷³ **Exhibit C-041**, Letter from Nandish Patel to Enforcement Directorate, 28 January 2017, ¶ 7.

²⁷⁴ **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017.

²⁷⁵ **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, p. 2.

²⁷⁶ **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, p. 2.

²⁷⁷ **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, p. 2.

²⁷⁸ **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, p. 2.

²⁷⁹ **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, pp. 2-3.

in because he was “*extremely fatigued and was suffering from bouts of cough and just wanted to buy a moment of peace.*”²⁸⁰

- b. Mr. Dakshinamurthy, a former director of Devas, issued his retraction on 7 February 2017. He stated that he was forced, without a summons, to go to the ED’s office, where he was questioned over the course of two days.²⁸¹ During that time, the ED officers threatened him and took sensitive personal details, including his address, financial information, and information about his immediate family.²⁸² The ED officials only allowed him to leave after signing a document that he was not permitted to read. Instead, he was “*shown one or two pages where [he] was asked to correct by hand and sign.*”²⁸³ The ED officers told him that if he signed the statement, he would be allowed to leave immediately, but that if he did not sign, he would face “*severe consequences.*”²⁸⁴ As he was leaving, an ED officer “*also took [his] signature on the summons and no copy of it was given to [him].*”²⁸⁵
- c. Mr. Mohan, Devas’s Director of Finance & HR, retracted his coerced statement on 21 February 2017, in which he explained he was “*forcibly and without [his] consent taken to*” the ED’s offices and “*illegally detained the whole night.*”²⁸⁶ The ED officers had “*coerced [him] into signing*” a retroactive search and seizure consent and back-dated summons to appear at the ED’s offices.²⁸⁷ Furthermore, the ED officers presented him with a statement and “*directed [him] to sign on every page*” and “*conducted themselves in a manner so as to suggest that [he] should just sign as directed, lest [he] not be allowed to go back home.*”²⁸⁸ Mr. Mohan explained that,

²⁸⁰ **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, p. 3.

²⁸¹ **Exhibit C-042**, Letter from Nataraj Dakshinamurthy to Karnal Singh, 7 February 2017, ¶¶ 1.

²⁸² **Exhibit C-042**, Letter from Nataraj Dakshinamurthy to Karnal Singh, 7 February 2017 ¶¶ 7.

²⁸³ **Exhibit C-042**, Letter from Nataraj Dakshinamurthy to Karnal Singh, 7 February 2017, ¶ 8.

²⁸⁴ **Exhibit C-042**, Letter from Nataraj Dakshinamurthy to Karnal Singh, 7 February 2017, ¶ 8.

²⁸⁵ **Exhibit C-042**, Letter from Nataraj Dakshinamurthy to Karnal Singh, 7 February 2017, ¶ 8.

²⁸⁶ **Exhibit C-044**, Letter from Ranganathan Mohan to Karnal Singh, 21 February 2017, pp. 1-2.

²⁸⁷ **Exhibit C-044**, Letter from Ranganathan Mohan to Karnal Singh, 21 February 2017, p. 2.

²⁸⁸ **Exhibit C-044**, Letter from Ranganathan Mohan to Karnal Singh, 21 February 2017, p. 2.

at 64 years old, he was a “*senior citizen*” who was “*in shock and extremely traumatized*” from the experience.²⁸⁹ He was also “*under constant fear and stress,*” and it was “*only after feeling better and gathering courage*” that he wrote to disavow the statement the ED had procured through coercion.²⁹⁰

112. India has so far failed to explain this gross miscarriage of justice and instead has simply denied “*all allegations*” without evidence.²⁹¹
113. On 10 July 2018 (three years after the ECIR was registered), notwithstanding the retractions of the coerced statements, the ED filed its criminal complaint in the PMLA Action against Devas, its officers and related entities.²⁹² Remarkably, the complaint relied on the coerced statements obtained during and after the ED’s unauthorized raid of Devas’s offices.²⁹³ In this complaint, the ED parroted the CBI’s baseless theory of Devas’s criminality, i.e., that it had misrepresented its technological capacity to Antrix to enter into the Agreement and “*illegally*” obtained and diverted foreign investments to its subsidiary, DMAI.²⁹⁴ Based on this, the ED formally recommended that the Adjudicating Authority take “*cognizance*” of the complaint and “*punish*” the accused with the “*maximum sentence*” applicable, and sought an order that would allow the ED to “*confiscate*” permanently Devas’ properties in India.²⁹⁵
114. Doubtless, the PMLA Action was instituted in bad faith. It was also without jurisdiction; as Devas explained in its challenge to the constitutionality of the PMLA Action before the Karnataka High Court in March 2019, the PMLA provisions that the ED claims Devas

²⁸⁹ **Exhibit C-044**, Letter from Ranganathan Mohan to Karnal Singh, 21 February 2017, p. 2.

²⁹⁰ **Exhibit C-044**, Letter from Ranganathan Mohan to Karnal Singh, 21 February 2017, pp. 2-3.

²⁹¹ Respondent’s Rejoinder on Interim Measures, 7 October 2022, n. 116.

²⁹² **Exhibit C-046**, Complaint Filed Under Section 45(1) r/w 3, 4 and 8(5) of the Prevention of Money Laundering Act, 2002, 10 July 2018.

²⁹³ **Exhibit C-046**, Complaint Filed Under Section 45(1) r/w 3, 4 and 8(5) of the Prevention of Money Laundering Act, 2002, 10 July 2018, pp. 24-30 (relying on the “statements” of Ranganathan Mohan, Desaraju Venugopal and Nataraj Dakshinamurthy).

²⁹⁴ **Exhibit C-046**, Complaint Filed Under Section 45(1) r/w 3, 4 and 8(5) of the Prevention of Money Laundering Act, 2002, 10 July 2018, pp. 41-44.

²⁹⁵ **Exhibit C-046**, Complaint Filed Under Section 45(1) r/w 3, 4 and 8(5) of the Prevention of Money Laundering Act, 2002, 10 July 2018, p. 52.

violated were not even in force at the time these violations were alleged to have occurred.²⁹⁶ The Karnataka High Court is yet to rule on Devas's petition.²⁹⁷ Even so, the PMLA proceedings remain ongoing, with the criminal court yet to proceed to "frame charges"²⁹⁸ against any of the accused, let alone proceed to trial to conclusively determine guilt.²⁹⁹

115. To be sure, the ED's allegations are baseless. Devas regularly made transfers to DMAI because various vendors, including those supplying critical equipment and services for the Devas System, and employees based in the U.S., insisted on having a contractual relationship with and being paid by a U.S. company.³⁰⁰ After Antrix terminated the Agreement, Devas had to engage legal counsel to enforce its rights, for which further transfers were made to DMAI.³⁰¹ Notably, in the ongoing Initial BIT Arbitration proceedings, India did not allege any deficiencies with the manner in which Devas had conducted its business, including payments to foreign vendors to develop its project.

4. The ED And CBI Continue Baseless And Harassing Investigations Against Devas Officers

116. For the remainder of the quantum phase of the Initial BIT Arbitration and during the enforcement proceedings relating to the ICC Award, the ED and CBI continued to escalate

²⁹⁶ See **Exhibit C-212**, *Devas Multimedia Private Limited v. The Directorate of Enforcement*, Writ Petition No. 10739 of 2019, 6 March 2019, PDF pp. 23-24.

²⁹⁷ **Exhibit C-213**, Case Status, *Devas Multimedia Private Limited v. The Directorate of Enforcement*, Writ Petition No. 10739 of 2019.

²⁹⁸ Under Indian law, a "charge" is framed when the court presumes that the accused has committed a triable offence, with the actual "trial" only commencing thereafter. See **Exhibit C-215**, *Hardeep Singh v. State of Punjab and Ors.* (2014) 3 SCC 92, ¶ 38 ("[T]rial" means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the "trial" commences only on charges being framed.").

²⁹⁹ See **Exhibit C-259**, *Directorate of Enforcement v. Devas Multimedia and Ors.*, Court of CCH-4 XXI Additional City Civil and Sessions Judge, SPL. CC. No. 447/2018, 6 April 2022, ¶¶ 6, 21 (noting the argument that the ED's "investigation is not complete and even charges have not been framed" and acknowledging that the case is still at the stage of "summons" to the accused). See also **Exhibit C-266**, Case Status, *Directorate of Enforcement v. A-2 Ramachandran Viswanathan and Anr.*, Court of CCH-4 XXI Additional City Civil and Sessions Judge, SPL. CC. No. 993/2022; **Exhibit C-267**, Case Status, *Directorate of Enforcement v. Devas Multimedia and Ors.*, Court of CCH-4 XXI Additional City Civil and Sessions Judge, SPL. CC. No. 477/2018.

³⁰⁰ First Witness Statement of Ramachandran Viswanathan, 22 August 2022, ¶ 25.

³⁰¹ First Witness Statement of Ramachandran Viswanathan, 22 August 2022, ¶ 25.

their actions against Devas, its officers, and Claimants, and in particular Claimants' representatives who had testified against India in the Arbitrations.

117. On 20 December 2018, the ED's Adjudicating Authority issued notices against every one of the defendants in the First FEMA Action—including Devas, Claimants, DT, and all six directors who testified against Antrix and India in the Arbitrations—to appear for a “*Personal Hearing*” in January 2019 at the ED's office in Kolkata, India.³⁰²
118. Four days later, the ED commenced a second legal action against Devas under FEMA (the “**Second FEMA Action**”). On 24 December 2018, the ED filed a complaint alleging that payments from Devas to DMAI of approximately USD 22 million between 2006 and 2016 contravened various provisions of the FEMA.³⁰³ The ED's allegations in the Second FEMA Action were premised on the same DMAI transactions that the ED alleged were “*proceeds of crime*” in its pending PMLA Action, which in itself was based on false coerced statements the ED had extracted from Devas employees under severe duress, and which those employees subsequently retracted.³⁰⁴ The ED's Adjudicating Authority nonetheless took “*cognizance*” of the Second FEMA Action and, on the same day, issued a “*show cause*” notice to Devas and various former Devas officers (including three who had recently testified against Antrix and India in the ICC and Initial BIT Arbitrations) to answer for these alleged offences.³⁰⁵ Devas promptly challenged the constitutionality of the complaint and show cause notice before the Karnataka High Court, arguing that the ED

³⁰² **Exhibit C-104**, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, File No. T-4/03/BGZO/SRO/2016, Adjudication Order, 30 January 2019, p. 52.

³⁰³ **Exhibit C-103**, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, File No. T-3/BGZO/9/2018-AD-RR, Complaint Under Section 16(3) of the Foreign Exchange Management Act, 1999, 24 December 2018, p. 19.

³⁰⁴ **Exhibit C-046**, Complaint Filed Under Section 45(1) r/w 3, 4 and 8(5) of the Prevention of Money Laundering Act, 2002, 10 July 2018, p. 46 (“*The Accused-1 company [Devas] used part of proceeds of crime to the tune of Rs. 180,77,58,989/- and transferred part of the proceeds of crime to its own WOS Devas Multimedia America Inc, USA under the pretext that they were reimbursing their own subsidiary towards the so called Business support services allegedly rendered by the WOS in USA to Accused-1 company in India.*”).

³⁰⁵ **Exhibit C-216**, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, File No. T-4/40/BGZO/SRO/2018/2870, Show Cause Notice, 24 December 2018.

was relying on statements “*illegally coerced*” from Devas officers solely to coerce Devas to “giv[e] up their arbitral awards.”³⁰⁶

119. While the ED’s multiple investigations were ongoing, the CBI also escalated its campaign to frustrate the enforcement of the adverse arbitration awards. One week after the ED instituted the Second FEMA Action, on 8 January 2019, the CBI filed a “*supplementary*” charge sheet against Devas, its officers and its investors.³⁰⁷ As before, the CBI did not make allegations of bribery or corruption by Devas, its officers, or its investors (nor could it). Instead, the CBI re-iterated its vague allegation that an undefined “*criminal conspiracy*” had taken place between Devas and Antrix officials. The CBI appeared to draw this inference based on its allegations that *ISRO/Antrix officials* had failed to follow internal government guidelines by leasing the spectrum to Devas.³⁰⁸ But the CBI did not point to any evidence, or even make allegations, that Devas had been responsible for any alleged oversight by ISRO/Antrix officials. Yet less than two weeks after the supplemental charge sheet was filed, the CBI asked the Indian courts to issue “*non-bailable*” warrants against two former Devas officers—Mr. Viswanathan and Dr. Chandrasekhar—so that they could be put on Interpol’s red corner list.³⁰⁹ Both had recently testified in the ICC Arbitration and Initial BIT Arbitrations. And a few months later, on 18 March 2019, at the CBI’s request, the CBI court split the pending proceedings against Mr. Viswanathan and Dr. Chandrasekhar from the remaining accused,³¹⁰ including the accused Antrix/ISRO/DOS officials,³¹¹ ostensibly to fast-track the prosecutions of the two Devas officers.

³⁰⁶ **Exhibit C-338**, *Devas Multimedia Private Limited v. Special Director, Directorate of Enforcement and Anr.* Writ Petition. No. 6440 of 2019, 4 February 2019, PDF pp. 5-6.

³⁰⁷ **Exhibit C-048**, CBI Supplementary Charge Sheet, 8 January 2019.

³⁰⁸ **Exhibit C-048**, CBI Supplementary Charge Sheet, 8 January 2019, pp. 8-21.

³⁰⁹ Non-bailable warrants were finally issued by the CBI Court against one of these officers, Mr. Viswanathan, on 23 March 2022. See **Exhibit C-217**, *CBI v. KRS Murthi and Ors* (A-2 & A-3), Special Judge CBI-19 (PC Act), CIS No. 190/2019, 23 March 2022, p. 2.

³¹⁰ See **Exhibit C-069**, *CBI v. KRS Murthi & Others*, Court of Sh. Chandra Shekhar, L.D. Special Judge CBI-19 (PC Act), C.C. No. 190/2019, Order; and Application on Behalf of Accused No. 4 – Devas Multimedia Pvt. Ltd., 30 January 2021, p. 1.

³¹¹ Dr. K.R. Sridhara Murthi (Former Managing Director of Antrix, Accused No. 1); Dr. G. Madhavan Nair (Former Chairman of ISRO and Antrix, Accused No. 5); Veena Sri Ram Rao (Former Department of Space Official, Accused No.6); Appana Bhaskarnarayana (Former Department of Space Official, Accused No. 7).

120. The CBI’s supplementary charge sheet made one new allegation against Devas, which was that it “*intentionally made a false claim*” in the Agreement that “*it had the ownership and right to use the Intellectual Property used in the design of Digital Multimedia Receivers (“DMR”) and Commercial Information Devices (“CID”)*”.³¹² The CBI made this allegation based on a letter from the European Telecommunications Standards Institute (“ETSI”), which stated that technical standards for DVB-SH were developed in 2006.³¹³ But the ETSI letter in no way undermined Devas’s representations. Technology generally develops long before standards (which ETSI creates) for them are adopted,³¹⁴ and, in any case, DVB-SH was not the only technology available for Devas to provide its services.³¹⁵ Rather, “*knowledgeable network and system designers generally delay their final technology selections as long as possible to take advantage of the best possible technology available.*”³¹⁶ This is what Devas did—while “[t]here were numerous alternate transmission waveforms to choose from”, Devas ultimately chose DVB-SH for satellite transmission.³¹⁷ As with the ED’s PMLA proceedings, the CBI proceedings have not resulted in any framed charges against any of the accused, much less proceeded to trial.³¹⁸
121. Soon after the CBI issued its supplementary charge sheet, on 30 January 2019, the ED—without having heard Devas—issued a penalty order in the First FEMA Action. Confirming reports that India’s strategy was to recover the amounts owed under the ICC Award through “*imposition of penalty on Devas, and prosecution of the company and all*

³¹² **Exhibit C-048**, CBI Supplementary Chargesheet, 8 January 2019, ¶ 16.12.

³¹³ **Exhibit C-400**, Letters Rogatory Between France and India, 4 May 2017 to 3 October 2018, p. 60.

³¹⁴ First Witness Statement of Gary Parsons, 20 January 2023, ¶ 35.

³¹⁵ First Witness Statement of Gary Parsons, 20 January 2023, ¶ 36.

³¹⁶ First Witness Statement of Gary Parsons, 20 January 2023, ¶ 37.

³¹⁷ First Witness Statement of Gary Parsons, 20 January 2023, ¶ 37.

³¹⁸ See **Exhibit C-265**, Case Status, *CBI v. KRS Murthi and Ors.*, Special Judge CBI-19 (PC Act), CIS No. 190/2019.

its directors under PMLA”,³¹⁹ the ED imposed fines of over USD 220 million against Devas, its investors, and its current and former officers.³²⁰

D. India Leverages Investigations In Settlement Discussions

122. The parties twice formally discussed settling this case. First, in 2018, Kiran Kumar, the former Chairman of the Space Commission, ISRO, Antrix, and DOS, and officials from the Prime Minister’s National Security Advisor’s office, entered into negotiations with Devas representatives. During those discussions, Indian officials offered to drop all tax, criminal, and other prosecutions in exchange for Devas and its investors abandoning all of their claims.³²¹ Devas officials declined.³²²
123. In February 2020, discussions began again, and Mr. Viswanathan and other Devas representatives met representatives of India, including Mr. Kumar and National Security Advisor Ajit Doval in Paris. Mr. Doval and Mr. Kumar noted that they had the Prime Minister’s blessing to settle the matter and, as in the last settlement discussions, offered to close the criminal and regulatory investigations against Devas in exchange for a global settlement.³²³
124. India complains that Claimants are violating settlement discussion privilege by using these negotiations as evidence of India’s wrongdoing, citing to the IBA Rules which it contends shrouds its behavior from disclosure before this Tribunal.³²⁴ India’s complaints are misguided, and the Tribunal should not be precluded from assessing evidence of India’s actions in these settlement discussions for the purposes of this Arbitration.

³¹⁹ **Exhibit C-037**, Pradeep Thakur, *ED moves to prosecute Devas under PMLA for Fema violation*, The Times Of India, 27 July 2016, p. 1, available at <https://timesofindia.indiatimes.com/india/ed-moves-to-prosecute-devas-under-pmla-for-fema-violation/articleshow/53407579.cms>.

³²⁰ **Exhibit C-104**, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, File No. T-4/03/BGZO/SRO/2016, Adjudication Order, 30 January 2019.

³²¹ First Witness Statement of Ramachandran Viswanathan, 22 August 2022, ¶ 34.

³²² First Witness Statement of Ramachandran Viswanathan, 22 August 2022, ¶ 34. *See also* Claimants’ Application for Interim Measures, 22 August 2022, ¶¶ 20-22.

³²³ First Witness Statement of Ramachandran Viswanathan, 22 August 2022, ¶ 36.

³²⁴ *See* Respondent’s Response to Claimants’ Application for Interim Measures, 12 September 2022, ¶ 62.

125. First, the IBA commentary describes its guidance in “*determining[] applicable privileges*” as “*non-binding*,” with the applicable standard “*left to the discretion of the arbitral tribunal*.”³²⁵ Thus, contrary to India’s assertions, no blanket settlement privilege rules apply to shield the contents of these discussions.
126. Second, as explained in Claimants’ Reply on Interim Measures, Claimants’ lawyers are bound by ethical rules that prevent the leveraging of criminal proceedings to gain a civil advantage, and public policy counsels against allowing India to use general principles of confidentiality to shield its unethical conduct.³²⁶
127. Third, the text of the IBA Rules allows the Tribunal to account for “*any need*” to protect documents created for the purpose of settlement negotiations.³²⁷ India has not articulated any need to keep these discussions private—nor does it deny that they took place. Instead, it has provided only generalized objections and claims that it will not be “*baited*” into discussing the negotiations.³²⁸ In any event, India could not articulate such a purpose. As Claimants described, these settlement discussions went nowhere; keeping them private now cannot facilitate a just and expeditious resolution of the dispute.
128. Accordingly, this Tribunal should look past India’s attempts at misdirection and see the settlement discussions for what they are: unethical attempts by India to leverage its sovereign power to pressure Claimants into dropping their legitimate claims.

³²⁵ **Exhibit C-314**, International Bar Association, Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, p. 28.

³²⁶ See Claimants’ Reply to Respondents’ Response to its Application for Interim Measures, 22 September 2022, ¶¶ 29-30 (citing **Exhibit C-129**, New York Rules of Professional Conduct, Rule 3.4(e) (“*A lawyer shall not: present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter*”)); **Exhibit C-142**, Commentary to the Canadian Bar Association Code of Professional Conduct, Ch. III, ¶ 9 (“*it is improper for the lawyer to advise, threaten or bring a criminal, quasi-criminal or disciplinary proceeding in order to secure some civil advantage for the client*”); **Exhibit C-143**, Australian Solicitor Conduct Rules, Rule 34.1.2 (“*A solicitor must not in any action or communication associated with representing a client: threaten the institution of criminal or disciplinary proceedings against the other person if a civil liability to the solicitor’s client is not satisfied.*”)).

³²⁷ **Exhibit CL-151**, IBA Rules on the Taking of Evidence in International Arbitration, 17 December 2020, art. 9(4).

³²⁸ Respondent’s Rejoinder on Interim Measures, 7 October 2022, ¶ 27.

E. Adverse Decisions Prompt India To Intensify its Subversion of the ICC Award

129. On 13 October 2020, the Initial BIT Tribunal issued an award on damages, ordering India to pay Claimants damages of over USD 111 million plus interest, and USD 10 million in attorneys' fees plus interest (the "**Quantum Award**").³²⁹
130. Shortly thereafter, 27 October 2020, a U.S. court confirmed the ICC Award,³³⁰ and on 4 November 2020, entered judgment for Devas for the full amount of the Award (including interest), just short of USD 1.3 billion as of that date ("**ICC Award Judgment**").³³¹
131. On the same day that the U.S. court issued the ICC Award Judgment, on 4 November 2020, Indian authorities took three steps, all aimed at evading payment of the substantial debt that India now owed Claimants.
132. First, the Supreme Court issued an order enjoining Devas from enforcing the ICC Award until the lower court (the Delhi High Court) decided Antrix's application to stay enforcement.³³² The Supreme Court did, however, allow Devas to petition the High Court to "*seek a deposit of the sum awarded or a part thereof*", as was contemplated by section 9 of the Indian Arbitration Act.³³³
133. However, second, India's President enacted a special "*ordinance*" amending the Indian Arbitration Act to allow parties to stay enforcement of an arbitration award without posting security when there is a *prima facie* case of fraud or corruption in the underlying agreement ("**Arbitration Ordinance**").³³⁴ Because an ordinance bypasses the regular procedure for enacting legislation through Parliament, the Indian Constitution requires that the President

³²⁹ **Exhibit C-049**, Quantum Award, 13 October 2020.

³³⁰ **Exhibit C-051**, Order Granting Petition to Confirm Foreign Arbitral Award, 27 October 2020, pp. 17-18.

³³¹ **Exhibit C-053**, ICC Award Judgment, 4 November 2020.

³³² **Exhibit C-054**, Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd., Supreme Court of India, IA No. 107899/2020, Order, 4 November 2020 ("**Supreme Court Order**"), p. 5.

³³³ **Exhibit C-054**, Supreme Court Order, p. 5. *See Exhibit C-214*, §9(1)(ii)(b), Arbitration and Conciliation Act, 1996 ("*A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court...for an interim measure of protection... securing the amount in the arbitration.*")

³³⁴ **Exhibit C-055**, The Arbitration and Conciliation (Amendment) Ordinance 2020, 4 November 2020.

only issue an ordinance where “*circumstances exist which rendered it necessary for him to take immediate action*”.³³⁵ However, he did not disclose what specific circumstances existed to require the Arbitration Ordinance.³³⁶ One, and thus far only, explanation posited by a former Attorney General of India was that the Arbitration Ordinance came “*at a time when the Delhi High Court will start the enforcement hearings*” in the Devas case. Indeed, the timing was “*very suspicious.*”³³⁷

134. Third, India launched an Inter-Ministerial Monitoring Committee (“**IMCC**”) under the leadership of the Finance Director, Nirmala Sitharaman. Devas learned of this committee when the tax authorities filed a bulletin in tax proceedings against Devas in which the IMCC directs the Commissioner of Income Tax for India to “*expedite the statutory proceedings*” against Devas and its investors for the stated purpose of influencing the “*Commercial Arbitration Dispute raised by foreign investors in the Devas Multimedia Pvt. Ltd. (DMPL) Under India-Germany BIT and India-Mauritius BIT against Antrix.*”³³⁸ As the memo instructs, the IMCC was constituted because India is “*on a war footing*” against Devas and the arbitral awards.³³⁹ While Devas only obtained this memo by happenstance, because the Tax Commissioner filed it, similar memos were likely sent to the ED, CBI, and other authorities taking action against Devas.
135. Armed with this change in legal regime, and facing a debt of over USD 1 billion, Antrix again sought to invoke the “*fraud*” allegations against Devas in relation to the ICC Award. Unsurprisingly, it did so on friendly turf.

³³⁵ Under the Indian Constitution, the President has the power to promulgate an ordinance during recess of Parliament if “*circumstances exist which render it necessary for him to take immediate action*”. See **Exhibit C-219**, Article 123, Constitution of India.

³³⁶ **Exhibit C-055**, The Arbitration and Conciliation (Amendment) Ordinance 2020, 4 November 2020.

³³⁷ **Exhibit C-058**, Payaswini Upadhyay, *A Change to the Arbitration Law Whose Purpose is Unclear*, Bloomberg Quint, 24 November 2020, available at <https://www.bqprime.com/law-and-policy/a-change-to-the-arbitration-law-whose-purpose-is-unclear>. India allowed the Arbitration Ordinance to lapse in February 2021, and formally codified its provisions by legislative amendment to the Indian Arbitration and Conciliation Act in March 2021. See **Exhibit C-220**, § 2, Arbitration and Conciliation (Amendment) Act, 2021 (India).

³³⁸ **Exhibit C-052**, Inter-Ministerial Monitoring Committee Directive, 4 November 2020.

³³⁹ **Exhibit C-052**, Inter-Ministerial Monitoring Committee Directive, 4 November 2020.

F. India Liquidates Devas

136. While its set aside petition and various criminal investigations were still pending, India set out to fully dismantle Devas and Claimants’ investment in it. India did so by relying entirely on allegations of “*fraud*” contained in the CBI and ED investigations, none of which were ever tested or proved in any court, and each of which Devas strongly contested.

1. Antrix Files Liquidation Petition

137. Beginning in January 2021, India began the process to legally liquidate, and formally take over Devas. The Indian Companies Act, 2013 gives a specialized companies law tribunal, the National Company Law Tribunal (“NCLT”), the power to liquidate (or “*wind up*”) an Indian-registered company on certain enumerated grounds.³⁴⁰ The NCLT came into existence relatively recently, in 2016.³⁴¹ It is a “*quasi-judicial authority*” that is “*primarily concerned with the administration of the Companies Act*”³⁴² and was incorporated to deal with “*corporate disputes that are of a civil nature arising under the Companies Act.*”³⁴³

138. Generally, the NCLT acts as a bankruptcy court—it winds up companies if they are incapable of discharging their obligations to third parties, such as if a company becomes insolvent and its proceeds need to be distributed to creditors.³⁴⁴ Additionally, the NCLT can issue a winding up order under section 271(c) of the Companies Act, 2013 (the “**Indian Companies Act**”), which provides:

“if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its

³⁴⁰ **Exhibit C-173**, § 271, Companies Act, 2013 (India)

³⁴¹ **Exhibit C-345**, Notification S.O. 1935 (E), Ministry of Corporate Affairs, 1 June 2016.

³⁴² **Exhibit C-346**, Ministry of Corporate Affairs, “Roles and Responsibilities”; **Exhibit C-347**, Ministry of Corporate Affairs, “National Company Law Tribunal”.

³⁴³ **Exhibit C-347**, Ministry of Corporate Affairs, “National Company Law Tribunal”.

³⁴⁴ *See generally*, **Exhibit C-218**, §§6-9, Insolvency and Bankruptcy Code, 2016 (India).

*affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.*³⁴⁵

139. While the NCLT is empowered to invoke this provision, it has done so exceedingly rarely. In fact, in its eight-year history (from its enactment in 2013), the NCLT seems to have used this provision to wind up only one other company.³⁴⁶ Pertinently, the case against this other company—Super Royal—was instituted by the ROC after undertaking its own months-long investigation into the company for running a “ponzi scheme”.³⁴⁷ Thus, prior to Devas, it was unprecedented for a company to successfully institute winding up proceedings against its own creditor for “*fraud*”.
140. This did not deter India. On 14 January 2021—unbeknownst to Devas—Antrix requested permission from its corporate parent, the Central Government of India, to file a petition to wind up its own creditor (and thus the creditor of the Government of India), Devas. Antrix invoked section 271(c) of the Indian Companies Act, citing the stale “*fraud*” allegations made up (but never tested, much less proved) by the CBI and ED (also organs of the Government of India).³⁴⁸
141. Just four days after Antrix’s application, on 18 January 2021 (two of which fell over the weekend) the Central Government issued a notification authorizing Antrix to present a wind-up petition against Devas before the NCLT.³⁴⁹ The Central Government did not give Devas any notice of Antrix’s request, nor allow it the opportunity to make any representations prior to the grant of its authorization, despite being explicitly required to do so under the statute.³⁵⁰ Thus, in a cynical ploy, India sought and granted itself

³⁴⁵ **Exhibit C-173**, § 271(c), Companies Act, 2013 (India).

³⁴⁶ A company called ‘Super Royal Holidays India Pvt. Ltd.’ was directed to be wound up by the NCLT on 16 April 2020 under §271(c) of the Companies Act, 2013. See **Exhibit C-221**, *Union of India Ministry of Corporate Affairs v. Super Royal Holidays India Pvt. Ltd. and Others*, 16 April 2020, 2020 SCC OnLine NCLT 8912, ¶¶ 24-25.

³⁴⁷ See **Exhibit C-221**, *Union of India Ministry of Corporate Affairs v. Super Royal Holidays India Pvt. Ltd. and Others*, 16 April 2020, 2020 SCC OnLine NCLT 8912, ¶¶ 4(2)-4(9).

³⁴⁸ **Exhibit C-062**, Request for Sanction, 14 January 2021, PDF pp. 2-4.

³⁴⁹ **Exhibit C-063**, Sanction By Indian Government, 18 January 2021.

³⁵⁰ See **Exhibit C-173**, § 272(3) proviso 2, Companies Act, 2013 (India) (“*Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.*”)

permission to liquidate its own creditor based on years-old fraud allegations that India had itself concocted but never dared to test, let alone prove.

142. On the same day, on 18 January 2021, at 4:30 pm, hours after receiving the green light from its parent, Antrix filed a petition under section 271(c) before the NCLT to wind-up Devas.³⁵¹ Its petition relied on documents which were available to Antrix/India since at least the outset of the ICC Arbitration and through the Initial BIT Arbitration, and yet on which basis neither Antrix nor India had raised any fraud allegations.³⁵² In its petition, Antrix claimed to be a “*victim of the fraud and corruption to which its then Chairman and other officials were a party*”, noting that the evidentiary basis for the petition was the “*criminal investigation by the CBI*”.³⁵³
143. The NCLT listed the matter for a hearing the very next day at 11:30 am, as the first scheduled hearing (despite the NCLT’s obligation to give parties to any proceeding before it a reasonable opportunity of being heard).³⁵⁴

2. The NCLT provisionally liquidates Devas

144. Having had virtually no notice, much less opportunity to prepare or submit evidence refuting Antrix’s submissions (which, with annexes, amounted to over 2,000 pages), Devas attended the hearing the next morning. At the hearing, the Solicitor General of India—a Government lawyer second in seniority only to India’s Attorney General—and an Additional (assistant) Solicitor General argued the case on Antrix’s behalf.³⁵⁵ India’s Ministry of Corporate Affairs (which heads the ROC) “*supported*” Antrix’s case.³⁵⁶

³⁵¹ **Exhibit C-065**, *Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd. & Another*, NCLT, CP No. 06/BB/2021, Petition for Winding Up Under Section 271 and 272 of the Companies Act 2013, 18 January 2021 (“**Antrix Wind-up Petition**”); **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 7(d).

³⁵² **Exhibit C-065**, Antrix Wind-up Petition, 18 January 2021, PDF pp. 2-5.

³⁵³ **Exhibit C-065**, Antrix Wind-up Petition, 18 January 2021, ¶¶ 7, 14.

³⁵⁴ See **Exhibit C-066**, NCLT Hearing Schedule, 19 January 2021.

³⁵⁵ **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021.

³⁵⁶ **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021, ¶ 6.

145. As it was impossible for Devas to have filed any meaningful response to the allegations raised by Antrix in the approximately 20 hours since it was notified of Antrix’s action, Devas sought additional time from the NCLT to file a response, relying on the statute’s mandate that the NCLT give notice to the company and afford it “*a reasonable opportunity*” to make its representations before appointing a liquidator.³⁵⁷
146. Neither the statutory mandate nor the obvious injustice done to Devas moved the NCLT. Instead, faced with allegations that threatened Devas’s very existence, the NCLT refused to grant it the opportunity to respond to the petition in writing, providing:
- “...it is [the] settled position of law that principles of natural justice mandates judicial forums to afford reasonable opportunity to the other side before passing any order by judicial authorities. However, Courts/Tribunal [sic] are empowered to pass appropriate Ad interim/interim order at the stage of admission itself, if circumstances, in a case justifies for passing such interim order(s). In the instant case, it is not in dispute that [Devas] was given notice **though it was short for duration** and thus their counsels appears before the Tribunal and advanced their arguments on merits of the case.”*³⁵⁸
147. And so Devas was punished for exercising extraordinary diligence and having its counsels appear before the NCLT at such short notice. The NCLT failed to provide any reason at this time, or indeed later, for the urgency prompting it to take up Antrix’s petition in a single day.
148. Shortly after the hearing, even though it had less than 16 hours to review the 2,000 pages of documents submitted by Antrix with its petition, the NCLT declared its views on Antrix’s allegations:
- a. First, accepting Antrix’s allegations as true, the NCLT found that “*it is prima facie proved*” that Devas has “*resorted various frauds, misfeasance, connived with*

³⁵⁷ See **Exhibit C-173**, § 273(1) proviso 2, Companies Act, 2013 (India) (“*Provided further that before appointing a provisional liquidator under clause (c), the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice*”).

³⁵⁸ **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021, ¶ 12. (emphasis added)

officials etc.”³⁵⁹ According to the NCLT, this was the case because “*the Contract was annulled after following due process of law*” yet Devas “*was able to get*” the ICC Award. The NCLT further stated that “*the incorporation of [Devas] and obtaining a contract was done in a fraudulent manner that too within a short time, without having requisite experience*”.³⁶⁰ The only “*evidence*” in support of these “*findings*” was the “*criminal investigation by the CBP*”,³⁶¹ which had begun seven years before the liquidation proceedings, in 2014.³⁶² Needless to say, three different arbitral tribunals had already found India had acted unlawfully in annulling the Agreement. India had also never raised any concerns about the manner in which the Agreement had been executed or how Devas was formed, or the experience of its principals until after it started losing the Arbitrations, as there was no evidence of any wrongdoing in this regard.

- b. Second, and extraordinarily, the NCLT noted that even though the CBI and other proceedings were at the “*investigation*” stage of proceedings, Devas should be provisionally liquidated because it “*has suffered various adverse findings with cogent evidence at the hands of various statutory authorities*.”³⁶³ It bears repeating that Devas had—and continues to have—suffered no “*findings*” with respect to the criminal investigations instituted against it by the CBI or the ED in its PMLA Action. Thus, the NCLT simply re-branded the allegations of various investigative authorities as “*findings*” on the basis of which it provisionally liquidated Devas.

149. The NCLT, directing Devas to hand over management of the company to a liquidator (also a government employee³⁶⁴) (the “**Liquidator**”), noted that:

³⁵⁹ **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021, ¶10.

³⁶⁰ **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021, ¶10.

³⁶¹ **Exhibit C-065**, Antrix Wind-up Petition, 18 January 2021, ¶¶ 7, 14.

³⁶² *See supra* ¶ 83.

³⁶³ **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021, ¶11.

³⁶⁴ **Exhibit C-173**, § 359(2), Companies Act, 2013 (India) (“*The liquidators appointed...shall be whole-time officers of the Central Government.*”)

“The provisional liquidator is permitted to initiate appropriate action in accordance with extant provisions of Companies Act, to take control of Management of [Devas] and to take custody or control [of] all the property, effects and actionable claims to which the [Devas] is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the [Devas] and avoid misuse of its property.”³⁶⁵

150. The NCLT made no attempt to describe how Devas had or could “*misuse its property*” or indeed why such alleged and undefined “*misuse*” had to be urgently enjoined. Indeed, all the CBI allegations concerned historical activity; Devas was not providing any services at this point such that it could perpetuate fraud. Despite noting Devas’s arguments to the contrary,³⁶⁶ the NCLT did not explain why provisional liquidation was either urgent or proportionate. The reason was, of course, that India desperately wanted to stymie the enforcement of the ICC Award and Judgment.
151. In sum, within *five days* of Antrix seeking its parent’s (India’s) permission to file a winding up petition against its creditor, Devas, the NCLT provisionally liquidated the company and forced the company’s management to hand over its control to India.

3. The Liquidator Fires Devas’ Counsel Worldwide and Acts Against Devas’ And Its Shareholders Interests

152. The Liquidator was required to take steps to “*protect and preserve*” Devas’s properties.³⁶⁷ In fact, he did the very opposite.
153. Upon his appointment, the Liquidator immediately took steps to undermine Devas and its ability to enforce the ICC Award—its largest asset. Three days after he was appointed, on 22 January 2021, the Liquidator fired all of Devas’s arbitration and enforcement counsel, who were engaged in confirmation proceedings in multiple jurisdictions, including the U.S., France, and the United Kingdom.³⁶⁸

³⁶⁵ **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021, ¶14(4).

³⁶⁶ *See* **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021, ¶ 5(b).

³⁶⁷ **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021, ¶ 14(4).

³⁶⁸ **Exhibit C-068**, Emails Firing Devas Counsel, 22 January 2021. *See also* **Exhibit C-070**, Email from Official Liquidator to Roseann Wecera, 30 January 2021 (“*We hereby inform you that you may refrain yourself from*

154. The Liquidator also refused to defend Devas in the ongoing investigations. For instance, on 30 January 2021, the Liquidator made an appearance for Devas before an Indian court hearing one of the CBI cases and stated that he was abandoning Devas’s prior application to defer the CBI’s investigation.³⁶⁹ Likewise, the Liquidator did nothing to resist the ED’s efforts to attach Devas’s assets: in proceedings pending before an Indian court where the ED is seeking to attach Devas’s property, the Liquidator has yet to object to the ED’s efforts despite having notice of the case since February 2021.³⁷⁰ In fact, the Liquidator’s failure to register an appearance for Devas in its pending constitutional challenge to the Second FEMA Action led to its eventual dismissal for “*non-prosecution*”.³⁷¹ The Liquidator also failed to contest any of the actions of the prosecutors in the ED and CBI cases.
155. Instead of acting in Devas’s interests and protecting its assets—which is the official role of a liquidator³⁷²—the Liquidator has spent his time manufacturing fraud allegations *against Devas*. On 2 February 2021, the liquidator issued his “*First Report*”, in which he parroted Antrix’s baseless allegations in its petition to the NCLT, alleging (again, on a “*prima facie*” basis) that Devas was a “*Sham/Shell company*”³⁷³ and the Devas-Antrix Agreement “*was vitiated by fraud.*”³⁷⁴

4. Claimants Challenge the Provisional Liquidation

156. Devas could no longer represent its interests or the interests of its shareholders in these liquidation proceedings now that it was under the control of the Liquidator. Devas’s

representing Devas Multi Media pvt ltd (in prov liqn) [sic] as a consequence of the NCLT provisional winding up order dated 19.01.2021.”)

³⁶⁹ **Exhibit C-069**, CBI Order and Deferment Application of Devas, 30 January 2021, p. 2.

³⁷⁰ See **Exhibit C-223**, Docket entries, *Directorate of Enforcement v. M/s Devas Multimedia Pvt. Ltd.*, MSA 24/2020 (orders passed).

³⁷¹ **Exhibit C-339**, *Devas Multimedia Private Limited v. Special Director, Directorate of Enforcement and Anr.* Writ Petition No. 6440 of 2019 (Order), 26 August 2021.

³⁷² See **Exhibit C-173**, § 290(1)(a), Companies Act, 2013 (India) (“*the Company Liquidator, in a winding up of a company by the Tribunal, shall have the power to carry on the business of the company so far as may be necessary for the beneficial winding up of the company*”).

³⁷³ **Exhibit C-071**, *Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd. & Another*, NCLT, O.L.R. No. 14/2021 in NCLT CP No. 06/BB/2021, First Interim Report of the Liquidator, 3 February 2021 (“**First Interim Report of the Devas Liquidator**”), ¶ 12.

³⁷⁴ **Exhibit C-071**, First Interim Report of the Devas Liquidator, ¶ 32.

shareholders nonetheless did what they could to defend Devas from this egregious takeover. One of the Claimants, DEMPL, appealed to the National Company Law Appellate Tribunal (“NCLAT”)—which hears all appeals from the NCLT³⁷⁵—for relief against Devas’s provisional liquidation.

157. On 11 February 2021, the NCLAT denied the appeal on the grounds that even though Devas was provisionally liquidated, DEMPL’s interest “*is not likely to be affected*” because it “*may still get an opportunity to be heard*” before the NCLT.³⁷⁶ Accordingly, the NCLAT directed DEMPL to “*implead*” itself in (i.e., to apply to be joined to) the ongoing NCLT proceedings.³⁷⁷ The NCLAT further pointed to the actual underlying reason for liquidating Devas: “[i]t is significant to make mention that ... ‘if the Company has acted against the interests of the sovereignty and integrity of India ... the [NCLT] can by order direct the winding up of such Company’”.³⁷⁸ The NCLAT thus revealed that the liquidation had been prompted by concern over India’s “*sovereignty and integrity*” that the NCLT considered was under attack from Devas’s enforcement of the ICC Award.
158. On 1 March 2021, DEMPL applied to implead itself and to vacate the provisional liquidation order.³⁷⁹ The NCLT declined to address DEMPL’s impleadment (or *vacatur*) applications. Instead, the NCLT decided that Devas’s former management could oppose its winding up,³⁸⁰ ignoring the fact that, as a shareholder, DEMPL’s interests were not identical to Devas’s. In particular, DEMPL had an interest in making representations

³⁷⁵ **Exhibit C-173**, § 421(1), Companies Act, 2013 (India).

³⁷⁶ **Exhibit C-072**, NCLAT Order, 11 February 2021, ¶70.

³⁷⁷ **Exhibit C-072**, NCLAT Order, 11 February 2021, ¶78.

³⁷⁸ **Exhibit C-072**, NCLAT Order, 11 February 2021, ¶77.

³⁷⁹ See **Exhibit C-349**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Application to implead DEMPL, 1 March 2021; **Exhibit C-350**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Application for seeking vacation of ad-interim Order dated 19.01.2021, 1 March 2021.

³⁸⁰ **Exhibit C-076**, NCLT Decision, 2 March 2021; **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 11(a).

regarding the proceeds of any potential liquidation and the impact the liquidation would have on shareholders' rights.³⁸¹

159. Notwithstanding these issues, the NCLT ordered Devas's former management to file an "affidavit in objection", which would comprise the entirety of his substantive defence to liquidation, within just 10 days.³⁸² Thus, the NCLT granted Devas less than two weeks to find a former director who could submit an affidavit, review over 2,000 pages of Antrix's petition and respond to it, even though Devas's prior counsel with historical knowledge of the case had just been fired by the Liquidator, and India had seized Devas's documents and records on which newly appointed counsel would have relied.³⁸³ The NCLT insisted on such a condensed time period based on the Additional Solicitor General's plea that there was "urgency in the matter" requiring it be decided on "priority".³⁸⁴ The NCLT did not address DEMPL's arguments that no urgency existed because Devas was already in the hands of the Liquidator.³⁸⁵
160. In the meantime, the Liquidator also sought to undermine enforcement of the ICC Award outside India. After firing Devas's global arbitration and enforcement counsel, the Liquidator left Devas entirely unrepresented in the U.S. ICC Award recognition and

³⁸¹ See **Exhibit C-349**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Application to implead DEMPL, 1 March 2021, ¶5(g) (noting that "serious allegations" had been against Devas's shareholders which meant that "they ought to be made parties" to the winding up proceedings to defend themselves) and ¶ 5(n) (noting that Devas's shareholders were "directly and vitally affected" by the proceedings as it affected their "right to participate in the affairs and management" of Devas). See also **Exhibit C-423**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18-cv-1360, Fourth Declaration of Anuradha Dutt, 6 July 2021, ¶ 8 ("As a matter of Indian law, Devas shareholders have the right to all of Devas's residual proceeds after Devas is wound up. This includes the proceeds from...any judgment arising out of the ICC Award and the sale thereof.").

³⁸² **Exhibit C-076**, NCLT Decision, 2 March 2021, p. 2 (granting Devas's former management until 12 March 2021 to file their objections).

³⁸³ See **Exhibit C-386**, Affidavit of Anuradha Dutt, CC/Devas (Mauritius) Ltd. and Others v. The Republic of India, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶¶ 15-16.

³⁸⁴ **Exhibit C-076**, NCLT Decision, 2 March 2021, p. 2.

³⁸⁵ See **Exhibit C-386**, Affidavit of Anuradha Dutt, CC/Devas (Mauritius) Ltd. and Others v. The Republic of India, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 10(c).

enforcement proceedings for five months, and only appointed counsel after the court insisted that the Liquidator “*needed*” to appoint counsel.³⁸⁶

161. On 15 March 2021, pursuant to the NCLT’s order of 2 March 2021, Dr. Chandrasekhar filed an affidavit opposing the winding up proceedings.³⁸⁷ Dr. Chandrasekhar’s affidavit pointed out that Antrix, an arm of the Indian Government, had abused the Indian Companies Act to bring an action to liquidate its own creditor without giving it any meaningful opportunity to defend itself before the appointment of the Liquidator.³⁸⁸ The affidavit also observed that Antrix’s allegations of fraud, being premised entirely on the claims made by the CBI and ED which were yet to be tried by Indian courts, were merely (baseless) allegations.³⁸⁹ Finally, Dr. Chandrasekhar challenged Antrix’s allegations of fraud against Devas on their merits, noting that:
- a. Antrix and ISRO engaged Devas to commercially utilize the S-band, which was a legal and *bona fide* business;
 - b. The Devas project was led by several technical experts with relevant experience in the field;
 - c. The Devas-Antrix Agreement was not rushed as negotiations to reach terms took almost two years;
 - d. The process leading up to the signing of the Agreement involved several senior Indian Government officials and was transparent;

³⁸⁶ **Exhibit C-227**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18- cv-1360, Transcript of Hearing(Dkt. No. 106), 23 March 2021, p. 22 (noting that the Liquidator “*need[s] to*” employ counsel and “*find the funds necessary to hire counsel. And without that, [the Liquidator] is not going to be able to participate in these proceedings*”).)

³⁸⁷ **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021.

³⁸⁸ **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, ¶¶ 12-13, 17.

³⁸⁹ **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, ¶¶ 20-25.

- e. The financial terms of the Agreement actually favored Antrix, insofar as Devas was required to make a sizable down payment for the cost of the satellite without a guarantee that it would be successfully constructed; and
 - f. After the Antrix board approved the deal, investigative committees comprised of Government officials also considered and approved the Agreement.³⁹⁰
162. Noting that this case raised “*complicated questions of facts which require a full-fledged trial before the competent civil courts/tribunals and the criminal courts*” and on which the NCLT was unsuited to opine, the affidavit requested the NCLT to “*dismiss the winding-up petition and leave the triable issues to be decided by the competent courts/tribunals*” or at least defer the liquidation proceedings “*until the competent courts adjudicate on the allegations made in the present proceedings.*”³⁹¹
163. In its written response to the affidavit, Antrix acknowledged that Devas had not been found guilty of fraud by any Indian court but, turning due process on its head, averred this was a “*lame excuse*” because no court had found Devas innocent either:

“No Court in the Country has exonerated the Respondent on the charges of fraud. As stated earlier, the fraudulent actions committed by the Respondent have resulted in contraventions under various laws and provisions and each agency under the respective enactments are pursuing the case and the Respondent has to meet the respective consequences as and when proceedings conclude. No Court or quasi-judicial authority has held that the Respondent is a bona fide company and has not indulged in any fraud.”³⁹²

164. Likewise, the MCA argued in its response supporting Antrix’s winding up petition that “*the ex-management of [Devas] had miserably failed to prove its bona fide*”.³⁹³ And so,

³⁹⁰ **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, ¶ 30(l).

³⁹¹ **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, ¶ 25.

³⁹² **Exhibit C-229**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Memo of Rejoinder by Antrix, 23 March 2021, ¶¶ 7, 19. (emphasis added)

³⁹³ **Exhibit C-230**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Reply of Ministry of Corporate Affairs, 22 March 2021, ¶ 9.

contrary to the most basic principles of due process, Antrix (and India) sought to argue that Devas was guilty of fraud, unless it could prove itself innocent.

165. While the NCLT proceedings were pending, on 22 March 2021, DEMPL filed a petition before the Karnataka High Court seeking the issuance of a writ that would quash the Indian Government’s authorization (dated 18 January 2021) granted to Antrix to file the winding-up petition.³⁹⁴ Under India’s Constitution, any person can petition the High Courts of each State to seek the issuance of a “*writ*” to quash government action that contravene constitutional or legal rights.³⁹⁵ This petition was grounded primarily in the Central Government’s failure to comply with the statutory requirement that it allow Devas a “*reasonable opportunity of hearing*” before authorizing Antrix to initiate the liquidation proceedings.³⁹⁶ The requirement for this hearing was not merely a formality but a way for the Indian Companies Act to guarantee the due process rights of the subject of the application. DEMPL accordingly argued in its writ petition that it would be inequitable to require it to continue to participate in the NCLT winding up proceedings “*until the legality of the very genesis*” of that proceeding (i.e. the authorization) was decided by the Karnataka High Court.³⁹⁷

5. The Liquidation Proceedings Progress With Undue Haste

166. While DEMPL’s appeal was pending before the Karnataka High Court, the liquidation proceedings before the NCLT continued at an extraordinary pace. The Indian civil court system is infamous for its delays, given the overburdened judiciary, and the NCLT is no exception. To illustrate, the statutorily required timeframe to resolve insolvency and bankruptcy cases, which forms the majority of the NCLT caseload, is 330 days, or a little

³⁹⁴ **Exhibit C-231**, *Devas Employees Mauritius Private Limited v. Union of India & Ors.*, Writ Petition No. 6191 of 2021.

