

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEVAS MULTIMEDIA PRIVATE
LTD.,

Petitioner,

and

DEVAS MULTIMEDIA AMERICA,
INC.; DEVAS EMPLOYEES
MAURITIUS PRIVATE LIMITED;
TELCOM DEVAS MAURITIUS
LIMITED; and CC/DEVAS
(MAURITIUS) LTD.,

Intervenor-Petitioners,

v.

ANTRIX CORP. LTD.,

Respondent.

C18-1360 TSZ

ORDER

THIS MATTER comes before the Court on Intervenor-Petitioners' motion to compel discovery, docket no. 112, and Respondent Antrix Corp. Ltd.'s motion for a protective order, docket no. 115. Having reviewed all papers filed in support of, and in opposition to, the motions, the Court enters the following Order.

1 **Background**¹

2 In November 2020, the Court entered an order confirming the foreign arbitral
3 award at issue (“Award”) and entered a \$1.29 billion judgment (“Judgment”) in favor of
4 Petitioner Devas Multimedia Private Ltd. and against Respondent. Respondent appealed
5 the Court’s order, *see* Notice of Appeal (docket no. 53), but to date, Respondent has not
6 paid the Judgment, sought to stay enforcement of the Judgment, or posted a supersedeas
7 bond. *See* Champion Decl. at ¶ 33 (docket no. 114).

8 On January 18, 2021, Respondent petitioned the National Company Law Tribunal
9 (“NCLT”) in India to “wind up” or liquidate Petitioner based on newfound allegations of
10 fraud and illegality. *See* Babbio Decl. at ¶ 18 (docket no. 68). The NCLT granted
11 Respondent’s petition the following day, appointing M. Jayakumar as the provisional
12 Liquidator to take over Petitioner and prepare its liquidation. *Id.* at ¶ 20. The Liquidator
13 promptly fired Petitioner’s global counsel, prompting Petitioner’s shareholders, Devas
14 Multimedia America, Inc. (“DMAI”), Devas Employees Mauritius Private Limited
15 (“DEMPL”), Telcom Devas Mauritius Limited (“Telcom Devas”), and CC/Devas
16 (Mauritius) Ltd. (“CC/Devas”) (collectively, “Intervenors”), to intervene in this action to
17 defend the Court’s confirmation order and Judgment. *Id.* at ¶¶ 23, 26–28. The Court
18 granted their motion to intervene. *See* Order (docket no. 76).

19
20
21 ¹ Because the parties are familiar with the facts and procedural history, the Court recounts only the
22 relevant background information here. *See* Orders (docket nos. 45, 49, 72, 76, & 108) (summarizing
23 background facts and procedural history).

1 In late May 2021, the NCLT issued a final liquidation order, appointed
2 M. Jayakumar as the official Liquidator, and ordered him to liquidate Petitioner. NCLT
3 Winding Up Order, Ex. 1 to Dutt Decl. (docket no. 113-1). The NCLT also ruled that
4 DEMPL, an Intervenor in this action, could not join or intervene in the NCLT liquidation
5 proceedings. NCLT Implead Order, Ex. 2 to Dutt Decl. (docket no. 113-2).

6 Intervenor believe that Respondent has been transferring certain business assets
7 to a new company, NewSpace India Limited (“NewSpace”), which, like Respondent, is
8 wholly owned by the Government of India and is under the direct control of India’s
9 Department of Space (“DOS”). DOS Annual Report 2020–2021, Ex. 2 to Champion
10 Decl. (docket no. 114-2 at 97); *see* April 2019 Article, Ex. 9 to Champion Decl. (docket
11 no. 114-9 at 7) (reporting that certain individuals believe “Antrix is being hollowed out,”
12 as its business dealings are being “shifted” to NewSpace, possibly “due to the Devas,
13 Deutsche Telekom, Columbia Capital and Telecom Ventures liability claims”).

14 On May 24, 2021, Intervenor served Respondent with discovery requests,
15 consisting of seven interrogatories, ten requests for production (“RFPs”), and a notice of
16 deposition, relating to Respondent’s assets and purported alter egos. *See* Interrog. &
17 RFPs, Ex. 28 to Champion Decl. (docket no. 114-28). Respondent objected to these
18 requests, *see* Champion Decl. at ¶ 31, but responded that Respondent does not maintain
19 any financial accounts in the United States and that it owns approximately \$186,000 in
20 old receivables owed by U.S. companies, *see* Resp. & Obj. to Interrog. & RFPs, Ex. C to
21 Meehan Decl. (docket no. 116-3). The parties have attempted to resolve this discovery
22 dispute without Court intervention, but Respondent maintains that Intervenor lack the
23

1 authority to seek postjudgment discovery and that the scope of the requested discovery is
2 overbroad and unduly burdensome. *See* Champion Decl. at ¶¶ 32–33; Meehan Decl. at
3 ¶¶ 8–9. Intervenors now move to compel discovery, docket no. 112, and Respondent
4 moves for a protective order, docket no. 115.

