THE DIALECTIC OF TREATY OBLIGATIONS AND DOMESTIC IMMUNITY: REVISITING THE ENFORCEMENT PARADOX UNDER ENGLISH LAW IN THE APPLICATION OF THE NEW YORK CONVENTION TO STATE DEFENDANTS IN *CC/DEVAS v. REPUBLIC OF INDIA*

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Abstract

This article undertakes a detailed analysis of CC/Devas (Mauritius) Ltd & Ors v. Republic of India [2025] EWHC 964 (Comm), a significant judgment rendered by the High Court of Justice (Commercial Court) on 17 April 2025. The matter before Sir William Blair concerned the adjudicative jurisdiction of English courts in the enforcement of arbitral awards against a foreign sovereign, namely the Republic of India, and the extent to which ratification of the New York Convention (1958) constitutes a submission to jurisdiction within the meaning of section 2(2) of the State Immunity Act 1978. The claimants, investors under a bilateral investment treaty, sought recognition and enforcement of two arbitral awards seated in The Hague, alleging that India had given its prior written consent to such enforcement under Article III of the Convention. The court was asked to determine whether such ratification alone constitutes a waiver of sovereign immunity under English law. The judgment is notable for its precise delineation of adjudicative versus enforcement jurisdiction, its interpretation of international treaty obligations as domestic waivers of immunity, and its broader implications for investor-State arbitration. This article explores the judgment's legal reasoning, contextual background, and anticipated impact on future enforcement proceedings involving foreign sovereigns in England and beyond.

I. INTRODUCTION

In *CC/Devas (Mauritius) Ltd & Ors v. Republic of India* [2025] EWHC 964 (Comm)1, the Commercial Court was required to grapple with a novel and finely balanced question of public international law, treaty interpretation, and domestic sovereign immunity. At issue was whether a sovereign State, by ratifying the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ["**New York Convention**"], can be deemed to have submitted to the adjudicative jurisdiction of the courts of the United Kingdom under section 2(2) of the State Immunity Act 1978 ["**SIA**"]. The claimants, a consortium of Mauritius- and US-based entities, sought enforcement of two investment treaty arbitration awards rendered under the auspices of the Permanent Court of Arbitration seated at The Hague, claiming in excess of €195 million against the

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

Republic of India. Their central contention was that India's ratification of the Convention constituted "prior written agreement" to the jurisdiction of the English courts within the meaning of the SIA.

The case sits at the confluence of complex transnational legal trends, where domestic enforcement proceedings increasingly intersect with global arbitration norms and the evolving doctrine of State immunity. Unlike the more conventional route under section 9 of the SIA, where a foreign State's agreement to arbitrate in writing waives immunity, the claimants sought to bypass the need for such an agreement entirely. They instead relied on the overarching obligations of recognition and enforcement embedded in Article III of the New York Convention[2]. India, for its part, resisted this contention, asserting that mere ratification of the Convention could not, without more, constitute a waiver of its sovereign immunity from suit. The resulting dispute turned on an exacting construction of English statutory language and public international law instruments.

The litigation before Sir William Blair was characterised by procedural complexity and international entanglements. Parallel proceedings were ongoing in the Netherlands, the arbitral seat, where issues of validity and enforceability of the underlying awards remained the subject of scrutiny. The present application arose from an earlier without-notice enforcement order granted under section 101 of the Arbitration Act 1996. That order, which concerned the enforcement of the BIT awards as judgments of the High Court, was later challenged by India on jurisdictional grounds, thus prompting the current proceedings.[3]. The hearing focused exclusively on a narrow yet highly consequential point of law, referred to as the "section 2 question", namely whether India's ratification of the New York Convention, standing alone and irrespective of its consent to arbitration, constituted submission to the jurisdiction of the English courts for the purposes of enforcement.

Sir William Blair's judgment, delivered on 17 April 2025, reflects a meticulous approach to statutory interpretation, buttressed by comparative jurisprudence and public policy considerations. The court examined the nature of adjudicative jurisdiction under English law and distinguished it from enforcement jurisdiction, which is separately addressed under section 13 of the SIA. In refusing to conflate the obligation to "recognise and enforce" arbitral awards under Article III of the New York Convention with a blanket waiver of immunity, the court upheld a strict construction of sovereign immunity doctrine. The ruling rejected the proposition that ratification of the Convention, absent more specific language, could constitute a "prior written agreement" under section 2(2).

