ORDER

1. Counsels Present : Shri N. Venkataraman, Learned Additional Solicitor General of India a/w Ms. Poornima Hatti, AOR, Shri Ankur Singh and Shri V.Chandrasekara Bharathi, for the Petitioner; Shri Pawan Sharma, Shri C.K.Nandakumar, Shri Raghuram Cadambi, Ms. Priyanka M.P, Ms. Chaitanya Kaushik, learned Counsels for the Respondent No.1 and Impleading Applicant; Shri M. Jayakumar, Official Liquidator, Shri Kumar.M.N, learned ACGSC,: Shri M.M.Juneja, Director General, COA (OSD), Shri Sanjay Shorey, Director (Legal & Prosecution) for the Respondent No.2.
2. Orders pronounced in C.P No. 06/BB/2021 and in C.A Nos.11, 12 & 13 of 2021.
3. CP No. 06/BB/2021 is allowed by ordering to wind up R1 Company/Devas by appointing Liquidator. Accordingly, C.A Nos 11,12 & 13 are dismissed. All CAs/IAs, if any filed and pending on the file of Register of this Tribunal also stand dismissed as infructuous.
4. Shri Pawan Sharma, Learned Counsel representing the Respondent No.1 Company, has submitted that the operation of the order shall be kept in abeyance for 10 (ten) days, so as to enable them to appeal before the Competent court of law.
5. Shri N.Venkataraman, Learned ASGI, has strongly opposed the prayer.
6. Since the Tribunal has already passed Final orders in the case, in accordance with law, it cannot suspend its own orders. However, Counsels may take legal remedies in higher courts as per law, and Copies of the orders pronounced today will be uploaded on the website of the NCLT at the earliest possible time.
7. Post the case on 07-07-2021 for report of Liquidator.

Sd/-
Member (T)

Sd/-
Member (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.No.06/BB/2021
U/ss 271& 272& other Applicable provisions
of Companies Act, 2013

Between:

Antrix Corporation Ltd.
Represented by its Authorized Signatory,
Chairman and Managing Director
Registered office at
AntarikshBhavanCampus,
Near New BEL Road,
Bangalore-560094 ... Petitioner

And

1. Devas Multimedia Pvt. Ltd.
Represented by its Director.
First Floor, 29/1, Kaveriappa Layout,
Millers Tank, Bund Road,
Bangalore – 560052

2. The Ministry of Corporate Affairs
Represented by its Secretary.
5th Floor, 'A' Wing, ShastriBhawan,
New Delhi – 110001 ... Respondents

Date of Order: 25thMay, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Petitioner	:	Shri Tushar Mehta, SGI Shri N. Venkataraman, ASG Ms. PoornimaHatti Shri Ankur Singh
For the Respondent No.1& Impleading Applicant	:	Shri Rajiv Nayar, Senior Counsel Mrs. AnuradhaDutt Shri Pawan Sharma, Shri C.K Nanda Kumar,

Ms. Priyanka M.P
Mr. HaarisFazil
Mr. RaghuramCadambi,
Mr. ChaitanyaKaushik
Mr. Shobit Ahuja

For the Respondent No.2: Shri Kumar M.N ACGSC
Shri M.M Juneja, DG COA(OSD)
Shri. Sanjay Shorey, Director (Legal &Prosecution)

The Official Liquidator : Shri M.Jayakumar

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. The Company Petition bearing C.P.No.06/BB/2021 is filed by Antrix Corporation Ltd. ("Antrix"),under provisions of Sections 271 & 272 and other applicable provisions of Companies Act, 2013by inter alia seeking to orderthe Respondent No.1 Company to be wound-up with consequential liquidation process.

2. Brief facts of the case, as mentioned in the instant Company Petition, which are relevant to the issue in question, are as follows:
   (1) Antrix Corporation Ltd. (hereinafter referred to as "Petitioner/Antrix"), is a wholly owned Government of India Company under the administrative control of the Department of Space (hereinafter also referred to as 'DoS') and was incorporated on 28.09.1992, under the Companies Act, 1956. It is the commercial arm of the Indian Space Research Organization (hereinafter referred to as 'ISRO') and promotes and commercially markets the products and services emanating from the Indian Space Programs.
   (2) Devas Multimedia Pvt. Ltd., (hereinafter referred to as R 1 Company/Devas) is a Company incorporated on 17.12.2004, having its registered office at First Floor, 29/1, Kaveriappa Layout, Millers Tank, Bund Road, Bangalore – 560052, Karnataka, and registered with the Registrar of Companies,

Bangalore under the Companies Act, 1956 with CIN:U92132KA2004PTC035261. The main objects of Devas to highlight the Company's intention to pursue digital multimedia services. Article 3 of the Articles of Association of the Respondent No.1 provides the Authorized Share Capital and Paid-up Capital as Rs.5 Lakh and Rs.1 Lakh respectively, divided into 10000 equity shares of Rs.10 each. Its Authorised Share Capital currently stands at Rs.20 Lakh and Paid-up Share Capital at Rs.18,37,150/- (Rupees Eighteen lakh Thirty-Seven Thousand One Hundred and Fifty).

