UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEUTSCHE TELEKOM AG, *Petitioner*, v. REPUBLIC OF INDIA, *Respondent*.	Civil Action No. 1:21-cv-01070-RJL

REPLY MEMORANDUM IN SUPPORT OF THE REPUBLIC OF INDIA'S MOTION TO STAY

WHITE & CASE
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INTRODUCTION

In its Opposition to India's Motion to Stay ("MTS Opp'n," ECF 20), Petitioner Deutsche Telekom ("Petitioner" or "DT") does not dispute that if India's Revision Application filed at the Swiss Federal Supreme Court on May 2, 2022, were to be successful, the Awards underlying the current enforcement proceeding would be annulled at the seat of the arbitration, thereby rendering the Awards at issue in this case generally unenforceable. *See* MTS Opp'n 16. Nor does DT dispute that the revision proceedings likely will conclude in less than 12 months, without the possibility of appeal. *See* Scherer Aff. ¶ 41 (ECF 21-1). DT also agrees that the Swiss Federal Supreme Court's determinations on India's Revision Application are relevant to India's substantive defenses in the present enforcement proceeding. *See* MTS Opp'n 1. And DT acknowledges that, despite the now-pending revision proceedings, which have the possibility of annulling the Awards, India is confronted with litigating numerous parallel proceedings all over the world. *Id.* at 3, 6 (referencing additional proceedings in New York, Germany, Switzerland, and Singapore).

Nevertheless, DT opposes India's Motion to Stay unless India pays security in the total amount of the Final Award. *Id.* at 35. DT's opposition, however, rests on a strained application of the "*Europcar* factors"—factors which the D.C. Circuit already has said go well beyond the analysis necessary for this Court's exercise of discretion to enter a stay. *LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 880 (D.C. Cir. 2021) ("[W]e doubt that a six-factor balancing test—enforced by appellate review—is consistent with the district court's 'broad discretion to stay proceedings as an incident to its power to control its own docket.'" (quoting *Clinton v. Jones*, 520 U.S. 681, 706 (1997))). In any event, the *Europcar* factors, which align with the traditional stay factors under *Landis*, favor granting a stay for the pendency of the Swiss revision proceedings.

DT's attempt to essentially add an additional factor—India's likelihood of success in the Swiss revision proceedings—is misplaced. *See* MTS Opp'n 2, 24-26. A debate regarding the

appropriate effect of the Indian Supreme Court Judgment on the instant proceedings is, indeed, a significant part of the burdensome litigation India seeks to mitigate by first awaiting the result of the Swiss revision proceedings. India reserves all rights to respond to DT's baseless criticisms of the Indian Supreme Court Judgment, its findings of fraud, and its applicability in these proceedings, if and when those issues are before this Court. But, for now, issues of Devas's and its shareholders' fraudulent conduct are squarely before the *Swiss* Federal Supreme Court—a court with the power to annul the Awards and render the U.S. enforcement litigation unnecessary. Considerations of judicial economy, comity, and hardship to the Court and parties are all this Court needs to determine that a stay—which likely would last less than a year—is appropriate here.

In any event, DT's assessment of India's likelihood of success in the revision proceedings is speculative and wrong, as further explained by India's Swiss Counsel in those proceedings, Dr. Christopher Boog ("Boog Decl. II"). As Dr. Boog explains, India's Revision Application to annul the Awards was timely filed after the Indian Supreme Court issued its Judgment on January 17, 2022, which concluded that Devas had been incorporated for a fraudulent and unlawful purpose and had obtained the Devas-Antrix Agreement in a fraudulent manner; the Indian Supreme Court Judgment, in and of itself, constitutes new conclusive evidence to serve as grounds for revision. Boog Decl. ¶¶ 10-11 (ECF 19); Boog Decl. II ¶ 33. Dr. Boog further explains that the usefulness of statistics regarding the chances of success for past revision applications filed at the Swiss Federal Supreme Court is doubtful, given that the Swiss Federal Supreme Court assesses every case on its own merits, and in any event, the chances of success of revision applications are not nearly as statistically bleak as DT alleges. *See* Boog Decl. II ¶ 31 (noting that the success rate of revision applications appears to be higher than what is reported for setting-aside applications).

Because of the very real possibility that Switzerland may yet annul the Awards, all of the applicable factors favor granting a stay—whether decided under the *Landis* or *Europcar* tests. And no matter which test is applied, India flat out rejects DT's suggestion that the Motion to Stay is merely a delay strategy while India rightfully seeks to annul—and resists enforcement of—awards tainted by fraud.

Finally, DT's request for prejudgment security as a condition for the stay is meritless—and the fact that this Court may not grant an order of security is no reason to deny the stay. Such a prejudgment attachment is prohibited by the FSIA, absent an express waiver of attachment immunity. *See* Order at 5, *Metropolitan Municipality of Lima v. Rutas de Lima S.A.C.*, No. 20-cv-2155 (FYP) (D.D.C. Jan. 31, 2022) (ECF 44) (stating that a party's request for security as a condition of a case management stay "must be denied" because the foreign-sovereign party that obtained the stay "has not explicitly waived its immunity from prejudgment attachment, and the Court therefore may not require [it] to post security"). DT admits that "this Court has been reluctant to order security from foreign sovereigns in the exercise of its case management discretion while jurisdictional objections based on sovereign immunity are pending." MTS Opp'n 32 (citing *Hulley Enters. v. Russian Fed'n* ("*Hulley II*"), 502 F. Supp. 3d 144, 164 (D.D.C. 2020); *CC/Devas (Mauritius) Ltd. v. Republic of India* ("*Devas v. India*"), No. 1:21-cv-106-RCL, 2022 U.S. Dist. LEXIS 53416, at *19 (D.D.C. Mar. 24, 2022)). But unlike even those cases, here no waiver of attachment immunity can be alleged, as there is not even a colorable argument that India is seeking a stay under Article VI of the New York Convention.

Seeking to bypass the FSIA, DT relies on the incredible assertion that India, one of the world's largest economies, "has been divesting itself of foreign assets" to avoid enforcement of this $101 million Award. MTS Opp'n 34. This is wrong. And DT wrongly speculates that India

may not pay the Final Award "even upon an eventual order by this Court." *Id.* at 35. DT, however, failed to provide any basis for this erroneous assertion. In any event, none of these arguments is sufficient to overcome India's presumptive immunity from prejudgment attachment.