5 **Discussion**

6 **1. Jurisdiction**

7 “Once a notice of appeal is filed, the district court is divested of jurisdiction over
8 matters being appealed.” *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163,
9 1166 (9th Cir. 2001) (citing *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58
10 (1982) (per curiam)). Federal Rule of Civil Procedure 62.1 limits the actions a district
11 court may take when it “lacks authority to grant [certain motions] because of an appeal
12 that has been docketed and is pending.” Fed. R. Civ. P. 62.1(a). The district court
13 nevertheless “retains jurisdiction during the pendency of an appeal to act to preserve the
14 status quo.” *Nat. Res. Def. Council*, 242 F.3d at 1166.

15 Despite the pending appeal, this Court’s authority is not confined to the actions
16 listed in Federal Rule of Civil Procedure 62.1 because the parties’ pending motions do
17 not raise any issues that are currently on appeal. Moreover, resolving such motions will
18 “preserve[] the status quo and [will] not materially alter the status of the case on appeal.”
19 *See Nat. Res. Def. Council*, 242 F.3d at 1166; *see also Icenhower v. Diaz-Barba (In re*
20 *Icenhower)*, 755 F.3d 1130, 1138 (9th Cir. 2014) (concluding bankruptcy court “retained
21 jurisdiction to supervise the course of conduct mandated in the judgment” and “[t]o
22
23

1 account for . . . changed facts” after judgment was entered). The Court has jurisdiction to
2 decide the instant motions.

3 **2. Postjudgment Discovery Standard**

4 Federal Rule of Civil Procedure 69(a)(2) provides that, “[i]n aid of the judgment
5 or execution, the judgment creditor or a successor in interest whose interest appears of
6 record may obtain discovery from any person--including the judgment debtor--as
7 provided in these rules or by the procedure of the state where the court is located.”
8 Fed. R. Civ. P. 62(a)(2); *see also* Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery
9 regarding any nonprivileged matter that is relevant to any party’s claim or defense and
10 proportional to the needs of the case.”). These “rules governing discovery in
11 postjudgment execution proceedings are quite permissive.” *Republic of Argentina v.*
12 *NML Capital, Ltd.*, 573 U.S. 134, 138 (2014). A judgment creditor or successor in
13 interest “has a right to conduct reasonable post-judgment discovery and to inquire into [a
14 judgment debtor’s] assets,” including “a very thorough examination of the judgment
15 debtor.” *Credit Lyonnais, S.A. v. SGC Int’l, Inc.*, 160 F.3d 428, 430 (8th Cir. 1998)
16 (internal quotation marks and citation omitted).

17 Likewise, under the Washington Superior Court Civil Rules (“CR”), which
18 Federal Rule of Civil Procedure 69(a)(2) incorporates, a judgment creditor may take a
19 judgment debtor’s deposition “anywhere at any time, and if the debtor objects to the time
20 and place, the burden is on them to seek a protective order.” *See Ward v. Icicle Seafoods,*
21 No. C06-431JLR, 2008 WL 11506711, at *2 (W.D. Wash. Feb. 19, 2008) (citing
22 CR 26(c), 30(b)(1), & 69(b) (“In the aid of the judgment or execution, the judgment
23

1 creditor or successor in interest when that interest appears of record, may examine any
2 person, including the judgment debtor.”)).

3 **3. Intervenor’s Authority to Seek Postjudgment Discovery**

4 The parties dispute whether Intervenor is “judgment creditor” or “successors
5 in interest” within the meaning of the applicable procedural rules, and whether a party
6 *must* be a judgment creditor or successor in interest to seek postjudgment discovery.

7 Intervenor DEMPL, Telecom Devas, and CC/Devas argue that as shareholders of
8 Petitioner, they are Petitioner’s successors in interest. Intervenor DMAI argues that it is a
9 judgment creditor based on its collection services agreement with Petitioner.

10 Furthermore, according to Intervenor, because they are parties to this action, the Court
11 has the inherent authority to permit them to examine Respondent about its assets,
12 regardless of their specific status under the applicable procedural rules. The Court
13 addresses each argument in turn.

14 **A. Whether Intervenor DEMPL, Telcom Devas, and CC/Devas are**
15 **Successors in Interest**

16 Intervenor DEMPL, Telcom Devas, and CC/Devas, as Petitioner’s Mauritian
17 shareholders, contend that, because they are entitled to Petitioner’s assets once it is
18 liquidated (subject to creditors’ claims), they are successors in interest within the
19 meaning of Federal Rule of Civil Procedure 69(a)(2).

