UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

DEUTSCHE TELEKOM AG

Petitioner,

- against -

THE REPUBLIC OF INDIA

Respondent.

Civil Action No. 1:21-cv-01070-RJL

NOTICE

Petitioner Deutsche Telekom AG ("Deutsche Telekom" or the "Petitioner"), by and through its attorneys Hughes Hubbard & Reed LLP, respectfully submits this Notice that, on March 31, 2023, Petitioner's Swiss counsel received by mail a decision of the Swiss Federal Supreme Court (dated March 8, 2023) rejecting India's challenge to the Interim Award and Final Award upon which the Court based its July 25, 2022 minute order granting India's Motion to Stay this litigation. The decision of the Swiss Federal Supreme Court is final and binding and is not subject to any further appeal. A copy of the Swiss Federal Supreme Court's decision (and English language translation) is attached hereto as Exh. A. Accordingly, India's Motion to Dismiss pursuant to FRCP Rule 12(b)(1) (ECF No. 11) is now ripe for decision.

Petitioner respectfully requests that the Court take further notice of a decision dated January 26, 2023 of the Berlin Kammergericht ("Berlin Court"), the highest state court for the city-state of Berlin, granting Deutsche Telekom's application to enforce the Final Award in Germany. A copy of the Berlin Court's decision (and English language translation) is attached hereto as Exh. B. In its decision, the Berlin Court rejected India's opposition to Deutsche

Telekom's petition to the Berlin Court to recognize the Final Award in Germany. In its decision, the Berlin Court specifically rejected the same argument India made to this Court in India's Motion to Dismiss that "the BIT itself contemplates recognition and enforcement of the Award (if at all) exclusively in the Indian courts." (ECF No. 11-1, at 18 (emphasis in original)). The Berlin Court rejected India's argument as contrary to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, reasoning that:

> Insofar as the provision in the BIT under Art. 9 refers to enforcement being carried out in accordance with the law of the contracting party in whose territory the capital investment was made, this does not preclude enforceability in Germany. This is because the requirements for the declaration of enforceability of a foreign arbitral award are governed both in India and in Germany by the provisions of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (UNC), which India has also ratified and which in any case claims universal validity in Germany without restriction to civil and commercial matters (cf. Geimer, Internationales Zivilrecht, 8th ed. 2020, Rn. 3887) … This is because the Respondent has in principle submitted to enforceability in the BIT, and this declaration also applies to the creation of the necessary conditions for enforcement abroad. It cannot be inferred from the provision in the BIT that enforcement would only be possible in India according to the prerequisites applicable there, because this would contradict the spirit and purpose of the Convention and would amount to a thwarting of enforcement, although enforcement against objects of a foreign state not used for sovereign purposes is in principle permissible.

See Exh. B (English) at pp. 11-12.

Petitioner takes further note that this Court issued two decisions since India filed its Reply Brief in Support of its Motion to Dismiss on November 12, 2021 that are relevant to India's pending Motion to Dismiss. These two decisions are: (i) *Chiejina v. Federal Republic of Nigeria*, Case No. 21-cv-2241 (RJL), 2022 WL 3646377 (D.D.C. Aug. 24, 2022); and (ii) *Blasket Renewable Investments, LLC v. The Kingdom of Spain*, Memorandum Opinion, Case No. 21-cv-3249 (RJL) (D.D.C. March 29, 2023). In both cases, this Court applied two decisions of the D.C. Circuit to hold that a sovereign award-debtor's defense against enforcement that is based on an argument that there was no agreement to arbitrate under a bilateral investment treaty because the claimant allegedly did

not make an "investment" or was not an "investor" within the meaning of the treaty was a challenge to the petition on the merits and did not implicate the Court's subject matter jurisdiction. In both *Chevron Corp. v. Ecuador*, 795 F.3d 200, 204 (D.C. Cir. 2015) and *LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 877 (D.C. Cir. 2021), the D.C. Circuit held that the district court before which the petition to enforce the award was brought must defer to the tribunal's determination that the underlying dispute fell within the four corners of the agreement to arbitrate. *Chevron* and *Stileks* control in this case, because Respondent's motion to dismiss for lack of subject matter jurisdiction is not "predicated on an argument that, under the law applicable to them, the parties were incapable of entering into an agreement to arbitrate anything at all." *Blasket*, at p. 12.

Dated: April 13, 2023
Washington, DC

HUGHES HUBBARD & REED LLP

By: _____

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