(3) That Respondent No. 2 is Ministry of Corporate Affairs, which is in charge of administration of the Companies Act, 1956/2013.

(4) The 'then officials' of Antrix Corporation Limited ('then officials' to distinguish them from the Petitioner Company and hereinafter referred to as the 'then officials'), including it's then Chairman, had executed a contract dated 28/01/2005 in favour of the Respondent No. 1 Company. The agreement was entered into to render Satellite Based Digital Multimedia Broadcasting Services (hereinafter referred to as SDMB Services) by leasing transponder capacity in the S-Band spectrum and was done in connivance with the then officials/public servants of ISRO, Department of Space and other government bodies connected with the agreement; and the then officials/Directors/ of the Respondent Company, and the same wasterminated by letter dated 25.02.2011.

(5) It is alleged that the Petitioner itself is a victim of the fraud and corruption, to which its then Chairman and other officials were party, and on account thereof, has suffered an Arbitral Award dated 14.09.2015, passed in Case No. 18051/CYK titled as 'Devas Multimedia Pvt. Ltd. Vs. Antrix Corporation Ltd.', running into more than half a billion dollars, which with interest, comes to more than a billion dollars today. The

Petitioner preferred an Application before the Hon'ble High Court of Delhi, against the impugned Arbitral Award dated 14.09.2015, on the ground, that the very contract dated 28/01/2005 from which the said arbitral award arises is wholly vitiated on account of the acts of corruption, fraud and criminality committed by the then officials of Antrix, acting in collusion with the officials of the R1 Company as well as other Government servants and various Criminal and other penal proceedings are presently underway, under the Prevention of Corruption Act, 1988, the Indian Penal Code, 1872, the Prevention of Money Laundering Act, 2002 ('PMLA') and the Foreign Exchange Management Act, 1997 ('FEMA'), against the individuals/entities concerned, including CMD and Directors of the Respondent No. 1 Company, as well as the then Secretary to the Government of India in the Department of Space, and other government officials. Further, vide order dated 04.11.2020 passed by the Hon'ble Supreme Court of India in SLP (C) 28434 of 2018, the Arbitral Award dated 14.09.2015 was kept in abeyance till the adjudication of the matter before the Hon'ble High Court of Delhi. Furthermore, vide the same order dated 04.11.2020, the original Petition filed U/s.34 of the Arbitration and Conciliation Act, 1996 by Antrix, challenging the Arbitral Award dated 14.09.2015, has been transferred from the City Civil Court, Bangalore.

(6) It is stated that the case at hand, and the contract in issue, relates to the leasing of the scarce and valuable natural resource of the country, namely spectrum in the 'S' band to the Respondent No. 1 Company, for providing SDMB Services. The contract contemplates the launch and operation of two satellites for the purpose of involving financial expenditures and fees. The performance of a contract of this nature requires not only ample financial capability going into millions of dollars, but also the knowledge and possession of the requisite

technology and knowhow.However, a contract so valuable and involving complex and advanced technology was callously and corruptly awarded to the Respondent No.1, which was incorporated merely two months prior to the award of this contract, by two persons including a former employee of ISRO, with a paltry share capital of Rupees One Lakh. The amount comes to around USD 2200 at the then prevailing exchange rate, as against the payments to the tune of USD 40 million plus additional annual payments, which were contemplated under the contract. That the very grant of the contract is mired in fraud and corruption is evident from the following:

i. No attempt was made, contrary to the existing judgments of the Supreme Court in regard to the award of Government contracts, to invite tenders/bids through public advertisement; to lay down in advance the necessary qualifications and eligibility criteria including technical qualifications as well as the financial capacity to operate the contract to be awarded and thereafter, to award the contract to the most qualified and eligible entity. On the other hand, giving these salutary and settled principles a complete go-bye, the contract dated 28/01/2005, conferring largesse on the Respondent No. 1 Company, was executed in a wholly arbitrary fashion.

ii. The Respondent No.1 Company was started by two individuals ,one of whom was a former employee of ISRO. Another former employee of ISRO joined thereafter, as a Director in the Respondent No.1 Company. The grant of the contract on 28/01/2005was obviously to favor these persons.The project involved the use of a combination of technologies, i.e., satellite and terrestrial systems, for providing SDMB services. It is a matter of record that the technology necessary for providing these services was not even in existence at the time the contact was awarded, and

was developed years later by French scientists, who had patented it. Further, the capital of the Respondent No.1 Company was only Rs. One lakh, which was around USD 2200 at the then prevailing exchange rate of approximately Rs. 45 per dollar. This was obviously farcical, as millions of dollars were agreed to be paid to Antrix under the contract dated 28.01.2005, and no reasonable person or authority would have entrusted a project of this magnitude to such a Company.

iii. The existence of this contract was suppressed by the 'then officials', from various government authorities, while seeking approvals for the project. As a matter of fact, a Cabinet Note dated 17/11/2005, put up for the consideration of the Union Cabinet, suppressed the existence of this contract, which had already been executed on 28/01/2005, and stated, instead, that ISRO was in receipt of "several firm expressions of interest" by different service providers for utilization of the satellite capacity.