³⁹⁵ **Exhibit C-219**, Article 226(1), Constitution of India.

³⁹⁶ **Exhibit C-231**, *Devas Employees Mauritius Private Limited v. Union of India & Ors.*, Writ Petition No. 6191 of 2021, ¶ 1.

³⁹⁷ **Exhibit C-231**, *Devas Employees Mauritius Private Limited v. Union of India & Ors.*, Writ Petition No. 6191 of 2021, ¶ 96.

over 11 months, but due to “a shortage of manpower”, the NCLT takes an average of 460 days, or about 1 year and 3 months, to conclude such cases.³⁹⁸

167. Yet after provisional liquidation, which the NCLT decided overnight, the NCLT took less than four months to issue a final liquidation order against Devas,³⁹⁹ based on pleadings that were filed less than two weeks before its final decision. And the liquidation decision then went through all three layers of adjudication within just one year. Even more surprising, this entire process occurred during the peak of the calamitous second wave of the COVID pandemic in India, at which time all of India was placed under a strict lockdown and the NCLT had itself declared that the “sharp increase in COVID-19 cases” required that it only take up “urgent” matters.⁴⁰⁰ The NCLT nonetheless rushed this matter at break-neck pace to hobble Devas’s efforts to enforce the ICC Award and Judgement.
168. As noted above, Antrix and MCA had submitted responses to Dr. Chandrasekhar’s affidavit from 22-23 March 2021.⁴⁰¹ On 23 March 2021, the NCLT heard the matter, at which time Devas’s former director requested time to file a rejoinder. In response, the Additional Solicitor General appearing for Antrix requested that the winding-up proceedings be immediately heard to prevent Claimants from enforcing the ICC Award before a U.S. court. The NCLT agreed to adjourn the matter to 30 March 2021—just one week—for a final hearing.⁴⁰²

³⁹⁸ See e.g. **Exhibit C-380**, PTI, *Clouds of resolution period delay, NCLT manpower crunch over IBC ‘sheen’*, Economic Times BFSI, 10 October 2022, available at <https://bfsi.economictimes.indiatimes.com/news/policy/clouds-of-resolution-period-delay-nclt-manpower-crunch-over-ibc-sheen/94749223>.

³⁹⁹ **Exhibit C-173**, § 273(1) of the Indian Companies Act requires that the NCLT make an order “appointing a provisional liquidator of the company till the making of a winding up order” or “for the winding up of a company with or without costs” within “ninety days from the date” a winding up petition is “presented”. See **Exhibit C-173**, § 273(1), Companies Act, 2013 (India). However, the Indian Companies Act does not provide a specific time period within which the NCLT must issue a final winding up order after it has ordered provisional liquidation.

⁴⁰⁰ **Exhibit C-381**, National Company Law Tribunal Order, File No. 10/03/2021-NCLT, 19 April 2021.

⁴⁰¹ **Exhibit C-229**, Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr. Company Petition No. 06/BB/2021 of 2021, Memo of Rejoinder by Antrix, 23 March 2021; **Exhibit C-230**, Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr., Company Petition No. 06/BB/2021 of 2021, Reply of Ministry of Corporate Affairs, 22 March 2021, ¶ 9.

⁴⁰² **Exhibit C-424**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18-cv-1360, Third Declaration of Anuradha Dutt, 23 March 2021, ¶¶ 4-7.

169. On 30 March 2021, the parties appeared again for final arguments but in light of DEMPL’s writ petition before the High Court of Karnataka, the outcome of which would have a direct bearing on the NCLT proceedings, DEMPL successfully adjourned the NCLT proceedings.⁴⁰³
170. In the interim, Dr. Chandrasekhar was able to file an additional affidavit further addressing Antrix’s allegations regarding Devas’s technology. Noting that Antrix appeared to have misconstrued the applicable technologies, the additional affidavit clarified that Devas accurately represented to have “*hybrid*” satellite-terrestrial technology (and the components used for providing these services) at the time of the Agreement.⁴⁰⁴ Antrix (along with the CBI as described above)⁴⁰⁵ appeared to believe that DVB-SH technology, developed in 2007, was the only possible transmission system Devas could have used to implement the Devas project. This was not true. While Devas eventually chose to use DVB-SH as the best available technology to deploy its project, at the time of the Agreement, in 2004, several transmission systems were in use for digital multimedia services around the world, of which Dr. Chandrasekhar provided numerous examples.⁴⁰⁶ And contrary to Antrix’s assertions, Devas did not claim to own the “*DVB-SH*” technology at the time it entered into the Agreement; that technology is not even mentioned in the Devas-Antrix Agreement.⁴⁰⁷
171. On 28 April 2021, a single judge of the Karnataka High Court dismissed DEMPL’s writ petition, ignoring DEMPL’s fundamental grievance with the winding up proceedings.⁴⁰⁸ Despite it being the thrust of DEMPL’s petition, not once did the Karnataka High Court

⁴⁰³ **Exhibit C-424**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18-cv-1360, Third Declaration of Anuradha Dutt, 23 March 2021, ¶ 7.

⁴⁰⁴ **Exhibit C-343**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Dr. Chandrasekhar Additional Affidavit, 7 April 2021, ¶¶ 4-6.

⁴⁰⁵ *See supra* ¶ 120.

⁴⁰⁶ **Exhibit C-343**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Dr. Chandrasekhar Additional Affidavit, 7 April 2021, ¶¶ 6-8, 10-12.

⁴⁰⁷ **Exhibit C-343**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Dr. Chandrasekhar Additional Affidavit, 7 April 2021, ¶¶ 15-16.

⁴⁰⁸ **Exhibit C-232**, *Devas Employees Mauritius Private Limited v. Union of India & Ors.*, Writ Petition No. 6191 of 2021, Single-Judge Judgment, 28 April 2021.

record, let alone address, the Government’s failure to comply with the statutory requirement of hearing under section 272(3) of the Indian Companies Act. Despite knowing that Devas was under the management of the Liquidator, who was acting *against* Devas’ interests at this time, the court remarked that the petition was premature because “*Devas is not aggrieved by the sanction order*” and that DEMPL could instead “*urge its contentions before NCLT.*”⁴⁰⁹ To compound the injustice, the court imposed costs of INR 500,000 on DEMPL (approximately USD 6,000),⁴¹⁰ a rarely imposed sanction usually reserved for a “*gross abuse*” of the judicial process,⁴¹¹ and not, as in this case, the invocation of a statutory right. The message was clear: Devas’s shareholders would be punished at every turn simply for attempting to protect Devas and enforce its rights.

172. That same day, on 28 April 2021, Antrix filed an application before the NCLT seeking an “*urgent*” hearing of its winding up petition, for the very next day, on 29 April 2021.⁴¹² Antrix claimed urgency due to the ongoing foreign enforcement proceedings commenced by Devas and DEMPL against Antrix.⁴¹³ DEMPL objected to the urgent listing of the Petition on the grounds that:

“(i) Devas India had already been placed in provisional liquidation, (ii) the Provisional Liquidator was representing Devas India in all proceedings, and (iii) Mr. Nayar, SA Senior Counsel for DEMPL and Devas India was in isolation on account of his wife and family members suffering from

⁴⁰⁹ **Exhibit C-232**, *Devas Employees Mauritius Private Limited v. Union of India & Ors.*, Writ Petition No. 6191 of 2021, Single-Judge Judgment, 28 April 2021, ¶ 47.

⁴¹⁰ **Exhibit C-232**, *Devas Employees Mauritius Private Limited v. Union of India & Ors.*, Writ Petition No. 6191 of 2021, Single-Judge Judgment, 28 April 2021, ¶ 54.

⁴¹¹ See e.g. **Exhibit C-419**, *Ram Kishan and Anr. v. Union of India and Anr.*, (2020) 19 SCC 555, ¶ 4 (The Supreme Court imposing exemplary costs of INR 100,000 for a writ petition because it amounted to a “gross abuse of the process of law and interference in the administration of justice.”).

⁴¹² See **Exhibit C-351**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Memorandum of Urgent Listing, 28 April 2021.

⁴¹³ See **Exhibit C-351**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Memorandum of Urgent Listing, 28 April 2021, ¶ 6. See also **Exhibit C-386**, *Affidavit of Anuradha Dutt, CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 27.

COVID-19 and he had no access to his materials for the NCLT Proceedings.”⁴¹⁴

173. Yet, the NCLT granted Antrix’s request and scheduled the final hearing on Antrix’s petition for 30 April 2021, just two days later. The quick listing was surprising because, just a day earlier, on 27 April 2021, the NCLT had issued a notification advising parties that it would be closed between 28 April 2021 and 11 May 2021 due to the lockdown imposed in the State of Karnataka due to COVID-19.⁴¹⁵
174. When the NCLT took up the matter on 30 April, the Senior Counsel representing DEMPL again sought a brief adjournment of the hearing for medical reasons as he and his wife were severely ill with COVID. Indeed, at this time, India was facing one of the most dire public health emergencies in its history as the country experienced more than 5 million deaths as a result of the COVID second wave.⁴¹⁶ Yet the Additional Solicitor General appearing for Antrix strongly opposed DEMPL’s request, claiming “urgency” in the matter.⁴¹⁷ The NCLT, without giving reasons, rejected DEMPL’s request for adjournment and began hearing Antrix’s arguments.⁴¹⁸ On 3 May 2021, the NCLT began hearing final arguments on Antrix’s winding-up petition, merely five days after Antrix sought the hearing.⁴¹⁹ The hearing continued on 5 May, 6 May, 7 May and concluded on 10 May 2021.

6. Antrix Opposes Devas’s Applications to Test Antrix’s Allegations

175. While the hearing was ongoing, on 2 May 2021, Antrix filed an additional rejoinder raising an additional argument that the two-way interactive services that Devas contemplated

⁴¹⁴ See **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 28.

⁴¹⁵ See **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 29.

⁴¹⁶ **Exhibit C-382**, Sneha Mordani, *2nd Covid wave was India’s worst tragedy since Partition, saw up to 49 lakh excess deaths*: Report, India Today, 21 July 2021, available at <https://www.indiatoday.in/coronavirus-outbreak/story/2nd-covid-wave-was-india-worst-tragedy-since-partition-saw-up-to-49-lakh-excess-deaths-1830894-2021-07-21>

⁴¹⁷ **Exhibit C-244**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Order, 30 April 2021.

⁴¹⁸ **Exhibit C-244**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Order, 30 April 2021.

⁴¹⁹ See *supra* ¶ 151.

providing was not available at the time the Agreement was signed.⁴²⁰ On 4 May 2021, Dr. Chandrasekhar filed a sur-rejoinder disputing Antrix’s assertions about the existence of the technology, noting that “*Devas [was] able to provide two way interactive services*” using the technology it had and of which it had “*full understanding and capability to implement.*”⁴²¹ The next day, on 5 May 2021, Antrix filed a further submission contending that Devas should have had the capability to provide the services it promised under the Agreement (the “**Devas Services**”) on the date the Agreement was executed.⁴²² That same day, Dr. Chandrasekhar responded, re-iterating that Devas indeed had access to the technology required for delivery of the Devas Services and a team capable of developing any further technology required.⁴²³

176. During the course of oral arguments on 5 May 2021, Dr. Chandrasekhar’s counsel also requested that the NCLT make an order to “*advertise*” the Petition. This application was made because notice of the Petition had not been advertised as required by rule 7 of the Companies (Winding-up) Rules, 2020 which states, “[s]*ubject to any directions of the Tribunal, notice of the petition shall be advertised not less than fourteen days before the date fixed for hearing in any daily newspaper in English and vernacular language widely circulated in the State or Union territory in which the registered office of the company is situated, and the advertisement shall be in Form WIN 6*”.⁴²⁴ This advertisement would serve the important purpose of informing the relevant stakeholders in Devas of the pending winding-up proceedings. This would have included, for example, other Devas officers and

⁴²⁰ **Exhibit C-353**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Memo of Additional Rejoinder by Antrix to the Additional Affidavit of Dr. Chandrasekhar, 2 May 2021, PDF p. 5.

⁴²¹ **Exhibit C-354**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Sur-Rejoinder of Dr. Chandrasekhar to Antrix’s rejoinder, 4 May 2021, ¶ 10 (“*By combining these two components viz the forward link carrying Multimedia Broadcast Content to the User Terminal and the return link which carries requests from the User Terminals, Devas is able to provide two way interactive services. The Devas personnel had the full understanding and capability to implement the system.*”). See also First Witness Statement of Gary Parsons, 20 January 2023, ¶ 41(b).

⁴²² **Exhibit C-355**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Antrix’s Rejoinder, 5 May 2021.

⁴²³ **Exhibit C-356**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Further Affidavit from Dr. Chandrasekhar, 5 May 2021.

⁴²⁴ **Exhibit C-248**, Rule 7, Companies (Winding Up) Rules, 2020 (India).

employees with contemporaneous knowledge of Devas’s performance of the Agreement, and interest in the outcome of the Liquidation. The NCLT did not make a decision on this oral application at the time.⁴²⁵

177. As Antrix’s submissions were based entirely on the statements of two Antrix officials— Mr. Rakesh Sasibhushan (Antrix’s then Chairman and Managing Director) and Mr. Sanjay Kumar Agarwal (Antrix’s then Finance Director)—on 5 May 2021, Dr. Chandrasekhar also filed an application seeking to cross examine them. Despite not having been part of the negotiations leading up to, or the signing of, the Agreement, Mr. Sasibhushan (who joined Antrix in 2016) and Mr. Agarwal (who joined Antrix in 2018) had verified that the allegations in Antrix’s winding up petition and subsequent pleadings were “*true and correct*” to the “*best of [their] knowledge.*”⁴²⁶ These allegations included that: (i) Devas did not have the requisite technology at the time when it entered into the Agreement; (ii) the Agreement was concealed from various government authorities and negotiated in secret; and (iii) S-band capacity leased to Devas under the Agreement was not available for non-government uses.⁴²⁷
178. Dr. Chandrasekhar and DEMPL sought to cross examine these individuals to demonstrate their lack of personal knowledge and thus the credibility of their assertions. Indeed, Antrix/India officials who were actually involved in the negotiation and implementation of the Devas-Antrix Agreement have roundly and publicly contradicted these views, noting that these allegations were manufactured by the CBI and ED in response to the arbitration

⁴²⁵ **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 33.

⁴²⁶ See e.g. **Exhibit C-065**, Antrix Wind-up Petition, 18 January 2021, pp. 50-1 (Rakesh Sasibhushan’s “Verifying Affidavit”); **Exhibit C-229**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Memo of Rejoinder by Antrix, 23 March 2021, p. 72 (Sanjay Kumar Agarwal’s “Verifying Affidavit”).

⁴²⁷ **Exhibit C-240**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Application seeking cross examination of Mr. Rakesh Sasibhushan and Mr. Sanjay Kumar Agarwal, 5 May 2021, pp. 6-8.

proceedings. For example, Dr. Nair, former Chairman of ISRO and winner of India's second-highest civilian honor,⁴²⁸ stated regarding the Agreement that:

*“There was nothing wrong in the deal and I do not know how the chargesheet has come. There was vested interest behind this and the previous ISRO chairman K. Radhakrishnan had given wrong statements...”*⁴²⁹

179. Regarding the obvious benefits of the Agreement, he noted:

*“In reality, the Antrix-Devas deal would have made Indian telecommunication sector rise to whole new level as the technology itself would have negated the usage of towers and its maintenance cost. The satellite's radiation beams would have covered the entirety of India, including remote villages, mountainous regions and even forests. Both internet and voice data would have been provided by this technology. This innovative idea was the aim of ISRO through Antrix-Devas technology.”*⁴³⁰

180. In challenging India's campaign to discredit the Agreement, he argued:

*“Three inquiries have found nothing wrong in signing of the deal. Each one of them has said that there was no loss to the exchequer. Competent technical people were present in these team[s]. I don't understand on what basis has the CBI been making these claims. And incidentally, it is not probing why the deal was cancelled. It is the cancellation of the deal that is problematic and not the signing. International courts (of arbitration) have now ruled that the cancellation of the deal was illegal...”*⁴³¹

Adding:

⁴²⁸ **Exhibit C-234**, Hindustan Times, *Madhavan Nair dedicates Padma Vibhushan to ISRO staff*, 25 January 2009, available at <https://www.hindustantimes.com/india/madhavan-nair-dedicates-padma-vibhushan-to-isro-staff/story-YznbDBrgMy0IfJtMxhHs1O.html>.

⁴²⁹ **Exhibit C-235**, Tanima Biswas, *Ex-ISRO Chairman G Madhavan Nair Named In Antrix-Devas Case Chargesheet*, NDTV, 11 August 2016, available at <https://www.ndtv.com/india-news/ex-isro-chairman-g-madhavan-nair-named-in-antrix-devas-case-chargesheet-1443061>.

⁴³⁰ **Exhibit C-236**, G. Madhavan Nair, *Agneepareekshal (“Ordeals Of Fire”)*, DC Books, 1 January 2017, PDF pp. 14-15.

⁴³¹ **Exhibit C-237**, Express News Service, *Antrix-Devas case: Former ISRO chairman G Madhavan Nair named in CBI chargesheet*, The Indian Express, 12 August 2016, available at <https://indianexpress.com/article/india/india-news-india/antrix-devas-case-former-isro-chief-madhavan-nair-named-in-cbi-chargesheet-2968893/>.

*“The entire deal was in conformity with the existing SatCom policy. You cannot retrospectively apply rules. We would have got the assured 13.8% returns over the project period of 12 years, one of the highest so far.”*⁴³²

181. Dr. Nair was not alone. Dr. K.R. Sridhara Murthi, former Antrix Executive Director from 2001 to 2007 (and then Managing Director from 2007 to 2010) also remarked:

*“By allocating S-band spectrum for satellite mobile communication we were following the policy that already existed — how can you find fault with us for that...The whole issue arises from the fact that there has not been sufficient informed discussion. There is just a lot of hype by some people with certain interests who are trying to reinforce their argument...It is painful for us who have done our job with dedication, pride and certain values.”*⁴³³

182. K. Kasturirangan, who served as ISRO’s Chairman for nearly a decade from 1994 to 2003 has also *“argued that there was value in the [Devas] deal when negotiations began during his tenure in 2003 since DEVAS technology for digital multimedia broadcast services is a creation of a consortium of top designers of communication systems from around the world.”*⁴³⁴

183. Given this clear public challenge to Antrix’s false narrative and the serious ramifications of liquidation, it was imperative that the NCLT ensured a fair process was followed so that it could establish an accurate factual record.⁴³⁵ Thus, testing the allegations made by the Antrix officials on whose statements its petition was based was obviously critical.

⁴³² **Exhibit C-238**, Zia Haq, *Interview -- G Madhavan Nair, former chief of Isro*, Hindustan Times, 11 February 2012, available at <https://www.hindustantimes.com/india/interview-g-madhavan-nair-former-chief-of-isro/story-me3Uo9Yv13ByhARG7shYNM.html>. In addition, Antrix and ISRO officials were on notice as early as 2010 that Devas was asserting that the Agreement complied with SATCOM Policy. See **Exhibit C-333**, Letter from R. Viswanathan to T.K. Alex, 27 August 2010, p. 5 (“Devas . . . negotiated over a period of two years between 2003-2005, and [sic] was able to execute the Agreement on January 28, 2005, in compliance with the Government of India’s Union Cabinet approved 1999 SatCom Policy, the extant regulations that govern all satellite-based services.”) (emphasis added).

⁴³³ **Exhibit C-239**, Indulekha Aravind, *Troubled space*, Business Standard, 21 January 2013, available at https://www.business-standard.com/article/beyond-business/troubled-space-112020400047_1.html?_sm_au_=iVVfJrvFT7607rRHFcVTvKQkcK8MG.

⁴³⁴ **Exhibit C-428**, TA Johnson, *“ISRO head, former chiefs differ on deal”*, Indian Express, 18 April 2011, available at <https://indianexpress.com/article/news-archive/web/isro-head-former-chiefs-differ-on-deal/>.

⁴³⁵ **Exhibit C-240**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Application seeking cross examination of Mr. Rakesh Sasibhushan and Mr. Sanjay Kumar Agarwal, 5 May 2021, PDF p. 10.

184. Unsurprisingly, Antrix—which was rightly fearful of its allegations being exposed as a sham—opposed the cross examination application tooth and nail in a submission dated 6 May 2021. Antrix argued that, by filing this Application during final arguments, Dr. Chandrasekhar was attempting to “*frustrate the proceedings.*”⁴³⁶ This was untrue. The NCLT had reinitiated the liquidation proceedings a day after Antrix’s urgent appeal, on 30 April 2021, or just a week before Dr. Chandrasekhar made the application for cross examination. Moreover, Dr. Chandrasekhar had filed the application in response to the fact that earlier that day the NCLT orally acknowledged that its jurisdiction was not necessarily “*summary*” in nature, and that it had the jurisdiction to examine the factual issues raised by Antrix’s petition.⁴³⁷ Thus, Dr. Chandrasekhar acted with extraordinary diligence in filing the cross examination application that very day, to ensure that the NCLT would have the opportunity to examine these factual issues.⁴³⁸
185. Moreover, despite repeatedly asserting before the NCLT that there was “*urgency*” in finally liquidating Devas,⁴³⁹ Antrix had at no point actually demonstrated why, having already provisionally liquidated Devas, the NCLT now needed to urgently and summarily decide the liquidation petition. Plainly, the reason that Antrix sought to accelerate the proceedings was because the U.S. court overseeing the confirmation of the ICC Award, recognizing the brazen and sham nature of these proceedings, on 23 March 2021, had denied the

⁴³⁶ **Exhibit C-241**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Objection to Application for Cross Examination of Mr. Rakesh Sasibhushan and Mr. Sanjay Kumar Agarwal, 6 May 2021, PDF p. 5.

⁴³⁷ **Exhibit C-358**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Rejoinder to Antrix’s objections to the Cross Examination Application, 6 May 2021, PDF p. 5.

⁴³⁸ **Exhibit C-240**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Application seeking cross examination of Mr. Rakesh Sasibhushan and Mr. Sanjay Kumar Agarwal, 5 May 2021.

⁴³⁹ See e.g. **Exhibit C-242**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Order, 9 April 2021 (“*Since there is an urgency in the matter, the Learned ASG urged the Tribunal to take case on expeditious basis*”); **Exhibit C-243**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Order 16 April 2021 (“*Learned ASG submits that...the matter may be heard earlier, in view of urgency in the matter.*”); **Exhibit C-244**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Order, 30 April 2021, p. 2 (“*Learned Additional Solicitor General, has strongly opposed the adjournment by pointing out the urgency in the case to decide it on urgent basis.*”).

Liquidator’s attempt to stay enforcement of the Award.⁴⁴⁰ It comes as no surprise that Antrix accordingly repeatedly invoked claims of “*urgency*” in Devas’s liquidation.

186. Antrix also bizarrely asserted that cross examination of its officials would be “*clear misdirection*” because Antrix had “*no role to play whatsoever*” in the technology Devas claimed it owned at the time of signing the Agreement.⁴⁴¹ This statement made no sense—Antrix officials had negotiated with Devas at length and it was to them that Devas made representations about the technology it had and that it intended to procure and develop over the course of implementing the Agreement.⁴⁴² Moreover, the Antrix officials Dr. Chandrasekhar wished to cross examine had stated under oath that Devas did not have the relevant technology, and thus ostensibly alleged to have information about the status of Devas’s technology.

7. NCLT Issues Final Liquidation Order

187. On 14 May 2021, Antrix, Dr. Chandrasekhar and DEMPL filed written closing submissions in support of their oral arguments in the Petition.⁴⁴³ Antrix used this opportunity to make entirely new allegations, including that the reports of the Liquidator demonstrated that funds had been improperly diverted out of Devas into DMAI.⁴⁴⁴ Dr. Chandrasekhar applied the same day for leave to respond to Antrix’s new arguments,⁴⁴⁵

⁴⁴⁰ **Exhibit C-227**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18- cv-1360, Transcript of Hearing (Dkt. No. 106), p. 22 (Denying the Liquidator’s motion (Dkt. 71) to intervene and to stay the proceedings).

⁴⁴¹ **Exhibit C-241**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Objection to Application for Cross Examination of Mr. Rakesh Sasibhushan and Mr. Sanjay Kumar Agarwal, 6 May 2021, PDF p. 6.

⁴⁴² *See, e.g., supra* ¶ 37.

⁴⁴³ **Exhibit C-359**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, DEMPL’s Written Submissions, 14 May 2021; **Exhibit C-360**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Dr. Chandrasekhar’s Written Submissions, 14 May 2021; **Exhibit C-361**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Antrix’s Rejoinder Written Submissions , 14 May 2021.

⁴⁴⁴ **Exhibit C-361**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Antrix’s Rejoinder Written Submissions, 14 May 2021, PDF p. 14.

⁴⁴⁵ **Exhibit C-362**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Dr. Chandrasekhar Application , 14 May 2021.

which Antrix predictably opposed.⁴⁴⁶ The NCLT did not rule on Dr. Chandrasekhar's application; nonetheless, he submitted additional written submissions on 18 May 2021, responding to Antrix's new allegations.⁴⁴⁷

188. Ultimately, on 25 May 2021, and without allowing any cross examination (despite having acknowledged that it had the powers to do so) or analyzing Antrix's consistent falsehoods and logical fallacies, the NCLT issued a final liquidation order of Devas, ending the provisional nature of the Liquidator's appointment, and making his appointment official.⁴⁴⁸ The decision made no attempt to address the plethora of evidence submitted by Dr. Chandrasekhar that unequivocally controverted Antrix's allegations. It is moreover rife with falsehoods and devoid of basic logic.
189. To start with, the NCLT proclaimed that the following "*basic facts*" "*clearly establish that the incorporation of Devas itself was with fraudulent intention to grab prestigious contract in question from Antrix in connivance and collusion with the then officials of Antrix*"⁴⁴⁹:
- a. the signing of the Agreement in 2005 and India's decision to "*annul*" it in 2011;
 - b. Devas's commencement of the ICC Arbitration and Antrix's attempts to prevent it from proceeding in 2011;
 - c. the Indian Supreme Court's decision in 2013 allowing the ICC Arbitration to proceed;
 - d. the delays in the ICC Arbitration and the change in venue of the final hearings from New Delhi to London in 2014;

⁴⁴⁶ **Exhibit C-363**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Antrix's Reply Memo to Dr. Chandrasekhar's Application dated 14.05.2021, 16 May 2021.

⁴⁴⁷ **Exhibit C-364**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Additional Written Submissions from Dr. Chandrasekhar, 18 May 2021.

⁴⁴⁸ **Exhibit C-078**, *Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd. & Another*, NCLT, CP No. 06/BB/2021, Final Liquidation Order, 25 May 2021 ("**NCLT Final Liquidator Order**"), PDF pp. 99-100.

⁴⁴⁹ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 76.

- e. the terms of the Agreement relating to Devas’s payments to Antrix per satellite;
 - f. the ICC Tribunal’s reproduction of Antrix’s termination letter dated 26 February 2011;
 - g. correspondence between Devas and Antrix from February 2011 to April 2011 regarding Antrix’s attempts to terminate the Agreement and “reimburse[]” Devas for the fees it had paid;
 - h. the ICC Tribunal’s reproduction of Devas’s letter of 13 June 2013 withdrawing its claim for specific performance of the Agreement but reserving its claim against Antrix for damages for breach of contract; and
 - i. a second reference to Antrix’s attempt in 2011 to “reimburse” Devas for terminating the Agreement.⁴⁵⁰
190. Needless to say, none of the “*basic facts*” listed above point to fraud. They are simply events that gave rise to or formed part of the ICC Arbitration.
191. The NCLT further found that Devas had “*fraudulent intention/manner*” because Devas was “*able to obtain huge award*” even though the ICC Tribunal found that the India’s Cabinet Committee on Security’s decision to annul the Agreement was an “*act of Governmental Authority acting [sic] its sovereign capacity*”.⁴⁵¹ The NCLT then complained that the ICC Award had led Devas to “*mak[e] all sorts of efforts for enforcement of such award*”.⁴⁵² The NCLT did not bother to explain what connection the ICC Tribunal’s finding or Devas’s efforts to recover monies due to it under the ICC Award had on Antrix’s “*fraud*” allegations. Indeed, none can be discerned by any reasonable mind. Yet the NCLT took “*issue*” with Devas “*taking steps*” in Indian and foreign courts to enforce the ICC Award, which the NCLT noted “*would have serious ramifications*”.⁴⁵³ Even though the NCLT has

⁴⁵⁰ **Exhibit C-078**, NCLT Final Liquidator Order, PDF pp. 71-76.

⁴⁵¹ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 78.

⁴⁵² **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 78.

⁴⁵³ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 71.

no powers to opine on the validity of the ICC Award, it expressly drew adverse inferences against Devas for “*rush[ing]*” to arbitration, falsely claiming that this violated the Agreement.⁴⁵⁴ The NCLT further considered it “*not fair*” that the hearings for the ICC Arbitration took place outside India.⁴⁵⁵ This despite the fact that Devas and Antrix had explicitly agreed that the physical hearings could take place “*in New Delhi, India or at such other venue as is mutually agreed by the Parties and the Tribunal*”.⁴⁵⁶

192. The NCLT then laid out the real reason why Devas liquidated at such extraordinary speed: it was attempting to enforce the ICC Award. In the NCLT’s own words:

*“When Antrix and Union of India have suffered huge ICC Award and are facing its enforcement proceedings, Devas, in all fairness, it should wait for the outcome of all proceedings pending before Hon’ble Delhi [High Court] against the validity of the Award. Therefore, this Tribunal would not permit Devas to succeed at both ends and its bounden duty is to protect public interest and to uphold the law. Since Devas is misusing the legal status conferred on it by virtue of its incorporation by filing various proceedings on untenable grounds in India and abroad to enforce the ICC Award, it would be just and proper for this Tribunal to decide the matter as expeditiously as possible.”*⁴⁵⁷

193. The NCLT thus made clear that it was liquidating Devas on an expedited basis because Devas had the temerity to enforce a large arbitration award in its favor against an Indian Government entity.

194. In its decision, the NCLT also casually disregarded crucial statutory pre-conditions for liquidating a company.

- a. First, the NCLT decided that, despite the express notice requirements in the Companies Law,⁴⁵⁸ there was no requirement to give prior notice to the Company

⁴⁵⁴ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 77.

⁴⁵⁵ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 77.

⁴⁵⁶ **Exhibit C-125**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, ICC Case 18051/CYK, Procedural Order No. 2, 8 November 2013, ¶ 7.2.

⁴⁵⁷ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 79. (emphases added).

⁴⁵⁸ See **Exhibit C-173**, § 273, Companies Act, 2013 (India).

to be wound up, and considered that it had “*already granted reasonable opportunity*” to Devas to contest the provisional liquidation.⁴⁵⁹

- b. Second, Dr. Chandrasekhar had argued that Antrix’s petition was time-barred, insofar as it exceeded the applicable three-year limitation period for filing a case relating to fraud, having filed a petition in 2021 with respect to fraud allegations that, by Antrix’s own filings, it was aware of since 2014. The NCLT dismissed this contention outright, holding that Antrix could have filed the petition at any time because “*in some cases like fraud/crimes...there cannot be any limitation question*” and that, accordingly, “*question of limitation does not arise in the instant case.*”⁴⁶⁰
 - c. Third, Dr. Chandrasekhar had also pointed out that under the Companies (Winding Up) Rules, 2020, no company could be wound up without the NCLT first advertising the petition publicly,⁴⁶¹ so that relevant stakeholders were apprised of the action and given an opportunity to contest it. Despite acknowledging that it had failed to uphold this non-discretionary obligation, the NCLT said it could liquidate Devas because it had “*already afforded adequate opportunity to Devas*” to contest Antrix’s petition and because issuance of the notice to other stakeholders was somehow “*not necessary.*”⁴⁶²
195. The NCLT also rejected Dr. Chandrasekhar’s cross examination application or indeed the need for any further evidential inquiry, declaring “*the facts and circumstances leading to the filing of [the] instant Company Petition...do not require any evidence to be adduced.*”⁴⁶³ Instead, the NCLT stated, the various issues of criminality affecting the Agreement “*can be decided based on the sufficient rather voluminous documentary evidence produced by the Parties*” before the ICC Tribunal.⁴⁶⁴ But this suggestion

⁴⁵⁹ **Exhibit C-078**, NCLT Final Liquidator Order, PDF pp. 85-86.

⁴⁶⁰ **Exhibit C-078**, NCLT Final Liquidator Order, PDF pp. 80-81.

⁴⁶¹ **Exhibit C-248**, Rules 5, 7, Companies (Winding Up) Rules, 2020 (India).

⁴⁶² **Exhibit C-078**, NCLT Final Liquidator Order, PDF pp. 82-83.

⁴⁶³ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 87.

⁴⁶⁴ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 87.

contradicts the NCLT's *own* reasoning that Antrix could not have raised these allegations before the ICC Tribunal because it was not aware of them at the time.⁴⁶⁵ Moreover, the NCLT did not even attempt to analyze the “*voluminous*” evidence within the ICC Arbitration record, to which it claimed it had access, that plainly and unequivocally controverted Antrix's allegations.

196. On the same day that it issued its final liquidation order, the NCLT also ruled that DEMPL had no basis to participate in the winding up proceeding, on the grounds that it was a minority shareholder and was defending Devas, whose interests the NCLT declared were sufficiently represented by its former director. The NCLT further noted that DEMPL (and indeed all other shareholders) were now “*bound by the decisions taken*” by Devas's new management, *i.e.*, India,⁴⁶⁶ and should “*approach the Liquidator*” with any grievances over the company's management.⁴⁶⁷ Dr. Chandrasekhar could not, however, sufficiently represent the DEMPL's concerns, as a shareholder.
- a. First, DEMPL had a specific interest in protecting the company's major asset, the ICC Award. Yet the NCLT, without any apparent understanding of the facts or law involved in the Arbitration, found that the “*contention of [DEMPL] that amount awarded is an asset and Antrix is debtor is not tenable and it is baseless as long as the Award has not attained its finality*”.⁴⁶⁸ Setting aside the fact that arbitral awards are final by their nature, the NCLT ignored the U.S. court's recent confirmation of the Award, and also ominously forecast the fate of the Indian set aside process, now that Devas and the ICC Award it held were under India's control.⁴⁶⁹
 - b. Second, DEMPL argued that it needed to participate in the Liquidation Proceedings to defend itself against Antrix's allegations that Devas's shareholders had violated

⁴⁶⁵ See *supra* ¶ 148.

⁴⁶⁶ **Exhibit C-079**, NCLT Impleadment Order, p. 12.

⁴⁶⁷ **Exhibit C-079**, NCLT Impleadment Order, p. 13.

⁴⁶⁸ **Exhibit C-079**, NCLT Impleadment Order, p. 12.

⁴⁶⁹ **Exhibit C-079**, NCLT Impleadment Order, p. 12.

the law and committed fraud.⁴⁷⁰ Speaking out of both ends of its mouth, the NCLT both acknowledged that Antrix had accused the shareholders of fraud⁴⁷¹ but also that the shareholders could not participate in the liquidation proceedings to defend themselves because, obtusely, “*their liability is limited to their shareholding*”.⁴⁷²

197. While dismissing the application, the NCLT held that the Impleadment Application was “*nothing but to delay proceedings*” and amounted to a “*proxy war*” for Devas.⁴⁷³ In effect, the NCLT foreclosed DEMPL’s ability to challenge the actions of the Liquidator, despite his conduct being contrary to his statutory mandate to “*protect and preserve*” Devas’ interests and ensure its “*beneficial*” winding-up.⁴⁷⁴

8. The NCLAT Upholds The Final Liquidation, Acknowledging That It Was Done On “*Prima Facie*” Grounds

198. On 27 and 28 May 2021, Dr. Chandrasekhar and DEMPL promptly filed appeals respectively against the NCLT final liquidation order and impleadment order to the NCLAT.⁴⁷⁵ Dr. Chandrasekhar argued, among other things, that the NCLT had applied the wrong standard of proof (“*prima facie*”) in determining whether Antrix had sufficiently established “*fraud*” so as to liquidate Devas,⁴⁷⁶ which required a full-fledged trial.⁴⁷⁷ Dr. Chandrasekhar also challenged the absurd conclusions of the NCLT that had completely ignored all the exculpatory evidence he had put on the record, such as the fact that Devas was fully qualified to participate in the Agreement, and included several technical experts who had years of experience in multimedia services.⁴⁷⁸ Dr. Chandrasekhar further raised

⁴⁷⁰ **Exhibit C-079**, NCLT Impleadment Order, p. 7.

⁴⁷¹ *See Exhibit C-078*, NCLT Final Liquidator Order, PDF pp. 12-13, 42.

⁴⁷² **Exhibit C-078**, NCLT Final Liquidator Order, p. 98.

⁴⁷³ **Exhibit C-079**, NCLT Impleadment Order, p. 13.

⁴⁷⁴ **Exhibit C-173**, §§ 283, 290(1)(a), Companies Act, 2013 (India).

⁴⁷⁵ **Exhibit C-249**, *Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.*, Company Appeal (AT) No. 17 of 2021, 27 May 2021; **Exhibit C-250**, *Devas Employees Mauritius Private Limited v. Antrix Corporation Limited and Ors.*, Company Appeal (AT) No. 24 of 2021, 28 May 2021.

⁴⁷⁶ **Exhibit C-249**, Dr. Chandrasekhar Appeal Of NCLT Decision, PDF pp. 120-21.

⁴⁷⁷ **Exhibit C-249**, Dr. Chandrasekhar Appeal Of NCLT Decision, PDF p. 112.

⁴⁷⁸ **Exhibit C-249**, Dr. Chandrasekhar Appeal Of NCLT Decision, PDF p. 125.

the procedural requirements, including adherence to limitations period,⁴⁷⁹ advertisement⁴⁸⁰ and notice requirements, that the NCLT had done away with in its rush to reach a decision.

199. DEMPL argued that the NCLT had wrongly denied its impleadment because, among other reasons, the NCLT had failed to address the fact that DEMPL’s impleadment was necessary because of the Liquidator’s ongoing failure to protect Devas’s interests, including notably the ICC Award.⁴⁸¹
200. On 7 June 2021, the NCLAT issued an order in Dr. Chandrasekhar’s appeal setting a briefing schedule and listing the matter for 8 July 2021.⁴⁸² However, the NCLAT did not stay the final liquidation order despite the fact that it is customary for an appellate body to stay a lower body’s winding up order while on review.⁴⁸³ Accordingly, Dr. Chandrasekhar appealed to the Supreme Court for an interim stay of the final liquidation order.⁴⁸⁴ However, the Supreme Court refused to intervene, purportedly because Dr. Chandrasekhar’s appeal of the NCLAT’s decision raised no “*question of law*.”⁴⁸⁵ Accordingly, Devas remained under the Liquidator’s control during the pendency of the proceedings before the NCLAT.
201. On 20 and 23 June 2021, Antrix and the MCA filed their replies to Dr. Chandrasekhar’s appeal. Antrix argued that the factual “*findings*” by the NCLT were correct⁴⁸⁶ and the MCA

⁴⁷⁹ **Exhibit C-249**, Dr. Chandrasekhar Appeal Of NCLT Decision, PDF pp. 128-30.

⁴⁸⁰ **Exhibit C-249**, Dr. Chandrasekhar Appeal Of NCLT Decision, PDF pp. 130-35.

⁴⁸¹ **Exhibit C-250**, *Devas Employees Mauritius Private Limited v. Antrix Corporation Limited and Ors.*, Company Appeal (AT) No. 24 of 2021, 28 May 2021, PDF p. 15.

⁴⁸² **Exhibit C-080**, NCLAT Briefing Schedule, 7 June 2021.

⁴⁸³ See **Exhibit C-423**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18-cv-1360, Fourth Declaration of Anuradha Dutt, 6 July 2021, ¶ 6 (noting that “*it is customary for an appellate body to stay a lower body’s decision while on review.*”).

⁴⁸⁴ **Exhibit C-254**, *Devas Multimedia Private Limited v. Antrix Corporation Limited and Anr.* Civil Appeal No. 1848 of 2021, 7 June 2021.

⁴⁸⁵ **Exhibit C-255**, *Devas Multimedia Private Limited v. Antrix Corporation Limited and Anr.* Civil Appeal No. 1848 of 2021, Order, 15 June 2021.

⁴⁸⁶ **Exhibit C-340**, *Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.*, Company Appeal (AT) No. 17 of 2021, Antrix Reply, 20 June 2021.

argued that the NCLT had met the standard under the Companies Act which was lower than what was required in criminal proceedings.⁴⁸⁷

202. On 29 June 2021, Dr. Chandrasekhar responded that the NCLT could not make fraud “*findings*” on a summary basis without holding a trial.⁴⁸⁸ He also sought an interlocutory order for Antrix and MCA to provide all files relating to the various meetings of government agencies in light of Antrix’s allegations that their approval of the Agreement was improper.⁴⁸⁹
203. In the meantime, the Liquidator finally appointed counsel to represent Devas in the U.S. enforcement proceedings. But rather than supporting Devas’s enforcement efforts, the Liquidator’s new U.S. counsel acted in India’s interests by attempting to obstruct and stall enforcement of the ICC Award. In July 2021, their first action was to ask the U.S. court to stay enforcement proceedings of the ICC Award Judgment.⁴⁹⁰ The court rejected that request, observing that “[a]s the Court has repeatedly emphasized, this matter has been subjected to hindrance and delay, largely on the part of Antrix” and concluding that the Liquidator’s “*motion for a stay . . . lacks merit under these circumstances and is intended to further delay these proceedings, as well as [the Devas Shareholders’] right to recover on the Award.*”⁴⁹¹
204. Less than a month after the U.S. court’s decision, on 8 September 2021, the NCLAT, through two separate opinions that concurred in result, dismissed Dr. Chandrasekhar’s and

⁴⁸⁷ **Exhibit C-365**, *Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.*, Company Appeal (AT) No. 17 of 2021, MCA Reply, 23 June 2021.

⁴⁸⁸ **Exhibit C-341**, *Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.*, Company Appeal (AT) No. 17 of 2021, Dr. Chandrasekhar Rejoinder to Antrix Reply, 29 June 2021.

⁴⁸⁹ **Exhibit C-367**, *Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.*, Company Appeal (AT) No. 17 of 2021, Memo for Production of Additional Documents, 29 June 2021.

⁴⁹⁰ **Exhibit C-081**, Motion for Temporary Stay By Liquidator’s Counsel before the US District Court of the Western District of Washington, 16 July 2021.

⁴⁹¹ **Exhibit C-082**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18-cv-1360, Minute Order (Dkt. No. 132), 9 August 2021, ¶ 1.

DEMPL's appeals against the Final Liquidation and Impleadment Orders respectively.⁴⁹² The NCLAT also refused to rule on Dr. Chandrasekhar's disclosure application.⁴⁹³

205. The NCLAT's decision bears little similarity to its predecessor. Rather, the NCLAT, without reason, ignored Dr. Chandrasekhar's challenges to the NCLT's "*findings*". For example, the NCLAT made no observations on the NCLT's bizarre "*finding*" that Devas's institution of the ICC Arbitration was fraudulent because the decision to annul the Agreement was one made in India's "*sovereign capacity*."⁴⁹⁴ The NCLAT also ignored the NCLT's observations on Devas supposedly "*rushing*" to institute the ICC Arbitration and "*unfair[ly]*" conducting the hearings outside India.⁴⁹⁵ The NCLAT also did not analyze the NCLT's "*finding*" that Devas was "*misusing*" its corporate status to "*fil[e] various proceedings . . . in India and abroad to enforce the ICC Award . . .*"⁴⁹⁶ And so, these wholly baseless "*findings*" were given imprimatur on appeal without any reasoning at all.
206. Rather than review the lower tribunal's decision, the NCLAT made completely new "*findings*", based on arguments raised by Antrix that the NCLT had not adjudicated.⁴⁹⁷ But even the NCLAT's "*findings*", just like the NCLT's before it, were illogical and made in complete ignorance of the record. For example, the NCLAT alleged that:
- a. The Agreement was fraudulently executed because a chartered accountant (S. Gururaj) signed it as a duly authorized agent of the Devas Board pursuant to a Board resolution.⁴⁹⁸ One member called the act an illegal "*act of trickery*" that "*cannot be*

⁴⁹² See **Exhibit C-084**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd. and Another*, NCLAT, Company Appeal (AT) (CH) No. 17 of 2021, and *Devas Employees Mauritius Pvt. Ltd. v. Antrix Corp. Ltd. and Others*, NCLAT, Company Appeal (AT) (CH) No. 24 of 2021, Judgment, 8 September 2021 ("**NCLAT Final Order**"), opinion of Justice M. Venugopal (Judicial Member), PDF pp. 1-204; Opinion of V.P. Singh (Technical Member), PDF pp. 204-357.

⁴⁹³ See **Exhibit C-084**, NCLAT Final Order, PDF p. 161.

⁴⁹⁴ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 78.

⁴⁹⁵ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 77.

⁴⁹⁶ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 79.

⁴⁹⁷ See **Exhibit C-249**, Dr. Chandrasekhar Appeal Of NCLT Decision *Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.*, Company Appeal (AT) No. 17 of 2021, 27 May 2021, PDF pp. 117-151 ("Formulation of Facts in Issue and Questions of Law", "Grounds"); **Exhibit C-250**, DEMPL Appeal Of NCLT Decision *Devas Employees Mauritius Private Limited v. Antrix Corporation Limited and Ors.*, Company Appeal (AT) No. 24 of 2021, 28 May 2021, PDF pp. 101-108 ("*Formulation of Facts in Issue and Questions of Law*", "Grounds").

⁴⁹⁸ See **Exhibit C-084**, NCLAT Final Order, PDF p. 197.

countenanced in the eye of the Law” while the other member thought it “*strange*” that the “*vast*” and “*vital*” Agreement was signed by a clerk with “*no background in science and technology*”.⁴⁹⁹ Both members ignored, however, that the signing of the Agreement was a purely administrative task that had, as is common for corporations, been expressly delegated to this individual by the Board⁵⁰⁰ because Devas’s leadership was not available at the time of the Agreement’s execution.⁵⁰¹ Importantly, no Indian authority complained about the status or authority of the signee at the time the Agreement was signed, nor thereafter during any of the Arbitrations. It is indeed baffling how this could be an “*act of trickery*” when the signee was known to Antrix and indeed all Indian authorities since 2005.

- b. Devas had been formed for a fraudulent purpose because the services it was meant to provide were new and could not have been offered in India because no licensing scheme existed for it.⁵⁰² Despite having access to the Agreement, the NCLAT failed to apparently read it because the Agreement is clear that Devas was “*developing*” the technology, and Antrix would assist Devas in procuring the necessary licenses.⁵⁰³
- c. Devas did not have the technology it was meant to provide under the Agreement.⁵⁰⁴ This ignored all the evidence Devas had provided demonstrating that it had, as it had represented in the Agreement, access to the relevant technology to provide the Devas Services.⁵⁰⁵ Indeed, it makes no sense for Devas to invent qualifications to

⁴⁹⁹ See **Exhibit C-084**, NCLAT Final Order, PDF p. 197, 355.

⁵⁰⁰ **Exhibit C-292**, Copy of the Minutes of the First Meeting of the Board of Directors of Devas Multimedia Private Limited, 15 January 2005, ¶ 11.

⁵⁰¹ Second Witness Statement of Ramachandran Viswanathan, 6 January 2023 ¶ 28.

⁵⁰² **Exhibit C-084**, NCLAT Final Order, PDF pp. 167-169, 254-6.

⁵⁰³ **Exhibit C-007**, Devas-Antrix Agreement, recital 3 (“*Whereas, Devas is developing a platform capable of delivering multimedia and information services via satellite and terrestrial systems to mobile receivers, tailored to the needs of various market segments.*”); art. 3(c) (“*Antrix shall provide technical assistance to Devas on a best effort basis for obtaining required operating licenses and Regulatory approvals from various ministries.*”).

⁵⁰⁴ **Exhibit C-084**, NCLAT Final Order, PDF pp. 166, 259-60.

⁵⁰⁵ See **Exhibit C-249**, *Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.*, Company Appeal (AT) No. 17 of 2021, 27 May 2021, ¶¶ 7.47-7.72. See also First Witness Statement of Gary Parsons, 6 January 2023, Section V.

enter into an Agreement and pay millions of dollars in leasing fees if it did not have the capacity to roll out its services, which would have been its sole source of revenue. Yet, incomprehensibly, the NCLAT complained that Devas had not rolled out the contemplated services or produced any devices,⁵⁰⁶ which was not true, and more importantly ignored the fact that Devas could not implement the contemplated technology once Antrix had terminated the Agreement. Indeed, two separate arbitral tribunals had come to the conclusion that Devas would have successfully completed the Project had Antrix upheld its end of the bargain, as they both awarded damages for Antrix/India's breaches.⁵⁰⁷ Devas's technical expertise was never challenged in any of these Arbitrations, nor could it have been given the world-class institutions Devas had partnered with⁵⁰⁸ and the decades of knowhow and experience of its leadership.⁵⁰⁹ Indeed, the NCLAT's decision showed a fundamental lack of understanding of the telecommunications industry and its technology,⁵¹⁰ which evidentiary mechanisms, such as the requested cross examination of Antrix officials,⁵¹¹ would have elucidated.

- d. Devas did not acquire a spectrum license from the Wireless Planning Committee ("WPC").⁵¹² Again, the NCLAT failed to read the Agreement, which made that Antrix's responsibility,⁵¹³ as expressly held by the Initial BIT Tribunal.⁵¹⁴ Likewise, the NCLAT alleged, without explanation, that it was somehow Devas's fault that its experimental license was obtained further to allegedly manipulated meeting

⁵⁰⁶ **Exhibit C-084**, NCLAT Final Order, PDF pp. 266-267, 331.

⁵⁰⁷ See **Exhibit C-033**, ICC Award, ¶ 386; **Exhibit C-049**, Quantum Award, 13 October 2020, ¶ 539;

⁵⁰⁸ See *supra* ¶¶ 47, 56.

⁵⁰⁹ See *supra* ¶¶ 29, 47, 51.

⁵¹⁰ See First Witness Statement of Gary Parsons, 6 January 2023, ¶ 26.

⁵¹¹ See *supra* ¶ 184.

⁵¹² **Exhibit C-084**, NCLAT Final Order, PDF pp. 174, 310-311.

