

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

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**BETWEEN**

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

**Claimants**

**and**

**The Republic of India**

**Respondent**

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**NOTICE OF ARBITRATION**

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**2 February 2022**

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## I. INTRODUCTION

1. CC/Devas (Mauritius) Ltd. (“**CC/Devas**”), Telcom Devas Mauritius Limited (“**Telcom Devas**”), and Devas Employees Mauritius Private Limited (“**DEMPL**”) (together, the “**Claimants**”), hereby commence an 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**”).
2. This Notice of Arbitration 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. Claimants have duly authorized the undersigned to institute and pursue arbitration proceedings on their behalf against India under the BIT.

### A. The Dispute

4. This dispute arises from India’s violations of Claimants’ rights under the Treaty by engaging in an audacious scheme to evade payment of an arbitration award (and subsequent US court judgment) valued in excess of USD 1.3 billion against India’s wholly owned and controlled state enterprise, Antrix Corporation Limited (“**Antrix**”), the commercial arm of the Indian Department of Space (“**DOS**”). The award was in favor of an Indian company of which Claimants are shareholders, Devas Multimedia Private Limited (“**Devas**”), following a commercial arbitration before the International Chamber of Commerce (“**ICC**”) (the “**ICC Award**”). Aside from the ICC Award, India has also evaded a USD 111 million award (plus interests and costs) that Claimants obtained against it under an earlier BIT arbitration arising from the same underlying dispute. India has pursued its scheme to evade payment of the ICC Award by hollowing out the judgment-debtor Antrix by transferring all of its contracts and business to a newly formed company also wholly owned and controlled by India, appropriately named “NewSpace.” But even more relevant to the protections offered by the Treaty, India has used every arm of the State to pursue an unprecedented campaign of attacks against Devas in India, including conducting baseless

“investigations” of Devas and its officers and employees, from which government officials concocted equally baseless allegations of “*fraud*” so fantastic that neither Antrix nor India has dared to air them before any impartial tribunal. Within India, however, the mere allegations have been employed *prima facie* to force Devas into liquidation, which Indian courts have acknowledged is for the express purpose of invalidating the ICC Award.

5. The following facts have already been adjudicated by multiple tribunals—Devas was incorporated in India in 2004 by foreign investors including Claimants, as a vehicle to enter into and perform an agreement between Devas and Antrix (the “**Devas-Antrix Agreement**”) that followed from protracted, arm’s-length negotiations. Under the Devas-Antrix Agreement, Antrix leased a portion of India’s “S-band” frequency allocation to Devas for an upfront, lump-sum amount and regular lease payments, including a commitment to build and launch two satellites with Devas instruments into orbit for the purpose of providing broadband internet and multimedia services to customers across India.
6. Claimants’ investments in Devas enabled Devas to perform its obligations under the Devas-Antrix Agreement. Devas procured the appropriate licenses, paid the requisite fees, and conducted multiple, successful technology trials. By 2009, notwithstanding repeated delays by Antrix in preparing the satellites, Devas officials remained hopeful that Antrix would be prepared to launch in the near future.
7. That did not happen. In 2009, apparently as a result of unrelated scandals involving telecommunications and Indian government officials, political pressure began to mount against the Devas-Antrix Agreement. On 25 February 2011, Antrix informed Devas that it was terminating the Devas-Antrix Agreement on *force majeure* grounds due to demands of the Indian state. Disclosures in the arbitrations revealed that government officials sought but could not identify any failure to perform by Devas.
8. Following Antrix’s termination of the Agreement, Devas initiated an arbitration against Antrix under the Devas-Antrix Agreement. Thereafter, Claimants and another major investor in Devas, Deutsche Telekom (“**DT**”), initiated separate BIT arbitrations (the “**Arbitrations**”) against India under its treaties with Mauritius and Germany, respectively.

Devas and its investors prevailed in all three arbitrations. India responded by taking retaliatory action, including opening unjustified criminal investigations against Devas, its employees, and officers. Such harassment intensified as the Arbitrations progressed and India's liabilities increased. India's investigative agencies raided Devas's offices, held its employees and officers in custody all night without counsel, and refused to release them until they signed coerced statements. While these "*investigations*" proceeded, Antrix and India avoided raising any allegations of fraud in any of the Arbitrations. Antrix's counsel called the investigations a "*red herring*" and a "*rabbit hole*" before a US court in proceedings to confirm Devas's arbitration award against Antrix.

9. India's efforts to intimidate the Claimants and undermine the Arbitrations escalated in November 2020, after a US court confirmed Devas's award against Antrix and issued a judgment in Devas's favor of almost USD 1.3 billion. In response, India's regulatory agencies initiated a program to rid the Government of its substantial debt by dissolving Devas, its creditor. Indian officials created an Inter-Ministerial Monitoring Committee, specifically charged with "*expediting*" proceedings against Devas and its principals, and placing the country "*on a war footing*" against enforcement of the arbitral awards. India then amended its arbitration law with purportedly retrospective effect, to allow award-debtors like Antrix to stay arbitration enforcement proceedings indefinitely without posting security on the basis of "*prima facie*" fraud allegations.
10. Antrix unsurprisingly amended its application in Indian courts to set aside Devas's arbitral award to add newly-minted fraud allegations, despite never before having raised such allegations in more than a decade of litigation and arbitration before other tribunals. Antrix then sought and received permission from the Government of India to file a wind-up petition against Devas. Within days, and with virtually no notice to Devas, a provincial companies court in India accepted Antrix's allegations and appointed a provisional liquidator, an Indian government employee, to liquidate Devas. The liquidator immediately took steps to stop enforcement of the ICC Award, firing all of Devas's counsel worldwide—including counsel in the US federal court proceeding that had resulted in confirmation of the ICC award. The liquidator, moreover, has accepted wholesale Antrix's allegations of fraud, and made it his mission to find purported "*support*" for them.

11. While Devas's shareholders have only been permitted limited participation in these proceedings, they have challenged the liquidation at every step. But a few months later, in May 2021, the court made Devas's liquidation official. The liquidation was then confirmed by a national appellate court for corporate matters, and most recently by India's Supreme Court, all on the basis of the untested and preposterous allegations of fraud by Antrix. Indian courts have made plain that the purpose of the liquidation is to prevent Devas from enforcing the ICC Award. In their through-the-looking-glass reasoning, "*Antrix and Union of India*," are Devas's victims, "*hav[ing] suffered [the] huge ICC Award and [] facing its enforcement proceedings*," while Devas is somehow "*misusing the legal status conferred on it by virtue of its incorporation*" by seeking to enforce a duly obtained and confirmed arbitral award.<sup>1</sup> India's repudiation of its obligations, and its enlistment of its judiciary to help it do so, could not be more clear.
12. Unsurprisingly, since taking charge of Devas, the state-employed liquidator has failed to protect the assets and interests of Devas or its shareholders, including its USD 1.3 billion judgment against Antrix. The liquidator has instead performed as if instructed by Antrix and the Indian government. After firing Devas's counsel worldwide, the liquidator delayed in hiring replacement counsel when ordered to by the US court that had confirmed the ICC Award. The liquidator has since attempted to delay US enforcement proceedings, presumably waiting for the Indian courts to set aside the ICC Award.
13. India has accordingly abused its sovereign powers and violated its obligations under the BIT by (i) unlawfully expropriating Claimants' investment in Devas, (ii) failing to accord Claimants fair and equitable treatment, (iii) unlawfully providing less favorable treatment to Claimants than accorded domestic investors or investors of any third state, (iv) failing to provide Claimants with full protection and security, and (v) failing to allow Claimants to freely transfer funds.

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<sup>1</sup> **Exhibit C-078**, NCLT Final Liquidator Order, 25 May 2021, p. 78.

**B. Parties to the Dispute**

**1. Claimants**

14. Each of the Claimants is incorporated in and resides in Mauritius:
- a) CC/Devas (Mauritius) Ltd., International Proximity, 5th Floor, Ebène Esplanade, 24 Cybercity Ebène, Mauritius;
  - b) Telcom Devas Mauritius Limited, International Proximity, 5th Floor, Ebène Esplanade, 24 Cybercity Ebène, Mauritius; and
  - c) Devas Employees Mauritius Private Limited, International Proximity, 5th Floor, Ebène Esplanade, 24 Cybercity Ebène, Mauritius.
15. Claimants are represented in this arbitration by Gibson, Dunn & Crutcher LLP. For the purposes of this arbitration, correspondence to Claimants should be addressed to:

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## 2. Respondent

16. Respondent in this arbitration is India. Courtesy copies of this Notice of Arbitration, and documents appended hereto, will be sent by electronic mail to Respondent at the below addresses:

**His Excellency Shri Narendra Modi**

Prime Minister of India  
South Block, Raisina Hill,  
New Delhi, India -110101

**The Hon'ble Minister of External Affairs**

South Block, Raisina Hill,  
New Delhi, India -110101

**The Hon'ble Minister of Law and Justice**

South Block, Raisina Hill,  
New Delhi, India -110101

**The Hon'ble Minister of Home Affairs**

North Block, Raisina Hill,  
New Delhi, India -110101

## II. BACKGROUND TO THE DISPUTE<sup>2</sup>

### A. Claimants Invest In India

17. Claimants invested in India by making substantial equity investments in Devas, an Indian company, which was party to the Devas-Antrix Agreement. The goal of the Agreement was to enable Devas to provide audio-visual broadcast and broadband wireless access services to users throughout India using an integrated system of satellites and terrestrial networks, and to enable Antrix and India to commercialize their capabilities to build and launch communications satellites. To execute the project Devas sought partners that could provide both capital and expertise in satellite and terrestrial communications systems, in particular CC/Devas, Telcom Devas and DEMPL. Below we set out (1) the background to Devas-Antrix Agreement and (2) Claimants' investments in Devas.

