

ENGLAND AND WALES / JUDGMENT

CC/Devas (Mauritius) Ltd & Ors v The Republic of India

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Neutral Citation Number: [2026] EWHC 414 (Comm) Case No: CL-2021-000253 IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES COMMERCIAL COURT (KBD) Royal Courts of Justice Rolls Building Fetter Lane, London, EC4A 1NL Date: 25th February 2026 Before : Mrs Justice O'Farrell DBE

- ----- Between :

- (1) CC/DEVAS (MAURITIUS) LTD
- (2) DEVAS EMPLOYEES MAURITIUS PRIVATE LIMITED
- (3) TELECOM DEVAS MAURITIUS LIMITED
- (4) CCDM HOLDINGS LLC
- (5) DEVAS EMPLOYEES FUND US LLC
- (6) TELECOM DEVAS LLC

- and - Claimants THE REPUBLIC OF INDIA Defendant

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- ----- Tom Sprange KC and Kabir Bhalla (instructed by King & Spalding International LLP) for the Fourth, Fifth & Sixth Claimants Sudhanshu Swaroop KC (instructed by White & Case LLP) for the Defendant Hearing date: 5th February 2026

- ----- Approved Judgment This judgment was handed down remotely at 10.30am on Wednesday 25th February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. MRS JUSTICE O'FARRELL Approved Judgment Mrs Justice O'Farrell: Devas v India 25.02.26 1. The applications before the Court concern the construction and effect of the judgment of Sir Nigel Teare, sitting as a Judge of the High Court, dated 18 October 2024 ("the Judgment") and an order dated 23 October 2024 ("the Teare Order"), following a directions hearing on 10 October 2024. 2. The Fourth to Sixth Claimants ("the Applicants") seek the following relief: i) ii) clarification under CPR 3.1(2)(p) as to the proper interpretation of paragraph 4(4) of the Teare Order, namely as to whether the scope of the permission to rely on Dutch law expert evidence on the prospects of the Dutch Court recognising or otherwise giving effect to the Indian

Supreme Court Judgment (“ISCJ”) in the Revocation 2 proceedings necessarily includes the Dutch law assessment of the procedural fairness (or otherwise) of the ISCJ (the “Clarification Application”); ff alternatively, if paragraph 4(4) of the Teare Order does not on its proper construction permit the parties to adduce Dutch law expert evidence on the procedural fairness (or otherwise) of the ISCJ, for a variation pursuant to CPR 3.1(7) or for a further order for permission under CPR 35.4 so as to expand the scope of Dutch law expert evidence to include this issue (the “Variation/Part 35 Application”); iii) a declaration that the Applicants are entitled to pursue the issue of procedural fairness of the ISCJ in these proceedings (the “Declaration Application”). 3. The Defendant (“India”) opposes the applications, participating solely for the purpose of its invocation of state immunity and without prejudice to its challenge to jurisdiction. Its position is that, on a proper construction of the Judgment and the Teare Order, the procedural fairness (or otherwise) of the ISCJ is not in dispute in these proceedings. That was the basis on which permission was refused for India to adduce Indian law expert evidence as to procedural fairness. It is said that India would suffer material prejudice if for the purposes of state immunity the Applicants were now permitted to put procedural fairness back in issue. Background to the dispute 4. 5. The underlying dispute between the parties arises out of a contract dated 28 January 2005 (“the Devas Contract”) between a joint venture vehicle, Devas Multimedia Private Limited (“Devas”), and Antrix Corporation Limited (“Antrix”), an Indian state-owned entity, for the lease of part of India’s S-Band spectrum on two Indian satellites to be operated by the Indian Space Research Organisation for the creation of a hybrid communications platform providing multimedia services across India. In 2011, India decided to cancel the project and terminated the Devas Contract. Devas commenced ICC arbitral proceedings against Antrix pursuant to the arbitration agreement in the Devas Contract. On 14 September 2015 the ICC arbitral tribunal issued an award in favour of Devas (“the ICC Award”) for wrongful termination in the sum of USD 562.5 million. The award was set aside in the Delhi High Court but MRS JUSTICE O’FARRELL Approved Judgment Devas v India 25.02.26 6. 7. 8. recognised as valid by a decision of the Hague Court of Appeal on 17 December 2024. Separately, the First to Third Claimants, shareholders in Devas, commenced arbitral proceedings against India pursuant to the UNCITRAL Rules and a bilateral investment treaty between the Government of the Republic of Mauritius and the Government of the Republic of India (“the BIT”). The seat of the arbitration was the Netherlands. The tribunal rendered two awards in favour of the First to Third Claimants against India (“the Awards”), namely: (i) the Jurisdiction and Merits Award dated 25 July 2016; and (ii) the Quantum Award dated 13 October 2020, pursuant to which India is required to pay in excess of EUR 195 million. In January 2021 the National Company Law Tribunal in India ordered the provisional liquidation of Devas, based on allegations of illegality concerning investments in respect of the Devas project. That decision was upheld by the Indian Supreme Court in a judgment dated 17 January 2022, the ISCJ. India has sought to challenge the Awards in the supervisory courts of the Netherlands. There have been various proceedings, including an application to set aside the Jurisdiction and Merits Award on the ground that the tribunal had no jurisdiction, pursuant to Article 1065 of the Dutch Code of