⁵¹³ **Exhibit C-007**, Devas-Antrix Agreement, art. 3(c) ("*Antrix shall be responsible for obtaining all necessary Government and Regulatory Approvals relating to orbital slot and frequency clearances*").

⁵¹⁴ See e.g. **Exhibit C-049**, Quantum Award, ¶¶ 377-380 (finding that the Agreement "*did not make it a formal obligation for the WPC to issue...a license*" but that the failure to procure it was Antrix's responsibility.)

minutes.⁵¹⁵ Again, this ignored the indisputable fact that Devas could not and did not have any role in this alleged manipulation.⁵¹⁶ Indian officials had contemporaneously declared that the license had been properly obtained,⁵¹⁷ which India did not dispute in the Initial BIT Arbitration,⁵¹⁸ despite being aware at the time of the inconsistencies between the meeting minutes.⁵¹⁹

- e. Antrix had failed to follow purported internal policies and properly secure approvals before it signed the Agreement.⁵²⁰ Even assuming this was true, the NCLAT failed to explain how this was attributable to Devas. Indeed, it was not. Antrix represented to Devas that it had the requisite internal approvals to enter into the Agreement, which Devas accepted.⁵²¹ Devas had no role in drafting the alleged meeting minutes or other documents or in deciding whether to secure approvals or how within the Space Department or before the Union Cabinet.
- f. When seeking its approval for investments, Devas had “*misled*” FIPB authorities about the scope of services it would be providing under the Agreement by failing to disclose that it would be providing services in addition to “ISP” services.⁵²² Again, the NCLAT refused to read the rest of the FIPB application which

⁵¹⁵ **Exhibit C-084**, NCLAT Final Order, PDF pp. 174, 311.

⁵¹⁶ *See* Second Witness Statement of R. Viswanathan, ¶ 56.

⁵¹⁷ **Exhibit C-023**, Suresh Report, p. 16 (“*For experimental trials, the necessary license has been obtained and the tasks have been completed in the stipulated time.*”)

⁵¹⁸ *See Exhibit C-036*, J&M Award, ¶¶ 120, 123.

⁵¹⁹ *See Exhibit C-178*, *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, And Telcom Devas Mauritius Limited v. The Republic of India*, PCA Case No. 2013-09, India’s Statement of Defence, 2 December 2013, ¶ 39 referring to **Exhibit C-414**, Minutes of the TAG Sub-Committee on DEVAS Experimental Plan held at New Delhi on 6 January 2009, as originally drafted by Dr. Kibe, 6 January 2009, p. 2; **Exhibit C-415**, Minutes of the TAG Sub-Committee on DEVAS Experimental Plan held at New Delhi on 6 January 2009, as originally drafted by Dr. Kibe, circulated on 29 October 2009, p. 2; **Exhibit C-416**, Minutes of the TAG Sub-Committee on DEVAS Experimental Plan held at New Delhi on 6 January 2009, as modified, 6 January 2009, p. 2. All these minutes consistently indicate that the portion of the meeting minutes that was purportedly altered concerned matters discussed between Indian Government officials after Devas officials had left the room. Accordingly, India did not accuse Devas of interfering with the production of these minutes during the Arbitration, given that Devas officials had no access to or influence over them whatsoever.

⁵²⁰ **Exhibit C-084**, NCLAT Final Order, PDF pp. 171-2, 292, 296-298.

⁵²¹ *See supra* ¶¶ 43, 46.

⁵²² **Exhibit C-084**, NCLAT Final Order, p. 324.

repeatedly made clear that Devas would provide multimedia services.⁵²³ And neither Antrix nor India had raised any objections with Claimants' FIPB applications, including in the Initial BIT Arbitration where the Tribunal accepted them as conclusive evidence of Claimants' valid investment in India.⁵²⁴

- g. Devas had “*siphoned*” off/“*diverted*” investments into its U.S. subsidiary, DMAI.⁵²⁵ Again this allegation simply ignored the plethora of evidence supplied by Dr. Chandrasekhar demonstrating that the funds had not been “*diverted*” but were verifiably used for developing Devas’s technology, including by developing designs, contracting relevant intellectual property, and developing bespoke Devas devices that were successfully deployed in experimental trials attended by ISRO and Antrix leadership.⁵²⁶ After India annulled the Devas-Antrix Agreement, Devas was forced to use its funds to pay for legal services to enforce its rights in the Arbitrations and in Indian courts.⁵²⁷ Despite noting that it was not equipped to make determinations on what activities constituted money laundering, and that Devas had submitted numerous DMAI contracts as evidence of these services, the NCLAT blithely declared that “*mere contracts cannot aid Devas*”, failing to explain then what additional evidence would have sufficed.⁵²⁸ Indeed, these allegations were so

⁵²³ **Exhibit C-305**, FIPB Application, 2 February 2006, pp. 1, 13 (“*Devas. . . was incorporated. . . with the objective of developing technology and software for delivering multimedia services through various systems*”; Devas “*will now be pursuing the technology development and commercialization of state-of-the-art services which include multimedia terminals and associated transmit equipments for delivering multimedia, information and internet content and interactive services from different media sources via landline, satellite, and terrestrial wireless systems to a variety of fixed, portable and mobile terminals.*”) (emphasis added); see also **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, PDF pp. 78-79.

⁵²⁴ **Exhibit C-036**, J&M Award, ¶ 200 (“*Claimants received the approval of the Foreign Investment Promotion Board prior to their share subscriptions. Moreover, the Tribunal has received no evidence to the effect that Claimants’ investment was not properly made “under the relevant laws and regulations.”*”)

⁵²⁵ **Exhibit C-084**, NCLAT Final Order, PDF pp. 190, 322.

⁵²⁶ Second Witness Statement of Ramachandran Viswanathan, 6 January 2023, ¶ 39; See **Exhibit C-249**, *Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.*, Company Appeal (AT) No. 17 of 2021, 27 May 2021, PDF pp. 136-138.

⁵²⁷ Second Witness Statement of Ramachandran Viswanathan, 6 January 2023, ¶ 71; See **Exhibit C-249**, *Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.*, Company Appeal (AT) No. 17 of 2021, 27 May 2021, PDF pp. 136-138.

⁵²⁸ **Exhibit C-084**, NCLAT Final Order, PDF p. 320.

flimsy that the ED has failed to secure charges based on them despite supposedly investigating them since 2018.⁵²⁹

207. Having set out these bizarre, contradictory and wholly unsupported “*findings*”, the NCLAT brushed aside the NCLT’s failure to abide by procedural requirements under the Companies Act, including notice and advertisement.⁵³⁰
208. The NCLAT further considered that Antrix’s petition was not time-barred because “*fraud*” was a “*continuous cause of action*.”⁵³¹ Like the NCLT, both members declared that Antrix’s right to apply for Devas’s winding up was essentially indeterminate, accruing whenever it – or any Indian authority – “*discovered*” a “*different dimension of fraud indulged by*” Devas.⁵³² Yet the NCLAT had “*convinced*” themselves of “*massive large scale fraudulent activities committed by Devas and its investors/shareholders*” based not on the CBI’s or ED’s investigations, but “*on the face of [the] record*”⁵³³ before them, which consisted entirely of documents of which Antrix was a custodian or that had been in its possession since at least 2011.⁵³⁴ Neither Antrix (nor the NCLAT) could explain why it did not “*discover*” the fraud when the NCLAT was apparently able to find it so conclusively on just an *ex facie* reading of no more than the Agreement, SATCOM Policy, some internal meeting minutes and government policy documents.
209. The NCLAT, like the NCLT before it, was content to rely solely on the CBI and ED’s criminal allegations, yet dismissed Dr. Chandrasekhar’s contention that Antrix’s petition should await the outcome of those proceedings that had yet to even result in charges being framed, much less proceed to trial.⁵³⁵ This meant that allegations that had yet to even culminate in criminal charges—let alone a trial and conviction—against Devas were

⁵²⁹ See **Exhibit C-249**, *Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.*, Company Appeal (AT) No. 17 of 2021, 27 May 2021, PDF p. 111.

⁵³⁰ **Exhibit C-084**, NCLAT Final Order, PDF pp. 194-5, 230-1.

⁵³¹ **Exhibit C-084**, NCLAT Final Order, PDF pp. 187-192, 214-220.

⁵³² **Exhibit C-084**, NCLAT Final Order, PDF pp. 191, 219.

⁵³³ **Exhibit C-084**, NCLAT Final Order, PDF p. 350.

⁵³⁴ See *supra* ¶ 142.

⁵³⁵ **Exhibit C-084**, NCLAT Final Order, PDF pp. 195, 239.

simply re-packaged by Antrix as “civil” allegations and entertained by the NCLT/NCLAT, without any explanation of what standard of proof (if any) Antrix had to meet.⁵³⁶

210. Moreover, the NCLAT upheld the NCLT’s decision to deny Devas even the guarantees of a limited civil trial. One member declared that the NCLT did not need to conduct a trial because “*permitting a party to cross-examine a deponent in respect of a particular point of conflict is a matter of exercise of subjective judicial discretion of the ‘Tribunal.’*”⁵³⁷ The other member went further, stating that because Dr. Chandrasekhar had failed to challenge the authenticity of some of Antrix’s documents, it had raised “*no triable issues,*” and that filing a cross examination application during final arguments before the NCLT constituted an “*abuse of process.*”⁵³⁸ As is apparent, Dr. Chandrasekhar/DEMPL had raised numerous “*triable issues*” in direct response to Antrix’s allegations (that went beyond challenging Antrix’s documents).⁵³⁹ Instead of holding a trial on these issues, both the NCLT and NCLAT dealt with all of Antrix’s allegations summarily, relying only on written affidavits and pleadings without any additional assessment, even though Dr. Chandrasekhar strongly contested the veracity of these submissions.
211. Recognizing the inherent limitations of its inquiry—and betraying a lack of confidence in its truncated deliberation—the NCLAT acknowledged that its “*finding*” that there were

⁵³⁶ See **Exhibit C-084**, NCLAT Final Order, PDF p. 196 (“*In Law, it is incumbent on a person to discharge the ‘onus of proof’ which rest upon him. As a matter of fact, the ‘burden of proof’ lies on a person who asserts the affirmative of the issue.*”). Neither member of the NCLAT explained how this ‘burden of proof’ was to be met by Antrix.

⁵³⁷ See **Exhibit C-084**, NCLAT Final Order, PDF p. 196; **Exhibit C-173**, § 424, Companies Act, 2013 (India).

⁵³⁸ **Exhibit C-084**, NCLAT Final Order, PDF pp. 351-53.

⁵³⁹ These included:

- a. whether the technology that formed the Agreement’s subject matter “existed” at the time of the Agreement, *supra* ¶ 120;
- b. whether Devas possessed or was capable of developing the technology that formed the Agreement’s subject matter, *supra* § II.A.4;
- c. whether Devas was guilty of tampering with government documents, *supra* ¶ 98;
- d. whether Devas fraudulently obtained the Agreement after “conniving” with former Antrix officials, *supra* § II.A.1; and
- e. whether Devas held the requisite approvals/licenses from Indian officials to perform the Agreement, *supra* ¶ 61.

“genuine/reasonable” grounds to liquidate Devas was “prima facie” in nature.⁵⁴⁰ Indeed, both the NCLT and NCLAT had made their decision on “prima facie” grounds, accepting at face value Antrix’s allegations without conducting even a modicum of inquiry into their veracity. Despite declaring it had the powers to do so, neither tribunal called witnesses or experts, or made any attempt to examine or address the voluminous record with exculpatory material put on the record by Dr. Chandrasekhar. Rather, both “quasi-judicial” tribunals accepted Antrix’s submissions, no matter how incongruent, at face value.

212. The NCLAT also denied DEMPL’s appeal, holding that its application to implead itself was not maintainable because it could not purport to represent Devas’s interests while Devas was under the control of the Liquidator.⁵⁴¹ This ignored the fundamental premise of DEMPL’s attempt to implead itself before the NCLT: the Liquidator’s hostility to Devas’s best interests.⁵⁴² The NCLAT then held that DEMPL’s impleadment was in any event not necessary because a representative of Devas, the party actually “aggrieved” by its winding up, had already challenged its liquidation before the NCLAT.⁵⁴³

9. The Supreme Court Upholds The Liquidation

213. On 17 and 22 September 2021 respectively, Dr. Chandrasekhar and DEMPL filed appeals of the NCLAT’s decisions to uphold Devas’s liquidation and deny DEMPL’s impleadment application, respectively, with the Supreme Court.⁵⁴⁴ The grounds of appeal included, among other reasons, a plea for a full-fledged trial and cross examination of witnesses⁵⁴⁵ in light of the gross due process and procedural violations, resulting in nonsensical conclusions by the NCLT and NCLAT. DEMPL also sought to appeal the denial of its

⁵⁴⁰ See **Exhibit C-084**, NCLAT Final Order, PDF p. 200.

⁵⁴¹ See **Exhibit C-084**, NCLAT Final Order, PDF p. 203.

⁵⁴² **Exhibit C-250**, *Devas Employees Mauritius Private Limited v. Antrix Corporation Limited and Ors.*, Company Appeal (AT) No. 24 of 2021, 28 May 2021, PDF p. 15.

⁵⁴³ See **Exhibit C-084**, NCLAT Final Order, PDF p. 203.

⁵⁴⁴ See **Exhibit C-256**, *Devas Multimedia Private Limited (through ex-director) v. Antrix Corporation Limited & Anr.* Civil Appeal No. 5766 of 2021, 17 September 2021; **Exhibit C-257**, *Devas Employees Mauritius Private Limited v. Antrix Corporation Limited and Anr.* Civil Appeal No. 5906 of 2021, 22 September 2021.

⁵⁴⁵ See **Exhibit C-256**, *Devas Multimedia Private Limited (through ex-director) v. Antrix Corporation Limited & Anr.* Civil Appeal No. 5766 of 2021, 17 September 2021, PDF pp. 131-134.

impleadment in light of the NCLAT’s specific allegations of fraud against Devas shareholders.⁵⁴⁶

214. While the appeal before the Supreme Court was pending, the Liquidator attempted to muddy the waters in the U.S. enforcement proceedings. The Liquidator, acting as Devas’s representative before U.S. courts, asked the U.S. court to revoke its decision to allow Claimants to intervene in the ICC Award enforcement proceedings, arguing that the Claimants’ intervention was no longer necessary because the Liquidator now intended to enforce the ICC Award Judgment.⁵⁴⁷ This is obviously difficult to reconcile with the Liquidator’s counsel joining Antrix in the lower court proceedings to oppose registration of the Judgment across the United States (a necessary step to enforcing against assets of Antrix located anywhere in the U.S.).⁵⁴⁸ Moreover, the Liquidator’s position was inconsistent with his position before Indian courts, where his reports supported the liquidation of the company on the (false) grounds of fraud alleged by Antrix.⁵⁴⁹ The reasons for the Liquidator’s duplicity were obvious—to oust any parties defending the ICC Award and its enforcement from the pertinent legal proceedings. The U.S. court denied the Liquidator’s request.⁵⁵⁰
215. On 17 January 2022, the Indian Supreme Court issued its decision on Dr. Chandrasekhar and DEMPL’s appeals, dismissing each of their grounds of appeal.
216. First, the Supreme Court found that the NCLT and NCLAT had the “*power to regulate their own procedure*” and accordingly were authorized to ignore the statutory requirements, such as notice and advertisement.⁵⁵¹

⁵⁴⁶ See **Exhibit C-256**, *Devas Multimedia Private Limited (through ex-director) v. Antrix Corporation Limited & Anr.* Civil Appeal No. 5766 of 2021, 17 September 2021, PDF pp. 233-240.

⁵⁴⁷ **Exhibit C-085**, Petitioner-Appellee’s Motion for Reconsideration of Order Granting Intervention, 1 October 2021.

⁵⁴⁸ **Exhibit C-087**, Liquidator’s Opposition to Intervenor’s Motion to Register the Judgment, 29 November 2021.

⁵⁴⁹ See **Exhibit C-071**, First Interim Report of the Devas Liquidator; **Exhibit C-074**, Second Report of Liquidator, 27 February 2021; **Exhibit C-224**, Third Report of Liquidator.

⁵⁵⁰ **Exhibit C-086**, Order, 15 November 2021.

⁵⁵¹ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 7.22. See also **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶¶ 7.23-7.298.

217. The Supreme Court justified the NCLT’s admitted failure to comply with the statutory requirements by claiming that no “*prejudice*” was caused to Devas.⁵⁵² This conclusion ignored the evidence of prejudice on the record.⁵⁵³ The conclusion also ignored the fact that Devas and its shareholders first learned of the winding up petition when it was served with *it less than 20 hours prior to the first NCLT hearing*, during which Devas was provisionally wound up and taken over by the Liquidator, who then proceeded to act against the company’s interests at every turn.⁵⁵⁴ Devas and its shareholders were never afforded an opportunity to respond meaningfully to the winding up petition. Instead, they were continuously playing a game of catch up throughout the whirlwind liquidation proceedings, during which Devas was put under the control of the Liquidator within five days of its creditor (India-owned, Antrix) seeking permission to wind it up.
218. Second, the Supreme Court found that no limitation period applied, because “[i]f the conduct of the affairs of the company in a fraudulent manner is a continuing process, the right to apply becomes recurring.”⁵⁵⁵ In coming to this conclusion, the Supreme Court relied on the NCLAT’s “*finding*” that new allegations had been raised in the CBI’s supplementary charge sheet dated 8 January 2019 and in the PMLA complaint dated 24 December 2018. The Supreme Court completely ignored the fact that, as Dr. Chandrasekhar had set out, the CBI’s charge sheet, with precisely the same fraud allegations, had been filed in 11 August 2016. To be clear, the CBI’s 2019 supplementary charge sheet did not raise any new fraud “*findings*” that had not already been alleged by the 2016 CBI Charge Sheet.⁵⁵⁶ What is more, all the documents based on which Antrix petitioned for liquidation—on which *ex facie* the NCLT and NCLAT allegedly found “*massive large scale fraud*”—had all been in Antrix’s possession since at least 2011.⁵⁵⁷ In

⁵⁵² **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 7.21. See also **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶¶ 7.14-20, 30.

⁵⁵³ See **Exhibit C-256**, *Devas Multimedia Private Limited (through ex-director) v. Antrix Corporation Limited & Anr.* Civil Appeal No. 5766 of 2021, 17 September 2021, PDF p. 71.

⁵⁵⁴ See *supra* ¶¶ 152-155; 247.

⁵⁵⁵ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 8.22.

⁵⁵⁶ See *supra* ¶ 119.

⁵⁵⁷ See *supra* ¶ 208.

other words, the CBI and ED investigations added no new information or documents on the basis of which Antrix suddenly “*uncovered*” fraud—it was, according to the NCLT and NCLAT, “*on the face*” of the decades-old documents which were heavily assessed by India and Antrix had in three prior Arbitrations.

219. Third, the Supreme Court remarkably justified the NCLT’s decision to deny Devas’s right to a full-fledged trial, including the ability to cross examine witnesses on whose affidavits the NCLT had relied to reach its conclusions. The Supreme Court restated the NCLT’s summary of Antrix’s fraud allegations, falling into six categories, as follows:

*“(i) the offer of a non-existent technology; (ii) misrepresentation about the possession of intellectual property rights over a device; (iii) violation of SATCOM policy; (iv) securing of an experimental license fraudulently; (v) manipulation of the minutes; and (vi) the trail of money brought in through FIPB approvals.”*⁵⁵⁸

220. The Supreme Court then abruptly pronounced that, under the Indian Evidence Act, these allegations would be characterized as “*negative assertions*” and not “*positive assertions requiring persons making those assertions to prove them.*”⁵⁵⁹ It stated that “[a] party alleging the non-existence of something cannot be called upon to prove the non-existence” purportedly because “*it is the party who asserts the existence or who challenges the assertion of non-existence, who is liable to prove the existence of the same.*”⁵⁶⁰ According to the Court:

“In the case on hand, Antrix asserted that Devas offered services which were non-existent, through a device which was not available and that even the so-called intellectual property rights over the device were not available. Therefore, obviously Antrix cannot lead evidence to show the non-existence or non-availability of those things, either by oral evidence or by subjecting their officials to cross-examination by Devas. Devas never produced before the Tribunals any device nor did they demonstrate the availability to Devas services. All that Devas wanted was, the cross-examination of the officials of Antrix. Any amount of cross-examination of the officials of Antrix could

⁵⁵⁸ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 10.6.

⁵⁵⁹ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 10.7-9.

⁵⁶⁰ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶¶ 10.7-8.

not have established the existence of something that was disputed by Antrix.”⁵⁶¹

221. The Supreme Court’s “*findings*” are shocking in several respects.

- a. The Supreme Court’s decision undermines the basic evidentiary principle that a litigant has the burden to prove its case. Indeed, the Supreme Court refers to the Indian Evidence Act, which states expressly that the “*burden of proof as to any particular facts*” lies “*on that person who wishes the Court to believe in its existence.*”⁵⁶² Here, Antrix alleged that Devas did not possess the requisite technology, had made misrepresentations, was responsible for Antrix’s supposed violations of SATCOM and other internal policies, and had improperly secured FIPB approvals for its investments. Accordingly, the burden of proving these allegations fell on Antrix. Yet the Supreme Court reversed the burden and applied it on Devas to disprove the allegations, and then denied Devas the evidentiary means to shoulder this misplaced burden by denying it a trial.
- b. The Supreme Court effectively adopted “*findings*” of fraud made on a summary basis, without allowing a trial or cross examination, even though these are standard course in Indian civil proceedings.
- c. There is no question that cross examination of witnesses who are making allegations—whether about the existence or non-existence of technology—is a reasonable, and generally well-regarded, manner by which the defendant or respondent can demonstrate that the allegations are false. For example, Dr. Chandrasekhar could have put to Antrix’s witnesses contradictory assertions by other ISRO/Antrix officials, evidence about the success of the experimental trials conducted by Devas with the full participation and support of Antrix and Indian Government officials, or questioned Antrix’s witnesses on the basis of their belief that the technology didn’t exist given that it was available in Japan, the U.S., and

⁵⁶¹ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 10.9.

⁵⁶² **Exhibit C-344**, § 102, Indian Evidence Act, 1872 (India).

elsewhere.⁵⁶³ But even following the Supreme Court’s twisted logic, many of Antrix’s allegations were not “*negative assertions*”, but undeniably “*positive assertions*” that ought to have been tested through a full-fledged trial, including cross examination of witnesses. These included, in the words of the Supreme Court itself, “*violations of SATCOM policy*”, “*securing of an experimental license fraudulently*”, “*manipulation of the minutes*”, or “*the trail of money brought in through FIPB approvals*”.⁵⁶⁴

222. It is clear that the Supreme Court had a predetermined outcome in mind—the liquidation of Devas. Cross examination of Antrix’s officials would have conclusively disproven Antrix’s fraud allegations against Devas. As such, the Supreme Court *post-facto* conjured up a whole raft of arguments to rubber-stamp the lower tribunals’ refusal to cross examine Antrix officials, or to meaningfully engage with the evidence, thereby ensuring the Supreme Court’s pre-determined outcome. For example, the Supreme Court found that the timing of Devas’ application for cross examination—after Antrix’s final arguments were heard by the NCLT *but while proceedings were still ongoing*—was a sufficient basis to reject the application and deny Devas and the NCLT the benefit of adducing necessary evidence on the fraud allegations.⁵⁶⁵ Thus, according to the Supreme Court, while there was no limitation on Antrix raising fraud allegations, Devas was strictly limited in its capacity to offer evidence in its defence (notwithstanding the rushed nature of the NCLT proceedings, the Liquidator’s immediate incapacitation of Devas to defend itself and protect its interests, and the limited opportunity that Devas’s shareholders had to defend the company).

223. Fourth, noting that while “[t]echnically speaking, the appeal ... is only on a question of law” and “it [was] not up to [the] Court to reappreciate evidence”, the court found no “*perversity in the findings recorded by both the Tribunals*”⁵⁶⁶ despite the severely deficient

⁵⁶³ See First Witness Statement of Gary Parsons, 20 January 2023, ¶¶ 53(c)-(d).

⁵⁶⁴ **Exhibit C-088**, Judgment of the Indian Supreme Court, 17 January 2022, ¶ 10.6.

⁵⁶⁵ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 10.14.

⁵⁶⁶ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 12.7.

process and logically incoherent conclusions reached by them.⁵⁶⁷ Without examining a single document, the Supreme Court determined that the “*findings*” of the NCLT and NCLAT were “*borne out by the documents*” and “[t]hough it [was] *sufficient for [the court] to stop at this*” it decided to go “*a little deeper to find out whether there was any perversity in the findings recorded by the Tribunals and whether such findings could not have been reached by any reasonable standards.*”⁵⁶⁸ The Supreme Court then went on to parrot Antrix’s allegations, purportedly on the basis that they were “*undisputed facts,*” such as (i) Devas not having access to the technology or intellectual property it promised under the Agreement; (ii) that the negotiations preceding the Agreement’s signing “*should have come to the public domain*” but did not; (iii) that the licenses Devas received from India were for different services than that it offered under the Agreement; (iv) that Devas’s formation was for a “*fraudulent purpose;*” and (v) that Devas’s affairs were being conducted in a “*fraudulent manner.*”⁵⁶⁹ These “*facts*” were all, in fact, not only demonstrably false but also very much disputed throughout the liquidation proceedings, which was *exactly* why Devas consistently pled for a full-fledged trial to test them.⁵⁷⁰ While contending that these “*undisputed facts emerge[d] from the documents placed before the Tribunal*”, the court failed to actually refer to any such documents that apparently demonstrated fraud with such clarity so as to render unnecessary any trial. That is because no such documents exist.

⁵⁶⁷ See *supra* ¶¶ 194, 206.

⁵⁶⁸ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 12.7.

⁵⁶⁹ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶¶ 12.7-8.

⁵⁷⁰ See **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, PDF p. 22 (Contending that the NCLT should not determine fraud summarily because Antrix’s petition involved “complicated questions of facts which require a full-fledged trial”). See also **Exhibit C-249**, *Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.*, Company Appeal (AT) No. 17 of 2021, 27 May 2021, PDF p. 37 (“The Ld. NCLT failed to appreciate that the case of Devas has been that the allegation of fraud, collusion or conspiracy require a trial, and the Ld. NCLT having summary jurisdiction cannot return finding without giving a trial. In any event, if it is held that the Ld. NCLT is not of summary jurisdiction then without trial such finding cannot be returned.”); **Exhibit C-256**, *Devas Multimedia Private Limited (through ex-director) v. Antrix Corporation Limited & Anr.* Civil Appeal No. 5766 of 2021, 17 September 2021, PDF p. 128 (Arguing that the NCLAT ought to have conducted a trial “when a clear dispute exists between the parties” as to Antrix’s allegations of “fraud collusion and conspiracy”).

224. Finally, although the NCLAT described its own “findings” as being “*prima facie*,” the Supreme Court stated that the NCLAT had used an “*inappropriate expression*”⁵⁷¹ and that the NCLAT’s “findings” were “*final and not prima facie*”. Again, the Supreme Court’s characterization of the circumstances was astounding. Of course, “*final*” and “*prima facie*” are not mutually exclusive concepts: *prima facie* refers to the standard of proof applied to a process and finality referring to the status of a decision within a legal system. Yes, the NCLAT’s “findings” were “*final*” because they were adopted by the two-member body as a final decision, but they were done so on an admittedly *prima facie* basis. In fact, the Supreme Court acknowledged as much towards the end of its decision, when revealing the true motivations for its decision. It noted:

“What if [Devas] is allowed to continue to exist and also enforce the arbitration awards for amounts totaling to tens of thousands of crores of Indian Rupees (the ICC award is stated to be for INR 10,000 crores and the 2 BIT awards are stated to be for INR 5,000 crores) and eventually the Criminal Court finds all shareholders guilty of fraud? The answer to this question would be abhorring.”⁵⁷²

225. The Supreme Court, in commenting on what would happen “*if*” Devas was found “*guilty of fraud*,” confirmed (perhaps inadvertently) that it understood the NCLAT’s “*fraud findings*” were in fact based on a *prima facie* standard of proof.

226. Moreover, with this statement, the Supreme Court confirmed that the underlying motivation for its decision was not actual fraud that had been proved in a court of law with attendant due process safeguards, but concern over Devas’s (successful) efforts to enforce the ICC Award against the State-owned entity, Antrix.

227. The Supreme Court also denied DEMPL’s impleadment application, finding that the Indian Companies Act and rules framed thereunder do not affirmatively allow a shareholder in a

⁵⁷¹ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 12.10. The Supreme Court also addressed various miscellaneous grounds at ¶ 13.

⁵⁷² **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 13.3 (emphases added). The Supreme Court also noted that Claimants “*have even shown extreme urgency in enforcing an ICC Arbitration award and 2 BIT awards, before the conclusion of the winding up proceedings*,” even though enforcement proceedings were underway before the liquidation proceedings were initiated. **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 7.30.

liquidated company to be impleaded in the liquidation proceedings as a respondent.⁵⁷³ Again, the Court’s conclusion has no statutory basis, because the Indian Companies Act specifically allowed “any” person “aggrieved” by an order to appeal it.⁵⁷⁴ Accordingly, the Court retroactively invented a prohibition that did not exist in the books. The Supreme Court went on to hold that, in any event, DEMPL’s objections to the winding up were identical to that of Devas, and had already been considered by the NCLT and NCLAT.⁵⁷⁵ This ignored the obvious fact that Devas could not represent its own interests because it was under the control of the Liquidator.

228. After the Supreme Court’s dismissal of Dr. Chandrasekhar and DEMPL’s appeals, the winding-up proceedings of Devas returned to the NCLT and is currently ongoing.

G. India Celebrates The Supreme Court Decision And Plans To Use It To Progress Criminal Investigations

229. On 18 January 2022, India’s Finance Minister gave an extensive press conference, in which she hailed the Indian Supreme Court’s liquidation decision issued a day earlier, on 17 January 2022.⁵⁷⁶ Her comments proved what the Claimants have long known: that the fraud allegations are unfounded and that India’s evasion of its payment obligations to Devas is politically motivated.
230. First, the Finance Minister showered the Supreme Court with praise for its decision, repeatedly calling it a “comprehensive” order,⁵⁷⁷ the “findings” of which “no country which respects rule of law will ignore...”⁵⁷⁸
231. Second, the Finance Minister made clear that the escalation of investigations against Devas and its liquidation were prompted by the change in India’s Central Government in 2014, when her political party, the BJP, came to power. She noted that “Prime Minister Modi,

⁵⁷³ See Exhibit C-088, Judgment of the Indian Supreme Court, ¶ 11.3.

⁵⁷⁴ Exhibit C-173, § 421, Companies Act, 2013 (India).

⁵⁷⁵ See Exhibit C-088, Judgment of the Indian Supreme Court, ¶¶ 11.5, 7.

⁵⁷⁶ Exhibit C-119, Transcript of Press Conference of Nirmala Sitharaman, 18 January 2022.

⁵⁷⁷ Exhibit C-119, Transcript of Press Conference of Nirmala Sitharaman, 18 January 2022, pp. 1, 4.

⁵⁷⁸ Exhibit C-119, Transcript of Press Conference of Nirmala Sitharaman, 18 January 2022, p. 7.

after coming in 2014, understanding the gravity, **made all the departments work together so that this fault is rightly placed and it is *only till yesterday*** [date of the Supreme Court decision] **that we could come up with it.**⁵⁷⁹ Seizing the political moment, the Finance Minister railed against the opposition Congress Party (and its governing coalition the ‘United Progressive Alliance’) for “*selling off*” a “*rare endowment of the people*” to Devas for “*a pittance*,”⁵⁸⁰ yet did not claim that the S-band spectrum was intentionally undervalued (which it was not, as confirmed by contemporaneous Government reports like the Chaturvedi Report).⁵⁸¹ The Finance Minister mentioned the Congress Party/United Progressive Alliance no less than thirty times in the conference, openly accusing them of “*fraud*” and “*misuse[]*” of “*position*” in entering into the Agreement, labeling them the “*masters of corruption*.”⁵⁸²

232. Third, the Finance Minister admitted that “[*t*]he company [Devas] *probably wasn’t fraudulent*,” but asserted, falsely and without any evidence or basis, that “*the shareholders knew all the fraudulent practices which was going on in terms of the Agreement*.”⁵⁸³ As noted above, however, neither the CBI nor the ED, despite over a decade of investigations, has come up with any evidence that Devas’s shareholders were aware of Antrix’s supposed “*fraudulent practices*,” which in itself the CBI and ED have found no proof for. Indeed, the ED’s charges against an Antrix official were recently quashed by an Indian court,⁵⁸⁴ reflecting their utterly baseless nature.

233. Fourth, the Finance Minister acknowledged the real reason for the termination of the Devas-Antrix Agreement in 2011: “[*t*]he government cannot afford to grant the S-band

⁵⁷⁹ **Exhibit C-119**, Transcript of Press Conference of Nirmala Sitharaman, 18 January 2022, p. 7. (emphases added)

⁵⁸⁰ **Exhibit C-119**, Transcript of Press Conference of Nirmala Sitharaman, 18 January 2022, p. 1.

⁵⁸¹ **Exhibit R-0006**, Chaturvedi Report, PDF p. 6 (“*Concerns on cheap selling of spectrum to Devas have no basis whatsoever.*”)

⁵⁸² **Exhibit C-119**, Transcript of Press Conference of Nirmala Sitharaman, 18 January 2022, pp. 1, 8.

⁵⁸³ **Exhibit C-119**, Transcript of Press Conference of Nirmala Sitharaman, 18 January 2022, p. 5.

⁵⁸⁴ See **Exhibit C-207**, *K.R.S Murthi v. Directorate of Enforcement*, Writ Petition No. 14702 of 2019, Judgment, 30 September 2022. See also **Exhibit C-264**, Johnson T.A., ‘*Board approved deal: Karnataka High Court quashes ED case against former Antrix chief*, Indian Express, 1 October 2022, <https://indianexpress.com/article/cities/bangalore/board-approved-deal-karnataka-hc-quashes-ed-case-against-former-antrix-chief-8183429/>.

spectrum to anyone, including Antrix, for strategic reasons.”⁵⁸⁵ That is why it had unlawfully annulled the Agreement, and thereafter engaged in decades of charades to absolve itself of any liability for doing so.

234. Fifth, the Finance Minister revealed the strategy of the Indian Government. First, she claimed that after the change in Government in 2014, India’s Prime Minister himself had “*made all the departments work together*” to “*come up with*” a “*case*” against Devas so that “*fault*” could be “*rightly placed*”.⁵⁸⁶ Now, armed with the Supreme Court judgment that had “*come up*” with the case against Devas, India planned to use its holdings to embolden the criminal investigations, with the Finance Minister stating that she “*will be holding a meeting with all those departments, and also the law enforcement agencies to see how best we can proceed.*”⁵⁸⁷
235. Thus, in a bizarre and cynical ploy, India used *prima facie* allegations made by its investigative agencies, based on false and coerced statements, to liquidate Devas. And India now planned to use the Supreme Court’s decision upholding that liquidation as a basis for the same investigative agencies to fuel their criminal processes against Devas and its officers.

H. India Escalates Retaliation Following Initiation Of This Arbitration

1. Claimants Initiate Arbitration

236. While the liquidation proceedings were pending before the NCLT, on 6 May 2021, Claimants sent India a Notice of Dispute setting out India’s unlawful action and invited India to settle the dispute amicably.⁵⁸⁸ On 16 August 2021, India rejected Claimants’ offer to engage in settlement discussions, accusing Devas of being “*formed for [a] fraudulent and unlawful purpose*” and conducting its affairs “*in a fraudulent manner*”, and the

⁵⁸⁵ **Exhibit C-119**, Transcript of Press Conference of Nirmala Sitharaman, 18 January 2022, p. 4.

⁵⁸⁶ **Exhibit C-119**, Transcript of Press Conference of Nirmala Sitharaman, 18 January 2022, p. 7.

⁵⁸⁷ **Exhibit C-119**, Transcript of Press Conference of Nirmala Sitharaman, 18 January 2022, p. 7.

⁵⁸⁸ **Exhibit C-077**, Trigger Letter, p. 10.

Claimants of also being “*responsible for perpetuating fraud.*”⁵⁸⁹ Consequently, on 2 February 2022, Claimants filed their Notice of Arbitration.⁵⁹⁰

2. India Attempts To Amend The Treaty

237. Five months after Claimants filed their Notice of Arbitration, on 11 July 2022, India and Mauritius signed a so-called “*Joint Interpretative Statement*” to the BIT, which in fact attempted to amend an already terminated BIT (the “**Attempted BIT Amendment**”). India did not notify Claimants of the Attempted BIT Amendment, nor did it publish or announce it anywhere. Conscious that the Attempted BIT Amendment lacked any binding force on this Arbitration or the Claimants, India chose not to raise it before this Tribunal. Instead, as will be explained further below, India has sought to use it in Mauritian courts to attempt to enjoin this Arbitration.
238. Despite being shrouded in secrecy, the Attempted BIT Amendment is transparent about its purpose—a misguided, retroactive attempt by India to escape liability for its conduct specifically in this matter. The Attempted BIT Amendment purports to make, among others, the following changes to a treaty that India had already terminated five years ago:

“[P]rotection under the [BIT] shall not be extended to investors or investments that have, concluded or pending, judicial or administrative proceedings against them at any stage, where **fraud, money-laundering, round-tripping or corruption or similar illegal mechanisms have been alleged or being investigated into.**”

...

“[T]he term ‘investor’ under the [BIT] does not include persons or entities that (a) are owned or controlled, directly or indirectly, by persons of a non-Contracting Party, **that have been alleged to have indulged in fraud, money-laundering, or corruption or similar illegal mechanisms**; or (b) are owned or controlled, directly or indirectly, by persons of the other Contracting Party; or (c) do not have substantial business activities in the territory of the Contracting Party to which the investor belongs.”

...

⁵⁸⁹ Exhibit C-083, India’s Response to Trigger Letter, ¶¶ 14, 17.

⁵⁹⁰ See, Notice of Arbitration, 2 February 2022.

*“[A]rbitral tribunal constituted under the [BIT] shall not have the jurisdiction to review the merits of the decision made by a judicial authority of the Parties.”*⁵⁹¹

239. Clearly, India read Claimants’ Notice of Arbitration (“NOA”), then attempted to put together amendments purposefully to evade liability. None of these limitations exist in the original BIT. That the Attempted BIT Amendment was specifically designed to exclude Claimants from bringing this Arbitration is further made obvious by the fact that India’s other interpretive statements contain no provisions relating to “*fraud, money-laundering, or corruption or similar illegal mechanisms.*”⁵⁹²
240. India’s desperate attempt to evade liability in this respect is plainly unsuccessful. It is well-established that “*interpretive statements*”, when they attempt to amend a treaty, cannot be treated as a “*subsequent agreement*” within the meaning of Article 31(3) of the Vienna Convention on the Law of Treaties (“VCLT”). As the *Magyar* tribunal noted, “*an interpretive declaration, as its name indicates, can only interpret the treaty terms; it cannot change their meaning*”.⁵⁹³ As the *Muszynianka* tribunal further confirmed:⁵⁹⁴

“In the face of such clear text, interpretative declarations pursuant to Article 31(3)(a) of the VCLT cannot be employed as ‘a trump card to allow States to offer new interpretations of old treaty language, simply to override unpopular treaty interpretations based on the plain meaning of the terms actually used.

Under Article 31(3)(a) of the VCLT, subsequent agreements must be considered, together with the context, as interpretative tools only. They may

⁵⁹¹ **Exhibit C-258**, Joint Interpretative Statement to the Agreement between the Government of the Republic of India and the Government of the Republic of Mauritius, signed on 4 September 1998 signed on 11 July 2022, p. x.

⁵⁹² **Exhibit CL-033**, Malhotra, Sarthak, *India’s Joint Interpretive Statement for BITs: An Attempt to Slay the Ghosts of the Past*, Investment Treaty News, 12 December 2016, available at <https://www.iisd.org/itn/en/2016/12/12/indias-joint-interpretive-statement-for-bits-an-attempt-to-slay-the-ghosts-of-the-past-sarthak-malhotra/>.

⁵⁹³ **Exhibit CL-037**, *Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary*, ICSID Case No. ARB/17/27, Award, 13 November 2019, ¶ 218. See also **Exhibit CL-034**, Charles H. Brower, II, *Fair and Equitable Treatment Under NAFTA’s Investment Chapter*, 96 AM. SOC’Y INT’L L. PROC. 9, 9 (2002), cited in Stefan Matiation, *Arbitration with Two Twists: Loewen v. United States and Free Trade Commission Intervention in NAFTA Chapter 11 Disputes*, 24 U. PA. J. INT’L ECON. L. 451 (2003), at 480 (noting that where the FTC’s interpretation is inconsistent with the ordinary meaning of the words of the relevant NAFTA provision and, therefore, is not an interpretation in accordance with Article 31 of the VCLT, scholars have considered that interpretation to constitute an amendment).

⁵⁹⁴ **Exhibit CL-152**, *Muszynianka Spółka z Ograniczona Odpowiedzialnoscia v. Slovak Republic*, PCA Case No. 2017-08, Award, 7 October 2020, ¶¶ 223-25.

thus clarify the meaning or scope of a treaty provision, but “cannot modify treaty obligations”—their value is limited to “interpreting [a] treaty in accordance with the general rule of interpretation of treaties.”

241. Additionally, neither interpretive statements nor amendments issued after an arbitration has been commenced can retroactively affect ongoing proceedings as it would impact the claimant’s due process rights.⁵⁹⁵ As the *Infinito Gold* tribunal noted, where an “interpretive” agreement “would postdate the commencement of this arbitration [] the Tribunal could not take it into consideration in favour of one litigant to the detriment of the other without incurring the risk of breaching the latter’s due process rights”.⁵⁹⁶ This would moreover violate the critical date doctrine under international law, which renders ineffective any self serving evidence put forward by a party that it has developed after the relevant date (here, the date of the investment or, at the latest, the date on which Claimants commenced the Arbitration with their Notice of Arbitration).
242. Thus, India’s attempt to modify the BIT with retroactive effect cannot have any impact on these proceedings. Rather, India’s actions reflect its consistent pattern of abusing its State powers to abrogate Claimants’ legal rights and access to justice.

⁵⁹⁵ See **Exhibit CL-035**, Gabrielle Kaufman-Kohler, *Interpretive Powers of the Free Trade Commission and the Rule of Law*, E. Gaillard and F. Bachand (eds.), *Fifteen Years of NAFTA Chapter 11 Arbitration* (Juris 2011), at PDF p. 17. She writes that in order for an interpretive statement to be beneficial to the rule of law, it must “not to breach the principle of nonretroactivity, which may occur when an interpretation crosses the line and is in effect a disguised treaty amendment rather than a true interpretation. In that case, the interpretation would fail the test of prospectivity. [...] If these latter breaches materialize, there is good reason for an arbitral tribunal to disregard the interpretation. Doing otherwise would not only fail to sanction the breach, it would also be an impediment to the rule of law. In all other cases, an arbitral tribunal must apply the interpretation. Doing so will be in conformity with the treaty and will promote the rule of law.” **Exhibit CL-035**, Gabrielle Kaufman-Kohler, *Interpretive Powers of the Free Trade Commission and the Rule of Law*, E. Gaillard and F. Bachand (eds.), *Fifteen Years of NAFTA Chapter 11 Arbitration* (Juris 2011), at PDF p. 22. See also **Exhibit CL-036**, Todd Weiler, *NAFTA Investment Arbitration and the Growth of International Economic Law*, 36 CAN. BUS. L.J. 405 (2002), at 427-28; **Exhibit CL-034**, Charles H. Brower, II, *Fair and Equitable Treatment Under NAFTA’s Investment Chapter*, 96 AM. SOC’Y INT’L L. PROC. 9, 9 (2002), cited in Stefan Matiation, *Arbitration with Two Twists: Loewen v. United States and Free Trade Commission Intervention in NAFTA Chapter 11 Disputes*, 24 U. PA. J. INT’L ECON. L. 451 (2003), at 482.

⁵⁹⁶ **Exhibit CL-058**, *Infinito Gold Ltd. v. Republic of Costa Rica*, ICISD Case No. ARB/14/5, Award, 3 June 2021, ¶ 338. See also **Exhibit CL-153**, *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award, 28 September 2007, ¶¶ 386-87 (noting that “even if [a post hoc] interpretation were shared today by both parties to the Treaty, it still would not result in a change of its terms. States are of course free to amend the TPA by consenting to another text, but this would not affect rights acquired under the TPA by investors or other beneficiaries.” This is because “the fact that the TPA is concluded between States cannot allow the derogation of rights that belong to private parties.”)

3. India Attempts To Extradite Mr. Viswanathan

243. India’s abuse of its State powers has continued to the present day. Aware of his important role in the Devas-Antrix relationship from the outset, India has focused its harassment campaign on Mr. Viswanathan, who acted as an important witness in the prior ICC and BIT Arbitrations and is acting as a witness in this Arbitration. Claimants have set out India’s efforts to extradite Mr. Viswanathan in detail in their submissions requesting Interim Measures and will not repeat them here.⁵⁹⁷ Claimants add only that India now possesses an extradition dossier that has been signed, attested and stamped by a CBI court, and is capable of forwarding these documents to U.S. authorities (and may have already done so) for the purpose of seeking Mr. Viswanathan’s extradition.⁵⁹⁸ In addition, in the PMLA proceedings against Mr. Viswanathan (that were split from the remaining accused⁵⁹⁹) the efforts to declare Mr. Viswanathan a “*fugitive*”—to enable India to summarily seize his property worldwide—continue apace.⁶⁰⁰
244. India also issued a recent penalty order issued by the ED in the Second FEMA Action on 28 July 2022.⁶⁰¹ For its claims that Devas and its officers contravened FEMA provisions,⁶⁰² the ED imposed separate penalties on Devas and its officers of nearly USD 170 million,⁶⁰³

⁵⁹⁷ See Claimants’ Application for Interim Measures, 22 August 2022; Claimants’ Reply to Respondent’s Response to its Application for Interim Measures, 22 September 2022.

⁵⁹⁸ See **Exhibit C-260**, *CBI v. KRS Murthi and Ors (A-2 & A-3)*, Special Judge CBI-19 (PC Act), CIS No. 190/2019, 15 September 2022; **Exhibit C-261**, *CBI v. KRS Murthi and Ors (A-2 & A-3)*, Special Judge CBI-19 (PC Act), CIS No. 190/2019, 1 October 2022; **Exhibit C-262**, *CBI v. KRS Murthi and Ors (A-2 & A-3)*, Special Judge CBI-19 (PC Act), CIS No. 190/2019, 7 November 2022.

⁵⁹⁹ See **Exhibit C-259**, *Directorate of Enforcement v. Devas Multimedia and Ors.*, Court of CCH-4 XXI Additional City Civil and Sessions Judge, SPL. CC. No. 447/2018, 6 April 2022.

⁶⁰⁰ See **Exhibit C-263**, *Directorate of Enforcement v. A-2 Ramachandran Viswanathan and Anr.*, Court of CCH-4 XXI Additional City Civil and Sessions Judge, SPL. CC. No. 993/2022, 1 October 2022; **Exhibit C-385**, *Directorate of Enforcement v. A-2 Ramachandran Viswanathan and Anr.*, Court of CCH-4 XXI Additional City Civil and Sessions Judge, SPL. CC. No. 993/2022, Order, 26 December 2022.

⁶⁰¹ **Exhibit C-342**, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, File No. T-4/40/BGZO/SRO/2018, Adjudication Order, 28 July 2022.

⁶⁰² See *supra* ¶¶ 93, 118.

⁶⁰³ The penalties imposed were as follows:

- a. Devas penalized for approximately USD 65 million;
- b. Mr. Viswanathan penalized for approximately USD 65 million;

again in pursuit of India’s strategy to use the ED to “*recover from Devas the amount it hopes to earn through international arbitration.*”⁶⁰⁴

245. At the same time that India has redoubled its coercive efforts against Devas’s officers, it has begun to drop its criminal investigations against Antrix officials, despite the fact that its allegations of “*fraud*” against Devas are intertwined with its allegations of “*fraud*” against Antrix. For example, on 30 September 2022, the Karnataka High Court quashed the ED’s PMLA proceedings against K.R. Sridhara Murthi.⁶⁰⁵ Meanwhile, the PMLA Action against the Devas officers continues.⁶⁰⁶

4. The New Delhi High Court Sets Aside The ICC Award

246. As the liquidation proceedings progressed through the NCLT, NCLAT and Supreme Court, Antrix’s petition to set aside the ICC Award also made its way to through the Delhi High Court.

247. The Liquidator entered his appearance before the High Court in the set aside proceedings, purportedly on Devas’ behalf. However, he failed to appoint any counsel to defend Devas’s interests in defending the ICC Award.⁶⁰⁷ The Liquidator also failed to file any response or oppose Antrix’s challenge of the ICC Award.

c. Mr. Chandrasekhar, Mr. Venugopal, Mr. Dakshinamurthy, Mr. Babbio, Mr. Fox and Mr. Mahajan collectively penalized for approximately USD 22 million;

d. Mr. Mohan penalized for approximately USD 17.5 million.

Exhibit C-342, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, File No. T-4/40/BGZO/SRO/2018, Adjudication Order, 28 July 2022, ¶¶ 6.1-6.4.

⁶⁰⁴ See *supra* ¶ 96.

⁶⁰⁵ See **Exhibit C-207**, *K.R.S Murthi v. Directorate of Enforcement*, Writ Petition No. 14702 of 2019, Judgment, 30 September 2022. See also **Exhibit C-264**, Johnson T.A., ‘Board approved deal:’ *Karnataka High Court quashes ED case against former Antrix chief*, Indian Express, 1 October 2022, <https://indianexpress.com/article/cities/bangalore/board-approved-deal-karnataka-hc-quashes-ed-case-against-former-antrix-chief-8183429/>.

⁶⁰⁶ See **Exhibit C-266**, Case Status, *Directorate of Enforcement v. A-2 Ramachandran Viswanathan and Anr.*, Court of CCH-4 XXI Additional City Civil and Sessions Judge, SPL. CC. No. 993/2022; **Exhibit C-267**, Case Status, *Directorate of Enforcement v. Devas Multimedia and Ors.*, Court of CCH-4 XXI Additional City Civil and Sessions Judge, SPL. CC. No. 477/2018.

⁶⁰⁷ See **Exhibit C-420**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18- cv-1360, Declaration of Anuradha Dutt, 2 March 2021, ¶ 9.