(7) The incorporation of M/s. Devas Multimedia Pvt. Ltd., is an initiative of a few former employees of ISRO, in particular ShriD.Venugopal and Shri M.G.Chandrasekhar. Shri D. Venugopal worked as a Scientist Engineer with ISRO and remained posted as Deputy Director, Satellite Communication Programme Office (SCPO) at ISRO HQ, Bangalore for 7 years from 1990-1997 and left ISRO in the year 1998. Shri M.G. Chandrasekhar worked as a Scientist Engineer with ISRO and left in the year 1998. One Shri Ramachandran Viswanathan, an American citizen, is the connecting bridge between former employees of ISRO and the then serving senior officials of DoS and Antrix. Shri Ramachandran Viswanathan ,through a Company called Forge LLC, USA, brought into effect an MoU dated 28/07/2003 and a subsequent Joint Venture (JV)

Proposal dated 15/04/2004, which form the backdrop of the incorporation of the respondent company ostensibly to render SDMB Services. It is the JV proposal, which was presented to officials of ISRO, DoS and Antrix by Shri Ramachandran Viswanathan, and was subsequently converted into the contract in question, for lease of spectrum or 'Space Segment Capacity'.

(8) Further, in 1998, a wholly owned subsidiary of this Company M/s. World Space India Pvt. Ltd., was incorporated in Bangalore. Shri D. Venugopal and Shri. M.G. Chandrasekhar were made Vice President (Operations) and Managing Director of this wholly owned subsidiary. Shri Ramachandran Viswanathan was serving as the Managing Director of M/s. Forge Advisors LLC, USA in 2003. During this year, he met Shri K.R SridharaMurthi, the then Executive Director, M/s. Antrix Corporation Ltd, who formed part of the Indian Delegation to the USA under the then Chairman, ISRO and this meeting led to the signing of an MoU dated 28/07/2003 and a subsequent JV Proposal dated 15/04/2004 to SDMB services (also referred to as 'Digitally Enhanced Video and Audio Services').

(9) The JV Proposal dated 15/04/2004 by Shri Ramachandran Viswanathan through M/s Forge LLC, USA was received by Antrix under the chairmanship of Shri G. Madhavan Nair. He was also functioning, as the Secretary, Department of Space, and the Chairman of the Space Commission. After receiving the same, Shri G. Madhavan Nair in connivance with the above officials and Shri A. Bhaskaranarayana, the then Director, Satellite Communication & Navigation Programme Office (SCNPO), ISRO, DoS and Smt. Veena S. Rao, the then Additional Secretary, DoS, who also formed part of the Board of Directors of Antrix, without going through the formalities and procedures required to be complied with under the

various wings and Ministries of the Government, aided the process of signing the illegal agreement dated 28/01/2005 which allocated transponder capacity in the S-Band spectrum infavorof Devas. No attempt whatsoever was made to discover whether any other entity had the required technology and finances superior to the Respondent No.1 Company.

(10) It is stated that when Multimedia technology was unknown to the world in 2005, Devas misrepresented that they were owners and IPR holders of the technology which has proved to be false by the Authorities of the Government of France, pursuant to a Letter Rogatory dated 07/11/2017& it was confirmed that the IPR for Digital Video Broadcast- Satellite Handheld (DVB-SH) technology was granted to ETSI in Europe. DVB-SH is a hybrid technology and the services to be provided by the Respondent No.1 Company could not have been rendered without this technology. Further, it was confirmed that the IPR which was granted as late as 2007, with subsequent second versions and technical revisions in 2008, 2010 and 2011, respectively, and Devas at no point of time, acquired the IPR or the right to use the IPR of this technology from ETSI.

(11) The 'INSAT Coordination Committee' (ICC) and the Department of Space (DoS), were the competent authorities to allocate space segment spectrum. The ICC had not given any authority to the then officials of Antrix. Nonetheless, without any authority in this regard existing in the Applicant Company, the then officials of Antrix entered the contract dated 28/01/2005 in favour of the Respondent No.1 Company for lease of spectrum. The contract dated 28.01.2005 was in complete violation of the 'Satellite Communications' Policy of the Government of India as the hybrid SDMB Services to be provided under the said contract were not even contemplated by the SATCOM policy.

(12) The Respondent No. 1 Company did not have any space segment allocation from DoS, carrier plan approval and up linking permission from the Network Operation and Control Centre (NOCC) of the Government of India, and frequency authorization from the Wireless Planning and Coordination Wing (WPC) of the Government of India. Further, the 'Technical Advisory Group' (TAG) which is to be consulted on any new technological developments and use of satellite Applications was kept in the dark about the contract dated 28/01/2005. Though the contract stipulated that the onus of procuring all approvals and licenses is on Devas, the same could not have been signed without any of the licenses having first been obtained by Devas, in view of the heavy investment involved in the launch and operation of satellites by ISRO for making available the space segment capacity.