20 A “successor in interest” is defined as “[s]omeone who follows another in
21 ownership or control of property.” *Successor In Interest*, BLACK’S LAW DICTIONARY
22 (11th ed. 2019). Under Washington law, the ownership of stock in a company “carries
23

1 with it the inherent right to participate in the control of the corporation, . . . and the
2 inherent right to share in the assets of the corporation—after creditors—when it is in the
3 process of dissolution.” *Deer Park Pine Indus. v. Stevens County*, 46 Wn.2d 852, 855–
4 56, 286 P.2d 98 (1955); *see also James S. Black & Co., Inc. v. F.W. Woolworth Co.*, 14
5 Wn. App. 602, 606, 544 P.2d 112 (1975) (permitting shareholders, as dissolved
6 corporation’s “successors in interest,” to join dissolved corporation as plaintiffs in
7 lawsuit).

8 Respondent appears to concede that Intervenors have “contingent or future interest
9 in proceeds from [Petitioner’s] dissolution or liquidation,” but argues that such interests
10 do not convert Intervenors into “successors in interest” for purposes Federal Rule of Civil
11 Procedure 69(a)(2). *See* Resp. to Mot. to Compel (docket no. 119 at 10). Respondent
12 relies on unpublished, non-Washington case law, arguing that Intervenors never
13 possessed any right to bring this action in their own name, as the “right to pursue a cause
14 of action either belongs to the dissolved corporation or no longer exists; at no time does it
15 pass to another party.” *See id.* (citing, *inter alia*, *Mikkilineni v. United States*, 53 F.
16 App’x 82, 83 (Fed. Cir. 2002), and *Cohen v. Ford Motor Co.*, No. 1:91CV2148, 1992
17 WL 46104, at *2 (N.D. Ohio Feb. 10, 1992) (concluding that a shareholder may not
18 institute a lawsuit on a dissolved corporation’s behalf until the “corporation has paid all
19 its creditors” and the shareholder “succeed[s] to the interests of the corporation”). These
20 authorities, however, appear to be in conflict with Washington law and Federal Rule of
21 Civil Procedure 69(a)(2)’s incorporation of the state’s procedural rules. *See James S.*
22 *Black*, 14 Wn. App. at 606. Nor do Respondent’s authorities directly address whether
23

1 shareholders of a soon-to-be-dissolved corporation are successors in interest for purposes
2 of seeking discovery to aid in the execution of a Judgment.²

3 In light of the permissive rules governing postjudgment discovery, the Court
4 concludes that the future, contingent interests held by Intervenor DEMPL, Telecom
5 Devas, and CC/Devas in Petitioner’s assets (once Petitioner is wound up and satisfies its
6 creditors’ claims), including any interest in the Judgment, are sufficient to show that
7 these Intervenor are successors in interest for purposes of Federal Rule of Civil
8 Procedure 69(a)(2) and are therefore entitled to obtain discovery to enforce execution of
9 the Judgment.

10 **B. Whether Intervenor DMAI is a Judgment Creditor**

11 Intervenor DMAI argues that it is a judgment creditor under Federal Rule of Civil
12 Procedure 69(a)(2) based on the Collection Services Agreement (“CSA”) that it executed
13 with Petitioner in early 2018. The Court previously had “serious doubts about whether
14 Petitioner, in executing the [CSA], transferred to DMAI any interest in the Award or the
15 claims giving rise to this action.” Order (docket no. 108 at 11). Nevertheless, the Court
16 denied DMAI’s motion to substitute or join Petitioner for the primary reason that the

17
18 ² Respondent also appears to question shareholders’ rights under Indian law, namely whether shareholders
19 “have the right to all of [Petitioner’s] residual proceeds after [Petitioner] is wound up,” including “the
20 proceeds from any judgment arising out of the . . . Award and the sale thereof.” Dutt Decl. at ¶¶ 8–9
21 (docket no. 113). Respondent contends that shareholders “do not have any inherent right in the assets of”
22 Petitioner, and once Petitioner “is in liquidation, only the liquidator retains [Petitioner’s] rights and
23 powers, so the liquidator decides how to distribute its assets consistent with Indian law.” John Decl. at
¶¶ 1–5, 9–10 (docket no. 121). For purposes of the instant motions, however, the Court need not address
which party’s understanding of Indian law is correct because Federal Rule of Civil Procedure 69 directs
the Court to consult the other federal procedural rules “or the procedure of the state where the court is
located.” Fed. R. Civ. P. 69(a)(2).