248. Accordingly, DEMPL applied to implead itself in the proceeding.⁶⁰⁸ DEMPL pled that the Liquidator was not acting in the interests of Devas, pointing specifically to his inexplicable decision to fire Devas’s international counsel without replacement, and his enthusiastic support for Antrix’s baseless allegations before Indian courts.⁶⁰⁹ Unsurprisingly, the Liquidator objected to DEMPL’s impleadment application, claiming sole authority to represent Devas’s interests after its provisional liquidation.⁶¹⁰ Despite this claim, the Liquidator failed to appoint counsel for Devas for another *six* months after his appointment by the NCLT.⁶¹¹
249. On 29 August 2022, the Delhi High Court set aside the ICC Award on two grounds: first, that the ICC Award “*suffers from patent illegalities*” and second, that it is “*in conflict with the Public Policy of India*” (the “**Set Aside Decision**”).⁶¹²
250. In coming to these conclusions, the New Delhi High Court treated the NCLT, NCLAT and Supreme Court’s supposed “*findings on fraud*” as *res judicata*, and subject to issue estoppel,⁶¹³ despite those “*findings*” being made on a *prima facie* basis only, with no meaningful opportunity for opposition allowed to Devas or its shareholders.
251. DEMPL filed an appeal against the Set Aside Decision on 6 October 2022 before a Division Bench of the Delhi High Court.⁶¹⁴ In this appeal, DEMPL raised, *inter alia*, the Single Judge’s patent error in holding that the Tribunal had failed to consider “*pre-contractual*

⁶⁰⁸ **Exhibit C-268**, *Antrix Corporation Ltd. v. Devas Multimedia Pvt Ltd.*, OMP (Comm) 11 of 2021, Interlocutory Application on behalf of DEMPL, 6 April 2021.

⁶⁰⁹ **Exhibit C-268**, *Antrix Corporation Ltd. v. Devas Multimedia Pvt Ltd.*, OMP (Comm) 11 of 2021, Interlocutory Application on behalf of DEMPL, 6 April 2021, PDF pp. 8-10.

⁶¹⁰ See **Exhibit C-420**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18- cv-1360, Declaration of Anuradha Dutt, 2 March 2021, ¶ 10.

⁶¹¹ Counsel purporting to represent the Liquidator made their first appearance in the set aside proceedings on 27 July 2021. See **Exhibit C-269**, *Antrix Corporation Ltd. v. Devas Multimedia Pvt Ltd.*, OMP (Comm) 11 of 2021, Order, 27 July 2021, p. 1.

⁶¹² **Exhibit C-270**, *Antrix Corporation Ltd. v. Devas Multimedia Pvt Ltd.*, OMP (Comm) 11 of 2021, Single-Judge Judgment, 29 August 2022, ¶ 173.

⁶¹³ **Exhibit C-270**, *Antrix Corporation Ltd. v. Devas Multimedia Pvt Ltd.*, OMP (Comm) 11 of 2021, Single-Judge Judgment, 29 August 2022, ¶¶ 119-20.

⁶¹⁴ **Exhibit C-272**, *Devas Employees Mauritius Pvt. Ltd. v. Antrix Corporation Ltd. and Ors.*, FAO (OS) Comm. No. 289 of 2022, 6 October 2022.

evidence” when it was clear on the face of the record that it *had* considered such evidence, failure to use the appropriate standard for set aside by relying on perceived “errors” in the ICC Award, and inappropriate reliance on *res judicata* to adopt the Supreme Court’s “*factual findings*”.

252. On 17 March 2023, the Delhi High Court dismissed DEMPL’s appeal (“**Set Aside Appeal Decision**”).⁶¹⁵ Despite DEMPL’s plea, the Set Aside Appeal Decision ignored the Single Judge’s patent error on “*pre-contractual evidence*”. Instead, it upheld the Set Aside Decision based solely on the binding authority of the Supreme Court’s liquidation decision and the “*findings on fact*” against Devas purportedly made therein which have somehow “*attained finality*.”⁶¹⁶ Incredibly, the Set Aside Appeal Decision missed the fact that the Supreme Court had not made final “*findings*” against Devas and had itself pondered in its judgment what would happen “*if*” Devas was eventually found guilty of the fraud alleged.⁶¹⁷
253. Notably, the Liquidator has not attempted to revoke confirmation of the ICC Award by the US court by notifying it of the Set Aside Decision or the Set Aside Appeal Decision. In fact, India has scrupulously avoided review of this and the liquidation decisions by any independent adjudicatory authority outside India. Instead, India is now (so far unsuccessfully)⁶¹⁸ attempting to use the decisions of its courts to present what are still unproven allegations to foreign courts as a *fait accompli* simply because the Supreme Court signed off on Devas’s summary liquidation.

5. India Attempts To End This Arbitration

254. Desperate to limit its accountability for its actions, on 12 January 2023, India applied to the Mauritian Supreme Court on an urgent and *ex parte* basis to “*restrain*[]” and

⁶¹⁵ **Exhibit C-210**, *Devas Employees Mauritius Pvt. Ltd. v. Antrix Corporation Ltd. and Ors.*, FAO (OS) Comm. No. 289 of 2022 (Division Bench Judgment), 17 March 2023.

⁶¹⁶ **Exhibit C-210**, *Devas Employees Mauritius Pvt. Ltd. v. Antrix Corporation Ltd. and Ors.*, FAO (OS) Comm. No. 289 of 2022 (Division Bench Judgment), 17 March 2023, ¶ 101.

⁶¹⁷ *Supra* ¶¶ 224-225.

⁶¹⁸ See e.g. **Exhibit C-357**, Judgment of the Superior Court of Québec, *CC/Devas (Mauritius) Ltd, Devas Employees Mauritius Limited, Telcom Devas Mauritius Limited and ors v. The Republic of India and ors* (500-11-060766-223), 23 December 2022.

“*prohibit[]*” Claimants from pursuing this Arbitration.⁶¹⁹ Though it had received Claimants’ Notice of Arbitration almost a year ago, and had participated in the Arbitration since by constituting the Tribunal, attending the first procedural conference, and making various submissions before the Tribunal, all of a sudden, a week before Claimants were due to file their Statement of Claim, India sought an injunction to halt this Arbitration.

255. India’s arguments in the Mauritius anti-arbitration proceedings were based on matters that are squarely within the competence of this Tribunal⁶²⁰ (as the Tribunal has since confirmed).⁶²¹ According to India, Claimants “*should be restrained from pursuing the frivolous and spurious*” Arbitration because the Supreme Court’s liquidation decision “*is final and binding and the findings of fraud by Devas are res judicata*” and so Claimants must not be allowed to “*pursue the present arbitration as a disguised appeal.*”⁶²² India moreover argued that because its court had set aside the ICC Award, “*Claimants therefore have no locus standi or legal basis to pursue an arbitration.*”⁶²³ India also sought to bring the Attempted BIT Amendment into play for the first time since India and Mauritius signed it in July 2022, arguing that it precludes Claimants from qualifying as investors under the BIT.⁶²⁴

256. The Mauritian Court granted an *ex parte* order on the same day as India’s application.⁶²⁵ On 17 January 2023, when Claimants sought their rightful remedy by means of their

⁶¹⁹ **Exhibit C-165**, India’s Application To Mauritian Supreme Court, 12 January 2023, ¶ 61(A). *See also* **Exhibit C-278**, India’s Application for Perpetual Injunction To Mauritian Supreme Court, 24 January 2023, ¶ 64.

⁶²⁰ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000], art 8(1) (stating that the BIT applies to “[a]ny dispute between an investor of one Contracting Party and the other Contracting Party *in relation to an investment of the former . . .*” (emphasis added)). **Exhibit CL-154**, Christoph Schreuer, Jurisdiction and Applicable Law in Investment Treaty Arbitration, McGill Journal of Dispute Resolution (2014) Vol 1:1, pp. 7-8 (“*These provisions do not restrict a tribunal’s jurisdiction to claims arising from alleged violations of the BITs’ substantive standards. By their own terms, these consent clauses encompass disputes that go beyond the interpretation and application of the BIT itself and would include disputes that arise from a contract and other rules of law in connection with the investment.*”). *See generally* pp. 7-10.

⁶²¹ *See* Tribunal’s Interim Award dated 10 March 2023, ¶¶ 55, 61-63.

⁶²² **Exhibit C-165**, India’s Application To Mauritian Supreme Court, 12 January 2023, pp. 24. *See also* p. 26.

⁶²³ **Exhibit C-165**, India’s Application To Mauritian Supreme Court, 12 January 2023, p. 25.

⁶²⁴ **Exhibit C-165**, India’s Application To Mauritian Supreme Court, 12 January 2023, pp. 25-26.

⁶²⁵ *See* **Exhibit C-166**, Mauritian Court Order, 12 January 2023.

Second Interim Measures Application, India immediately threatened Claimants with the initiation of contempt proceedings in Mauritius,⁶²⁶ even though Claimant’s request did not violate the court order as it sought only interim relief, and did not materially progress the Arbitration. On 24 January 2023, India filed an application for a perpetual injunction, restraining Claimants from proceeding further in this Arbitration.⁶²⁷ In doing so, India clearly articulated its contempt and disregard for international law, arguing that “*questioning the judgment of the highest Court in India before an Arbitral Tribunal, which undoubtedly ranks lower in hierarchy, is unprecedented.*”⁶²⁸

257. As a result of India’s illegal actions in Mauritius, Claimants have been forced into time-consuming and expensive litigation in the Mauritius Courts.⁶²⁹ India has used every possible opportunity to delay and prolong the proceedings, from challenging, then withdrawing, the appointment of “*the entire legal team representing the Claimants*” in Mauritius, challenging service to its fully owned subsidiary, Antrix, which India added as a third party to its injunction applications for no discernible reason other than to obstruct the litigation, and resisting the application of the Mauritian International Arbitration Act, even though India was seeking to enjoin an international arbitration.⁶³⁰
258. On 1 March 2023, India upped the ante in Mauritius, filing an order “*committing [Claimants] for contempt of Court, including the imposition of such penal punishment by way of imprisonment and/or fine*”⁶³¹ on the (misconceived) basis that Claimants violated the anti-arbitration injunction by applying to this Tribunal for interim relief.

⁶²⁶ See **Exhibit C-167**, India’s Notice To Initiate Contempt Proceedings Against Claimants, 17 January 2023.

⁶²⁷ See **Exhibit C-278**, India’s Application for Perpetual Injunction To Mauritian Supreme Court, 24 January 2023.

⁶²⁸ **Exhibit C-278**, India’s Application for Perpetual Injunction To Mauritian Supreme Court, 24 January 2023, p. 23.

⁶²⁹ See Letter from Claimants to Tribunal dated 10 February 2023. See also **Exhibit C-373**, *Republic of India v. CC/Devas (Mauritius) Limited and Others* SC/COM/WRT/000010/2023, First Witness Statement of Mr Boopendradas Sungker, 30 January 2023; **Exhibit C-374**, *Republic of India v. CC/Devas (Mauritius) Limited and Others* SC/COM/PWS/000036/2023, First Witness Statement of Mr Boopendradas Sungker, 5 February 2023.

⁶³⁰ See **Exhibit C-375**, *Republic of India v. CC/Devas (Mauritius) Limited and Others* SC/COM/WRT/000010/2023, Affidavit of Ms. Savita A. Kotgar, 18 February 2023; **Exhibit C-376**, *Republic of India v. CC/Devas (Mauritius) Limited and Others* SC/COM/WRT/000036/2023, Affidavit of Ms. Savita A. Kotgar, 1 March 2023.

⁶³¹ **Exhibit C-377**, India Contempt Application, 1 March 2023.

259. Seeing right through India’s attempts to avoid its international obligations contained in the BIT and in this Arbitration, on 10 March 2023, this Tribunal granted its Interim Award, finding that the Mauritian anti-arbitration injunction and contempt proceedings initiated by India “severely undermine the procedural integrity of this arbitration, and aggravate the dispute”⁶³² and “have the clear purpose of impairing the Claimants’ right to access international justice under the Treaty by preventing them from presenting their case to the Tribunal.”⁶³³ This Tribunal ordered India (among other things) to:

[R]efrain from taking any action or measure that may affect the procedural integrity of this arbitration, aggravate or extend the dispute, or that may interfere with the Tribunal’s mandate to adjudicate international justice in this arbitration, under the Treaty.⁶³⁴

260. The Tribunal found that it:

[W]ould deny access to international justice if it prevented the Claimants from appearing in this arbitration, restricted their rights to appear before this Tribunal, refrained from taking any action with respect to the Second Application, or denied the interim measures requested by the Claimants because of the existence of a court order that, at most, may bind the Claimants under the laws of Mauritius, but is not binding on this Tribunal, whose jurisdiction derives from the Treaty, not the laws of Mauritius, under international law.⁶³⁵

261. On 11 March 2023, India responded to the Tribunal’s Interim Award, stating that it “would not act or conduct its affairs inconsistent with the legal remedies sought and duly granted in accordance with law” and “[would] not be able to participate” in this Arbitration, in clear violation of the terms of the Interim Award.⁶³⁶ Accordingly, Claimants reverted to the Tribunal with a proposed procedural calendar and asked the Tribunal for hearing dates

⁶³² Tribunal’s Interim Award, 10 March 2023, ¶ 69.

⁶³³ Tribunal’s Interim Award, 10 March 2023, ¶ 82.

⁶³⁴ Tribunal’s Interim Award, 10 March 2023, ¶ 98(v).

⁶³⁵ Tribunal’s Interim Award, 10 March 2023, ¶ 61.

⁶³⁶ **Exhibit C-370**, Email from MS Krishnan (DOS) to Tribunal, 11 March 2023.

later in the year if India continued to refuse to participate in the Arbitration.⁶³⁷ The Tribunal gave India leave until 13 April 2023 to provide any comments on Claimants' proposal.

262. On 13 April 2023, the Mauritius Financial Services Commission (“FSC”) raided the Claimants’ offices and suspended their Global Business Licenses, citing the year-and-a-half old Indian Supreme Court judgment and the fraud allegations within. While the FSC was raiding Claimants’ offices, India’s counsel White & Case LLP wrote to the Tribunal to inform it that “*with immediate effect, White & Case no longer represents the Republic of India in this Arbitration.*”⁶³⁸ India then announced it had appointed new counsel, Ms. Melanie Ven Leeuwen, at Derains & Gharavi, who also represents India in the set aside proceedings in the Netherlands. India’s new counsel then asked this tribunal for a five week extension, ostensibly to come up to speed with the file.
263. In the meantime, the FSC announced that it had commenced an inquiry into the Claimants and ordered them to respond to thirteen questions, including about this Arbitration, in less than 24 hours.⁶³⁹ Claimants responded to the questions to the best of their ability the next day, noting that they would require additional time to respond to the remaining questions given that some of the information requested was either “*not immediately available, not within the remit of the local directors*” or related “*to ongoing litigation and arbitration proceedings that might require the consent of third parties.*”⁶⁴⁰
264. After the weekend, on 17 April 2023, the Tribunal denied India’s request for an extension, seeing through India’s transparent attempt to delay this Arbitration. The very next day, on 19 April 2023, the FSC notified Claimants that it had completed the inquiry (which it had started less than two business days ago and for which it had yet to receive information that

⁶³⁷ **Exhibit C-371**, Email from A. Ritwik (Gibson, Dunn & Crutcher) to Tribunal, 31 March 2023.

⁶³⁸ **Exhibit C-372**, Email from Andrea Menaker (White & Case) to Tribunal, 13 April 2023.

⁶³⁹ See **Exhibit C-378**, Letter from Financial Services Commission Mauritius to CC/Devas (Mauritius) Ltd, 13 April 2023; **Exhibit C-379**, Email from Financial Services Commission Mauritius to CC/Devas (Mauritius) Ltd, 13 April 2023.

⁶⁴⁰ **Exhibit C-384**, Email from CC/Devas (Mauritius) Limited to Financial Services Commission Mauritius, 14 April 2023.

it had requested from the Claimants) and asked the Claimants to show cause as to why the FSC should not revoke their licenses.⁶⁴¹

265. India's attempts to end this Arbitration by any means possible only serves to underscore its guilt. For over a decade now India has flouted its obligations under international law and employed every conceivable tactic to escape liability for its actions. It is now attempting desperately to evade judgment by this Tribunal, knowing too well that its violations of international law are glaring and indisputable. Indeed, all courts outside India have held that it is liable for its debts under the Arbitration Awards and refused to credit its belated and manufactured allegations of fraud.

I. Courts Outside India Reject Its Fraud Allegations

266. Having referred to its fraud allegations as a "*red herring*" before the US court,⁶⁴² India changed tactics after its Supreme Court's decision affirming the liquidation of Devas. This was in line with the Finance Minister's proclamation that "*all [] departments*" would coordinate to make use of the Supreme Court decision to make "*a case*" against Devas and its investors.⁶⁴³ Accordingly, India attempted to deploy the Supreme Court Liquidation Decision in various ongoing enforcement proceedings around the world. No court took its bait.

1. The Canadian Courts Deny That The Supreme Court Decision Is Proof Of Fraud

267. Claimants have attempted to enforce the J&M and Quantum Awards in Canada. India sought to use the Supreme Court liquidation decision to resist enforcement, arguing that the decision in itself constituted conclusive evidence that the Devas Agreement was "*tainted by fraud from the outset*".⁶⁴⁴ On 23 December 2022, the Canadian Superior Court

⁶⁴¹ **Exhibit C-387**, Financial Services Commission Mauritius Notice to CC/Devas (Mauritius) Limited et. al, 19 April 2023.

⁶⁴² *Supra* ¶ 107.

⁶⁴³ *Supra* ¶ 234.

⁶⁴⁴ **Exhibit C-357**, *CC/Devas (Mauritius) Ltd. and Others v. Republic of India and others*, No. 500-11-060766 (Judgment), 23 December 2022, ¶ 14.

(Commercial Division) rebuffed this attempt, holding that the Supreme Court decision was proof only of the fact that Devas had been liquidated under Indian law and no more.⁶⁴⁵

2. The Dutch Supreme Court Finally Rejected India's Attempt To Set Aside The J&M Award

268. Soon after India lost the J&M Award, it applied to set it aside at the seat of the arbitration in the Hague. All three levels of Dutch courts rejected India's efforts.
269. On 14 November 2018, the Hague District Court dismissed India's petition to set aside the Initial BIT Award. The Court squarely rejected India's attempt to invoke the CBI charge sheet as a ground for set aside, stating that "*the mere circumstance that a Charge Sheet has been lodged is still devoid of legal consequence.*"⁶⁴⁶ The Hague District Court also noted the baselessness of the allegations themselves, finding that "*India has failed to supply a sufficiency of factual substantiation supporting its position that the Devas Contract is threatened with nullity.*"⁶⁴⁷
270. In a decision dated 25 February 2021, the Hague Court of Appeal (which was deliberating India's appeal to set aside the J&M Award) rejected India's fraud arguments, finding that India had not "*established in court that criminal acts played a role in the formation of the Devas Contract.*"⁶⁴⁸ The Court of Appeal found that "[u]ntil the Indian courts have consented to the charges set out in the Charge Sheet being included in an official indictment, it cannot even be assumed that those charge are valid *prima facie*."⁶⁴⁹
271. Ultimately, on 3 February 2023, the Dutch Supreme Court rejected India's appeal against the Hague Court of Appeal's decision, making the J&M Award, and all the tribunal's

⁶⁴⁵ **Exhibit C-357**, *CC/Devas (Mauritius) Ltd. and Others v. Republic of India and others*, No. 500-11-060766 (Judgment), 23 December 2022, ¶ 240.

⁶⁴⁶ **Exhibit C-417**, *Republic of India v. CC/Devas (Mauritius) Limited and Others*, C/09/529140 (Judgment), ¶ 4.66.

⁶⁴⁷ **Exhibit C-417**, *Republic of India v. CC/Devas (Mauritius) Limited and Others*, C/09/529140 (Judgment), ¶ 4.67.

⁶⁴⁸ **Exhibit C-284**, Judgment of the Hague Court of Appeal, *The Republic of India v. CC/Devas (Mauritius) Ltd, Devas Employees Mauritius Limited, Telcom Devas Mauritius Limited* (21/02108), 16 February 2021, ¶ 5.39.

⁶⁴⁹ **Exhibit C-284**, Judgment of the Hague Court of Appeal, *The Republic of India v. CC/Devas (Mauritius) Ltd, Devas Employees Mauritius Limited, Telcom Devas Mauritius Limited* (21/02108), 16 February 2021, ¶ 5.36.

findings within it final and beyond reproach.⁶⁵⁰ Indeed, it is only one of several courts outside of India to reject India’s concocted allegations, the German and Swiss courts also having done so in respect of the DT Award.⁶⁵¹

3. The Federal Supreme Court of Switzerland Rejects India’s Fraud Allegations

272. As with the ICC and J&M Awards, India has also sought to evade its obligations under the DT Award. Though the Federal Supreme Court of Switzerland had already confirmed the DT Award,⁶⁵² India sought to challenge this confirmation by launching “*revision*” proceedings “*citing subsequently discovered facts and evidence*” in the Indian Supreme Court decision affirming Devas’s liquidation.⁶⁵³ The Swiss Court rightly found that India’s argument was “*not convincing*” because the liquidation proceedings “*could not have been initiated against Devas without the knowledge of state authorities.*”⁶⁵⁴ In addition, India was “*not trying to prove facts that it had already submitted in the arbitral proceedings but was unable to prove, but only facts that it claims to have discovered subsequently,*” which was “*not an independent ground of review.*”⁶⁵⁵ Ultimately, the court found that India’s arguments “*come to nothing.*”⁶⁵⁶

⁶⁵⁰ See **Exhibit C-352**, Judgment of the Netherlands Supreme Court, *The Republic of India v. CC/Devas (Mauritius) Ltd, Devas Employees Mauritius Limited, Telcom Devas Mauritius Limited* (21/02108), 3 February 2023.

⁶⁵¹ See **Exhibit C-337**, Judgment of the Berlin Court of Appeal, *Deutsche Telekom AG v. The Republic of India* (12 Sch 7/21), 26 January 2023; **Exhibit C-369**, *Republic of India v. Deutsche Telekom AG*, Judgment of March 8, 2023, 1st Civil Law Division, Federal Supreme Court of Switzerland.

⁶⁵² **Exhibit C-369**, *Republic of India v. Deutsche Telekom AG*, Judgment of March 8, 2023, 1st Civil Law Division, Federal Supreme Court of Switzerland, p. 4.

⁶⁵³ **Exhibit C-369**, *Republic of India v. Deutsche Telekom AG*, Judgment of March 8, 2023, 1st Civil Law Division, Federal Supreme Court of Switzerland, ¶ 4 (India argued that “*it has learned significant facts from the judgment of the Supreme Court of India dated January 17, 2022, on the liquidation of the Devas company and, at the same time, has found decisive evidence that the Respondent’s disputed investment in India in the form of the shareholding in Devas was made fraudulently and thus unlawfully.*”).

⁶⁵⁴ **Exhibit C-369**, *Republic of India v. Deutsche Telekom AG*, Judgment of March 8, 2023, 1st Civil Law Division, Federal Supreme Court of Switzerland, ¶ 4.3.

⁶⁵⁵ **Exhibit C-369**, *Republic of India v. Deutsche Telekom AG*, Judgment of March 8, 2023, 1st Civil Law Division, Federal Supreme Court of Switzerland, ¶ 4.3.

⁶⁵⁶ **Exhibit C-369**, *Republic of India v. Deutsche Telekom AG*, Judgment of March 8, 2023, 1st Civil Law Division, Federal Supreme Court of Switzerland, ¶ 4.3.

4. The German Court Rejects India's Fraud Arguments

273. India also attempted to resist DT's efforts to enforce the DT Award in Germany. Relying on its then-pending challenge to the DT Award before the Swiss Courts on the basis of the fraud allegations, India requested that the German enforcement proceedings be suspended "until the conclusion of the revision proceedings" in Switzerland.⁶⁵⁷
274. The German court rejected India's maneuver out-of-hand. The Court first noted that, as far as Devas' investors were concerned, their "*acquisition of shares in Devas... does not, even according to [India]'s submissions, contradict Indian law.*"⁶⁵⁸ Accordingly, India could not claim that these investments were not to be afforded legal protections that it otherwise ensured.⁶⁵⁹ Turning then to the criminal investigations, the Court noted that the investigations did not merit a stay of any enforcement and/or set aside proceedings because they did not present "*a question of new facts*" having already been "*the subject of the initial discussions in the arbitral proceedings.*"⁶⁶⁰ More pertinently, the Court remarked on the baselessness of the investigations themselves, having resulted in "*no criminal convictions to date, now almost twelve years after the contract with Devas was terminated in February 2011.*"⁶⁶¹ On this basis, amongst others, the German court rejected India's fraud arguments and provisionally enforced the DT Award.⁶⁶²

⁶⁵⁷ **Exhibit C-337**, *Deutsche Telekom AG v. The Republic of India* (12 Sch 7/21), Judgment of the Berlin Court of Appeal, 26 January 2023, p. 6.

⁶⁵⁸ **Exhibit C-337**, *Deutsche Telekom AG v. The Republic of India* (12 Sch 7/21), Judgment of the Berlin Court of Appeal, 26 January 2023, p. 11.

⁶⁵⁹ **Exhibit C-337**, *Deutsche Telekom AG v. The Republic of India* (12 Sch 7/21), Judgment of the Berlin Court of Appeal, 26 January 2023, p. 11.

⁶⁶⁰ **Exhibit C-337**, *Deutsche Telekom AG v. The Republic of India* (12 Sch 7/21), Judgment of the Berlin Court of Appeal, 26 January 2023, p. 13.

⁶⁶¹ **Exhibit C-337**, *Deutsche Telekom AG v. The Republic of India* (12 Sch 7/21), Judgment of the Berlin Court of Appeal, 26 January 2023, pp. 13-14.

⁶⁶² **Exhibit C-337**, *Deutsche Telekom AG v. The Republic of India* (12 Sch 7/21), Judgment of the Berlin Court of Appeal, 26 January 2023, p. 22.

III. THE TRIBUNAL HAS JURISDICTION

275. Claimants' claim meets all the requirements under the BIT, as detailed below.

A. India Has Consented To Arbitration

276. India has consented to arbitrate this dispute pursuant to the UNCITRAL Rules.⁶⁶³ Article 8(2)(c) of the BIT enshrines India's consent to arbitrate this dispute.

(1) Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) If such dispute cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date of request for settlement, the investor may submit the dispute to:

...

(c) to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law; . . .

(3) Where a dispute has been submitted for resolution under paragraph 2(a), 2(b), 2(c) or 2(d) above, the choice so exercised shall not be changed except with the consent of the Contracting Party which is party to the dispute.

(4) Notwithstanding anything contained in paragraph (2) above, the Contracting Party which is a party to the dispute shall have the option to submit the dispute for resolution to international arbitration in accordance with procedure set out in paragraph 2(d) above.⁶⁶⁴

277. It is settled law that a state's consent to arbitration may result from a direct agreement in a BIT to bring before an arbitral tribunal a future dispute arising from the investment.⁶⁶⁵ In

⁶⁶³ According to the Indian Government website, India "terminated" the BIT on 22 March 2017. See **Exhibit C-389**, Department of Economic Affairs, "Bilateral Investment Treaties (BITs)/Agreements". Claimants' investments, however, were made prior to and approved well before 2017. See *infra* ¶ 286. Under Article 13(3) of the BIT, therefore, the provisions of the Treaty (including its substantive protections and dispute resolution provisions) "remain in force" with respect to the Investors' investments for a further period of ten (10) years, *i.e.* at least until 2027. Similarly, the BIT Amendment does not apply to this Arbitration, for the reasons set out at ¶¶ 237 to above.

⁶⁶⁴ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000].

⁶⁶⁵ See *e.g.* **Exhibit CL-039**, *National Grid PLC v. The Argentine Republic*, Ad hoc Arbitration, Decision on Jurisdiction, 20 June 2006, ¶ 49 (A Tribunal constituted under the 1976 UNCITRAL Rules and pursuant to the UK-

the case of the BIT, India’s consent consists of its express and unequivocal offer to arbitrate, and Claimants complied with the conditions of that offer, as set out below.

278. Claimants have satisfied the notice requirements of Articles 8(1) and (2) of the BIT. On 6 May 2021, Claimants sent India a Notice of Dispute setting out India’s unlawful actions and invited India to settle the dispute amicably.⁶⁶⁶ On 16 August 2021, India rejected Claimants’ offer to engage in settlement discussions.⁶⁶⁷ Thus, the dispute could not be settled amicably within six months of Claimants’ request for settlement. Consequently, on 2 February 2022, Claimants filed their Notice of Arbitration.

B. Claimants Are Qualifying Investors

279. The Claimants are protected investors under the BIT.

280. Article 1(1)(b) of the BIT defines “*investor*” as follows:

“‘investor’ means in respect to either Contracting Party:

(i) the ‘national’, that is a natural person deriving his or her status as a national of that Contracting Party from the relevant laws of that Contracting Party; and

(ii) the ‘company’ that is a legal person, such as a corporation, firm or association, incorporated or constituted in accordance with the law of that Contracting Party; . . .”⁶⁶⁸

Argentina BIT found that “*the parties to the dispute have consented to arbitration and their consent is not in doubt or dispute. The Respondent consented to arbitration by offering under the terms of the Treaty the option to settle eventual disputes that may arise with investors who are nationals of the other State party. Claimant consented to arbitration by filing its Notice of Arbitration.*”); **Exhibit CL-040**, *Cairn Energy PLC and Another v. The Republic of India*, PCA Case No. 2016-07, Final Award, 21 December 2020, ¶ 714 (“*By consenting to submit any investment-related dispute to the jurisdiction of the Tribunal under Article 9 of the BIT, the Parties have vested this Tribunal with the power to resolve any incidental issues, including the issue of whether the Claimants complied with Indian law when structuring and carrying out the 2006 Transactions. The Tribunal will discharge this mandate in the liability Section of this Award below. Consequently, to the extent that the Respondent’s illegality objection goes to the Tribunal’s jurisdiction, it is dismissed.*”).

⁶⁶⁶ **Exhibit C-077**, Trigger Letter, p. 10.

⁶⁶⁷ **Exhibit C-083**, India’s Response to Trigger Letter, p. 10.

⁶⁶⁸ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000].

281. CC/Devas, Telcom Devas, and DEMPL are companies organized and existing under the laws of Mauritius.⁶⁶⁹ As of the day they initiated this Arbitration, CC/Devas, Telcom Devas and DEMPL were all in good standing under Mauritian law.⁶⁷⁰ Accordingly, the Claimants are “investors” under Article 1(1)(b)(ii) of the BIT and entitled to its protections.

C. Claimants Have Made Protected Investments

282. Claimants each have made protected investments under the BIT, principally through their equity investment in Devas.

283. Article 1(1)(a) BIT defines “investment” as follows:

“investment” means every kind of asset established or acquired under the relevant laws and regulations of the Contracting Party in whose territory the investment is made, and in particular, though not exclusively, includes:

(i) movable and immovable property as well as other rights in rem such as mortgages, liens or pledges;

(ii) shares, debentures and any other form of participation in a company;

(iii) claims to money, or to any performance under contract having an economic value;

(iv) intellectual property rights, goodwill, technical processes, know-how, copyrights, trademarks, trade-names and patents in accordance with the relevant laws of the respective Contracting Parties;

(v) business concessions conferred by law or under contract, including any concessions to search for, extract or exploit natural resources; . . . ”

284. Claimants’ investments in India were principally through their shareholdings in an Indian company, Devas, which was incorporated in Karnataka, Bangalore, on 17 December 2004.⁶⁷¹

⁶⁶⁹ **Exhibit C-010**, Certificate of Incorporation of CC/Devas (Mauritius) Limited, 10 February 2006; **Exhibit C-011**, Certificate of Incorporation of Telcom Devas Mauritius Limited, 20 February 2006; **Exhibit C-017**, DEMPL Certificate of Incorporation, 16 April 2009.

⁶⁷⁰ See **Exhibit C-280**, Certificate of Current Standing of CC/Devas (Mauritius) Limited, 19 August 2022; **Exhibit C-281**, Certificate of Current Standing of Telcom Devas Mauritius Limited, 19 August 2022; **Exhibit C-282**, Certificate of Current Standing of DEMPL, 19 August 2022.

⁶⁷¹ See **Exhibit C-291**, Certificate of Incorporation, Devas Multimedia Private Limited, 17 December 2004.

285. Claimants' respective holdings in Devas were:⁶⁷²
- a) CC/Devas held 15,730 Class A Equity Shares, 11,978 Class B Equity Shares, 525 Class C Equity Shares, and 3,116 Class D Equity Shares, representing 17.06 percent of voting shares;
 - b) Telcom Devas held 15,730 Class A Equity Shares, 11,978 Class B Equity Shares, 525 Class C Equity Shares, and 3,116 Class D Equity Shares, representing 17.06 percent of voting shares; and
 - c) DEMPL held 6,402 Class D Equity Shares, representing 3.48 percent of voting shares.
286. CC/Devas and Telcom Devas first acquired stakes in Devas in 2006,⁶⁷³ followed by additional acquisitions of shares in 2007⁶⁷⁴ and by answering a capital call in 2009.⁶⁷⁵ DEMPL acquired its stake in two rounds of investment in 2009 and 2010.⁶⁷⁶ These investments were duly approved by India's FIPB.⁶⁷⁷ The cash infusions from CC/Devas and Telcom Devas enabled Devas to make its Upfront Capacity Reservation Fee payments to Antrix under the Devas-Antrix Agreement and were accompanied by significant contributions in telecommunications knowhow.⁶⁷⁸
287. In addition, through their respective holdings in Devas, Claimants are the partial, indirect owners of Devas's rights and claims to performance pursuant to the Devas-Antrix Agreement, including the ICC Award rendered pursuant to that Agreement. Specifically,

⁶⁷² See **Exhibit C-049**, Quantum Award, ¶ 663(c) (stating shareholding percentages).

⁶⁷³ See *supra* ¶ 49.

⁶⁷⁴ See *supra* ¶ 53.

⁶⁷⁵ See *supra* ¶ 60.

⁶⁷⁶ See **Exhibit C-036**, J&M Award, ¶ 111.

⁶⁷⁷ See **Exhibit C-021**, Letter from Ministry of Finance, FIPB Unit (Saxena) to Devas, 29 September 2009, p. 1. See also **Exhibit C-020**, Letter from Devas to FIPB, 14 September 2009; **Exhibit C-015**, Amendment No. 3 to FIPB Approval, 21 October 2008; **Exhibit C-014**, FIPB Approval of DT Investment, 7 August 2008; **Exhibit C-013**, FIPB Approval of Devas Capital Structure, 19 May 2008; and **Exhibit C-009**, FIPB Approval for Setting Up ISP Services, 2 February 2006.

⁶⁷⁸ See **Exhibit C-036**, J&M Award, ¶¶ 104-109; *supra* § II.A.3.

the ICC Award “*crystallized the parties’ rights and obligations under the original*” Devas-Antrix Agreement and thus “*constitute an investment*”⁶⁷⁹ under Article 1(1)(a)(iii) of the BIT as they represent Claimants’ indirect “*claims to money, or to any performance under contract having an economic value*”.⁶⁸⁰

288. India has argued that the Tribunal does not have jurisdiction because Claimants’ investment consists only of the ICC Award, which the Delhi High Court set aside on 29 August 2022, six months after Claimants initiated this Arbitration.⁶⁸¹ This argument fails for two reasons.

289. First, there is no dispute between the Parties that the Delhi High Court set aside the ICC Award *after* Claimants had initiated the Arbitration. Accordingly, through their respective holdings in Devas, Claimants are the partial, indirect owners of the “*bundle of rights*” that would have belonged to Devas but for India’s violations of the BIT, including the ICC Award rendered pursuant to the Devas-Antrix Agreement.⁶⁸² As discussed in section II.H.4

⁶⁷⁹ **Exhibit CL-041**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Decision on Jurisdiction and Recommendation on Provisional Measures, 21 March 2007, ¶ 127. *See also Exhibit CL-126*, *White Industries Australia Ltd. v. Republic of India*, UNCITRAL, Final Award, 30 November 2011, ¶¶ 7.6.2-10.

⁶⁸⁰ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000].

⁶⁸¹ *See* Respondent’s Rejoinder on Interim Measures, 7 October 2022, ¶¶ 63-69.

⁶⁸² *See Exhibit CL-007*, *ATA Construction, Industrial and Trading Company v. The Hashemite Kingdom of Jordan*, ICSID Case No. ARB/08/2, Award, 18 May 2010, ¶ 96 (“... *an investment is not a single right but is, like property, correctly conceived of as a bundle of rights, some of which are inseparable from others and some of which are comparatively free-standing.*”); **Exhibit CL-008**, *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award, 7 February 2017, ¶ 358 (“*In the Tribunal’s view, when quantifying the value of the expropriated assets, the Tribunal must proceed on the basis that Burlington is entitled to exercise all of the contractual rights it would have had but for the expropriation, and that Ecuador would have complied with its contractual obligations going forward. In other words, when building the counterfactual scenario in which the expropriation has not occurred, the Tribunal must assume that Burlington holds the rights that made up the expropriated assets and that those rights are respected. This does not mean that the Tribunal is enforcing a contract claim. What the Tribunal does is to value an expropriated asset, which the Parties agree consists of a bundle of rights allowing Burlington to obtain future revenues.*”); **Exhibit CL-009**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal, 2 October 2006, ¶¶ 303-304 (Acknowledging claimants’ argument that “*That is plain hornbook law of expropriation. The fact it is indirect in the sense that the rights themselves were held by the Project Company is irrelevant, the BIT clearly contemplates that sort of situation. . . . So the short answer is that what was expropriated was that bundle of rights and legitimate expectations*” “*articulated the matter correctly.*”), ¶ 331 (“*The Tribunal fails to see how it can be contended that this dispute does not arise directly out of an investment. It plainly does. The fact that this case involved a complex series of carefully drafted agreements does not detract from the fact that the Claimants invested US\$16.765 million into the Hungarian Airport Project. . . . The investment was no less direct because it was channelled through the Project Company.*”); **Exhibit CL-010**, *Hochtief AG v. The Argentine Republic*, ICSID Case No. ARB/07/31, Decision on Jurisdiction, 24 October 2011, ¶ 66 (“*The Tribunal considers that the phrase “the management, utilization, use and*

above, the New Delhi High Court’s Set Aside Decision reflects and is a consequence of India’s continued of its obligations under the BIT. The Set Aside Decision only further crystallizes India’s expropriation of Claimants’ investment in Devas; it does not defeat jurisdiction. This sentiment was echoed by India’s counsel, Ms. Andrea Menaker, at the parties’ first meeting, when she alleged that Claimants had initiated the Arbitration “*prematurely*” because the ICC Award had not yet been set aside (at that time).

290. India has argued that there was “*nothing remarkable*” about Ms. Menaker’s statement, because “*a party has a right to seek set aside of an arbitral award at the place of arbitration (or annulment in the case of an ICSID award) and that, if an award has been set aside or annulled, a party is no longer bound by that award. Given that the ICC Award has been set aside, it is logical that Claimants’ claims challenging the alleged non-compliance with that Award cannot prevail.*”⁶⁸³ This cannot be right;⁶⁸⁴ if it were, all a State would have to do is expropriate an investor’s investment to defeat jurisdiction. That would eviscerate one of the key protections (i.e., expropriation without compensation) from investment treaty law. Thus, while the Set Aside Decision is relevant for the merits of the case and the quantification of Claimants’ claim, it has no bearing on the Tribunal’s jurisdiction.
291. Second, and in any case, India’s argument ignores the fact that Claimants have explicitly framed their protected investments under the BIT in the form of their shareholding in Devas in both the NOA and in this Memorial.⁶⁸⁵ Claimants have also defined their claims on the basis of India’s interference with this investment, as India has liquidated Devas.⁶⁸⁶
292. India mistakenly argues that Claimants’ Notice of Arbitration in fact frames Claimants’ investment as the ICC Award because “*all of [Claimants’] alleged damages depend on the Tribunal finding that India breached its Treaty obligations by allegedly failing to comply*

enjoyment of an investment” does include recourse to dispute settlement, as an aspect of the management of the investment. Indeed, the (‘procedural’) right to enforce another (‘substantive’) right is one component of the bundles of rights and duties that make up the legal concept of what property is.”)

⁶⁸³ Respondent’s Rejoinder on Interim Measures, 7 October 2022, ¶ 69.

⁶⁸⁴ See *infra* ¶¶ 314-315.

⁶⁸⁵ See Notice of Arbitration, 2 February 2022, § III.B.3.

⁶⁸⁶ See *supra* § I; Notice of Arbitration, 2 February 2022, ¶ 102(c).

with the ICC Award” and because “[t]he liquidation of Devas thus could not cause any damage” to Claimants’ investment.⁶⁸⁷ This is a flawed analysis. Claimants have invested in shares in Devas. Since Devas has been liquidated, Claimants no longer have control over their investment. However, Claimants, through their shareholding in Devas, do hold “residual contractual rights” which, further to India’s illegal termination of the Devas-Antrix Agreement, have “crystallised” in the form of the ICC Award.⁶⁸⁸ Both the liquidation and the Set Aside Decision have impaired Claimants’ ability to recover the debts due under the ICC Award.

293. The fact remains that Claimants’ protected investment under the BIT is founded on their respective shareholdings in Devas and the set aside of the ICC Award does not change this.

D. The Tribunal’s jurisdiction is *res judicata*

294. It is well-established that the principle of *res judicata* is a principle of international law that applies in the context of investment treaty arbitration.⁶⁸⁹ Generally, for *res judicata* to apply, the prior action must have been (i) between the same parties, (ii) with respect to the same subject matter; and (iii) on the same legal grounds.⁶⁹⁰
295. These three limbs are satisfied as between the Initial BIT Arbitration and this Arbitration with respect to a finding that Claimants satisfy the jurisdictional prerequisites to pursue a claim under the BIT. Notably, (i) the same Claimants brought arbitration proceedings

⁶⁸⁷ Respondent’s Rejoinder on Interim Measures, 7 October 2022, ¶ 67.

⁶⁸⁸ **Exhibit CL-042**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶¶ 128-29.

⁶⁸⁹ See **Exhibit CL-043**, *Petrobart Limited v. The Kyrgyz Republic (II)*, ARB No. 126/2003, Arbitral Award, 29 March 2005, ¶ VIII.4.3 (“... the notion of *res judicata* is undoubtedly recognised in international law (see for instance *International Court of Justice, Effect of Awards of Compensation made by the United Nations Administrative Tribunal, Advisory Opinion*, ICJ Reports 1954 p. 53, *Bin Cheng, General Principles of Law as applied by International Courts and Tribunals*, 1987, p. 337 et seq., and *Vaughan Lowe, Res judicata and the Rule of Law in International Arbitration, African Journal of International and Comparative Law*, 1996, the latter two works referred to by *Petrobart*). The Arbitral Tribunal considers that procedural fairness requires that a matter which has been examined and finally decided by a court or an arbitral tribunal shall as a rule not be subject to a new examination in proceedings between the same parties (cf. the principle of *ne bis in idem*).”); **Exhibit CL-044**, *Silja Schaffstein, The Doctrine of Res Judicata Before International Arbitral Tribunals*, 2012, ¶ 238.

⁶⁹⁰ See **Exhibit CL-031**, *Interpretation of Judgments Nos. 7 & 8 (The Chorzów Factory)*, 1927 P.C.I.J., (ser. A) no. 13, PDF p. 41 (dissenting opinion of Judge Anzilotti) (16 December 1927). Judge Anzilotti’s Latin terms were translated by the tribunal in **Exhibit CL-032**, *Trail Smelter Case (United States of America v. Canada)*, 3 R.I.A.A. 1938, 1952 (11 March 1941) to mean “parties, object, and cause.”

against the same Respondent in the Initial BIT Arbitration, (ii) with respect to Claimants’ rights arising under the Devas-Antrix Agreement; and (iii) under the same BIT. The Initial BIT Tribunal has already held, in the J&M Award, that Claimants have satisfied the requisite elements of jurisdiction listed above.⁶⁹¹ India’s application to set aside the J&M Award has now been denied by the Netherlands Supreme Court and that Award is therefore beyond reproach.⁶⁹² It is therefore not open to India to re-litigate the Initial BIT Tribunal’s findings on jurisdiction. Accordingly, this Tribunal should adopt the Initial BIT Tribunal’s findings on the jurisdictional prerequisites contained in the BIT and find that it has jurisdiction in this Arbitration.

⁶⁹¹ **Exhibit C-036**, J&M Award, ¶¶ 196-210, 501(a). See **Exhibit CL-045**, *Iberdrola Energia S.A. v. Republic of Guatemala II*, PCA Case No. 2017-41, Final Award, 24 August 2020, ¶ 307 (“... the Tribunal finds that the Iberdrola I Award definitively settled the question as to whether the claims brought in the present arbitration relate to “matters governed by the Treaty” under Article 11(1). The Iberdrola I tribunal’s decision was that they did not, and as a result, it determined that it had no jurisdiction *ratione materiae*. Having been definitively settled in the Iberdrola I Award, this Tribunal cannot revisit jurisdiction. It must therefore deny jurisdiction over the present claims.”); **Exhibit CL-046**, *Quiborax S.A. and Non Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015, ¶ 541 (“The jurisdictional phase concluded with the Decision on Jurisdiction, in which the Tribunal established that it had jurisdiction over the claims of Quiborax and NMM. The Tribunal finds that there is no reason that can justify reopening the jurisdictional issues at this stage, assuming this were at all possible. It therefore denies the Respondent’s new jurisdictional objections.”).

⁶⁹² See **Exhibit C-352**, Judgment of the Netherlands Supreme Court, *The Republic of India v. CC/Devas (Mauritius) Ltd, Devas Employees Mauritius Limited, Telcom Devas Mauritius Limited* (21/02108), 3 February 2023.

IV. INDIA HAS BREACHED ITS OBLIGATIONS UNDER THE BIT

A. India Has Unlawfully Expropriated Claimants' Investment

296. Through the actions described at Sections II.F to II.H, namely through India's liquidation of Devas and its set aside of the ICC Award, India has unlawfully expropriated Claimants' investment. India has deprived Claimants of the full value of their investment in Devas. India's expropriation violated international law (including, specifically, India's obligations under the BIT), by, among other things, failing to compensate Claimants and failing to accord them due process.
297. The analysis below proceeds in three parts. First, Claimants describe the expropriation standard in the BIT. Second, Claimants show that India's conduct resulted in the expropriation of their investment in Devas. Third, Claimants establish that India's conduct was unlawful.

1. Applicable Standard

298. Article 6 of the BIT prohibits expropriation of covered investments by either Contracting Party, subject to certain conditions:

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation except for public purposes under due process of law, on a nondiscriminatory basis and against fair and equitable compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair and equitable rate until the date of payment, shall be made without unreasonable delay and shall be effectively realizable and be freely transferable.

...

3. Where a Contracting Party expropriates, nationalises or takes measures having effect equivalent to nationalisation or expropriation against the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure

*fair and equitable compensation as specified therein to such investors of the other Contracting Party who are owners of those shares.*⁶⁹³

299. The BIT recognizes that an investment shall also not be “*subjected to measures having effects equivalent to nationalisation or expropriation.*”⁶⁹⁴

300. This language reflects the well-accepted doctrine in international law that expropriation includes:

*[N]ot only open, deliberate and acknowledged takings of property, such as outright seizure or formal or obligatory transfer of title in favour of the host State, but also covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property even if not necessarily to the obvious benefit of the host State.*⁶⁹⁵

301. Therefore, a State expropriates an investment “*when the effect of the measures taken by the state has been to deprive the owner of title, possession or access to the benefit and economic use of his property.*”⁶⁹⁶ Arbitral tribunals have consistently endorsed this standard.⁶⁹⁷

⁶⁹³ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000], Article 6 (emphasis added).

⁶⁹⁴ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000], Article 6(1) (emphasis added).

⁶⁹⁵ **Exhibit CL-047**, *Metalclad Corporation v. The United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 103.

⁶⁹⁶ **Exhibit CL-048**, *Compañía del Desarrollo de Santa Elena, S.A. v. The Republic of Costa Rica*, ICSID Case No. ARB/96/1, Final Award, 17 February 2000, ¶ 77. See also **Exhibit CL-049**, *AES Summit Generation Limited and AES-Tisza Erőmű Kft v. The Republic of Hungary*, ICSID Case No. ARB/07/22, Award, 23 September 2010, ¶ 14.3.1 (“For an expropriation to occur, it is necessary for the investor to be deprived, in whole or significant part, of the property in or effective control of its investment: or for its investment to be deprived, in whole or significant part, of its value.”); **Exhibit CL-050**, *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002, ¶ 107 (“When measures are taken by a State the effect of which is to deprive the investor of the use and benefit of his investment even though he may retain nominal ownership of the respective rights being the investment, the measures are often referred to as a ‘creeping’ or ‘indirect’ expropriation or . . . as measures ‘the effect of which is tantamount to expropriation.’”).

⁶⁹⁷ See, e.g., **Exhibit CL-051**, *CME Czech Republic B.V. (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, ¶ 604 (“De facto expropriations or indirect expropriations, i.e. measures that do not involve an overt taking but that effectively neutralize the benefit of the property of the foreign owner, are subject to expropriation claims.”); **Exhibit CL-052**, *Alpha Projectholding GmbH v. Ukraine*, ICSID Case No. ARB/07/16, Award, 8 November 2010, ¶ 408 (“Thus, even if the 1998 and 1999 JAAs remain nominally in force, Claimant’s

302. Under international law, actions of a State’s courts are attributable to the State,⁶⁹⁸ and tribunals have recognized that those actions can amount to expropriation (either on their own or as a composition of a series of acts).⁶⁹⁹ As noted by the *SCB v. Tanzania* tribunal, “judicial decisions that permit the actions or inactions of other branches of the State and which deprive the investor of its property or property rights can . . . amount to expropriation”.⁷⁰⁰ Likewise the *Rumeli v. Kazakhstan* tribunal observed that although “most cases of expropriation result from action by the executive or legislative arm of a State, a taking by the judicial arm of the State may also amount to an expropriation.”⁷⁰¹ Tribunals have also found that the deprivation of contractual rights validated by the host State’s courts may amount to a judicial expropriation.⁷⁰²
303. In assessing whether an expropriation has taken place—direct or otherwise—all relevant governmental acts affecting the investment must be considered cumulatively.⁷⁰³ In *Rumeli*,

investment may still have been expropriated if the contracts have been ‘rendered useless’ by the actions of the Ukraine government.”).