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<sup>2</sup> Claimants reserve the right to amend, supplement, or update the facts, and to provide a full statement of the case in its Memorial and during the course of these proceedings.

## 1. The Devas-Antrix Agreement

18. The Devas-Antrix Agreement complimented and was motivated by India's longstanding need to commercialize its radio frequencies and satellite orbital slots that it otherwise risked losing. The International Telecommunications Union (the "ITU") allots a limited number of radio frequencies and satellite orbital slots to various entities pursuant to international agreement. Typically, an entity allocated a particular frequency will launch a satellite into orbit, which will use the frequency to provide radio and communication services.<sup>3</sup> To prevent member states from hoarding slots, the ITU also has a policy of "use it or lose it" under which member states have seven years to build and launch a satellite in their designated slot.<sup>4</sup> Though India had been allotted a range of frequencies on the S-band since the 1970s, it had not been able to commercialize these due to technology limitations. However, in the late 1990s, technological advances, such as those pioneered by Dr. Rajendra Singh—the principal of one of the Claimants, Telcom Devas—made it possible to establish a telecommunications system that would efficiently utilize India's allocations.<sup>5</sup>
19. It was in this context that India's Department of Space ("DOS")—which had already lost some of its S-band spectrum to other Indian agencies—sought out private business partners. In 2003, Dr. Kasturirangan, the Secretary of DOS (as well as the Chairman of the Space Commission, Chairman of ISRO, and the Chairman of Antrix) met with Mr. Ramachandran Viswanathan and Dr. Chandrasekhar. At the time, Mr. Viswanathan had accumulated over a decade of experience in the telecommunications industry, first as a consultant at McKinsey & Co., and then as an executive at Worldspace Inc, which provided satellite digital audio radio services in various parts of the world. At WorldSpace, Mr. Viswanathan met Dr. M. G. Chandrasekhar, at that time the Managing Director of WorldSpace and previously the Scientific Secretary of the Indian Space Research

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<sup>3</sup> Exhibit C-033, ICC Award, ¶ 54. See also Exhibit C-045, DT Award, ¶ 6 (Devas system entailed "launching two satellites necessary to exploit the S-band electromagnetic spectrum").

<sup>4</sup> Exhibit C-033, ICC Award, ¶ 56.

<sup>5</sup> See Exhibit C-036, J&M Award, ¶ 66(f).

Organization (“ISRO”), who knew that the Indian Government was looking for ways to make commercial use of the S-band spectrum.

20. Following a number of meetings and discussions between Dr. Kasturirangan, Mr. Viswanathan and Dr. Chandrashekhar, in July 2003 Mr. Viswanathan, on behalf of his consultancy Forge Advisors LLC (“**Forge Advisors**”) signed a non-binding Memorandum of Understanding (the “**MOU**”) with Antrix.<sup>6</sup> The MOU recorded that the parties wished to “*build a strategic partnership that leverages Antrix’s satellite & space capabilities to enable new social & commercial applications.*”<sup>7</sup>
21. Following the MOU’s execution, Forge Advisors spent months exploring strategic options with DOS, ISRO, and Antrix. In April 2004, Forge Advisors sent a formal proposal under which a new entity, Devas, would construct the ground-based system to support the satellites, while ISRO would prepare and launch the satellite. Forge Advisors discussed this proposal in a series of meetings in Bangalore with dozens of high-level representatives of DOS, ISRO, and Antrix.<sup>8</sup> While these negotiations were underway, the Chairman of ISRO constituted a “*High Power Committee*” to review the “*technical feasibility, risk mitigation, time schedule, financial and organisational aspects of this project*” including

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<sup>6</sup> **Exhibit C-001**, Memorandum of Understanding Between Forge Advisors, LLC and Antrix Corp. Ltd., 28 July 2003 (“**MOU**”).

<sup>7</sup> **Exhibit C-001**, MOU, p. 1.

<sup>8</sup> 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.

*“alternate uses for space segment.”*<sup>9</sup> Based on its review, the Committee concluded that the project was not only *“technically sound and reliable”* but also *“quite attractive.”*<sup>10</sup>

22. On the basis of these recommendations, the Antrix Board of Directors, which is appointed by the Indian President and typically includes a number of ISRO and DOS officials along with private sector appointees, accepted that it would be favorable for Antrix to enter into an agreement to utilize the S-band spectrum. Thereafter, Antrix and Devas negotiated the form and terms of the prospective agreement. In June 2004, Forge Advisors sent a letter to the executive director of Antrix offering terms for a joint venture.<sup>11</sup> Antrix and ISRO, however, rejected the joint venture arrangement and instead demanded a straightforward lease arrangement with a higher upfront capacity reservation fee and higher annual lease fees. Forge Advisors proposed some terms along these lines, but ISRO and Antrix rejected those terms as well. Negotiations thus continued throughout October and November 2004, with at times daily negotiation sessions between Forge Advisors and ISRO officials, including its Chairman.
23. Finally, in December 2004 the Antrix Board *“approved the draft agreement negotiated with Devas”* as recommended by the High Power Committee.<sup>12</sup> As part of the approval, the High Power Committee insisted that an Indian company be incorporated for the lease arrangement because under Indian law no private entity could have any interest in a satellite. Accordingly, an Indian corporation, Devas, was registered to enter into the agreement with Antrix.<sup>13</sup> The Antrix Board of Directors approved the terms of a proposed

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<sup>9</sup> **Exhibit C-023**, Suresh Report, p. 6.

<sup>10</sup> **Exhibit C-023**, Suresh Report, p. 8.

<sup>11</sup> **Exhibit C-003**, Letter from Ramachandran Viswanathan, Managing Dir., Forge Advisors, to K. R. Sridhara Murthi, Exec. Dir., Antrix Corp. Ltd., 18 June 2004.

<sup>12</sup> **Exhibit C-023**, Suresh Report, p. 7, ¶ 4.

<sup>13</sup> See **Exhibit C-004**, Articles of Association of Devas Multimedia Private Limited, 10 December 2004; **Exhibit C-005**, Memorandum of Association of Devas Multimedia Private Limited, 10 December 2004, p. 1 (main object of company is to *“create, provide and operate infrastructure that includes satellite capacity and transmission, terrestrial transmission and augmentation, satellite control and uplink [and so on]”*).

agreement.<sup>14</sup> 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. (*i.e.*, the Devas-Antrix Agreement).<sup>15</sup>

24. Under the Devas-Antrix Agreement, Antrix was required to (i) manufacture, launch, and operate a primary and secondary satellite 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.<sup>16</sup> Devas was to pay Antrix an up-front capacity reservation fee of about USD 20 million, and yearly lease fees of about USD 9 million, rising to USD 11.25 million when Devas became cash flow positive.<sup>17</sup> If both satellites launched and the parties had renewed the lease terms on similar terms, Antrix stood to receive approximately USD 256 to 310 million in fees.<sup>18</sup>
25. The Agreement became fully binding and effective on 2 February 2006, when Antrix wrote to Devas confirming that it had “*received the necessary approval for building, launching and leasing*” the first satellite.<sup>19</sup>

## **2. Claimants Make Substantial Investments To Develop The Devas Project**

26. To develop the project, Devas sought additional investors and principals with significant telecommunications expertise. In March 2006, two of the Claimants, CC/Devas and Telcom Devas, made first rounds of investments of USD 7.5 million each in Devas.<sup>20</sup> CC/Devas and Telcom Devas both had valuable experience as investors and operators of

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<sup>14</sup> **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.

<sup>15</sup> **Exhibit C-007**, Agreement for the Lease of Space Segment Capacity on ISRO/ANTRIX S-Band Spacecraft between Antrix Corp. Ltd. and Devas Multimedia Private Ltd. (Agreement No. ANTX/203/Devas/2005), 28 January 2005 (“**Devas-Antrix Agreement**”).

<sup>16</sup> **Exhibit C-007**, Devas-Antrix Agreement, p. 1 and art. 3.

<sup>17</sup> **Exhibit C-033**, ICC Award, ¶ 67; **Exhibit C-036**, J&M Award, ¶ 90; **Exhibit C-045**, DT Award, ¶ 60.

<sup>18</sup> **Exhibit C-033**, ICC Award, ¶ 68.

<sup>19</sup> **Exhibit C-008**, Antrix Letter to Devas, 2 February 2006.

<sup>20</sup> **Exhibit C-036**, J&M Award, ¶ 107.

satellite and telecommunications projects. CC/Devas was affiliated with Columbia Capital LLC, a leading investor in the telecommunications space. Telcom Devas was headed by Raj Singh, who had pioneered the very hybrid satellite-terrestrial communications systems that the Devas project intended to use.

27. In 2007, CC/Devas and Telcom Devas made second round investments of approximately the same amount as their original investments.<sup>21</sup> These investments all were duly approved by India's Foreign Investment Promotion Board ("FIPB").<sup>22</sup>
28. In addition to securing support from established investors, Devas also added a number of telecommunications executives with high levels of experience to its Board. For instance, in 2007, Lawrence Babbio Jr., formerly the Vice Chairman and President of Verizon, and Gary Parsons, the founder of XM Satellite Radio, contributed investments and joined Devas's Board.
29. Having secured initial rounds of investment, Devas began looking for a strategic partner with additional capacity and resources to assist with the rollout of services throughout India, in particular the terrestrial component. After performing a thorough due diligence review, in 2008 Deutsche Telekom ("DT") agreed to invest approximately USD 75 million in Devas through its Singapore affiliate, DT Asia Pte Ltd ("DT Asia").<sup>23</sup>
30. Supported by these investments and the expertise of investors and principals, Devas was able to make timely lease payments under the Devas-Antrix Agreement and also proceed with trials to start rolling out its technology. From June 2009 to September 2009, Devas, along with Antrix, ISRO, and DOS, conducted successful field trials and demonstrations

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<sup>21</sup> Exhibit C-036, J&M Award, ¶ 107.