(13) The then Board of Antrix arbitrarily fixed the price for the leased spectrum and allowed all the transponders in two satellites to be arbitrarily leased to a single party, i.e., Devas, which was in violation of the SATCOM Policy. The then officials of Antrix never consulted DoS or ISRO for approvals regarding the leasing of transponder capacity. No background check was done on the technical and financial capabilities of the Devas in regard to the provision of the SDMB services. The then Chairman of ISRO and Antrix, G.Madhavan Nair in collusion with Smt. S. Veena Rao concealed the existence of the agreement before the Space Commission and Budgetary approvals for the two satellites were obtained from the Cabinet suppressing the existence of the agreement. The 'experimental license' granted to Devas by Antrix was a result of manipulation of minutes of the meetings by A. Bhaskaranarayana. Further, they leased S-Band spectrum to Devas neglecting military requests by the Ministry of Defence for utilization of the spectrum for national security purposes.

In addition to this, it was misrepresented that S-Band spectrum is not available while responding to such requests.

(14) Devas is a Company, which was incorporated without any commercial antecedents and hardly in existence for six months ,sold its shares at exorbitant rates, as high as Rs.1.26 Lakhs per share, to foreign investors. Further, DT Germany, through DT Asia, after investing Rs.430 Crores in Devas obtained only 19% shareholding in Devas. However, the four Mauritius investors after investing Rs.150 Crores, obtained 37% shareholding in Devas. This split in shareholding defies any market practice especially when there is a huge difference in the amounts invested. Obviously, a Private Limited Company with a share capital equivalent to about USD 2200, not having the technical knowhow for the project, being able to obtain such huge sums for a part of its shares cannot be a genuine commercial transaction. Investments worth Rs.579 Crores were brought in Devas, for which FIPB Approvals were sought. However, in all the FIPB applications, the reason for investment was stated to be the provision of "Internet Services". The rendering of SDMB services, which is a hybrid service, and the contract dated 28/01/2005 were concealed from the FIPB authorities. The Devas concealed the contract dated 28/01/2005 from the FIPB authorities knowing fully that the hybrid technology did not exist at the relevant time, and that it did not possess the required technical expertise to render the same.

(15) Further, it was promised in the FIPB application that around 1000 people would get employment in India, whereas in fact only about half a dozen persons were employed in India. Devas through their applications to FIPB authorities, confirmed that the proposed scope of services will only be value-based internet service involving contemporary indigenous technology at a Pan India level. The license issued

to Devas by DoT on 02/05/2008 was only a "Category 'A' ISP License" at a Pan India level and the license did not permit Devas to render the hybrid SDMB Services in India. No mention of such services can be found in the license granted and the monies to the tune of Rs. 579 Crores were brought in, and when the same were not being used for the stipulated ends, the investment would be rendered illegal and loses the eligibility as a protected investment.

(16) The investment of Rs.579 Crores,brought in, instead of being used to render internet services, was used in the following manner that resulted in a case of Money Laundering:

i) Around Rs. 75 Crores were sent out of India by creating a wholly owned subsidiary in the USA, with the Directors of Devas controlling the subsidiary. And over Rs. 180 Crores were sent out as payments towards business support services, without receiving either assets or services and writing them off as losses in the books.

ii) Over Rs. 233 Crores moved out of India in the guise of litigation services. When the earlier payments were made as business support, it resulted in service tax exposure on reverse charge basis. To avoid payment of such taxes, the monies were laundered in the guise of litigation support services and Rs. 92 Crores remained in India out of which a sum of Rs. 21 crores was lying in fixed deposits, which have been seized by the PMLA authorities and Rs. 59 Crores was paid as upfront capacity fee to Antrix. The balance monies were paid out as salaries to the Directors of Devas.

(17) The investors/shareholders of Devas, invested in Devas knowing fully well about the contract dated 28/01/2005 and did not take any measures to ensure that the monies invested by them are utilized for providing the services as contemplated under the said agreement. On the contrary, these investors/shareholders allowed Devas to launder the money

out of India. There can be no doubt that the investors/shareholders worked hand in glove with the officials of Devas to commit the multiple FEMA violations and money laundering activities.The aforementioned Government servants, as well as private persons, who played instrumental roles in the incorporation of the Respondent No.1 Company and the perpetuation of the fraud are accused in the criminal proceedings. Additionally, proceedings under the Prevention of Money Laundering Act are also underway, apart from the fiscal penalties already levied on Devas, its individual office bearers, as well as the foreign shareholders, under the Foreign ExchangeManagement Act. Further, based on investigations conducted in 2010-11, the RoC, Bangalorehad issued a few show cause notices to the Respondent No.1 and the same is before the Hon'ble Delhi High Court on a Petition filed by the Respondent No.1 and the present proposal is not the subject matter of issue or dispute in the present proceedings. The entire picture relating the fraud and criminality in this case has come to light over a period of number of years, following detailed and thorough investigationsand as a result, most of the aforementioned criminal and penal proceedings, including the filing of the charge sheets by the CBI, are subsequent to the passing of the arbitral award and could not, therefore, be placed before the Arbitral Tribunal.