1 CSA was executed several months *before* this action commenced, and Federal Rule of
2 Civil Procedure 25(c) “allows for substitution only in cases involving transfers of interest
3 occurring during the pendency of litigation, but it does not apply to transfers “occurring
4 before the litigation begins.” Order (docket no. 108 at 11) (quoting 6 *Moore’s Federal*
5 *Practice* § 25.31 (Matthew Bender 3d ed.)). The Court’s prior order, did not, however,
6 directly resolve whether the CSA conferred any right in DMAI to *seek discovery* to
7 enforce execution of the Judgment under Federal Rule of Civil Procedure 69(a)(2).

8 A “judgment creditor” is defined as “[a] person having a legal right to enforce
9 execution of a judgment for a specific sum of money.” *Judgment Creditor*, BLACK’S
10 LAW DICTIONARY (11th ed. 2019). As a matter of Washington law, any “party in whose
11 favor a judgment of a court has been or may be filed or rendered, or the assignee or the
12 current holder thereof, may have an execution . . . or other legal process issued for the
13 collection or enforcement of the judgment at any time within ten years from entry of the
14 judgment or the filing of the judgment in this state.” RCW 6.17.020; *see also*
15 RCW 6.17.030 (providing “when a judgment recovered in any court of this state has been
16 assigned, execution may issue in the name of the assignee after” certain steps are taken).

17 The CSA provides that DMAI will “[t]ake all actions necessary to protect, defend
18 and enforce the Award, including searching for and, to the extent possible, attaching
19 assets for the purposes of collecting any outstanding amounts on the Award” and “shall
20 use best efforts to provide Collection Services.” CSA at §§ 2.2(b) & 2.3, Ex. T to Babbio
21 Decl. (docket no. 68-20 at 3). Although the CSA provides that Petitioner “shall at all
22 times be the legal and beneficial owner of all funds collected” and that DMAI shall hold
23

1 such funds “for the benefit of” Petitioner, the CSA also provides that DMAI “shall have a
2 lien on” 30 percent of amounts actually collected “until the disbursement” of such
3 amounts. *Id.* at § 2.4 & Ex. B.

4 The Court is persuaded that the CSA assigns DMAI a legal right to enforce
5 execution of Judgment for a specific sum of money, namely 30 percent of any collected
6 amounts, and that DMAI can therefore avail itself of Washington’s legal processes for the
7 collection or enforcement of the Judgment. *See* RCW 6.17.020 & .030. Regardless of
8 whether the CSA creates a contractual *obligation* or *right* on the part of DMAI, there is
9 little doubt that the CSA authorizes DMAI to “[t]ake all actions necessary to protect,
10 defend and enforce the Award, including searching for and . . . attaching assets for the
11 purposes of collecting any outstanding amounts on the Award.” CSA at § 2.2(b).³ The
12 Court concludes that DMAI is a judgment creditor within the meaning of Federal Rule of
13 Civil Procedure 69(a)(2) and can therefore obtain, for purposes of executing on the
14 Judgment, discovery related to Respondent’s assets.

15 C. Inherent Authority to Order Postjudgment Discovery

16 Intervenor also contend that, irrespective of Federal Rule of Civil Procedure
17 69(a)(2), this Court has the inherent authority to permit Intervenor to seek postjudgment
18 discovery. Although district courts possess “inherent powers” that are “necessarily
19

20
21 ³ Respondent also argues that DMAI is not a “legal representative” of Petitioner under § 41 of the
22 Restatement of Judgments. For purposes of whether Intervenor are entitled to postjudgment discovery of
23 Federal Rule of Civil Procedure 69(a)(2), the Court need not decide whether DMAI is a legal
representative of Petitioner.

1 vested in courts to manage their own affairs so as to achieve the orderly and expeditious
2 disposition of cases,” the U.S. Supreme Court recognizes certain limits on those powers.
3 *See Dietz v. Bouldin*, 136 S. Ct. 1885, 1891 (2016) (quoting *Link v. Wabash R.R. Co.*, 370
4 U.S. 626 (1962)). “First, the exercise of an inherent power must be a ‘reasonable
5 response to the problems and needs’ confronting the court’s fair administration of justice”
6 and “[s]econd, the exercise of an inherent power cannot be contrary to any express grant
7 of or limitation on the district court’s power contained in a rule or statute.” *Id.* at 1892
8 (quoting *Degen v. United States*, 517 U.S. 820, 823–24 (1996)).

9 In light of the unique circumstances in this case, the Court concludes that
10 authorizing Intervenors to seek postjudgment discovery to enforce execution of the
11 Judgment on behalf of Petitioner is a reasonable response to the problems and needs
12 confronting the Court’s fair administration of justice. Petitioner is in the process of being
13 liquidated under the auspices of a court-appointed Liquidator. NCLT Winding Up Order,
14 Ex. 1 to Dutt Decl. (docket no. 113-1). Although the Liquidator has now hired new
15 counsel to represent Petitioner, at the direction of the Court and in compliance with Local
16 Civil Rule 83.2(b)(4), the first motion filed by this new counsel was an apparent attempt
17 to delay the proceedings. *See* Minute Order (docket no. 132). Because Petitioner is
18 hindered in its ability to seek postjudgment discovery or to execute the Judgment, the
19 responsibility has fallen to Intervenors to do so.