ARGUMENT

I. The Applicable Factors Favor a Stay

India has explained that this Court has "'broad discretion to stay proceedings as an incident to its power to control its own docket.'" Mot. to Stay 7 (ECF 18-1) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). In this analysis, the Court should balance "'the court's interests in judicial economy and any possible hardship to the parties,'" along with "'the interest of international comity.'" *Id.* (quoting *Belize Soc. Dev., Ltd. v. Gov't of Belize*, 668 F.3d 724, 732-33 (D.C. Cir. 2012); *Hulley II*, 502 F. Supp. 3d at 158). DT criticizes India for not referencing the Second Circuit's *Europcar* factors, from *Europcar Italia, S.P.A. v. Maiellano Tours*, 156 F.3d 310 (2d Cir. 1998), which concerned a stay requested pursuant to Article VI of the New York Convention. Of course, India has not sought a stay under Article VI of the New York Convention, but rather under this Court's inherent case management powers. *See* Mot. to Stay 1. Article VI may be applied when set-aside proceedings are pending in the seat of arbitration; that is not the case here, where India is seeking a stay pending revision proceedings. Moreover, as India's immunity remains in dispute, this Court lacks jurisdiction even to enter a stay under Article VI.

In any event, for all that DT makes of the *Europcar* factors, DT also acknowledges that the "*Landis* and *Europcar* frameworks are easily synthesized." MTS Opp'n 22-23; *see also Hulley II*, 502 F. Supp. 3d at 153-54 ("[T]he *Europcar* factors neatly comport with and explicate the more general considerations guiding the exercise of the Court's inherent authority to issue a stay in the context of an arbitral enforcement action. To be more precise, the first four *Europcar* factors focus on considerations of 'economy of time and effort for [the court], for counsel, and for the litigants,'

and the fifth and sixth factors highlight the 'benefit and hardship' to the parties." (quoting *Landis*, 299 U.S. at 254)). Regardless of which test this Court applies, the factors all favor a stay of this action pending completion of the Swiss revision proceedings.

A. Judicial Economy Will Be Served by the Stay

In its Motion to Stay, India explained that judicial economy favors a stay in this case, because a stay would conserve judicial resources by safeguarding a judgment of this Court from further remand and reconsideration. *See* Mot. to Stay 8-13. Indeed, courts in this District consistently hold that judicial economy favors a stay during a non-frivolous challenge that may lead to annulment of arbitral awards, and recognize the need to avoid "'fractured and disorderly'" litigation in the future. *See, e.g.*, *Hulley II*, 502 F. Supp. 3d at 155 (quoting *Seneca Nation of Indians v. United States HHS*, 144 F. Supp. 3d 115, 119 (D.D.C. 2015)) (staying litigation under *Landis*). As is the case here, the Court's interest in judicial economy is "'especially strong where a [foreign] parallel proceeding is ongoing'" and when "there is a possibility that the [arbitral] award will be set aside[,] since a court may be acting improvidently by enforcing the award prior to the completion of the foreign proceedings." *Cef Energia B.V. v. Italian Republic*, No. 19-CV-3443 (KBJ), 2020 U.S. Dist. LEXIS 130291, at *15 (D.D.C. July 23, 2020) (granting stay).

Moreover, courts in this District have previously explained in numerous cases that, "[a]lthough a stay would . . . delay the resolution of the parties' dispute, it would still likely be shorter than the possible delay that would occur if this Court were to confirm the award and the [foreign court] were to then set it aside." *Masdar Solar & Wind Coop. U.A. v. Kingdom of Spain*, 397 F. Supp. 3d 34, 39 (D.D.C. 2019); *Infrared Envt'l Infrastructure GP Ltd. v. Kingdom of Spain*, No. 20-CV-817 (JDB), 2021 U.S. Dist. LEXIS 120489, at *16 (D.D.C. June 29, 2021) (same); *Cef Energia*, 2020 U.S. Dist. LEXIS 130291, at *15 (same); *Novenergia II - Energy & Env't (SCA) v. Kingdom of Spain*, No. 18-cv-01148 (TSC), 2020 U.S. Dist. LEXIS 12794, at *10 (D.D.C. Jan.

27, 2020) (same); *Unión Fenosa Gas, S.A. v. Arab Republic of Egypt*, No. 18-CV-2395 (JEB), 2020 U.S. Dist. LEXIS 98645, at *10 (D.D.C. June 4, 2020) (same); *Hulley II*, 502 F. Supp. 3d at 156 (same).

This is especially true here, given that both parties agree the Swiss Federal Supreme Court typically takes less than 12 months from the filing of a revision application to issue a final decision, and there will be no opportunity for parties to appeal. *See* Boog Decl. ¶ 29; *see also* Scherer Aff. ¶¶ 41-42. The revision proceedings are thus expected to conclude by the second quarter of 2023. Courts in this District have granted stays in cases when the anticipated duration of the parallel proceedings is much longer. *See, e.g.*, *Hulley Enters. v. Russian Fed'n* ("*Hulley I*"), 211 F. Supp. 3d 269, 288 (D.D.C. 2016) (staying enforcement of awards where parallel appeal in an annulment proceeding was expected to last "two and a half years"); *Freeman v. United States DOI*, 83 F. Supp. 3d 173, 179 (D.D.C. 2015) (observing that the Court of Federal Claims stayed litigation for "nearly fifteen years" during parallel proceedings).

In its Opposition, DT asserts that judicial economy "can only be served by resolving the threshold question of this Court's subject matter jurisdiction now," because the Swiss revision proceedings allegedly "have no bearing" on this Court's subject-matter jurisdiction. MTS Opp'n 1, 24-25. This is wrong. As India previously explained, if India were to be successful in its Revision Application, both Awards—including the Final Award, which DT is seeking to enforce in the present action—will be annulled, and DT will have nothing to enforce.[1] Mot. to Stay 1; *see*

[1] DT does not dispute that if India were to be successful in the revision proceedings, the Awards underlying the current enforcement proceeding would be annulled at the seat of the arbitration. MTS Opp'n 25. Concerned with India's potential victory in Switzerland, however, DT argues that even if the Awards were annulled, they may not be enforced in the United States, "if the annulment is repugnant to fundamental notions of what is decent and just in the United States." *Id.* Recognizing the "high bar" in making such a showing, DT nonetheless argues that the "*ex parte* process" of winding-up Devas "was conducted in violation of Indian substantive law and fundamental due process," and that "[Devas's] alleged fraud has nothing to do with Petitioner."

also TermoRio S.A. E.S.P. v. Electranta S.P., 487 F.3d 928, 935-36 (D.C. Cir. 2007) ("[A]n arbitration award does not exist to be enforced in other Contracting States if it has been lawfully 'set aside' by a competent authority in the State in which the award was made.") (emphasis added). This Court would have no need to make a determination on its subject-matter jurisdiction, since there will be nothing to enforce.