(18) The Respondent No.1 Company has siphoned away, out of the country, almost the entirety of the foreign investment made in India in the guise of spurious payments to its own subsidiary entities. The genesis and entire objective of the Respondent No.1 Company, the subsequent actions taken by the said Company including manipulated/fraudulent FIPB approvals, the fraudulent foreign investments brought into India and then laundered out to USA, the illegal execution of the Antrix-Devas agreement dated 28/01/2005 for services which were

not even in vogue, using technologies not even in the ownership of the Respondent No.1 Company, by way of concealment in conspiracy with the officials of Antrix, DoS and others , clearly establishes the fact that the Respondent No. 1 Company had no real substratum except as conduit for committing illegal actions. It is also evident that the foreign investors/shareholders were hand-in-glove with the Respondent No.1 Company in committing the illegalities, including money laundering activities. The circumstances narrated above clearly show that the objective of the Respondent was to harm public interest and monies, for personal illegal gains of the shareholders/owners of the Respondent No. 1 Company. It is stated that significant public interest is involved in the matter as the Respondent No. 1 company had fraudulently sought to use Rs. 269 Crores of public money for building satellites for exclusive and personal gain of a few, in clear violation of the extant provisions of the law and policy regarding such matters.

(19) It is stated that the 'then officials' of Antrix, nor the Company itself, had any authority to enter into the contract dated 28/01/2005 with Devas. The execution of the said contract was also contrary to the then existing policies of the Government of India, including the SATCOM policy. None of the Government Departments and Bodies who were authorized to take decisions were consulted or involved in the process, nor was their approval sought by either party to the contact. The very existence of the agreement was concealed even from the Union Cabinet.

(20) The creation of the R1 Company as a corporate entity, just a month before the agreement dated 28/01/2005, is a sham, with the objective of committing fraudulent and illegal activities including money laundering for the benefit all the shareholders of the Respondent No. 1 Company, the original

owners and the owners of Forge LLC. The Respondent No. 1 Company had been in violation of the triple test as stipulated to avail the INSAT capacity allocated for the commercial sector namely sound business lines, on a "for profit" basis and consistent with the Government policies in the concerned user sectors.

(21) The policy framework mandates Department of Space and other concerned regulatory authorities to inform, notify, coordinate,and register satellite systems and networks by and for Indian Private Parties following well defined and transparent norms and the SATCOM Policy mandates authorization only by the Indian Administration through its Ministries and Regulatory authorities. Antrix does not qualify as one falling under Indian Administration or a Department of the Government or a regulatory authority to inform/notify and coordinate and register satellite systems and networks by and for Indian private parties and no well-defined and transparent norms were followed.The Agreement in question is in complete violation of Article 3.5 of the SATCOM policy that stipulates a single window clearance through licenses issued by a committee of Secretaries comprising of Department of Space, Department of Telecom, Ministry of Information & Broadcasting, Ministry of Home, Ministry of Defence and MoI with Wireless Advisor to the GoI. "Devas Services" do not figure in the SATCOM policy including the provisions for regulatory approval and licenses and this hybrid service, which is a bundle of telecommunication and broadcasting services involving terrestrial retransmission network and satellite spectrum are connected and traceable to several Ministries, Departments and Wings of the Government.

(22) Devas has not entered into an agreement with Department of Space/INSAT for the use of capacity to render the "Devas Services" as mandated by the SATCOM Policy. Instead, it has

entered into an agreement with Antrix, which is not authorized by law to enter into agreements to award transponder capacity to any party. The letters of Rogatoryissued by CBI to the FrenchAuthorities,itis interaliastated that as on 28/01/2005, there was no approved technology to provide video, multimedia and information services through satellite to handheld devices. It is also revealed that ETSI holds the copy rights of the said standards and that the developers of the said technologies hold the patent. As per the report dated 15/05/2018 of Ms. Chantal Bonardi, Project Manager/ Technical Officer, ETSI neither M/s Forge Advisors LLC USA nor M/s. Devas Multimedia Pvt. Ltd., Bangalore approach ETSI during the period from 28/07/2003 to 28/01/2007 or even afterwards, with respect to DVB-SH technology and this fact is corroborated from the testimony of Mr.Loyau, Legal Director, ETSI.

(23) Further, the National Frequency Allocation Plan ("NFAP") in 2002 and 2008 brings out the broad frequency band outlay of various services duly catalogued U/s. NFAP 2002 and 2008. "Devas Services" do not figure in this frequency band. It is very important that the agreement dated 28/01/2005nowhere indicates the network details including the frequency band ,regarding the deployment of satellite component and terrestrial component ,without which the whole agreement becomes empty, unusable, and unenforceable. The fact that multimedia services have not even emerged in the scene, it is imperative to state that doing any services involving broadcasting and telecommunication using spectrum and terrestrial mode requires step by step compliance involving various ministries and departments, (steps prescribed prior and post 09/06/2006) which included compliance even prior to entering into a lease agreement for a transponder for space capacity segment which had not been compiled by the

Respondent No. 1 Company. Shankara Committee had no locus standi whatsoever, when the entire governance regime was only in the hands of the various Ministries, Department and the Wings of the Government. In the light of governing policies, norms, and procedures, Antrix did not have the locus standi to discuss the issue of leasing transponder capacity/space segment to the Respondent No. 1 Company but went ahead approving it and authorizing the Executive Director to sign it.

