

DEVAS ANTRIX CASE STUDY

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ABSTRACT

The Indian Supreme Court affirmed the National Company Law Appellate Tribunal's (NCLAT) judgment to dissolve Devas Multimedia (or Devas, an Indian multimedia services provider) in the case of *Devas Multimedia Private Limited v. Antrix Corporation Limited*¹ in January 2022, discovering that the company had been formed fraudulently and with illegal intentions. According to Sections 271 and 272 of the Companies Act, 2013, the NCLAT ordered the dissolution of Devas in 2021 in response to a petition submitted by Antrix, the commercial and marketing arm of the Indian Space Research Organization (ISRO).

The Supreme Court's (SC) ruling is the most recent twist in the protracted Devas saga, which began in 2005. It happens at a time when Devas' international investors have effectively seized Indian assets in many other countries, including Canada² and France³, to recoup the money that India owes them as per two awards made under bilateral investment treaties (BITs). Additionally, following the SC's decision, Devas' foreign investors filed a new BIT claim against India, claiming that the nation is making unjustified efforts to prevent the enforcement of a commercial arbitral award that it had managed to win against Antrix back in 2015 by the International Chamber of Commerce's rules (ICC).⁴

¹ Devas Multimedia Private Limited v. Antrix Corporation Limited, January 17, 2022, Supreme Court of India, https://main.sci.gov.in/SupremeCourt/2021/22244/22244_2021_41_1501_32547_Judgement_17_Jan-2022.pdf (Devas v. Antrix).

² Jagriti Chandra, Devas can seize only 50% of Air India's assets, says Canada court, The Hindu, January 9, 2022, <https://www.thehindu.com/news/national/partial-relief-for-air-India-in-devas-award/article38204656..> Provide full stop at the end of each citation

³ Jagriti Chandra, Devas gets nod to attach India flat in Paris, The Hindu, January 13, 2022, <https://www.thehindu.com/news/national/devas-gets-nod-to-attachIndia-flat-in-paris/article38268427.ece>

⁴ Express News Service, Devas investors issue new arbitration notice to GoI over failed 2005 Antrix satellite deal, The Indian Express, February 4, 2022, <https://indianexpress.com/article/cities/bangalore/devas-investors-issue-new-arbitration-notice-to-goi-over-failed-2005-antrix-satellite-deal-7756280/>

This paper explains the lessons India can take away from this experience as the Devas case develops. The in-depth study of the case is covered in the first part. The focus of the next section is on the fraud component of this case and the reasoning for SC's decision. The final segment investigates how this judgment has altered the dynamics of corporate governance. The paper then examines the future and wraps up by outlining the most important lessons India may take away from the entire incident.

Keywords: Antrix, Bilateral Investment treaties, Dissolution, Fraudulently, Seized.

Devas Antrix Case and ‘fraud’ as a ground for winding up the corporation: Did the Supreme Court open a Pandora’s box? (Changing dynamics in corporate governance)

FACTS OF THE CASE

The Department of Space is in charge of the government-owned company Antrix Corporation Ltd. (Antrix). Bangalore, India serves as the home base for Antrix. "It is the commercial arm of the Indian Space Research Organization (ISRO), which offers a range of goods and services to the general public. Devas, the first respondent, in this case, is a business that was founded to offer digital multimedia services." On January 28, 2005, Antrix and Devas formally entered a contract that went into effect right away (Agreement). Antrix undertook to develop and operate 2 satellites, launch them, and rent spectrum capacity from those satellite systems to Devas to fulfill its responsibilities under the terms of the Agreement.⁵

Such satellites and airwaves will be utilized to provide multimedia broadband broadcasting services throughout India. Antrix terminated the Agreement with the Central Government on February 25, 2011, due to several problems and altered policy decisions. Devas used the arbitration provision of the Agreement because they were unhappy with the termination. The International Chamber of Commerce (ICC) finally awarded Devas USD 562.5 million in damages with interest on September 14, 2015, for the loss brought on by Antrix's wrongful termination of the Agreement.