⁶⁹⁸ See **Exhibit CL-053**, INTERNATIONAL LAW COMMISSION, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001) (Article 4 prescribes that “the conduct of any State organ shall be considered an act of that State under international law, whether that organ exercises legislative, executive, judicial or any other functions.”).

⁶⁹⁹ **Exhibit CL-054**, *AO Tatneft v. Ukraine*, UNCITRAL, Award on the Merits, 29 July 2014, ¶¶ 461-462. See also **Exhibit CL-055**, *Sistem Muhendislik Insaat Sanayi ve Ticaret A.S. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Award, 9 September 2009, ¶¶ 118-119 (in which the investor entered into share purchase agreements with a State-owned Kyrgyz company after it was declared bankrupt. The Kyrgyz courts later reversed the declaration of bankruptcy and invalidated the share purchase agreements that were concluded with the liquidator. The voiding of the contracts was ultimately upheld by the Kyrgyz Supreme Court. The arbitral tribunal held that it was well-established that the abrogation of contractual rights by a State is tantamount to an expropriation of property by that State and that the court’s decision “deprived the Claimant of its property rights in the hotel just as surely as if the state had expropriated it by decree.”).

⁷⁰⁰ **Exhibit CL-056**, *Standard Chartered Bank (Hong Kong) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/15/41, Award, 11 October 2019, ¶ 279.

⁷⁰¹ **Exhibit CL-057**, *Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶ 702. Separately, a judicial expropriation may be found even where the treaty breaches do not amount to a denial of justice, see **Exhibit CL-058**, *Infinito Gold v. Costa Rica*, ICSID Case No. ARB/14/5, Award, 3 June 2021, ¶¶ 361, 365.

⁷⁰² See e.g. **Exhibit CL-059**, *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, 22 August 2017, ¶ 648; **Exhibit CL-055**, *Sistem Muhendislik Insaat Sanayi ve Ticaret A.S. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Award, 9 September 2009, ¶ 118.

⁷⁰³ **Exhibit CL-060**, *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, ¶ 667 (“[T]he expression ‘creeping expropriation’ is used to refer to a specific form of expropriation that results from a series of measures taken over time that cumulatively have an expropriatory effect, rather than from a single measure or group of measures that occur at one time.”).

the tribunal found that the facts of the case amounted to a “‘creeping’ expropriation, instigated by the decision of the Investment Committee . . . , and which proceeded via a series of court decisions, culminating in the final decision of the Presidium of the Supreme Court.”⁷⁰⁴

304. Thus, decisions of the judicial branch of a State’s government, taken together with decisions made by the legislative and/or executive branch, may amount to an expropriation.

2. India Has Expropriated Devas

305. Through its liquidation proceedings, India has directly expropriated Claimants’ investment by placing Devas under the control of Indian Government authorities. In the alternative, by failing to defend and instead attempting to set aside the ICC Award, which is Devas’s primary asset of value, India has attempted to eviscerate the value of Devas, making these measures tantamount to an expropriation, *i.e.* amounting to an indirect expropriation.

a) India Has Directly Expropriated Claimants’ Investment

306. Through its liquidation of Devas, India has directly expropriated Claimants’ investment. As noted above, Claimants’ investment comprised of their shareholding and other investments in Devas.⁷⁰⁵ Upon Devas’s liquidation, the NCLT appointed an Indian Government employee who works for and is a representative of the Central Government under the aegis of the MCA,⁷⁰⁶ the Liquidator, to assume complete control of the company and all its affairs.⁷⁰⁷ Upon his appointment, the Liquidator was tasked with taking “*custody or control of the property, effects and actionable claims to which the company is or appears*

⁷⁰⁴ **Exhibit CL-057**, *Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July, 2008, ¶ 708.

⁷⁰⁵ *See supra* ¶¶ 284-288.

⁷⁰⁶ *See Exhibit C-173*, § 359, Companies Act, 2013 (India) (“(1) For the purposes of this Act, so far as it relates to the winding up of companies by the Tribunal, the Central Government may appoint as many Official Liquidators, Joint, Deputy or Assistant Official Liquidators as it may consider necessary to discharge the functions of the Official Liquidator. (2) The liquidators appointed under sub-section (1) shall be whole-time officers of the Central Government. (3) The salary and other allowances of the Official Liquidator, Joint Official Liquidator, Deputy Official Liquidator and Assistant Official Liquidator shall be paid by the Central Government.”); *See also*, **Exhibit C-383**, Ministry of Corporate Affairs, “Official Liquidators”.

⁷⁰⁷ *See supra* ¶ 217.

to be entitled”.⁷⁰⁸ Accordingly, the Liquidator, along with his team of other Indian Government employees, “proceeded to [Devas’s] registered office”, spoke with the landlord and took control of the premises (by deploying security guards), as well as all the company’s books and records.⁷⁰⁹ The Liquidator then fired all of Devas’s global counsel and has either attended litigation proceedings where Devas is a party as Devas’s representative, or, in some limited instances, hired his own counsel to represent Devas.⁷¹⁰

307. Not only has the Liquidator taken complete control of Devas, he and other Indian authorities have affirmed that Devas’s shareholders, including Claimants, will receive none of the company’s assets after the liquidation process is complete. Generally in liquidation proceedings, the liquidator will determine a recovery schedule under which to distribute the company’s assets, generally starting with creditors and then distributing the remaining assets to the shareholders.⁷¹¹ Here, however, India has declared that not only will Devas’s shareholders, including Claimants, not receive any proceeds from Devas’s liquidation, but they may be subject to additional “recovery/restitution” proceedings for monies purportedly “siphoned” out of India.⁷¹² This is premised on the Liquidator’s (false and

⁷⁰⁸ See **Exhibit C-173**, §283(1), Companies Act, 2013 (India) (“Where a winding up order has been made or where a provisional liquidator has been appointed, the Company Liquidator or the provisional liquidator, as the case may be, shall, on the order of the Tribunal, forthwith take into his or its custody or control all the property, effects and actionable claims to which the company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company.”). See also **Exhibit C-071**, First Interim Report of the Devas Liquidator, ¶4.

⁷⁰⁹ **Exhibit C-071**, First Interim Report of the Devas Liquidator, ¶¶ 4, 21.

⁷¹⁰ See *supra* ¶ 153.

⁷¹¹ See **Exhibit C-173**, §277(5), Companies Act, 2013 (India) (“The Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:— (i) taking over assets; (ii) examination of the statement of affairs; (iii) recovery of property, cash or any other assets of the company including benefits derived therefrom; (iv) review of audit reports and accounts of the company; (v) sale of assets; (vi) finalisation of list of creditors and contributories; (vii) compromise, abandonment and settlement of claims; (viii) payment of dividends, if any; and (ix) any other function, as the Tribunal may direct from time to time”) (emphasis added).

⁷¹² **Exhibit C-224**, Third Report of Liquidator, ¶ 16 (“The Provisional Liquidator will take further steps in the matter as directed by this Hon’ble Tribunal if the Tribunal confirms the winding up order and proceed further to prosecute delinquent directors under section 339 of the Companies Act 2013 as well as to initiate recovery/restitution proceedings of the money belonging to DMPL that was siphoned out of India.”)

unsubstantiated) assertion that Devas’s shareholders were guilty of incorporating Devas “for fraudulent purpose”.⁷¹³

308. Thus, according to India “*the investors are directly responsible for conducting the affairs of Devas in a fraudulent manner to further its fraudulent purpose and unlawful purpose of incorporation, as they owned and controlled Devas*”.⁷¹⁴ By using the past tense, India further affirms that the Claimants’ ownership and control of Devas has been fully vitiated by the liquidation.

309. Full control of Devas accordingly now lies with an agent of the Indian Government, and the Claimants have thus lost all ownership and control over their investment. Accordingly, India has directly expropriated Claimants’ investment.⁷¹⁵

b) India Has, In The Alternative, Indirectly Expropriated Claimants’ Investment

310. In the alternative, India has indirectly expropriated Claimants’ investment by interfering with its rights to claims of money under the ICC Award.⁷¹⁶ Following India’s illegal termination of the Devas-Antrix Agreement, Devas was able to recover the value of the Devas project, and thus the company, when it was awarded commensurate damages under the ICC Award.⁷¹⁷ The ICC Award was accordingly Devas’s primary and, by far and above, most valuable asset.⁷¹⁸ Moreover, the ICC Award incorporated Claimants’ vested rights to

⁷¹³ Exhibit C-224, Third Report of Liquidator, ¶ 14.

⁷¹⁴ Exhibit C-083, Letter from India, Department of Space to Gibson Dunn, 16 August 2021, ¶ 16 (emphasis added).

⁷¹⁵ See Exhibit C-173, §283(1), Companies Act, 2013 (India). See also First Witness Statement of Lawrence T. Babbio, Jr., 20 January 2023, ¶ 2.

⁷¹⁶ See *supra* ¶ 287.

⁷¹⁷ See Exhibit C-033, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, ICC Case 18051/CYK, Final Award, 14 September 2015, ¶ 401 (which ordered Antrix to pay Devas USD 562.5 million in damages for its wrongful repudiation of the Agreement).

⁷¹⁸ Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 75.

arbitration and proceeds from the ICC Award, which are protected under international law and capable of expropriation.⁷¹⁹

311. Once the Liquidator took control of Devas, he refused to enforce or defend the ICC Award. For example, he applied to stay enforcement of the Award before U.S. courts (which was denied).⁷²⁰ Likewise, he made an appearance but made no efforts and submitted no arguments to defend Antrix’s petition to set aside the ICC Award before Indian courts.⁷²¹
312. Additionally, the Liquidator has refused to defend Devas in ongoing criminal proceedings, despite his obligation to act in the best interests of the company.⁷²² As Indian officials have revealed to the media, the purpose of the criminal investigations by the CBI and ED was to levy fines on Devas, its officers and investors in the amount of the arbitration awards.⁷²³ In accordance with this scheme, the ED has imposed fines on Devas, its investors and officers totaling approximately USD 390 million.⁷²⁴ Thus, the Liquidator will be able to “set off” the ICC Award (Devas’s largest asset)—to the extent he ever makes any effort to collect on it given that it has now been set aside—against these bogus fines, against which he has refused to defend Devas.
313. Accordingly, the Liquidator, India’s agencies and courts have together eviscerated the value of Claimants’ investment by refusing to take any measures to defend Devas or the ICC Award, ultimately resulting in the courts setting aside the ICC Award.
314. Similarly, in *Saipem v. Bangladesh*, the tribunal, presided over by Gabrielle Kaufmann-Kohler and including Christoph Schreuer and Sir Philip Otton, considered a Bangladeshi

⁷¹⁹ See **Exhibit CL-042**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 127. See also **Exhibit CL-126**, *White Industries Australia Ltd. v. Republic of India*, UNCITRAL, Final Award, 30 November 2011, ¶¶ 7.6.2-10.

⁷²⁰ See *supra* ¶ 203.

⁷²¹ See *supra* ¶ 247.

⁷²² See *supra* ¶ 154.

⁷²³ See *supra* ¶ 96.

⁷²⁴ See **Exhibit C-104**, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, File No. T-4/03/BGZO/SRO/2016, Adjudication Order, 30 January 2019, ¶¶ 9.2-9.4; **Exhibit C-342**, *Directorate of Enforcement, India v. Devas Multimedia Pvt. Ltd. and others*, File No. T-4/40/BGZO/SRO/2018, Adjudication Order, 28 July 2022, ¶¶ 6.1-6.4.

court's nullification of a commercial arbitration award. The Italian investor, Saipem, and the Bangladeshi state-owned corporation Petrobangla were parties to a concession contract that included an arbitration clause. Saipem received an award in its favor against Petrobangla after initiating arbitration under the ICC Rules. However, during the arbitration, Petrobangla successfully sought an anti-arbitration injunction from Bangladeshi courts.⁷²⁵ After the tribunal issued the award, the Bangladeshi court found the award was null and void.⁷²⁶ Saipem brought an action against Bangladesh under the Italy-Bangladesh BIT, claiming judicial expropriation. The tribunal considered the interventions by Bangladesh's courts to be an indirect expropriation of Saipem's investment. In doing so, it held that the nullification had “*substantially depriv[ed] Saipem of the benefit*” of contractual rights incorporated in the ICC award and therefore constituted a measure tantamount to expropriation.⁷²⁷

315. India's actions in this case constitute an even clearer taking than Bangladesh's actions in *Saipem*. Here, India has not just set aside the ICC Award, on the basis of manufactured fraud allegations that have never been tested in a trial,⁷²⁸ and suffering from significant due process abuses.⁷²⁹ Through the liquidation proceedings, India has also taken over its own creditor company in which Claimants had invested. Accordingly, India has expropriated Claimants' investment in Devas under the BIT and customary international law.

3. India's Expropriation was Unlawful

316. Pursuant to the BIT, in order to be lawful, an expropriation must be carried out in compliance with all four of the following conditions: (i) payment of prompt, adequate, and effective compensation; (ii) under due process of law; (iii) in a non-discriminatory manner; and (iv) for a public purpose.⁷³⁰ These factors are cumulative: if any of the four conditions

⁷²⁵ See **Exhibit CL-042**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 47.

⁷²⁶ See **Exhibit CL-042**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 50.

⁷²⁷ **Exhibit CL-042**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 129.

⁷²⁸ See *supra* ¶¶ 187-197.

⁷²⁹ See *infra* ¶¶ 406-408.

⁷³⁰ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000], Article 6(1).

is not met, the expropriation is unlawful.⁷³¹ Here, India’s expropriation of Claimants’ investment fails to satisfy even one of these requirements.

a) India Has Not Compensated Claimants

317. It cannot be disputed that India has failed to pay Claimants any compensation for its expropriation of Claimants’ investment.⁷³² India has directly expropriated Devas and declared that it will not provide any proceeds of liquidation, including rights to and under the ICC Award, to Claimants, or indeed any of the company’s shareholders. And, moreover, India has sought to set aside the ICC Award itself, in an attempt to completely eviscerate Devas’s value. This is, on its own, sufficient to render India’s expropriation unlawful under the BIT and customary international law.⁷³³

b) India Expropriated Claimants’ Investment With A Blatant Disregard For The Due Process Of Law

318. India’s expropriation of Claimants’ investment was conducted with a blatant disregard for due process of law. Host states are required to accord investors both substantive and procedural due process protections. The tribunal in *ADC v. Hungary* held that:

“[D]ue process of law’, in the expropriation context, demands an actual and substantive legal procedure for a foreign investor to raise its claims against the depriving actions already taken or about to be taken against it. Some basic legal mechanisms, such as reasonable advance notice, a fair hearing and an unbiased and impartial adjudicator to assess the actions in dispute, are expected to be readily available and accessible to the investor to make

⁷³¹ See **Exhibit CL-061**, *Siag v. Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶ 428 (confirming that an expropriating party must satisfy all conditions for an expropriation to be lawful); **Exhibit CL-062**, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007, ¶ 7.5.21 (finding that the elements of a legal expropriation include prompt compensation, in addition to being “non-discriminatory” and for a “public purpose” with “specific commitments, et cetera”); **Exhibit CL-063**, *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Award, 10 March 2015, ¶¶ 361-62 (confirming that an expropriating party must satisfy all four conditions for an expropriation to be “classified as legal”).

⁷³² Notice of Arbitration, 2 February 2022, ¶ 102(a); See also Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 73.

⁷³³ **Exhibit CL-147**, *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability, 14 December 2012, ¶¶ 543-45 (finding that lack of compensation was sufficient to render Ecuador’s expropriation unlawful); **Exhibit CL-064**, *Up and C.D. Holding Internationale v. Hungary*, ICSID Case No. ARB/13/35, Award, 9 October 2018, ¶ 411 (finding that a failure to offer or pay compensation rendered Hungary’s expropriation unlawful).

*such legal procedure meaningful. In general, the legal procedure must be of a nature to grant an affected investor a reasonable chance within a reasonable time to claim its legitimate rights and have its claims heard. If no legal procedure of such nature exists at all, the argument that ‘the actions are taken under due process of law’ rings hollow.”*⁷³⁴

319. The tribunal in *ADC v. Hungary* concluded that Hungary’s expropriation was not done with due process of law,⁷³⁵ because there was no procedure under Hungarian law for the claimants to seek a judicial review of the expropriation.⁷³⁶
320. In *Kardassopoulos v. Georgia*, the tribunal agreed with the *ADC v. Hungary* tribunal that “whatever the legal mechanism or procedure put in to place”, such review mechanism “‘must be of a nature to grant an affected investor a reasonable chance within a reasonable time to claim its legitimate rights and have its claims heard’ if it is to be found to have been carried out under due process of law.”⁷³⁷ In that case, the tribunal, finding that Georgia did not meet this standard, held that “the expropriation of [the claimant’s] rights was carried out in a manner that can at best be described as opaque. This is best illustrated by the documentary and oral evidence . . . which underscores the Georgian Government’s role in the events that led to squeezing the Claimants out of the investment picture . . .”.⁷³⁸ The evidence also showed a “disregard for the Claimants’ rights”.⁷³⁹

⁷³⁴ **Exhibit CL-009**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal, 2 October 2006, ¶ 435. See also **Exhibit CL-061**, *Siag v. Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶¶ 440-42; **Exhibit CL-065**, *Ioannis Kardassopoulos and Ron Fuchs v. The Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010, ¶¶ 395-396; **Exhibit CL-046**, *Quiborax S.A. and Non Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015, ¶ 221.

⁷³⁵ **Exhibit CL-009**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal, 2 October 2006, ¶ 434.

⁷³⁶ **Exhibit CL-009**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal, 2 October 2006, ¶ 438. See also **Exhibit CL-061**, *Siag v. Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶¶ 440-42 (finding that Egypt failed to accord the claimants substantive due process because Egypt’s early cancellation of the project was without valid reason, and that Egypt failed to accord the claimants procedural due process because it did not provide claimants notice of the cancellation).

⁷³⁷ **Exhibit CL-065**, *Ioannis Kardassopoulos and Ron Fuchs v. The Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010, ¶ 396.

⁷³⁸ **Exhibit CL-065**, *Ioannis Kardassopoulos and Ron Fuchs v. The Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010, ¶¶ 397, 404.

⁷³⁹ **Exhibit CL-065**, *Ioannis Kardassopoulos and Ron Fuchs v. The Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010, ¶ 398.

321. Similarly, in *Quiborax v. Bolivia*, the tribunal found that Bolivia’s expropriation of the claimants’ concessions did not comply with the standards of due process under international law. For instance, the tribunal there found that the claimants were not notified of the government’s audits (which constituted the expropriatory measures) until the day before their concession was revoked, which could not have “*allowed the Claimants to participate in the audit prior to the revocation of the concessions.*”⁷⁴⁰ The tribunal also found that the claimants were not heard during the audits (the government not having responded to multiple letters) and that the revocation of claimants’ concession lacked valid reasons.⁷⁴¹

(1) India Denied Claimants The Opportunity To Be Heard

322. India refused to allow Claimant DEMPL to participate in the liquidation proceedings, depriving it of the opportunity to be heard. DEMPL applied to intervene (or “*implead*”) in the Liquidation proceedings before the NCLT, NCLAT and Supreme Court, and all three denied DEMPL’s applications for different, and largely inconsistent, reasons.

- a. DEMPL first applied to the NCLT to present arguments.⁷⁴² The NCLT denied its request on the basis that it was a minority shareholder that could only challenge “*oppression*” and “*mismanagement*” within Devas.⁷⁴³ But this reasoning would disqualify any shareholder from intervening who wanted to protect the company from liquidation.
- b. DEMPL then appealed the NCLT’s decision before the NCLAT, which denied the appeal claiming that now that the Liquidator was representing the interests of Devas, its shareholders had no standing to intervene.⁷⁴⁴ This ignored the fact that

⁷⁴⁰ **Exhibit CL-046**, *Quiborax S.A. and Non Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015, ¶ 223.

⁷⁴¹ *See Exhibit CL-046*, *Quiborax S.A. and Non Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015, ¶ 226.

⁷⁴² *See supra* ¶ 158.

⁷⁴³ **Exhibit C-079**, NCLT Impleadment Order, p. 11.

⁷⁴⁴ *See supra* ¶¶ 198-199, 204.

the very reason DEMPL was seeking to intervene was because the Liquidator was failing to act in the Company's best interests, much less that of the shareholders.⁷⁴⁵

- c. DEMPL again appealed its exclusion from the liquidation proceedings before the Supreme Court, which upheld the NCLAT's denial, claiming that the shareholders had no right to intervene under the Indian Companies Act.⁷⁴⁶ The Supreme Court also asserted that DEMPL's objections were identical to those of Devas and accordingly there was no prejudice to DEMPL.⁷⁴⁷ This conclusion is plainly incorrect, as DEMPL had consistently pled that it had a distinct interest in challenging Devas's liquidation because, among other reasons, DEMPL was "*directly and vitally affected by the orders passed in the present proceedings as it affects [DEMPL]'s right to participate in the affairs and management of [Devas]*"⁷⁴⁸ and that "*allegations have been made against the shareholders in the winding up petition*" that made it "*necessary for the shareholders to be heard*"⁷⁴⁹ The Supreme Court ignored the fact that DEMPL was seeking to intervene in the proceedings to represent the interests of shareholders, which was different from that of the company, because in the event the company was liquidated, the shareholders had a right to proceeds from the liquidation.⁷⁵⁰

⁷⁴⁵ See *supra* ¶¶ 158, 307.

⁷⁴⁶ See *supra* ¶¶ 213, 227.

⁷⁴⁷ See *supra* ¶ 227.

⁷⁴⁸ **Exhibit C-349**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Application to implead DEMPL, 1 March 2021, ¶ 5(n).

⁷⁴⁹ **Exhibit C-250**, *Devas Employees Mauritius Private Limited v. Antrix Corporation Limited and Ors.*, Company Appeal (AT) No. 24 of 2021, 28 May 2021, ¶ 9.10. See also **Exhibit C-257**, *Devas Employees Mauritius Private Limited v. Antrix Corporation Limited and Anr.* Civil Appeal No. 5906 of 2021, 22 September 2021, pp. 384-385, 387 (noting that "*the right of a shareholder to oppose a winding up petition is independent of the right of the Company*", because they had "*lost their right to participate in the affairs and management of Devas*" and been denied their "*right to meet th[e] allegations*" raised specifically against them by Antrix).

⁷⁵⁰ See **Exhibit C-257**, *Devas Employees Mauritius Private Limited v. Antrix Corporation Limited and Anr.* Civil Appeal No. 5906 of 2021, 22 September 2021, PDF p. 418 ("*The Appellate Tribunal failed to appreciate that left unchecked, the Liquidator will lead to the dissipation of all of Devas's assets (including the ICC Award in Devas's favor), leaving nothing in the liquidation estate to be claimed by DEMPL and other shareholders of Devas upon liquidation*"). See also **Exhibit C-423**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18-cv-1360, Fourth Declaration of Anuradha Dutt, 6 July 2021, ¶ 8 ("*As a matter of Indian law, Devas shareholders have the right to all of Devas's residual proceeds after Devas is wound up. This includes the proceeds from...any judgment arising out of the ICC Award and the sale thereof.*").

323. Accordingly, Claimant DEMPL was denied even the opportunity to participate in the liquidation proceedings before it irrevocably lost the rights to its investment in Devas with the final liquidation order. Moreover, under the “*reasons*” offered by the NCLT, NCLAT, and Supreme Court, it would have been impossible for Devas’s other shareholders, including Claimants CC/Devas and Telcom Devas, to intervene successfully as they were defending the company (the reason offered by the NCLT), the Liquidator had already displaced them (as offered by the NCLAT) and no shareholders had rights to intervene in liquidation proceedings under the Companies’ Act (according to the Supreme Court). Thus, like in *ADC v. Hungary*, Claimants were denied due process because there was no procedure under Indian law for Claimants to challenge the liquidation proceedings, which have expropriated their investment.⁷⁵¹

(2) India Denied Devas Due Process

324. The only person India allowed to intervene on Devas’s behalf was a former director of Devas, Mr. Chandrasekhar.⁷⁵² However, even his participation in the liquidation proceedings lacked fundamental due process protections.

325. The very genesis of the liquidation proceedings reflects a gross violation of due process as they were brought on the basis of allegations that the India-owned Antrix itself understood to have no basis (having been in possession of all of the underlying “*evidence*” submitted in support of its liquidation petition for almost a decade before it lodged its petition),⁷⁵³ and were undertaken specifically to stymie enforcement of the ICC Award.

- a. There is no question that the allegations underlying Antrix’s liquidation petition, which were fully adopted by the NCLT, had never been aired in civil or criminal court further to a trial. No charges have even been framed against the accused; rather, the only action taken against anyone accused so far has been to *drop* charges

⁷⁵¹ **Exhibit CL-009**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal, 2 October 2006, ¶ 438.

⁷⁵² *See supra* ¶ 158.

⁷⁵³ *See supra* ¶ 148.a.

against an Antrix official in one of the ED investigations.⁷⁵⁴ Moreover, it was apparent to Antrix that the allegations were bogus, as a mere three months before adopting them in its liquidation petition, Antrix called the fraud allegations a “*red herring*” and a “*rabbit hole*”.⁷⁵⁵ Indeed, not once had Antrix raised these allegations in the arbitration *or* enforcement proceedings anywhere around the world. Even India chose not to raise the allegations as a substantive defense in any of the arbitration or enforcement proceedings, seeking only to stay the proceedings on the basis of an ongoing investigation, but refusing to adopt the purported allegations on which these investigations were based as defenses.⁷⁵⁶

- b. Antrix acknowledged several times the reason for its urgent pursuit of liquidation—it could not allow Devas to keep enforcing the ICC Award or resulting judgment.⁷⁵⁷ And for that reason, the NCLT, NCLAT, and ultimately the Supreme Court too, agreed to liquidate Devas.⁷⁵⁸ If there were any doubt the timing of Antrix’s application gives away its purpose. Antrix applied for Devas’s liquidation almost immediately after the ICC Award was confirmed and a judgment was issued against Antrix for almost USD 1.3 billion in November 2020.
326. Moreover, the liquidation proceedings were riddled with due process violations, including the lack of “*reasonable advance notice, a fair hearing and an unbiased and impartial adjudicator*”.⁷⁵⁹ Claimants address these in turn below.

⁷⁵⁴ See *supra* ¶ 245.

⁷⁵⁵ *Supra* ¶ 107.

⁷⁵⁶ See *supra* ¶ 107.

⁷⁵⁷ See *supra* ¶¶ 168, 172.

⁷⁵⁸ See *supra* ¶¶ 191-192, 225-226.

⁷⁵⁹ **Exhibit CL-009**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal, 2 October 2006, ¶ 435.

(a) Devas Was Not Provided Reasonable Advance Notice

327. India provisionally liquidated Devas within just five days of Antrix’s application, based on spurious fraud allegations, giving Devas’s counsel only twelve hours to prepare for the dissolution hearing, and without any opportunity to file a written response.⁷⁶⁰
328. First, without notice to Devas, Antrix sought and received from its parent, India, authorization to seek to dissolve its creditor of USD 1.3 billion within four days.⁷⁶¹ India and Antrix also failed to notify Devas of Antrix’s request for authorization to file the petition, even though the Companies’ Act expressly provides this guarantee.⁷⁶²
329. Second, and within hours after receiving this authorization, Antrix filed the liquidation petition before the NCLT, which scheduled a hearing for the next day, giving *Devas less than 20 hours of notice via email*.⁷⁶³
330. Third, at that hearing, the NCLT proceeded provisionally to liquidate Devas and appoint the Liquidator, who immediately assumed control of the company.⁷⁶⁴ Antrix alleged, and the NCLT accepted, that there was urgency to act quickly, without ever explaining the source of this alleged urgency.⁷⁶⁵ India thus stripped Devas of its ability to participate in the liquidation proceedings meaningfully as soon as the proceedings began.⁷⁶⁶

⁷⁶⁰ See *supra* ¶¶ 140-148; See **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 7(d)-(e); Notice of Arbitration, 2 February 2022, ¶ 102(c)(ii); **Exhibit C-078**, NCLT Final Liquidator Order, 25 May 2021, PDF p. 79.

⁷⁶¹ See *supra* ¶ 140.

⁷⁶² See *supra* ¶ 194.a.

⁷⁶³ See *supra* ¶ 145.

⁷⁶⁴ See *supra* ¶ 149.

⁷⁶⁵ See *supra* ¶¶ 147, 150.

⁷⁶⁶ See **Exhibit CL-046**, *Quiborax S.A. and Non Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015, ¶ 223 (finding that providing claimants with one day’s notice of the expropriatory measures could not have “*allowed the Claimants to participate in the audit prior to the revocation of the concessions.*”).

(b) Devas Did Not Have A Fair Hearing Before An Impartial, Unbiased Adjudicator

331. For the reasons below, Devas did not receive a fair opportunity to present its case before a rational, unbiased adjudicator.

(1) India Interfered With Devas's Right to Counsel

332. India hobbled Devas's ability to represent itself as the Liquidator, within three days of his appointment, fired Devas's global counsel, and asked them to hand over all records.⁷⁶⁷ The Liquidator moreover seized all of Devas's records located in India.⁷⁶⁸ While Devas's former director was able to find alternate Indian counsel later, the new counsel no longer had access to Devas's documents, books and records.⁷⁶⁹

(2) The Liquidation Proceedings Were Accelerated Without Cause

333. The liquidation proceedings were rushed through by the NCLT and NCLAT at lightning pace. This was an unprecedented case for the NCLT. Before it, the NCLT had seemingly undertaken just one other case under section 271(c) of the Companies Act—the Super Royal case—in which winding up proceedings were instituted almost two years from the conclusion of the investigation into the company, and after the company failed to respond to the winding up notice.⁷⁷⁰ Moreover, it normally takes over a year for the NCLT to process routine bankruptcy and insolvency cases.⁷⁷¹ Yet, the NCLT provisionally liquidated Devas just **one day** after receiving Antrix's petition, and finalized its decision

⁷⁶⁷ See *supra* ¶ 153; see also Second Witness Statement of Ramachandran Viswanathan, 20 January 2023, ¶ 74; Notice of Arbitration, 2 February 2022, ¶ 102(c)(iii).

⁷⁶⁸ See *supra* ¶ 306.

⁷⁶⁹ See **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶¶ 15-16.

⁷⁷⁰ India's investigation into the fraud purportedly committed by 'Super Royal Private Limited' concluded in February 2018. See **Exhibit C-221**, *Union of India Ministry of Corporate Affairs v. Super Royal Holidays India Pvt. Ltd. and Others*, 2020 SCC OnLine NCLT 8912, ¶¶ 4.10, 4.21. However, the winding-up petition against Super Royal was filed before the NCLT only on 22 November 2019. See **Exhibit C-222**, *Case status, Registrar of Companies Karnataka v. M/s Super Royal Holiday India Pvt. Ltd.* C.P. No. 203 of 2019.

⁷⁷¹ See *supra* ¶ 166.

less than four months later, and less than two weeks after receiving the Parties' written submissions.⁷⁷²

334. Moreover, the NCLT insisted on rushing through these proceedings in the middle of one of the worst public health disasters India has ever faced, namely, the second wave of COVID that afflicted the country from April-June 2021 and killed almost five million people, leading to a strict, nation-wide lockdown.⁷⁷³ In the midst of this public health emergency, the NCLT repeatedly denied, without explanation, Dr. Chandrasekhar/DEMPL's requests for adjournment even when its senior counsel and his family fell ill with COVID.⁷⁷⁴ This contravened the NCLT's own policy at the time to restrict its docket only to cases that were urgent.⁷⁷⁵
335. The NCLT never identified a legitimate basis for the purported urgency in this matter, particularly in light of fact that Devas was already under the control of the Liquidator and that there was no statutory deadline that required it to act with such haste.⁷⁷⁶ The only "urgency" identified by Antrix, which the NCLT appeared to accept, were ongoing proceedings to enforce the ICC Award.⁷⁷⁷
336. The unduly accelerated nature of the proceedings had at least two significant impacts on Devas's due process rights.
- a. First, Devas was unable to properly represent itself. As noted above, after Devas's provisional liquidation, its officers had to find new counsel urgently, that new counsel had to come up to speed on a massive new case file within weeks, and had to do so without access to the company's books and records that had also been

⁷⁷² See *supra* ¶¶ 147, 187-188.

⁷⁷³ See **Exhibit C-382**, Sneha Mordani, *2nd Covid wave was India's worst tragedy since Partition, saw up to 49 lakh excess deaths*: Report, India Today, 21 July 2021, available at <https://www.indiatoday.in/coronavirus-outbreak/story/2nd-covid-wave-was-india-worst-tragedy-since-partition-saw-up-to-49-lakh-excess-deaths-1830894-2021-07-21>.

⁷⁷⁴ See *supra* ¶¶ 172-174.

⁷⁷⁵ See *supra* ¶ 167.

⁷⁷⁶ See *supra* ¶¶ 147, 150.

⁷⁷⁷ See **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 27.

seized by India.⁷⁷⁸ Local counsel to Devas’s former director, Dr. Chandrashekar, has testified before other courts that “*if during the course of the NCLT proceedings, the NCLT had not conducted the hearing with such undue haste, and had granted Devas India with more time, Devas India would have been able to provide further inputs and information to rebut Antrix’s allegations*”.⁷⁷⁹

- b. Second, it would have been impossible for the NCLT to review and consider the several-thousand page record (which raised several highly technical questions of fact) within this time period.⁷⁸⁰ Perhaps not surprisingly, as discussed below, the NCLT failed to address the vast majority of Dr. Chandrasekhar’s arguments and evidence.⁷⁸¹

(3) Indian Tribunals Made “*Fraud Findings*” Without Considering Exculpatory Evidence

337. The NCLT and NCLAT adopted Antrix’s fraud allegations wholesale without even considering, much less addressing, Dr. Chandrasekhar’s submissions and the voluminous evidence to the contrary.
338. From the very beginning of the liquidation process, Antrix and India relied on the CBI and ED’s manufactured fraud allegations as a basis for Devas’s liquidation. Antrix’s Authorization Application to wind up Devas was explicitly based on the CBI and ED investigations, which have yet to proceed beyond investigation to a trial.⁷⁸² Not only that. The CBI’s own allegations were based on “*statements*” that were patently manufactured..⁷⁸³ The NCLT’s decision characterized the allegations contained in those investigations as

⁷⁷⁸ See *supra* ¶¶ 153, 308.

⁷⁷⁹ **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 32.

⁷⁸⁰ See *supra* ¶ 148.

⁷⁸¹ See *infra* ¶¶ 188-189.

⁷⁸² See *supra*, ¶¶ 168, 172, 191-192.

⁷⁸³ See Annex 1 of this Memorial.

“adverse findings with cogent evidence at the hands of various Statutory Authorities,”⁷⁸⁴ despite referring to no evidence in support of these “findings”, and accepting that they are “prima facie”.⁷⁸⁵

339. Dr. Chandrasekhar raised this fact in opposition to the liquidation proceedings,⁷⁸⁶ and Antrix itself acknowledged it.⁷⁸⁷ Disregarding the higher standard of proof applicable to fraud charges,⁷⁸⁸ the NCLAT essentially applied no standard of proof at all, accepting that the allegations were “prima facie,” and “finding” that was a sufficient basis for its certification of the NCLT’s liquidation decision.⁷⁸⁹ These *prima facie* allegations were then restated by India’s highest court. These *prima facie* allegations were then deemed *res judicata* by the New Delhi High Court to set aside the ICC Award.⁷⁹⁰
340. In making “prima facie” “findings” on the basis of preliminary investigations, and without allowing cross examination of Antrix’s witnesses, the NCLT, NCLAT and Supreme Court each also ignored the written evidence submitted by Dr. Chandrasekhar and DEMPL. Rather, the NCLT and NCLAT adopted, without question or consideration of Dr. Chandrasekhar’s defenses, Antrix’s allegations wholesale, which were themselves based on the CBI’s and ED’s allegations, that have not even been adopted by any criminal court as charges, let alone as convictions.⁷⁹¹
341. Not only do the CBI and ED’s allegations lack any legal force within India, these agencies are well known for being political tools of the government, which frequently and abusively

⁷⁸⁴ **Exhibit C-067**, *Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd. & Another*, NCLT, CP No. 06/BB/2021, Order, 19 January 2021, ¶ 11.

⁷⁸⁵ **Exhibit C-067**, *Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd. & Another*, NCLT, CP No. 06/BB/2021, Order, 19 January 2021, ¶ 10.

⁷⁸⁶ See **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, ¶¶ 20-25.

⁷⁸⁷ **Exhibit C-229**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Memo of Rejoinder by Antrix, 23 March 2021, PDF pp. 26, 29, 68.

⁷⁸⁸ See **Exhibit C-084**, NCLAT Final Order, PDF pp. 195, 241; See *supra*, ¶¶ 209-210.

⁷⁸⁹ See **Exhibit C-084**, NCLAT Final Order, PDF p. 200.

⁷⁹⁰ **Exhibit C-270**, *Antrix Corporation Ltd. v. Devas Multimedia Pvt Ltd.*, OMP (Comm) 11 of 2021, Single-Judge Judgment, 29 August 2022, ¶¶ 119-120, 151, 153, 160-162, 170-172.

⁷⁹¹ See *supra* ¶¶ 142, 209.

launch investigations against political opponents of the sitting government, which are so feeble that they are rarely brought to court.⁷⁹² Indeed, the lack of credibility to the CBI's investigation into Devas is evident on the face of its own documents.⁷⁹³

342. The fraud allegations themselves are facially frivolous and debunked on the basis not only of the evidence submitted by Dr. Chandrasekhar (completely ignored by the NCLT), but also on the basis of common sense alone. For example:

- a. The NCLT found that because Devas was incorporated less than 45 days prior to signing the Agreement, this indicated that the Agreement was fraudulent.⁷⁹⁴ The NCLT, NCLAT and Supreme Court all failed to consider the fact, made by Dr. Chandrasekhar in all his submissions, that the company was incorporated specifically to enter into the Agreement after almost two years of negotiations between the parties.⁷⁹⁵ Though the NCLT claimed to have relied on the ICC Arbitration's record,⁷⁹⁶ it ignored the considerable evidence in that record detailing the nature and content of the negotiations that led to the culmination of the Agreement.⁷⁹⁷
- b. The NCLT found that Devas lacked technical expertise to enter into the Agreement,⁷⁹⁸ failing to consider the plethora of evidence to the contrary on the record, including, *inter alia*, witness statements by Devas's former directors and officers in the ICC proceedings, the findings of the ICC tribunal, and the findings

⁷⁹² See *supra* ¶ 90. It is for this reason that Antrix has itself labeled these fraud allegations a “*red herring*” and “*rabbit hole*” before judges outside India, and India has never dared to rely on the allegations to defend itself in any of the arbitration or enforcement proceedings, see *supra* ¶ 156.

⁷⁹³ See *supra* ¶ 99; Annex 1 to this Memorial.

⁷⁹⁴ **Exhibit C-078**, NCLT Final Liquidator Order, 25 May 2021, ¶¶ 14, 19(7).

⁷⁹⁵ See **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, PDF pp. 34, 74.

⁷⁹⁶ See *supra* ¶ 195; **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 87.

⁷⁹⁷ See **Exhibit C-033**, ICC Award, ¶¶ 58-71 (citing Mr. Viswanathan's witness statements heavily).

⁷⁹⁸ **Exhibit C-078**, NCLT Final Liquidator Order, ¶¶ 14, 19(7), 21.

of contemporaneous Indian Government committees who had been charged with reviewing the Agreement, including the Suresh Report and Chaturvedi Report.⁷⁹⁹

- c. The NCLT found the signing of the Agreement by a clerk to be indicative of fraud.⁸⁰⁰ The NCLT failed to consider Dr. Chandrasekhar's submissions that this is standard commercial practice, and that Devas's Board authorized the clerk to sign the Agreement, including the resolution itself that was on the record of the liquidation proceedings.⁸⁰¹
- d. The NCLT found that Devas did not conduct any substantive business.⁸⁰² Again, the NCLT ignored Dr. Chandrasekhar's submissions, backed by voluminous evidence in the form of uncontested witness statements submitted by Devas's officers, and findings by the ICC Tribunal to the contrary, of the successful development and testing of Devas's technology until India annulled the Agreement.⁸⁰³
- e. The NCLT found "*absurd*" that Devas only applied for licenses after it signed the Agreement, and claimed Devas did not have the necessary licenses required to roll out the Devas Services.⁸⁰⁴ The NCLT appears to have failed to review the plain language of the Agreement that "*Antrix shall be responsible for obtaining all necessary Government and Regulatory Approvals relating to orbital slot and frequency clearances*" and "*shall provide technical assistance to Devas on a best effort basis for obtaining required operating licenses and Regulatory approvals*

⁷⁹⁹ See *supra* ¶¶ 188, 195. See also **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, PDF p. 39; **Exhibit C-343**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Dr. Chandrasekhar Additional Affidavit, 7 April 2021, PDF p. 13.

⁸⁰⁰ **Exhibit C-078**, NCLT Final Liquidator Order, ¶¶ 20-21.

⁸⁰¹ See **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, PDF pp. 33-34.

⁸⁰² **Exhibit C-078**, NCLT Final Liquidator Order, ¶ 34.

⁸⁰³ **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, PDF p. 85.

⁸⁰⁴ **Exhibit C-078**, NCLT Final Liquidator Order, ¶ 15.

from various ministries”.⁸⁰⁵ In fact, the NCLT appears to have entirely ignored the actual terms of the Agreement, rarely discussing it in its 99-page decision.⁸⁰⁶ Moreover, the NCLT again failed to consider the findings of the ICC and Initial BIT Tribunals, the witness evidence submitted by Devas’s former officers, and even India’s own contemporaneous reviews, including the Suresh Report and Chaturvedi Report, which found no issues with Devas’s licensing practices.⁸⁰⁷

- f. The NCLT found that “*the unlawful object of Devas is to bring foreign funds into India and then siphon off the same by diverting those funds to foreign countries, into dubious accounts.*”⁸⁰⁸ The NCLT made no reference to Dr. Chandrasekhar’s submissions and evidence, including the ICC Tribunal’s findings and the uncontested witness statements submitted by Devas’s former officers in those proceedings, that funds were not “*siphoned*” but used to develop Devas’s technology during the subsistence of the Agreement and for litigation expenses after Antrix’s wrongful repudiation.⁸⁰⁹

343. The NCLAT refused to review many of the above “*findings*” made by the NCLT and instead opined on issues not even adjudicated by the NCLT, and accordingly not raised or specifically briefed by the parties on appeal. For example:

- a. The NCLAT found that the Agreement was not executed in accordance with the SATCOM policy because it failed to follow its public “*tender process*”.⁸¹⁰ But the

⁸⁰⁵ **Exhibit C-007**, Agreement for the Lease of Space Segment Capacity on ISRO/ANTRIX S-Band Spacecraft by Devas Multimedia Pvt. Ltd., article 3(c).

⁸⁰⁶ See **Exhibit C-078**, NCLT Final Liquidator Order (referring to the terms of the Agreement in the operative portion of its decision (from PDF page 69 onwards) just four times).

⁸⁰⁷ See *supra* ¶¶ 188, 195. See also **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, PDF pp. 62-63.

⁸⁰⁸ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 90.

⁸⁰⁹ See **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, PDF pp. 87-90.

⁸¹⁰ **Exhibit C-084**, NCLAT Final Order, PDF pp. 284-5.

SATCOM Policy, by its express terms, did not require a public auction process.⁸¹¹ Moreover, the Agreement's express terms required Antrix to warrant that it had the ability and capacity to enter into the Agreement and that it would obtain the necessary Indian government clearances.⁸¹² Yet the NCLAT did not even mention, much less explain, its "*finding*" in light of express provisions to the contrary.

- b. The NCLAT found further evidence of "*fraud*" in Antrix's purported concealment of Devas and the Agreement from India's Space Commission and Union Cabinet in the months after the Agreement was signed.⁸¹³ Even a cursory examination of the documents negates this "*finding*": Devas and the Agreement *were* mentioned to the Space Commission,⁸¹⁴ and the Suresh Report had declared that it was the "*practice all along*" for specific contracts and companies to not be mentioned to the Union Cabinet.⁸¹⁵
 - c. The NCLAT also declared that Devas's Experimental License was procured after minutes of meetings of the Technical Advisory Committee ("**TAG**") sub-committee of the Indian Satellite Coordination Committee were "*manipulated*".⁸¹⁶ Yet neither Antrix, nor even the CBI or ED, had even alleged that Devas was responsible for any purported manipulation.
344. The Supreme Court then rubber stamped the NCLT and NCLAT's "*findings of fraud*" against Devas, declaring "*when two forums namely NCLT and NCLAT have recorded*

⁸¹¹ See **Exhibit C-286**, cl. 2.6.2, Satellite Communication (SATCOM) Policy Framework, 1997 ("*Once capacity is earmarked by ICC for non-governmental users, Department of Space/INSAT is authorised to provide this capacity to non-governmental users for services other than telecommunications following its own procedures. It may enter into bilateral agreements with other agencies for marketing this capacity. In case the demand is more than the available capacity, the Department of Space/INSAT may evolve suitable transparent procedures for allotting the capacity. This procedure may be in the form of auction, good faith negotiations, first come first served or any other equitable method.*") (emphasis added).

⁸¹² See **Exhibit C-007**, Devas-Antrix Agreement, arts. 3(c), 12(a).

⁸¹³ **Exhibit C-084**, NCLAT Final Order, PDF pp. 171-2, 292, 296-298.

⁸¹⁴ See **Exhibit C-226**, Agenda Note for 104th Space Commission meeting, 3 May 2005.

⁸¹⁵ See **Exhibit C-023**, Report on GSAT-6, submitted by Dr. B.N. Suresh, May 2010, p. 8.

⁸¹⁶ **Exhibit C-084**, NCLAT Final Order, PDF pp. 173-176, 306-309.

concurrent findings on facts, it is not open to this Court to re-appreciate evidence.”⁸¹⁷ But the evidence had not been evaluated by either the NCLT or the NCLAT—both were simply rehashing the same *prima facie* determinations (that were themselves flawed and unsubstantiated). Then the Supreme Court (incorrectly and inexplicably) declared that the NCLT and NCLAT’s “*fraud findings*” were based on a series of “*undisputed facts*”.⁸¹⁸ The Supreme Court thus willfully ignored the vigorous contestations of all of Antrix’s allegations by Dr. Chandrasekhar. In fact, as discussed in further detail below, Dr. Chandrasekhar’s submissions had raised numerous triable issues before the NCLT and NCLAT, which the NCLT and NCLAT did not even conduct a limited civil trial to adjudicate.⁸¹⁹ And so, in terming the NCLT and NCLAT’s “*findings*” “*undisputed*”,⁸²⁰ the Supreme Court failed to conduct even a cursory examination of the record that would have shown them as being vigorously disputed at each stage of the liquidation proceedings, or account for the obvious denial of due process to Devas.

(4) India Refused To Grant Devas A Trial

345. Despite accepting that it had the ability to conduct a full-fledged trial, the NCLT denied this opportunity to Dr. Chandrasekhar (the only party that was allowed standing to contest the liquidation). Such a trial would have allowed Dr. Chandrasekhar to properly defend Devas against the admittedly *prima facie* allegations Antrix had made against it.
346. At each stage of the liquidation proceedings, Devas repeatedly requested that it be granted the opportunity for a full trial, during which witnesses would be cross examined.⁸²¹ On 5

⁸¹⁷ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 12.7.

⁸¹⁸ *See supra* ¶ 223.

⁸¹⁹ *See supra* ¶¶ 195, 209-210.

⁸²⁰ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 12.8.

⁸²¹ *See e.g. Exhibit C-228, Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, PDF p. 21 (noting that Antrix’s allegations “*require a full-fledged trial before the competent civil courts*”); **Exhibit C-240, Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.** Company Petition No. 06/BB/2021 of 2021, Application seeking cross examination of Mr. Rakesh Sasibhushan and Mr. Sanjay Kumar Agarwal, 5 May 2021, PDF p. 9 (noting that Antrix’s “*pleadings raised contentious issues which cannot be decided in a summary jurisdiction*”); **Exhibit C-249, Devas Multimedia Pvt. Ltd. v. Antrix Corporation Limited & Ors.**, Company Appeal (AT) No. 17 of 2021, 27 May 2021, PDF p. 37 (noting that the allegations of “*fraud, collusion or conspiracy*” against Devas “*require a trial*”); **Exhibit C-256, Devas Multimedia Private Limited (through ex-director) v. Antrix Corporation Limited & Anr.** Civil Appeal No. 5766 of 2021, 17 September 2021, PDF p. 864 (noting that the NCLAT

May 2021, the same day that the NCLT orally confirmed that it had the jurisdiction to examine the factual issues in the liquidation petition, Dr. Chandrasekhar's counsel filed an application seeking to cross examine the two Antrix officials who had "verified" the fraud allegations in Antrix's petition.⁸²² Dr. Chandrasekhar requested cross examination of these witnesses to test their assertions that (i) no similar technology as the Devas Services existed at the time the Agreement was signed; (ii) Antrix's former officials concealed the Agreement from various government departments when seeking their approval; and (iii) S-band capacity was not available for non-government users.⁸²³ Notably, Antrix had provided no documents to support these allegations, and Dr. Chandrasekhar had provided substantial evidence to the contrary.⁸²⁴

347. On 10 May 2021, the NCLT concluded oral arguments and reserved judgment on Antrix's petition and Dr. Chandrasekhar's petition for cross examination,⁸²⁵ and on 25 May 2021, it issued its order liquidating Devas.⁸²⁶
348. In its liquidation decision, the NCLT rejected Dr. Chandrasekhar's cross examination application, declaring that "*the facts and circumstances leading to the filing of [the present] company petition . . . do not require any evidence to be adduced,*" and that it was sufficient to rely on the evidence produced before the ICC Tribunal (where the issue of fraud had not

"ought not to have rendered findings on technology in summary jurisdiction without conducting a full-fledged trial and calling for expert witnesses").

⁸²² **Exhibit C-240**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Application seeking cross examination of Mr. Rakesh Sasibhushan and Mr. Sanjay Kumar Agarwal, 5 May 2021, PDF p. 9.

⁸²³ **Exhibit C-240**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Application seeking cross examination of Mr. Rakesh Sasibhushan and Mr. Sanjay Kumar Agarwal, 5 May 2021, PDF pp. 7-9.