(24) Further, the agreement on behalf of the Respondent No.1 Company was signed by one Mr.Sree Ram Gururaj (S.R. Gururaj) and the same came to the knowledge of the investigating agencies that S. R. Gururaj was a commerce graduate on the date of signing the agreement and became a C.A. Since 1997, he was an article clerk of Mr. M. Umesh, Chartered Accountant and left the job in April/May 2008. It is very clear that the Act of fraud is evident that not even Directors have signed this agreement or any responsible person, who can be made accountable, and the investors have not questioned the same.

(25) The then officials of Antrix in collusion with the Respondent No. 1 Company, allowed all the transponders on GSAT-6 and 6A to be leased to a single private party the Respondent No. 1 Company, in contravention to the SATCOM policy. The Respondent No. 1 Company had fraudulently claimed that it had ownership and right to use IPR in the design of Digital Multimedia Receivers ("DMR") and Commercial Information Devices ("CID").Further, it is revealed that in 58th Meeting of the Board of Directors, held on 17/03/2005 at Bangalore, Mr. G. MadhavanNair, informed the Board that Antrix had signed a contract worth US$ 144 Million with the Respondent for leasing of S-Band Transponders over a period of 12 years. Ms.Veena S Rao, the then Additional Secretary (AS),

Department of Space, being one of the Directors on the Board of Antrix was also present in the said meeting and she was aware of the agreement between Antrix and the Respondent No. 1 Company for leasing of S-Band Transponders. However, the same was concealed before the 104th Space Commission meeting which was attended by the aforementioned persons forming part of the 58th Board Meeting of Antrix.

(26) Further, when the TRAI recommendations, even as late as 2008, explicitly stated mobile TV services using satellites were not available in India, the agreement dated 28/1/2005offering the same is fraudulent, illegal and void *ab-initio* in the absence of any statutory policy or regulation. The pricing mechanism adopted under the agreement dated 28/01/2005 is in shocking contrast to the pricing of spectrum recommendations by TRAI on 11/07/2008. The pricing of recommendations by TRAI on 11/07/2008 took into consideration several categories of service providers. The agreement dated 28/01/2005 grants transponder capacity exclusively in favour of the Respondent No. 1 Company. Even on repeated requests by the Ministry of Defence on the allocation of S-Band spectrum for defence purposes vide the Integrated Space Cell meetings in October 2004, Defence Space Vision 2020, 3rd Task Force Meeting of HQ Integrated Defence Staff with Department of Space, the request was out rightly rejected thereby compromising security. While these requests were being made, the transponder capacity was already being allotted to the Respondent No. 1 Company vide the agreement dated 28/01/2005, through a well-organized conspiracy.

(27) The Respondent No.1 Company confirmed in the FIPB Applications that the proposed scope of services will only be value-based internet service involving contemporary indigenous technology, majority of which would be developed

locally in India. It projected an employment graph commencing from a threshold of 90 and would be crossing a 1000 mark. None of this was even attempted to be achieved and the foreign investments were only brought in to be laundered abroad.The Respondent No.1 Company also affirmed that the services would be Pan India. To show on record that the Respondent No.1 Company is an ISP, the company appeared to have provided services between 25-35 people of Jayanagar, Bangalore for which one need not have to takeFIPB approval and bring investments into India to the extent of Rs. 579 Crores, none of which was utilised for the rendition of ISP services. The types of services which can be provided under the ISP license issued on 02/05/2008 to the Respondent No. 1 Company has been catalogued completely and the same does not envisage or permit the S-DMB services.

(28) Four entities from Mauritius subscribed shares for premiums of around Rs. 150 Crores and the balance shares with premiums of Rs. 430 Crores was subscribed by DT Germany through its subsidiary DT Singapore. Curiously DT Singapore got only 19% shareholding whereas the Mauritius entities own 37%. This skewed shareholding further fortifies the element of fraud in the entire dealings of the R-1 Company.The share subscription agreement between the R-1 Company and its investors/shareholders clearly refers to the agreement dated 28/01/2005 and the payments made in connection therewith.

(29) The object of Devas was to harm public interest and monies, for personal illegal gains for its shareholders/owners. Significant public interest is involved in the matter as the Respondent No. 1 Company had fraudulent sought to use Rs. 269 Crores of public money for building satellites for exclusive and personal gain of a few, in clear violation of the extant provisions of the law and policy regarding such matters. Hence the present petition is filed.