<sup>22</sup> See Exhibit C-021, Submission for Issuance and Allotment of Shares, 11 June 2009, 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-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.

<sup>23</sup> Exhibit C-033, ICC Award, ¶ 79; Exhibit C-036, J&M Award, ¶ 108; Exhibit C-045, DT Award ¶ 69; see also Exhibit C-049, Quantum Award, ¶ 589.

of Devas's technology. Antrix considered the trials extremely successful. At one trial, the Chairman of ISRO, Antrix, and the Space Commission, Dr. Radhakrishnan, remarked that the Devas-Antrix partnership was "great" and that he was "looking forward to the launch" of the first of two planned satellites.<sup>24</sup>

31. To pursue these trials, Devas had to obtain the necessary licenses and approvals. Specifically, Devas secured (i) a license to provide internet services, including web hosting and internet telephony;<sup>25</sup> and (ii) the required import and trial licenses from the Department of Telecommunication's Wireless Planning and Coordination Wing to carry out the field trials.<sup>26</sup>
32. Though Devas's timely payments under the Devas-Antrix Agreement had triggered Antrix's obligation to build and launch the satellites, Antrix was unable to meet the contractual deadline of June 2009, which was ultimately pushed back to September 2010.<sup>27</sup> Substantial contractual penalties against Antrix began to accrue, although Devas did not press for compensation. Despite these delays, Claimants continued to meet their financial obligations and technical strategic milestones. Specifically, CC/Devas and Telcom Devas, along with DT Asia, made further capital injections into Devas of USD 25 million.<sup>28</sup> Additionally, Devas implemented an equity incentive plan for key employees pursuant to which DEMPL purchased shares in Devas in 2009 and 2010.<sup>29</sup> All these investments were

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<sup>24</sup> **Exhibit C-033**, ICC Award, ¶ 87; **Exhibit C-045**, DT Award ¶ 87. See also **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").

<sup>25</sup> **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).

<sup>26</sup> See **Exhibit C-012**, License Agreement for Provision of Internet Services between the Government of India and Devas Multimedia Pvt. Ltd., 2 May 2008; **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.

<sup>27</sup> **Exhibit C-007**, Devas-Antrix Agreement, art. 3; **Exhibit C-036**, J&M Award, ¶ 110.

<sup>28</sup> **Exhibit C-036**, J&M Award, ¶ 111.

<sup>29</sup> **Exhibit C-036**, J&M Award, ¶ 111.

duly approved by India's FIPB.<sup>30</sup> In total, the Claimants invested tens of millions of USD, as well as significant professional and technical knowhow into India.

## **B. India Terminates The Agreement, Violating Its Obligations Under The BIT**

33. By 2009, however, political circumstances and media scrutiny began to put pressure on the Devas-Antrix Agreement. That year, the "2G scandal" broke out, in which certain Indian Government officials were accused of undervaluing the 2G spectrum and selling it to favored companies.<sup>31</sup>
34. Though the 2G scandal had absolutely nothing to do with the Devas-Antrix Agreement, and the markets for satellite and terrestrial spectrum are entirely different, it put all telecommunications deals entered into by the Government under heightened scrutiny and pressure. This motivated Dr. Radhakrishnan to commission a further internal review of all aspects of the Devas-Antrix Agreement in December 2009.<sup>32</sup> The review, conducted by Dr. B. N. Suresh, Director of the Indian Institute of Space and Technology, found no wrongdoing and did not recommend termination ("**Suresh Report**"). To the contrary, the Suresh Report found that the Devas-Antrix Agreement was executed only after "*technical feasibility, financial and market aspects, time schedule, risk mitigation, and pricing*" had been thoroughly scrutinized by the High Power Committee.<sup>33</sup> Antrix entered into the Devas-Antrix Agreement, the Report found, "*in close coordination & participation*" of the concerned agencies.<sup>34</sup> And Antrix had followed "*guidelines for leasing the transponder services to private service providers as per the Satcom policy.*"<sup>35</sup> There was "*absolutely*

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<sup>30</sup> **Exhibit C-021**, Submission for Issuance and Allotment of Shares, 11 June 2009, p. 3 (chart setting forth FIPB approval history) (attachment to Letter from Ministry of Finance, FIPB Unit (Saxena) to Devas, 29 September 2009).

<sup>31</sup> See **Exhibit C-025**, "Chronology of developments related to 2G spectrum case," The Hindu Times, 2 February 2011 (noting 2009 government investigations opened into 2G spectrum licenses granted to certain telecom firms in 2008).

<sup>32</sup> **Exhibit C-022**, Order for constitution of a committee to look into Devas Multimedia Contract and terms of reference, 8 December 2009.

<sup>33</sup> **Exhibit C-023**, Suresh Report, p. 6.

<sup>34</sup> **Exhibit C-023**, Suresh Report, p. 15.

<sup>35</sup> **Exhibit C-023**, Suresh Report, p. 15.



*no doubt on the technical soundness of the digital multimedia services”* proposed by Devas.<sup>36</sup>

35. Nonetheless, media scrutiny and speculation increased, as did the accrual of contractual penalties for Antrix’s failure to perform. At the same time that Devas was diligently conducting additional (successful) trials in China and Germany,<sup>37</sup> Indian authorities began seeking ways to painlessly exit the Agreement. On 16 June 2010, Dr. Radhakrishnan wrote to the Ministry of Law and Justice seeking a “*legal opinion*” on how to annul the Agreement. Later that month, the Space Commission met and resolved that it “*may take actions necessary and instruct Antrix to annul the Antrix-Devas contract.*”<sup>38</sup> The DOS then sought the opinion of the Additional Solicitor General (“ASG”) of India on how to annul the Agreement, who in turn recommended invoking the *force majeure* provision, absent any way to fault Devas’s performance.<sup>39</sup> Ultimately, on 8 February 2011, Dr. Radhakrishnan held a press conference in New Delhi, where he announced that the Indian government had decided to terminate the Devas-Antrix Agreement.<sup>40</sup> On 17 February 2011, the Indian Cabinet Committee on Security announced that it would revoke the slot in the S-band previously assigned to DOS for commercial activities and that, as a result, the Devas-Antrix Agreement would be annulled.<sup>41</sup> On 25 February 2011, Antrix notified Devas that the Devas-Antrix Agreement was terminated on “*force majeure*” grounds, due to Indian government decisions over which Antrix purportedly had no control.<sup>42</sup>

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

36. Antrix’s wrongful termination of the Devas-Antrix Agreement, endorsed and encouraged by Indian officials, constituted a breach of both the Devas-Antrix Agreement and India’s

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<sup>36</sup> **Exhibit C-023**, Suresh Report, p. 15.

<sup>37</sup> **Exhibit C-033**, ICC Award, ¶ 108.

<sup>38</sup> **Exhibit C-033**, ICC Award, ¶ 112; **Exhibit C-036**, J&M Award, ¶ 134; **Exhibit C-045**, DT Award, ¶ 82.

<sup>39</sup> **Exhibit C-024**, Opinion of the ASG, 12 July 2010.

<sup>40</sup> **Exhibit C-033**, ICC Award, ¶ 121; **Exhibit C-036**, J&M Award, ¶ 142; **Exhibit C-045**, DT Award, ¶ 86.

<sup>41</sup> **Exhibit C-033**, ICC Award, ¶ 125; **Exhibit C-036**, J&M Award, ¶ 146; **Exhibit C-045**, DT Award ¶ 90 (citing 16 February 2011 as the announcement date).

<sup>42</sup> **Exhibit C-033**, ICC Award, ¶ 126; **Exhibit C-036**, J&M Award, ¶ 146; **Exhibit C-045**, DT Award, ¶ 92.

obligations under various investment treaties. Accordingly, soon after Antrix terminated the Devas-Antrix Agreement, Devas, the Claimants and DT all initiated, and won, their respective Arbitrations. In response, Indian authorities pursued retaliatory and harassing investigations against Devas, its officers, and investors.

### 1. The Arbitrations Trigger Retaliatory Investigations By Indian Authorities

37. In June 2011, Devas filed a Request for Arbitration in the International Chamber of Commerce against Antrix under the Devas-Antrix Agreement's arbitration clause (the "ICC Arbitration").<sup>43</sup> Mere months later, apparently on Dr. Radhakrishnan's request, India's Office of the Registrar of Companies ("ROC") and Directorate of Enforcement, Ministry of Finance, Department of Revenue ("ED") launched investigations into Devas.<sup>44</sup>
38. In August 2011, the ROC began to inundate Devas with repeated and harassing demands for documents as part of an investigation into unspecified "violations."<sup>45</sup> Also, starting in August 2011, ROC officers began appearing at Devas's offices to inspect company documents and question employees, often with less than a day's notice.<sup>46</sup> Notwithstanding their harassing and disruptive nature, Devas complied with all the ROC's requests in full.<sup>47</sup>
39. On 5 December 2011, Devas filed a writ petition before the Delhi High Court to stay the ROC's investigation, noting that the ROC was "on a day to day basis harassing [Devas] and its officers."<sup>48</sup> The Court agreed with Devas and enjoined the ROC's investigation.<sup>49</sup>

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<sup>43</sup> **Exhibit C-027**, ICC Arbitration Request for Arbitration, 29 June 2011.

<sup>44</sup> **Exhibit C-026**, Letter from Dr. Radhakrishnan to DK Mittal, Department of Corporate Affairs, 1 June 2011.

<sup>45</sup> See **Exhibit C-028**, Devas Writ Petition in the High Court of Delhi, 5 December 2011, pp. 6-9.

<sup>46</sup> 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, pp. 8-9.