⁵ Vasanth, "India: winding-up in pendency of arbitration and criminal proceedings: NCLT orders for winding up of devas multimedia for operating fraudulently since incorporation", 02 June 2021, winding-up in pendency of arbitration and criminal proceedings: nclt orders for winding up of devas multimedia for operating fraudulently since incorporation - contracts and commercial law - india (mondaq.com)

The (Central Bureau of Investigation) and the Enforcement Directorate (ED) looked into the incident because it may have wide-ranging effects and since Devas was thought to have engaged in several fraudulent operations. Such satellites and airwaves will be utilized to provide multimedia broadband broadcasting services throughout India, according to the business Devas. Antrix terminated the Agreement with the Central Government on February 25, 2011, due to several problems and altered policy decisions. Devas used the arbitration provision of the Agreement because they were unhappy with the termination. The International Chamber of Commerce (ICC) finally awarded Devas USD 562.5 million in damages with interest on September 14, 2015, for the loss brought on by Antrix's wrongful termination of the Agreement.

The (CBI) and the Enforcement Directorate (ED) investigated the incident because it may have wide-ranging effects and since Devas was thought to have engaged in several fraudulent operations. Devas, on the other side, received such a significant contract arbitrarily without following the proper procedures. The firm claims that Antrix found several mistakes and procedural irregularities all through the contract awarding procedure, which was tainted with fraud and corruption. It was alleged that there had been no attempt to solicit proposals or tenders or to disclose technical specifications.

Devas, for his part, argued that the current petition could not be upheld because it did not follow the "second proviso to *Section 272(3) of the Companies Act*⁶, which mandated that a business be given a sufficient chance to make suggestions before it was wound up. Devas went on to say that the current issue could only be resolved if the investigations and cases before the CBI Court, PMLA Court, or both were concluded. Additionally, Devas claimed that Antrix became a debtor of Devas as a result of the ICC judgment against the business for USD 562.5 million with interest. Devas said that because the debtor's request to wind up a creditor was against the law, it was illogical on their part.

Timeline of the Devas-Antrix Case

Event	Year
The signing of the Antrix-Devas contract	2005

⁶ Companies Act, 2013, § 272(3)

Antrix rescinds the contract on the advice of the Indian government	2011
India launches criminal investigations in the Antrix-Devas deal	2014
ICC award against Antrix for annulling the contract	2015
CC/Devas tribunal award against India under the India-Mauritius BIT	2016
Deutsche Telekom tribunal award against India under the IndiaGermany BIT	2017
CC/Devas tribunal orders India to pay USD160 million plus interest as damages to CC/Devas	2020
Deutsche Telekom tribunal orders India to pay USD132 million as damages to Deutsche Telekom	2020
Foreign investors start the process of attaching Indian assets abroad	2021
NCLAT allows winding up of Devas on the request of Antrix	2021
The Supreme Court approves the NCLAT's winding up order	2022

ISSUES

The question of whether the foreign investment was made by the host country's laws is crucial in BIT adjudication. In some sectors, this is known as the legality criteria. A BIT cannot be utilized to protect an investment that has not been authorized by the host country's legal system. An

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investment would've been considered corrupt or fraudulent if it was made as a consequence of fraud and corruption. This defense has been utilized by the host state to challenge the jurisdiction of the arbitral tribunal in several bilateral investment treaty arbitration proceedings.⁷



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⁷ Antrix-Devas, BIT Arbitrations, and India's Quixotic Approach, THE WIRE, available at <https://thewire.in/business/antrix-devas-bitarbitrations-isro-india-nclt> (last visited on July 24, 2022)

ORDER/JUDGEMENT

India didn't submit a jurisdictional objection in the CC/Devas arbitration until after the tribunal published its decision on July 25, 2016, but the panel sustained the decision since it judged Devas to have engaged in both corruption and fraud as well as unlawful investment. India did not ask for a deferral of the reparations arbitration proceedings until December 2016, after the CBI had charged several personnel and management for many other reasons, violating the Prevention of Corruption Act and the Indian Penal Code.⁸

The panel agreed to the Indian government's request to stop the arbitration process while the hearing phase was ongoing when it was made to the Deutsche Telekom tribunal in October 2016. The panel ruled that the motion was late in being submitted and that it had violated procedural rules.

Primarily, the main argument in both of these pleas would be that the court's ruling that the "Devas agreement" was a legally binding contract and an "investment" under the BIT can not be affirmed if the charges were found to be true and the Antrix-Devas agreement had no legal force under Indian law. This must have been used as a first defense against the tribunal's jurisdiction, even though the CBI and Enforcement Directorate (ED) investigations were still underway and the charge sheet had not yet been submitted. Even while the theory and practice of combating corruption in arbitration courts are still not well-established, they are evolving and taking into account many points of view, some of which may have benefited India. According to Lucinda Low, *"due to the obvious emergence of multilateral treaties and the consolidation of commitments regarding the prevention, recognition, and restoration in both the public and private sectors, fraud has emerged as an international and transnational public policy question, and both BIT adjudication tribunals and international arbitral tribunals must resolve judicial power, rules of evidence, and other problems resulting from corruption allegations."*

As per Lucinda Low, there was a good chance that the Indian government would have appealed the decision to delay the BIT arbitration proceedings until the conclusion of the probe.