While it is true that the parties have fully briefed the Court on the issue of India's subject-matter jurisdiction under the FSIA, this Court has yet to issue any such decision—nor would it need to if the Awards were annulled by the Swiss Federal Supreme Court. *See TermoRio*, 487 F.3d at 935-36. Moreover, if this Court should proceed to rule on India's Motion to Dismiss before the conclusion of the Swiss revision proceeding, the losing party most likely would appeal to the Court of Appeals—which would lead to additional rounds of briefing, oral argument, and expenditure of judicial resources. The additional expended judicial and party resources would later prove to be wasteful if the Awards were annulled in the primary jurisdiction. *See Hulley I*, 211 F. Supp. 3d at 282 (holding that if the awards sought to be enforced were annulled in the primary jurisdiction, petitioners "may have 'no cause of action'" and thus "mak[ing] a subject-matter jurisdiction determination . . . may be a fruitless exercise") (citation omitted).

While DT cites to two cases where the court denied a motion to stay pending parallel set-aside proceedings, MTS Opp'n 17-19, it has failed to identify a single case requiring that a court

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Id. Both of DT's arguments are incorrect. The Indian Supreme Court Judgment dated January 17, 2022, expressly notes that "[a]ll these shareholders are aware of the winding up proceedings and the proceedings are fought tooth and nail by one shareholder," and that Devas's shareholders (including Deutsche Telekom Asia, which was wholly owned and controlled by Petitioner) could not "feign ignorance and escape the allegations of fraud." Sup. Ct. of India Judgment ¶¶ 7.30, 12.8(xv) (ECF 19-4). Moreover, in suggesting that a potential revision decision by the Swiss Federal Supreme Court based on an Indian Supreme Court Judgment would be "repugnant to fundamental notions of what is decent and just," DT not only questions the judgment of the highest court in India, but also doubts the integrity of the highest court in Switzerland. Such a contention is simply untenable.

establish jurisdiction before taking measures pursuant to its inherent power to manage its docket. Indeed, the U.S. Supreme Court has held expressly that a court may, for the sake of efficiency, decline to determine its subject-matter jurisdiction prior to deciding a "threshold, nonmerits issue" presented by a case. *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 433 (2007). The D.C. Circuit similarly recognizes that "certain non-merits, nonjurisdictional issues may be addressed preliminarily, because '[j]urisdiction is vital only if the court proposes to issue a judgment on the merits.'" *Pub. Citizen v. U.S. Dist. Court for the Dist. of Columbia*, 486 F.3d 1342, 1348 (D.C. Cir. 2007) (quoting *Sinochem*, 549 U.S. at 431) (emphasis added); *see also Devas v. India*, 2022 U.S. Dist. LEXIS 53416, at *7-8 (same). A stay of proceedings in this case is exactly the type of non-merits action the *Sinochem* decision contemplates. *See Devas v. India*, 2022 U.S. Dist. LEXIS 53416, at *8 ("[C]ourts in this district have held that staying a dispute about a foreign arbitral award is 'the type of threshold, non-merits, nonjurisdictional question' that a court may decide before addressing its own jurisdiction.").

In arguing that the expeditious resolution of disputes "weigh[s] in favor" of Petitioner, DT relies on a false narrative that "India has spent the last eleven years engaged in a campaign to avoid paying the compensation it owes to Petitioner." MTS Opp'n 4, 24. In fact, however, the Final Award was only entered in May 2020, a mere two years ago, and the Indian Supreme Court Judgment that conclusively established Devas's and its shareholders' fraud and gave rise to India's Revision Application was entered only in January 2022. After the issuance of the Indian Supreme Court Judgment, India promptly engaged Swiss counsel, who rapidly familiarized themselves with the proceedings, and initiated the revision proceedings by the applicable deadline on May 2, 2022.

The fact that the arbitration underlying this enforcement proceeding was first initiated in 2013 and lasted for seven years also is not uncommon or surprising in the context of international

arbitration, and does not weigh against granting a stay. For example, this Court granted a stay in 2020 in *Hulley II*, even though the underlying case had been pending for sixteen years. *Hulley II*, 502 F. Supp. 3d at 148. In March 2021, another court in this District granted a stay, even though the arbitration underlying that enforcement proceeding had been commenced eight years before. *RREEF Infrastructure (G.P.) Ltd. v. Kingdom of Spain*, No. 1:19-cv-03783 (CJN), 2021 U.S. Dist. LEXIS 63261, at *4 (D.D.C. Mar. 31, 2021). In the context of general case management stays, a stay lasting less than twelve months is fairly routine, and is granted in a variety of circumstances. In *Municipality of Lima v. Rutas de Lima*, for example, then-Judge Jackson granted a stay of a vacatur and enforcement proceeding that has lasted nearly two years—almost as long as the entire arbitration underlying the case—merely for one party to conclude service of process in Peru. No. 20-cv-2155 (FYP) (ECF No. 4); *see also Freeman*, 83 F. Supp. 3d at 179 (observing a fifteen-year stay during parallel proceedings); *United States v. Burnett*, 747 F. App'x 602, 602 (9th Cir. 2019) (upholding a stay that lasted "for the past ten years"); *EEOC v. Neches Butane Products Co.*, 704 F.2d 144, 147 (5th Cir. 1983) (describing a thirteen-year stay).

Moreover, it should be underscored that Judge Lamberth in the related *Devas v. India* case granted a stay that could last a year or more, finding that a stay would promote judicial economy, because there, as here, the courts in the primary jurisdiction might set aside the awards underlying the enforcement proceeding. 2022 U.S. Dist. LEXIS 53416, at *11-13. Judge Lamberth noted he was not "convince[d]" the stay would needlessly prolong the dispute or that India would "concoct additional schemes to attack" Devas and avoid enforcement. *Id.* at *11-12. He also rejected Devas's assertion that the set-aside proceedings had been filed by India with an intent "to hinder or delay resolution" of the dispute, and instead found that "India appears to be pursuing potential remedies in the Netherlands on a timely basis," which argues in favor of a stay. *Id.* at *17.

