

Nos. 23-1201, 24-17

IN THE  
**Supreme Court of the United States**

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CC/DEVAS (MAURITIUS) LIMITED, ET AL.,

*Petitioners,*

v.

ANTRIX CORP. LTD., ET AL.,

*Respondents.*

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DEVAS MULTIMEDIA PRIVATE LIMITED,

*Petitioner,*

v.

ANTRIX CORP. LTD., ET AL.,

*Respondents.*

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**No. 23-1201 PETITIONERS' UNOPPOSED MOTION  
FOR DIVIDED ARGUMENT**

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Pursuant to Supreme Court Rule 28.4, Petitioners in No. 23-1201 move for divided argument in Nos. 23-1201 and 24-17. The Court granted certiorari in both cases, consolidated them, and allotted one hour for argument. Petitioners in No. 23-1201 and the Petitioner in No. 24-17 have each filed separate merits briefs, and while they agree on resolution of the question presented, Petitioners in No. 23-1201 believe that divided argument is essential to ensuring that their interests are adequately and fairly represented and that this Court receives fully adversarial argument. In addition, although Petitioners agree on the merits of the constitutional question, only Petitioners in No. 23-1201 contend that this Court should reach that question.

Division of the argument will ensure that the Petitioners can adequately represent their interests in these cases and that the Court can adequately consider Petitioners' distinct legal arguments. If the Solicitor General's motion for divided argument is granted, Petitioners in No. 23-1201 request that the remaining 20 minutes be allocated between Petitioner in No. 24-17 and Petitioners in No. 23-1201. If the Solicitor General's motion is not granted, Petitioners in No. 23-1201 ask that their 30 minutes be divided evenly. Thus, this motion does not require an enlargement of time. Antrix Corporation Ltd. ("Antrix"), Respondent in both consolidated cases, takes no position on this motion. Petitioner in No. 24-17 consents to the relief requested in the motion but vigorously disputes many of the motion's assertions and characterizations.

1. This case presents the question whether the exercise of personal jurisdiction over a foreign state sued under the Foreign Sovereign Immunities Act ("FSIA") requires satisfaction of the minimum-contacts test. Under the FSIA,

“[p]ersonal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction \* \* \* where service has been made under section 1608 of this title.” 28 U.S.C. § 1330(b). Devas Multimedia Private Ltd. (“Devas”) obtained an arbitral award for breach of contract against Antrix, a corporation wholly owned by the Republic of India and incorporated by the government to market goods and services created by its space program. Devas petitioned to confirm the arbitral award in the Western District of Washington, relying on the arbitration exception to immunity under the FSIA. See 28 U.S.C. § 1605(a)(6). Although it was uncontested that Antrix was a “foreign state” under the FSIA, service was proper, and Devas’s claim fell under the arbitral exception to immunity, Antrix still argued personal jurisdiction was improper under a minimum-contacts analysis. The district court disagreed, noting that the parties did not dispute that personal jurisdiction existed under the FSIA and holding that foreign states are not protected by a minimum-contacts requirement under the Due Process Clause and that Antrix was a foreign state as the alter ego of India. No. 23-1201 Pet. App. 13a-15a, 21a-22a. Rejecting Antrix’s other arguments, the district court confirmed the award and entered judgment for Devas in the amount of \$1.3 billion. *Id.* at 34a-35a. Antrix appealed. *Id.* at 3a.

After Antrix appealed the judgment below to the Ninth Circuit, it petitioned the National Company Law Tribunal in India to place Devas into liquidation, asserting that Devas had been incorporated for fraudulent purposes and that its affairs were being conducted in a fraudulent manner. No. 23-1201 Pet. App. 54a; No. 20-36024 C.A. Doc. 38-2, ¶¶ 1, 11. Accepting those assertions, the Tribunal ordered that Devas be placed

under the management of a court-appointed Official Liquidator, who, under India's Companies Act, is required to be a "whole-time officer[] of the Central Government." The Companies Act, 2013, § 359(2). The liquidation order provided that "[t]he Liquidator is directed to take expeditious steps to liquidate [Devas] in order to prevent it from perpetuating its fraudulent activities and abusing the process of law in enforcing the ICC Award." Dkt. 113-1, ¶ 38(7), *Devas Multimedia Private Ltd. v. Antrix Corp. Ltd.*, No. 2:18-cv-01360-TSZ (W.D. Wash. July 6, 2021) ("D. Ct. Dkt."). The liquidation order was upheld on appeal by the Supreme Court of India. No. 20-36024 C.A. Doc. 72, App. B.