⁸ 'Fraud of huge size': SC upholds winding up of Devas Multimedia, BUSINESS STANDARD, available at https://www.businessstandard.com/article/companies/fraud-of-huge-size-sc-upholds-winding-up-of-devas-multimedia122011701368_1.html (last visited on January 26, 2022).

Additionally, Without a doubt, it would have given the Indian government a better bargaining position.

The swiss federal supreme court set aside the proceedings by stating that "*It was hard to understand why the appellant didn't even mention these situations, which emerged to be reflective, or in the very slightest, of criminality* " in its writings in the arbitral proceedings file and then during the hearing". In the set-aside procedure associated with the CC/Devas ruling, the Hague District Court also rejected India's contention that the BIT arbitral tribunal lacked jurisdiction since the Antrix Devas agreement had been tainted by evil conduct and was thus unlawful from the start.⁹

The rationality as per the court is that "*the simple lodging of charging documents at this time has no legal implications.*" There is no chance of the Devas Contract being null and void since it is tainted by criminal offenses as long as no (irrevocable) court ruling on the criminal complaint has been rendered.

The NCLT ultimately concluded that the evidence proved beyond a reasonable doubt that Devas was founded with the dishonest purpose of obtaining a reputable contract in cooperation with a limited number of corrupt Antrix personnel. According to the NCLT, a complex contract like this one should be awarded to a business with the necessary technical expertise and a successful track record of a person based only on rational thinking, the court said. In particular, the NCLT ruled that Devas lacked the abilities necessary to engage in the process of issuing the Agreement, much less to do so on her own to guarantee that the Agreement was granted.

According to a well-established legal theory, the wrongdoings and criminal activities committed by Antrix's corrupt officials will not be binding on the State and will be null and invalid from the start, meaning they will not have any legal or civil repercussions. Devas is charged with writing the Agreement to lure foreign investment into India and then siphon it out through dubious accounts. Despite the continuing arbitral judgment challenge and actions taken by the CBI and ED, the NCLT found that the Agreement did not grant Devas any legal rights, much less civil

⁹ Supreme Court upholds winding up of Devas Multimedia Devas Multimedia Pvt. Ltd. Vs. Antrix Corporation Ltd. & Anr. Supreme Court, IBC LAws, available at <https://ibclaw.in/devasmultimedia-pvt-ltd-vs-antrix-corporation-ltd-anrsupreme-court/> (last visited on January 26, 2022).

rights. As a result, the NCLT was certain that Devas had been wound up since the requirements outlined in S. 271(e) of the Companies Act had been satisfied.

DEVAS ANTRIX CASE AND 'FRAUD' AS A GROUND FOR WINDING UP THE CORPORATION: DID THE SUPREME COURT OPEN A PANDORA'S BOX?

A firm is wound up when its existence is terminated, and its assets are managed for the benefit of its shareholders and creditors. A liquidator, or administrator, is chosen, who seizes possession of the company's assets, pays off debts, and then distributes any remaining funds to the members in line with their individual entitlements.

If any of the conditions listed in section 271 are met, the Tribunal may perform a winding-up. On a request from any of the individuals who are permitted under section 272, the Tribunal may order the company's dissolution.

A company may be dissolved by a tribunal's order in the following cases.

1. If the company has decided by a special resolution that the Tribunal should wind up the firm;
2. If the business has violated Indian sovereignty and integrity, state security, cordial relations with other countries, public order, morals, or decency;
3. If the Tribunal determines that the company's operations have been handled dishonestly or in response to a request from the Registrar or any person authorized by the Central Government
4. If the business was created for a dishonest and illegal motive,
5. if the firm should be dissolved due to wrongdoing, mismanagement, or fraud committed by those in charge of running its activities;
6. The firm has failed to file its financial statements or annual returns with the Registrar for the five fiscal years that have just passed.
7. The corporation would be dissolved if the tribunal decided it was reasonable and equitable for it to cease operations.
8. The grounds of incapacity to pay debt and winding up under have been eliminated with the passage of the Insolvency and Bankruptcy Code.