In any event, DT's interest in speedy collection of damages (for which any delay is compensated through accumulation of interest) is far less significant than this Court's interest in avoiding potentially years of "[m]ore expensive litigation involving more complex issues," which would result "[i]f this Court were to affirm an award that [the Swiss Federal Supreme Court] later annuls." *RREEF Infrastructure*, 2021 U.S. Dist. LEXIS 63261, at *8. In light of the potential burdens that a premature enforcement might impose upon this Court, DT will not be unduly burdened by awaiting the decision of the Swiss Federal Supreme Court over the course of the next 8-12 months. For these reasons, courts in this District have frequently—and correctly—concluded that allowing enforcement litigation to go forward in the United States while non-frivolous litigation that may result in set-aside or annulment proceeds in parallel creates a "litigation quagmire that a stay would forestall." *Hulley II*, 502 F. Supp. 3d at 156. Therefore, contrary to DT's assertions, judicial economy overwhelmingly favors a stay.

B. The Stay Is Justified by International Comity

In its Motion to Stay, India explained that the considerations of international comity also weigh in favor of a stay. Mot. to Stay 13-14. In particular, India explained that this case involves an arbitration seated in Switzerland, regarding a dispute between India and a German company under an international treaty to which the United States is not a party. *Id.* at 13. Moreover, the Awards at issue in this case currently are at risk of being annulled in Switzerland—the primary jurisdiction—because the Swiss Federal Supreme Court is evaluating the validity of the Awards under Swiss law. *Id.* These factors all militate in favor of granting the stay, in particular to allow a court from a country with the greater (and closer) interest in the dispute, *i.e.*, Switzerland, to rule on key questions first. *See id.* at 13-14 (citing *Hulley II*, 502 F. Supp. 3d at 157).

In its Opposition, DT argues that international comity considerations favor Petitioner, particularly insofar as international comity should be analyzed under the following *Europcar*

factor: "Was the foreign proceeding initiated before the underlying enforcement action so as to raise concerns of international comity?" MTS Opp'n 27-28. DT is incorrect.

First, as other courts in this District have held, "important international comity interests" include "the possibility of inconsistent results in the primary and secondary jurisdictions." *E.g.*, *Hulley II*, 502 F. Supp. 3d at 157. Here, avoiding such possibility clearly favors a stay. Second, contrary to DT's assertion, the fact that the Swiss revision proceeding was filed after the instant U.S. proceeding commenced matters little, as it is considerably more likely that the Swiss proceeding will conclude before the U.S. one—in which India is still at the earliest stage of contesting sovereign immunity.

DT also implies that this Court should not, as a matter of comity, await the decision of the Swiss Court, because India's Revision Application "was made with intent to delay." MTS Opp'n 27-29. This could not be further from the truth. India's intention in filing the Revision Application is quite obviously to seek annulment of the Awards, which India's highest national court has confirmed are tainted with fraud. *See* Boog Decl. II ¶ 22; Sup. Ct. of India Judgment ¶ 12.8. Nothing about India's decision not to seek a stay in Switzerland implies otherwise. *See* Boog Decl. II ¶¶ 11-20 (reviewing Swiss procedures for seeking a stay, and stating "I do not believe that any conclusion can be drawn from the fact India did not seek suspensive effect in relation to its motivation for, let alone the prospects of success of, its Swiss Revision Application").

C. Petitioner Disregards Hardships to the Court and the Parties

In its Motion, India also explains that the balance of hardships favors India, in particular because India would suffer significant hardship if the Awards are enforced in the United States, and then the Swiss Federal Supreme Court annuls the Awards in light of the new evidence of fraud. Mot. to Stay 14-16 (citing *Getma Int'l v. Republic of Guinea*, 142 F. Supp. 3d 110, 118 (D.D.C. 2015)). The burden of recovering seized assets once the Awards are annulled by the primary

jurisdiction is a "very real harm," with potentially onerous and "costly" consequences for India. Mot. to Stay 14-15 (quoting *Getma*, 142 F. Supp. at 118; *Hulley II*, 502 F. Supp. 3d at 156). Moreover, as DT acknowledges, it "is currently seeking to enforce the Awards in Washington D.C., New York, Germany, Singapore, and Switzerland." MTS Opp'n 3. India has explained that a foreign State would "undeniably be burdened by having to attack the validity of [an] arbitral award in [even] two forums" simultaneously, particularly where the primary jurisdiction is outside of the United States. *Masdar Solar*, 397 F. Supp. 3d at 40 (emphasis added). Here, without a stay, India would be forced to litigate the validity of the Awards in yet another forum.

DT does not address these arguments, but rather argues that it will be prejudiced because India supposedly will have "the opportunity to continue and expand its efforts to divest international assets and resist enforcement of the Final Award." MTS Opp'n 29-30. DT's argument is unavailing.

First, even without enforcement in United States, DT has managed to pursue attachment of funds in Switzerland belonging to the Airport Authority of India. *Id.* at 15. It is not at all clear how a stay of the D.C. proceedings—likely lasting a year—would affect those efforts. Second, DT is wholly mistaken in its suggestion that India is "divest[ing] international assets." *Id.* at 29. DT refers to two examples of this alleged "divestment"—neither of which is as DT describes.

With regards to the International Air Transport Association ("IATA"), DT alleges that "India has withdrawn from the IATA after Petitioner successfully attached India's interest in funds held by the association." *Id.* This allegation, however, improperly conflates India with the Airport Authority of India—a legally separate entity with its own sovereign immunity and authority over the collection of air navigation charges, incurred during flights through India's airspace, and other airport use and maintenance fees. Any actions taken by Airport Authority of India cannot be

imputed to India without piercing the corporate veil, which DT has not alleged any basis to do. *See First Nat'l City Bank v. Banco Para El Comercio Exterior De Cuba*, 462 U.S. 611, 626-28 (1983); *Dole Food Co. v. Patrickson*, 538 U.S. 468, 474-75 (2003).

Moreover, Airport Authority of India did not "divest" any assets; it merely stopped receiving new revenues into its account with IATA, as confirmed by DT's own exhibit. *See* Gaurav Joshi, *Indian Airports Leave International Airline Fee Collection System*, Simple Flying (May 12, 2022) ("Airports in India, which relied on the International Air Transport Association (IATA) to collect dues for various charges from foreign carriers, will now manage the task locally.") (Ina Roth Affidavit at 29 (ECF 21-5, Tab 1)). Presumably, the revenues continue to accrue to Airport Authority of India, just not through IATA, and thus have not been "divested."

