

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)**

BETWEEN:

- (1) CC/DEVAS (MAURITIUS) LTD.
(2) DEVAS EMPLOYEES MAURITIUS PRIVATE LIMITED
(3) TELCOM DEVAS MAURITIUS LIMITED

Claimants

- (4) CCDM HOLDINGS LLC
(5) DEVAS EMPLOYEES FUND US LLC
(6) TELCOM DEVAS LLC

Claimants/Appellants

-and-

THE REPUBLIC OF INDIA

Defendant/Respondent

**RESPONDENT’S SECOND SUPPLEMENTARY SKELETON
FOR APPEAL**

18 March 2026

Without Prejudice to State Immunity

INTRODUCTION

1. This is the Respondent (“India”)’s supplementary skeleton argument, pursuant to the direction of Lewison LJ dated 9 March 2026, addressing “*the effect (if any of the decision of the Supreme Court in the Kingdom of Spain case*” (“**Infrastructure**”).
2. The issues will be addressed under the following headings:
 - (1) The test for submission under s.2(2) of the State Immunity Act 1978 (the “**SIA**”)
 - (2) The principles of treaty interpretation
 - (3) Application

The Test for Submission under s2(2) of the SIA

3. The Supreme Court addresses the test for submission under s.2(2) in *Infrastructure*, §§43-72. India's position is as follows.
4. First, India accepts that for the purposes of this appeal,¹ the Court of Appeal is bound by the following propositions: (1) “*a waiver of immunity by treaty*” (and therefore, on the Supreme Court's reasoning, a “prior written agreement” by treaty under s.2(2) SIA to “submit” to the jurisdiction) requires “*a clear and unequivocal expression of the state's consent to the exercise of jurisdiction*”; (2) such expression of consent does not require explicit words such as waiver or submission; and (3) it must be shown that the words used “*necessarily*” lead to the conclusion that the state has submitted to the jurisdiction (*Infrastructure*, §69).
5. Second, the Supreme Court's approach to s.2(2) SIA is not, in itself, a basis for challenging Sir William Blair (the “**Judge**”)’s judgment (“**Judgment**”). The Judge applied a materially similar test to that of the Supreme Court, when finding that the ratification of the New York Convention (the “**NYC**”) is not a submission to jurisdiction, namely: “*If the express words used amount, on their proper construction, to an unequivocal agreement by the state to submit to the jurisdiction, that is sufficient to satisfy section 2(2) of the SIA, even if the words “submit” and “waiver” are not used*” (*CC/Devas (Mauritius) Ltd and others v India* (Judgment, §53 [CB/8/141]); and the waiver must be “*clear and unmistakable*” (Judgment, §82 [CB/8/151]).
6. Thirdly, whilst explicit words such as waiver or submission are not required, it is still relevant, in assessing whether there is “*clear and unequivocal*” consent to jurisdiction that the NYC does not say anything explicitly about immunity, let alone about “waiver” or “submission”.
7. Fourthly, for all of the reasons given by the Judge, in India's previous submissions, and herein, India's ratification of the NYC is not “*a clear and unequivocal expression*” of India's consent to the exercise of jurisdiction and does not lead to the conclusion (“*necessarily*” or at all) that India has submitted to the jurisdiction.

The Principles of Treaty Interpretation

8. The Supreme Court found (and it is common ground in this case) that the question of

¹ India reserves its position, for the purposes of any appeal to the Supreme Court.

waiver of immunity by treaty depends on the rules of treaty interpretation in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (the “VCLT”) (see *Infrastructure*, §69).

9. On the proper application of the rules of interpretation in Articles 31 and 32, and, in that regard, for all of the reasons given by the Judge, in India’s previous submissions, and herein, ratification of the NYC is not, for the purposes of s.2(2) SIA, “*a clear and unequivocal expression*” of India’s consent to the exercise of jurisdiction, and does not lead to the conclusion (“*necessarily*” or at all) that India has submitted to the jurisdiction.