Civil Procedure (“the DCCP”). Such challenge was dismissed by the Hague District Court on 14 November 2018. On 16 February 2021 that decision was upheld by the Hague Court of Appeal (“the HCA Decision”) and on 3 February 2023 by the Supreme Court, thereby exhausting all rights of appeal. 9. The material outstanding applications/appeals before the courts in the Netherlands are: i) ii) iii) an application to revoke the Awards pursuant to Article 1068 of the DCCP on grounds of alleged fraud in the arbitration proceedings (“the Revocation 1 Application”); an application to set aside the Quantum Award pursuant to Article 1065 of the DCCP on grounds of failure to comply with mandate, lack of reasons and violation of public policy, dismissed by the Hague District Court on 25 October 2023 but subject to India’s outstanding appeal (“the Quantum Set- Aside Proceedings”); an application by India pursuant to Article 382 of the DCCP to revoke the HCA Decision which rejected India’s application to set aside the Jurisdiction and Merits Award (“the Revocation 2 Application”) on grounds of fraud in the Dutch proceedings. The proceedings 10. On 30 April 2021 the First to Third Claimants issued an arbitration claim form in this jurisdiction. By an ex parte order dated 29 June 2021, the court recognised and granted permission to enforce the Awards against India, subject to India’s entitlement to seek to set aside the order. MRS JUSTICE O’FARRELL Approved Judgment *Devas v India* 25.02.26 11. 12. On 5 May 2022, India applied: (i) to set aside the ex parte order by invoking state immunity pursuant to the State Immunity Act 1978 (“the SIA”); and (ii) for a stay of enforcement pending the exhaustion of its remaining challenges before the Dutch Courts, which stay is advanced only for the purposes of claiming immunity within the meaning of section 2(4) of the SIA. The application was supported by the witness statement of Dipen Sabharwal KC of White & Case LLP dated 5 May 2022 and a subsequent statement dated 10 January 2023. On 4 November 2022 the Applicants were joined to the proceedings as purported assignees of the rights of the First to Third Claimants under Deeds of Assignment dated 24 December 2021, without prejudice to any argument India may wish to raise regarding the validity and effect of the Deeds of Assignment. 13. On 24 January 2024 the Applicants served their response to India’s application for a stay. India’s invocation of state immunity was disputed on the grounds that: i) ii) India consented to the adjudicative jurisdiction of the English Court within the meaning of section 2 of the SIA by its written consent to the recognition and enforcement of awards pursuant to Article III of the New York Convention (the “Section 2 Question”); and/or India agreed in writing to submit the disputes to arbitration pursuant to the BIT within the meaning of section 9 of the SIA and thus consented to the arbitral jurisdiction (the “Section 9 Question”). 14. As part of their response to the application for a stay, the fourth statement of Douglas Watson of Gibson, Dunn & Crutcher UK LLP, then representing the Applicants, dated 24 January 2024, raised allegations of procedural irregularities in the Devas liquidation and the ISJC at paragraphs 76 to 98. On the same date, the Applicants issued an application, seeking permission to adduce expert evidence on the Dutch law rules governing the issues of res judicata and revocation in the form of a report by Professor Snijders dated 24 January 2024. 15. The application also sought an order for a combined hearing to determine India’s 5 May 2022 application, together with the following issues: i) ii) iii) whether India has submitted to the jurisdiction of the English Courts within the meaning of section 2 of the