After these developments, the Liquidator advised Devas's counsel that their "engagement in this matter is terminated with immediate effect" and instructed them to "refrain \* \* \* from representing Devas." D. Ct. Dkt. 68-16. The Liquidator's first report described Devas as "a Sham/Shell company" and characterized the Devas-Antrix agreement on which the ICC Award is based as "vitiating by fraud." D. Ct. Dkt. 68-17, ¶¶ 12, 32. In response, several Devas shareholders and a Devas subsidiary—Petitioners in No. 23-1201 (collectively, "Intervenors")—intervened in the district court and the court of appeals to defend and enforce the ICC Award. No. 23-1201 Pet. App. 54a.

The Intervenors maintained that the liquidation proceedings were based on unsubstantiated assertions and resulted in an employee of the Government of India, the Liquidator, taking control of Devas. D. Ct. Dkt. 64, at 3, 5. They contended that intervention was necessary to preserve adversity and allow post-judgment discovery

and vigorous enforcement of the award. *Id.* at 10-11. The district court permitted the Intervenor to conduct post-judgment discovery to locate Antrix's executable assets and to register the judgment in the Eastern District of Virginia after discovery revealed assets there. No. 23-1201 Pet. App. 37a, 40a-41a; D. Ct. Dkt. 76, at 11. Both Antrix and the Liquidator appealed the order permitting the Intervenor to register the judgment. No. 23-1201 Pet. App. 3a.

On appeal, the Ninth Circuit reversed confirmation of Devas's award, holding that the district court lacked personal jurisdiction. No. 23-1201 Pet. App. 3a. Intervenor and the Liquidator separately filed petitions for writs of certiorari, which this Court granted and consolidated for one hour of oral argument.

2. Intervenor and the Liquidator agree on resolution of the question presented, but they have distinct interests in this litigation that have made them adverse to each other in important respects. They are formally adverse to each other in Ninth Circuit No. 22-35085, one of the cases in which this Court issued a writ of certiorari in No. 23-1201, where the Liquidator is the appellant and the Intervenor is appellee. And in light of the Liquidator's actions and status as an official of the Indian government, Intervenor respectfully submit that he cannot fairly and adequately represent their interests at argument in these consolidated cases.

The Intervenor maintains that the allegations of fraud leveled against Devas are entirely meritless and designed to prevent enforcement of Devas's arbitral award. The Court of Appeals of the Hague recently held that aspects of the liquidation proceedings provided "strong indications that there was no proper administration of justice with

sufficient safeguards in the liquidation proceedings.” *Devas Multimedia America Inc. v. Antrix Corporation Ltd.*, ¶¶ 6.36-6.49, No. 200.332.942/01 (The Hague Court of Appeal Dec. 17, 2024), available at [https://www.gibsondunn.com/wp-content/uploads/2025/01/Devas\\_Multimedia\\_America\\_Inc.\\_v\\_Antrix\\_Corporation\\_Limited-Certified-Translation-of-Dutch-Decision.pdf](https://www.gibsondunn.com/wp-content/uploads/2025/01/Devas_Multimedia_America_Inc._v_Antrix_Corporation_Limited-Certified-Translation-of-Dutch-Decision.pdf). The Dutch court accordingly concluded that the liquidation proceedings “indicate a bias, to the detriment of Devas, and cannot be reconciled with the impartiality that this judicial authority is to observe,” such that “the liquidation ruling cannot be recognized in the Netherlands” and “the powers of the appointed liquidator have no legal effect in the Netherlands.” *Id.* ¶¶ 6.43-6.44, 6.49.