Application

10. The Supreme Court held that Article 54(1) of the ICSID Convention, interpreted pursuant to Article 31 of the VCLT, is a “*clear and unequivocal submission to the adjudicative jurisdiction*” of the English courts for the purpose of enforcement (*Infrastructure*, §118). In particular, the Court reasoned as follows:

- (1) As to the question of “ordinary meaning”, Articles 53 to 55 of the ICSID Convention were to be considered together (*Infrastructure*, §80). In this regard:
 - (a) Under Article 53, each contracting state (in its capacity as a party to an ICSID award) agrees to abide by and comply with the terms of the award and thereby agrees that the award is final and cannot be re-examined on the merits by the enforcing court (*Infrastructure*, §§81, 91, 141-142).
 - (b) Under Article 54(1) each contracting state is “*obliged*” to recognise as binding and enforce the pecuniary obligations of an award as if it were a final judgment of its own courts, and (therefore) “*also consents to the fact that all other contracting states are undertaking the same obligation*”, so that “*as a matter of ordinary language*” each contracting state agrees that “*awards to which it is a party will be recognised and enforced in other contract states which have undertaken the same obligation*” (*Infrastructure*, §82).
 - (c) Article 55 provides that “*nothing in article 54 derogates from state immunity from execution*”. It “*is significant that only immunity from execution is expressly preserved in this scheme*” (*Infrastructure*, §§86-88).
 - (d) Furthermore, under the ICSID Convention, “*recognition and enforcement proceedings will in all, or almost all, cases involve the courts of one contracting state exercising adjudicative jurisdiction over another contracting state*” (*Infrastructure*, §92).

(2) As to “context”:

(a) Article 54 is “*part of a self-contained or closed scheme for producing binding awards*”, so that once the authenticity of the award is established, the domestic court may not re-examine the award on the merits or on grounds of public policy. In this respect, “*the ICSID Convention differs significantly from the New York Convention*” (*Infrastructure*, §98, quoting *Micula v Romania*).

(b) The proposition that the ICSID Convention involves “*a network of mutual enforcement obligations*” is supported by Article 27, which “. . . *recognises that any contracting state whose national is involved in the dispute may bring an international claim against the other contracting if it fails to comply with the award rendered*” (*Infrastructure*, §§102-103).

(3) As to “object and purpose”, a major object of the ICSID Convention was “*to encourage investment by providing protection against sovereign risk*”, and the existence of immunity would be inconsistent with that object (*Infrastructure*, §§106, 116).

11. The Supreme Court’s reasoning does not support the Appellants’ case that the NYC also contains a submission to jurisdiction under s.2(2) SIA. There are numerous material distinctions between the ICSID Convention (as analysed by the Supreme Court) and the NYC, including the following.

12. First, Article III of the NYC, concerning the recognition and enforcement of arbitral awards, contains the words “*in accordance with the rules of procedure of the territory where the award is relied upon*”, which are absent from Article 54 of the ICSID Convention. As suggested by the Court of Appeal in *Infrastructure Services v Spain* [2025] KB 611, (§102) [JAB/43/1533-1534], as held by the Judge, and as argued by India on appeal (RSA/§§24-30 [CB/4/72-76]), those words preserve state immunity. Further, the Supreme Court in *Infrastructure* accepted that “*state immunity is a procedural bar to proceedings where it applies*” (*Infrastructure*, §26).

13. Secondly, the NYC does not contain any equivalent to Article 53, by which the contracting parties agree, in their capacity as parties to an award, that they will abide by the award.

14. Thirdly, the NYC does not contain any equivalent to Article 55 of the ICSID Convention, which expressly preserves immunity from execution, a point that the Supreme Court regarded as “*significant*” (*Infrastructure*, §88).