SIA; whether and to what extent India is, by reason of the Dutch supervisory court judgments, precluded from re-arguing the question of whether it has agreed in writing to submit to arbitration the disputes that are the subject of the Awards for the purposes of section 9 of the SIA; whether India is precluded from relying on its essential security interests (“the ESI Issue”) by reason of its abandonment of the point before the Dutch Courts and/or whether the ESI Issue is a matter going to jurisdiction within the meaning of section 9 of the SIA; iv) whether India’s application to set aside, to the extent that it invokes state immunity pursuant to the SIA should be dismissed. MRS JUSTICE O’FARRELL Approved Judgment *Devas v India* 25.02.26 16. 17. On 19 April 2024 India served the second witness statement of Pavini Singh, White & Case LLP, in response to Mr Watson’s evidence, including at paragraphs 94 to 104 a reply to the allegations of procedural irregularity in the liquidation proceedings and the IS CJ. At the same time, India issued an application for permission to adduce expert evidence, namely, the report of Professor Tjittes dated 19 April 2024 on Dutch law and the report of Sudipto Sarkar SA dated 19 April 2024 on Indian law. In his expert report dated 19 April 2024 at paragraphs 197-210, Professor Tjittes identified, and applied, the following factors as relevant to the prospects of success in the Revocation 2 Application, based on the test set out in the Dutch Supreme Court decision of *Gazprombank* ECLI:NL:HR:2014:2838, NJ 2015/478 as to the circumstances in which foreign judgments from countries with which the Netherlands does not have a recognition treaty will be recognised: i) ii) iii) iv) Firstly, the jurisdiction of the court that rendered the decision must be based on a ground of jurisdiction that is generally deemed acceptable by international standards. Secondly, the foreign decision must have been rendered in judicial proceedings that meet the requirements of a fair and due process and provide adequate procedural safeguards. The standard for this requirement is Dutch law. Of importance, therefore, are the Dutch fundamental principles of due process, whereby the international provisions of Article 6 of the ECHR serve as a minimum standard. Thirdly, the recognition of the foreign judgment by the Dutch court should not be in violation of Dutch public policy. Finally, the foreign decision should not be incompatible with a decision of a Dutch court rendered between the same parties, or with an earlier decision of a foreign court rendered between the same parties in a dispute involving the same subject matter and based on the same cause of action, provided that that earlier decision is susceptible of recognition in the Netherlands. 18. Subsequently, there were further exchanges of witness evidence, Mr Watson’s fifth statement dated 3 June 2024 and Ms Singh’s third statement dated 22 July 2024. Additional evidence on the Dutch law issues was given, by a witness statement of Professor Meijer of Linklaters LLP (representing the Applicants in the Dutch proceedings) dated 3 June 2024 and the second report of Professor Tjittes dated 22 July 2024. The Judgment 19. On 10 October 2024 the matter came before Sir Nigel Teare (“the Judge”) for directions. The key issue for the court at the directions hearing was to determine what issues (if any) should be ordered to be tried with regard to the Section 9 Question, together with the Section 2 Question. India’s position was that the Section 2 Question should be determined first and separately from the Section 9 Question. The Applicants’ position was that a hearing should be fixed for determination of both questions together. MRS JUSTICE O’FARRELL Approved Judgment

