

HIGH COUNCIL OF THE NETHERLANDS

CIVIL ROOM

Number 21/02108
Date February 3, 2023

ARREST

In the case of

THE REPUBLIC OF INDIA,
sitting at New Delhi, India, EISERES to
cassation,
hereinafter referred to as India,
attorneys: B.T.M. van der Wiel, R.R. Verkerk and A. Stortelder, v.

1. CC/DEVAS (MAURITIUS) LTD,
2. DEVAS EMPLOYEES MAURITIUS PRIVATE LIMITED,
3. TELCOM DEVAS MAURITIUS LIMITED,
all domiciled at Port Louis, Mauritius,
SELLERS in cassation,
hereinafter collectively, Devas et al,
attorneys: J. van der Beek and B.M.H. Fleuren.

1. **Process**

For the course of the proceedings on the facts, the Supreme Court refers to:

- a. The judgments in case C/09/529140 / HA ZA 17-315 of the District Court of The Hague dated October 11, 2017 and November 14, 2018;
- b. The judgment in case 200.259.875/02 of the Hague Court of Appeal dated February 16, 2021. India has appealed the court's judgment in cassation.

Devas et al. filed a defense motion to dismiss.

The case was explained for the parties by their lawyers, and for India in part by S.H.J. de Bruijn.

Devas c.s. filed a writ of suspension and resumption of proceedings, stating that CCDM Holdings, LLC, Devas Employees Fund US, LLC and Telcom Devas, LLC. (hereinafter collectively referred to as CCDM c.s.) were resuming the proceedings in cassation. By supplemental letter, Devas c.s. and CCDM c.s. requested that the judgment be entered as to both Devas c.s. and CCDM c.s. as parties.

The Opinion of Advocate General P. Vlas seeks the dismissal of the appeal in cassation. India's attorney responded to that opinion in writing.

Following this response, India was given the opportunity to comment further on the writ of suspension and resumption and on the request to enter judgment with respect to both Devas et al. and CCDM et al.

Devas et al. withdrew the writ of suspension and resumption and requested that the judgment be entered only as to Devas et al.

India filed a statement of defense responding to the act of suspension and resumption and its withdrawal.

Devas et al. submitted a letter responding to the statement of defense.

The Attorney General was given the opportunity to make additional submissions on suspension and resumption, but declined to do so.

2. **Review of suspension and resumption of cassation proceedings**

2.1 The writ of suspension and resumption was filed before Devas c.s. applied for judgment, and therefore in time (art. 225 paragraph 4 Rv in conjunction with art. 418a Rv). In this deed, Devas c.s. invoked the suspension of the proceedings in cassation on the basis of article 225 paragraph 1 opening words and under c, Rv. Devas c.s. based this argument on the fact that they have assigned their claims by virtue of (inter alia) the arbitral award of which India seeks setting aside in these proceedings, under a special title (assignment), to CCDM c.s. In the deed it was stated that CCDM c.s. resumed the proceedings in cassation on the basis of art. 227 (1) Rv.

2.2 India has challenged the suspension of the proceedings by Devas et al. and the resumption by CCDM et al. To this end, India has argued, in summary, that the assignments between Devas c.s. and CCDM c.s. are invalid and that even if the assignments were valid, they did not result in "the cessation of the relations in which a party was conducting the proceedings" as referred to in Section 225(1)(c) of the Code of Civil Procedure.

Given this challenge to India's suspension, the cassation proceedings could only resume in the name of CCDM et al. after a court order to that effect. Devas et al, however, withdrew the writ of suspension and resumption. They were free to do so as long as the suspension and resumption had not yet been decided. The proceedings in cassation are therefore continued by Devas et al. as the original defendants (art. 225 paragraph 2 Rv). A decision on the validity of the invoked ground for suspension and the assignments underlying it is therefore no longer necessary.

- 2.3 India has claimed an order that Devas et al. pay the actual litigation costs of dealing with the suspension and resumption notified, or at least an order for litigation costs in the amount of three times the applicable liquidation rate.

An order to pay the actual costs of the proceedings can only be justified in extraordinary circumstances, such as abuse of process or wrongful acts.¹ This is not the case here. The Supreme Court will order Devas et al. to pay the costs of dealing with the suspension and resumption announced in accordance with the applicable liquidation rate. The Supreme Court sees no reason in the circumstances of this case to deviate from the liquidation rate.

3. Resource Assessment

The Supreme Court reviewed the complaints about the court's judgment. The outcome is that these complaints cannot lead to setting aside this judgment. It is not necessary for the Supreme Court to give reasons why it arrived at this judgment. This is because, when evaluating these complaints, it is not necessary to answer questions of importance for the unity or development of the law (see Article 81(1) of the Judicial Organization Act).

4. Decision

Supreme Court:

- dismisses the appeal;
- orders India to pay the costs of the proceedings in cassation, up to the present judgment estimated on the side of Devas c.s. at € 845 for disbursements and € 2,200 for salary, plus statutory interest on these costs if India has not paid them within fourteen days from today;
- order Devas et al. to pay the costs of dealing with the suspension and resumption of the proceedings, assessed on India's side at €800 for salary.

This judgment was delivered by counsel T.H. Tanja-van den Broek, presiding, C.E. du Perron, H.M. Wattendorff, A.E.B. ter Heide and K. Teuben, and pronounced in public by counsel F.J.P. Lock on February 3, 2023.

¹ See, inter alia, HR December 23, 2022, ECLI:NL:HR:2022:1934, para. 3.3.

21/02108

Signature Judgment

ECLI:NL:HR:2023:139

Signatures

Versteeg, E.E.J.

A handwritten signature in black ink, appearing to be 'E.E.J. Versteeg', enclosed in a thin black rectangular border.

Lock, Mr. F.J.P.

A handwritten signature in black ink, appearing to be 'F.J.P. Lock', enclosed in a thin black rectangular border.