20 Furthermore, the Court’s exercise of its inherent power to authorize Intervenors to
21 obtain such discovery is not contrary to any express grant of or limitation on the Court’s
22 authority contained in the applicable rules or statutes. Respondent argues that Federal
23

1 Rule of Civil Procedure 69(a)(2) permits *only* “a judgment creditor or a successor in
2 interest” to obtain postjudgment discovery, but Respondent would have the Court read
3 the word “only” into that provision, a word that is plainly not there. Nor does that rule
4 limit (or even address) *the Court’s* authority to permit, as opposed to a party’s ability to
5 seek, postjudgment discovery. Given the absence of any indication that ordering the
6 requested discovery would conflict with the Federal Rules of Civil Procedure or
7 applicable laws, the Court exercises its inherent authority to permit Intervenors to obtain
8 postjudgment discovery based on the unusual facts of this case and as a matter of fairness
9 and justice.

10 **4. Scope of Intervenors’ Discovery Requests**

11 Respondent moves for a protective order under Federal Rule of Civil
12 Procedure 26(c) “to protect [itself] from annoyance, embarrassment, oppression, or undue
13 burden or expense.” Fed. R. Civ. P. 26(c)(1); *see Blum v. Merrill Lynch Pierce Fenner &*
14 *Smith Inc.*, 712 F.3d 1349, 1355 (9th Cir. 2013) (“A party asserting good cause bears the
15 burden, for each particular document [it] seeks to protect, of showing that specific
16 prejudice or harm will result” (citation omitted)).

17 Respondent makes general and specific objections to Intervenors’ discovery
18 requests, principally arguing that such requests exceed the scope of permissible
19 discovery. *See* Resp. & Obj. to Interrog. & RFPs, Ex. C to Meehan Decl. (docket
20 no. 116-3). Intervenors respond that they made reasonable concessions during the
21 parties’ meet-and-confer process to narrow the breadth of these requests both in terms of
22 time and subject matter, and that Respondent refused to even propose any further
23

1 revisions. *See* Resp. to Mot. for Prot. Ord. (docket no. 117 at 3 n.1). The Court
2 addresses each of Respondent’s objections to Intervenor’s discovery requests.

3 **A. Respondent’s General Objections**

4 **i. Respondent’s Extraterritorial Assets**

5 Respondent objects to production of information related to its extraterritorial
6 assets on the ground that the Court lacks jurisdiction to authorize Intervenor to attach or
7 execute against assets located outside the United States, and that any related discovery is
8 thus unlikely to lead to any relevant assets.⁴

9 Regardless of whether this Court lacks authority to permit execution against assets
10 located in other countries, Intervenor are entitled to obtain discovery of Respondent’s
11 assets both within and outside of the United States. In *NML Capital*, the U.S. Supreme
12 Court assumed that district courts are within their discretion “to order the discovery of
13 third-party banks about the judgment debtor’s assets located outside the United States.”
14 573 U.S. at 140. The Supreme Court went on to hold that the Foreign Sovereign
15 Immunities Act (“FSIA”), 28 U.S.C. §§ 1130, 1602, does not immunize a foreign-
16 sovereign judgment debtor from postjudgment discovery of information concerning its

17
18
19 ⁴ Relatedly, Respondent contends that Intervenor seek information about Respondent’s dealings with the
20 Government of India, as well as communications with the Liquidator, which will “further embroil this
21 Court in matters that have absolutely no connection to the United States”; and it appears to revive its
22 argument that this matter should have been dismissed based on the doctrine of *forum non-conveniens*.
23 Resp. to Mot. to Compel (docket no. 119 at 23). The Court has already declined to dismiss this action on
that ground, *see* Minute Order at ¶ 1(b) (docket no. 28), and has appropriately considered comity interests
and the burden that discovery might cause to Respondent and the Government of India. *See NML
Capital*, 573 U.S. at 146 n.6.