15. Fourthly, under the NYC, recognition and enforcement proceedings do not “*in all, or almost all, cases involve the courts of one contracting state exercising adjudicative jurisdiction over another contracting state*” (*Infrastructure*, §92). As recognised by the Court of Appeal judgment in *Infrastructure*, “*whereas the [ICSID] Convention is necessarily dealing with awards to which a contracting state is party, that is far from the case in relation to the New York Convention*” (§102(i) [**JAB/43/1533-34**]; and see Dickinson and Thompson, “The State Immunity Act 1978” (2025), pp.175-178).
16. Fifthly, the premise of the Supreme Court’s reasoning in relation to “ordinary language” is that, under Article 54, contracting states have an unconditional “*obligation*” to recognise and enforce ICSID Awards. However, under Article III of the NYC, any obligation of the contracting states to recognise and enforce NYC Awards is expressly subject to “*the conditions laid down in the following articles*”. Those conditions include the defences to enforcement that are set out in Article V, which includes the invalidity of the alleged arbitration agreement (Article V(1)(a)) (**RSA/§39(3) [CB/4/79]**). A contracting state does not have any obligation, or right, to enforce an NYC Award when those defences remain unresolved (see *Dardana Ltd v Yukos* [2002] 1 All ER (Comm), §18 [**JAB/14/411**]).
17. Sixthly, as the Supreme Court noted expressly in relation to the question of “context”, unlike the ICSID Convention, the NYC does not contain a “*self-contained or closed scheme for producing binding awards*”, (see *Infrastructure*, §98). Instead, Articles III and V of the NYC provide for a series of defences that the award debtor may raise, including as to the validity of the arbitration agreement.
18. Seventhly, it is a “*fundamental requirement*” of the NYC that an award that is sought to be enforced or recognised is based on a “*valid and existing arbitration agreement*”. That follows *inter alia* from Articles II, III, and V(1)(a) and (c) of the NYC, and in any event is “*obvious*” (see *Dallah Real Estate & Tourism Holding Co v Pakistan* [2011] 1 AC 763, §68, per Lord Mance [**JAB/21/681**]). Where there is no arbitration agreement, the enforcing State has neither an obligation, nor a right, to recognise and enforce the award (*Dallah*, §§68-69, Lord Mance [**JAB/21/681**]; §127, Lord Collins [**JAB/21/697**]) (**RSA/§39 [CB/4/78-79]**).²

² In this appeal, the question for determination is whether India’s ratification of the NYC is, on its own, and regardless of whether India agreed to arbitrate the disputes, a submission to jurisdiction under s.2(2) of the SIA (see **RSA, §1 [CB/4/67]**). There is an ongoing dispute for the purposes of the exception to immunity in

19. Eighthly, the NYC does not contain any equivalent to Article 27 of the ICSID Convention.
20. Ninthly, as regards “object and purpose”, the Supreme Court focused on the “*major object*” of the ICSID Convention to provide “*protection against sovereign risk*”, and said that the existence of immunity would render that protection “*valueless*” (*Infrastructure*, §§106, 116). However: (1) that object relates specifically to states, and to investment treaty awards against states, whereas the NYC does not have any such object; (2) furthermore, it cannot be said that the existence of state immunity in the small sub-set of NYC cases involving states would render the NYC “*valueless*” (see also §15 above, and §24 below).
21. Tenthly, the Supreme Court found “*a broad international consensus*” that Article 54(1) of the ICSID Convention entails a waiver of immunity from adjudicative jurisdiction (*Infrastructure*, §§135-142). In relation to the NYC, the broad consensus, in the cases and the commentaries, is that Article III is not in itself a waiver of immunity from jurisdiction (see **RSA/§§26-27, 44-53 [CB/4/72-74, 80-83]**).

Response to the Appellants’ Case

22. The Appellants argue that the Supreme Court’s judgment supports their position in various respects. Those arguments should be rejected.
23. As regards “Language”, the Appellants rely on the reasoning in *Infrastructure* at §§81-89 [Appellants’ Second Supplementary Skeleton Argument, (“**ASSSA**”)/§8]. However, the language of the ICSID Convention is materially different from the NYC, as set out above.
24. As regards “Object and Purpose”, the Appellants argue that the “*sole object and purpose of the NYC is to govern and ensure the reciprocal enforcement of agreements to arbitrate and resulting arbitral awards*” [**ASSSA/§§10-12**, emphasis added]. Thus, on the Appellants’ own case:³ (1) it is not the object and purpose of the NYC to ensure the reciprocal enforcement of arbitration awards where there is no valid arbitration agreement;

s.9 of the SIA (which does not presently arise for determination), as to whether India agreed to arbitrate (**RSA, §6 [CB/4/68]**).

³ For the avoidance of doubt, whilst India accepts that the object and purpose of the NYC requires that the alleged award debtor is party to a valid arbitration agreement, India does not accept the formulation of object and purpose that is proposed by the Appellants, in particular the use of the word “*ensure*”, which is not supported by any of the authorities that the Appellants cite in **ASSSA/§§11-12**.

and (2) it would be inconsistent with the object and purpose of the NYC to hold that the NYC contains a waiver of immunity regardless of whether there is a valid arbitration agreement (see further, **RSA/§39 [CB/4/79]**). In this case there is an ongoing dispute, for the purpose of the exception to immunity in s.9 of the SIA, as to whether India agreed to arbitrate (see fn. 2 above).