⁸²⁴ See **Exhibit C-343**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.*, Company Petition No. 06/BB/2021 of 2021, Dr. Chandrasekhar Additional Affidavit, 7 April 2021, PDF pp. 10-17 (demonstrating the existence of similar technology as that promised under the Agreement); **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, PDF p. 24-27 (demonstrating that it was Antrix/ISRO that had negotiated with Devas to help Antrix/ISRO utilize S-Band spectrum), PDF pp. 61-65 (demonstrating that the Agreement was not concealed from Indian Government Departments)

⁸²⁵ See **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 30.

⁸²⁶ **Exhibit C-078**, NCLT Final Liquidator Order.

been raised at all.⁸²⁷ But, as explained above, the NCLT made no attempt to analyze the “*voluminous*” evidence within the ICC Arbitration record that plainly and unequivocally controverted Antrix’s allegations, such as witness statements made by Devas officials detailing the negotiations leading to the signing of the Agreement and the extensive work Devas undertook to the Project including agreements with top notch telecommunications firms around the world.⁸²⁸ As a result, the NCLT simply parroted Antrix’s allegations as supposed “*findings*” without allowing even the questioning of the individuals making those allegations.

349. The NCLAT affirmed the NCLT’s decision, finding that no trial was necessary because “*permitting a party to cross-examine a deponent in respect of a particular point of conflict is a matter of exercise of subjective judicial discretion of the Tribunal.*”⁸²⁹ The NCLAT also found that Antrix’s winding up petition raised “*no triable issues*” (despite both Dr. Chandrasekhar and DEMPL having raised numerous triable issues before the NCLAT, which it did not acknowledge),⁸³⁰ and that Dr. Chandrasekhar’s request for cross examination constituted an “*abuse of process*”.⁸³¹
350. The NCLT and NCLAT’s denial of Dr. Chandrasekhar’s right to cross examine Antrix’s fact witnesses was upheld by the Indian Supreme Court in its liquidation decision. The Supreme Court came to the incredible conclusion that, because one of Antrix’s allegations of fraud was in the negative (i.e. that Devas did not hold the required technology at the time of the Agreement), Antrix could not be cross examined “*to prove [] non-existence.*”⁸³² According to the Supreme Court, Antrix could therefore make, and the NCLT could accept, untested allegations because “*any amount of cross-examination of the officials of Antrix*

⁸²⁷ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 87. *See also* **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 47(b)

⁸²⁸ *See supra* ¶ 188, 195.

⁸²⁹ **Exhibit C-084**, NCLAT Final Order, PDF p. 196; **Exhibit C-173**, § 424, Companies Act, 2013 (India). *See also* **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 69.

⁸³⁰ *See supra* ¶¶ 205,210.

⁸³¹ **Exhibit C-084**, NCLAT Final Order, PDF pp. 351-2.

⁸³² **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 10.8.

could not have established the existence of something that was disputed by Antrix.”⁸³³ This is obviously a ridiculous proposition, and reflects fatal due process violations under international law.

- a. First, the Supreme Court is wrong that Antrix officials made only negative assertions. For example, Dr. Chandrasekhar specifically requested cross examination of the Antrix officials on the affirmative allegations that they had made against Devas and/or the Agreement, including their allegation that Antrix’s former officials “*suppressed*” the Agreement from various government departments when seeking their approval.⁸³⁴ Not a single document was provided by Antrix to support this allegation,⁸³⁵ which was then adopted unquestioned by the NCLAT and Supreme Court.⁸³⁶ Apart from rejecting this assertion, which Dr. Chandrasekhar did,⁸³⁷ questioning the individual making this allegation was the *only* way to test it.
- b. Second, it was undisputed that the burden of proof for its allegations rested with Antrix, not Devas. It was for Antrix to prove the technology did not exist. The Supreme Court, in violation of fundamental and universal due process protections, reversed the burden of proof, calling on Dr. Chandrasekhar to prove that the technology, in fact, existed.⁸³⁸ In fact, were it truly Dr. Chandrasekhar’s burden to

⁸³³ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 10.8.

⁸³⁴ See **Exhibit C-065**, Antrix Wind-up Petition, 18 January 2021, PDF p. 23.

⁸³⁵ See **Exhibit C-065**, Antrix Wind-up Petition, 18 January 2021, PDF p. 23.

⁸³⁶ **Exhibit C-084**, NCLAT Final Order, PDF pp. 171-2, 292, 296-298; **Exhibit C-088**, Judgment of the Indian Supreme Court, 17 Jan. 2022, ¶ 12.8(xii).

⁸³⁷ **Exhibit C-228**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Affidavit-in-Objection of Dr. Chandrasekhar, 15 March 2021, PDF pp. 61-65 (demonstrating that the Agreement was not concealed from Indian Government Departments).

⁸³⁸ See e.g. **Exhibit CL-042**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 113 (“It is a well-established rule in international adjudication that **the burden of proof lies with the party alleging a fact, whether it is the claimant or the respondent.**”) (emphasis added); **Exhibit CL-066**, *Marvin Feldman v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, 16 December 2002, ¶ 177 (“[V]arious international tribunals, including the International Court of Justice, have generally and consistently accepted and applied the rule that the party who asserts a fact, whether the claimant or respondent, is responsible for providing proof thereof. Also, it is a generally accepted canon of evidence in civil law, common law and, in fact, most jurisdictions, that the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a claim or defence.”); **Exhibit CL-067**, *Case concerning Avena and other Mexican Nationals, (Mexico v. United States of America)*, Judgment, 31 March 2004, ICJ Reports 2004, p. 41, ¶¶ 55-57 (acknowledging the “well-settled principle in international law that a litigant seeking to establish the existence of a fact bears the burden of proving it”); **Exhibit**

prove that the technology existed, Dr. Chandrasekhar had to be permitted the opportunity to cross examine Antrix's witnesses who had submitted, at best technologically ignorant, and at worst bald-faced lies, about the status of the technology.⁸³⁹ The Supreme Court's reasoning is particularly appalling as Dr. Chandrasekhar rose to the (unfairly imposed) burden and submitted extensive material to the NCLT which evidenced the existence of the relevant technology, such as documents evidencing and explaining the analogous technology previously developed by Devas's founders and press releases confirming the existence of this technology across the world.⁸⁴⁰ Yet none of the NCLT, NCLAT or Supreme Court considered it.⁸⁴¹

351. Accordingly, the "*prima facie*" allegations against Devas were rubber-stamped, all the way to the Supreme Court, as a basis for liquidating Devas, and ultimately adopted by the Delhi High Court as a basis for setting aside the ICC Award as *res judicata*.⁸⁴²

(5) India Liquidated Devas To Rid Itself Of Liability Under The ICC Award

352. Dr. Chandrasekhar/DEMPL did not have the benefit of pleading its case before impartial and neutral decision makers. Rather, the NCLT, NCLAT and Supreme Court made clear that they had prejudged the matter with the express goal of rendering a decision that would relieve India of its debt under the arbitral awards.⁸⁴³ Each expressly pointed to the

CL-068, *Military and Paramilitary Activities in and Against Nicaragua, (Nicaragua v. United States of America)*, Judgment, 26 November 1984, ICJ Reports 1984, PDF p. 48, ¶ 101 ("Ultimately, however, it is the litigant seeking to establish a fact who bears the burden of proving it"); **Exhibit CL-069**, UNCITRAL Arbitration Rules 1976, Article 24(1) ("Each party shall have the burden of proving the facts relied on to support his claim or defence.").

⁸³⁹ See generally First Witness Statement of Gary Parsons, 20 January 2023.

⁸⁴⁰ **Exhibit C-343**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Dr. Chandrasekhar Additional Affidavit, 7 April 2021, PDF pp. 11-13.

⁸⁴¹ The NCLT did not rule on Devas's evidence. The NCLAT and Supreme Court ignored it. See **Exhibit C-084**, NCLAT Final Order, PDF pp. 166, 258-263; **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶¶ 12.8(iv), 12.8(vii).

⁸⁴² See **Exhibit C-270**, *Antrix Corporation Ltd. v. Devas Multimedia Pvt Ltd.*, OMP (Comm) 11 of 2021, Single-Judge Judgment, 29 August 2022, ¶¶ 160-162.

⁸⁴³ See *supra* ¶¶ 157, 191-192, 224-226; Notice of Arbitration, 2 February 2022, ¶ 102(c)(iv).

enforcement of the ICC Award as the reason underlying not just the urgency of the proceedings, but also necessitating the tribunals' and Court's ultimate "*findings*".

353. The NCLT took "*issue*" with Devas "*taking steps*" in Indian and foreign courts to enforce the ICC Award, because this "*would have serious ramifications,*" for India⁸⁴⁴ declaring consequently that it was the NCLT's "*bounden duty*" to "*expeditiously*" liquidate Devas to prevent it from pursuing enforcement.⁸⁴⁵ The NCLT further expressed its disdain for the arbitral process that had resulted in a large liability for Antrix and India by (among other things):

- a) Drawing an adverse inference against Devas for "*rush[ing]*" to arbitration. The NCLT also took issue with the arbitration hearings taking place outside of India, noting without elaboration, that this was "*not fair*" to Antrix;⁸⁴⁶
- b) Complaining that Devas was "*able to obtain huge award*" which led it to "*mak[e] all sorts of efforts for enforcement of such award*";⁸⁴⁷
- c) Chastising Devas for exercising its legal rights under the Agreement and ICC Award, noting that "*Antrix and Union of India have suffered [the] huge ICC Award and are facing its enforcement proceedings*" and that, in its view, Devas was "*misusing the legal status conferred on it by virtue of its incorporation by filing various proceedings on untenable grounds in India and abroad to enforce the ICC Award*";⁸⁴⁸ and
- d) Directing the Liquidator to "*prevent*" Devas from "*enforcing the ICC Award.*"⁸⁴⁹

⁸⁴⁴ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 71.

⁸⁴⁵ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 79.

⁸⁴⁶ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 77.

⁸⁴⁷ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 78.

⁸⁴⁸ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 79.

⁸⁴⁹ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 100.

354. Similarly, the Supreme Court declared that it would be “*abhorring*” for Devas to be “*allowed to continue to exist and also enforce the arbitration awards*” just in case the Criminal Court eventually finds all shareholders guilty of fraud.⁸⁵⁰

355. These declarations made explicit the real purpose of Devas’s urgent liquidation: to prevent the company from enforcing the ICC Award.

356. Accordingly, India failed to provide Devas with a fair hearing before an impartial and neutral adjudicator.

c) **India’s Conduct Was Not Motivated By Any Public Purpose**

357. As the tribunal in *ADC v. Hungary* observed:

*[A] treaty requirement for ‘public interest’ requires some genuine interest of the public. If a mere reference to ‘public interest’ can magically put such interest into existence and therefore satisfy this requirement, then this requirement would be rendered meaningless.*⁸⁵¹

358. To demonstrate that it acted for a valid public purpose, a State must: (i) identify the public purpose; and (ii) demonstrate that a reasonable nexus exists between the impugned expropriatory measure and the declared public purpose.⁸⁵² Moreover, as the Initial BIT Tribunal held, following the *Deutsche Bank*, *Tecmed*, *Azurix* and *LG&E* tribunals, the expropriation must be proportionate,⁸⁵³ “*prevent[ing] States from taking measures which severely impact an investor unless such measures are justified by a substantial public interest.*”⁸⁵⁴

⁸⁵⁰ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 13.3.

⁸⁵¹ **Exhibit CL-009**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal, 2 October 2006, ¶ 432.

⁸⁵² See **Exhibit CL-070**, *Vestey Group Limited v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016, ¶¶ 294-96.

⁸⁵³ **Exhibit C-036**, J&M Award, ¶ 414.

⁸⁵⁴ **Exhibit CL-071**, *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, 31 October 2012, ¶ 522.

359. India’s conduct was not motivated by any legitimate public purpose. As the NCLT and Supreme Court acknowledged, India sought to and ultimately did liquidate Devas and set aside the ICC Award to avoid paying Antrix’s debt under the ICC Award.⁸⁵⁵ India’s efforts to rid its subsidiary’s debt fails to serve any reasonable or legitimate public purpose. By undermining the arbitral process, and with it the rule of law, India’s actions have contravened the public interest.
360. Even if India’s efforts to rid itself of liability could be construed as serving the public interest, its actions in this case are plainly disproportionate. By liquidating Devas and taking control of it, India has completely deprived Claimants of their investment for a nominal advantage to its public purpose. Indeed, political grandstanding appears to have been the main benefit that has accrued to India’s current political party as demonstrated by the Finance Minister’s press conference following the Supreme Court’s affirmation of Devas’s liquidation.⁸⁵⁶ The obvious lawful alternative to achieving the same public purpose of resolving the pending liability of its state-owned company is to compel the payment of the ICC Award.

d) India’s Expropriation Was Discriminatory

361. It is axiomatic that “*non-discrimination is a requisite for the validity of a lawful*” expropriation and that “*a purely discriminatory [expropriation] is illegal and wrongful.*”⁸⁵⁷ Discrimination exists where there are “*different treatments to different parties.*”⁸⁵⁸

⁸⁵⁵ Notice of Arbitration, 2 February 2022, ¶ 102(b); **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 78 (“*Even though Devas suffered this finding, it was able to obtain huge award and making all sorts of efforts for enforcement of such award*”); **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 13.3 (“*What if the company is allowed to continue to exist and also enforce the arbitration awards for amounts totalling to tens of thousands of crores of Indian Rupees (the ICC award is stated to be for INR 10,000 crores and the 2 BIT awards are stated to be for INR 5,000 crores) and eventually the Criminal Court finds all shareholders guilty of fraud? The answer to this question would be abhorring.*”).

⁸⁵⁶ See *supra* ¶ 229.

⁸⁵⁷ **Exhibit CL-072**, *Libyan American Oil Company (LIAMCO) v. Libya*, Ad Hoc Arbitration, Award, 12 April 1977, ¶ 244.

⁸⁵⁸ **Exhibit CL-009**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal, 2 October 2006, ¶¶ 441-42 (rejecting Hungary’s contention that there could not be discrimination where claimants were the only foreign parties involved in the operation of an airport, and finding the relevant “*comparison of different treatments . . . [is] that received by the Respondent-appointed operator and that received by the foreign investors as a whole*”).

Discrimination also exists where measures are designed to exclude foreign control in a sector of the economy.⁸⁵⁹

362. India expropriated Claimants' investment in a discriminatory manner because it singled out Devas for liquidation. As explained above, India itself requested that the CBI conduct investigations into Devas, on the basis that they would "*be of use*" to Antrix and India in their arbitrations with Devas.⁸⁶⁰ These investigations formed the basis of "*fraud*" allegations, which then formed the basis of India's liquidation of Devas pursuant to an obscure and rarely utilized provision of the Indian Companies Act.⁸⁶¹
363. In addition to manufacturing this scheme to absolve itself of liability under the ICC Award, India's actions have also been motivated by a protectionist desire. As early as 2009, in the Chaturvedi Report, Indian authorities lamented the foreign ownership of Devas,⁸⁶² with the CBI in 2014 drawing criminal inferences from the fact that Devas's Board comprised of members of an American company.⁸⁶³ The NCLT also confirmed its suspicion of Devas's "*foreign*" connections, baselessly declaring that the "*unlawful object of Devas is to bring foreign funds into India and then siphon off the same by diverting those funds into foreign countries, into dubious accounts.*"⁸⁶⁴

364. As Claimants have shown above, India's liquidation and takeover of Devas, has unlawfully expropriated Claimants' investment. The liquidation of Devas has irretrievably deprived Claimants of their investment and the set aside proceedings in India vitiate any value remaining in Devas, particularly as the Liquidator has refused to defend the ICC Award,

⁸⁵⁹ See **Exhibit CL-073**, *Eureko B.V. v. Republic of Poland*, Ad Hoc Arbitration, Partial Award, 19 August 2005, ¶ 242 (finding Poland expropriated the claimant's investment with discriminatory intent through a measure that aimed to exclude foreign control in the insurance business).

⁸⁶⁰ See *supra* ¶ 81.

⁸⁶¹ See *supra* ¶¶ 138-139.

⁸⁶² See **Exhibit R-0006**, Chaturvedi Report, PDF p. 47.

⁸⁶³ See **Exhibit C-032**, CBI Complaint, 16 March 2015, ¶ 8.

⁸⁶⁴ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 90.

and the Delhi court overseeing the Award's set aside proceedings has adopted the *prima facie* "fraud findings" in the liquidation proceedings as *res judicata*.

365. In similar circumstances, the *Saipem* tribunal concluded that the taking of the investor's residual rights as a result of the Bangladeshi Supreme Court decision annulling an ICC award constituted an illegal expropriation. The Bangladeshi Supreme Court's set aside decision, while it appeared "*understandable under domestic law*", was "*flawed*" under international law, including under the New York Convention, which requires a presumption for enforcement by the domestic court when reviewing an arbitral award,⁸⁶⁵ and "*constituted the 'coup de grâce' given to the arbitral process.*"⁸⁶⁶ The *Saipem* tribunal found that the Bangladeshi courts' revocation of the arbitrators' authority "*violated the internationally accepted principle of prohibition of abuse of rights,*"⁸⁶⁷ and as such was illegal because it "*lack[ed] any justification*" and was a "*grossly unfair ruling*".⁸⁶⁸

⁸⁶⁵ See **Exhibit CL-074**, Dirk Otto and Omaia Elwan, "Article V(2)," in Herbert Kronke, Patricia Nacimiento, *et al.* (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention*, (Kluwer Law International; Kluwer Law International 2010), PDF pp. 8-9 ("*The general pro-enforcement orientation of the New York Convention also points to a narrow reading of the public policy defense. An expansive interpretation would otherwise vitiate the main purpose of the Convention, that is, to remove unwarranted obstacles to the enforcement of arbitration awards. The public policy defense should be permitted only when enforcement of an award would result in a violation of the enforcing state's most fundamental notions of morality and justice . . . Notably, the public policy clause in Article V(2) does not enable the enforcing court to re-examine the findings of the arbitrators and substitute its own conclusions for the arbitrators' findings*") (emphasis added); **Exhibit CL-075**, Summary Record of the Seventeenth Meeting, U.N. DOC. E/CONF. 26/SR.17, 3 June 1958, p. 3 ("*As regards paragraph 2 (b) of article IV, the Working Party felt that the provision allowing refusal of enforcement on grounds of public policy should not be given a broad scope of application. It therefore agreed to recommend the deletion of references to the subject matter of the award and to fundamental principles of the law*"); **Exhibit CL-076**, Albert Jan van den Berg, *New York Arbitration Convention of 1958: towards a uniform judicial interpretation*, Deventer; Boston: Kluwer Law and Taxation, 1981, PDF p. 278 ("*It is to be noted that the opening lines of both the first and the second paragraph of Article V employ a permissive rather than mandatory language: enforcement 'may be' refused. For the first paragraph it means that even if a party against whom the award is invoked proves the existence of one of the grounds for refusal of enforcement, the court still has a certain discretion to overrule the defense and to grant the enforcement of the award. Such overruling would be appropriate, for example, in the case where the respondent can be deemed to be stopped from invoking the ground for refusal. For the second paragraph it would mean that a court can decide that, although the award would violate the domestic public policy of the court's own law, the violation is not such as to prevent enforcement of the award in international relations.*") (emphasis added).

⁸⁶⁶ **Exhibit CL-042**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 173.

⁸⁶⁷ **Exhibit CL-042**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 161.

⁸⁶⁸ **Exhibit CL-042**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 155.

Accordingly, “the Bangladeshi courts abused their supervisory jurisdiction over the arbitration process.”⁸⁶⁹

366. For the reasons set out, the New Delhi High Court Set Aside Decision, adopting *prima facie* “*fraud findings*” as a basis for setting aside the ICC Award, which were themselves based on a severely deficient liquidation process specifically aimed at preventing enforcement of a substantial debt against India, so egregiously violated due process protections that they constitute an abuse of rights, and as such were illegal under international law.⁸⁷⁰

B. India Has Failed To Accord Claimants Fair And Equitable Treatment And Denied Claimants Due Process

367. India’s conduct, individually and collectively, amounts to a breach of the fair and equitable treatment (“FET”) obligation in the BIT and under customary international law. The analysis below proceeds in two parts. First, Claimants describe the FET standard. Second, Claimants show that India has breached the FET standard by failing to accord Claimants’ investment in Devas due process in the liquidation proceedings, and by breaching Claimants’ legitimate expectations that India would honor its obligations under the New York Convention.

1. Applicable Standard

368. A state’s obligation to provide “*fair and equitable treatment*” is a cornerstone protection of international investment law, and is enshrined in almost all investment treaties. As the tribunal in *PSEG Global* explained, the standard “*allow[s] for justice to be done in the absence of the more traditional breaches of international law standards . . . thus ensuring that the protection granted to the investment is fully safeguarded.*”⁸⁷¹

⁸⁶⁹ **Exhibit CL-042**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 159.

⁸⁷⁰ **Exhibit CL-042**, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 161 (finding that an abuse of rights occurred where the domestic courts “*exercised their supervisory jurisdiction for an end which was different from that for which it was instituted.*”).

⁸⁷¹ **Exhibit CL-077**, *PSEG Global Inc. and Konya Ilgın Elektrik Üretim ve Ticaret Şirketi v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award, 19 January 2007, ¶ 239.

369. Article 4(1) of the BIT guarantees all Mauritian investors' investments treatment that is fair and equitable, providing:

*Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.*⁸⁷²

370. As the Initial BIT Tribunal held, this standard extends beyond the customary minimum standard as defined in *Neer* as “[i]t is now generally recognized that customary international law has evolved since 1926”, and thus looked to jurisprudence that has since evolved to establish the contours of FET protection.⁸⁷³ The modern FET standard has been held to encompass “at least: (a) protection against arbitrary and unreasonable measures, discrimination, and denial of justice, (b) the right to procedural propriety and due process, and (c) the assurance of a predictable, consistent and stable legal framework.”⁸⁷⁴ Each of these factors is described in more detail below.

a) The FET Standard Protects An Investor From Unreasonable, Discriminatory And Arbitrary Treatment

371. The tribunal in *EDF (Services) Limited v. Romania* summarized that unreasonable or arbitrary treatment amounting to a violation of FET includes any of the following:

a. a measure that inflicts damage on the investor without serving any apparent legitimate purpose;

b. a measure that is not based on legal standards but on discretion, prejudice or personal preference;

c. a measure taken for reasons that are different from those put forward by the decision maker;

⁸⁷² **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000].

⁸⁷³ **Exhibit C-036**, J&M Award, ¶ 457.

⁸⁷⁴ **Exhibit CL-054**, *OAO Tatneft v. Ukraine*, UNCITRAL, Award on the Merits, 29 July 2014, ¶ 394.

*d. a measure taken in wilful disregard of due process and proper procedure.*⁸⁷⁵

372. Finding a breach of the FET standard, the tribunal in *Saluka v. Czech Republic* held that:

*A foreign investor protected by the Treaty may in any case properly expect that the [host State] implements its policies bona fide by conduct that is, as far as it affects the investors' investment, reasonably justifiable by public policies and that such conduct does not manifestly violate the requirements of consistency, transparency, even-handedness and non-discrimination. In particular, any differential treatment of a foreign investor **must not be based on unreasonable distinctions and demands, and must be justified by showing that it bears a reasonable relationship to rational policies not motivated by a preference for other investments over the foreign-owned investment.***⁸⁷⁶

373. Additionally, if a State undertakes measures that defy basic reasoning and logic, they will be deemed unreasonable and arbitrary. For example, the tribunal in *Glencore v. Colombia* held that Colombia acted unreasonably and arbitrarily when the General Comptroller of Colombia calculated tariffs owed by the claimant following a contractual amendment in a manner that was “*contrary to basic principles of legal reasoning and financial logic.*”⁸⁷⁷

374. Just as with expropriation, in the context of a breach of the FET standard, judicial measures “*emanat[e] from an organ of the State in just the same way as a law promulgated by the legislature or a decision taken by the executive.*”⁸⁷⁸ Thus, a domestic court’s actions may

⁸⁷⁵ See **Exhibit CL-078**, *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, ¶ 303. See also **Exhibit CL-079**, *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010, ¶¶ 262-63 (quoting Professor Schreuer’s description in EDF and explaining “[s]umming up, the underlying notion of arbitrariness is that prejudice, preference or bias is substituted for the rule of law.”); **Exhibit CL-080**, Christoph Schreuer, *Protection against Arbitrary or Discriminatory Measures*, in *THE FUTURE OF INVESTMENT ARBITRATION* (2009), PDF pp. 2-6; **Exhibit CL-060**, *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, ¶ 578 (“*In the Tribunal’s eyes, a measure is for instance arbitrary if it is not based on legal standards but on excess of discretion, prejudice or personal preference, and taken for reasons that are different from those put forward by the decision maker.*”).

⁸⁷⁶ **Exhibit CL-081**, *Saluka Investments BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶ 307 (emphases added). The tribunal held that the Czech Republic had unreasonably frustrated the claimant’s good faith efforts to resolve a financing crisis. See **Exhibit CL-081**, *Saluka Investments BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶ 407.

⁸⁷⁷ **Exhibit CL-082**, *Glencore International A.G. and C.I. Prodeco, S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award, 27 August 2019, ¶ 1475.

⁸⁷⁸ **Exhibit CL-058**, *Infinito Gold v. Costa Rica*, ICSID Case No. ARB/14/5, Award, 3 June 2021, ¶ 358.

amount to a violation of a treaty's FET standard. As set out by the tribunal in *Infinito Gold v. Costa Rica*, a judicial organ's violation of the FET standard does not necessarily have to satisfy the requirements of a denial of justice claim:

*[T]here is no principled reason to limit the State's responsibility for judicial decisions to instances of denial of justice. Holding otherwise would mean that part of the State's activity would not trigger liability even though it would be contrary to the standards protected under the investment treaty. While the Tribunal agrees that domestic courts must be given deference in the application of domestic law, this does not mean that their decisions are immune from scrutiny at the international level. . . In the same vein, **judicial decisions that are arbitrary, unfair or contradict an investor's legitimate expectations may also breach the FET standard even if they do not rise to the level of a denial of justice.***

Crucially, the question before investment tribunals is not whether the domestic court misapplied its own domestic law. The question is whether, in its application of domestic law, the court has breached international law, and more specifically, the standards of protection contained in the relevant treaty. . .

*[D]enial of justice is only one of the ways in which judicial decisions may breach the BIT. **Even if a decision does not amount to a denial of justice, it may violate other treaty standards (such as FET or expropriation), provided the requirements for these breaches are met.***⁸⁷⁹

⁸⁷⁹ **Exhibit CL-058**, *Infinito Gold v. Costa Rica*, ICSID Case No. ARB/14/5, Award, 3 June 2021, ¶¶ 359-361 (emphases added), see also ¶¶ 362-366. See also **Exhibit CL-054**, *OAO Tatneft v. Ukraine*, UNCITRAL, Award on the Merits, 29 July 2014, ¶¶ 405, 411 (noting that “[t]he discussion about whether these various decisions amounted to a denial of justice is immaterial because what this Tribunal has to determine in the end is whether they were manifestly unfair and unreasonable. . . Conduct which might not be as grave as to amount to egregiousness or bad faith but which nonetheless interferes with the legitimate exercise of rights of the protected individual might equally qualify as a kind of conduct resulting in liability.”); **Exhibit CL-083**, *Eli Lilly and Company v. Canada*, ICSID Case No. UNCT/14/2, Award, 16 March 2017, ¶ 223 “[I]t is evident that there are distinctions to be made between conduct that may amount to a denial (or gross denial) of justice and other conduct that may also be sufficiently egregious and shocking, such as manifest arbitrariness or blatant unfairness. It is also apparent, in the Tribunal's view, that concepts of manifest arbitrariness and blatant unfairness are capable, as a matter of hypothesis, of attaching to the conduct or decisions of courts. It follows, in the Tribunal's view, that a claimed breach of the customary international law minimum standard of treatment requirement of NAFTA Article 1105(1) may be properly a basis for a claim under NAFTA Article 1105 notwithstanding that it is not cast in denial of justice terms. As noted above, the conduct of the judiciary will in principle be attributable to the State by reference to uncontroversial principles of State responsibility. As a matter of principle, therefore, having regard to the content of the customary international law minimum standard of treatment, the Tribunal is unwilling to shut the door to the possibility that judicial conduct characterized other than as a denial of justice may engage a respondent's obligations under NAFTA Article 1105, within the standard articulated in the award in *Glamis*.”); **Exhibit CL-084**, *Frontier Petroleum Services Ltd. v. The Czech Republic*, UNCITRAL, Final Award, 12 November 2010, ¶ 525 (“[T]he Tribunal rejects Respondent's argument that this Tribunal does not have the power to review the decision of a national court's conception of the public policy exception under the New York Convention. The Tribunal's role under this claim is to determine whether the refusal of the Czech

375. Notably, the FET standard can be violated by unreasonable conduct, even in the absence of bad faith or malicious intent.⁸⁸⁰

b) The FET Standard Requires A State To Act With Due Process

376. Host states bear an affirmative obligation to act transparently.⁸⁸¹ The tribunal in *Urbaser v. Argentina* noted that “*in relation to a foreign investor, the authorities of the State shall act in a way to create a climate of cooperation in support of investment activities. Investors*

courts to recognise and enforce the Final Award in full violates Article III(1) of the BIT. In order to answer this question, the Tribunal must ask whether the Czech courts' refusal amounts to an abuse of rights contrary to the international principle of good faith, i.e. was the interpretation given by the Czech courts to the public policy exception in Article V(2)(b) of the New York Convention made in an arbitrary or discriminatory manner or did it otherwise amount to a breach of the fair and equitable treatment standard.”).

⁸⁸⁰ See **Exhibit CL-085**, *Azurix Corp. v. The Argentine Republic*, ICSID CASE No. ARB/01/12, Award, 14 July 2006, ¶ 372 (“It would be incoherent [. . .] to consider that a party to the BIT has breached the obligation of fair and equitable treatment only when it has acted in bad faith or its conduct can be qualified as outrageous or egregious”); **Exhibit CL-060**, *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, ¶ 543 (“The Tribunal believes that the state’s conduct need not be outrageous or amount to bad faith to breach the fair and equitable treatment standard.”).

⁸⁸¹ **Exhibit CL-086**, *Emilio Agustín Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Award, 13 November 2000, ¶ 83 (“[T]he lack of transparency with which this loan transaction was conducted is incompatible with Spain’s commitment to ensure the investor a fair and equitable treatment”); **Exhibit CL-057**, *Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶ 618 (“[T]he process that led to the decision of the Working Group lacked transparency and due process and was unfair, in contradiction with the requirements of the fair and equitable treatment principle.”); **Exhibit CL-087**, *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007, ¶¶ 308–309 (finding that the respondent showed a lack of transparency in denying access to the claimant to an administrative file and this was a breach of FET); **Exhibit CL-060**, *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, ¶¶ 543, 579 (“Furthermore, as noted by a number of arbitral tribunals, FET ‘requires that any regulation of an investment be done in a transparent manner [. . .]’”); **Exhibit CL-088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶¶ 154, 167, 172 (at ¶ 167 observing that “the Claimant was entitled to expect that the government’s actions would be free from any ambiguity that might affect the early assessment made by the foreign investor of its real legal situation or the situation affecting its investment and the actions the investor should take to act accordingly”); **Exhibit CL-089**, *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, ¶ 570 (“Fair and equitable treatment also requires that any regulation of an investment be done in a transparent manner”); **Exhibit CL-081**, *Saluka Investments BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶¶ 307, 309; **Exhibit CL-079**, *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010, ¶ 284 (“[A]n absence of transparency in the legal procedure or in the actions of the State” is a factor relevant to the FET standard); **Exhibit CL-090**, *LG&E Energy Corp., LG&E Capital Corp. and LG&E International, Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, ¶ 128 (“This means that violations of the fair and equitable treatment standard may arise from a State’s failure to act with transparency –that is, all relevant legal requirements for the purpose of initiating, completing and successfully operating investments made, or intended to be made under an investment treaty should be capable of being readily known to all affected investors.”).

must have trust in the host State's best efforts to sustain their operation on this State's territory."⁸⁸²

377. Investors are also entitled to be treated with substantive and procedural due process, within both administrative and judicial proceedings.⁸⁸³ The right to due process includes, *inter alia*, the right to be heard. In its recent decision, the tribunal in *Glencore v. Colombia* held that:

*The rule of law requires that in judicial proceedings (administered by a court of law or a tribunal) and in administrative proceedings (administered by the public administration) due process be respected: the adjudicator, be it a judge, tribunal member, or administrative authority, **must give each party a fair opportunity to present its case and to marshal appropriate evidence, and then must assess the submissions and the evidence in a reasoned, even-handed, and unbiased decision.***

*It is undisputed that a breach of due process, whether in judicial proceedings or in administrative proceedings, may result in the violation of the FET standard. But the due process standard operates differently in different settings. In administrative proceedings [. . .] the decision-maker is often the investigator, the accuser, and the adjudicator, and a related officer (who may be the senior officer of the decision-maker) is often the one who rules on appeal. Due process does not require strict separation of these functions - provided that the final administrative decision is subject to full judicial review. **The private individual must have an opportunity to have the case revisited, this time by an independent and impartial judge, with the guarantee of a formal adversarial procedure.***⁸⁸⁴

⁸⁸² **Exhibit CL-091**, *Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, ICSID Case No. ARB/07/26, Award, 8 December 2016, ¶ 628.

⁸⁸³ See **Exhibit CL-081**, *Saluka Investments BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶ 308 (“[A]ccording to the ‘fair and equitable treatment’ standard, the host State must never disregard the principles of procedural propriety and due process and must grant the investor freedom from coercion or harassment by its own regulatory authorities.”); **Exhibit CL-047**, *Metalclad Corporation v. The United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶¶ 91-94 (finding a violation of FET where a municipality did not act with procedural propriety); **Exhibit CL-088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶¶ 162, 166 (finding a violation of FET where a government agency failed to notify the claimant of its intention to refuse renewal of a permit); **Exhibit CL-050**, *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002, ¶ 143 (finding a violation of FET where there was a procedural failure to give notice and an attachment order was executed by police without directly notifying the owner of the property).

⁸⁸⁴ **Exhibit CL-082**, *Glencore International A.G. and C.I. Prodeco, S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award, 27 August 2019, ¶¶ 1318-19 (emphases added).

378. Further, in *Deutsche Bank v. Sri Lanka*, the tribunal held that a decision issued by the Supreme Court of Sri Lanka “without a proper examination and without giving the [claimants] involved an opportunity to respond, constitutes a breach of [FET]” in the form of a due process violation.⁸⁸⁵ In that case, the Sri Lankan Supreme Court granted an interim order preventing the Ceylon Petroleum Corporation from making payments to various banks, including Deutsche Bank. The court granted all the petitioners’ claims “[i]n a five page judgment rendered less than 48 hours after the filing of the petition” and based on “what appears to have been extremely limited evidence” and “without hearing from the various banks whose contractual rights were directly affected” by the order.⁸⁸⁶ The tribunal held that Sri Lanka’s Supreme Court had violated due process by issuing an order with “far-reaching consequences” without giving claimants the right to be heard,⁸⁸⁷ giving rise to “a serious due process violation” that was a breach of FET.⁸⁸⁸
379. The FET standard therefore requires that a host State give investors a meaningful opportunity to defend themselves, prior to making administrative or judicial decisions that will severely impair the value of the investment.

⁸⁸⁵ **Exhibit CL-071**, *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, 31 October 2012, ¶ 478. See also **Exhibit CL-084**, *Frontier Petroleum Services Ltd. v. The Czech Republic*, UNCITRAL, Final Award, 12 November 2010, Section 8.3.4; ¶¶ 517, 527, 529 (finding that, where the tribunal was faced with the question of whether the Czech court’s refusal to enforce an arbitral award on the basis of Article V(2)(b) of the New York Convention (i.e., that it violated Czech public policy) constituted a violation of the underlying treaty, the Czech decision should be “reasonably tenable and made in good faith.” On the basis of those facts, i.e., that “Claimant’s requests were entertained by four levels of courts and Claimant had several opportunities to submit legal arguments on the proper interpretation and application of the exceptions to the recognition and enforcement of the Final Award established under Article V of the New York Convention”, “there [was] no indication that the courts determining Claimant’s requests for the recognition and enforcement of the Final Award acted arbitrarily, discriminatorily, or in bad faith.”).

⁸⁸⁶ **Exhibit CL-071**, *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, 31 October 2012, ¶ 476.

⁸⁸⁷ **Exhibit CL-071**, *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, 31 October 2012, ¶ 478.

⁸⁸⁸ **Exhibit CL-071**, *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, 31 October 2012, ¶ 480.

c) Under The FET Standard, States Are Also Obligated Not To Deny Investors Justice

380. There is broad consensus among investment treaty tribunals that the obligation not to deny justice falls within the scope of the obligation to accord fair and equitable treatment,⁸⁸⁹ which as noted above, is set out at Article 4(1) of the BIT.⁸⁹⁰ It is also considered to be a principle of customary international law.⁸⁹¹ Indeed “*the duty to provide decent justice to foreigners . . . is one of [the] oldest principles.*”⁸⁹²

⁸⁸⁹ See, e.g. **Exhibit CL-057**, *Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶ 651 (“*The parties agree that the duty not to deny justice arises from customary international law and can also be considered to fall within the scope of treaty provisions provided for ‘fair and equitable treatment.’*”); **Exhibit CL-062**, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007, ¶ 7.4.11 (finding that the FET standard “*is commonly understood to include a prohibition on denial of justice*”); **Exhibit CL-092**, *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award, 6 November 2008, ¶ 188 (“*The Tribunal recognizes that the 2002 and 1977 BITs do not comprise a specific provision regarding the miscarriage or denial of justice. It considers, however, that the fair and equitable treatment standard encompasses the notion of denial of justice.*”); **Exhibit CL-084**, *Frontier Petroleum Services Ltd. v. Czech Republic*, UNCITRAL, Final Award, 12 November 2010, ¶ 293 (“*The fair and equitable treatment standard has been found on several occasions to encompass the notion of a denial of justice*”); **Exhibit CL-093**, *Dan Cake (Portugal) S.A. v. Hungary*, ICSID Case No. ARB/12/9, Decision on Jurisdiction and Liability, 24 August 2015, ¶ 146 (“*The violation of the obligation to treat the investor in a fair and equitable manner took the form of a denial of justice.*”).

⁸⁹⁰ See *supra*, ¶ 369.

⁸⁹¹ See **Exhibit CL-094**, *Flughafen Zürich & Gestión e Ingeniería IDC S.A. v. Venezuela*, ICSID Case No. ARB/10/19, Award, 18 November 2014, ¶ 378 (“*And even if denial of justice were not contained within the standard of FET, it is in any event a delict sanctioned by customary international law. As Paulsson states: ‘the duty to provide decent justice to foreigners arises from customary international law. Indeed, it is one of its oldest principles.’*”)

⁸⁹² **Exhibit CL-094**, *Flughafen Zürich & Gestión e Ingeniería IDC S.A. v. Venezuela*, ICSID Case No. ARB/10/19, Award, 18 November 2014, ¶ 378.

381. The obligation not to deny an investor justice requires States to adjudicate foreigners' claims in a substantively and procedurally fair manner.⁸⁹³ Investors must be afforded even-handed and ordinary justice. This standard is commonly understood to encompass:⁸⁹⁴

a. a denial of access to courts;

b. excessive length of proceedings;

c. serious procedural defects in proceedings; and

d. unjust or partial outcomes going beyond mere misapplication of the law.

382. In the words of one tribunal: “[t]he test is not whether a particular result is surprising, but whether the shock or surprise occasioned to an impartial tribunal leads, on reflection, to justified concerns as to the judicial propriety of the outcome . . . In the end **the question is whether, at an international level and having regard to generally accepted standards of the administration of justice, a tribunal can conclude in the light of all the available facts that the impugned decision was clearly improper and discreditable**, with the result that the investment has been subjected to unfair and inequitable treatment.”⁸⁹⁵ In this respect, the concepts of “*due process*” and “*denial of justice*”—both prongs of the FET

⁸⁹³ **Exhibit CL-095**, *RosInvestCo UK Ltd. v. The Russian Federation*, SCC Arbitration V (079/2005), Final Award, 12 September 2010, ¶ 277 (citing the Harvard Law School Draft Convention on the Law of the Responsibility of States for Damages Done in Their Territory to the Person or Property of Foreigners: “*A state is responsible if an injury to an alien results from a denial of justice. Denial of justice exists when there is a denial, unwarranted delay or obstruction of access to courts, gross deficiency in the administration of judicial or remedial process, failure to provide those guarantees which are generally considered indispensable in the proper administration of justice, or a manifestly unjust judgment.*”); **Exhibit CL-093**, *Dan Cake (Portugal) S.A. v. Hungary*, ICSID Case No. ARB/12/9, Decision on Jurisdiction and Liability, 24 August 2015, ¶ 146 (quoting *Mondev v. United States and Azinian v. Mexico* to state: “*Arbitral Tribunals have used, in order to characterize judicial decisions as denials of justice, various expressions . . . : “administer[ing] justice in a seriously inadequate way, clearly improper and discreditable.”*”).

⁸⁹⁴ See **Exhibit CL-096**, *Lion Mexico Consolidated L.P. v. United Mexican States*, ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021, ¶ 220; **Exhibit CL-097**, *Krederi Ltd. v. Ukraine*, ICSID Case No. ARB/14/17, Award, 2 July 2018, ¶ 449; **Exhibit CL-098**, *Iberdrola Energia, S.A. v. Republic of Guatemala (I)*, ICSID Case No. ARB/09/5, Award, 17 August 2012, ¶ 432; **Exhibit CL-099**, *Limited Liability Company Amto v. Ukraine*, SCC Case No. 080/2005, Final Award, 26 March 2008, ¶ 75; **Exhibit CL-100**, *Robert Azinian, Kenneth Davitian, & Ellen Baca v. Mexico*, ICSID Case No. ARB (AF)/97/2, Award, 1 November 1999, ¶¶ 102-103; **Exhibit CL-101**, Emmerich de Vattel, *The Law of Nations*, Volume III, Book II, trans. C. Fenwick, ¶ 350 (1916).

⁸⁹⁵ **Exhibit CL-102**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, 11 October 2002, ¶ 127 (emphasis added).

protection—“are closely linked. A failure to allow a party due process will often result in a denial of justice.”⁸⁹⁶

383. Fundamentally, parties must be given access to a *bona fide* judicial process for due process to have been afforded. In *Dan Cake v. Hungary*, the tribunal determined that the decision of the Metropolitan Court of Budapest shocked “a sense of juridical propriety” and was therefore a denial of justice when that court failed to convene a composition hearing as required by Hungarian law, causing the liquidator to sell the claimant’s assets.⁸⁹⁷ Though the tribunal could not be sure whether the claimant would have been successful at the hearing, a denial of justice was found in any event because the court’s decision deprived the claimant “of the chance – whether great or small – to avoid the sale of its assets and its disappearance as a legal person”.⁸⁹⁸ In other words, the debtor had the right to have the hearing convened, irrespective of the chance of success. Moreover, the tribunal emphasized that while it was not a “court of appeal” it was open to the tribunal to determine whether the court exercised that discretion unfairly or “in breach of a fundamental right”.⁸⁹⁹

d) The FET standard protects investors’ legitimate expectations

384. The protection of an investor’s legitimate expectations is “firmly rooted in arbitral practice.”⁹⁰⁰ The Initial BIT Tribunal likewise found that “the legitimate expectations of the investors have generally been considered central to [the FET] definition” referring to an established line of jurisprudence, including *El Paso*, *Waste Management II*, *Suez/AWG*, *Bayindir*, and *CMS*.⁹⁰¹

⁸⁹⁶ See **Exhibit CL-103**, *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶ 452.

⁸⁹⁷ **Exhibit CL-093**, *Dan Cake (Portugal) S.A. v. Hungary*, ICSID Case No. ARB/12/9, Decision on Jurisdiction and Liability, 24 August 2015, ¶¶ 145-150.

⁸⁹⁸ **Exhibit CL-093**, *Dan Cake (Portugal) S.A. v. Hungary*, ICSID Case No. ARB/12/9, Decision on Jurisdiction and Liability, 24 August 2015, ¶ 145.

⁸⁹⁹ **Exhibit CL-093**, *Dan Cake (Portugal) S.A. v. Hungary*, ICSID Case No. ARB/12/9, Decision on Jurisdiction and Liability, 24 August 2015, ¶ 117.

⁹⁰⁰ **Exhibit CL-104**, *Ioan Micula, et al. v. Romania*, ICSID Case No. ARB/05/20, Award, 11 December 2013, ¶ 667.

⁹⁰¹ **Exhibit C-036**, *J&M Award*, ¶¶ 456-463.

385. As the tribunal in *Tecmed* noted, FET requires a host State to:

*[P]rovide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment. . . . The foreign investor also expects the host State to act consistently, i.e. without arbitrarily revoking any preexisting decisions . . . that were relied upon by the investor to assume its commitments as well as to plan and launch its commercial and business activities. The investor also expects the State to use the legal instruments that govern the actions of the investor or the investment in conformity with the function usually assigned to such instruments, and not to deprive the investor of its investment without the required compensation.*⁹⁰²

386. A host State will be in breach of the FET standard if its conduct results in an “*evisceration of the arrangements in reliance upon [which] the foreign investor was induced to invest.*”⁹⁰³

387. The tribunal in *Glencore v. Colombia* further considered that legitimate expectations:

[A]rise when a State (or its agencies) makes representations or commitments or gives assurances, upon which the foreign investor (in the exercise of an objectively reasonable business judgement) relies, and the frustration occurs when the State thereafter changes its position as against those expectations in a way that causes injury to the investor. The protection of legitimate expectations is closely connected with the principles of good faith, estoppel, and the prohibition of venire contra factum proprium.

*A State can create legitimate expectations vis-à-vis a foreign investor in two different contexts. In the first context, the State makes representations, assurances, or commitments directly to the investor (or to a narrow class of investors or potential investors). But legal expectations can also be created in some cases by the State’s general legislative and regulatory framework: an investor may make an investment in reasonable reliance upon the stability of that framework, so that in certain circumstances a reform of the framework may breach the investor’s legitimate expectations.*⁹⁰⁴

⁹⁰² **Exhibit CL-088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶ 154. See also **Exhibit CL-081**, *Saluka Investments BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶ 302 (“[A]n obligation to treat foreign investors so as to avoid the frustration of investors’ legitimate and reasonable expectations.”).

⁹⁰³ **Exhibit CL-051**, *CME Czech Republic B.V. (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, ¶ 611.

⁹⁰⁴ **Exhibit CL-082**, *Glencore International A.G. and C.I. Prodeco, S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award, 27 August 2019, ¶¶ 1367-68.

388. Legitimate expectations may be formed through explicit or implicit representations by the host State. As such, numerous tribunals have recognized that an investor is entitled to rely on communications from the State as a basis for forming legitimate expectations.⁹⁰⁵
389. Furthermore, it is well recognized that legitimate expectations not only arise through direct representations made by the State to the investor, but can also be generated through a host State's legal and regulatory frameworks.⁹⁰⁶

⁹⁰⁵ See **Exhibit CL-105**, *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, 31 October 2011, ¶ 513 (finding Argentina breached legitimate expectations arising from general assurances contained in a regulatory framework); **Exhibit CL-106**, *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Liability, 27 December 2010, ¶¶ 120, 167-168 (finding Argentina breached legitimate expectations arising from general assurances contained in a regulatory framework); **Exhibit CL-107**, *Ioannis Kardassopoulos v. Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction, 6 July 2007, ¶¶ 189-94 (finding Georgia breached legitimate expectations arising from representations and warranties set forth in a joint venture agreement); **Exhibit CL-108**, *Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008, ¶¶ 359-64 (finding Ecuador breached legitimate expectations arising from specific payment provisions of a purchase agreement); **Exhibit CL-060**, *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, ¶¶ 563, 575 (finding Venezuela breached legitimate expectations arising from specific representations made in a letter); **Exhibit CL-109**, *Union Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, Award, 31 August 2018, ¶¶ 9.130, 9.145 (finding Egypt breached legitimate expectations arising from representations made in a letter); **Exhibit CL-110**, *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Decision on Jurisdiction, Admissibility and Liability, 21 April 2015, ¶¶ 198-205 (finding Romania breached legitimate expectations arising from representations made in a government notice); **Exhibit CL-073**, *Eureko B.V. v. Republic of Poland*, Ad Hoc Arbitration, Partial Award, 19 August 2005, ¶¶ 226, 231-32 (finding Poland breached legitimate expectations arising from obligations contained in a purchase agreement).

⁹⁰⁶ See **Exhibit CL-081**, *Saluka Investments BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶ 301 (“An investor’s decision to make an investment is based on an assessment of the state of the law and the totality of the business environment at the time of the investment as well as on the investor’s expectation that the conduct of the host State subsequent to the investment will be fair and equitable.”); **Exhibit CL-111**, *Suez, Sociedad General de Aguas de Barcelona S.A. and Vivendi Universal, S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability, 30 July 2010, ¶ 226 (“In examining the various cases that have justifiably considered the legitimate expectations of investors and the extent to which the host government has frustrated them, this Tribunal finds that an important element of such cases has not been sufficiently emphasized: that investors, deriving their expectations from the laws and regulations adopted by the host country, acted in reliance upon those laws and regulations and changed their economic position as a result. Thus it was not the investor’s legitimate expectations alone that led tribunals to find a denial of fair and equitable treatment. It was the existence of such expectations created by host country laws, coupled with the act of investing their capital in reliance on them, and a subsequent, sudden change in those laws that led to a determination that the host country had not treated the investors fair and equitably.”); **Exhibit CL-090**, *LG&E Energy Corp., LG&E Capital Corp. and LG&E International, Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, ¶ 133 (finding that Argentina had “created specific expectations among investors” through guarantees provided in its legislation and regulations, and was therefore bound by these guarantees); **Exhibit CL-112**, *National Grid P.L.C. v. Argentine Republic*, UNCITRAL, Award, 3 November 2008, ¶ 179 (finding breach of FET where Argentina “fundamentally changed the legal framework on the basis of which the Respondent itself had solicited investments and the Claimant had made them”); **Exhibit CL-113**, *BG Group Plc. v. The Republic of Argentina*, UNCITRAL, Final Award, 24 December 2007, ¶¶ 298, 307, 310 (observing that “[t]he duties of the host State must be examined in the light of the legal and business framework as represented to the investor at the time that it decides to invest”). See also **Exhibit**

390. Thus, an investor is entitled to rely on an objective assessment of a State’s legal framework, which includes its “*international law obligations, its domestic legislation and regulations, as well as the contractual arrangements concluded between the investor and the State.*”⁹⁰⁷
391. Intertwined with legitimate expectation is the general obligation of good faith under international law. As the Initial BIT Tribunal noted, the good faith obligation is “*not only self-standing*” as reflected by its inclusion in the VCLT, but also “*stems from the concept of FET*”.⁹⁰⁸ In agreement with the *Tecmed* panel, the Initial BIT Tribunal confirmed that “*the commitment of fair and equitable treatment . . . is an expression and part of the bona fide principle recognized in international law.*”⁹⁰⁹ Thus, the good faith obligation requires that “*the foreign investment must be treated in a manner such that it ‘will not affect the basic expectations that were taken into account by the foreign investor to make the investment.’*”⁹¹⁰ Notably, while the absence of good faith constitutes a breach of FET, “*this does not mean that every violation of FET by a State requires bad faith.*”⁹¹¹

2. India’s Actions Are Unreasonable, Arbitrary And Discriminatory

392. India’s actions against Claimants have been without legitimate purpose, based on bias and prejudice, and motivated by an underlying desire to protect the Indian Government from paying its debt. These include India’s multiple sham investigations designed to harass Devas, its employees, officers and investors, in retaliation for Devas’s and Claimants’ initiation of—and victory in—the Arbitrations. Likewise, India’s abuse of its sovereign

CL-114, *Occidental Exploration and Production Company v. The Republic of Ecuador*, LCIA Case No. UN 3467, Final Award, 1 July 2004, ¶ 191 (observing that “*there is certainly an obligation not to alter the legal and business environment in which the investment has been made*”); **Exhibit CL-073**, *Eureko B.V. v. Republic of Poland*, Ad Hoc Arbitration, Partial Award, 19 August 2005, ¶¶ 231-32 (finding breach of FET where the organs of the Government “*breached the basic expectations of Eureko that are at the basis of its investment*” and were enshrined in the underlying contractual agreements); **Exhibit CL-104**, *Ioan Micula, et al. v. Romania*, ICSID Case No. ARB/05/20, Award, 11 December 2013, ¶ 674 (finding Romania had made a promise or assurance, through its legal framework and issued certificates, which gave rise to the investors’ legitimate expectation).