1 extraterritorial assets; and it expressly rejected Argentina’s argument that “if a judgment
2 creditor could not ultimately execute a judgment against certain property, then it has no
3 business pursuing discovery of information pertaining to that property.” *NML Capital*,
4 573 U.S. at 144. The *NML Capital* Court explained that “information about Argentina’s
5 worldwide assets generally” allowed the judgment creditor to “identify where Argentina
6 may be holding property that *is* subject to execution.” *Id.* at 145 (emphasis in original);
7 *see also SAS Inst., Inc. v. World Programming Ltd.*, No. 10-CV-25-FL, 2018 WL
8 1144585, at *4 (E.D.N.C. Mar. 2, 2018) (concluding that a judgment creditor “should be
9 entitled to discover where and in what amounts [a judgment debtor] has assets outside of
10 the United States to enable it to make . . . fully informed decisions about pursuing or
11 continuing execution proceedings abroad”). Respondent fails to address these cases or
12 point to any other authority indicating that a district court is precluded from ordering
13 postjudgment discovery simply because that same court lacks jurisdiction with respect to
14 the attachment or execution against extraterritorial assets.⁵

15 Notwithstanding this conclusion, the Court agrees with Respondent that certain
16 discovery requests involving Respondent’s assets and asset transfers are overbroad and
17
18

19
20
21
22
23
⁵ The Court notes that in October 2020, Intervenor DEMPL, Telcom Devas, and CC/Devas obtained a separate arbitral award against the Government of India by the Arbitral Tribunal of the United Nations Commission on International Trade Law (“UNCITL”) seated in the Hague, the Netherlands, *see* UNCITL Award, Ex. 1 to Champion Decl. (docket no. 114-1), and that Petitioner and/or Intervenor have sought to enforce this Award in courts throughout Europe, including France and the United Kingdom. *See* Petition at ¶¶ 37–39 (docket no. 1).

1 unduly burdensome. The Court addresses these issues in connection with its discussion
2 of Respondent’s specific objections in Section 4(B) below.

3 **ii. Respondent’s Purported Alter Egos**

4 Respondent also objects to any discovery related to Respondent’s relationship with
5 the Government of India or NewSpace, arguing that such discovery is unlikely to lead to
6 any recoverable assets because neither entity can be joined in this action on account of
7 their foreign sovereign immunity,⁶ and because the International Chamber of Commerce
8 (“ICC”) tribunal has already found that Respondent and the Government of India are
9 separate legal entities.

10 Intervenor’s are not precluded from obtaining certain discovery related to
11 Respondent’s relationship with the Government of India and NewSpace. *See* Fed. R.
12 Civ. P. 69(a)(2) (concluding judgment creditors and successors in interest “may obtain
13 discovery from *any person*, including the judgment debtor”) (emphasis added).
14 Discovery of a third party’s assets is permitted so long as the relationship between the
15 third party and the judgment debtor “is sufficient to raise a reasonable doubt about the
16 bona fides of [any] transfer of assets between them.” *Credit Lyonnais*, 160 F.3d at 431;
17 *see also Brown v. Sperber-Porter*, No. 16-2801, 2017 WL 11482463, at *7 (D. Ariz.
18 Dec. 8, 2017) (permitting discovery of “information relevant to the judgment
19 enforcement proceedings,” considering “the liberal discovery Rule 69(a) permits for

20
21 ⁶ Respondent, however, appears to concede that a foreign state cannot avail itself of the protections of the
22 FSIA when a party seeks to confirm an arbitral award against a foreign state, as in this case. *See* 28
23 U.S.C. §§ 1604 & 1605(a)(6); *see also* Resp. to Mot. to Compel (docket no. 119 at 20).

1 judgment creditors, and the relationship between [the judgment creditor] and [third-party
2 intervenors'] bank accounts at issue”).

3 Respondent challenges this conclusion on the ground that the ICC tribunal already
4 found that Respondent is not an alter ego of the Government of India. *See* Award at
5 ¶¶ 221–26, Ex. 1 to Hellmann Decl. (docket no. 2-1). Respondent exaggerates the import
6 of this finding. When the ICC tribunal issued the Award in 2015, it could not have
7 possibly resolved whether Respondent has transferred or is transferring assets or business
8 operations to NewSpace or any other government-affiliated entity during the period from
9 2019 to the present. Nor could the ICC tribunal have resolved whether Respondent has
10 transferred or is transferring such assets to avoid paying any amounts due with respect to
11 the Award that the ICC tribunal had issued years earlier.

12 Nevertheless, the Court again agrees with Respondent that certain discovery
13 requests concerning Respondent’s relationship with the Government of India and
14 NewSpace are overbroad and unduly burdensome, and the Court addresses these issues in
15 Section 4(B) below.