Devas v India 25.02.26 20. The Section 9 Question included the following issues identified by the Applicants: i) ii) iii) iv) v) whether the HCA Decision gives rise to an issue estoppel on the question of whether India has agreed in writing to submit to arbitration the disputes that are the subject of the Awards for the purposes of section 9 of the SIA; whether primacy should be given to the HCA Decision, as a decision of the supervisory court; whether India has a real prospect of success on its challenge to the HCA Decision by the Revocation 2 Application, such that it is appropriate to stay determination of the Section 9 Question pending the outcome of the same; whether India is precluded from relying on the ESI Issue on grounds that it would amount to abuse of process and/or because it does not go to jurisdiction within the meaning of section 9 of the SIA; whether India can rely on recognition of the alleged findings in the ISCJ as giving rise to an issue estoppel in these proceedings. In the Judgment handed down on 18 October 2024 at [47] to [49], the Judge accepted that, as a matter of principle, a stay pending determination of the Revocation 2 Application would serve a state immunity purpose. He rejected India's case that the Revocation 1 Application and/or the Quantum Set-Aside Proceedings concerned jurisdiction and the Section 9 Question. Therefore, those proceedings would not provide a reason for a stay of the jurisdiction challenge in this court. At [63] the Judge held that he could not exclude India's argument that it could suffer serious prejudice if this jurisdiction decided issue (i) of the Section 9 Question, *res judicata*, in favour of the Applicants before the outcome of the Revocation 1 Application or the Quantum Set-Aside appeal in the Netherlands. A possible outcome in those proceedings was that the HCA could decide that its decision does not have *res judicata* effect under Dutch law, giving rise to inconsistent decisions. For that reason, the Judge concluded that the Section 2 Question, which turned on a point of law, should be determined first and separately from the Section 9 Question. If the Applicants succeeded on the Section 2 Question, there would be no need for a stay and the court could give directions for a hearing to determine whether the Awards should be enforced. If the Applicants failed on the Section 2 Question, the court could at that stage consider whether a stay of the Section 9 Question and enforcement challenge should be granted pending resolution of any proceedings then outstanding in the Netherlands. At [72] to [74], the Judge considered what directions could be given to make progress on the disputed Dutch law expert evidence as to India's prospects of success on the Revocation 2 Application, so that, if the Applicants failed on the Section 2 Question, the court would have available the views of the experts when deciding whether or not to grant the stay sought by India. The Judge considered that it was unnecessary to have any expert evidence concerning the Revocation 1 Application or the Quantum Set-Aside Proceedings because they did not concern jurisdiction or the Section 9 Question. Subject to that, the Judge gave permission for the reports of Professor 21. 22. 23. 24. MRS JUSTICE O'FARRELL Approved Judgment Devas v India 25.02.26 Snijders and Professor Tjittes already served and gave permission for Professor Snijders to respond to Professor Tjittes' opinion regarding the recognition and effect of the ISCJ under Dutch law. 25. At [75] the Judge considered the extent to which permission should be given for the parties to rely on Indian law expert evidence: "As to expert evidence of Indian law, it seems that such evidence as is relevant to the issues of

recognition and res judicata will be required. India has requested permission for the report of Sudipto Sarkar SA to stand as India's expert evidence. I grant that permission limited to issues of recognition and res judicata. However, since the procedural fairness (or otherwise) of the decision of the Supreme Court of India is not in issue (see paragraph 75 of the skeleton argument of counsel for the Fourth to Sixth Claimants) there is no need for Indian law evidence on that question and I do not give permission for it. I also grant permission for the Fourth to Sixth Claimants to adduce evidence on Indian law, limited to the issues of recognition and res judicata, in response to the evidence of Sudipto Sarkar SA. I request counsel to agree the date by which that evidence should be provided and the dates for a meeting, joint report and supplementary reports." The Teare Order 26. The Teare Order dated 23 October 2024, sealed on 8 November 2024, contained the following material provisions: "1. There shall be a hearing to determine the Section 2 Question arising under the State Immunity Act 1978 ...

2. The Fourth to Sixth Claimants' application to list the Section 9 SIA Issues is presently refused without prejudice to their right to re-apply following the hearing and determination of the Section 2 Question in accordance with paragraph 3 below.
3. If the Fourth to Sixth Claimants do not succeed in the Section 2 Question, then the Court may give directions for a hearing to determine whether, in the circumstances then prevailing, to list for determination: (i) the SIA Stay Application limited to the prospects of success of Revocation 2; and (ii) the Section 9 SIA Issues.
4. For the purposes of: (a) India's invocation of state immunity pursuant to the State Immunity Act 1978 including the SIA Stay Application; and (b) the Claimants' application to list for determination the Section 9 SIA Issues the parties are granted permission to rely on expert evidence on Dutch law limited to:
 - (1) The prospects of success of Revocation 2; MRS JUSTICE O'FARRELL Approved Judgment Devas v India 25.02.26
 - (2) Whether the Hague CA Decision has res judicata effect;
 - (3) The prospects of the Hague Court of Appeal in the Quantum Set-Aside Proceedings overturning the decision of the Hague District Court dated 25 October 2023 (the "Quantum HDC Decision") regarding the res judicata effect of the Hague CA Decision.
 - (4) The prospects of the Dutch Court recognising or otherwise giving effect to the decision of the Supreme Court of India dated 17 January 2022 ("the ISCJ") in the Revocation 2 proceedings.
5. Accordingly, permission is granted to adduce expert evidence as follows:
 - (1) The Fourth to Sixth Claimants are permitted to rely on expert evidence on Dutch law in the form of the report of Professor Snijders dated 24 January 2024, together with accompanying exhibits, limited to the issues identified in paragraph 4 above; and