The Liquidator has not defended either Devas or its arbitral award before the courts and agencies of India, even acquiescing in Antrix’s arguments that the award should be set aside by the courts of India. D. Ct. Dkt. 147, ¶ 8 (listing ways in which the Liquidator has acted against Devas’s interests in criminal and civil proceedings in India). In these proceedings, the Liquidator left Devas unrepresented in the district court for “nearly four months,” and, after retaining counsel, moved for an indefinite stay of all judgment-enforcement proceedings, which the district court concluded was “intended to further delay these proceedings, as well as [Devas’s] or Intervenors’ right to recover on the award.” D. Ct. Dkt. 132, at 1-2. The Liquidator similarly moved, unsuccessfully, to expel the Intervenors from participating in Antrix’s appeal of the judgment confirming the arbitral award against Devas. See No. 20-36024 C.A. Docs.

38-1, 39. Intervenors' involvement in argument before this Court is necessary to protect the interests of the corporation and the relevant stakeholders.

Moreover, if Intervenors are not allowed to present argument, *only* agents of the Government of India will be presenting argument on behalf of all the parties in this appeal. Antrix is an instrumentality of India, and the district court held that it is India's alter ego. No. 23-1201 Pet. App. 13a-15a. And the Liquidator is a "whole-time officer[] of the Central Government" of India. The Companies Act, 2013, § 359(2). Participation by Intervenors is necessary to ensure that the oral argument before the Court is a fully adversarial proceeding.

3. In addition, although the two sets of Petitioners agree that neither the FSIA nor the Constitution justifies a minimum-contacts test, they advance distinct arguments regarding the constitutional issue. Specifically, while Petitioners agree on the merits of the constitutional issues, only the Intervenors urge this Court to resolve the constitutional question. In contrast, the Liquidator (and the Solicitor General) suggest that the Court remand the constitutional issues after resolving the statutory question. Thus, absent argument by Intervenors, the Court will not have the benefit of advocacy by a party that believes it should reach the constitutional issue.

4. This Court has granted divided argument in cases where parties advance the same basic legal position but possess different interests or proffer different arguments, including where, as here, one party intervened below to protect interests it believed were not adequately represented by the existing parties. *E.g.*, *FDA v. All. for Hippocratic Med.*, 144 S. Ct. 1053 (2024) (original defendant and defendant-intervenor

advanced distinct interests); *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 144 S. Ct. 996 (2024) (debtors and claimants had unique interests); *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 376 (2023) (creditors and debtors had unique interests and distinct perspectives); *Moore v. Harper*, 143 S. Ct. 401 (2022) (respondents, which included an intervenor, had different overriding interests and offered distinct perspectives); *Ruan v. United States*, 142 S. Ct. 1099 (2022) (two petitioners pressed different arguments, did not join each other’s fallback arguments, and had diverging interests at times); *Fulton v. City of Philadelphia*, 141 S. Ct. 230 (2020) (original defendants and defendant-intervenors offered differing perspectives and sought to vindicate different interests); *Kelly v. United States*, 140 S. Ct. 661 (2019) (parties were differently situated and advanced different arguments); *Rucho v. Common Cause*, 139 S. Ct. 1316 (2019) (aligned parties pressed different approaches and had different interests); *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 951 (2019) (original defendant and defendants-intervenors presented distinct interests, perspectives, and arguments); *Frank v. Gaos*, 139 S. Ct. 304 (2018) (plaintiff class and defendant corporation shared interest in defending settlement but had different and sometimes diverging interests).

Divided argument is appropriate here for the same reasons. As set forth above, Petitioners have distinct interests, emphasize different arguments, and—most importantly—Intervenors have well-founded concerns that their interests cannot be represented adequately or fairly by the Liquidator. See Shapiro et al., *Supreme Court Practice* § 14.5 (10th ed. 2013) (“Having more than one lawyer argue on a side is



justifiable, as Justice Jackson admitted, when they represent different parties with different interests or positions.”).

5. For the foregoing reasons, Petitioners in No. 23-1201 move to divide argument evenly between the two sets of Petitioners. If the Solicitor General’s motion for divided argument is granted, Petitioners in No. 23-1201 request that the remaining 20 minutes be allocated between the two sets of Petitioners. If the Solicitor General’s motion is not granted, Petitioners in No. 23-1201 ask that the 30 minutes be allocated between the two sets of Petitioners.

January 17, 2025

Respectfully submitted,

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