16 **iii. Intervenor’s Obligation to Not Seek Double Recovery**

17 Respondent also argues that it need not produce the requested discovery related to
18 the Government of India or NewSpace because Intervenor’s are attempting to enforce a
19 separate arbitral award directly against the Government of India and they “cannot recover
20 a penny more than the compensation that they were awarded in” that arbitration. Mot. for
21 Prot. Ord. (docket no. 115 at 23). Respondent then leaps to the conclusion that
22 “Intervenor’s do not need such discovery,” so it would be a “pointless” and “extremely
23

1 expensive and burdensome[] endeavor” to permit them to seek such discovery. *Id.* at 23–
2 24. Respondent notably fails to mention that Intervenors have not actually recovered *any*
3 amounts due in connection with the separate arbitral award, meaning the risk of double
4 recovery is merely hypothetical at this point. *See* Champion Decl. at ¶ 33 (docket
5 no. 114). Respondent also fails to cite any authority that Intervenors are precluded from
6 *seeking discovery* to aid execution of this Judgment on behalf of Petitioner simply
7 because they obtained a separate arbitral award against the Government of India.
8 Assuming that Intervenors actually recover amounts due in connection with the other
9 award, Intervenors might then be precluded from executing the full amount of this
10 Judgment to avoid double recovery, whenever that time comes. Until then, Intervenors
11 are entitled to discover Respondent’s assets, as well as Respondent’s relationships with
12 the Government of India and NewSpace. *See Credit Lyonnais*, 160 F.3d at 431.⁷

13 **iv. Respondent’s Other General Objections**

14 Although Respondent did not address its other general objections in its motion for
15 a protective order, or its response to Intervenors’ motion to compel, some of
16 Respondent’s objections warrant further discussion. *See* Resp. & Obj. to Interrog. &
17 RFPs (docket no. 116-3). For example, Respondent objects to certain requests on the
18 ground that Federal Rule of Civil Procedure 69 “requires that discovery ‘be tailored to the
19

20 ⁷ Respondent also argues, in a conclusory fashion, that Intervenors seek such discovery merely to “gin up
21 new claims against India.” *See* Mot. for Prot. Ord. (docket no. 115 at 24). To the contrary, the record
22 demonstrates that Intervenors have legitimate interests in defending this Award and their separate
23 arbitration award against the Government of India, as well as enforcing this Judgment on behalf of
Petitioner.

1 specific purpose of enabling a judgment creditor to discover assets upon which it can
2 seek to execute a judgment.” *Id.* (see Gen. Obj. Nos. 3 & 5) (citing *E.I. DuPont de*
3 *Nemours & Co. v. Kolon Indus., Inc.*, 286 F.R.D. 288, 292 (E.D. Va. 2012)). The Court
4 agrees and will address Respondent’s concerns in Section 4(B).

5 Respondent also objects to the date range of Intervenor’s discovery requests, from
6 July 1, 2011, to present, as overbroad. See docket no. 116-3 (Gen. Obj. No. 6). Again,
7 the Court agrees and shall limit the date range of such requests from **September 14,**
8 **2015**, the date of the Award, to the present. Intervenor has already agreed to this
9 timeframe. See Resp. to Mot. for Prot. Ord. (docket no. 117 at 3 n.1).

10 Finally, Respondent objects to Intervenor’s discovery requests to the extent that
11 they call for information protected by attorney-client privilege or another privilege, see
12 docket no. 116-3 (Gen. Obj. No. 8). To the extent Respondent withholds materials on the
13 basis of a privilege, Respondent is DIRECTED to file the required privilege log with the
14 Court on or before **September 17, 2021**.

15 **B. Respondent’s Specific Objections**

16 Respondent makes specific objections to each of the seven interrogatories and ten
17 RFPs, as well as the notice of deposition. See Resp. & Obj. to Interrog. & RFPs, Ex. C to
18 Meehan Decl. (docket no. 116-3):

19 **Interrogatories Nos. 1 and 2:** Respondent objects to these interrogatories on the
20 ground that they are overbroad and/or not reasonably calculated to reveal executable
21 assets (as well as on grounds that have already been rejected by this Court). The Court
22 concludes that these interrogatories are reasonably calculated to reveal executable assets
23

1 and thus DENIES Respondent's motion for a protective order with respect to
2 interrogatories nos. 1 and 2, and DIRECTS Respondent to answer these interrogatories on
3 or before **September 17, 2021**, subject to any privilege issues and subject to and as
4 consistent with this Order.

5 **Interrogatory No. 4:** Respondent objects to this interrogatory on the ground that
6 it is overbroad, unduly burdensome, and not reasonably calculated to reveal executable
7 assets. The Court agrees that the request for information regarding financial and in-kind
8 transfers "over \$10,000 in each calendar year that Antrix paid to . . . *any third party*" is
9 overbroad and unduly burdensome. *See* docket no. 116-3 (emphasis added). The Court
10 therefore GRANTS in part Respondent's motion for a protective order with respect to
11 interrogatory no. 4 and REVISES this interrogatory as follows:

12 Identify and describe all financial and in-kind transfers over **\$50,000** in
13 each calendar year that Antrix paid to India or NewSpace **on or after**
September 14, 2015, or to any third party **on or after November 4, 2020**.