- (2) India is permitted to rely on expert evidence on Dutch law in the form of the first report of Professor Rieme-Jan Tjittes dated 19 April 2024 (together with accompanying exhibits) (“Tjittes 1”) and the second report of Professor Tjittes dated 22 July 2024 (together with accompanying exhibits) (“Tjittes 2”) limited to the issues identified in Paragraph 4 above and not any other evidence concerning the Quantum Set Aside Proceedings or Revocation 1.
- (3) The Fourth to Sixth Claimants are permitted to rely on a supplemental expert report of Professor Snijders in response to Tjittes 1 and Tjittes 2 regarding (i) the issue identified in paragraph 4(3) above, being the prospects of the Hague Court of Appeal in the Quantum Set-Aside Proceedings overturning the Quantum HDC Decision regarding the res judicata effect of the Hague CA Decision; (ii) the issue identified in paragraph 4(4) above, being the prospects of the Dutch Court recognising or otherwise giving effect to the decision of the Supreme Court of India dated 17 January 2022 (“the ISCJ”) in Revocation 2. The said report shall be filed and served by 18 November 2024.
- (4) India has permission to rely upon a supplemental expert report of Professor Tjittes responding to the supplemental expert report of Professor Snijders. The said report shall be filed and served by 18 December 2024.
- (5) There shall be a joint meeting of experts with a memorandum of what is agreed and not agreed on the above identified Dutch law issues. The said meeting shall take place MRS JUSTICE O’FARRELL Approved Judgment Devas v India 25.02.26 virtually on 20 January 2025 and the joint memorandum shall be prepared by 3 February 2025.
6. For the purposes of India’s reliance upon the ISCJ in the context of India’s invocation of state immunity pursuant to the State Immunity Act 1978 (including the SIA Stay Application) the parties are granted permission to rely on expert evidence on Indian law limited to the issues of recognition in Revocation 2 and res judicata, in relation to the ISCJ. There is no permission for Indian law evidence on the procedural fairness (or otherwise) of the ISCJ for the reasons recorded at paragraph 75 of the Judgment.” The dispute 27. 28. 29. On 2 December 2024, the Applicants served a second report from their expert, Professor Snijders, in which he opined that the ISCJ would be denied recognition in the Revocation 2 proceedings. The reasons for his opinion included failure to meet Dutch law criteria of due process (the second Gazprombank criteria). India objected to the inclusion of such argument on the ground that, in light of the Judgment and the Teare Order, the procedural fairness of the ISCJ is not in issue. For that reason, although the Dutch law experts produced a Joint Report dated 17 April 2025, addressing the issues identified in the Teare Order, Professor Tjittes recorded his instruction by India’s legal representatives not to consider the procedural fairness, or otherwise, of the ISCJ as part of the Gazprombank criteria. On 17 April 2025 Sir William Blair, sitting as a Judge of the High Court, handed down judgment on the Section 2 Question in favour of India, holding that ratification of the New York Convention by India does not in and of itself, absent a valid arbitration agreement, amount to consent by way of a prior written agreement by the state amounting to a waiver of state immunity for the purpose of Section 2(2) of the SIA. Permission to appeal that decision was

granted and the hearing of the appeal is pending. 30. On 22 September 2025 the Applicants issued their application seeking clarification and/or variation of the Teare Order and declaratory relief in respect of the scope of the legal issues before the court. Clarification Application 31. 32. 33. The application for clarification concerns the proper interpretation of paragraph 4(4) of the Teare Order. CPR 3.1(2)(p) provides that the court's case management powers include the power to take any step or make any order for the purpose of managing the case and furthering the overriding objective. There is no dispute as to the approach of the court to the interpretation and construction of orders, as set out by Lord Sumption in *Sans Souci Ltd v VRL Services*

[2012] UKPC 6 at [13]: MRS JUSTICE O'FARRELL Approved Judgment *Devas v India* 25.02.26 "... the construction of a judicial order, like that of any other legal instrument, is a single coherent process. It depends on what the language of the order would convey, in the circumstances in which the Court made it, so far as these circumstances were before the Court and patent to the parties. The reasons for making the order which are given by the Court in its judgment are an overt and authoritative statement of the circumstances which it regarded as relevant. They are therefore always admissible to construe the order. In particular, the interpretation of an order may be critically affected by knowing what the Court considered to be the issue which its order was supposed to resolve." 34. Further to that general statement of the approach to be taken, it is common ground that the following additional principles are applicable to construction of the Teare Order: i) ii) iii) iv) The reasons for making the order that are given in the judgment may not be used to contradict the order: *Sans Souci* (above) at [16]. The subjective intentions of the parties and of the Judge are inadmissible: *Coward v Phaestos* [2021] EWHC 9 at [51]. Caution should be exercised when using a party's written or oral submissions as context; they are inadmissible for the purposes of construction: *Coward v Phaestos* (above) at [57]. The sole question for the court is what the order means; therefore, issues as to whether it should have been granted and if so in what terms are not relevant to construction: *Pan Petroleum AJE Ltd v Yinka Fawcett Petroleum Co Ltd & Ors* [2017] EWCA Civ 1525 at [41]. 35. The starting point must be the operative words of paragraph 4 of the Teare Order: "For the purposes of ... the SIA Stay Application ... the parties are granted permission to rely on expert evidence on Dutch law limited to:

- (1) The prospects of success of Revocation 2; ...
- (4) The prospects of the Dutch Court recognising or otherwise giving effect to the decision of the Supreme Court of India dated 17 January 2022 ("the ISCJ") in the Revocation 2 proceedings." 36. On a natural reading of the above words, the plain language of paragraph 4 gives permission to the parties to rely on Dutch legal expert evidence regarding all aspects of the issue of ISCJ recognition relevant to the Revocation 2 proceedings. This would include the issue of procedural fairness as part of the Gazprombank criteria. There is MRS JUSTICE O'FARRELL Approved Judgment *Devas v India* 25.02.26 37. 38. 39. 40. no proviso to the paragraph circumscribing or excluding any issue of Dutch law on this question. Such

reading of paragraph 4 is reinforced by reference to the evidence before the Judge at the hearing. In Professor Tjittes' first report at paragraphs 197 to 201, he identified the Gazprombank criteria that were required to be satisfied for recognition of the IS CJ in the Dutch courts. Those criteria included the requirement that the foreign proceedings met the requirements of proper judicial procedure with sufficient safeguards. Professor Tjittes' opinion is that India has a real prospect of success on the application of those factors. Mr Watson's fifth witness statement at paragraph 21 indicated that the Applicants considered it necessary to adduce responsive expert evidence on the issues covered in Tjittes 1. Professor Meijer's witness statement contained an outline of the Dutch law issues that would be relied on by the Applicants in support of their position that the IS CJ would not be recognised in the Dutch proceedings, including at paragraph 111 acknowledgement that the Gazprombank criteria identified by Professor Tjittes were applicable. Thus, it was common ground at the hearing before the Judge that the Dutch courts would consider the procedural fairness of the IS CJ as a matter of Dutch law when deciding whether to recognise it for the purpose of the Revocation 2 Application. Further support is found for the Applicants' position in paragraph 5 of the Teare Order, which grants permission to India to rely on the first and second reports of Professor Tjittes, and grants permission to the Applicants to rely on a supplemental expert report of Professor Snijders in response to those reports. Such permission expressly excludes evidence concerning the Quantum Set Aside Proceedings and the Revocation 1 Application but no exclusion or limitation is imposed on the ambit of Dutch law evidence as to the issue of recognition of the IS CJ. India's case is that, on a proper construction, the Teare Order and Judgment refuse permission for Indian law evidence on the basis that, for the purpose of state immunity, the procedural fairness (or otherwise) of the IS CJ is not in issue. It is said that this should be interpreted as a statement that the procedural fairness of the IS CJ is not in dispute for all issues of Indian and Dutch law arising in the proceedings. Its position turns on the wording of paragraph 6 of the Teare Order which refuses permission for Indian law evidence on the procedural fairness (or otherwise) of the IS CJ. The difficulty with that argument is that paragraph 6 expressly refers to Indian law evidence on procedural fairness but does not refer to Dutch law evidence on that issue. The reference to paragraph 75 of the Judgment does not assist because it, likewise, is concerned with Indian law expert evidence on procedural fairness of the IS CJ, which is said not to be in dispute. The position is even clearer from a reading of paragraph 74 of the Judgment, which in terms gives permission to the Applicants for Professor Snijders to be given the opportunity to respond to Professor Tjittes' opinion regarding the recognition and effect of the decision of the IS CJ in Dutch law. Professor Tjittes' opinion on this issue in his first report identified as relevant the Gazprombank criteria, including the procedural fairness of the IS CJ as a matter of Dutch law. Therefore, the procedural fairness of the IS CJ is a matter in issue between the parties raised in India's Dutch law expert evidence. MRS JUSTICE O'FARRELL Approved Judgment *Devas v India* 25.02.26 41. 42. 43. 44. 45. 46. 47. India submits that the consequences of the Applicants' construction would be illogical, and prejudicial to India in that: (1) the court has excluded Indian law evidence on procedural fairness; (2) the court has done so, even though it did permit Indian law evidence on *res judicata* of the IS CJ; and (3) the Applicants would be