<sup>47</sup> **Exhibit C-028**, Devas Writ Petition in the High Court of Delhi, 5 December 2011, pp. 5-9.

<sup>48</sup> **Exhibit C-028**, Devas Writ Petition in the High Court of Delhi, 5 December 2011, p. 13.

<sup>49</sup> **Exhibit C-029**, Delhi Court Order, 7 December 2011; **Exhibit C-030**, Delhi Court Order, 29 May 2012.

40. In parallel, also in December 2011, the ED opened its own investigation into Devas.
41. On 3 July 2012, Claimants commenced an arbitration against India pursuant to the BIT (the “**Initial BIT Arbitration**”), requesting compensation due to India’s violations of its obligations to, *inter alia*, accord fair and equitable treatment and refrain from unlawfully expropriating Claimants’ investment.<sup>50</sup> Claimants’ arbitration claim was followed by a similar claim in September 2013 by DT, under the bilateral investment treaty between Germany and India (the “**DT Arbitration**”).<sup>51</sup>

## 2. India’s Losses Prompt Indian Authorities To Launch Even More Investigations

42. In 2015, shortly before the ICC tribunal had indicated to the parties that it would be rendering an award, India’s Central Bureau of Investigation (“**CBI**”)—which normally investigates fraud, corruption, “*economic crimes*,” and “*special crimes*,” like terrorism—opened a case against Devas, its officers, and some employees of Antrix and Indian governmental agencies.<sup>52</sup>
43. In September 2015, the three-member tribunal in the ICC arbitration unanimously found that Antrix wrongfully terminated the Devas-Antrix Agreement and rejected India’s contention that Devas had no value at the time of the annulment.<sup>53</sup> The tribunal ordered Antrix to pay Devas USD 562.5 million in damages, plus interest (the “**ICC Award**”).<sup>54</sup>
44. Antrix wasted no time applying to set the ICC Award aside, filing a petition on 19 November 2015 with the Indian courts (given that the seat of arbitration was New Delhi). Antrix’s principal arguments revolved around the ICC tribunal’s alleged misinterpretation

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<sup>50</sup> **Exhibit C-089**, Initial Arbitration Notice of Arbitration, 3 July 2012.

<sup>51</sup> **Exhibit C-045**, DT Award, ¶ 10.

<sup>52</sup> **Exhibit C-032**, CBI Complaint, 16 March 2015.

<sup>53</sup> **Exhibit C-033**, ICC Award, ¶¶ 251, 361.

<sup>54</sup> **Exhibit C-033**, ICC Award, ¶ 401.

of the Devas-Antrix Agreement and its lack of jurisdiction to hear the case.<sup>55</sup> Notably, it did not make any fraud allegations, despite pending investigations by the ED and CBI.

45. The CBI also intensified its efforts after the ICC Award was issued. In 2016, the CBI filed a “*charge sheet*” against Devas, its employees, and a group of government employees who had been involved in the negotiation process. The charge sheet alleged that the lease to Devas was “*wrongful*” and that government employees committed a conspiracy and “*abused*” their official positions to facilitate a lease of transponder capacity to Devas, but it did not otherwise allege bribery or corruption by Devas, its officers, or its investors.<sup>56</sup>
46. The CBI’s charges lacked any basis in fact and were plainly designed to impede enforcement of the ICC Award. As local news outlets reported at the time, having lost the ICC arbitration and on the hook for half a billion dollars, 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.*”<sup>57</sup> Indeed, 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.*”<sup>58</sup>
47. So poorly supported and obviously manufactured were the CBI’s charges that India refused to use them as defenses in the ongoing Initial BIT Arbitration. Notably, the charge sheet accused two Devas officers who had just served as witnesses in the ICC Arbitration and would again testify in the Initial BIT Arbitration.<sup>59</sup> Yet neither Antrix nor India questioned them about any of the CBI’s accusations during the hearings.

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<sup>55</sup> **Exhibit C-035**, Memorandum of Petition Under Section 34 Of The Arbitration & Conciliation Act, 1996, 19 November 2015, ¶¶ 121, 145, 176-78, 189-90, 199-200.

<sup>56</sup> **Exhibit C-038**, Central Bureau of Investigation Charge Sheet, Brief Facts of the Case, 11 August 2016, ¶¶ 16(2), 16(125).

<sup>57</sup> **Exhibit C-034**, “Antrix-Devas deal: Government to field top lawyers in Delhi High Court,” published by The Indian Express, 9 October 2015.

<sup>58</sup> **Exhibit C-034**, Antrix-Devas deal: Government to field top lawyers in Delhi High Court”, published by The Indian Express, 9 October 2015.

<sup>59</sup> Namely, Mr. Viswanathan and Dr. Chandrashekar.

48. In mid-2016, the BIT tribunal informed the parties to expect the Jurisdiction and Merits Award in the Initial Arbitration. As if on cue, on 6 June 2016, the ED issued a “*show cause*” notice against Devas and 20 of its current and former directors and foreign investors, claiming penalties running into tens of millions of dollars, on the theory that the foreign investments violated India’s foreign exchange laws (“**First FEMA Action**”). The ED brought these charges despite the fact that the Indian agency responsible for approving foreign investments, the FIPB, had duly authorized every single investment made by Claimants and DT in Devas.<sup>60</sup>
49. Indeed, the investigation had no credible basis and was little more than the Indian authorities’ latest attempt to undermine the outcome of the Arbitrations. 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.*”<sup>61</sup> India did not even attempt to raise these spurious allegations in the ongoing investment arbitration proceedings against the Claimants and DT.
50. On 25 July 2016, the three-member tribunal in the Initial BIT Arbitration issued an interim award on jurisdiction and merits, unanimously finding that India’s repudiation of the Devas-Antrix Agreement was an unlawful expropriation of Devas’s business, in breach of Article 6 of the BIT (“**J&M Award**”).<sup>62</sup> Having found that India was liable, the tribunal decided that it would determine the quantum of damages in a separate proceeding. In

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<sup>60</sup> See *supra* ¶ 27.

<sup>61</sup> **Exhibit C-037**, “ED Moves to Prosecute Devas Under PMLA For FEMA Violation,” Times of India, 27 July 2016. See also **Exhibit C-090**, “ISRO’s Antrix vs Devas: Countering ED probe on FEMA multimedia firm moves HIC,” Firstpost, 28 July 2016, <http://www.firstpost.com/business/antrixdevus-case-isro-may-face-l-bn-fine-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.*”).

<sup>62</sup> **Exhibit C-036**, J&M Award, ¶ 501.

response, the DOS issued a press release stating its intent to use the ED and CBI to frustrate enforcement of the Award.<sup>63</sup>

51. On 27 October 2016, India applied to stay the quantum phase of the Initial BIT Arbitration pending the outcome of the CBI investigation.<sup>64</sup> The tribunal squarely rejected India’s obvious 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.*”<sup>65</sup>

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

52. Even though India failed to pause the Initial BIT Arbitration, its retaliatory campaign to undermine the Arbitrations continued. In January 2017, the ED froze Devas’s Indian mutual fund investments and bank accounts, as well as the bank accounts of several Devas personnel.
53. In perhaps its most flagrant and abusive conduct to date, 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.<sup>66</sup> Further, the officers did not provide any seizure memo identifying which documents would be seized and instead carried numerous documents away from the office.<sup>67</sup>
54. The ED additionally questioned Devas employees on site for over four hours and held three employees at ED’s offices to question them overnight—over 15 hours. A fourth individual,

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<sup>63</sup> [Exhibit C-037](#), DOS Press Release, 27 July 2016.

<sup>64</sup> [Exhibit C-039](#), Respondent’s Letter to the Tribunal, 27 October 2016.

<sup>65</sup> [Exhibit C-040](#), 21 December 2016 UNCITRAL Arbitration Procedural Order No. 7, ¶¶ 16-17.

<sup>66</sup> [Exhibit C-041](#), Letter from Nandish Patel to Enforcement Directorate, 28 January 2017, ¶¶ 2-3.

<sup>67</sup> [Exhibit C-041](#), Letter from Nandish Patel to Enforcement Directorate, 28 January 2017, ¶¶ 3-4.

not detained, was ordered to return the next day and interrogated for over 11 hours.<sup>68</sup> The ED seized the Devas employees' cell phones and refused to let them to 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 and refused to provide them with a copy.<sup>69</sup>

55. 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.<sup>70</sup> 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.<sup>71</sup> 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).”*<sup>72</sup> The ED official questioning Mr. Venugopal *“arbitrarily refused to accept”* many of his answers *“and brushed aside the explanations”* he provided.<sup>73</sup> For almost 12 hours, the ED interrogated him, hurling threats and insults, and claimed they were *“acting at the direction of highest authorities in New Delhi.”*<sup>74</sup> 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.”*<sup>75</sup> Mr. Venugopal explained that he gave in because he was *“extremely fatigued and was suffering from bouts of cough and just wanted to buy a moment of peace.”*<sup>76</sup>

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<sup>68</sup> **Exhibit C-041**, Letter from Nandish Patel to Enforcement Directorate, 28 January 2017, ¶ 6.

<sup>69</sup> **Exhibit C-041**, Letter from Nandish Patel to Enforcement Directorate, 28 January 2017, ¶ 7.

<sup>70</sup> **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017.

<sup>71</sup> **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, p. 2.

<sup>72</sup> **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, p. 2.

<sup>73</sup> **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, p. 2.

<sup>74</sup> **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, p. 2.

<sup>75</sup> **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, pp. 2-3.

<sup>76</sup> **Exhibit C-043**, Letter from D. Venugopal to Karnal Singh, 11 February 2017, p. 3.