⁹⁰⁷ **Exhibit CL-115**, *Murphy Exploration & Production Company – International v. The Republic of Ecuador*, UNCITRAL, PCA Case No. 2012-16, Partial Final Award, 6 May 2016, ¶ 248.

⁹⁰⁸ **Exhibit C-036**, J&M Award, ¶ 467.

⁹⁰⁹ **Exhibit C-036**, J&M Award, ¶ 467.

⁹¹⁰ **Exhibit C-036**, J&M Award, ¶ 467.

⁹¹¹ **Exhibit C-036**, J&M Award, ¶ 467.

powers to manufacture allegations against Devas and its officers based on fabricated and coerced evidence, which it then laundered into “*fraud findings*” via a thoroughly-deficient liquidation process, undeniably violates its obligation to accord FET.

393. There is little doubt that India initiated and escalated investigations against Devas, its officers and investors in retaliation to the Arbitrations. As soon as Devas notified Antrix of the dispute, Antrix requested the Ministry of Corporate Affairs to launch a fishing expedition into Devas’s finances and technological capacity and “[a]ny other issue which is incidental” to FEMA and PMLA provisions.⁹¹² The reason for this was made explicit in a letter from the Department of Space to the Ministry of Corporate Affairs, noting “[t]he outcome of the investigations by [the MCA] would be of use to the Government and Antrix in handling the arbitrations.”⁹¹³ India’s investigative authorities reciprocated. In a letter to Antrix, the Ministry of Corporate Affairs wrote “it is hoped that the findings of the investigations meet the requirements of your Department”.⁹¹⁴
394. The more losses India suffered in the Arbitrations, the more investigations India launched. As India began to suffer losses in the ICC and Initial BIT Arbitrations, the CBI and ED, both Government instruments that have a documented history of being used to silence and intimidate opposition by launching frivolous proceedings,⁹¹⁵ launched investigations into Devas. India’s Finance Minister has since proudly acknowledged that these agencies escalated their efforts following the election of the BJP party.⁹¹⁶ Both the CBI and ED demonstrably fabricated evidence to formulate their allegations. The CBI used “*witness statements*” consisting of copy-pasted testimony from one statement to another.⁹¹⁷ And the ED raided Devas’s offices, took into custody, without a warrant, Devas’s officers, coerced

⁹¹² **Exhibit C-026**, Letter from Dr. Radhakrishnan to DK Mittal, Department of Corporate Affairs, 1 June 2011. (emphasis added)

⁹¹³ **Exhibit C-179**, Letter from Department of Space to Ministry of Corporate Affairs, 17 January 2014 (emphasis added).

⁹¹⁴ **Exhibit C-174**, Letter from Ministry of Corporate Affairs to Dr. Radhakrishnan, 2 February 2012. (emphasis added)

⁹¹⁵ See *supra* ¶ 83.

⁹¹⁶ See *supra* ¶ 231.

⁹¹⁷ See Annex 1.

them to sign unseen statements under duress and then used those statements to build its case.⁹¹⁸

395. Yet despite these shocking measures, the investigations resulted in no charges being framed, let alone convictions. Belying the falsity of these charges, India offered to drop them altogether in exchange for Claimants' abandoning the Arbitrations.⁹¹⁹ Yet, immediately after India faced significant losses in the Arbitrations, it turned to these investigations and "*made all the departments work together*" to "*come up with*" the liquidation of Devas.⁹²⁰
396. By retaliating against Claimants for simply asserting their legal rights, fabricating evidence to manufacture charges to first harass and intimidate Devas, its officers and investors, and then deploy those manufactured charges for use in substandard liquidation proceedings, India no doubt acted unreasonably and arbitrarily, in violation of its obligation to accord Claimants' FET.
397. The ensuing liquidation proceedings too constituted a clear violation of India's FET obligation.
398. First, the NCLT liquidated Devas "*without serving any apparent legitimate purpose*", which the NCLAT and Supreme Court also upheld "*without serving any apparent legitimate purpose*".⁹²¹ Thwarting enforcement of an arbitration award against the State is not a "*legitimate purpose*"⁹²² and in fact violates India's obligations under international law, including its obligations under the New York Convention.⁹²³

⁹¹⁸ See *supra* § II.C.3.

⁹¹⁹ See *supra* § II.D.

⁹²⁰ **Exhibit C-119**, Transcript of Press Conference of Nirmala Sitharaman, 18 January 2022, p. 7.

⁹²¹ **Exhibit CL-078**, *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, ¶ 303(a).

⁹²² See *supra* § IV.A.3.c).

⁹²³ See **Exhibit CL-116**, New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, United Nations Conference on International Commercial Arbitration, 1958, Article III ("*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, under the conditions laid down in the following articles. There shall not be imposed*

399. Second, the liquidation was “*not based on legal standards but on discretion, prejudice or personal preference.*”⁹²⁴ Throughout the liquidation process, it was clear that the desired outcome of the Indian Government was to liquidate Devas to avoid payment of the ICC Award. For example:

- a. The NCLT, NCLAT and Supreme Court disregarded mandatory statutory provisions in the Companies Act regarding, among others, notice and advertisement, and instead retroactively declared that these express requirements were discretionary.⁹²⁵
- b. The courts consistently exercised their discretion in a manner that favored Antrix, such as the NCLT rejecting Dr. Chandrasekhar’s requests for cross examination and extensions due to Dr. Chandrasekhar/DEMPL’s senior counsel falling ill with COVID,⁹²⁶ or the NCLAT and Supreme Court’s refusal to temporarily “*stay*” Devas’s liquidation pending appeal, which is customary.⁹²⁷ Indeed, none of the courts ever explained the purported need for urgency given that Devas had been provisionally liquidated and was under the full control of the government-appointed Liquidator for the entire duration of the liquidation proceedings.
- c. The courts refused to engage with the voluminous evidence submitted by Devas’s former director, and instead relied on allegations by the CBI and ED, which had never been tested in any court, to arrive at the pre-judged conclusion that the Devas Agreement and the company’s subsequent conduct was tainted by fraud.⁹²⁸

substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.”).

⁹²⁴ **Exhibit CL-078**, *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, ¶ 303(b).

⁹²⁵ *See supra* ¶¶ 194, 207, 216.

⁹²⁶ *See supra* ¶¶ 174, 195.

⁹²⁷ *See supra* ¶ 200.

⁹²⁸ *See supra* ¶¶ 140, 148.a, 188, 205, 209, 223.

400. Third, it is apparent that the NCLT liquidated Devas “*for reasons that are different from those put forward by the decision maker*”⁹²⁹ and yet its decision was upheld by the NCLAT and Supreme Court, both of which also betrayed their true motivations in their decisions. Namely, it is obvious that the NCLT’s decision is affected by prejudice against the arbitral process and an expressed preference to rule in a manner favorable to the Indian Government.⁹³⁰ The NCLT, for example, proclaimed, without explanation, that it was “*not fair*” that the ICC arbitration had taken place outside India,⁹³¹ and that the ICC Tribunal had granted Devas a “*huge award*” in spite of its finding that India’s decision to annul the Agreement in 2011 was taken in its sovereign capacity.⁹³² In a brazen display of favoritism, the NCLT equated Antrix and the Indian Government’s immediate interest in disregarding the ICC Award as being in the “*public[s] interest*”, which the NCLT declared was its “*bounden duty to protect.*”⁹³³
401. The NCLAT and Supreme Court refused to review this obvious favoritism and, in fact, expressed their own biases for the Government’s case. The NCLAT declared that because spectrum was a natural resource belonging to the “*citizens*”, the “*public trust*” doctrine, which declared that the Government “*protect the resources for the enjoyment of the general public rather than . . . permit their use for private ownership or commercial purposes*”, required that it rule in Antrix’s favor.⁹³⁴ The Supreme Court also made clear that confirming Devas’s liquidation would protect India’s interest, insofar as “*allowing Devas and its shareholders to reap the benefits*” of the Agreement and the ICC Award “*would send [a] wrong message*” about investing in India.⁹³⁵

⁹²⁹ **Exhibit CL-078**, *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, ¶ 303(c).

⁹³⁰ *See supra* ¶¶ 191-192.

⁹³¹ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 77.

⁹³² **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 78.

⁹³³ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 79.

⁹³⁴ **Exhibit C-084**, NCLAT Final Order, PDF p. 333, 337.

⁹³⁵ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 13.

402. The decisions in the liquidation proceedings are thus reflective of a deeply flawed administration of “*justice*” marked by a bias to relieve the Indian Government of its substantial debt to Claimants.
403. Fourth, as already established above,⁹³⁶ the liquidation decisions were “*taken in wilful disregard of due process and proper procedure.*”⁹³⁷
404. Fifth, the decisions of the NCLT, NCLAT, and Supreme Courts are rife with “*findings*” that are “*contrary to basic principles of legal reasoning and financial logic.*”⁹³⁸ For example:
- a. the NCLT relied heavily on the supposed “*findings*” of the CBI and ED against Devas, despite the fact that the CBI and ED’s PMLA allegations had yet to be tried by a single court, and despite the fact that the allegations originated in investigations which were requested by India itself, on the basis that they would “*be of use*” to Antrix and India in their arbitrations with Devas;⁹³⁹
 - b. the NCLT held that it was “*absurd*” for Devas to claim that it was applying for licenses after signing the Agreement,⁹⁴⁰ despite that being exactly what Antrix and Devas had expressly agreed upon under the Agreement;⁹⁴¹
 - c. the NCLT admonished Devas for conducting the ICC proceedings outside India, even though that decision was taken by the ICC Tribunal in accordance with the Agreement;⁹⁴²

⁹³⁶ See *supra* § IV.A.3.b).

⁹³⁷ See **Exhibit CL-078**, *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, ¶ 303(d).

⁹³⁸ **Exhibit CL-082**, *Glencore International A.G. and C.I. Prodeco, S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award, 27 August 2019, ¶ 1475.

⁹³⁹ See **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 70; **Exhibit C-179**, Letter from Department of Space to Ministry of Corporate Affairs, 17 January 2014.

⁹⁴⁰ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 77.

⁹⁴¹ See *supra* ¶ 43.

⁹⁴² **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 77.

- d. the NCLT declared that Devas’s attempts to enforce the ICC Award were fraudulent, because the ICC Tribunal had determined that India had annulled the Agreement in an exercise of its “*sovereign capacity*”.⁹⁴³ The NCLT ignored the remainder of the ICC Award that held that Antrix’s conduct was wrongful and was accordingly liable to pay Devas damages;⁹⁴⁴
- e. the NCLT dismissed Dr. Chandrasekhar’s cross examination application on the basis that Antrix’s fraud allegations could be decided on the basis of the documentary record before the ICC Tribunal.⁹⁴⁵ This outrageous “*finding*” ignored the fact that the full ICC Arbitration record was not even produced before the NCLT, and that fraud had *never* been raised in the ICC Arbitration, and had the NCLT reviewed the full factual record it would not have found any indicia of fraud by Devas;⁹⁴⁶
- f. the NCLT found that Devas had “*brought foreign funds into India*” which it had then “*siphon[ed] off to foreign countries*”,⁹⁴⁷ without referencing the fact that the foreign investors (whose money was supposedly siphoned off) had sided with *Devas* against India, in recognition of the absurdity of this claim and India’s conduct.⁹⁴⁸ Moreover, the only money that had actually exchanged hands between the parties was a payment of approximately USD 13 million paid by *Devas* to Antrix as a deposit for Upfront Capacity Reservation Fees.⁹⁴⁹ The NCLT also somehow ignored that, under the terms of the Agreement, Antrix stood to *earn* over USD 300 million solely in lease payments;⁹⁵⁰

⁹⁴³ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 78.

⁹⁴⁴ *See supra* ¶ 91.

⁹⁴⁵ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 87.

⁹⁴⁶ *See supra* ¶¶ 142, 195.

⁹⁴⁷ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 90.

⁹⁴⁸ *See supra* ¶ 342.f.

⁹⁴⁹ *See supra* ¶ 80.

⁹⁵⁰ *See supra* ¶ 42.

- g. the NCLT (and NCLAT) dismissed DEMPL’s impleadment application on the ground that it was bound by the decisions taken by Devas’s new management (*i.e.* the Liquidator),⁹⁵¹ in stunning ignorance of the fact that DEMPL’s impleadment was *premised* on the Liquidator’s failures to protect Devas’s interests;⁹⁵²
 - h. the NCLAT dismissed Dr. Chandrasekhar’s request for a civil trial on the ground that Dr. Chandrasekhar, having failed to challenge the authenticity of some of Antrix’s documents, had raised no “*triable issues*”.⁹⁵³ As would have been apparent by even a cursory reading of the record, Dr. Chandrasekhar/DEMPL had raised numerous “*triable issues*” in response to Antrix’s allegations that went beyond simply challenging its documents as inauthentic;⁹⁵⁴
 - i. in a “*finding*” that turned basic evidentiary principles on their head, the Supreme Court declared Antrix’s allegation that Devas fraudulently misrepresented its technical capabilities was a “*negative assertion*”, for which cross examination would serve no useful purpose and that Devas—as the *respondent*—would have the burden of disproving.⁹⁵⁵
405. Finally, India’s actions are discriminatory for the reasons set out above.⁹⁵⁶

3. India’s Courts Disregarded Due Process of Law And Denied Claimants Justice

406. India violated international standards of due process in the liquidation proceedings. These violations also amounted to India’s denying Claimants justice.

⁹⁵¹ **Exhibit C-079**, NCLT Impleadment Order, p. 12; **Exhibit C-084**, NCLAT Final Order, PDF p. 203.

⁹⁵² *See supra* ¶¶ 196-197, 212.

⁹⁵³ **Exhibit C-084**, NCLAT Final Order, PDF p. 351-2.

⁹⁵⁴ *See supra* ¶¶ 161-162, 210.

⁹⁵⁵ **Exhibit C-088**, Judgment of the Indian Supreme Court, ¶ 10.7.

⁹⁵⁶ *See supra* § IV.A.3.d).

407. It is evident that the Indian courts did not “*assess submissions and the evidence in a reasoned, even-handed, and unbiased decision*,”⁹⁵⁷ and that the judgments failed to reflect any analytical process or reasonable analysis of the facts and law as required by international law.⁹⁵⁸ As described above:

- a. Claimants were denied the ability to participate in the liquidation proceedings.⁹⁵⁹
- b. The liquidation proceedings were conducted with undue haste and did not allow Dr. Chandrasekhar (the only individual allowed to participate) to adequately present his case.⁹⁶⁰
- c. The NCLT, NCLAT, and Supreme Court “*findings*” were based on “*prima facie*” allegations by Antrix officials that were:
 - i. Untested through cross examination, which the NCLT denied based on incoherent reasons, and which the NCLAT and Supreme Court upheld based on further incoherent reasons.⁹⁶¹
 - ii. On the basis of documents that:
 1. had been available during the ICC Arbitration but that it did not consider raised any indicia of fraud;⁹⁶² and

⁹⁵⁷ **Exhibit CL-082**, *Glencore International A.G. and C.I. Prodeco, S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award, 27 August 2019, ¶¶ 1318-19.

⁹⁵⁸ See **Exhibit CL-102**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, ¶ 127 (noting that only a “*proper and credible*” legal and factual analysis that satisfies the sense of judicial propriety would provide the protection of the law and meet the requirements under the international minimum standard and the fair and equitable treatment standard); *c.f.* **Exhibit CL-117**, *Mamidoil Jetoil Greek Petroleum Products Societe S.A. v. Republic of Albania*, ICSID Case No. ARB/11/24, Award, 30 March 2015, ¶ 769 (finding that the domestic court decision was not improper or discreditable considering that “[t]he judgment [was] reasoned, understandable, coherent [...]”); **Exhibit CL-118**, *Philip Morris Brand SARL, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Award, 8 July 2016 ¶ 528 (noting that the investor received a properly reasoned judgment).

⁹⁵⁹ See *supra* ¶¶ 196-197, 212, 227.

⁹⁶⁰ See *supra* § IV.A.3.b)(2)(b).

⁹⁶¹ See *supra* ¶¶ 195, 210, 219-222.

⁹⁶² See *supra* ¶ 142.

2. on their face, showed no indicia of fraud;⁹⁶³
 3. were manufactured;⁹⁶⁴
 4. had been thoroughly rebutted through submissions and evidence from Devas's former director.⁹⁶⁵
- d. The NCLT, NCLAT and Supreme Court each completely ignored evidence submitted by Dr. Chandrasekhar.⁹⁶⁶
 - e. The NCLT, NCLAT and Supreme Court each denied Devas the right to a full trial and to cross examination.⁹⁶⁷
 - f. The NCLT and Supreme Court both announced that the true motivation of their decisions was to protect the Indian Government from enforcement of the ICC Award and its significant debt under that Award.⁹⁶⁸
408. Claimants have therefore not been allowed “*a fair opportunity to present [their] case and to marshal appropriate evidence.*”⁹⁶⁹

4. India Breached Claimants' Legitimate Expectations

409. India breached Claimants' legitimate expectations, formed through Claimants' objective assessment of India's “*international law obligations, its domestic legislation and*

⁹⁶³ See *supra* ¶¶ 98, 115.

⁹⁶⁴ See *supra* ¶¶ 113, 338.

⁹⁶⁵ See *supra* ¶¶ 175-186.

⁹⁶⁶ See *supra* ¶¶ 187-197, 206, 223.

⁹⁶⁷ See *supra* ¶ 195, 210, 219-222.

⁹⁶⁸ See *supra* ¶¶ 192-193, 223-226.

⁹⁶⁹ **Exhibit CL-082**, *Glencore International A.G. and C.I. Prodeco, S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award, 27 August 2019, ¶¶ 1318-19.

*regulations, as well as the contractual arrangements concluded between” Devas and Antrix.*⁹⁷⁰

410. Claimants legitimately expected that Antrix, with the support of its parent India, would honor any future arbitral debt in favor of Devas. Under the Indian Arbitration Act, arbitral awards are “*final and binding on the parties.*”⁹⁷¹ Claimants, moreover, took assurance from India’s contemporaneous amendments to its arbitration law that promoted the enforceability of challenged awards with the explicit aim of “*projecting India as an investor friendly country having a sound legal framework*”.⁹⁷²
411. Contrary to Claimants’ expectations, however, Devas’s initiation of the ICC Arbitration followed by its victory before the ICC Tribunal prompted India to initiate retaliatory investigations and actions against Devas and its principals.⁹⁷³ That these investigations were retaliatory and lacked any credibility is demonstrated by the fact that India never once raised them in any of the three ongoing Arbitration proceedings to defend itself.⁹⁷⁴ Indeed, Devas entered the Agreement on the basis of ISRO officials’ representations that they had received the appropriate authorizations to enter into it.⁹⁷⁵ Claimants then made substantial equity investments in Devas only after traveling to India and meeting with the highest level ISRO and Antrix officers to confirm their support of the Devas Project.⁹⁷⁶ For the duration of the Project and up until India annulled the Agreement, ISRO and Antrix officials continued to demonstrate unwavering support for the Project, the viability of the intended technology, and support for the required licensing.⁹⁷⁷ ISRO leadership, for example, attended the successful demonstrations of Devas’s technology in Bangalore and abroad,

⁹⁷⁰ **Exhibit CL-115**, *Murphy Exploration & Production Company – International v. The Republic of Ecuador*, UNCITRAL, PCA Case No. 2012-16, Partial Final Award, 6 May 2016, ¶ 248.

⁹⁷¹ **Exhibit C-214**, § 35, Arbitration and Conciliation Act, 1996 (India).

⁹⁷² **Exhibit C-418**, Statement of Objects and Reasons, Arbitration and Conciliation (Amendment) Bill, 2015, 25 November 2015, ¶ 5.

⁹⁷³ *See supra* § II.C.

⁹⁷⁴ *See supra* ¶¶ 82, 89, 94.

⁹⁷⁵ *See supra* § II.A.1. *See also* **Exhibit C-007**, Devas-Antrix Agreement, art. 12(a)(i) (“*Antrix hereby represents and warrants to Devas...Antrix has the capacity and power to enter into and perform this Agreement in terms thereof.*”)

⁹⁷⁶ *See supra* § II.A.3.

⁹⁷⁷ *See supra* § II.A.4.

and confirmed their success.⁹⁷⁸ As the DT Tribunal concluded “*all of the acts ... of the DOS, ISRO ... are attributable to India as they were performed by organs of the State within the meaning of Article 4 of the ILC Articles.*”⁹⁷⁹ Thus, Claimants reasonably relied on these Indian officials’ continuous representations that the Agreement was valid and Devas was implementing it as intended.

412. However, once Devas confirmed the ICC Award before the U.S. court and obtained a judgment, India amended its arbitration law, enabling its courts to suspend the enforcement of the arbitral award when there is a *prima facie* case of “*fraud*” or “*corruption*” in the underlying agreement.⁹⁸⁰ India then, without notice to Devas, granted authorization to Antrix, which India fully owns, to seek Devas’s liquidation on the basis of *prima facie* allegations of fraud that Antrix had just months ago pronounced a “*red herring*” and “*rabbit hole*”.⁹⁸¹ The NCLT, strongly denouncing the arbitral process which it considered “*not fair*” and detrimental to India’s interests,⁹⁸² liquidated Devas on the basis of the same *prima facie* allegations, which the NCLAT and Supreme Court upheld in an unprecedented application of Indian law where determinations of fraud were made on a summary basis leading to the civil death of a company. And now India is relying on these rubber-stamped fraud allegations—that have never been tested pursuant to a trial or any credible evidentiary process—to set aside the ICC Award.⁹⁸³

413. Thus, ever since Devas chose to initiate the ICC Arbitration against a government company in 2011, and particularly since the issuance of the ICC Award in 2015 and its confirmation

⁹⁷⁸ See *supra* ¶¶ 62-64.

⁹⁷⁹ **Exhibit C-045**, DT Award, ¶ 390. Indeed, there can be no doubt that DOS, an executive department of the Indian Government, and ISRO, DOS’s subsidiary agency, are entities which have status as organs of the Indian State under Indian law. See **Exhibit C-169**, ISRO/DOS “Organisation Structure” (detailing that both organizations are subordinate to India’s Prime Minister). See also **Exhibit C-219**, Constitution of India, art. 12 (noting that the “*State*” for the purposes of enforcing fundamental rights includes “*the Government and the Parliament of India and...all local or other authorities within the territory of India or under the control of the Government of India.*”)

⁹⁸⁰ See *supra* ¶ 133.

⁹⁸¹ See *supra* ¶ 107.

⁹⁸² See *supra* ¶ 191.

⁹⁸³ See *supra* § II.H.4.

in 2020, India has denied Devas and Claimants their legitimate expectation that India would uphold and respect the arbitral process, even if it lost.

C. India Has Failed To Provide Claimants With Effective Means To Enforce Their Rights

414. India has failed to provide Claimants with “*effective means*” to assert their claims and enforce their rights. The analysis below proceeds in two parts. First, Claimants reference the BIT provision being invoked and then describe the applicable standard. Second, Claimants show that India has denied Claimants effective means to assert their claims and enforce their rights.

1. The Effective Means Obligation Is Incorporated By Virtue Of Article 4(5) Of The India-Kuwait Treaty

415. Claimants are entitled to effective means to enforce their rights and claims with respect to their investment.

416. Claimants are entitled to “*treatment which shall not be less favourable than that accorded to investors of any third state*”⁹⁸⁴ (“**MFN treatment**”). This includes, for example, Article 4(5) of the India-Kuwait BIT, which was in force at the time of Claimants’ investment, providing that:

*Each Contracting State shall maintain a favourable environment for investments in its territory by investors of the other Contracting State. Each Contracting State shall in accordance with its applicable laws and regulations provide effective means of asserting claims and enforcing rights with respect to investments and ensure to investors of the other Contracting State the right of access to its courts of justice, administrative tribunals and agencies and all other bodies exercising adjudicatory authority, and the right to employ persons of their choice, for the purpose of the assertion of claims and the enforcement of rights with respect to their investment.*⁹⁸⁵

⁹⁸⁴ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000], Art. 4(3).

⁹⁸⁵ **Exhibit CL-122**, Agreement Between the State of Kuwait and the Republic of India for the Encouragement and Reciprocal Protection of for the Encouragement and Reciprocal Protection of Investment [Date of Signatures 27 November 2001; Entry into Force 28 June 2003], Art. 4(5). While India unilaterally terminated the India-Kuwait BIT on 27 June 2018, the BIT was in force at the time of Claimants’ investment and remains operational for pre-termination investments until 27 June 2032, under its Article 16 (“*In respect of investments made prior to the date when the notice*

417. It is well accepted by tribunals that MFN provisions such as Article 10.4 of the BIT can be used to import a substantive provision from a treaty with a non-Party State, such as Article 4(5) of the India-Kuwait BIT.⁹⁸⁶ Indeed, the tribunal in *White Industries v. India* found that Article 4(5) of the India-Kuwait treaty could be incorporated in the India-Australia Treaty by virtue of the MFN provision in that treaty (which reads almost identically to the MFN provision in the BIT).⁹⁸⁷

2. Applicable Standard

418. The *White Industries* tribunal set out a comprehensive analysis of the effective means standard as follows:

(a) the "effective means" standard is lex specialis and is a distinct and potentially less demanding test, in comparison to denial of justice in customary international law;

(b) the standard requires both that the host State establish a proper system of laws and institutions and that those systems work effectively in any given case;

of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of fifteen(15) years from the date of termination of this Agreement.”).

⁹⁸⁶ See **Exhibit CL-123**, *Sergei Paushok, CJSC Golden East Company, and CJSC Vostokneftegaz Company v. The Government of Mongolia*, UNCITRAL, Award on Jurisdiction and Liability, 28 April 2011, ¶ 254 (“[T]he MFN clause of the Treaty allows for the integration into it of the broader provisions contained in the U.S. Mongolia BIT and the Denmark-Mongolia BIT.”); **Exhibit CL-057**, *Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶ 575 (parties agreed that MFN could be used to import an FET provision); **Exhibit CL-124**, *Hesham Talaat M. Al-Warraq v. Republic of Indonesia*, UNCITRAL, Final Award, 15 December 2014, ¶¶ 551-52, 554-55 (used the MFN provision to import FET, where the protection was not available in a multilateral treaty).

⁹⁸⁷ See **Exhibit CL-125**, Agreement between the Government of Australia and the Republic of India on the Promotion and Protection of Investments [Date of Signatures 26 February 1999; Entry into Force 4 May 2000], art. 4(2) (“A Contracting Party shall at all times treat investments in its own territory on a basis no less favourable than that accorded to investments of investors of any third country.”). See also **Exhibit CL-126**, *White Industries Australia Ltd. v. Republic of India*, UNCITRAL, Final Award, 30 November 2011, ¶¶ 11.2.1-11.2.9. See also **Exhibit CL-123**, *Sergei Paushok, CJSC Golden East Company, and CJSC Vostokneftegaz Company v. The Government of Mongolia*, UNCITRAL, Award on Jurisdiction and Liability, 28 April 2011, ¶ 254 (“[T]he MFN clause of the Treaty allows for the integration into it of the broader provisions contained in the U.S. Mongolia BIT and the Denmark-Mongolia BIT.”); **Exhibit CL-057**, *Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶ 575 (parties agreed that MFN could be used to import an FET provision); **Exhibit CL-124**, *Hesham Talaat M. Al-Warraq v. Republic of Indonesia*, UNCITRAL, Final Award, 15 December 2014, ¶¶ 551-52, 554-55 (used the MFN provision to import FET, where the protection was not available in a multilateral treaty); **Exhibit C-036**, J&M Award, ¶ 496 (“As to the possibility of importing the “full protection and security” clause of the Serbia-India BIT, the Tribunal shares the views expressed by the Claimants concerning the possibility of importing the “full protection and security” clause of the Serbia-India BIT.”).

(c) a claimant alleging a breach of the effective means standard does not need to establish that the host State interfered in judicial proceedings to establish a breach;

...

(f) the issue of whether or not ‘effective means’ have been provided by the host State is to be measured against an objective, international standard;

(g) a claimant alleging a breach of the standard does not need to prove that it has exhausted local remedies. A claimant must, however, adequately utilise the means available to it to assert claims and enforce rights. It will be up to the host State to prove that local remedies are available and the claimant to show that those remedies were ineffective or futile;

...

(i) as with denial of justice under customary international law, some of the factors that may be considered are the complexity of the case, the behaviour of the litigants involved, the significance of the interests at stake in the case and the behaviour of the courts themselves.⁹⁸⁸

419. India’s judicial processes have already earned it the rebuke of international tribunals. In *White Industries*, the tribunal (composed of Charles N. Brower, Christopher Lau, and J. William Rowley) found that India had breached its obligation to provide the claimant with effective means to assert its claims in both enforcement proceedings and set aside proceedings in relation to an arbitration award held by the claimant in that case. There, the claimant had been “‘asserting claims’ that the Indian courts lacked set aside jurisdiction on the facts before them.”⁹⁸⁹ The set aside proceedings remained unresolved after more than nine years, despite the Indian courts having expedited the proceedings.⁹⁹⁰ There the tribunal had “no difficulty in concluding the Indian judicial system’s inability to deal with *White*’s jurisdictional appeal in over nine years, and the Supreme Court’s inability to hear *White*’s

⁹⁸⁸ **Exhibit CL-126**, *White Industries Australia Ltd. v. Republic of India*, UNCITRAL, Final Award, 30 November 2011, ¶ 11.3.2. See also **Exhibit CL-127**, *Chevron Corporation and Texaco Petroleum Company v. Republic of Ecuador*, UNCITRAL, Partial Award on the Merits, 30 March 2010, ¶¶ 241-250 (assessing the effective means standard under the US-Ecuador BIT, which “employs almost identical wording to that found in Article 4(5) of the *India-Kuwait BIT*”).

⁹⁸⁹ **Exhibit CL-126**, *White Industries Australia Ltd. v. Republic of India*, UNCITRAL, Final Award, 30 November 2011, ¶ 11.4.2.

⁹⁹⁰ See **Exhibit CL-126**, *White Industries Australia Ltd. v. Republic of India*, UNCITRAL, Final Award, 30 November 2011, ¶¶ 11.4.5, 11.4.18-19.

jurisdictional appeal for over five years amounts to undue delay and constitutes a breach of India's voluntary assumed obligation of providing White with 'effective means' of asserting claims and enforcing rights."⁹⁹¹

420. While several tribunals, like *White Industries* and *Chevron*, have found a breach of the effective means obligation as a result of undue delay in domestic courts, such delay is not the only way in which States have deprived investors of effective means to enforce their rights. For example, in *Petrobart v. Kyrgyz Republic*, the tribunal found that the government's intervention in domestic court proceedings (by "requesting" in a letter that a court stay execution of a "valid judgment" relating to the claimant's investment) violated the government's obligation "to ensure that its domestic law provides effective means for the assertion of claims and the enforcement of rights with respect to investments."⁹⁹² In making this decision, the tribunal conceded that it was not certain "whether or to what extent" the government's request "had an effect on the Court's decision."⁹⁹³ What was clear, and sufficient to determine wrongfulness, was that because the court referred to the letter in its decision, it likely "attached some weight to it" and "considered [the letter] relevant for the decision."⁹⁹⁴
421. The tribunal in that case also considered changes to the Kyrgyz Republic's law on foreign investments, which had the effect of narrowing the definition of "foreign investment", finding that it was "retroactive legislation which is likely to have negative effects for some legal or physical persons in respect of previous business transactions." The tribunal found that it was "highly doubtful whether the adoption of the Foreign Investment Interpretation Law was compatible with the Kyrgyz Republic's duty under the Treaty to protect foreign investments."⁹⁹⁵

⁹⁹¹ **Exhibit CL-126**, *White Industries Australia Ltd. v. Republic of India*, UNCITRAL, Final Award, 30 November 2011, ¶ 11.4.19.

⁹⁹² **Exhibit CL-043**, *Petrobart Limited v. The Kyrgyz Republic (II)*, ARB No. 126/2003, Award, 29 March 2005, p. 28.

⁹⁹³ **Exhibit CL-043**, *Petrobart Limited v. The Kyrgyz Republic (II)*, ARB No. 126/2003, Award, 29 March 2005, p. 76.

⁹⁹⁴ **Exhibit CL-043**, *Petrobart Limited v. The Kyrgyz Republic (II)*, ARB No. 126/2003, Award, 29 March 2005, p. 85.

⁹⁹⁵ **Exhibit CL-043**, *Petrobart Limited v. The Kyrgyz Republic (II)*, ARB No. 126/2003, Award, 29 March 2005, p. 76. Note that the tribunal found that the "retroactive legislation" did not cause prejudice to the claimant in that case

3. India Did Not Provide Effective Means Of Asserting Claims and Enforcing Rights

422. India's system of laws and institutions with respect to the liquidation and set aside proceedings have been woefully deficient in providing Claimants with an effective means to assert their claims and enforce their rights under the Agreement and ICC Award. Specifically, India has:

- a. Deprived Claimants of "*access to its courts of justice*" and "*other bodies exercising adjudicatory authority*", i.e. the NCLT and NCLAT.
- b. Retroactively amended its arbitration and company law to interfere with Claimants' investment.

423. Claimants address each point below in turn.

a) India Deprived Claimants Access To Its Legal System

424. India refused to allow Claimant DEMPL from intervening in the Liquidation Proceedings on nonsensical and internally contradictory grounds. These grounds would have equally applied to other Claimants. Accordingly, India failed to provide Claimants with "*effective means of asserting claims and enforcing rights with respect to [their] investment*" in Devas before the NCLT, NCLAT and Supreme Court. India thereby failed to "*ensure to [Claimants] the right of access to its courts of justice, administrative tribunals and agencies and all other bodies exercising adjudicatory authority*".⁹⁹⁶

425. India has subverted Claimants' access to India's civil and criminal courts, and the due process protections they offer, and instead barreled through the CBI's and ED's untested and unproven criminal fraud allegations before the NCLT, which dispensed with them on a summary basis, despite the heavily contested and demonstrably false nature of the allegations. Yet the Indian Government has vowed to use these summary "*findings*" to

(because a prior tribunal had already established that the claimant's investment did not constitute a "*foreign investment*" under Kyrgyz law, based on the original legislation).

⁹⁹⁶ **Exhibit CL-122**, Agreement Between the State of Kuwait and the Republic of India for the Encouragement and Reciprocal Protection of for the Encouragement and Reciprocal Protection of Investment [Date of Signatures 27 November 2001; Entry into Force 28 June 2003], Art. 4(5).

bolster the very investigations by the CBI and ED which gave rise to the allegations underlying the summary “*findings*”,⁹⁹⁷ and is using them as *res judicata* “*findings of fraud*” to set aside the ICC Award.⁹⁹⁸ Accordingly India has completely circumvented its civil and criminal courts that would normally review the “*fraud findings*” to effectively convert its fraud allegations into “*findings*” based on a summary process, thus depriving Claimants of any “*effective means of asserting claims and enforcing rights*” before India’s civil and criminal courts in respect of the fraud charges.

426. Yet India had failed even to provide Claimants with any means at all, much less “*effective means*” to challenge the liquidation proceedings. As described above, the only person allowed to participate in the Liquidation Proceedings was Devas’s former director, Dr. Chandrasekhar. While Claimants’ interests could not be fully represented by Devas’s former director in any event, India also failed to give him “*effective means*” to enforce Devas’s rights and assert its claims in the Liquidation Proceedings. As discussed above:

- a. India liquidated Devas and transferred control of the company to itself with less than 24 hours’ notice to Devas and without providing it with any opportunity to make written submissions, or indeed explaining the basis of the purported urgency.⁹⁹⁹
- b. India deprived Devas “*the right to employ persons of their choice, for the purpose of the assertion of claims and the enforcement of rights with respect to their investment*”¹⁰⁰⁰ by firing all its counsel, including its counsel in India that had represented the company and its directors in the ED and CBI investigations that

⁹⁹⁷ See *supra* ¶ 234.

⁹⁹⁸ See *supra* ¶ 255.

⁹⁹⁹ See *supra* § II.F.2.

¹⁰⁰⁰ **Exhibit CL-122**, Agreement Between the State of Kuwait and the Republic of India for the Encouragement and Reciprocal Protection of for the Encouragement and Reciprocal Protection of Investment [Date of Signatures 27 November 2001; Entry into Force 28 June 2003], Art. 4(5).

formed the basis of Antrix’s liquidation petition (which was accepted without question by the NCLT, NCLAT and Supreme Court).¹⁰⁰¹

- c. India denied DEMPL/Dr. Chandrasekhar’s counsel access to Devas’s documents, which would have aided its defense as they had were seized by the Liquidator on Devas’s business and operations in India.¹⁰⁰² The Liquidator failed to respond to three separate requests from Dr. Chandrasekhar’s counsel (in May, June and August 2021) seeking access to these documents.¹⁰⁰³ Dr. Chandrasekhar’s counsel then applied to the NCLT “*seeking an order directing the Provisional Liquidator to disclose the documents it had seized*” in October 2021, which the NCLT has yet to rule on more than a year later.¹⁰⁰⁴
- d. India, without explanation, rushed the liquidation proceedings even though Devas had already been liquidated, depriving DEMPL, which had been forced to appoint new counsel who was unfamiliar with the investigations, to mount a defense to the thousands of pages of Antrix’s petition.¹⁰⁰⁵ Yet, the NCLT repeatedly denied requests from Dr. Chandrasekhar’s counsel for additional time and adjournments even when its senior counsel and family fell ill with COVID.¹⁰⁰⁶
- e. With a novel and unprecedented application of its law, India made “*findings of fraud*” against Devas without a proper trial or even the ability to cross examine Antrix’s supposed witnesses.¹⁰⁰⁷ India even did away with other procedural protections express in its own law, such as notice and advertisement.¹⁰⁰⁸

¹⁰⁰¹ See *supra* § II.F.3.

¹⁰⁰² See *supra* ¶ 159.

¹⁰⁰³ See **Exhibit C-386**, *Affidavit of Anuradha Dutt, CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 46.

¹⁰⁰⁴ See **Exhibit C-386**, *Affidavit of Anuradha Dutt, CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 46.

¹⁰⁰⁵ See *supra* ¶ 159.

¹⁰⁰⁶ See *supra* § II.H.5.

¹⁰⁰⁷ See *supra* ¶¶ 189-193, 195.

¹⁰⁰⁸ See *supra* ¶ 194.

- f. India gave *res judicata* effect to “*fraud findings*” that Claimants were prevented from ever challenging and which Devas itself did not have the opportunity to contest pursuant to a proper trial.¹⁰⁰⁹

b) India Wrongfully Intervened In The Liquidation And Set Aside Proceedings

427. Further, as in *Petrobart*,¹⁰¹⁰ India, either as a party or through senior government counsel, intervened in the liquidation and set aside proceedings to further interfere with Devas’s (and Claimants’) ability to assert their claims and enforce their rights. India’s interventions were not only considered “*relevant*” and given “*weight*” by its courts, but were used by Indian courts to materially progress India’s campaign to deny Devas (and the Claimants) their rights under the Agreement and ICC Award.
428. India’s interventions took several forms. First, India created a “*factual*” basis for Antrix’s subversion of the ICC Award before its domestic courts by spearheading and coordinating retaliatory investigations into Devas. As detailed in section II.C.1 above, in June 2011, shortly after Devas threatened Antrix (a wholly-owned government company) with arbitration proceedings for its wrongful attempt to terminate the Agreement, Antrix sought India’s help to retaliate against Devas, its officers and investors. Specifically, an Antrix official requested that India commence investigations into Devas under myriad statutes for unspecified violations of Indian law.¹⁰¹¹ Antrix made no attempt to disguise the reasons for its request, noting subsequently that these investigations would “*be of use*” to Antrix and India in their arbitrations with Devas.¹⁰¹² Despite its obvious *mala fide*, India obliged Antrix’s request, with several of its departments immediately instituting simultaneous, overlapping, baseless—but coercive and still-ongoing—criminal and civil investigations

¹⁰⁰⁹ See *supra* ¶ 250.

¹⁰¹⁰ See **Exhibit CL-043**, *Petrobart Limited v. The Kyrgyz Republic (II)*, ARB No. 126/2003, Award, 29 March 2005.

¹⁰¹¹ See **Exhibit C-026**, Letter from Dr. Radhakrishnan to DK Mittal, Department of Corporate Affairs, 1 June 2011.

¹⁰¹² **Exhibit C-179**, Letter from Department of Space to Ministry of Corporate Affairs, 17 January 2014, ¶ 3.

into Devas,¹⁰¹³ with the MCA going so far as to record in writing its “*hope*” that the findings of an investigation “*meet*” Antrix’s “*requirements*”.¹⁰¹⁴

429. Once Devas won the ICC Arbitration in 2015, India implemented its plan to use these investigations to avoid its liabilities under the ICC Award. Even though the investigation reports prepared by India (through the CBI and ED in its PMLA Action in particular) were, and continue to be, mere allegations pending a trial, Antrix used these reports before the NCLT; seeking, explicitly on the basis that they disclosed “*fraud*” affecting the Agreement, to forcibly liquidate Devas and set aside the ICC Award in its entirety.¹⁰¹⁵
430. Second, India authorized, and then actively supported, Antrix’s petition to forcibly liquidate Devas. As detailed in Section II.F, Indian law permitted Antrix to file a liquidation petition against Devas only with India’s prior authorization.¹⁰¹⁶ To prevent abuse of this provision, the applicable statute required that prior to granting such authorization, India grant the company sought to be wound up a “*reasonable opportunity of hearing*.”¹⁰¹⁷ Yet, just four days after Antrix filed an application seeking to liquidate Devas based exclusively on the CBI and ED’s untested criminal allegations of fraud—without granting a single hearing or even notice to Devas—India authorized Antrix to initiate legal proceedings against Devas in an unreasoned notification.¹⁰¹⁸
431. Antrix promptly instituted liquidation proceedings before the NCLT, naming the MCA as an answering respondent. The reason why the MCA was made a party became quickly apparent: in these proceedings, the MCA chose to align itself closely with Antrix and aggressively support Devas’s liquidation on the grounds that Devas had “*miserably failed*

¹⁰¹³ See *supra* § II.C.1.a)-II.C.4.

¹⁰¹⁴ **Exhibit C-174**, Letter from Ministry of Corporate Affairs to Dr. Radhakrishnan, 2 February 2012., ¶ 4.

¹⁰¹⁵ See *supra* ¶ 140.

¹⁰¹⁶ **Exhibit C-173**, § 271(c), Companies Act, 2013 (India).

¹⁰¹⁷ **Exhibit C-173**, § 272(3) proviso 2, Companies Act, 2013 (India) (“*Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.*”).

¹⁰¹⁸ **Exhibit C-063**, Sanction By Indian Government, 18 January 2021.

*to prove its bona-fide.*¹⁰¹⁹ The MCA also issued a ringing endorsement of Antrix’s fraud allegations (which were themselves based on India’s own ongoing investigations) stating that on a “*proper appreciation*” of the “*facts*” presented by Antrix it was “*clear*” that Devas was incorporated for “*fraudulent purpose*” and that its affairs were being conducted in a “*fraudulent manner*”.¹⁰²⁰

432. That the NCLT likely “*attached some weight to*” the MCA’s position and “*considered*” it “*relevant for the decision*”¹⁰²¹ is evident in its repeated references to the MCA’s arguments in its orders. For example, in its order directing Devas’s provisional liquidation, the NCLT noted:

*Shri M.M Juneja, DG, COA, Shri Sanjay Shorey, Director, Legal & Prosecution and Shri Sajeewan, C.V, ROC, while accepting the notice for the [MCA], has supported the case of [Antrix]. They have pointed various documents filed in the case to support winding up of [Devas]. So continuing the name of [Devas] on the rolls of Registrar of Companies is not at all warranted and it should be wound up and before passing final order, it is necessary to appoint provisional Liquidator in the meanwhile to take control of affairs of [Devas]. Therefore, they have urged the Tribunal to pass an Interim Orders as prayed for.*¹⁰²²

433. Similarly, in its final liquidation order, the NCLT extensively reproduced the MCA’s written arguments supporting Devas’s liquidation,¹⁰²³ noting specifically the argument that as the institution “*in charge of administration of the Companies Act*”¹⁰²⁴ it “*cannot be a mute spectator and allow any Company to fraudulently manage their affairs, which can be detrimental to the public interest.*”¹⁰²⁵ Ultimately, the NCLT directed Devas’s liquidation,

¹⁰¹⁹ **Exhibit C-230**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Reply of Ministry of Corporate Affairs, 22 March 2021, ¶ 9.

¹⁰²⁰ **Exhibit C-230**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Reply of Ministry of Corporate Affairs, 22 March 2021, p. 4.

¹⁰²¹ **Exhibit CL-043**, *Petrobart Limited v. The Kyrgyz Republic (II)*, ARB No. 126/2003, Award, 29 March 2005, ¶ 472.

¹⁰²² **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021, ¶ 6.

¹⁰²³ **Exhibit C-078**, NCLT Final Liquidator Order, PDF pp. 31-37.

¹⁰²⁴ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 4.

¹⁰²⁵ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 31.

echoing the MCA’s allegation that Devas’s acts are a “*fraud*” committed “*against public interest*”.¹⁰²⁶

434. Third, India has continuously failed to defend—through its employee the Liquidator—Devas’s legal interests in India after taking over its management and control in January 2021. Indian law requires that a Liquidator “*carry on the business of the Company*” under liquidation “*so far as may be necessary*” for its “*beneficial winding up*”.¹⁰²⁷ Yet, and as detailed above,¹⁰²⁸ the Liquidator’s first action immediately upon his appointment by the NCLT in January 2021 was to fire all of Devas’s Indian and international counsel. This gravely undermined Devas’s ability to defend its legal interests in the proceedings across India, including the liquidation, set aside and various ongoing criminal proceedings.¹⁰²⁹
435. The Liquidator then began actively attacking Devas’s interests, choosing to wholesale adopt Antrix’s allegations that Devas was a “*Sham/Shell company*” and the Devas-Antrix Agreement “*was vitiated by fraud*.”¹⁰³⁰ He went on to repeat these allegations without any basis whatsoever on several occasions,¹⁰³¹ going so far as to seek the NCLT’s permission to initiate new civil “*recovery*” proceedings against Devas’s former officials.¹⁰³² The

¹⁰²⁶ **Exhibit C-078**, NCLT Final Liquidator Order, PDF p. 83.

¹⁰²⁷ See **Exhibit C-173**, § 290(1)(a), Companies Act, 2013 (India).

¹⁰²⁸ See *supra* § II.F.3.

¹⁰²⁹ See *supra* § II.F.3; See also **Exhibit C-386**, Affidavit of Anuradha Dutt, *CC/Devas (Mauritius) Ltd. and Others v. The Republic of India*, NSD 347 of 2021 (Federal Court of Australia), 1 December 2022, ¶ 7(g); **Exhibit C-420**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18- cv-1360, Declaration of Anuradha Dutt, 2 March 2021, ¶¶ 5, 9-13 (describing the impact of the Liquidator’s actions on Devas’s defence in the liquidation and set aside proceedings); **Exhibit C-421**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18- cv-1360, Second Declaration of Anuradha Dutt, 19 March 2021, ¶¶ 13-16 (describing the impact of the Liquidator’s actions on Devas’s defence in the ongoing criminal proceedings); **Exhibit C-422**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18- cv-1360, Fifth Declaration of Anuradha Dutt, 3 December 2021, ¶ 8, 9 (setting out examples of the Liquidator failing to defend Devas’s interests).

¹⁰³⁰ **Exhibit C-071**, First Interim Report of the Devas Liquidator, ¶¶ 12, 32.

¹⁰³¹ See *supra*, ¶¶ 155, 160.

¹⁰³² **Exhibit C-224**, Third Report of Liquidator, 11 March 2021, ¶ 16.

Liquidator also distanced himself from any attempts to defend the ICC Award, stating that he had “*no design to either support or buttress*” Devas’s former positions.¹⁰³³

436. Fourth, mirroring the Kyrgyz Republic’s unlawful intervention in *Petrobart*, India enacted “*retroactive legislation*” and removed protections in place for foreign investments that had a demonstrable “*negative effect*[]” on Claimants’ attempts to enforce their rights.¹⁰³⁴
437. On 4 November 2020 (*the same day* that the U.S. court issued the ICC Award Judgment), India’s President issued the Arbitration Ordinance, which allowed parties to stay enforcement of an arbitration award without posting security when there is a *prima facie* case of fraud or corruption in the underlying agreement.¹⁰³⁵ This meant that Antrix, armed just with the CBI and ED’s allegations of fraud against Devas and the Agreement, was able to mount a new challenge to the ICC Award, in addition to seeking an interim stay of its enforcement during the pendency of the challenge. Thus, Devas’s ability to enforce the Award before Indian courts was indisputably “*negative*[ly] *effect*[ed]” by India’s retroactive interventions.¹⁰³⁶
438. For the above reasons, India’s interventions have deprived Claimants and Devas of effective means to assert their claims and enforce their rights.