DT also alleges that India "divested its interest in Air India in New York after Petitioner sought enforcement of the Awards against Air India." MTS Opp'n 29. This statement is entirely misleading. As DT is aware, the privatization of Air India had been underway for several years before DT commenced its proceeding in New York at the eleventh hour. *See* Air India Letter dated Nov. 15, 2021 at 3, *Deutsche Telekom AG v. Air India, Ltd.*, No. 21-cv-9155 (S.D.N.Y. Nov. 15, 2021) (ECF 18) ("India's efforts to sell the airline [Air India] have been ongoing for years, and have been widely known since at least early 2018 when a preliminary information memorandum was issued."); *see also id.*, Air India Mem. in Support of Mot. to Stay Discovery 11, (ECF 26) ("In early 2018—years before DT obtained the Award—India issued a preliminary information memorandum publicizing its sale efforts," which was "public information"). As news reports also confirm, India "had for years been trying to sell the airline"—*i.e.*, long predating the enforcement efforts regarding this matter. *See, e.g.*, *Air India: Struggling National Carrier Sold to Tata Sons*, BBC (Oct. 8, 2021), *available at* https://www.bbc.com/news/world-asia-india-58778274. And the

sale of Air India specifically to Tata Group was widely reported by October 8, 2021—a month before DT even filed their petition in New York. *Id.* Indeed, DT recognized both these facts in its Opposition. MTS Opp'n 34 (citing an October 8, 2021 article regarding the sale, and admitting that the privatization efforts had been ongoing for "years").

In any event, the suggestion that India, a sovereign country with one of the largest economies in the world, purportedly is withdrawing from the global economy just to frustrate enforcement of a US$ 101 million arbitral award is simply not credible.

Third, if the Final Award is ultimately enforced against India, DT will be compensated for any delay with considerable interest. *See* Final Award ¶ 357 (awarding interest "at a rate of 6-month USD LIBOR . . . plus 2% p.a., compounded semi-annually, from February 17, 2011 until payment in full"); Pet. to Recognize and Confirm ¶¶ 5-6 (ECF 1) (claiming interest "from February 17, 2011 until payment in full" and factoring in post-Award interest). This Court repeatedly has observed that an interest in "quickly collecting [an] arbitral award" is "less acute" where, as here, interest continues to accrue on the Award. *RREEF Infrastructure*, 2021 U.S. Dist. LEXIS 63261, at *8-9; *see also Hulley II*, 502 F. Supp. 3d at 163 (observing that any hardship from delayed payment "is tempered . . . by the fact . . . that post-award interest will compensate for any delay").

Finally, in footnote 8 of its Opposition, DT lists fourteen cases in which courts in this District declined a foreign sovereign's request for a stay, asserting that "these cases are far more apposite to the present one." MTS Opp'n 21 n.8. This assertion is wrong.

In ten of these fourteen cases, the State's request for a stay was analyzed under Article VI of the New York Convention after the courts had decided on issues of jurisdiction. As explained above, Article VI of the New York Convention does not apply while a sovereign defendant's jurisdictional defenses under the FSIA remain pending, and does not apply to the present

circumstances of this case. On the other hand, among the eighteen cases identified by India in its Motion to Stay (Mot. to Stay 7-8 n.2), fourteen of them were stayed pursuant to the courts' inherent power to manage its docket, which, as explained above, is what India seeks and is more analogous to the present proceeding.[2] In addition, the remaining four cases are also distinguishable:

- In *Hulley Enterprises Ltd. v. Russian Fed'n*, the court noted that the request for a stay was the "fifth time since 2016" that one of the parties sought a stay, and that the set-aside proceedings were initiated "almost eight years ago." No. 14-1996 (BAH), 2022 WL 1102200, at *1-2 (D.D.C. Apr. 13, 2022) (emphasis added). The court also took into consideration the "concerns about asset liquidation in the wake of the Russian Federation's war against Ukraine." *Id.* at *3. None of these concerns are present here.

- In *Tethyan Copper Co. Pty Ltd. v. Islamic Republic of Pakistan*, the court found that "[b]riefing before this Court on those [issues litigated in the parallel proceeding] is now complete." No. 1:19-cv-02424 (TNM), 2022 WL 715215, at *10 (D.D.C. Mar. 10, 2022). This is plainly not the case here, because India has explicitly reserved its substantive defenses, and the issue of Devas's and its shareholders' fraud with respect to those defenses has not been briefed in the present proceeding. Moreover, the *Tethyan* court also noted Pakistan had "submit[ed] no evidence, projection, or prediction about when the Committee or the Tribunal will finish their annulment and revision work. The Court thus ha[d] no 'estimated time for those proceedings." *Id.* at *16 (citation omitted). Here, both parties agree that the Swiss revision proceedings will most likely conclude in the next 12 months.

- In *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, no further proceeding in connection with the award that was sought to be enforced was available, and Guatemala instead sought a stay pending the result of arbitral proceedings concerning a related, but separate, claim for damages, before a new ICSID tribunal. The court held that pursuant to the ICSID rules, the appropriate recourse for Guatemala was to apply to the new tribunal for a stay. 414 F.Supp.3d 94, 108 (D.D.C. 2019). This is indisputably not the case here.

- In *Tatneft v. Ukraine*, the court denied Ukraine's request for a stay because the "setting aside proceeding is no longer active," and "Ukraine's prospective challenge is not a 'parallel proceeding.'" 301 F.Supp.3d 175, 197 (D.D.C. 2018). Here, DT does not dispute the revision proceedings are active and parallel to the present enforcement proceeding.

DT's reliance on these cases thus is misplaced. The Court should follow the eighteen decisions identified by India, the circumstances of which are more analogous to the present

[2] DT attempts to distinguish these eighteen cases by asserting that the foreign sovereigns in them were "pursing the first round of judicial review of the arbitral award." MTS Opp'n 20. This is irrelevant, as the legal effect of India's Revision Application would be the same—annulment of the Awards, rendering them unenforceable. *See* Boog Decl. ¶¶ 17-18.

situation, and grant India's Motion to Stay. *See* Mot. to Stay 7 n.2.