- 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.<sup>77</sup> During that time, the ED officers threatened him and took sensitive personal details, including his address, financial information, and information about his immediate family.<sup>78</sup> 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.*” 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.*” As he was leaving, an ED “*also took [his] signature on the summons and no copy of it was given to [him].*”<sup>79</sup>
- 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.*”<sup>80</sup> 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.<sup>81</sup> Furthermore, the ED officers presented him with a statement and “*directed [him] to sign on every page*” and that the officers “*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.*”<sup>82</sup> Finally, Mr. Mohan explained that, at 64 years, he was a “*senior citizen*” who was “*in shock and extremely traumatized*” from the experience. He was also “*under constant fear and stress,*” and

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<sup>77</sup> **Exhibit C-042**, Letter from Nataraj Dakshinamurthy to Karnal Singh, 7 February 2017, ¶¶ 1-2.

<sup>78</sup> **Exhibit C-042**, Letter from Nataraj Dakshinamurthy to Karnal Singh, 7 February 2017 ¶¶ 1-2.

<sup>79</sup> **Exhibit C-042**, Letter from Nataraj Dakshinamurthy to Karnal Singh, 7 February 2017, ¶ 8.

<sup>80</sup> **Exhibit C-044**, Letter from Ranganathan Mohan to Karnal Singh, 21 February 2017, pp. 1-2.

<sup>81</sup> **Exhibit C-044**, Letter from Ranganathan Mohan to Karnal Singh, 21 February 2017, p. 2.

<sup>82</sup> **Exhibit C-044**, Letter from Ranganathan Mohan to Karnal Singh, 21 February 2017, p. 2.



it was “*only after feeling better and gathering courage*” that he wrote to disavow the statement he claimed had been procured through coercion.<sup>83</sup>

56. Remarkably, despite the patently coercive and unlawful search and seizure, and notwithstanding the retractions, on 10 July 2018, the ED filed a second criminal complaint under the Indian Prevention of Money Laundering Act (“**PMLA**”) on the very basis of the false and coerced statements,<sup>84</sup> accusing Devas of diverting funds to foreign accounts.

#### 4. The ED And CBI Continue Baseless And Harassing Investigations

57. For the remainder of the quantum phase of the Initial BIT Arbitration, the ED and CBI continued to escalate their actions against Devas, its officers, and the Claimants. The actions regularly followed Claimants’ successes in the Initial BIT Arbitration and Devas’s attempts to enforce the ICC Award.
58. Notably, on 13 September 2018, Devas filed a petition to confirm the ICC Award in US federal court for the Western District of Washington at Seattle.<sup>85</sup> In response, the ED escalated its actions. In December 2018, it issued notices against every one of the defendants in the First FEMA Action—including Devas, its investors, and all six directors who testified against Antrix and India in the Arbitrations—to appear for a “*Personal Hearing*” at the ED’s office in January 2019. Given that other Devas employees had recently experienced what such “*personal*” attendances at the ED’s offices involved, Devas accordingly challenged the validity of the notices.
59. Also, in December 2018, the ED commenced yet another legal action (the “**Second FEMA Action**”) against, among others, Devas and its officers, including three who had just testified against Antrix and India in the ICC and Initial Arbitrations. The ED now claimed that the defendants violated India’s foreign exchange laws. As with the ED’s and CBI’s

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<sup>83</sup> **Exhibit C-044**, Letter from Ranganathan Mohan to Karnal Singh, 21 February 2017, pp. 2-3.

<sup>84</sup> **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.

<sup>85</sup> **Exhibit C-047**, Devas Petition to Confirm Foreign Arbitral Award, 13 September 2018.

prior allegations, these charges were meritless and aimed singularly to frustrate arbitration and enforcement efforts by Devas and the Claimants.

60. The CBI too continued to launch baseless actions against Devas, its officers, and investors. On 8 January 2019, the CBI filed a supplementary charge sheet against Devas, its officers, and certain government officials.<sup>86</sup> The supplemental charge sheet alleged a “*criminal conspiracy*” between Forge Advisors officials, including Mr. Viswanathan, and Antrix officials.<sup>87</sup> As before, the supplementary charge sheet did not make specific allegations of bribery or corruption by Devas, its officers, or its investors. Rather, the CBI claimed that Devas was an “*ineligible company*” and thus Antrix’s grant of S-band spectrum was “*in violation of the laid down guidelines*” which “*caused wrongful gain*” to Devas.<sup>88</sup>
61. Like the ED, the CBI began to target and harass Devas’s former officers, especially those who had testified against Antrix and India in the Arbitrations. On 18 January 2019, the CBI asked Indian courts to issue non-bailable warrants against two former Devas officers, so that these individuals could be put on Interpol’s red corner notice list.<sup>89</sup> Both these Devas officers—Mr. Viswanathan and Dr. Chandrasekhar—had testified against Antrix and India in the ICC Arbitration and Initial BIT Arbitration.
62. Then, on 30 January 2019, the ED—without having heard Devas or its investors—issued a penalty order in the First FEMA Action, imposing fines over USD 220 million against Devas, its investors, and its current and former officers. This only further confirmed the ED’s reported strategy to use the investigations to “*recover*” the amounts Antrix and India owed to Devas and the Claimants.<sup>90</sup>

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<sup>86</sup> **Exhibit C-048**, CBI Supplementary Charge Sheet, 8 January 2019.

<sup>87</sup> **Exhibit C-048**, CBI Supplementary Charge Sheet, 8 January 2019, ¶ 16.2.

<sup>88</sup> **Exhibit C-048**, CBI Supplementary Charge Sheet, 8 January 2019, ¶ 16.2.

<sup>89</sup> These warrants have not yet been issued.

<sup>90</sup> *See supra* ¶ 49.

#### D. Adverse Decisions Prompt India To Take Over Devas

63. While India’s enforcement arms targeted Devas with baseless, harassing actions, Antrix and India scrupulously avoided raising these allegations in the Arbitrations and subsequent enforcement proceedings. In fact, when questioned by the US court overseeing the confirmation of the ICC Award, Antrix called the “*allegation of misconduct on the part of Devas*” “*a red herring*” and asked the court “*not [to] follow . . . down the rabbit hole.*”<sup>91</sup> Yet soon after receiving adverse rulings in the Initial BIT Arbitration’s quantum phase and the ICC Award’s confirmation process, India used the manufactured fraud allegations to take over its own creditor, Devas.
64. On 13 October 2020, the tribunal in the Initial BIT Arbitration issued an award on damages, ordering India to pay Claimants damages over USD 111 million plus interest, and USD 10,000,000 in attorneys’ fees plus interest (the “**Quantum Award**”).<sup>92</sup> Shortly thereafter, on 27 October 2020, a US court confirmed the ICC Award,<sup>93</sup> and on 4 November 2020, the court 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**”).<sup>94</sup>
65. On the very same day as the ICC Award Judgment, 4 November 2020, the Indian President enacted a special ordinance amending the Indian Arbitration and Conciliation 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.<sup>95</sup> A former Indian attorney general in comments to the media noted that the 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.*”<sup>96</sup>

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<sup>91</sup> **Exhibit C-050**, Official Transcript, 14 October 2020, p. 32.

<sup>92</sup> **Exhibit C-049**, *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telkom Devas Mauritius Limited v. The Republic of India*, PCA Case No. 2013-09, Award of Quantum, 13 October 2020.

<sup>93</sup> **Exhibit C-051**, Order Granting Petition to Confirm Foreign Arbitral Award, 27 October 2020, pp. 17-18.

<sup>94</sup> **Exhibit C-053**, Judgment, 4 November 2020.

<sup>95</sup> **Exhibit C-055**, The Arbitration and Conciliation (Amendment) Ordinance 2020, 4 November 2020.

<sup>96</sup> **Exhibit C-058**, A Change To The Arbitration Law Whose Purpose Is Unclear, 24 November 2020.

66. Also on the same day, the Commissioner of Income Tax for India announced the creation of a specialized monitoring committee to “*expedite the statutory proceedings*” against Devas and its investors.<sup>97</sup> The Commissioner directed the monitoring committee to go “*on a war footing*” against Devas and its shareholders, including by launching tax proceedings designed to generate tax bills, penalties, and interest large enough to offset the Quantum Award (in addition to other awards).<sup>98</sup>
67. These adverse rulings also reinvigorated the Ministry of Corporate Affairs’ attacks on Devas. On 9 November 2020, the ROC filed an “*urgent application*” before the High Court of Delhi to have an expedited hearing challenging the High Court’s 2011 and 2012 orders enjoining the ROC investigation against Devas.<sup>99</sup> The High Court of Delhi dismissed the application on 18 November 2020,<sup>100</sup> following which, on 27 November 2020, the ROC filed another “*urgent application,*” listing several additional grounds counseling urgency, including the CBI, ED, and ROC investigations, the fact of the outstanding arbitral awards and ongoing enforcement efforts.<sup>101</sup>
68. After over a decade of arbitration and litigation over the matter, on 12 January 2021, in a blatant attempt to undermine enforcement of the ICC judgment, Antrix sought to amend its set aside application to include baseless charges of fraud against Devas and its shareholders. Antrix based its charges on documents allegedly “*unearthed which reveal a fraud of a criminal nature that vitiate the entire [Devas-Antrix Agreement], including the arbitration agreement between the parties.*”<sup>102</sup> These supposedly “*unearthed*” documents were the CBI charge sheets, the ED’s First and Second FEMA Actions, and the PMLA

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<sup>97</sup> **Exhibit C-052**, Inter-Ministerial Monitoring Committee Directive, 4 November 2020.

<sup>98</sup> **Exhibit C-052**, Inter-Ministerial Monitoring Committee Directive, 4 November 2020.

<sup>99</sup> **Exhibit C-056**, Urgent Application, 9 November 2020.

<sup>100</sup> **Exhibit C-057**, Order, High Court of Delhi, 18 November 2020.