Conducting business affairs in a dishonest and illegal way

Anyone authorized by the Central Government, or the Registrar may submit a winding-up application to the Tribunal. The Tribunal may order dissolution for reasons like

- The business's affairs and management are being handled dishonestly.
- The business was established fraudulently or for illicit motives
- Fraud, mismanagement, or other wrongdoing in connection with the company's establishment or management of its activities was committed by those involved.

Fraudulent Purpose

It is right and equitable to dissolve the corporation if it was created and presented under false pretences or for illegal reasons. When a corporation's primary objection is the outcome of a lottery, the Madras High Court observed in *Universal Mutual Aid and Poor Houses Assn v. A. Thoppa Naidu*[x] that the minor fact that a fraction of its articles were benevolent won't prevent the company from being wound up for illegal reasons.

SCENARIO IN PRESENT CASE

The fact that BITs only safeguard investments made by the host state's domestic laws must be taken into account while analyzing the BIT arbitration tribunal proceedings brought against India. For instance, the India-Mauritius BIT's Article 1(1) states that "investment" refers to any type of asset created or acquired by the applicable laws and regulations of the Contracting Party on whose territory the investment is made. The India-Germany BIT also states in Article 1(b) that "investment means any sort of asset invested by the national legislation of the Contracting Party where the investment is made." The "legality requirement" is presented by these paragraphs, which states that the BIT only protects investments that have been made legally.

An investment that has been tainted by fraudulent activity cannot be regarded as legal and cannot be protected by the BIT.

A BIT arbitration tribunal denied exercising its jurisdiction in *Metal-Tech v. Uzbekistan*¹⁰ and ruled that only authorized investments are eligible for a state's consent to BIT arbitration. The investor was found to have gained its investment through corruption.

However, even though the hearings were finalized only after the National Democratic Alliance (NDA) government was elected in 2014 and began criminal investigations into the case, India did not once bring up the issue of fraudulent activity as a judicial opposition during the BIT arbitration tribunals. In 2015, the Central Bureau of Investigation (CBI) filed a first investigation report (FIR) under the Prevention of Corruption Act, 1988, against Devas and its personnel. Additionally, the CBI filed a charge sheet in 2016 against several individuals, including the former chairman of the ISRO, G. Madhavan Nair, accusing him of engaging in various criminal offenses under *the Indian Penal Code*, including cheating and contravening provisions relating to *the Prevention of Corruption Act, 1998*, as well as enabling a gain to Devas¹¹ of USD 75,906,312.¹² According to the Prevention of Money Laundering Act, the Enforcement Directorate (ED) seized Devas for around USD 10,504,824 at the beginning of 2017.¹³ Additionally, Indictments against India were issued by the CC/Devas court and the DT court in July 2016 and March 2017. Why India did not bring up corruption and fraud even before BIT arbitration courts is still a mystery. The false incorporation of Devas was confirmed by no court decision at the time, but India had already opened criminal investigations and issued a list of charges for corruption and fraud. The Devas-Antrix contract included multiple irregularities, according to a 2012 investigation by the Comptroller and Auditor General (CAG), including a deal that promoted the interests of a single

¹⁰ Metal-Tech Ltd. v. Republic of Uzbekistan, ICSID Case No. ARB/10/3, Award, October 4, 2013.

¹¹ CBI files chargesheet in Antrix-Devas deal, names ex-ISRO chief Madhavan Nair, The Deccan Herald, August 11, 2016, <https://www.deccanherald.com/content/563784/cbi-files-chargesheet-antrix-devas.html> (CBI, Chargesheet).

¹² CBI, Chargesheet.

¹³ ED attaches Rs 80 crore of Devas in Antrix deal, The Business Standard, February 28, 2017, https://www.business-standard.com/article/news-ians/ed-attaches-rs-80-crore-of-devas-in-antrix-deal-117022801000_1.html

private firm at the expense of the general welfare.¹⁴ At first glance, there was enough proof that the incorporation of Devas was carried out illegally.¹⁵

India's Failure to Cite Fraud as a Defense India asked the CC/Devas tribunal to halt the proceedings in October 2016 for the resolution of the charges brought by the CBI against Devas by Indian judicial authorities. This request came after the tribunal had issued its award and begun the process of calculating the number of damages to be paid to the investors. Given the date of the request, the tribunal rejected it. Additionally, the CC/Devas tribunal claimed that despite India's allegedly illegal conduct against Devas being covered by Indian criminal laws, India did not ask for relief throughout the proceedings.¹⁶ After the hearing had already been completed in October 2016, India submitted a similar plea to the DT tribunal. The request was denied by the DT tribunal as well since it was made at the wrong time and had no merit.¹⁷