II. The Likelihood of Success of India's Revision Application Is Not a Factor to Consider Under a *Landis* or a *Europcar* Stay, and in Any Event, India's Revision Application Has Real Prospects of Success and Is Not Merely a "Strategy of Delay"

DT also argues that the Court should deny India's Motion to Stay because India's Revision Application "is frivolous and has almost no chance of success." MTS Opp'n 2. In making this argument, DT speculates as to India's motive in not asking the Swiss Federal Supreme Court to issue a stay of enforcement of the Final Award pending the revision proceedings, and relies on the rate of success of unrelated revision applications filed at the Swiss Federal Supreme Court. *See id.* at 2-3, 6-8. These arguments are both irrelevant and meritless.

Notably, *Landis* precludes any inquiry into the likelihood of success in the parallel proceedings. 299 U.S. at 257 ("How the [other] Court in [the parallel litigation] will decide the issues in that case is not to be predicted now.") (emphasis added). It is thus inappropriate for this Court to evaluate the likelihood of success in the Swiss revision proceedings under the *Landis* framework (or its "synthesized" analog of the *Europcar* factors, MTS Opp'n 22), given that "the current status of the [foreign parallel] proceedings" are a "'moving target' that cannot be reasonably relied upon." *Hulley II*, 502 F.Supp.3d at 161. Indeed, courts repeatedly have emphasized that "likelihood of success" inquiries "do not apply under the *Landis* standard." *Bankwitz v. Ecolab, Inc.*, No. 17-cv-02924, 2017 U.S. Dist. LEXIS 171786, at *13 n.1 (N.D. Cal. Oct. 17, 2017); *see also Rico v. Beard*, No. 2:17-cv-1402, 2019 U.S. Dist. LEXIS 148656, at *14 (E.D. Cal. Aug. 29, 2019) (finding that *Landis* does "not require" any showing of "likelihood of success"). Moreover, neither the *Europcar* framework nor the text of Article VI of the New York Convention makes any reference to "likelihood of success."

This Court therefore routinely stays enforcement pending proceedings that may result in the annulment or set-aside of arbitral awards without performing any analysis of the likelihood of

success. *See, e.g.*, *Novenergia II*, 2020 U.S. Dist. LEXIS 12794, at *11-15 (determining that "Spain has met its burden to show a 'pressing need' for a stay pending the outcome of the set aside proceedings"); *Hulley II*, 502 F. Supp. 3d at 159 (stating that petitioners' likelihood of success assessment "may be correct but this Court is not the appropriate forum to make that call, let alone make it first, before the Dutch Supreme Court has opined"); *RREEF Infrastructure*, 2021 U.S. Dist. LEXIS 63261, at *8 (staying the U.S. litigation explicitly under *Landis* because "[t]here can be no serious dispute that the [annulment] proceedings could significantly impact this litigation" without performing any analysis of the likelihood of success).

Indeed, in those few instances where U.S. courts (mistakenly) have attempted to predict the likelihood of success in foreign parallel litigation that may result in set-aside of arbitral awards—*i.e.*, guessing the outcome of foreign proceedings under foreign law—such attempts have been fraught with difficulties and, inevitably, some erroneous predictions. For example, in *LLC Komstroy v. Republic of Moldova*, another court in this District relied heavily on the petitioner's suggestion that one level of the French judiciary had "already determined that the Award is presently enforceable under French civil procedure rules." No. 14-cv-01921 (CRC), 2019 U.S. Dist. LEXIS 143739, at *18 (D.D.C. Aug. 23, 2019). The D.C. Circuit likewise deferred to the district court's prediction because, apparently, Moldova's lawyers "point[ed] to no evidence" as to how the later stages of the French litigation might unfold. *LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 881 (D.C. Cir. 2021) (affirming the discretionary denial of a stay). Several months later, however, the EU Court of Justice accepted Moldova's arguments in their entirety, reversed the French courts' decision, and concluded that the *Komstroy*/*Stileks* award is, in fact, unenforceable. *Komstroy v. Moldova*, Judgment of Sept. 2, 2021, EU Court of Justice, *available at*

https://curia.europa.eu/juris/document/document.jsf?text=&docid=245528&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=635097.

That reversal of fortune in *Stileks*—*i.e.*, a set-aside judgment in the primary jurisdiction after enforcement in a secondary jurisdiction—likely will lead to costly litigation in the United States to undo enforcement efforts. *See Hulley II*, 502 F. Supp. 3d at 156 (describing "costly proceedings to retrieve the property when the Awards were set aside" in the primary jurisdiction); *see also* Mot. to Stay 11 (analyzing *Thai-Lao Lignite (Thail.) Co. v. Gov't of the Lao People's Democratic Republic*, 864 F.3d 172, 178–81 (2d Cir. 2017), where seven years of U.S. litigation were rendered futile by the Malaysian set-aside proceedings). As India has explained—and as DT has failed to rebut—such cautionary tales are numerous, thus demonstrating the danger of prematurely attempting to guess the outcome of foreign proceedings that may result in set-aside or annulment of arbitral awards. Mot. to Stay 10–11.

In any event, DT's suggestions that India's Revision Application is "unlikely to succeed" and its prospects of success are "fanciful" (MTS Opp'n 6-9) are speculative and wrong.

First, DT puts much emphasis on the fact that India did not ask the Swiss Federal Supreme Court to stay enforcement of the Final Award pending the revision proceedings, speculating that India chose not to do so because it "did not dare ask" for a stay from the Swiss court as it would be denied. *Id.* at 2-3, 7. As India's Swiss counsel, Dr. Boog, explains, however, there is currently no pressing reason for India to apply for a stay of enforcement of the Final Award in Switzerland, because the enforcement proceedings in Switzerland are in abeyance pending DT's appeal. Boog Decl. II ¶ 13. Dr. Boog further explains that the Swiss Federal Supreme Court only grants a stay of enforcement of an arbitral award in "exceptional cases" and "under very strict conditions," which is a "more extraordinary procedural measure" than the Revision Application itself. *Id.*

¶¶ 12, 14. Indeed, the Swiss Federal Supreme Court is only slightly more inclined to grant a stay application when the application concerns an interim award on jurisdiction in an ongoing arbitration, which is not the case here. *Id.* ¶¶ 17-18. No conclusion can be drawn from the fact that India did not seek a stay of the enforcement of the Final Award in relation to India's motivation for, let alone the prospects of success of, its Swiss Revision Application. *Id.* ¶ 20.