<sup>101</sup> **Exhibit C-059**, Second Urgent Application, 27 November 2020, ¶ 2. On 16 December 2020, the High Court of Delhi set a hearing date for the matter in 2021, **Exhibit C-060**, Order, High Court of Delhi, 16 December 2020, but in light of the Indian Government’s winding up of Devas, the Liquidator has since entered appearance for Devas and the matter has not yet resumed, **Exhibit C-073**, Delhi High Court Order, 26 February 2021.

<sup>102</sup> **Exhibit C-061**, Application for Amendment under Order VI Rule 17 of the Civil Procedure Code, 1908, 12 January 2021, p. 4.

Action, with allegations supported by statements procured through threat and coercion.<sup>103</sup> These documents had been available to Antrix for a number of years.<sup>104</sup>

69. Based on these newly minted allegations, India proceeded to liquidate its award creditor, Devas, at breakneck speed. On 14 January 2021, Antrix requested permission from its corporate parent, the Central Government of India, to file a petition to wind up its own creditor, Devas.<sup>105</sup> On 18 January 2021, the Central Government authorized Antrix to present a wind-up petition against Devas before the National Company Law Tribunal (“NCLT”).<sup>106</sup> Hours later, on the same day, Antrix filed a petition to wind up Devas before the Bengaluru division of the National Company Law Tribunal (“NCLT”) at 4:30 p.m., moving for liquidation under Section 271(c) of the Companies Act, 2013 (the “**Companies Act**”).<sup>107</sup> Devas was served by email later that day.<sup>108</sup> The NCLT scheduled an oral hearing at 11:30 a.m. for the next day, 19 January 2021.<sup>109</sup> Without giving Devas any time to file a written response to Antrix’s petition, the NCLT held the hearing the next morning.<sup>110</sup> The Solicitor General of India and the Additional Solicitor General of India argued the case before the NCLT on Antrix’s behalf.<sup>111</sup> India’s Ministry of Corporate Affairs (which heads the ROC), unsurprisingly, “*supported*” Antrix’s case.<sup>112</sup>
70. Within hours of the hearing, the NCLT appointed a provisional liquidator (“**Liquidator**”), who is an Indian Government employee,<sup>113</sup> to “*initiate appropriate action . . . to take*

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<sup>103</sup> **Exhibit C-061**, Application for Amendment under Order VI Rule 17 of the Civil Procedure Code, 1908, 12 January 2021, pp. 4-5.

<sup>104</sup> *See supra* Section II.C.

<sup>105</sup> **Exhibit C-062**, Request for Sanction, 14 January 2021.

<sup>106</sup> **Exhibit C-063**, Sanction By Indian Government, 18 January 2021.

<sup>107</sup> **Exhibit C-065**, Antrix Wind-up Petition, 18 January 2021, ¶ 4.

<sup>108</sup> **Exhibit C-064**, Service of Wind-up Petition, 18 January 2021.

<sup>109</sup> **Exhibit C-066**, NCLT Hearing Schedule, 19 January 2021.

<sup>110</sup> **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021.

<sup>111</sup> **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021.

<sup>112</sup> **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021, ¶ 6.

<sup>113</sup> Section 359 of the Companies Act: “**359: Appointment of Official Liquidator.** (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

*control of Management [of Devas] and to take custody or control of all the property, effects and actionable claims to which [Devas] is or appears to be entitled to.”*<sup>114</sup> India was thus able to take control of Devas within just five days from the date of Antrix’s application.

**E. The Liquidator Fires Devas’s Counsel And Acts Against Devas’s And Its Shareholders’ Interests**

71. Upon his appointment, the Liquidator immediately took steps to undermine Devas and its ability to enforce the ICC Award. Three days after he was appointed, on 22 January 2021, the Liquidator fired **all** Devas’s arbitration and enforcement counsel, who were engaged in confirmation proceedings in multiple jurisdictions, including the United States, France, and the United Kingdom.<sup>115</sup>
72. The Liquidator also refused to defend Devas in the ongoing criminal 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.<sup>116</sup> Likewise, the Liquidator did nothing to resist the ED’s efforts to attach Devas’s assets. In fact, the Liquidator has been conspicuously absent during hearings and has not contested any of the actions of the prosecutors in the ED and CBI cases.
73. Instead of acting in the company’s interests and protecting its assets, the Liquidator has spent his time manufacturing fraud allegations against Devas. On 2 February 2021, the liquidator issued the first interim order in which he parroted Antrix’s baseless allegations

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*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.”*

<sup>114</sup> **Exhibit C-067**, NCLT Wind-up Order, 19 January 2021, ¶ 14(4).

<sup>115</sup> **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 representing Devas Multi Media pvt ltd ( in prov liqn ) as a consequence of the NCLT provisional winding up order dated 19.01.2021.*”)

<sup>116</sup> **Exhibit C-069**, CBI Order and Deferment Application of Devas, 30 January 2021, p. 2.

in its petition to the NCLT, alleging Devas was a “*Sham/Shell company*”<sup>117</sup> and the Devas-Antrix Agreement “*was vitiated by fraud.*”<sup>118</sup>

74. One of the Claimants, DEMPL, appealed the NCLT’s provisional liquidation decision, but the appellate court, the National Appellate Company Law Tribunal (“NCLAT”), denied the appeal on 11 February 2021 and directed DEMPL to seek redress from the NCLT.<sup>119</sup> DEMPL did so, but the NCLT, too, denied intervention, concluding that Devas could itself oppose the winding up, and directed Devas—through counsel for DEMPL—to file a reply,<sup>120</sup> pursuant to which an ex-director of Devas submitted an affidavit.
75. In light of India’s patently abusive and unlawful takeover of Claimants’ investment in Devas, on 6 May 2021, Claimants sent India a Notice of Intent to Initiate Arbitration for Claims Arising From India’s treatment of the Claimants (the “**Notice of Dispute**”).<sup>121</sup> Claimants set out India’s unlawful actions and invited India to settle the dispute amicably.<sup>122</sup> On 16 August 2021, India rejected Claimants’ offer to engage in settlement discussions.<sup>123</sup>
76. In the meantime, India proceeded to convert the provisional liquidation of Devas into a final liquidator order. The Liquidator filed additional reports containing fabricated allegations of fraud against Devas.<sup>124</sup> The Additional Solicitor General of India continued to represent Antrix in these proceedings and the Ministry of Corporate Affairs continued to support Antrix’s case.<sup>125</sup> Ultimately, on 25 May 2021, the NCLT issued a final

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<sup>117</sup> **Exhibit C-071**, First Interim Report of the Devas Provisional Liquidator, 2 February 2021, ¶ 12.

<sup>118</sup> **Exhibit C-071**, First Interim Report of the Devas Provisional Liquidator, 2 February 2021, ¶ 32.

<sup>119</sup> **Exhibit C-072**, NCLAT Order, 11 February 2021.

<sup>120</sup> **Exhibit C-076**, NCLT Decision, 2 March 2021.

<sup>121</sup> *See generally* **Exhibit C-077**, Notice of Intent to Initiate Arbitration for BIT Claims Arising From India’s Treatment of CC/Devas (Mauritius) Ltd., Telcom Devas Mauritius Limited and Devas Employees Mauritius Private Limited, 6 May 2021, (the “**Trigger Letter**”).

<sup>122</sup> **Exhibit C-077**, Trigger Letter, pp. 9-10.

<sup>123</sup> **Exhibit C-083**, India’s Response to Trigger Letter, p. 10.

<sup>124</sup> **Exhibit C-074**, Second Report of Provisional Liquidator, 27 February 2021.

<sup>125</sup> **Exhibit C-076**, NCLT Decision, 2 March 2021.

liquidation order ending the provisional nature of the Liquidator's appointment, and making his appointment official and final.<sup>126</sup>

77. The NCLT's order revealed the true reason for the liquidation: to stop Petitioners and Devas from enforcing the arbitral awards against India and Antrix. The NCLT noted 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 ICC Award.*"<sup>127</sup>
78. 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.<sup>128</sup> An ex-director of Devas and DEMPL appealed both orders before the NCLAT. The Additional Solicitor General of India continued to appear on behalf of Antrix in the appellate proceedings and the Ministry of Corporate Affairs continued to support Antrix's positions.<sup>129</sup> On 8 September 2021, the NCLAT rejected the appeals of the final liquidation order,<sup>130</sup> and DEMPL and Devas's ex-director appealed to the Supreme Court of India.
79. Rather than conducting a trial or even accepting evidence, the NCLAT simply parroted Antrix's nonsense allegations. For example, the NCLAT repeated an allegation that the Devas-Antrix Agreement was fraudulently executed because a chartered accountant signed it as a duly authorized agent of the Devas Board pursuant to a Board resolution.<sup>131</sup> The NCLAT called the act an illegal "*act of trickery*" that "*cannot be countenanced in the eye of the Law.*"<sup>132</sup> Of course, there is nothing unusual or illegitimate about this practice, and

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<sup>126</sup> **Exhibit C-078**, NCLT Final Liquidator Order, 25 May 2021.

<sup>127</sup> **Exhibit C-078**, NCLT Final Liquidator Order, 25 May 2021, p. 78.

<sup>128</sup> **Exhibit C-079**, NCLT Impleadment Order, 25 May 2021.

<sup>129</sup> **Exhibit C-080**, NCLAT Briefing Schedule, 7 June 2021.

<sup>130</sup> **Exhibit C-084**, NCLAT Final Order, 8 September 2021. The Indian Supreme Court later rejected Devas and DEMPL's appeals of the NCLAT decision.

<sup>131</sup> See **Exhibit C-084**, NCLAT Final Order, 8 September 2021, ¶ 323.

<sup>132</sup> See **Exhibit C-084**, NCLAT Final Order, 8 September 2021, ¶ 323.