It was hard to understand "why (India) didn't even mention [the oddities in the Devas-Antrix contract as well as other associated situations], that was reflective, or in the very slightest, of skepticism of committee of criminal offenses in its texts in the arbitral proceedings file, but during the hearing in April 2016, or its brief after investigations of June 10, 2021," according to the Swiss Federal Supreme Court's 2018 decision, where India had staunchly opposes the DT award.¹⁸

In the present case India did mention this fact and this resulted in a huge win for India against the Devas which can also be used in other court hearings as well. India through this case proved to the world that they can't be played and the Indian laws are sufficient enough to protect itself from such fraudulent activities. Hence it opened the pandora's box in this arena.

¹⁴ Report of the Comptroller and Auditor General of India on hybrid satellite digital multimedia broadcasting service agreement with Devas, New Delhi: 2012- 2013, https://cag.gov.in/webroot/uploads/download_audit_report/2012/Union_Compliance_Scientific_Department_Multimedia_Broadcasting_Service_4_2012.pdf

¹⁵ DT v. India, , para 82; CC/Devas v. India, , para 468.

¹⁶ CC/Devas v India, Procedural Order No. 7, December 21, 2016, https://www.italaw.com/sites/default/files/case-documents/italaw10802_0.pdf.

¹⁷ DT v. India, paras 115-119

¹⁸ Judgement of Swiss Federal Court, December 11, 2018 https://www.italaw.com/sites/default/files/case-documents/italaw10304_0.pdf. See also Pushkar Anand, Antrix-Devas, BIT Arbitrations, and India's Quixotic Approach, The Wire, May 31, 2021, <https://thewire.in/business/antrix-devas-bit-arbitrations-isro-india-nclt>

INTRODUCTION ON CHANGING DYNAMICS OF CORPORATE LAW & GOVERNANCE: STEERING TOWARDS TRANSPARENCY & ACCOUNTABILITY IN THE INDIAN SCENARIO

Over the past two decades, there has been a significant expansion in worldwide financial integration, as well as trade and investment flows, which more than doubled between 2000 and 2008 until the global financial crisis halted this trend (see McKinsey 2011; Lane and Milesi-Ferretti 2007). Due to disparities in the regulatory and legal frameworks reflected in company laws and the regulations of securities regulators, this financial integration has given rise to several international difficulties in corporate governance. This was also evident in the current Devas Antrix case.

Transparency and accountability in the business sector have now been possible thanks to this decision. The regulations were never observed back when they were merely put down on paper. Many international businesses, like Devas, were aware of this loophole and utilized it as a means of profit. But now because of this decision, such fraudulent companies won't be able to take advantage of these deals and India would be in an advantageous position.

LATEST DEVELOPMENTS

The Indian government has taken extensive steps to prevent the judgment from being executed, despite receiving multibillion-dollar arbitration decisions from the International Chamber of Commerce and the Bilateral Investment Treaty. It is quite unlikely that Devas would've been able to obtain the entire sum granted by the International Court of Justice following the NCLT's decision. In any case, India would find itself in a situation akin to the White Industries under the British Raj if this were to take place.¹⁹

According to the inclusive definition of investment provided by the 2007 India Mauritius Bilateral Investment Treaty, Devas' International Chamber of Commerce award easily qualifies as an investment. (BIT).²⁰

¹⁹ Antrix Corporation Ltd. v. Devas Multimedia Pvt. Ltd., 2022 LiveLaw (SC) 57.

²⁰ India-Mauritius Bilateral Investment Treaty, 2007

Devas may be charged with waging a retaliation campaign against it by the Indian government, via its investigative agencies and other regulatory authorities, to keep it from carrying out the ruling of the International Criminal Court.

The 99-page judgment, makes clear the NCLT's displeasure with Devas' use of ICC arbitration. The National Company Law Tribunal (NCLT), trying to act within the broad power given by Indian law, enacted extra steps in the operative part of its judgment and directed the official liquidator to "take speedy steps to expropriate the Corporation to stop it from reinforcing its illicit practices and abusing the legal system in the regulation of the ICC award."