DT further speculates that India making its Revision Application in English "suggest[s] that the application is nothing more than an attempt to fabricate a roadblock to this Court's ruling on its motion to dismiss and subsequent rulings on the merits." MTS Opp'n 24-25. DT's baseless speculation as to India's motives is astounding. As Dr. Boog explains, the option to make revision applications before the Swiss Federal Supreme Court in English was designed to make the revision proceedings more efficient when the arbitration was conducted in English. *Id.* India's Revision Application was made in English not only because the entire Arbitration was conducted in English, and the challenged Awards are drafted in English, but also because the documents supporting the grounds for revision, including the Indian Supreme Court Judgment that conclusively established Devas's and its shareholders' fraudulent scheme, are all in English. *Id.* ¶ 25.

Second, relying on statistics that concern the rate of success for previous unrelated revision applications filed at the Swiss Federal Supreme Court, DT argues that India's prospects of success are "fanciful." MTS Opp'n at 7-8. As explained above, the likelihood of success is not a factor to be considered under either *Landis* or *Europcar*. *See supra* at 16-18. Even if it were, the success rate of previous unrelated revision applications has no bearing on the prospects of success of India's Revision Application, as the Swiss Federal Supreme Court assesses each individual case on its own merits. *See* Boog Decl. II ¶¶ 30-31. Furthermore, even the success rate of previous revision applications is much higher than what can be considered as "fanciful." As DT's Swiss

counsel Mr. Scherer acknowledges, four out of 45, *i.e.* 9 percent, of previous revision applications appear to have been granted by the Swiss Federal Supreme Court. Scherer Aff. ¶¶ 43-44. This is a higher percentage than what is reported for set-aside applications. Boog Decl. II ¶ 31. Moreover, two of the four cases that successfully obtained a revision were based upon the same grounds as those invoked by India in its Revision Application. *Id.*

Third, DT argues that India's Revision Application does not meet the statutory requirements for revision, because the Indian Supreme Court Judgment post-dates the Final Award and cannot serve as a basis for revision under Swiss law. MTS Opp'n 8. As Dr. Boog explains in his first Declaration, case law and literature support the proposition that evidence postdating the decision whose revision is sought, but shedding light on facts predating it, may also be admissible as the basis for a revision application. Boog Decl. ¶¶ 21-22. DT does not provide any authorities that suggest otherwise. *See* MTS Opp'n 8; Scherer Aff. ¶ 65. In any event, under the principles of international comity, it is not for this Court to decide issues of Swiss law. The principle of comity is a "golden rule among nations—that each must give the respect to the laws, policies and interests of others that it would have others give to its own in the same or similar circumstances." *Usoyan v. Republic of Turkey*, 6 F.4th 31, 48 (D.C. Cir. 2021).

Lastly, DT alleges that India's Revision Application is "untimely," noting that certain facts and evidence contained in the Indian Supreme Court Judgment were available during the arbitration proceedings. MTS Opp'n 8-10. As India previously explained, the full extent of Devas's and its shareholders' fraud only emerged during the course of the liquidation proceedings and after the Awards were rendered. Mot. to Stay 5; *see also* Revision App. ¶¶ 155-63 (ECF 19-1); Sup. Ct. of India Judgment ¶¶ 3.12-3.18. The arbitral tribunal thus never had the opportunity to examine the evidence of fraud or to consider fully the merits of whether DT's shareholding in

Devas violated the national laws of India.[3] Mot. to Stay 9; *see also* Interim Award ¶¶ 119, 176 (ECF 1-7). Indeed, the tribunal stressed that the limited evidence of fraud available to it at the time consisted of "mere allegations that [had] not yet been tried, let alone upheld, in court"—which is no longer the case. *Id.* As India previously explained, the Indian Supreme Court is the first judicial body to hear the fraud issues and to conclusively find that Devas engaged in fraudulent conduct during the acquisition and operation of the Devas-Antrix Agreement. *See* Mot. to Stay 3-5. It cannot be the case that the criminal allegations against Devas and its shareholders during the tribunal proceedings were too preliminary and unproven to constitute evidence of fraud, but then the conclusive findings of the Indian Supreme Court are too late.

III. Petitioner's Request for Security Is Prohibited by the FSIA and Is Not Justified Under the Circumstances

In its Motion, India observed that DT sought to condition any stay on India posting security of the full value of the Final Award. India demonstrated that there is no basis for an order of security as a condition of a stay, given that India has not waived its immunity from pre-judgment attachment under 28 U.S.C. § 1610(d)(1). Mot. to Stay 17 (citing cases). DT nevertheless contends that this Court is not precluded under the FSIA from ordering security, and further asserts that an order of security would be "necessary and appropriate" here. MTS Opp'n 30-35. DT is incorrect in both respects.

A. The FSIA Prohibits an Order of Security Here

Under the FSIA, this Court cannot order security as a condition of granting the present Motion to Stay. As provided in 28 U.S.C. § 1610(d)(1), a foreign state is "immune from

[3] Similarly, DT's argument that "India received full judicial review of the Interim Award before the Swiss Federal Supreme Court" during the set aside proceeding, MTS Opp'n 5, is irrelevant here, since at that time, the full extent of Devas's and its shareholders' fraud was not known to India or the Swiss Federal Supreme Court.

attachment prior to the entry of judgment" unless "the foreign state has explicitly waived its immunity from attachment prior to judgment." *See De Sousa v. Embassy of Angola*, 229 F. Supp. 3d 23, 27 (D.D.C. 2017) (holding that for purposes of § 1610(d)(1), a petitioner seeking pre-judgement attachment over a sovereign state's assets "'must demonstrate unambiguously the foreign state's intention to waive its immunity from prejudgment attachment in this country'" (quoting *S & S Mach. Co. v. Masinexportimport*, 706 F.2d 411, 418 (2d Cir. 1983)); Order at 5, *Rutas de Lima*, No. 20-cv-2155 (FYP) (ECF 44) (denying a party's request for security as a condition of a case management stay and stating that the request for security "must be denied" because the foreign-sovereign party that obtained the stay "has not explicitly waived its immunity from prejudgment attachment, and the Court therefore may not require [it] to post security").