3. Dr.M.G.Chandrashekar, the Ex-Director of the R-1 Company, has filed Affidavit-in-Objection dated 15th March, 2021, on behalf of Devas by inter-alia contending as follows:

(1) The present Petition is not maintainable as it purports to be in pursuance of a sanction dated 18.01.2021. However, it fails to comply with, the second proviso to Section 272(3) of the Companies Act, 2013, which mandates that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representation. In the instant case, no opportunity whatsoever was given to the R1 Company prior to the accord of the aforesaid sanction by the Central Government. And this proviso is applicable not only to the Registrar but also any person authorized by Central Government, failing which 272(e) of the Companies Act will be misused to circumvent the second proviso to Section 272(3) of the Companies Act. The intention of the legislature to provide for a hearing is so that there is an opinion formed by either the Registrar or the person so authorized to look into the affairs of the company after giving a fair opportunity of hearing and hearing is provided so that there is a built-in threshold due to these severe consequences.

(2) The scheme of the Companies Act regarding winding up U/s. 271(c) of the Companies Act is that the winding up Petition can be filed before this Tribunal only after an Application of mind by the Government or its agencies like Serious Fraud Investigation Office ("SFIO"), or Registrar of Companies ("ROC"), after an opportunity of the hearing is provided to a Company. Without following this procedure and without giving any pre-filing opportunity of hearing to the Respondent Company, the present winding up petition is not maintainable U/s.271(c) of the Companies Act. The requirement of a pre-filing opportunity of hearing to the Respondent Company

cannot be taken away by the Central Government by merely invoking Section 272(1)(e) of the Companies Act.

(3) The Petition is mala fide and ought not to be entertained. The Respondent Company had initiated an arbitration proceeding under an Agreement dated 28.01.2005 between the Petitioner/Antrix and the Respondent Company ("Devas Agreement") and the same was illegally terminated by the Petitioner on 25.02.2011. Since the Devas Agreement had an arbitration clause, the disputes in relation to its termination were referred toan International Chamber of Commerce ("ICC")being arbitration Case No.18051/CYK on 01.07.2011 ("ICC arbitration"). Neither in the termination letter dated 25.02.2011 nor in the pleadings filed in the ICC arbitration, was there a whisper of any fraud committed by the Respondent Company or its ex-directors or officers. The ICC Arbitration Tribunal gave a unanimous award dated 14.09.2015 against the Petitioner. Under the ICCaward a sum of USD 562.5 million a/w. interest became due and payable by the Petitioner to the Respondent Company. The Petitioner, therefore, became a debtor of the Respondent Company. It is inconceivable and untenable in law that a debtor is allowed to seek a winding up of its creditor and this action of the debtor to prevent the creditor, Respondent Company, to pursue its remedies in law in India is untenable and wholly mala fide and this Hon'ble Tribunal ought not to countenance such action of the Petitioner. Fraud should have been raised at the outset at the stage of termination of the Devas Agreement and cannot be raised at such a belated stage post the ICC Award.

(4) The Petition is indeed a travesty of justice. The Hon'ble Supreme Court of India by its order dated 04.11.2020 passed in SLP No. 28434/2018, Devas Multimedia Pvt. Ltd. vs. Antrix Corporation Limited, had permitted Devas to seek deposit of the sum awarded from the Hon'ble Delhi High Court in

proceedings and thus proceedings are currently pending adjudication before HC. Further, by filing the present petition and getting a provisional liquidator appointed, who has suspended the powers of all the lawyers of the Respondent Company to represent the Respondent Company in various proceedings, including the proceedings relating to the ICC arbitration pending in Hon'ble Delhi High Court (in OMP (Comm) No. 11 of 2021), the Petitioner has ensured that the Respondent Company is not able to defend itself effectively and enforce its legal rights. The mala fide conduct of the Petitioner is writ large.

(5) The provisional liquidator appointed by this Hon'ble Tribunal is also not acting bona fide. On one hand, the provisional liquidator has sought to cancel the Vakalat names of the lawyers acting for the Respondent Company, and on the other hand,is substituting himself in every forum as representing the Respondent Company, without defending its interests. He is acting in a manner whereby he is supporting the Petitioner in all forums. The provisional liquidator has once again filed various interim reports which only attempt to buttress the case of Petitioner without examining detailed facts. The conduct of the Provisional Liquidator can also be seen from order dated 30.01.2021 passed in CBI proceedings where Provisional Liquidator made a statement that he is not pursuing an application which was in the interest of the Respondent Company. The Respondent Company had filed an application for deferment of arguments on charges until the conclusion of investigation and other grounds. The Provisional Liquidator appeared and stated that he was not pressing the aforesaid Application.

