DEALS AND SUITS

Victory for Devas investors as Supreme Court of Canada denies leave to appeal on India's claim of immunity

In a major victory for the Devas investors, the Supreme Court of Canada has dismissed the Republic of India (India) and the Airports Authority of India's (AAI) applications for leave to appeal from a landmark Québec Court of Appeal decision.

The case involved a complex interplay of legal issues, particularly the relationship between enforcing international arbitration awards and the doctrine of sovereign immunity. The Court of Appeal's decision carefully considered the *State Immunity Act* alongside Canada's international obligations under treaties such as the New York Convention on the recognition and enforcement of foreign arbitral awards. Importantly, the Court clarified a longstanding debate by holding that India's consent to international arbitration and its ratification of the New York Convention together constitute an explicit waiver of sovereign immunity from jurisdiction. Furthermore, the Court upheld the compatibility of *ex parte* pre-judgment seizures with sovereign immunity, recognizing that such measures are permissible—a significant point given the differing approaches internationally regarding pre-judgment attachment of state-owned commercial assets.

The Supreme Court's dismissal of India's and AAI's applications for leave to appeal means the Court of Appeal's decision stands, bringing a successful conclusion to a multi-year legal battle on India's state immunity before Canadian courts, and clearing the path for the recognition and enforcement of arbitral awards against India of over US$111 million. Notably, the seizure before judgment of US$37.5 million remains intact while Québec courts determine whether AAI's funds can be applied toward satisfying India's debt.

For a comprehensive analysis of the case and the significant legal principles established by the Court of Appeal, please see our full insight: Court of Appeal declares that India is not immune from the Devas investors' enforcement efforts.

The BLG team representing the Devas investors includes Karine Fahmy, Ira Nishisato, Amanda Afeich and Dayeon Min.

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