25. As regards the alleged “structure and scheme”, the Appellants assert that the Judge’s approach to the words “rule of procedure” in Article III of the NYC creates “*a further substantive exception to recognition and enforcement*” in addition to those contained in Article V (**ASSSA/§13**). However, immunity is a rule of procedure that goes to jurisdiction. Interpreting the words “rules of procedure” to include immunity does not involve imposing a “*further substantive exception*” to recognition and enforcement (**RSA/§§25, 30(9) [CB/4/72,76]**).

26. As regards the alleged “contextual factors”:

(1) The Supreme Court’s reference to “mutual and reciprocal” obligations does not assist the Appellants (see **ASSSA/§14a**; and §27 below).

(2) The Supreme Court did not say that obligations under the ICSID Convention “*sit within an overall treaty scheme whose “object and purpose” is the enforcement of awards, subject to limited defences (at [106]-[118])*” (see **ASSSA/§14b**). Instead: (a) as regards “object and purpose”, the Supreme Court’s conclusion rested on the specific object of the ICSID Convention to provide “*protection against sovereign risk*”, not on some general object to enforce awards (see §20 above; and *Infrastructure*, §116); (b) as regards “*defences*”, the Supreme Court said that the ICSID Convention provides a “*self-contained or closed scheme*”, which precludes re-examination of the award, and which in this respect “*differs significantly*” from the NYC (see §17 above; and *Infrastructure*, §§98, 108).

(3) The ASSSA says that the Supreme Court found that obligations under the ICSID Convention “*apply equally as between private individuals and States*”, citing §103 of *Infrastructure* (**ASSSA/§14c**). However, §103 of *Infrastructure* refers only to Article 27 of the ICSID Convention. As set out above (at §19), there is no equivalent to Article 27 in the NYC.

27. As regards “Mutuality and Reciprocity”:

(1) The Appellants rely in particular on the Supreme Court’s statement that under the ICSID Convention, enforcement proceedings will “*in all, or in almost all cases, involve*

the courts of one contracting state exercising adjudicative jurisdiction over another contracting state” and argue that “*the same considerations apply in the NYC context*” (ASSSA/§§15-16, quoting *Infrastructure*, §92). However, enforcement proceedings under the NYC generally do not involve courts of a contracting state exercising jurisdiction over another contracting state (see §15 above).

(2) The Appellants argue that “*the effect of the Judgment in this case, read with the Supreme Court’s judgment in Infrastructure, would create a lacuna for a very significant number of BITs*” and the “*workability of those BITs would be seriously undermined if the adjudicative jurisdiction of the courts in States party to the NYC was unavailable with respect to the recognition of awards arising out of those treaties, as India contends*” (ASSSA/§16b). However:

(a) It is unclear why the construction of the ICSID Convention (which India has chosen not to join), should drive the construction of the NYC.

(b) There is no “*lacuna*”. NYC awards can be enforced against States under the NYC in accordance with the state immunity rules of the enforcing States. Thus, in the UK, it is well-established that the exception to state immunity in s.9 SIA applies to the enforcement of NYC awards against States, which requires that the State “has agreed in writing” to submit the dispute to arbitration. A similar position applies in the USA (see RSA/§48 [CB/4/81-82]).

(c) It is unclear why the “workability” of BITs would suddenly be at risk if the Appellants’ construction is not accepted in this case.

(d) However, the Appellants’ case, if accepted, would create an arbitrary distinction between domestic BIT awards and foreign BIT awards. On their case, there would automatically be no immunity from jurisdiction in respect of foreign BIT awards (due to the alleged s.2 SIA submission under Article III of the NYC). However, in relation to domestic BIT awards, it would still be necessary to establish that the exception in s.9 SIA applies.

28. As regards “Articles 54 and 55 of the ICSID Convention”:

(1) It is incorrect to say that the “*Supreme Court’s view of Article 55 of the ICSID Convention*” was that “*it was consistent with – rather than determinative of*” the conclusion that Article 54 amounted to a submission under s.2(2) (see ASSSA/§17). The Court stated that it was “*significant*” that in Article 55 only immunity from execution is preserved (*Infrastructure*, §88), and treated this as one of several factors that led to its conclusion, as part of the “single combined operation” under the VCLT (*Infrastructure*, §75).