Unless and until this specific direction is reversed in an appeal to the NCLT, the liquidator will not be permitted to move forward with the execution of the judgment in the first instance (National Commercial Law Tribunal). Mauritian investors may be able to claim indirect seizure of their investments—in this example, the ICC award in this particular case—using this express direction.²¹

The Arbitration and Conciliation Act, 1996 was modified the same day in November 2020 by the Indian government, "mandating for tribunals to award an unwavering stay on the regulation of arbitral award from arbitration proceedings held in India whenever there is a preponderance of the evidence that an arbitration agreement or an underpinning contract under which the grant is premised, or perhaps even the making of the grant, was caused by fraudulent activity." The modification applies to the ICC arbitration that was started as a result of the modification and has been continuing since 2013.

Devas could bring up this as a tactic to highlight the government's desire to delay the execution of the ICC ruling. According to Devas, each of these instances demonstrates how the Indian government breached the FET standards by establishing a complex regulatory environment, treating the FET in an unfair and inequitable manner, and creating a confusing administrative environment. Devas may also gain from the inclusion of a most-favorable-nation clause (MFNC), which would enable it to import more beneficial clauses from other bilateral investment treaties

²¹Devas v. Antrix, JUSMUNDI, available at <https://jusmundi.com/en/document/decision/endevas-multimedia-private-limited-v-antrixcorporation-limited-order-of-the-delhi-high-court-friday-22nd-january-2021>

(BITs), such as the necessity to offer "efficient ways of resolving disputes," as stated in the India Kuwait BIT.

SUGGESTIONS

The Antrix-Devas case provides India with two important lessons.

- First, India must utilize its regulatory authority legally and openly. The Devas case is a prime example of the nation's inadequate administration and regulation. The government in force at the moment did not reveal the anomalies in the Antrix-Devas transaction to annul the contract, despite them becoming obvious a few years after the agreement was signed. Instead, it used the justification of "national security" to conceal its errors. The S-band spectrum was once again purchased without following the proper procedures or being completely clear about its intended use, and India did not foresee that these activities would eventually be opposed worldwide in BIT arbitration tribunals. India must create a regulatory system that is open, understandable, and predictable and is based on the complete internalization of the duties under international law inherent in BITs.
- Second, when defending its rights in front of international arbitration bodies, India must adhere to a precise and strict litigation strategy. The NDA administration says that as the BIT claims progress, it would become clear that India made a mistake in its legal strategy by failing to raise the jurisdictional objection of fraud and corruption before the BIT arbitration panels. India also ought to have sped up the criminal investigative process. The involvement of several ministries and agencies may be in part to blame for the inability to bring up the corruption and fraud issue. Therefore, it is necessary to remedy the improper lack of cooperation between these entities.

CONCLUSION

The NCLT's decision, if confirmed on appeal, might, among other things, affect how the BIT arbitration decisions in the CC/Devas and Deutsche Telekom cases are implemented. India may argue that accepting and carrying out the judgment would be against US national policy and should be refused. Despite overwhelming agreement among lawyers, the Supreme Court has ruled that the public interest defense against foreign award enforcement must be used narrowly in the United States. If this is done, public policy can be defended against corruption. The NCLT has just found that the company's activities are deceptive, and not for any other reason, thus the US court is likely to dismiss this allegation. The National Labor Relations Commission (NLCT) claimed in its decision that the Antrix-Devas agreement was fraudulent, although it lacked the authority to look into and confirm the pact's validity. However, no concrete evidence of the agreement's legitimacy has yet been offered. The Supreme Court mandated that the case be sent to the Delhi High Court in November 2020. The International Chamber of Commerce arbitral judgment is currently the subject of a petition for reversal, and the ICC award has been suspended until the outcome of the appeal. The Delhi High Court will look into the legitimacy of the AntrixDevas business arrangement in light of allegations of corruption and fraud made against Antrix and Devas. The Indian government was expected to call for a temporary halt to enforcement operations in the US until the matter is resolved. The Indian government appears to have a single objective in mind: to prevent the International Court of Justice ruling and the BIT arbitration decisions that have not yet been upheld by US courts from taking effect. The Indian government has paid a high price for failing to address the corruption problem promptly. The only practical solution at this time is to expedite criminal proceedings and show beyond a reasonable doubt that those involved were corrupt and bought off. The BIT-based arbitration processes may be compared to "windmills," and the Indian government can be compared to "Don Quixote," to sum up its whole strategy.

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