Devas had every incentive to enter into the Devas-Antrix Agreement legitimately because it wanted—and intended—to do business in India.

80. On 17 January 2022, the Supreme Court of India dismissed the appeals of the liquidation order by the ex-director and DEMPL.<sup>133</sup> Recognizing the unprecedented nature of the proceedings, the Supreme Court noted that “*this is the first case of winding up on the ground of fraud.*”<sup>134</sup> Yet the Indian Supreme Court proceeded to enforce the winding up, despite acknowledging that Devas and its shareholders had not been convicted of any wrongdoing.<sup>135</sup> The Court laid bare the true intent of its decision: to stymie the ongoing enforcement proceedings. Noting that Devas has “*even shown extreme urgency in enforcing the ICC Arbitration award and 2 BIT awards,*”<sup>136</sup> the Court went on to surmise: “[w]hat if the company is allowed to continue to exist and also enforce the arbitral[] awards . . . and eventually the Criminal Court finds all shareholders guilty of fraud? The answer to this question would be abhorring.”<sup>137</sup>

#### **F. The Liquidator Continues To Undermine Award Enforcement**

81. The Liquidator, now in charge of Devas, continues to obstruct Devas and its shareholders from collecting on the arbitral awards. The Liquidator has failed to file any response or oppose Antrix’s amended challenge of the ICC Award in India based on its newly adopted fraud allegations.
82. The Liquidator has also sought to undermine enforcement of the ICC Award outside India. For instance, after the Liquidator fired Devas’s global arbitration and enforcement counsel, he left Devas entirely unrepresented in the US ICC Award recognition and enforcement

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<sup>133</sup> **Exhibit C-088**, Judgment of the Indian Supreme Court, 17 January 2022, ¶ 14.

<sup>134</sup> **Exhibit C-088**, Judgment of the Indian Supreme Court, 17 January 2022, ¶ 6.

<sup>135</sup> **Exhibit C-088**, Judgment of the Indian Supreme Court, 17 January 2022, ¶¶ 13.5-13.6 (the court wrote: “*If as a matter of fact, fraud as projected by Antrix, stands established . . . If the seeds of the commercial relationship between Antrix and Devas were a product of fraud . . . every part of the plant that grew out of these seeds, such as the Agreement, the disputes, arbitral awards etc., are all infected with the poison of fraud . . . We do not know if the action of Antrix in seeking the winding up of Devas may send a wrong message . . . But allowing Devas and its shareholders to reap the benefits of their fraudulent action may [also] send a[] wrong message.*” (emphases added)).

<sup>136</sup> **Exhibit C-088**, Judgment of the Indian Supreme Court, 17 January 2022, ¶ 7.30.

<sup>137</sup> **Exhibit C-088**, Judgment of the Indian Supreme Court, 17 January 2022, ¶ 13.3.

proceedings for five months. Claimants however, actively worked to enforce the Court's judgment, including by successfully applying to intervene in the proceedings and then by seeking discovery from Antrix and a third party with whom Antrix had done business. The court's authorization of such discovery caused the Liquidator to finally engage counsel to represent Devas.

83. But rather than supporting Devas's enforcement efforts, the Liquidator's new US counsel have acted in **India's** interests by attempting to obstruct and stall enforcement of the ICC Award. Their first action was to ask the Washington court to stay enforcement proceedings of the ICC Award Judgment.<sup>138</sup> 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.*”<sup>139</sup>
84. The Liquidator's counsel then asked the United States Court of Appeals for the Ninth Circuit to revoke its decision to allow Claimants to intervene in the Washington proceedings,<sup>140</sup> arguing that the Claimants' intervention was no longer necessary because the Liquidator intended to enforce the ICC Award Judgment. The Ninth Circuit denied the Liquidator's counsel's request.<sup>141</sup> 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.<sup>142</sup>
85. In fact, many of India's positions are difficult to reconcile. On 18 January 2022, India's Finance Minister gave an extensive press conference, in which she hailed the Indian Supreme Court's 17 January 2022 decision. Her comments in that conference proved what

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<sup>138</sup> **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.

<sup>139</sup> **Exhibit C-082**, Order of the US District Court of the Western District of Washington, 9 August 2021, pp. 1-2.

<sup>140</sup> **Exhibit C-085**, Petitioner-Appellee's Motion for Reconsideration of Order Granting Intervention, 1 October 2021.

<sup>141</sup> **Exhibit C-086**, Order, 15 November 2021.

<sup>142</sup> **Exhibit C-087**, Liquidator's Opposition to Intervenor's Motion to Register the Judgment, 29 November 2021.

Claimants have long known: that the fraud allegations are unfounded and that India's evasion of its payment obligations is politically motivated. The Finance Minister repeatedly railed against the opposition Congress Party for “*selling off*” a “*rare endowment of the people*” for “*a pittance*” yet did not claim that the S-band spectrum was intentionally undervalued (which it was not). She also admitted that “[t]he company probably wasn't fraudulent,” and acknowledged the real reason for the termination of the Devas-Antrix Agreement: “[t]he government cannot afford to grant the S-band spectrum to anyone, including Antrix, for strategic reasons.”

### III. JURISDICTION

#### A. Claimants Initiate Arbitration Pursuant To Article 3 Of The UNCITRAL Rules

86. As described in this Notice of Arbitration, this dispute arises from India's breaches of its obligations under the BIT with respect to treatment of Claimants' investment in India. Claimants hereby initiate arbitration of this dispute pursuant to the BIT and in accordance with Article 3 of the UNCITRAL Rules.

#### B. The Requirements Of The BITs To Proceed To Arbitration Under the UNCITRAL Rules Have Been Satisfied

##### 1. India Has Consented To Arbitration

87. India has consented to arbitrate this dispute pursuant to the UNCITRAL Rules.<sup>143</sup> The relevant jurisdictional requirements and India's consent to arbitrate this dispute are provided in Article 8(2)(c) of the BIT.

*“(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:*

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<sup>143</sup> According to the Indian government website, India “*terminated*” the BIT in 2017. The Investors' investments, however, were made prior to and approved well before 2017. *See infra* ¶ 96. 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.

...

*(c) to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law; . . .”*

88. As noted above, 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.<sup>144</sup> On 16 August 2021, India rejected Claimants’ offer to engage in settlement discussions.<sup>145</sup> Thus, the dispute could not be settled amicably within six months of Claimants’ request for settlement.

## **2. Claimants Are Qualifying Investors**

89. The Claimants are protected investors under the BIT.
90. 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; . . .”*

91. CC/Devas, Telcom Devas, and DEMPL are companies organized and existing under the laws of Mauritius.<sup>146</sup> Accordingly, the Claimants are “*investors*” under Article 1(1)(b)(ii) of the BIT and entitled to its protections.

## **3. Claimants Have Made Protected Investments**

92. Claimants each have made protected investments under the BIT, principally through their equity investment in Devas.

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<sup>144</sup> **Exhibit C-077**, Trigger Letter, p. 10.

<sup>145</sup> **Exhibit C-083**, India’s Response to Trigger Letter, p. 10.

<sup>146</sup> **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.

93. 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; . . .”*

94. Claimants’ investments in India are principally through their shareholdings in an Indian company, Devas, which was incorporated in Karnataka, Bangalore, on 17 December 2004.

95. Claimants’ respective holdings in Devas are:<sup>147</sup>

- a) CC/Devas holds 15,730 Class A Equity Shares, 11,978 Class B Equity Shares, 525 Class C Equity Shares, and 3,116 Class D Equity Shares, currently representing 17.06 percent of voting shares;

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<sup>147</sup> See **Exhibit C-021**, Submission for Issuance and Allotment of Shares, 11 June 2009, 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-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.

- b) Telcom Devas holds 15,730 Class A Equity Shares, 11,978 Class B Equity Shares, 525 Class C Equity Shares, and 3,116 Class D Equity Shares, currently representing 17.06 percent of voting shares; and
  - c) DEMPL holds 6,402 Class D Equity Shares, currently representing 3.48 percent of voting shares.
96. CC/Devas and Telcom Devas acquired these stakes in 2006, and DEMPL acquired its stake in 2009. These investments were duly approved by India’s FIPB. 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.<sup>148</sup>
97. 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.<sup>149</sup>

#### IV. SUMMARY OF CLAIMS

98. India’s conduct amounts to fundamental breaches of its obligations under the BIT, including, *inter alia*, (A) to refrain from unlawful expropriation; (B) to grant Claimants’ investment fair and equitable treatment and to refrain from impairing Claimants’ investment by unreasonable or discriminatory measures; (C) to provide Claimants treatment which shall not be less favorable to that accorded to domestic investors or investors of another state; (D) to provide Claimants and their investments with full protection and security; (E) to allow Investors “*to freely transfer*[], *without unreasonable*

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<sup>148</sup> See **Exhibit C-036**, J&M Award, ¶¶ 104-109; *supra* Section II.A.2.

<sup>149</sup> 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; **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; **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; **Exhibit CL-010**, *Hochtief AG v. The Argentine Republic*, ICSID Case No. ARB/07/31, Decision on Jurisdiction, 24 October 2011, ¶ 66.

*delay and on a non-discriminatory basis” the funds related to Claimants’ investment;<sup>150</sup> and (F) to “honour any obligation it may have entered into” with regard to Claimants’ investments.<sup>151</sup>*

99. The summary of the claims that follows does not constitute an exhaustive list or statement of Claimants’ case, and Claimants reserve the right to amend or supplement their claims during the course of these proceedings. Claimants also reserve the right to rely on any more favorable substantive protections India has entered into with respect to investors from third states pursuant to Claimants’ rights to most favorable nation (“MFN”) status under the BIT, Article 4(3).