- (2) The Appellants argue that the absence of an equivalent to Article 55 in the NYC does not determine this appeal either way *inter alia* because there is “*an equivalent distinction between adjudicative immunity and enforcement immunity*” in s.13(2) SIA, so that “*India’s immunity with respect to execution of any recognised award shall be preserved*” (ASSSA/§17b). The Court should be aware that this is inconsistent with the Appellants’ position at first instance, where they argued that, whilst the point did not arise for determination, if Article III of the NYC is a submission to the jurisdiction under s.2(2) SIA, then it could follow that Article III is also a “written consent” to execution under s.13(3) SIA (see Judgment, §§11, 79 [CB/8/128, 150-151]). India’s position in this regard is reserved.
- (3) The Appellants say that the Supreme Court did not repeat Phillips LJ’s comments that the position under the NYC might be different to that under the ICSID Convention (ASSSA/§18). However, the Supreme Court did not cast doubt on those comments either. Further, the Supreme Court remarked specifically that, unlike the ICSID Convention, the NYC does not contain a “*self-contained or closed scheme for producing binding awards*” (*Infrastructure*, §98).

29. As regards “Article 32 VCLT – supplementary means of interpretation”:

- (1) The negotiating history of the ICSID Convention, as analysed by the Supreme Court, involved a specific intention to exclude immunity from execution, but no such intention in relation to immunity from jurisdiction; it is not “*much like*” the NYC as the Appellants contend (see ASSSA/§19; and see *Infrastructure*, §§119-133; RSA/§§41-43 [CB/4/79-80]).
- (2) As respects judgments from other jurisdictions, the Supreme Court did not say that these should be “*given weight only to the extent that a “uniform interpretation” can be discerned*” (see ASSSA/§20). The Court actually said that “*regard should be had to how [the treaty] has been interpreted by the courts of different countries, particularly where there is consensus among national courts in relation to the question of interpretation*” (*Infrastructure*, §79 emphasis added).
- (3) The Supreme Court found a “*broad international consensus*” that Article 54(1) of the ICSID Convention entails a waiver of immunity from adjudicative jurisdiction (*Infrastructure*, §135). However, there is no consensus that Article III of the NYC entails such a waiver. Instead, the broad consensus, both in the cases and the commentaries, is that Article III of the NYC is not in itself a waiver of immunity from jurisdiction (see §21 above).

30. As regards the US authorities, the Appellants are now trying to argue that “*there is no uniform interpretation of the NYC*” and that they “*continue to rely on those authorities, in particular Preble-Rish*” (ASSSA/§20). However:

- (1) The Judge held that “*in US practice a State does not waive immunity [...] merely by becoming party to the NYC. There has to be an agreement on the part of the State to arbitrate the dispute in question*” (Judgment, §55, 56-59 [CB/8/142-143]). The Appellants did not seek to challenge that finding in their Grounds of Appeal,⁴ or in their Appeal Skeleton Argument (see ASA/§78 [CB/3/61-62]), and it is not open to them to do so now.
- (2) Without prejudice to that, all of the US authorities which the Appellants now try to rely on in ASSSA/§20 (i.e., *Preble-Rish*, *Seetransport*, *Creighton* and *Tatneft*) have been addressed in India’s skeleton (see RSA/§48 [CB/4/81-82]), and all support the conclusion that under US practice ratification of the NYC is not in itself a waiver of state immunity; the State must be party to a valid arbitration agreement.

Conclusion

31. In conclusion, the appeal should be dismissed, for the reasons set out in the Judgment, in India’s previous skeleton arguments and for the further reasons set out herein.

Sudhanshu Swaroop KC

Twenty Essex

18 March 2026

⁴ The Appellants did not challenge the Judge’s finding that under US practice, for a waiver of immunity, there “*has to be an agreement on the part of the State to arbitrate the dispute in question*”. Instead, the Appellants contended that the Judge erred by relying on that practice, because (they say) “*the wording of the FSIA is fundamentally different and expressly requires that in the case of arbitral awards, the jurisdiction route is required*” (Grounds of Appeal/§5(b) [CB/1/18-19]; see also ASA/§78 [CB/4/61-62]). The Grounds of Appeal and the ASA made no reference at all to *Preble-Rish*, or to any other US authorities.