[2] *Id* at ¶ 2.
[3] *Id* at ¶ 6.

This judgment assumes considerable significance within the broader matrix of investment treaty arbitration and the enforcement of foreign awards against sovereign States. It offers an authoritative pronouncement on the limits of treaty-based jurisdictional consent and reaffirms the primacy of domestic legislation in determining the extent of State immunity. For States, investors, and arbitral tribunals alike, the decision sets a clear benchmark for what constitutes valid submission to jurisdiction under English law. It also reflects the courts' continued adherence to a cautious and restrained doctrine of sovereign immunity, one rooted in legislative text rather than inferred from multilateral treaty obligations. The implications for global enforcement strategies are profound, and this article now turns to examine the factual and legal backdrop in greater detail.

II. BACKGROUND TO THE DISPUTE

The origins of the dispute lie in a high-stakes commercial venture initiated in 2005 between Devas Multimedia Private Limited ["**Devas**"], an Indian company, and Antrix Corporation Limited ["**Antrix**"][4], the commercial arm of the Indian Space Research Organisation. Under the so-called Devas Contract[5], Antrix agreed to lease S-Band satellite spectrum to Devas for the deployment of a hybrid satellite-terrestrial communication service. Although the agreement nominally involved two Indian corporate entities, Devas was, according to the claimants, substantially financed and controlled by foreign investors, including the claimants in these proceedings[6]. These investments were made according to the protections afforded under the bilateral investment treaty between Mauritius and India ["**Mauritius–India BIT**"], signed in 1998 and in force from 2000 until its termination in 2017.

In February 2011, the Indian government abruptly annulled the Devas Contract, citing a reorientation of national priorities regarding use of the electromagnetic spectrum. The decision, taken by the Indian Cabinet Committee on Security, was predicated on the assertion that the S-Band frequencies were needed for vital governmental purposes, and hence, commercial leasing was no longer tenable. Following this decision, Antrix terminated the Devas Contract. Devas had initiated arbitration against Antrix under the ICC Rules, resulting in an award of USD 562.5 million, which was later set aside by the Indian courts[7]. The claimants, as foreign shareholders in Devas, commenced a separate investor–State arbitration proceedings against India under the Mauritius–India BIT. This was

[4] *Id* at ¶ 13.
[5] *Id* at ¶ 15.
[6] *CC/Devas (Mauritius) Ltd, PCA Case No. 2013-09*, Award on Jurisdiction and Merits, 25 July 2016, ¶103.
[7] *Id* at ¶ 16.

governed by the UNCITRAL Rules, 1976 and administered by the Permanent Court of Arbitration in The Hague.

The arbitration proceedings resulted in two awards: one on jurisdiction and merits, dated July 25, 2016, and another on quantum, dated October 13, 2020 [collectively, the "**BIT Awards**"]. The tribunal found, *inter alia*, that India had expropriated the claimants' investments without due process or fair and equitable treatment. Although the tribunal accepted that part of the annulment decision was motivated by essential security interests, and therefore not a breach of India's obligations under the BIT, it nonetheless concluded that India was liable for the remainder. The tribunal awarded damages exceeding €195 million, quantifying the loss attributable to the 40% of the annulment decision it found unlawful. This assessment was rooted in the tribunal's conclusion that India's actions, while partly justified on essential security grounds, nonetheless amounted to a breach of the fair and equitable treatment standard under the BIT for the remaining portion[8]. The damages award was confirmed in the final award on quantum, dated 13 October 2020[9]. .

India raised a jurisdictional objection before the arbitral tribunal and in subsequent enforcement proceedings, contending that the claimants had not complied with the legality requirements stipulated in Article 2 of the Mauritius–India BIT. It further asserted that the claimants' indirect interests in Devas did not constitute a qualifying 'investment' within the meaning of Article 1(b) of the treaty. Interestingly, these arguments were also reiterated before the English Commercial Court as part of India's broader immunity defence[10].

Following prolonged efforts to enforce the BIT Awards in various jurisdictions, including the Netherlands, Canada, and Singapore, each with varying degrees of success, the claimants turned to the English courts. On 29 June 2021, they obtained a without-notice enforcement order under section 101 of the Arbitration Act 1996, which allows New York Convention awards to be enforced as if they were judgments of the High Court. In response, India applied on 5 May 2022 to set aside the order[11], asserting that it enjoyed sovereign immunity from the adjudicative jurisdiction of the English courts under Section 1 of the SIA, and that the exceptions in Sections 2 and 9 did not apply.