entitled to pursue the issue of procedural fairness, but India would be precluded from relying on expert evidence in relation to procedural fairness, even though the court implicitly considered that Indian law evidence was relevant to procedural fairness. That argument is not well-founded for the following reasons. Firstly, the Judgment and the Teare Order explain that Indian law evidence on procedural fairness was excluded because Indian law evidence on that issue is not in dispute. Given that the Dutch law experts agree that recognition of the ISCJ for the purpose of the Revocation 2 application is a matter to be determined in accordance with Dutch law using the Gazprombank criteria, there is no defined issue of Indian law on procedural fairness that would be relevant. Secondly, the Judgment and the Teare Order permit Indian law evidence on the *res judicata* effect of the ISCJ because India's case is that under the Dutch rules of private international law that question must be determined in accordance with the law of India as the *lex fori*. This was a specific issue raised in paragraphs 7-13 of Professor Tjittes' second report and explained in Ms Singh's third statement. Thirdly, contrary to India's submission, the Teare Order permits both the Applicants and India to pursue the issue of procedural fairness in these proceedings but as a matter of Dutch law, rather than Indian law, based on the common position of the Dutch legal experts. Finally, India's perceived unfairness of the Teare Order is not a matter that is material to construction of the same. Recourse would have been available to India by appeal or an application to vary the terms of the order. I reject India's construction of the Teare Order on the basis that it is contrary to the express words of the same. Its focus is confined to paragraph 6, which deals with Indian law issues; it ignores the clear words of paragraph 4, which deals with Dutch law issues. For the above reasons, I find that on a proper construction of the Teare Order and the Judgment, the scope of permission to rely on Dutch law expert evidence on the prospects of the Dutch Court recognising or otherwise giving effect to the ISCJ in the Revocation 2 proceedings includes the Dutch law assessment of the procedural fairness (or otherwise) of the ISCJ. *ff Variation of Order 48.* Alternative relief sought by the Applicants is for a variation of the Teare Order pursuant to CPR 3.1(7) or for a further order for permission under CPR 35.4 so as to expand the scope of Dutch law expert evidence to include the issue of procedural fairness. 49. CPR 3.1(7) provides that the powers of the court under the CPR includes a power to vary or revoke an order. The apparent breadth of this power was considered by the MRS JUSTICE O'FARRELL Approved Judgment *Devas v India* 25.02.26 Court of Appeal in *Tibbles v SIG plc* [2012] 1 WLR 2591 per Rix LJ at [39], stating that although the rule is apparently broad and unfettered, considerations of finality, the undesirability of allowing litigants to have two bites at the cherry, and the need to avoid undermining the concept of appeal, all push towards a principled curtailment of an otherwise apparently open discretion. The primary circumstances in which the discretion may, as a matter of principle, be appropriately exercised, are normally only

- (a) where there has been a material change of circumstances since the order was made, or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated. In this case if, contrary to my conclusion above, paragraph 4(4) of the Teare Order

