

FEDERAL COURT OF AUSTRALIA

CCDM Holdings, LLC v Republic of India (No 4) [2023] FCA 1400

File number(s): NSD 347 of 2021

Judgment of: **JACKMAN J**

Date of judgment: 10 November 2023

Catchwords: **PRACTICE AND PROCEDURE** – application for leave to appeal from interlocutory judgment – where interlocutory judgment held that there was a waiver of foreign State immunity – where participation in the final hearing of the proceedings may render any rights of appeal nugatory – leave to appeal granted

Legislation: *Federal Court of Australia Act 1976 (Cth) ss 24, 25*
Foreign States Immunities Act 1985 (Cth) s 10
International Arbitration Act 1974 (Cth) s 8
Federal Court Rules 2011 (Cth) rr 35.12, 35.13
Convention on the Recognition and Enforcement of Foreign Arbitral Awards, opened for signature 10 June 1958, 330 UNTS 3 (entered into force 7 June 1959) Art V

Cases cited: *CCDM Holdings, LLC v Republic of India (No 3) [2023] FCA 1266*

Division: General Division

Registry: New South Wales

National Practice Area: Commercial and Corporations

Sub-area: International Commercial Arbitration

Number of paragraphs: 3

Date of hearing: 10 November 2023

Counsel for the Applicants: Ms A Garsia

Solicitor for the Applicants: Norton Rose Fulbright Australia

Counsel for the Respondent: Dr F Roughley SC

Solicitor for the Respondent: White & Case

ORDERS

NSD 347 of 2021

BETWEEN: **CCDM HOLDINGS, LLC**
First Applicant

DEVAS EMPLOYEES FUND US, LLC
Second Applicant

TELCOM DEVAS, LLC
Third Applicant

AND: **THE REPUBLIC OF INDIA**
Respondent

ORDER MADE BY: JACKMAN J
DATE OF ORDER: 10 NOVEMBER 2023

THE COURT ORDERS THAT:

1. The Respondent be granted leave to appeal from:
 - (a) orders 1 and 2 of the orders made on 24 October 2023 in the interlocutory judgment of the Federal Court of Australia at Sydney, New South Wales (*CCDM Holdings, LLC v Republic of India (No 3)* [2023] FCA 1266 (Jackman J) (**Judgment**)); and
 - (b) that part of the Judgment which concerns s 10(1) and (2) of the *Foreign States Immunities Act 1985* (Cth) (**FSIA**).
2. The appeal be scheduled by the Registry before the Full Court of the Federal Court of Australia at a date in the future at the Court's convenience.
3. If the appeal is unsuccessful, there be liberty to restore the matter for a case management hearing before Justice Jackman no earlier than 28 days after judgment is given by the Full Court.
4. The costs of the application for leave to appeal be costs in the appeal.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT
(REVISED FROM TRANSCRIPT)

JACKMAN J:

1 The Republic of India (**India**) seeks leave to appeal, pursuant to s 24(1A) of the *Federal Court of Australia Act 1976* (Cth) and r 35.12 of the *Federal Court Rules 2011* (Cth) (the **Rules**), from the decision which I gave on 24 October 2023 in *CCDM Holdings, LLC v Republic of India* [2023] FCA 1266 (**Reasons**). The application was filed within time under r 35.13 of the Rules and is not opposed. The matter comes before me as a single judge, pursuant to s 25(2) of the *Federal Court of Australia Act*.

2 As I indicated in the Reasons, I anticipate that at the final hearing at first instance, India will seek to rely, among other things, on one or more aspects of Art V of the New York Convention, which have been adopted in s 8(5) of the *International Arbitration Act 1974* (Cth). As I said at [44] of my Reasons, reliance on those matters would entail a submission to the jurisdiction of this Court and thus defeat any argument based on foreign State immunity. Given that India wishes to appeal against my Reasons to the effect that it has waived its ability to rely on foreign State immunity by becoming a party to the New York Convention and apparently entering into the arbitration agreement in the present case, that appeal must be heard and decided before the final hearing, as otherwise, any right of appeal on that matter would be rendered nugatory.

3 Accordingly, it is appropriate to grant leave to appeal for that reason alone. Further, the matter is of sufficient contestability and importance to justify the grant of leave to appeal. The costs of the application for leave to appeal will be costs in the appeal.

I certify that the preceding three (3) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Jackman.

Associate:

Dated: 13 November 2023