[8] *CC/Devas (Mauritius) Ltd, PCA Case No. 2013-09*, Award on Jurisdiction and Merits, 25 July 2016, ¶¶ 446–448.
[9] *CC/Devas (Mauritius) Ltd, PCA Case No. 2013-09*, Award on Quantum, 13 October 2020, ¶ 263.
[10] *CC/Devas (Mauritius) Ltd v. Republic of India* [2025] EWHC 964 (Comm), [20]–[21]; *CC/Devas (Mauritius) Ltd, PCA Case No. 2013-09*, Award on Jurisdiction and Merits, 25 July 2016, ¶¶ 196–220.
[11] *Id* at ¶¶ 6, 7.

The claimants advanced two main arguments in reply. First, they contended that India had agreed to arbitration within the meaning of section 9 of the SIA, through its consent embedded in Article 8 of the Mauritius–India BIT. Secondly, and more unusually, they asserted that India's ratification of the New York Convention amounted to "prior written agreement" to the adjudicative jurisdiction of the English courts under section 2(2) of the SIA. To this end, the claimants placed heavy reliance on section 17 of the SIA, which deems references to "agreements" to include "*treaties, conventions, or other international agreements*." Accordingly, they argued that Article III of the Convention, which obliges Contracting States to recognise and enforce arbitral awards, amounted to a submission to jurisdiction sufficient to displace immunity.

The hearing before Sir William Blair was confined solely to this latter issue, commonly referred to as the "section 2 question." In light of the overlapping yet analytically distinct issues under sections 2 and 9 of the State Immunity Act 1978, it was agreed between the parties that the section 9 issue, namely whether India had agreed in writing to submit the dispute to arbitration under the Mauritius–India BIT, and a related application for a case management stay, pending the outcome of proceedings before the Dutch courts, would be determined separately and at a later stage. This procedural bifurcation was formally endorsed by Sir Nigel Teare in a directions order dated 18 October 2024, thereby isolating the 'section 2 question' for preliminary determination[12]. The section 2 issue thus became a freestanding question of law: whether India's ratification of the New York Convention constitutes, without more, a submission by prior written agreement to the adjudicative jurisdiction of the English courts in proceedings for the recognition and enforcement of arbitral awards. This question was procedurally significant because, if answered in the affirmative, it would allow the claimants to bypass the factually contested issues surrounding the alleged arbitration agreement under the BIT.

In seeking to persuade the court that the section 2 question should be answered affirmatively, the claimants pointed to the express language of Article III of the New York Convention, which mandates that Contracting States "shall recognise arbitral awards as binding and enforce them" by domestic procedural rules. They contended that this obligation necessarily implied[13] a waiver of jurisdictional immunity, given that recognition and enforcement could not proceed without the forum court assuming adjudicative jurisdiction over the foreign State. By contrast, India maintained that ratification of a multilateral treaty does not, absent express language, constitute an unequivocal

[12] *Id* at ¶ 7.
[13] *Id* at ¶¶ 2-5.

waiver of immunity. The mere obligation to enforce arbitral awards, it was argued, does not amount to submission to the jurisdiction of any particular court.

III. DECISION OF THE COURT

Sir William Blair commenced his analysis by isolating the interpretive task posed by section 2(2) of the State Immunity Act 1978, particularly the phrase "prior written agreement." He accepted the premise that, under Section 17 of the Act, such agreement may include an international convention, such as the New York Convention. However, he underscored that the threshold for construing a treaty obligation as a waiver of sovereign immunity must be set high. The judge affirmed that a waiver must be "clear and unequivocal" if it is to displace the fundamental presumption of immunity codified in section 1 of the Act. Thus, the key question became whether Article III of the Convention satisfied that standard by way of an express or necessarily implied submission to the adjudicative jurisdiction of the English courts.

Article III of the New York Convention provides that each Contracting State "shall recognise arbitral awards as binding and enforce them under the rules of procedure of the territory where the award is relied upon." The claimants argued that this provision must necessarily carry with it the corollary that the courts of the enforcing State are thereby vested with jurisdiction, since enforcement could not be affected absent such jurisdiction. Sir William Blair rejected this contention. In his judgment, Article III did not on its face address the question of jurisdiction. It imposed an obligation of result, namely, that States must provide for a mechanism of enforcement consistent with the Convention. Still, it did not dictate how such enforcement would be achieved within domestic legal systems.