4. Devas Adequately Utilized The Legal Means Available To It To Assert Claims And Enforce Rights In India

439. Claimants unquestionably “*use[d] all remedies that [were] available and might have rectified the wrong complained of.*”¹⁰³⁷

¹⁰³³ **Exhibit C-273**, *Antrix Corporation Limited v. Devas Multimedia Private Limited and Anr.* Company Petition No. 06/BB/2021 of 2021, Response of Liquidator to the Affidavit-in-Objection (to the Company Petition) filed by Dr. Chandrasekhar, 22 March 2021, p. 5.

¹⁰³⁴ **Exhibit CL-043**, *Petrobart Limited v. The Kyrgyz Republic (II)*, ARB No. 126/2003, Award, 29 March 2005, p. 76.

¹⁰³⁵ **Exhibit C-055**, The Arbitration and Conciliation (Amendment) Ordinance, 2020, No. 14 of 2020, 4 November 2020.

¹⁰³⁶ **Exhibit CL-043**, *Petrobart Limited v. The Kyrgyz Republic (II)*, ARB No. 126/2003, Award, 29 March 2005, p. 76.

¹⁰³⁷ **Exhibit CL-127**, *Chevron Corporation and Texaco Petroleum Company v. Republic of Ecuador*, UNCITRAL, Partial Award on the Merits, 30 March 2010, ¶ 326.

440. Claimant DEMPL repeatedly attempted to intervene in the liquidation process, in vain.¹⁰³⁸ As explained above, DEMPL sought to represent the shareholders' interests in the liquidation, which extended beyond the interests of Devas.¹⁰³⁹ Yet for various, conflicting reasons, none of which withstand scrutiny, the NCLT, NCLAT and Supreme Court, all denied DEMPL's petitions to intervene.¹⁰⁴⁰
441. DEMPL also challenged the government sanction that triggered the liquidation proceedings before the Karnataka High Court, which dismissed the petition and remarkably imposed exemplary costs on DEMPL for filing the action.¹⁰⁴¹
442. Additionally, while Claimants exercised control over Devas, the company applied to all the legal remedies available to it.
443. First, immediately after India's retaliatory campaign against Devas began in 2011, Devas repeatedly brought India's sham criminal investigations to the notice of its courts. For example, in 2011, after the MCA began its investigation, Devas promptly filed a petition before the Delhi High Court, challenging it as an abuse of process.¹⁰⁴² Devas and / or some of its former officers also mounted legal challenges against the ED's First FEMA Action,¹⁰⁴³ Second FEMA Action¹⁰⁴⁴ and PMLA Action¹⁰⁴⁵ before India's courts. Until its

¹⁰³⁸ See *supra* ¶ 322.

¹⁰³⁹ See *supra* ¶ 322.c.

¹⁰⁴⁰ See *supra* ¶¶ 196-197, 212, 227.

¹⁰⁴¹ **Exhibit C-231**, *Devas Employees Mauritius Private Limited v. Union of India & Ors.*, Writ Petition No. 6191 of 2021, 22 March 2021; **Exhibit C-232**, *Devas Employees Mauritius Private Limited v. Union of India & Ors.*, Writ Petition No. 6191 of 2021, Single-Judge Judgment, 28 April 2021, ¶ 54.

¹⁰⁴² See **Exhibit C-028**, Devas Writ Petition in the High Court of Delhi, 5 December 2011.

¹⁰⁴³ See **Exhibit C-208**, *Devas Multimedia Private Limited v. The Assistant Director Directorate of Enforcement*, Special Leave Petition by Devas (Civil) No. 18742 of 2019.

¹⁰⁴⁴ See **Exhibit C-274**, *Ranganathan Mohan v. Assistant Director, Directorate of Enforcement and Anr.* Appeal No. FE 70 of 2022, 9 September 2022 (pending before the FEMA Appellate Authority); **Exhibit C-275**, *Nataraj Dakshinamurthy v. Assistant Director, Directorate of Enforcement and Anr.* Appeal No. FE 69 of 2022, 9 September 2022 (pending before the FEMA Appellate Authority); **Exhibit C-276**, *D. Venugopal v. Assistant Director, Directorate of Enforcement and Anr.* Appeal No. FE 68 of 2022, 9 September 2022 (pending before the FEMA Appellate Authority); **Exhibit C-277**, *MG Chandrashekhar v. Assistant Director, Directorate of Enforcement and Anr.* Appeal No. FE 67 of 2022, 9 September 2022 (pending before the FEMA Appellate Authority).

¹⁰⁴⁵ See **Exhibit C-212**, *Devas Multimedia Private Limited v. The Directorate of Enforcement*, Writ Petition No. 10739 of 2019, 6 March 2019 (pending before the Karnataka High Court).

liquidation, Devas also appeared through counsel in the CBI proceedings to defend its innocence.¹⁰⁴⁶

444. Second, Devas, before it was taken over by the Liquidator, spent several years defending the ICC Award before India’s courts. Shortly after the ICC Award was pronounced in September 2015, Devas attempted to enforce the award in India in a petition filed before the Delhi High Court.¹⁰⁴⁷ Simultaneously, Devas defended the ICC Award in set aside proceedings that Antrix had instituted before in Bangalore (India).¹⁰⁴⁸ After the Supreme Court consolidated these proceedings before the Delhi High Court in November 2020,¹⁰⁴⁹ Antrix sought to amend its set aside petition to bring India’s “*fraud*” allegations on the record and seek set aside of the ICC Award on this basis.¹⁰⁵⁰ At this time, the Liquidator had already assumed control of Devas, and did not appoint counsel to defend Devas or the ICC Award before the Delhi High Court, failing also to file any response or oppose Antrix’s application to amend the set aside petition.¹⁰⁵¹ Instead, it fell to DEMPL to apply to intervene in these proceedings and challenge Antrix’s baseless allegations on Devas’s behalf.¹⁰⁵²
445. Accordingly, Claimants “*utilized*”, for over a decade, “*the means available to them*” under Indian law. However, as soon as India was faced with the prospect having to pay a large judgement, India rapidly closed off all legal avenues available to Claimants to defend their

¹⁰⁴⁶ The Liquidator began appearing for Devas in the CBI proceedings from 30 January 2021 onwards, and immediately acted against its interests in the proceedings. See **Exhibit C-069**, CBI Order and Deferment Application of Devas, 30 January 2021, p. 2.

¹⁰⁴⁷ See **Exhibit C-279**, *Devas Multimedia Private Limited v. Antrix Corporation Limited*, OMP (I) 558/2015, 25 September 2015.

¹⁰⁴⁸ **Exhibit C-035**, Memorandum of Petition Under Section 34 Of The Arbitration & Conciliation Act, 1996; **Exhibit C-205**, Antrix’s Challenge Against ICC Award, 3 December 2015.

¹⁰⁴⁹ **Exhibit C-054**, Supreme Court Order, 4 November 2020.

¹⁰⁵⁰ **Exhibit C-061**, Application for Amendment under Order VI Rule 17 of the Civil Procedure Code, 1908.

¹⁰⁵¹ See **Exhibit C-420**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18- cv-1360, Declaration of Anuradha Dutt, 2 March 2021, ¶ 9.

¹⁰⁵² **Exhibit C-268**, *Antrix Corporation Ltd. v. Devas Multimedia Pvt Ltd.*, OMP (Comm) 11 of 2021, Interlocutory Application on behalf of DEMPL, 6 April 2021.

interest in Devas, thus depriving Claimants of “*effective means*” to assert their claims and enforce their rights.

D. India Has Failed To Provide Claimants With Full Protection And Security

446. India has failed to accord Claimants full protection and security. As described below, India has failed to provide Claimants with similar protections accorded to investors from other countries as required by the BIT’s MFN provision, including to provide a legally stable and secure environment.

1. The Obligation To Provide Full Protection And Security Is Incorporated By Virtue Of Article 4(2) of the India-Lithuania Treaty and/or Article 3(2) of India-UK BIT and/or Article 3(2) of Germany-India BIT

447. Pursuant to the MFN provision in Article 4(3) of the BIT, Claimants are entitled to “*treatment which shall not be less favourable than that accorded to investors of any third state*”.¹⁰⁵³

448. When Claimants made their investments in 2006-2009, they became entitled to any more favorable substantive protections granted to investors under other Indian investment treaties that were in force at the time of the investment. This includes, for example, Article 3(2) of the India-Lithuania BIT, which provides that:

*Each Contracting Party shall accord fair and equitable treatment, full protection and security to all investments made by the investors of the other Contracting Party on a non discriminatory basis.*¹⁰⁵⁴

449. It also includes Article 3(2) of the India-UK BIT, which states:

*Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.*¹⁰⁵⁵

¹⁰⁵³ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000], art. 4(3).

¹⁰⁵⁴ **Exhibit CL-002**, Agreement between the Republic of India and the Republic of Lithuania for the Promotion and Protection and Investments [Date of Signatures 31 March 2011; Entry into Force 1 December 2011], art. 3(2).

¹⁰⁵⁵ **Exhibit CL-003**, Agreement between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland for the Promotion and Protection of Investments [Date of Signatures

450. As discussed above, it is well accepted by tribunals that MFN provisions such as Article 10.4 of the BIT can be used to import a substantive provision from a treaty with a non-Party State, such as Article 3(2) of the India-Lithuania BIT or Article 3(2) of the India-UK BIT.¹⁰⁵⁶ Indeed, the Initial BIT Tribunal incorporated the full protection and security (“FPS”) standard included in the India-Serbia BIT through the MFN provision contained in the BIT.¹⁰⁵⁷

2. Applicable Standards

451. The FPS standard owed to Claimants’ investments requires the host State’s guarantee to provide a legally stable and secure investment environment. To satisfy this standard, the

14 March 1994; Entry into Force 1 June 1995]. While India unilaterally terminated the India-UK on 23 March 2017, the BIT remains operational for pre-termination investments until 22 March 2032, under its Article 15 (“*in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of fifteen years after the date of termination and without prejudice to the application thereafter of the rules of general international law.*”). See also **Exhibit CL-004**, Agreement between the Federal Republic of Germany and the Republic of India for the Promotion and Protection and Investments [Date of Signatures 10 July 1995; Entry into Force 13 July 1998], Article 3(2) (“*Each contracting party shall accord to investments as well as to investors in respect of such investments at all times fair and equitable treatment and full protection and security in its territory.*”) India unilaterally terminated the Germany-India BIT on 23 March 2017, but the BIT remains operational for pre-termination investments until 22 March 2032, under its Article 15 (“*in respect of investments made while the Agreement is in force, its provisions shall continue to be in effect with respect to such investments for a period of fifteen years after the date of termination and without prejudice to the application thereafter of the rules of general international law.*”); **Exhibit CL-128**, Agreement Between the Government of the Republic of India and the Federal Government of the Federal Republic of Yugoslavia for the Reciprocal Promotion and Protection of Investments [Date of Signatures 31 January 2003; Entry into Force 24 February 2009], Article 3(2) (“*Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party and shall enjoy full legal protection and security.*”). India unilaterally terminated the India-Serbia BIT on 22 March 2020, but the BIT remains operational for pre-termination investments until 22 March 2030, under its Article 15 (“*the Agreement shall continue to be effective for a further period of ten years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.*”).

¹⁰⁵⁶ See **Exhibit CL-126**, *White Industries Australia Ltd. v. Republic of India*, UNCITRAL, Final Award, 30 November 2011, ¶¶ 11.2.1-11.2.9 (finding that more favorable substantive provisions in the India-Kuwait treaty could be incorporated in the India-Australia Treaty by virtue of the latter’s MFN provision); **Exhibit CL-123**, *Sergei Paushok, CJSC Golden East Company, and CJSC Vostokneftegaz Company v. The Government of Mongolia*, UNCITRAL, Award on Jurisdiction and Liability, 28 April 2011, ¶ 254 (“[T]he MFN clause of the Treaty allows for the integration into it of the broader provisions contained in the U.S. Mongolia BIT and the Denmark-Mongolia BIT.”); **Exhibit CL-057**, *Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶ 575 (“parties agree[d]” that an MFN clause could be used to import an FET provision); **Exhibit CL-124**, *Hesham Talaat M. Al-Warraq v. Republic of Indonesia*, UNCITRAL, Final Award, 15 December 2014, ¶¶ 551-52, 554-55 (where the tribunal used the MFN provision to import an FET obligation, where the protection was not available in a multilateral treaty).

¹⁰⁵⁷ See **Exhibit C-036**, *J&M Award*, ¶ 496 (“As to the possibility of importing the “full protection and security” clause of the Serbia-India BIT, the Tribunal shares the views expressed by the Claimants concerning the possibility of importing the “full protection and security” clause of the Serbia-India BIT.”).

host State is required to: (i) exercise “vigilance” which requires the host State to “take all measures necessary to ensure the full enjoyment and protection and security of [the investor’s] investment”;¹⁰⁵⁸ and (ii) take reasonable, precautionary and preventive action against harm to the protected investment.¹⁰⁵⁹ The host State must accordingly take all reasonable measures to protect foreign investments against harm from both the actions of the host State and its representatives and the actions of third parties.

452. As explained by Professor Christoph Schreuer, the content of the FET standard and the FPS standard differ. On the one hand, “[t]he FET standard consists mainly of an obligation on the host State’s part to desist from behaviour that is unfair and inequitable.”¹⁰⁶⁰ On the other hand:

[B]y assuming the obligation of full protection and security the host State promises to provide a factual and legal framework that grants security and to take the measures necessary to protect the investment against adverse action by private persons as well as State organs. In particular, this requires the creation of legal remedies against adverse action affecting the investment and the creation of mechanisms for the effective vindication of investors’ rights.¹⁰⁶¹

453. A State’s obligation to provide FPS extends not only to investments, but also to the investors making those investments.¹⁰⁶² Tribunals regularly find breaches where States harass or enact coercive measures against an investor company or its principals. For example, the tribunal in *Biwater v. Tanzania* found the State breached FPS after engaging

¹⁰⁵⁸ **Exhibit CL-129**, *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997, ¶ 6.05.

¹⁰⁵⁹ See **Exhibit CL-005**, *Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Final Award, 27 June 1990, ¶ 85(B) (finding breach of FPS and violation of the due diligence obligation through “failure to resort to [. . .] precautionary measures” and “inaction and omission”).

¹⁰⁶⁰ **Exhibit CL-006**, Christoph Schreuer, *Full Protection and Security*, JOURNAL OF INTERNATIONAL DISPUTE SETTLEMENT (2010), p. 14.

¹⁰⁶¹ **Exhibit CL-006**, Christoph Schreuer, *Full Protection and Security*, JOURNAL OF INTERNATIONAL DISPUTE SETTLEMENT (2010), p. 14.

¹⁰⁶² See **Exhibit CL-005**, *Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Final Award, 27 June 1990, ¶ 85(B) (FPS breached where the host State failed to take reasonable steps to protect farm staff from being killed); **Exhibit CL-102**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, ¶ 152 (“An investor whose local staff had been assaulted by the police while at work could well claim that its investment was not accorded ‘treatment in accordance with international law, including . . . full protection and security’ if the government were immune from suit for the assaults.”).

in conduct that was “*unnecessary and abusive*” by removing management from an investor’s offices *without* the use of force.¹⁰⁶³ In *CME v. Czech Republic*, the State breached the FPS standard because its conduct was “*targeted to remove the security and legal protection of the Claimant's investment in the Czech Republic*” through the amendment of laws and arbitrary conduct by the host State.¹⁰⁶⁴ And, in *Tatneft v. Ukraine*, a series of acts—including the “*forceful entry into the premises [of the company] and the retention of certain officials in their offices*”—were “*sufficient to conclude that indeed the Respondent failed to provide the appropriate police protection.*”¹⁰⁶⁵

3. India Did Not Accord Full Protection And Security To Claimants’ Investment Because It Failed to Guarantee A Legally Stable And Secure Environment

454. India has failed to fulfill its obligation to protect Claimants and their investments in India by (i) failing to exercise “*vigilance*” in ensuring Claimants’ full enjoyment and protection of Claimants’ investment; and (ii) not taking reasonable measures to protect Claimants’ investments against harm. India has in fact done the opposite in both cases, actively targeting Claimants’ investment by among other things, commencing harassing and frivolous investigations against Devas personnel, forcing Devas into liquidation and placing it in the hands of a government employee, the Liquidator, and seeking Mr. Viswanathan’s extradition.

a) India Has Failed To Exercise Vigilance

455. India has failed to exercise “*vigilance*” in ensuring Claimants’ full enjoyment and protection of Claimants’ investment. Rather, India’s conduct has run exactly opposite its obligations, and, taken as a whole, demonstrate a coordinated government effort to strip Claimants of their investment through (i) physical detention and harassment of Devas

¹⁰⁶³ **Exhibit CL-130**, *Biwater Gauff (Tanzania) Limited. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶ 731.

¹⁰⁶⁴ **Exhibit CL-051**, *CME Czech Republic B.V. (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, ¶ 613.

¹⁰⁶⁵ **Exhibit CL-054**, *OAO Tatneft v. Ukraine*, UNCITRAL, Award on the Merits, 29 July 2014, ¶ 428.

employees;¹⁰⁶⁶ (ii) baseless, protracted criminal investigations¹⁰⁶⁷ leading to (iii) an expedited liquidation effort with the intent to deprive Devas of the ICC Award and prevent its enforcement;¹⁰⁶⁸ and (iv) finally, the decision setting aside the ICC Award based on these unproven, untested, and admittedly *prima facie* fraud allegations.¹⁰⁶⁹

456. India's conduct began immediately after Devas initiated the ICC Arbitration, when it opened investigations against Devas, its officers, employees, and investors.¹⁰⁷⁰ This effort came to a head when India raided Devas's offices, held its employees hostage overnight without access to counsel or their families, and forced them to sign statements they were not allowed to read.¹⁰⁷¹
457. Subsequently, India used the coerced statements in part to support its charge sheets and began frivolous criminal proceedings against Devas, its officers and employees, including Mr. Viswanathan.
458. India had international enforcement actions to contend with, however, and the same day that a large judgment was entered against Antrix in a U.S. court, India rushed to amend its law to take immediate advantage of the CBI and ED's allegations¹⁰⁷² and worked tooth and nail to liquidate Devas, its award creditor.¹⁰⁷³
459. Once appointed, the Liquidator wasted no time in hindering enforcement of the ICC Award. The Liquidator immediately fired all of Devas's local and international counsel, undermining its ability to defend itself in the criminal and liquidation proceedings against it in India.¹⁰⁷⁴ Not only that, the Liquidator worked *against* India's interests in the

¹⁰⁶⁶ See *supra* ¶ 109.

¹⁰⁶⁷ See *supra* §§ II.C, II.C.4.

¹⁰⁶⁸ See *supra* § II.F.

¹⁰⁶⁹ See *supra* § II.H.4.

¹⁰⁷⁰ See *supra* § II.C.1.

¹⁰⁷¹ See *supra* ¶ 109-110.

¹⁰⁷² See *supra* ¶¶ 133, 437.

¹⁰⁷³ See *supra* ¶¶ 430-431.

¹⁰⁷⁴ See *supra* ¶ 434.

liquidation proceedings, wholesale adopting Antrix’s “*fraud*” allegations against Devas, and in the set aside proceedings, refusing to defend the ICC Award.¹⁰⁷⁵ The Liquidator’s efforts were so blatant that he drew the frustration of the U.S. district court judge, who found that the Liquidator’s “*motion for a stay . . . lacks merit under these circumstances and is intended to further delay these proceedings.*”¹⁰⁷⁶

460. Ultimately, India’s efforts culminated in the set aside of the ICC Award, based on *prima facie* allegations accepted as fact by the Supreme Court in a novel application of the law.¹⁰⁷⁷

461. Thus, far from exercising “*vigilance*” and creating a factual and legal framework that grants security and protects investments against undue action by State organs, or providing a method for Claimants to effectively vindicate their rights, India has amassed its agencies in a campaign against Devas and abused its sovereign powers in an effort to evade its debts.

b) India Has Not Taken Reasonable Measures To Protect Claimants’ Investments

462. Instead of taking measures to protect Claimants’ investments against harm, India has, again, done the opposite.

463. India did not take reasonable measures to protect Claimants’ investments against harm for many of the same reasons it failed to exercise vigilance. Specifically, it: (i) opened and maintained ongoing criminal investigations because of Devas’s initiation and prosecution of arbitration proceedings against India;¹⁰⁷⁸ (ii) approved and caused the liquidation of Devas because of these frivolous investigations and even sent senior government lawyers to argue on Antrix’s behalf;¹⁰⁷⁹ (iii) appointed a Liquidator who failed to perform his statutory duty to defend Devas’s assets;¹⁰⁸⁰ (iv) amended its arbitration law to frustrate

¹⁰⁷⁵ See *supra* ¶ 435.

¹⁰⁷⁶ **Exhibit C-082**, *Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd.*, U.S. District Court for the Western District of Washington, 2:18- cv-1360, Minute Order (Dkt. No. 132), 9 August 2021, ¶ 1.

¹⁰⁷⁷ See **Exhibit C-270**, *Antrix Corporation Ltd. v. Devas Multimedia Pvt Ltd.*, OMP (Comm) 11 of 2021, Single-Judge Judgment, 29 August 2022, ¶¶ 160, 169-72.

¹⁰⁷⁸ See *supra* ¶ 428.

¹⁰⁷⁹ See *supra* ¶¶ 144, 430-433.

¹⁰⁸⁰ See *supra* ¶ 434-435.

enforcement of the ICC Award;¹⁰⁸¹ (v) set aside the award relying on the same untested criminal allegations used to support the liquidation proceedings;¹⁰⁸² and (vi) expedited the criminal proceedings against Mr. Viswanathan and seeking to extradite him from India to the US.¹⁰⁸³

464. In addition, India's attempts to extradite Mr. Viswanathan to India further aggravate its failure to protect Claimants' investments from harm. As described in Mr. Viswanathan's witness statement and in Claimants' Application for Interim Measures, India's use of extradition proceedings and abuse of the MLAT process in an attempt to intimidate Claimants and Mr. Viswanathan into dropping their claims against India is both unethical and demonstrates a patent failure to protect Claimants' investments from harm.¹⁰⁸⁴ Tribunals have repeatedly found a breach of FPS when States have taken harassing action without the use of physical violence, and India's actions here—the threat of extradition, the forced detention of Devas employees overnight, and the seizure of the company—meet the threshold for a breach. Because India's obligations to provide FPS extend to Devas and its principals, it has breached them in the course of its harassment campaign.
465. India, in taking the actions described above and in pursuing Mr. Viswanathan's extradition based on unsubstantiated and frivolous allegations, has violated its obligations under the BIT.

E. India Has Failed To Allow Claimants To Freely Transfer Funds

466. India has violated its BIT obligations by failing to allow Claimants to freely transfer funds. As explained below, India has frozen Devas's bank accounts under false pretenses for an unreasonable period of time, thereby violating its obligations.

¹⁰⁸¹ See *supra* ¶ 437.

¹⁰⁸² See *supra* § II.H.4.

¹⁰⁸³ See *supra* § II.H.3.

¹⁰⁸⁴ First Witness Statement of Ramachandran Viswanathan, 22 August 2022, ¶¶ 49-50.

1. Applicable Standard

467. Article 7 of the BIT states:

1. Each Contracting Party shall permit all funds of an investor of the other Contracting Party related to an investment in its territory to be freely transferred, without unreasonable delay and on a nondiscriminatory basis. Such funds may include:

a. capital and additional capital amounts used to maintain and increase investments;

b. net operating profits including dividends and interest in proportion to their shareholdings;

c. repayments of any loan including interest thereon, relating to the investment;

d. payment of royalties and services fees relating to the investment;

e. proceeds from sales of their shares;

f. proceeds received by investors in case of sale or partial sale or liquidation;

g. the earnings of citizens/nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party;

h. any compensation paid pursuant to Articles 5 and 6.

2. All transfers shall be effected without unreasonable delay in any freely convertible currency at the market rate of exchange prevailing on the date of transfer.¹⁰⁸⁵

468. This type of provision has been found to be of crucial importance in the context of investor-State arbitration: “*the guarantee that a foreign investor shall be able to remit from the investment country the income produced, the reimbursement of any financing received or royalty payment due, and the value of the investment made, plus any accrued capital gain, in case of sale or liquidation, is fundamental to the freedom to make a foreign investment*”

¹⁰⁸⁵ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000], art. 7.

and an essential element of the promotional role of BITs.”¹⁰⁸⁶ Pakistan, for example, was found in violation of this provision when, by detaining the investor’s vessels (which formed part of its investment), it deprived the investor of their free disposal.¹⁰⁸⁷

2. India Restricted Free Transfer Of Claimants’ Funds

469. Since India and Antrix breached their respective obligations by terminating the Devas-Antrix Agreement, Devas was forced to expend considerable resources to defend its contractual rights.¹⁰⁸⁸ In early 2017, pursuant to its PMLA investigation and citing the coerced statements as evidence, the ED froze Devas’s Indian bank accounts and mutual fund investments, as well as several Devas employees’ bank accounts. A provisional order of attachment followed that order, resulting in the seizure of approximately USD 3 million.¹⁰⁸⁹ Even though nobody at the time (or indeed now) had been convicted of any crime in India or elsewhere involving the Devas-Antrix Agreement, the ED restricted funds *based on nothing but its own allegations* yet to be tested before any court. Those funds remain frozen to this day.
470. In March 2021, the Liquidator filed an application before the PMLA court seeking release of the funds, on the grounds that “*in the current circumstances that apprehension [that non-attachment of the funds would frustrate the PMLA proceedings] is no longer relevant as the property will be managed by the Provisional Liquidator.*”¹⁰⁹⁰ The Liquidator noted that he had “*not been appointed under creditor driven winding up*” and asked for the funds to be released to pay Devas’s new legal counsel who he subsequently instructed to obstruct

¹⁰⁸⁶ **Exhibit CL-131**, *Continental Casualty Company v. Argentine Republic*, ICSID Case No. ARB/03/9, Award, 5 September 2008, ¶ 239.

¹⁰⁸⁷ See **Exhibit CL-059**, *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, 22 August 2017, ¶¶ 653-656.

¹⁰⁸⁸ See **Exhibit C-283**, ED Provisional Attachment Order No. 05 of 2017, 27 February 2017, p. 21 (depicting a chart showing “*Legal Fees to USA Firms*” flowing from Devas in the amount of INR 230,11,14,734 (approximately 27.8 million USD)).

¹⁰⁸⁹ See **Exhibit C-075**, Application for Release of Devas’s Property by ED filed by the Liquidator, 1 March 2021, PDF pp. 3-4 (describing amounts attached).

¹⁰⁹⁰ **Exhibit C-075**, Application for Release of Devas’s Property by ED filed by the Liquidator, 1 March 2021, PDF p. 7.

enforcement of the ICC Award.¹⁰⁹¹ In other words: the Liquidator sought to release Devas's (and, by extension, Claimants') own funds in order to finance frustration of the global enforcement efforts.

471. The Liquidator later withdrew that application (citing a need for more details of pending cases) but he still controls Devas, and has declared he will not release any funds to the shareholders, whom he has stated (without support) are complicit in the (again, unsupported) "*fraud findings*".¹⁰⁹² Accordingly, Claimants have been unable to access the frozen funds for over six years. That amount of time is unconscionable and constitutes unreasonable delay.

F. India Has Breached The Treaty's Arbitration Agreement

472. Article 8(2)(c) of the BIT provides that "[a]ny dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement" may be submitted "to an ad hoc arbitral tribunal set up in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976".¹⁰⁹³ Article 8(3) provides that:

*Where a dispute has been submitted for resolution under paragraph 2(a), 2(b), 2(c) or 2(d) above, the choice so exercised shall not be changed except with the consent of the Contracting Party which is party to the dispute.*¹⁰⁹⁴

473. International jurisprudence makes clear that a party can recover damages on an indemnity basis if it suffers loss as a result of proceedings that have been started in breach of an arbitration agreement.¹⁰⁹⁵ According to Paul Friedland:

¹⁰⁹¹ **Exhibit C-075**, Application for Release of Devas's Property by ED filed by the Liquidator, 1 March 2021, PDF pp. 7, 10-11.

¹⁰⁹² See *supra* ¶¶ 155, 160.

¹⁰⁹³ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000].

¹⁰⁹⁴ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000] (emphasis added).

¹⁰⁹⁵ See e.g. **Exhibit CL-147**, *A v B No 2* [2007] EWHC 54 (the English High Court finding that, provided that it could be established that breach of an arbitration agreement had caused the innocent party reasonably to incur legal costs,

As arbitrators are plainly empowered to award monetary relief as between the parties, an award of damages and/or an indemnity for breach of an arbitration agreement raises no special issue of arbitral authority.

A claim for monetary relief also has the advantage of procedural simplicity. A claim for monetary relief for breach of an arbitration agreement would likely be considered in the ordinary course of the arbitration, together with other claims for breach. . .

Where arbitral jurisdiction is treaty-based, the choice of law is not difficult: a breach of the undertaking to arbitrate should be assessed under treaty principles. . . the principles of damages usually applicable to treaty claims would logically apply.¹⁰⁹⁶

474. Such damages “*should include the arbitration claimant's legal fees and costs associated with any anti-suit injunction application, and those associated with challenging jurisdiction in, and defending against, the foreign proceedings. The award could also include an indemnity against the judgment of the foreign court.*”¹⁰⁹⁷
475. As explained at Section II.H.5, since January 2023, clearly fearful of being found liable by this Tribunal, India first sought to enjoin, then refused to participate in this Arbitration, in violation of this Tribunal’s Interim Award and Article 8(3) of the BIT.
476. On 12 January 2023, four months after the Parties had signed the Terms of Appointment, ten days after the Parties agreed an extension for Claimants to file their Memorial, and

those costs should normally be recoverable on an indemnity basis); **Exhibit CL-148**, *CMA CGM SA v. Hyundai Mipo Dockyard Co Ltd* (2008) EWHC 2791 (the English court upholding an arbitral award issued by a tribunal with seat in London, awarding damages for breach of the arbitration agreement); **Exhibit CL-149**, *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 (the Singapore Court of Appeal finding that where it is established that a breach of an arbitration clause has caused an innocent party reasonably to incur legal costs, those costs should normally be recoverable on an indemnity basis); **Exhibit CL-157**, Case 4A_232/2013 Swiss Federal Supreme Court (the Swiss Court upholding an award made by an arbitral tribunal, finding that a party who had wrongly instituted court proceeding in Greece was in breach of an arbitration agreement, and awarding to the innocent party legal costs for the court proceedings and the amount of any payments that the Greek court may possibly order the innocent party to make).

¹⁰⁹⁶ **Exhibit CL-158**, Paul Friedland “A Claim for Monetary Relief for Breach of Agreement to Arbitrate as a Supplement or Substitute to an Anti-Suit Injunction,” in Albert Jan Van Den Berg (ed.), *International Arbitration 2006: Back to Basics? ICCA International Arbitration Congress Montréal, 31 May – 3 June 2006*, p. 2 (PDF). See also **Exhibit CL-159**, Jean-Pierre Fierens/Bart Volders, *Monetary Relief in Lieu of Anti-Suit Injunctions for Breach of Arbitration Agreements in RBA N° 34 – ArbJun/2012 – Doutrina Internacional*.

¹⁰⁹⁷ **Exhibit CL-158**, Paul Friedland “A Claim for Monetary Relief for Breach of Agreement to Arbitrate as a Supplement or Substitute to an Anti-Suit Injunction,” in Albert Jan Van Den Berg (ed.), *International Arbitration 2006: Back to Basics? ICCA International Arbitration Congress Montréal, 31 May – 3 June 2006*, p. 6 (PDF).

eight days before the newly-agreed deadline of 20 January for Claimants to file their Memorial, India applied for and obtained an *ex parte* anti-arbitration injunction from the Mauritian Supreme Court (which it later now sought to make perpetual).¹⁰⁹⁸ In response to Claimants’ exercise of their legal rights by filing the Second Interim Measures application dated 17 January 2023, India initiated contempt of court proceedings in Mauritius against Claimants, which are ongoing as at the date of this Memorial.¹⁰⁹⁹ India then sought to argue before Mauritian courts why this Tribunal lacked jurisdiction under the BIT in clear violation of fundamental *competence-competence* principles.

477. On 10 March 2023, this Tribunal issued its Interim Award, ordering India to cease the Mauritian injunction action and refrain from taking any additional action that could threaten the integrity of this Arbitration.¹¹⁰⁰ In flagrant violation of international law and its obligations under it, India refused to abide by the Tribunal’s Award. While India’s actions are egregious, they are not surprising given its propensity to violate awards it loses. India has made clear its position: that this Tribunal “*ranks lower*” than its own domestic courts, and that it “[would] *not be able to participate*” in this Arbitration.¹¹⁰¹
478. India’s actions are in clear breach of its agreement to arbitrate, as contained in Article 8 of the Treaty, as confirmed by the Tribunal in its Interim Award. As a result of India’s breach, Claimants have been forced to defend themselves in costly and time consuming litigation in the Mauritius courts, opposing the anti-arbitration injunction, defending themselves in the bogus contempt of court proceedings brought against them.¹¹⁰²
479. Therefore, Claimants respectfully request that the Tribunal make an award of damages, fully indemnifying Claimants for the legal fees incurred in the Mauritian anti-arbitration injunction, contempt, and company law proceedings, as a result of India’s breach of the Treaty’s arbitration agreement.

¹⁰⁹⁸ See *supra* ¶¶ 254-256.

¹⁰⁹⁹ See *supra* ¶ 258.

¹¹⁰⁰ Interim Award, ¶ 98.

¹¹⁰¹ See *supra* ¶¶ 256, 261.

¹¹⁰² See *supra* ¶ 262.

V. CLAIMANTS ARE ENTITLED TO DAMAGES

480. Article 8 of the BIT empowers this Tribunal to issue a final and binding award in settlement of this dispute. Claimants establish India’s violations of the BIT above. Because of these breaches, Claimants are entitled to reparation in accordance with the BIT and applicable principles of international law.
481. Article 6 of the BIT provides that lawful expropriation must be accompanied by, among other things, “*fair and equitable compensation*” that “*shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is earlier*” and “*shall include interest at a fair and equitable rate until the date of payment*”.¹¹⁰³ However, as described above, the expropriation here was not lawful.
482. Principles of customary international law govern the appropriate remedy for these violations of the BIT.¹¹⁰⁴ The *Case Concerning the Factory at Chorzów* stated the purpose and principle of reparation under international law:

*The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that **reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.** Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.*¹¹⁰⁵

¹¹⁰³ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments, art. 6 (1).

¹¹⁰⁴ **Exhibit CL-001**, Agreement between the Republic of India and the Republic of Mauritius for the Promotion and Reciprocal Protection of Investments [Date of Signatures 4 September 1998; Entry into Force 20 June 2000], Art. 11(1) (“If[. . .] obligations under international law existing at present or established hereafter [. . .] contain rules [. . .] entitling investments and returns of investors of the other Contracting Party to treatment more favourable than that provided for by the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.”).

¹¹⁰⁵ **Exhibit CL-133**, *Case Concerning the Factory at Chorzów (Germany v. Poland)*, Judgment, 13 September 1928, 1928 P.C.I.J. (Ser. A) No. 17, PDF p. 89 (emphases added).

483. The authoritative *Chorzów* standard¹¹⁰⁶ is codified in the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts (“**Articles on State Responsibility**”).¹¹⁰⁷ Specifically, Article 31(1) of the Articles on State Responsibility provides that “[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”¹¹⁰⁸
484. The Articles on State Responsibility identify three forms of reparation, with restitution being the primary remedy.¹¹⁰⁹ Restitution requires the State to “*re-establish the situation which existed before the wrongful act was committed.*”¹¹¹⁰ Where restitution is materially impossible, however, Article 36 provides that the “*State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.*”¹¹¹¹
485. The “*full reparation*” standard, in other words, requires Claimants to be placed in the same economic position they would have been in but for India’s wrongful acts.
486. This standard governs the damages calculations for India’s unlawful expropriation as well as for its other unlawful breaches of the BIT. Where multiple State breaches cause

¹¹⁰⁶ See, e.g., **Exhibit CL-060**, *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, ¶¶ 847-48 (describing *Chorzów* as “[a]n authoritative description of the principle of full reparation”); **Exhibit CL-009**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal, 2 October 2006, ¶¶ 484-95 (review decisions of international courts and tribunals to find that the principle set forth in *Chorzów* is the governing standard); **Exhibit CL-062**, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007, ¶¶ 8.2.4-8.2.5 (quoting *Chorzów* and observing that “[t]here can be no doubt about the vitality of this statement of the damages standard under customary international law, which has been affirmed and applied by numerous international tribunals as well as the PCIJ’s successor, the International Court of Justice”).

¹¹⁰⁷ **Exhibit CL-053**, INTERNATIONAL LAW COMMISSION, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), Art. 31.

¹¹⁰⁸ **Exhibit CL-053**, INTERNATIONAL LAW COMMISSION, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), art. 31(1).

¹¹⁰⁹ **Exhibit CL-053**, INTERNATIONAL LAW COMMISSION, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), art. 34.

¹¹¹⁰ **Exhibit CL-053**, INTERNATIONAL LAW COMMISSION, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), art. 35.

¹¹¹¹ **Exhibit CL-053**, INTERNATIONAL LAW COMMISSION, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), art. 36(1).

equivalent harm, the standard of compensation does not differ. The Tribunal in *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic* found:

*Of course, the level of damages necessary to compensate for a breach of the fair and equitable treatment standard could be different from a case where the same government expropriates the foreign investment. The difference will generally turn on whether the investment has merely been impaired or destroyed. Here, however, we are not faced with a need to so differentiate, given our earlier finding that the same state measures infringed both relevant Articles of the BIT and that these measures emasculated the Concession Agreement, rendering it valueless. **Put differently, the breaches . . . caused more or less equivalent harm.***¹¹¹²

487. India’s unlawful breaches of the BIT have caused Claimants “*more or less equivalent harm*” and, accordingly, the standard of compensation set by Article 6 of the BIT governs this Tribunal’s calculations of damages for India’s other breaches.

A. India Must Compensate Claimants For The Full Value Of Their Share Of The ICC Award

488. Here, India’s breaches, including its forced liquidation and occupation of Devas, have destroyed the value of Claimants’ investment in Devas, whose primary asset prior to its takeover by the Indian Government was the ICC Award. Accordingly, as a first measure of compensation, India must pay the full value of the ICC Award in accordance with Claimants’ ownership of Devas.

489. On 14 September 2015, the ICC Tribunal issued an award in the amount of USD 562.5 million plus interest, which comprised of pre-ICC Award interest of USD 110.4 million and post-ICC Award interest at a simple interest at a rate of 18 percent per year. BRG has calculated the value of the ICC Award inclusive of interest as of 19 April 2023 to be USD 1,593.5 million. As Claimants own 37.6 percent of Devas, they would have been entitled

¹¹¹² **Exhibit CL-062**, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007, ¶ 8.2.8 (emphasis added). See also **Exhibit CL-132**, *Gemplus, S.A., SLP, S.A. and Gemplus Industrial, S.A. de C.V. v. The United Mexican States*, ICSID Case No. ARB(AF)/04/3 & ARB(AF)/04/4, Award, 16 June 2010, ¶ 12-52 (“*this is an appropriate case in which the Tribunal should be guided by the same measure for breach of the FET standards in the two BITs, as for unlawful expropriation under the BITs . . . Accordingly, the Tribunal does not hereafter distinguish between compensation for unlawful expropriation and compensation for breach of the FET standards.*”).

to USD 599.2 million under the ICC Award, but for India’s liquidation and takeover of the company.¹¹¹³

B. India Must Compensate Claimants For The Additional Costs Incurred As A Result Of India’s Breach

490. As Claimants are entitled under international law to be restored to the same position they would have enjoyed but for India’s breach, they must be reimbursed the costs they have incurred in having to address those breaches. Specifically, in order to “*wipe out all the consequences*” of India’s illegal acts, Claimants must be compensated for their costs associated with having to defend themselves against India’s harassing investigations and its efforts to undermine the ICC Award.¹¹¹⁴ Claimants would also have retained Devas’s funds which have been unlawfully seized by the ED in violation of India’s obligations under international law.¹¹¹⁵
491. As detailed in BRG’s expert report, as of 19 April 2023, Claimants have incurred USD 30.5 million in legal expenses to defend the ICC Award, Devas and its principals, and for enforcement of the ICC Award.¹¹¹⁶ Additionally, India has seized USD 6.2 million of Devas’s assets in India attributable to Claimants.¹¹¹⁷

C. India Must Pay The Costs Of This Arbitration

492. To make Claimants whole, India must also pay the entire cost of this Arbitration, including Claimants’ legal fees, the fees and expenses of Claimants’ experts, the fees and expenses of the Tribunal, and the PCA’s other costs. In addition, India must be held fully liable for

¹¹¹³ See Expert Report of D. Bambaci, Table 8.

¹¹¹⁴ **Exhibit CL-133**, *Case Concerning the Factory at Chorzów (Germany v. Poland)*, Judgment, 13 September 1928, 1928 P.C.I.J. (Ser. A) No. 17, PDF p. 89. See also **Exhibit CL-126**, *White Industries Australia Ltd. v. Republic of India*, UNCITRAL, Final Award, 30 November 2011, ¶¶ 14.3.1-14.3.6 (awarding claimants costs incurred in pursuing litigation in Indian courts and attempting to settle its dispute with India because those costs would not have been incurred absent India’s failure to provide claimant with effective means); **Exhibit CL-155**, *Chevron v. Ecuador II*, PCA Case 2009-23, Second Partial Award on Track II, 30 August 2018, ¶¶ 9.51-52, 10.6, 10.9 (where Claimants requested “*all costs and attorneys’ fees that should be awarded to Claimants for being forced to (i) pursue this arbitration; (ii) uncover the Judgment fraud; and (iii) defend against enforcement of the Lago Agrio Judgment in any jurisdiction*” which the Tribunal granted “*in principle*” “*to make full reparation*” to the claimant).

¹¹¹⁵ See *supra* § IV.E

¹¹¹⁶ Expert Report of D. Bambaci, Table 7.

¹¹¹⁷ Expert Report of D. Bambaci, Table 4.

the costs Claimants incurred as a result of India’s egregious actions, in particular Claimants’ Second Application for Interim Measures necessary because of the *ex parte* injunctive relief India obtained from the Mauritian court. Claimants reserve the rights to fully set out these costs at the appropriate stage of the proceedings.

D. India Must Pay Claimants Moral Damages

493. India also owes Claimants moral damages for the personal and reputational harm they and their officers have suffered as a result of India’s actions and during the course of the arbitral award enforcement proceedings. Article 31 of the Articles on State Responsibility provide that a State must make full reparation for any “*injury caused by [an] internationally wrongful act.*”¹¹¹⁸ Article 31(2) defines “*injury*” as “*any damage, whether material or moral, caused by the internationally wrongful act of a State.*”¹¹¹⁹ Several international adjudicatory bodies,¹¹²⁰ including investment arbitration tribunals,¹¹²¹ have awarded moral damages for “*injury inflicted resulting in mental suffering, injury to . . . feelings, humiliation, shame, degradation, loss of social position or injury to . . . credit or to . . . reputation.*”¹¹²²

¹¹¹⁸ **Exhibit CL-053**, INTERNATIONAL LAW COMMISSION, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), art. 31.

¹¹¹⁹ **Exhibit CL-053**, INTERNATIONAL LAW COMMISSION, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), art. 31(2).

¹¹²⁰ See e.g., **Exhibit CL-134**, *M/V “Saiga” (No. 2) (St. Vincent and the Grenadines v. Guinea)*, Judgment, 1999 ITLOS Rep. 10, 1 July 1999, ¶ 175; **Exhibit CL-135**, *U.N. Compensation Comm’n, Decision taken by the Governing Council of the United Nations Compensation Commission During its Second Session, at the 15th Meeting held on 18 October 1991: Personal Injury and Mental Pain and Anguish*, U.N. Doc. S/AC.26/1991/3, 23 October 1991, p. 2 (providing, *inter alia*, that “*compensation will be provided for non-pecuniary injuries resulting from [. . .] mental pain and anguish*”); **Exhibit CL-136**, *Velásquez Rodríguez Case*, Compensatory Damages, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 7, 21 July 1989, ¶¶ 39, 50–2, 56; **Exhibit CL-137**, *Godínez Cruz Case*, Compensatory Damages, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 8, 21 July 1989, ¶¶ 37, 48–50; **Exhibit CL-138**, *Di Caro (Italy v. Venezuela)*, Decision, 10 R.I.A.A. 597, 7 May 1903; **Exhibit CL-139**, *Heirs of Jean Maninat Case (France v. Venezuela)*, Decision, 10 R.I.A.A. 55, 31 July 1905, PDF p. 30; **Exhibit CL-140**, *Gage Case (United States v. Venezuela)*, Decision, 9 R.I.A.A. 226, 17 February 1903, PDF p. 5; **Exhibit CL-141**, *Dispute Concerning Responsibility for the Deaths of Letelier and Moffitt (United States of America/Chile)*, Decision of 11 January 1992, 25 R.I.A.A. 1, ¶ 35.

¹¹²¹ See e.g., **Exhibit CL-142**, *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008; **Exhibit CL-143**, *Bernhard von Pezold et al. v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015; **Exhibit CL-144**, *Mohamed Abdulmohsen Al-Kharafi & Sons Co. v. The Government of the State of Libya, et al.*, Final Arbitral Award, 22 March 2013.

¹¹²² **Exhibit CL-145**, *Lusitania Cases (United States v. Germany)*, Opinion, 7 R.I.A.A. 32, 1 November 1923, PDF p. 10.

494. A number of investment arbitral tribunals have concluded that an injury to an investor’s credit, reputation, and prestige is compensable in the form of moral damages.¹¹²³ Although investment treaties “*primarily aim at protecting property and economic values,*” they allow for moral damages to be awarded “*in exceptional circumstances.*”¹¹²⁴ In particular, tribunals have granted moral damages as compensation for “*damage to[] worldwide professional reputation after [an] abusive cancellation*” of a project that had been “*previously approved.*”¹¹²⁵ In addition, cases of “*physical duress*” that is “*malicious*” that harm a claimant’s health, credit, or reputation may warrant moral damages.¹¹²⁶
495. In this case, a simple award of compensation would not be sufficient given India’s reprehensible conduct. An additional, symbolic award of moral damages is also necessary. India’s harassing conduct and meritless allegations contravene the conduct expected of States. This conduct includes, most egregiously, India’s raid of Devas’s offices without producing a warrant, where it unlawfully detained several of its employees overnight without allowing them to contact their families or counsel, and told them that they would not be allowed to leave until they signed unseen statements. Even though those officials issued formal retractions shortly after, India used those statements as the basis of further action against Devas and its officials. This conduct on its own not only demonstrates India’s willingness to manufacture evidence to support its campaign to evade its debts, but it also evinces the kind of unethical conduct that this Tribunal should condemn and that warrants a symbolic award.

¹¹²³ See e.g., **Exhibit CL-142**, *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008; **Exhibit CL-143**, *Bernhard von Pezold et al. v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015; **Exhibit CL-144**, *Mohamed Abdulmohsen Al-Kharafi & Sons Co. v. The Government of the State of Libya, et al.*, Final Arbitral Award, 22 March 2013. See also **Exhibit CL-146**, *S.A.R.L. Benvenuti & Bonfant v. People's Republic of the Congo*, ICSID Case No. ARB/77/2, Award, 8 August 1980, ¶ 4.96 (awarding “equitable” damages for “intangible loss”).

¹¹²⁴ **Exhibit CL-142**, *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, ¶ 289.

¹¹²⁵ **Exhibit CL-144**, *Mohamed Abdulmohsen Al-Kharafi & Sons Co. v. The Government of the State of Libya, et al.*, Final Arbitral Award, 22 March 2013, p. 369.

¹¹²⁶ **Exhibit CL-142**, *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, ¶ 290.

496. Beyond its harassment against Devas, India has also taken baseless action that has materially affected the lives of Devas's principals. As detailed above,¹¹²⁷ India's actions have caused reputational and psychological harm to Mr. Viswanathan. His work is affected because he cannot travel abroad for fear of being detained; he lives in constant fear of being extradited to face a partial court on manufactured charges—made worse by India's poor human rights record. The targeting of Mr. Viswanathan personally has caused considerable stress and anxiety about the safety of other Devas employees, as India has shown its willingness to act coercively to achieve its objectives.
497. India's actions have also interfered with the ability of Claimants and their principals to conduct business, not the least because their reputations and even their ability to freely travel has been compromised. There is little doubt that India's continued harassment and retaliation has caused real harm that cannot be readily quantified.
498. Accordingly, Claimants request the Tribunal award Claimants 5 percent of the total damages award in moral damages.

¹¹²⁷ *See supra* § II.H.3

VI. REQUEST FOR RELIEF

499. On the basis of the foregoing, without limitation and reserving Claimants' right to supplement these prayers for relief, Claimants respectfully request that the Tribunal:

- a. Declare that India has breached its obligations under the BIT;
- b. Order India to make full reparation to each of the Claimants for the injury or loss to their respective investments arising out of India's violations of the BIT and applicable rules of international law, of no less than USD 635.8 million;
- c. Order India to pay 5 percent of the total damages owed to Claimants in moral damages;
- d. Order India to pay interest not covered by damages awarded to Claimants, including post-award interest on all sums awarded at the same rate as for the ICC Award;
- e. Order India to make full reparation to each of the Claimants for losses incurred as a result of India's breach of the Treaty's arbitration agreement;
- f. Order India to pay all costs associated with this arbitration, including Claimants legal fees and expenses, management time, witnesses, experts and consultants' fees and expenses, administrative fees and expenses of the administration of this case, and the fees and expenses of the Tribunal, together with post-award interest on those costs so awarded; and
- g. Grant such other and further relief as the Tribunal deems just and proper.
- h. In addition, prior to payment of any amount awarded, Claimants will provide an undertaking not to seek double recovery in relation to their investment and will take appropriate steps to ensure they are not compensated twice in the event that any damages are paid by Antrix under the ICC Award, or by India under the Initial BIT Award, and that any amounts collected in enforcement proceedings under those awards are deducted from the total amount awarded by this Tribunal.

Dated: 23 April 2023

Gibson, Dunn & Crutcher

Gibson, Dunn & Crutcher LLP