Neutral Citation Number: [2021] EWHC 1944 (Comm) **Claim No. CL-2015-000752**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT
ON THE APPLICATION OF: **9th July 2021**

(1) DEVAS MULTIMEDIA AMERICA, INC
(2) CC/DEVAS (MAURITIUS) LTD.
(3) DEVAS EMPLOYEES MAURITIUS PRIVATE LIMITED
(4) TELCOM DEVAS MAURITIUS LIMITED

Applicants

IN AN ARBITRATION CLAIM BETWEEN:

DEVAS MULTIMEDIA PRIVATE LIMITED

Claimant

-and-

ANTRIX CORPORATION LIMITED

Defendant

AND IN THE MATTER OF AN ARBITRATION BETWEEN:

DEVAS MULTIMEDIA PRIVATE LIMITED

Claimant

-and-

ANTRIX CORPORATION LIMITED

Defendant

BEFORE:
Mr Justice Waksman

ANDREW SCOTT (Instructed by **Gibson, Dunn & Crutcher UK LLP**) appeared on behalf of the Applicants/Claimant

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APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

MR JUSTICE WAKSMAN:

1. I consider that the present application, which is to serve out of the jurisdiction an underlying application to join, is well founded. Let me just briefly explain why.

2. The underlying application is to join parties to the existing enforcement judgment of an arbitral award, which is enforceable under the New York Convention, on the basis that the four applicants are, to put it at its lowest, interested parties in that underlying award. They are associated with the claimant who is the beneficiary of the award, and that, in summary, there is a need for them to be joined in order that (a) the judgment on the award can be preserved; and (b) at least as far as this court is concerned, the award can be properly enforced.

3. The reason why that is not happening at the moment, on the claimant's case, is because the State of India ("India"), of which for these purposes the defendant to the arbitral award can be considered a part, is taking steps both in India and around the world, in other places where the arbitral award has been registered as a judgment, to undo it, so that the award will become ineffective. One particular step is that it has procured an order by the Indian National Company Court to place the claimant in liquidation. That order is currently under appeal and there may be further appeals; but the present effect of that liquidation is that (according at least to the claimants), the liquidator is doing India's bidding and taking steps to render nugatory the steps which had been taken to enforce the arbitral award in favour of that very party ie the claimant.

4. In some respects, the underlying point here is rather similar to what might take place in a derivative action brought on behalf of a company by its shareholders.

5. That is the background. The joinder application will be heard on notice when all the relevant arguments will be made.

6. At this stage, all I need to be satisfied about from the purposes of merits is that there is a serious issue to be tried. Indeed, as it seems to me, there is a strong prima facie case, if I needed to go that far. That is because there are strong arguments that, jurisdictionally, the court which granted the judgment over the enforcement award,

which judgment itself has not been set aside, has the power to join parties to it under CPR 19. There is obvious merit in that happening for the reasons which I have given.

7. The present application (which is without notice as is usual with service out) supported by evidence and a detailed skeleton argument from Mr Scott. The only point on which I wished to be addressed by him specifically concerns some observations made *obiter* by Mrs Justice Cockerill in *VTB v Machinoimport* [2021] EWHC [1758]. I will just read her paragraph 166:

> "Ultimately, I am not asked to, and do not need to, decide whether any of the above means there is no jurisdiction to add part 20 defendants to arbitration claims, and I therefore do not do so. I do, however, have considerable doubts as to whether there is jurisdiction to add defendants to, or permit part 20 proceedings in respect of, a part 8 arbitration claim, and I think it right to flag the issue as one which may arise for determination in another case. I note that HH Judge Pelling QC expressed a similar skepticism."

8. There is no binding ruling there, but it is worth just saying a little more about it. That was a very different case, which started life as an application under section 44 of the Act for worldwide injunctive relief in aid of an existing arbitration. One further party sought to intervene on the basis that it said that it had a prior contractual right to the claimant's, with which the injunction would interfere. Ultimately, that resulted in the direction for a trial of that issue, called the Cargo Trial.

9. What then happened was that VTB wanted to bring in within the confines of the Cargo Trial what Mrs Justice Cockerill decided was essentially a separate claim in conspiracy and fraud, against parties who were not currently parties to the proceedings, and which meant that only Part 20 could be invoked in order to achieve that. Because the claims were sufficiently different, or to put it another way they were not sufficiently the same, the Judge rejected that application.

10. So there, the application was to bring in parties and make new claims effectively against those parties. The circumstances here are quite different. It is not a question of claims against parties, it is a question of others being joined, in order effectively, or efficiently, to maintain and preserve the existing enforcement of an arbitral award in the circumstances which have arisen. It does not actually involve Part 20 at all. What it involves is Part 19. The cases are thus very different.

11. In any event, as Mrs Justice Cockerill made plain, these were *obiter* observations. It may be on a further application that the observations that she makes will become relevant, but that is not for today and that is certainly no obstacle, so far as the merits of the intended joinder application are concerned, which as I say I think are relatively strong. There is, in any event, a serious issue to be tried.

12. That then only leaves the question as to whether there is a basis for service out. So far as that is concerned, first of all there is, of course, the service provision under the Arbitration Act itself. In my judgment, that provision, 62.18.4, which of course is the general provision allowing, in the discretion of the court, service out of the jurisdiction, covers just the arbitration claim form but other documents in the proceedings, including ancillary orders such as would be made if the joinder application is successful. There could be many reasons why ancillary orders might be made in relation to the enforcement of an arbitral award. There is no reason in principle why such ancillary orders, when sought, should not be covered within the rubric of 62.18.4, albeit that that refers specifically only to the claim form.

13. Indeed Rule 63.8 states that

> "Where permission of the court is required for the claimant to serve the claim form out of the jurisdiction, the claimant must obtain permission to serve any other document in the proceedings out of the jurisdiction"

14. This suggests that ie the claim form provision encompasses any related applications".

15. Secondly, there is an alternative gateway, which seems to me to be equally applicable, under the usual PD6B which grants jurisdiction to serve out where the claim is made to enforce any arbitral award, which effectively is what is happening here.

16. For those reasons, service out of the jurisdiction is granted as sought.

17. Finally, there is an application for there to be alternative service. There is a degree of urgency about this because of what is going on with the liquidator. There may be applications to set aside or vary the original enforcement order here, although that has not been done yet. Any undertakings sought by the applicants have been ignored. The applicants wished to be joined before any such set aside application is heard.

18. Secondly, there is a real problem in India at the moment. Normally it would take at least a year to serve but, because of the global pandemic, the foreign process service was in fact unable to say how long it would take. They had confirmed recently they were not even able to contact the Indian service authorities. Given the state of play with Covid in India, one can understand that.

19. Of course, it has been said that, merely because it takes a long time to serve in another jurisdiction, that is not sufficient, unless the circumstances are exceptional. It seems to me that here, they are truly exceptional here.

20. Thirdly, and of particular relevance here, is that, given the way in which India has conducted itself, at least on the claimants' allegations, there is a possibility, to put it no higher, that the Indian authorities might not be as speedy as they might otherwise have been in effecting service of the joinder application upon the relevant defendant, which is effectively the state of India itself. The circumstances here are most peculiar.

21. For all of those reasons, it seems to me this is undoubtedly an exceptional case and, therefore, I also make the order that the application should be served by email, as set out in the draft order.

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