The judge then turned to the broader international legal context, including the jurisprudence surrounding treaty interpretation under the Vienna Convention on the Law of Treaties 1969. Applying Articles 31 and 32 of that Convention, Sir William Blair reiterated that treaty provisions must be interpreted in good faith in accordance with the ordinary meaning of their terms, in context, and in light of their object and purpose. In this regard, he acknowledged the pro-enforcement bias of the New York Convention, which has been described as a "liberalising instrument" in favour of arbitral finality. Nonetheless, he concluded that such bias cannot override the principle that waiver of State immunity must be express and not inferred from general obligations.

In addressing the persuasive authorities, the court was invited to consider *Infrastructure Services Luxembourg SARL v. Kingdom of Spain* [2023] 1 Lloyd's Rep 66, a case concerning the ICSID

Convention[14]. There, the High Court held that Article 54(1) of the ICSID Convention, which contains language analogous to Article III of the New York Convention, amounted to a submission to jurisdiction within the meaning of section 2(2) of the SIA. However, Sir William Blair distinguished that case on the basis that the ICSID Convention comprises a self-contained enforcement regime to which State parties expressly agree, including by allowing direct enforcement of awards as final judgments, without further review. The New York Convention, by contrast, operates through the procedural rules of domestic courts, thereby leaving a greater role for national law to determine questions of immunity. Notably, the Vienna Convention on the Law of Treaties does not authorise the interpretation of one treaty's effect through the lens of another distinct treaty addressing a separate subject matter.

Sir William Blair also found significant support in the recent decision of the Court of Appeal in *General Dynamics United Kingdom Ltd v. State of Libya* [2025] EWCA Civ 134, which held that a State's agreement to an arbitration clause rendering an award "binding and enforceable" amounted to a waiver of both adjudicative and enforcement immunity[15]. However, that case was premised upon the language of the arbitration clause itself and did not concern the effect of treaty ratification. Accordingly, it did not bear directly upon the issue before the court. The judge observed that neither General Dynamics nor any prior English decision had held that the mere act of ratifying the New York Convention, without more, constituted a submission to jurisdiction under section 2(2).

Further, Sir William Blair gave careful consideration to the textual contrast between section 2(2) and section 13(3) of the SIA. While the former permits a finding of submission by "prior written agreement," including treaties, the latter provides that "a provision merely submitting to the jurisdiction of the courts is not to be regarded as a consent" for the purposes of enforcement. This disjunction, he held, militated against any assumption that a general treaty obligation such as that in Article III could be read as a waiver of immunity in respect of adjudicative jurisdiction. Such an approach would collapse the distinction between adjudicative and enforcement immunity, which Parliament had preserved by separate statutory treatment.

In conclusion, the High Court answered the section 2 question in the negative. It held that India's ratification of the New York Convention did not, by itself, constitute a "prior written agreement" sufficient to engage the exception to immunity under section 2(2) of the SIA. The court therefore declined to determine the claimants' application for summary enforcement of the BIT Awards on this

[14] *Infrastructure Services Luxembourg SARL v. Kingdom of Spain* [2023] 1 Lloyd's Rep 66.
[15] *General Dynamics United Kingdom Ltd v. State of Libya* [2025] EWCA Civ 134.

ground. The matter remains pending regarding the Section 9 question, concerning whether India has agreed to arbitrate disputes under the Mauritius–India BIT. Until that issue is resolved, the question of sovereign immunity under English law in this case remains unsettled, albeit narrowed by this preliminary ruling.

IV. TAKEAWAYS

The decision of Sir William Blair in *CC/Devas (Mauritius) Ltd v. Republic of India* [2025] EWHC 964 (Comm) is likely to resonate across international arbitration circles as a reaffirmation of the English courts' cautious and principled approach to the doctrine of sovereign immunity. By refusing to extrapolate jurisdictional submission from the Republic of India's ratification of the New York Convention, the judgment fortifies the long-standing presumption that any waiver of State immunity must be express and specific. The ruling thus reinstates the centrality of statutory interpretation within the English legal framework, declining to subordinate Parliament's intention in the SIA to generalised policy commitments under multilateral instruments.