Since DT cannot point to any actual explicit waiver of attachment immunity by India (as there is none), it offers a convoluted rebuttal that fails on its face. MTS Opp'n 31. Copying from the (unsuccessful) playbook of petitioners in *Hulley* and *Devas*, DT argues that this Court is permitted to order security under 28 U.S.C. § 1609, because a foreign state's immunity from pre-judgment attachment is subject to the New York Convention—in particular, Article VI. MTS Opp'n 31. Article VI, in turn, provides:

> If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

New York Convention, art. VI.

But, unlike respondents in *Hulley* and *Devas*, India here has made neither an "application for the setting aside" nor for "suspension" of the Award DT seeks to enforce, and thus Article VI has no relevance here on its face. Nor has India invoked Article VI as a basis for the stay, relying expressly on the Court's inherent discretion over case management. *E.g.*, *Hulley II*, 502 F. Supp.

3d at 164 (explaining that Article VI of the New York Convention "is not applicable here since the Court is relying on its inherent authority to control its docket by issuing a second stay"). DT points to no authority whatsoever suggesting that Article VI applies in the circumstances at issue here, i.e., where *revision* proceedings are pending in the seat of the arbitration, and thus there is no basis for DT then relying on Article VI to suggest a waiver of India's attachment immunity.

Further, even if Article VI somehow could be relevant here (and it is not), courts in this District consistently have held that security cannot be imposed on a foreign sovereign in India's position, where threshold jurisdictional issues have not yet been resolved and the sovereign defendant has not waived sovereign immunity. *E.g.*, *Devas v. India*, 2022 U.S. Dist. LEXIS 53416, at *19 ("The Court has not decided whether it has jurisdiction over this dispute, so granting security under the Convention would be premature."); *Flanagan v. Islamic Republic of Iran*, 190 F. Supp. 3d 138, 183 n.30 (D.D.C. 2016) (rejecting a request for security because "[t]he FSIA precludes prejudgment attachment of a foreign state's property," which extends to cover orders of security); *see also Cef Energia*, 2020 U.S. Dist. LEXIS 130291, at *23 ("[T]his Court has not yet determined whether it has jurisdiction [over Italy]; therefore, it is not clear that it has the authority to order the posting of security pursuant to [Article VI of the New York] Convention."); *Novenergia II*, 2020 U.S. Dist. LEXIS 12794, at *15-16 ("[T]he court has not determined whether it has jurisdiction under the New York Convention, and therefore cannot order security under the Convention."); *cf. Hulley II*, 502 F. Supp. 3d at 164 ("[T]he authority and mechanisms to order the Russian Federation to post security in the vast amount of billions of dollars, faces a significant obstacle when this Court has not resolved threshold jurisdictional issues under the FSIA or New York Convention.").

DT attempts to distinguish those prior decisions by arguing that India "has not put forward actual jurisdictional objections." MTS Opp'n 32. This argument is unavailing (and also wrong,

as explained in India's Motion to Dismiss and Reply, ECF 11, 17). The relevant question here is not whether DT believes that certain arguments are relevant for resolution under the FSIA, but rather, whether the Court has satisfied for itself its jurisdiction. For example, the *Hulley* court declined to require security despite similar arguments by the *Hulley* petitioners that the respondent state's objections were not proper challenges to subject-matter jurisdiction, "but instead are 'properly considered as part of review under the New York Convention.'" Pet'rs' Opp'n to Mot. to Dismiss 12-15, *Hulley*, No. 14-1996 (BAH) (D.D.C. Nov. 23, 2015) (ECF 63). Despite the *Hulley* petitioners' preference that the court consider certain arguments at the merits stage, the court declined to grant security because it had not yet resolved the FSIA jurisdictional issues. *See Hulley II*, 502 F. Supp. 3d at 164 (declining to require security where the Court "ha[d] not resolved threshold jurisdictional issues under the FSIA").

DT further attempts to distance itself from prior cases by arguing that this Court should proceed to rule on India's Motion to Dismiss before ordering security and any stay of proceedings. MTS Opp'n 33. This argument also fails. Even if the Court were first to deny India's Motion to Dismiss (which it should not), Article VI still does not apply to the current circumstances, because India is seeking a case management stay pending resolution of revision proceedings in Switzerland. In addition, no court in this District has ever even agreed with the decades-old out-of-circuit cases DT cites (MTS Opp'n 31-32) for the (incorrect) notion that Article VI or the New York Convention—which do not even refer once to immunity—operate as a waiver of attachment immunity under the FSIA. This Court should not be the first to so hold.

B. An Order of Security Is Not Justified Here

Even if this Court had jurisdiction to require security during a stay (which it does not), such security is not necessary or appropriate here.

This Court has routinely declined ordering security because, in addition to the immunity

issues described above, sovereign defendants are "presumably" solvent. *Novenergia II*, 2020 U.S. Dist. LEXIS 12794, at *16; *Cef Energia*, 2020 U.S. Dist. LEXIS 130291, at *23. India thus is "not an insecure potential debtor that must be required to post security lest there be no assets to seize at a later date." *See Hulley II*, 502 F. Supp. 3d at 164. Indeed, DT recognizes this "presumption," and the need for it to "rebut this presumption." MTS Opp'n 34.

DT attempts to rebut the presumption by arguing that India "has been divesting itself of foreign assets specifically in response to Petitioner's attempts to enforce the Final Award." *Id.* This argument fails entirely, as discussed above. *See supra* at 3-4, 12-14.

DT, moreover, attempts to rebut the presumption by arguing that "India has shown no inclination to pay the Final Award," pointing to India's non-payment of the Award to-date. MTS Opp'n 35. DT's argument that this Court should speed forward towards enforcement despite ongoing revision proceedings in the primary jurisdiction, because India will not comply with enforcement, is nonsensical and circular. DT, moreover, fails to point to any statement or other actual evidence that India plans to defy this Court. This Court previously has rejected similar speculative arguments in cases against Sudan and Russia. *Flanagan*, 190 F. Supp. 3d at 183 n.30 (declining to order security "despite the continued risk that Sudan may not satisfy the judgment"); *see also Hulley II*, 502 F. Supp. 3d at 163–64 (declining to impose prejudgment security as a condition of a stay despite allegations that the sovereign has a "never pay" policy for arbitral awards). Here, the Court similarly should reject DT's baseless request for security.

CONCLUSION

For the reasons stated above and in India's Motion to Stay, India respectfully requests that the Court stay the present proceedings for the duration of the revision proceedings in Switzerland and reject Petitioner's unlawful request for prejudgment security.

Dated: June 8, 2022
Washington, D.C.

Respectfully submitted,

WHITE & CASE

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