**A. India Has Unlawfully Expropriated Claimants’ Investment**

100. Article 6 of the BIT states:

*“(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 non-discriminatory 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.”*

101. India has breached this provision by unlawfully expropriating or subjecting to measures having effects equivalent to expropriation through India’s liquidation of Devas and its takeover by the Liquidator, an Indian government employee and agent of the state. These actions ultimately destroyed the value of Claimants’ investments, as the Liquidator has refused to pursue enforcement of the ICC Award, which is currently Devas’s largest asset.

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<sup>150</sup> **Exhibit CL-001**, BIT Article 7(1).

<sup>151</sup> **Exhibit CL-001**, BIT Article 11(4).

102. India's expropriatory conduct was moreover unlawful as, contrary to the requirements in the BIT, and without limitation:
- a) India has refused to provide any compensation to the Claimants;
  - b) India's conduct was not motivated by any legitimate public purpose. Rather, as Indian courts and other authorities have acknowledged, India sought to and ultimately liquidated Devas to avoid paying its debt under the ICC Award.<sup>152</sup>
  - c) India expropriated Claimants' investment with a blatant disregard for the due process of law. Without limitation:
    - i. India concocted false charges against Devas and its employees to relieve itself of its substantial debt under the arbitral awards;<sup>153</sup>
    - ii. India liquidated Devas within just five days of Antrix's application, without giving Devas's counsel any meaningful opportunity to even prepare for the dissolution hearing, much less file a written response;<sup>154</sup>
    - iii. The Liquidator, an Indian Government employee, immediately fired Devas's counsel, leaving the company unable to represent its interests;<sup>155</sup>
    - iv. The NCLT and NCLAT held sham liquidation proceedings, in which they made findings of fraud by adopting wholesale Antrix's arguments as put forth by the ASG of India, refusing to hear witness testimony on the matter, acknowledging all the while that the purpose of the liquidation was to relieve India of its debt by frustrating enforcement of the arbitral awards.<sup>156</sup>

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<sup>152</sup> See **Exhibit C-078**, NCLT Final Liquidator Order, 25 May 2021, p. 78.

<sup>153</sup> See *supra* Section II.C.

<sup>154</sup> See *supra* Section II.D; **Exhibit C-078**, NCLT Final Liquidator Order, 25 May 2021, p. 78.

<sup>155</sup> See *supra* Section II.E.

<sup>156</sup> See *supra* Section II.D.



- d) India expropriated Claimants' investment in a discriminatory manner because it singled out Devas for liquidation.

**B. India Has Failed To Accord Claimants Fair And Equitable Treatment**

103. Article 4(1) of the BIT states:

*“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.”*

104. India's actions breached its obligation to accord fair and equitable treatment (“FET”) because they were, among other things, unreasonable, arbitrary, and discriminatory. Without limitation, India:

- a) Initiated 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;<sup>157</sup> and
- b) Liquidated Devas, fired its counsel, and appointed a Government employee to take over the company, who has taken no steps to defend Devas or its largest asset, the ICC Award, and to the contrary has attempted to frustrate enforcement of the Award.<sup>158</sup>

105. India accordingly breached its obligation to accord FET to Claimants' investments.

106. Through, *inter alia*, this conduct, India has also unreasonably and discriminatorily impaired Claimants management, maintenance, use and enjoyment of their investments in Devas.

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<sup>157</sup> See *supra* Section II.C.4.

<sup>158</sup> See *supra* Section II.E.

**C. India Has Unlawfully Provided Less Favorable Treatment To Claimants Than That Accorded To Domestic Investors Or Investors Of Any Third State**

107. Article 4(2) of the BIT states:

*“Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments of its own or investments of investors of any third State.”*

108. By singling Devas out for liquidation, India has accorded treatment of Claimants’ investments that is less favorable than that given to its domestic investors and investors of third-party states holding arbitral awards against India or its state agencies.

**D. India Has Failed To Provide Claimants With Full Protection And Security**

109. Article 4(3) of the BIT states:

*“In addition, each Contracting Party shall accord to investors of the other Contracting Party, including in respect of returns on their investments, treatment which shall not be less favourable than that accorded to investors of any third state.”*

110. Article 3(2) of the Agreement between the Republic of India and the Republic of Lithuania for the Promotion and Protection and Investments (“**Lithuania-India BIT**”) states:

*“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.”*

111. Article 3(2) of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India for the Promotion and Protection of Investments (“**UK-India BIT**”) 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.”*

112. Article 3(2) of the Agreement of the Federal Republic of Germany and the Republic of India for the Promotion and Protection and Investments (“**Germany-India BIT**”) states:

*“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.”*

113. Under Articles 4(2) and 4(3) of the BIT, India owed Claimants the same treatment required under Article 3(2) of the Lithuania-India BIT, under Article 3(2) of the UK-India BIT, and Article 3(2) of the Germany-India BIT.
114. India has failed to provide full protection and security (“FPS”) to the Claimants and their investments. The FPS standard requires the host state to guarantee a legally stable and secure investment environment. This encompasses “*an obligation . . . to desist from behavior that is unfair and inequitable*”<sup>159</sup> and the obligation to take all reasonable measures to protect foreign investments against harm from the actions of the host state, its representatives and the actions of third parties.<sup>160</sup> India’s harassment of Devas and its officers, followed by Devas’s takeover with the intent to prevent enforcement of the ICC Award, breaches India’s FPS obligations.

#### **E. India Has Failed To Allow Claimants To Freely Transfer Funds**

115. Article 7(1) of the BIT states:

*“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;*

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<sup>159</sup> **Exhibit CL-006**, Christoph Schreuer, *Full Protection and Security*, JOURNAL OF INTERNATIONAL DISPUTE SETTLEMENT (2010), p. 14.

<sup>160</sup> See **Exhibit CL-005**, *Asian Agricultural Products Ltd. v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Final Award, 27 June 1990, ¶ 77.

*(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.”*

116. India has breached its obligations under the BIT requiring it to allow Claimants to freely transfer funds by, among other things:

- a) Wrongly freezing Devas’s bank accounts and other assets in connection with its sham investigations;<sup>161</sup> and
- b) Preventing Claimants from accessing Devas’s assets by sending it into liquidation and refusing to disburse its assets, including the ICC Award to its shareholders.<sup>162</sup>

## **V. PROPOSAL FOR CONSTITUTION OF THE ARBITRAL TRIBUNAL**

117. Article 8(2)(d) of the BIT states that if a dispute cannot be settled according to the provisions of the BIT within six months from the date of request for settlement, an investor may submit a dispute:

*“to an ad hoc tribunal set up in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:*

*(i) The appointing authority under Article 7 of the Arbitration Rules shall be the President, the Vice-President or the next senior Judge of International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting Party.*

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<sup>161</sup> See *supra* ¶ 52.

<sup>162</sup> See *supra* Section II.F.

*(ii) The parties shall appoint their respective arbitrators within two months.*

*(iii) The arbitral award shall be made in accordance with the provisions of this Agreement and shall be binding on the parties to the dispute.*

*(iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.”*

118. Consistent with the BIT, Claimants will appoint their arbitrator within two months.
119. Claimants further propose that, once the parties appoint their respected arbitrators, the President be selected by agreement of the two party-appointed arbitrators in consultation with each party within 30 days after the nomination of India’s party-appointed arbitrator.
120. Claimants request Respondent to confirm its agreement to the above proposal regarding the method of appointment of the Tribunal within 15 days of the date of this Notice of Arbitration.

## **VI. PROPOSALS AS TO PLACE AND LANGUAGE OF THE ARBITRATION**

121. Where there is no prior agreement between the parties as to the seat of arbitration or language of the proceedings, Articles 16 and 17 of the UNCITRAL Rules empower the Tribunal to determine the appropriate place of the arbitration “*having regard to the circumstances of the arbitration*” as well as the language(s) to be used. Furthermore, the BIT requires that the “*tribunal shall determine its own procedure.*”<sup>163</sup>
122. Claimants propose that the place of the proceeding be in Washington, D.C., and the language of the proceeding be English.

## **VII. REQUEST FOR RELIEF**

123. India’s multiple violations of the BIT entitle Claimants to relief as set out below. It is worth noting that Claimants’ request for relief, including their request for compensation,

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<sup>163</sup> Exhibit CL-001, BIT, art. 9(6).

is separate and independent from the relief granted by the Quantum Award. While the Initial Arbitration arose from India's wrongful conduct in relation to its cancellation of the Devas-Antrix Agreement, this current dispute arises from India's unlawful and abusive measures against Devas to preclude it from collecting on the ICC Award. Accordingly, Claimants' requests for relief relate to the wrongful conduct that was not the subject of the Quantum Award (which India, in any event, has not yet paid).<sup>164</sup>

124. Claimants respectfully request an award in their favor:
- a) Declaring that India has breached its obligations under the BIT;
  - b) Directing 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 Treaty and applicable rules of international law, including damages of no less than Claimants' share of the amount of the ICC Award and Judgment of approximately USD 1.3 billion;
  - c) Ordering interest not covered in any damages awarded to Claimants, including post-award interest on all sums awarded at the same rate as for the ICC Award;
  - d) Ordering 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
  - e) Granting such other and further relief as the Tribunal deems just and proper.
125. Claimants reserve the right to provide a more precise calculation of its damages and losses in due course. Claimants further reserve the right to supplement and modify the claims set forth in this Notice of Arbitration, to make additional claims, to request such additional or different relief as may be appropriate, to submit memorials, documents, exhibits, witness

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<sup>164</sup> Claimants will undertake, as appropriate, not to double recover any amounts pursuant to paragraph 663(k) of the Quantum Award.

statements, expert reports, and other evidence elaborating its case and the relief sought in the course of these proceedings.

Dated: 2 February 2022

*Gibson, Dunn & Crutcher*

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