and paragraph [75] of the Judgment must be read as stating that the issue of procedural fairness of the ISCJ was not in dispute as a matter of Dutch law, such statement was incorrect. It is clear from the witness statements and expert reports referred to above that the issue of procedural fairness, applying Dutch legal principles, was considered to be a relevant part of the test for recognition of the ISCJ pursuant to the Gazprombank criteria. As to India's submission that the application to vary has been made too late, the Teare Order was sealed on 8 November 2024 and the second expert report of Professor Snijders dated 2 December 2024 raised the matter of procedural fairness promptly. Thereafter, the parties were in correspondence in which their differences of understanding regarding the effect of the Teare Order were articulated. Although the application to vary was not issued until 22 September 2025, no prejudice has been suffered by India. It was not entitled to rely on its interpretation given the explicit difference of opinion expressed by the Applicants and there has been no substantive hearing at which the affected expert evidence was considered. In those circumstances, it would be open to the court to exercise its broad discretion to vary the Teare Order to reflect the real issues in dispute between the parties. Further, CPR 35.4 gives the court general case management power to permit the parties to adduce expert evidence, where such expert evidence is reasonably required to determine issues in the proceedings. In this case, the question of the procedural fairness (or otherwise) of the ISCJ is directly relevant to India's prospects of success in the Revocation 2 Application and the merits of the stay application. Expert evidence on Dutch law is necessary for this court to determine that issue. Allowing both sides the opportunity to adduce such expert evidence for the purpose of the stay application is in accordance with the overriding objective in CPR 1.1. Having regard to the above, if, contrary to my conclusion, paragraph 4(4) of the Teare Order did not on its proper construction permit the parties to adduce Dutch law expert evidence on the procedural fairness (or otherwise) of the ISCJ, I would consider this an appropriate case in which to grant a variation to the Order pursuant to CPR 3.1(7) or for a further order for permission under CPR 35.4 so as to expand the scope of Dutch law expert evidence to include this issue. 50. 51. 52. 53. 54. Declaration 55. The Applicants seek a declaration that they are entitled to pursue the issue of procedural fairness of the ISCJ in these proceedings for the purpose of state immunity. It is submitted that such declaration is necessary to address India's broader contention that the procedural fairness (or otherwise) of the ISCJ is not in issue in these proceedings for the purpose of state immunity. India opposes the Declaration Application on the grounds that the Judgment and Teare Order refused permission for Indian law evidence on the basis that for the purpose of state immunity the procedural fairness (or otherwise) of the ISCJ is not in dispute. Further, it is contended that the Applicants are estopped from obtaining the declaration by reason of the concession made in paragraph 75 of the Applicants' skeleton before the court at the directions hearing; alternatively, it would be an abuse of process for them to withdraw that concession; alternatively, the concession amounted to an admission in writing for the purpose of CPR 14.2(1) and no application has been made to withdraw it. CPR 40.20 provides that the court may make a binding declaration whether or not any other remedy is claimed. The power to

grant declaratory relief is discretionary; when considering whether to grant such relief, the court should take into account justice to the claimant(s), justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why the court should or should not grant the declaration: *Rolls Royce v Unite the Union* [2010] 1 WLR 318 per Aitkens LJ at [120]. In this case, I do not consider that any useful purpose would be served by granting the declaration in the terms as sought. I have already determined that the question of the procedural fairness (or otherwise) of the ISCJ is directly relevant to India's prospects of success in the Revocation 2 Application which is in issue in respect of India's disputed stay application. That is the basis on which the Teare Order was made and the basis on which this court, if necessary, would have granted permission for Dutch law expert evidence to be adduced on this issue. Whether the issue of procedural fairness is material to other parts of the dispute or has any broader implications for the proceedings is not a matter that this court is in a position to decide. I note that, in giving permission for the parties to rely on expert evidence, the Judge expressly stated that this was for the purpose of enabling the parties to be ready to assist the court on the stay application should the Applicants lose on the Section 2 Question, so as to avoid further delay in progress. The Judge was not endeavouring to give full and final directions on the Section 9 Question; on the contrary, he refused to list determination of the Section 9 issues and the stay application, or further directions, pending the outcome of the Section 2 Question. When the court considers those matters, any defined issues regarding the scope of the dispute may be ventilated with the benefit of full argument. In those circumstances, the court declines to grant the declaration as sought. It follows that it is not necessary to consider India's somewhat ambitious submissions concerning estoppel, abuse of process or admission. 56. 57. 58. 59. 60. 61. Conclusions 62. For the reasons set out above, the court determines as follows: MRS JUSTICE O'FARRELL Approved Judgment *Devas v India* 25.02.26 i) ii) On a proper construction of the Teare Order and the Judgment, the scope of permission to rely on Dutch law expert evidence on the prospects of the Dutch Court recognising or otherwise giving effect to the ISCJ in the Revocation 2 proceedings includes the Dutch law assessment of the procedural fairness (or otherwise) of the ISCJ. ff If, contrary to the above conclusion, paragraph 4(4) of the Teare Order did not on its proper construction permit the parties to adduce Dutch law expert evidence on the procedural fairness (or otherwise) of the ISCJ, the court would grant a variation to the Order pursuant to CPR 3.1(7) or for a further order for permission under CPR 35.4 so as to expand the scope of Dutch law expert evidence to include this issue. iii) The declaration sought by the Applicants is refused. 63. The parties should endeavour to agree the order consequential on this judgment within 7 days of the hand down of the same. In the absence of agreement, this hearing is adjourned to a date to be fixed (or for decision in writing) for the purpose of any outstanding consequential matters.

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