For practitioners involved in enforcing arbitral awards against foreign States, the ruling serves as a potent reminder that the procedural advantages of the New York Convention do not extend to modifying the fundamental jurisdictional thresholds imposed by domestic law. While the Convention undoubtedly compels Contracting States to furnish an effective mechanism for enforcement, it does not preordain the outcome of any given enforcement proceeding. In England and Wales, the dual requirements of adjudicative jurisdiction and execution immunity, distinct yet related, must each be met on their own legal footing, with apparent statutory authority for derogation from immunity in every case[16]. This bifurcated structure is firmly established in English law, as confirmed by the Supreme Court in *Argentum Exploration Ltd v. The Silver*[17] and the Court of Appeal in *Hulley Enterprises Ltd v. Russian Federation*[18], both of which affirm that the State Immunity Act 1978 treats jurisdictional and enforcement immunity as separate and independently governed doctrines

Moreover, the High Court's delineation of adjudicative versus enforcement immunity reinforces the structural coherence of the SIA. By refusing to treat Article III of the New York Convention as a proxy for consent to enforcement under section 13(3), the court avoided the doctrinal slippage that might otherwise arise from conflating different species of jurisdiction. This precision ensures that

[16] State Immunity Act 1978, § 2, 9, 13.
[17] *Argentum Exploration Ltd v. The Silver and Another* [2024] UKSC 32, ¶¶ 15-17 (Lord Lloyd-Jones and Lord Hamblen).
[18] *Hulley Enterprises Ltd v. Russian Federation* [2025] EWCA Civ 108, ¶ 26-28 (Males LJ).

States retain protection in the enforcement phase unless they have clearly waived such immunity, either in the underlying contract, the BIT, or in post-dispute conduct. For claimants, this necessitates careful drafting and strategic foresight at the investment structuring stage.

The ruling also carries significant implications for the interpretation of international conventions within domestic systems. In adopting a textually grounded approach to Article III, the court resisted the temptation to advance a teleological interpretation driven by the object and purpose of the Convention. Although pro-enforcement jurisprudence may have considerable rhetorical and practical appeal, the judgment affirms that such objectives cannot override the clear statutory scheme enacted by Parliament. In this way, the decision acts as a bulwark against judicial overreach in matters implicating State sovereignty and international comity.

Notably, the judgment does not foreclose enforcement altogether. The claimants may still prevail if they can establish jurisdiction under Section 9 of the SIA by showing that India agreed in writing to arbitrate the disputes at issue. That question, which remains sub judice, will require a fact-sensitive inquiry into the legality of the investment, the effect of the Mauritius–India BIT, and the extent of India's consent to investor–State arbitration. Nonetheless, the decision on section 2 clarifies that the existence of a treaty obligation to enforce awards cannot by itself supplant the need for such an inquiry under English law.

Finally, the decision is of broader jurisprudential significance in the ongoing global discourse surrounding the limits of State immunity in the context of international arbitration. It sits in quiet contrast to recent decisions in jurisdictions such as Canada, the Netherlands, and France, which have embraced a more liberal approach to the enforcement of arbitral awards against recalcitrant States. In *The Republic of India v CCDM Holdings*[19], the Quebec Court of Appeal enforced the Devas award notwithstanding India's immunity defence. Likewise, the Dutch Supreme Court in *Yukos Capital v. Russia*[20] and multiple lower courts refused to countenance Russia's allegations of fraud, focusing instead on the award's finality and procedural integrity. France, too, in *Commisimpex v. Republic of Congo*[21], upheld execution against sovereign assets used for commercial purposes, confirming a pragmatic approach to immunity from execution. These examples illustrate a comparative trend toward limiting State immunity where obstruction or bad faith threatens the enforceability of awards,

[19] *The Republic of India v. CCDM Holdings, LLC & Ors*, 2024 QCCA 1620 (Quebec Court of Appeal).
[20] *Yukos Capital Sàrl v. Russian Federation*, Supreme Court of the Netherlands (Hoge Raad), Judgment of 5 April 2019, ECLI:NL:HR:2019:504.
[21] *Société Commisimpex v. République du Congo*, Cour de cassation (1ère civ.), Judgment of 13 January 2021, No. 19-18.821, ECLI:FR:CCASS:2021:C100021.

an inclination the English courts, in *Devas*, consciously resisted in favour of textual orthodoxy and legislative restraint. By adhering to a restrained and rule-bound model, the English courts reaffirm their role as guardians of a dualist legal tradition in which treaty obligations do not attain domestic effect save through statutory transposition. This distinction, so often overlooked in discussions of investor–state dispute resolution, is rendered with analytical precision in this critical and enduring judgment.