14 **Interrogatories Nos. 3, 5, 6, and 7:** Respondent objects to these interrogatories
15 on the ground that they are overbroad, unduly burdensome, and not reasonably calculated
16 to reveal executable assets. The Court agrees and hereby GRANTS Respondent's motion
17 for a protective order with respect to interrogatories nos. 3, 5, 6, and 7, and STRIKES
18 these interrogatories.

19 **RFPs Nos. 3, 9, and 10:** Respondent objects to these RFPs on the ground that
20 they are overbroad, unduly burdensome, and/or not reasonably calculated to reveal
21 executable assets. The Court concludes that such RFPs are reasonably calculated to
22 reveal executable assets, DENIES Respondent's motion for a protective order with
23

1 respect to RFPs nos. 3, 9, and 10, and DIRECTS Respondent to produce the requested,
2 non-privileged documents on or before **September 17, 2021**, subject to and as consistent
3 with this Order.

4 **RFPs Nos. 1, 2, 5, 7, and 8:** Respondent objects to these RFPs on the ground that
5 they are overbroad, unduly burdensome, and/or not reasonably calculated to reveal
6 executable assets. The Court agrees that these RFPs are not reasonably calculated to
7 reveal executable assets and thus GRANTS in part Respondent's motion for a protective
8 order with respect to RFPs nos. 1, 2, 5, 7, and 8, and REVISES these RFPs as follows:

9 *RFP No. 1:* All communications **from September 14, 2015**, between
10 **Respondent** and the Liquidator **concerning Respondent's financial**
assets, property, and any other assets valued at more than \$50,000.

11 *RFP No. 2:* All documents and communications **on or after September**
12 **14, 2015**, reflecting any transfer of accounts, transfer of assets, contracts,
13 business, revenues, "business segments," business opportunities, functions,
personnel, intellectual property, customer relationships, or any other thing
valued at more than \$50,000 from **Respondent** to NewSpace.

14 *RFP No. 5:* All documents **dated on or after September 14, 2015**,
15 reflecting payments over **\$50,000 that Respondent** has made to **any** entity
in the U.S.

16 *RFP No. 7:* All documents **dated on or after September 14, 2015**,
17 reflecting communications between and among **Respondent**, India, or
NewSpace, or any combination thereof, **concerning** documents reflecting
18 communications regarding the transfer of business from **Respondent** to
NewSpace.

19 *RFP No. 8:* All documents **dated on or after September 14, 2015**,
20 reflecting amounts over **\$50,000** owed to **Respondent**.

21 **RFPs Nos. 4 and 6:** Respondent objects to these RFPs on the ground that they are
22 overbroad, unduly burdensome, and/or not reasonably calculated to reveal executable
23

1 assets. The Court agrees and hereby GRANTS Respondent's motion for a protective
2 order with respect to RFPs nos. 4 and 6, and STRIKES these RFPs.

3 In sum, Intervenor's motion to compel discovery, docket no. 112, is GRANTED in
4 part as to Intervenor's authority to obtain certain information related to Respondent's
5 assets and asset transfers, both within and outside of the United States, and related to
6 Respondent's relationship to the Government of India and NewSpace, subject to and as
7 consistent with this Order. Intervenor's motion to compel is otherwise DENIED.

8 Respondent's motion for a protective order, docket no. 115, is GRANTED in part
9 as to (i) interrogatory no. 4, which is revised, (ii) interrogatories nos. 3, 5, 6, and 7, which
10 are stricken, (iii) RFPs nos. 1, 2, 5, 7, and 8, which are revised, and (iv) RFPs nos. 4 and
11 6, which are stricken, as the Court finds these discovery requests to be overbroad, unduly
12 burdensome, and not reasonably calculated to reveal executable assets. Respondent's
13 motion for a protective order is otherwise DENIED.

14 **Conclusion**

15 For the foregoing reasons, the Court ORDERS:

16 (1) Intervenor's motion to compel discovery, docket no. 112, is GRANTED in
17 part and DENIED in part;

18 (2) Respondent's motion for a protective order, docket no. 115, is GRANTED
19 in part and DENIED in part;

20 (3) Respondent is hereby ORDERED to answer Intervenor's interrogatories,
21 produce the responsive documents, and comply with any notices of deposition, *see* docket
22
23

1 no. 114-28, subject to and as consistent with this Order, *see* Section 4(B), and to file any
2 necessary privilege log with the Court, on or before **September 17, 2021**; and

3 (4) The Clerk is directed to send a copy of this Order to all counsel of record,
4 to the Liquidator via email addressed to ol-bangalore-mca@nic.in, and to the United
5 States Court of Appeals for the Ninth Circuit (Case No. 20-36024).

6 IT IS SO ORDERED.

7 Dated this 16th day of August, 2021.

8
9 

10 Thomas S. Zilly
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23