(6) The Petitioner is a wholly owned company of the Government of India. The sanction is being given by the Central Government to another arm of the Central Government itself,

i.e.,the Petitioner. The provisional liquidator is also a Central Government employee; therefore, the Central Government is being a judge in its own cause, which ought not to be permitted by this Hon'ble Tribunal. During 1990s, there was a dynamic time for DoS/Indian Space Research Organization ("ISRO") due to the liberalization of theIndian economy. In the early 1990s, DoS/ISRO had become interested in attractingprivate/foreign investment to help fund its activities, particularly in the field of building, launching and leasing telecommunications satellites, which remained a core part of India's spaceagenda.In 1992, DoS/ISRO decided to form Petitioner/Antrix as a marketing arm with the specific goal of attracting foreign and private investors to India's space programmes. As Scientific Secretary, ISRO, the ex-director of Respondent Company No.1 assisted the Chairman to obtain the requisite approval of the Government of India at all levels, including the Prime Minister's Office, for the creation of Antrix as a company fully owned by the Government of India.

(7) Antrix being "a front" for DOS/ISRO, Professor U.R. Rao, whowas then head of ISRO, DOS and the Space Commission, and instrumental in setting up Antrix,became Antrix's first Chairman. The management arrangement continued with Professor Rao'ssuccessors, Dr. K. Kasturirangan, Dr. G. Madhavan Nair and Dr.Radhakrishnan each of whom served simultaneously in the positions of Chairman ISRO and Antrix and the Space Commission and Secretary DOS.

(8) There was nomaterial whatsoever has been placed on record by the Petitioner before this Tribunal to form an opinion that the affairs of the Respondent Company have been conducted in a fraudulent manner and unlawful purposes and/or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance, or misconduct in connections therewith and further it is proper that the

company be wound up. Further, the Petitioner never raised any allegation of fraud either in the termination letter dated 25.02.2011 or in its Statement of Defence dated 15.11.2013 filed before the ICC Arbitral Tribunal.

(9) It appears that after initiation of the arbitration proceedings, and when the Petitioner became aware that it may suffer an adverse award, under the diktat of the DOS/Petitioner, various investigations were initiated against the Respondent Companyand all these investigations were only in retaliation to the arbitration proceedings initiated by the Respondent Company which are false, concocted and a method of arm-twisting the Respondent Company to give up its claims in the arbitration and the ICC award there under. It appears that the sudden hurry to file the present winding up proceedings is to prevent the Respondent Company from pursuing its remedies in India and outside India including in Washington, where enforcement proceedings are pending on behalf of the Respondent Company. No adjudication has taken place by any competent court of law with respect to the alleged fraud. This Tribunal has no finding before it, to come to a conclusion that there has been any fraud by the officers of the Respondent Company or the company itself in terms of Section 271(c) of the Companies Act.

(10) The allegations made in the Petition, including Para 13 and Annexure P-6 to the Petition are identical to the allegations raised by the Petitioner before the Hon'ble Delhi High Court in the arbitration proceedings. Further, thisHon'ble Tribunal being a Tribunal of summary jurisdiction cannot form any opinion unless the allegations of fraud are adjudicated upon by a court of law. Further, not only are the allegations pending adjudication before the Hon'ble Delhi High Court, but the allegations also made by the Petitioner are similar/identical to those pending before CBI Court, PMLA

Court or the Enforcement Directorate. In these circumstances, the Respondent Company and its shareholders, directors and officers are presumed to be innocent until found guilty by a competent court of law.

(11) It is contended that various courts have protected the interests of Devas by granting interim orders in various proceedings initiated by various authorities.The present case is a classic case of an abuse of jurisdiction of not only this Hon'ble Tribunal but also the jurisdiction of other Hon'ble Courts and Hon'ble Tribunals where the Government (not being private party) is bound to act fairly yet is trying to portray an outright civil dispute as a criminal offence. It is a settled law that jurisdiction of this Hon'ble Tribunal U/s. 271(c) is a summary jurisdiction and it has no jurisdiction to decide complicated questions of facts, which require a full-fledged trial before the competent Civil Courts/Tribunals and the Criminal Courts. Therefore, the standard of proof/defence which the Respondent Company has to show before this Tribunal is that the defence raised by the Respondent Company raises triable issues and the defence is not merely a moon-shine defence. Once the Respondent Company shows that the defence raises triable issues, this Tribunal ought to dismiss the winding up Petition and leave the triable issues to be decided by the Competent Courts/Tribunals. In any event, the present proceedings ought to be deferred until the competent courts adjudicate on the allegations made in the present proceedings. The allegations made in the Petition are unsubstantiated and do not constitute/make out the case of"fraud" even if the allegations made in the petition are assumed to be correct.

(12) The allegations raised in the present petition are subjudice either in the criminal cases filed or Section 34 Petition pending before the Hon'ble Delhi High Court being OMP

(Comm.) 11 of 2021 and the Respondent Company and its ex-directors are contesting all these cases which will be dealt with, in detail in those cases.

(13) TheDoS/ISRO needed to use the remaining satellite S-Band spectrum that they still had or face the possibility that the Government of India would take back even more S-Band spectrum and re-allocate that spectrum for terrestrial use. The S-band in India was the last remaining frequency coordinated with the ITU for use in mobile satellite communications, the further diminution of the band was not tenable from DOS/ISRO perspective.Ultimately, after lengthy discussions with numerous DOS/ISRO/Antrix officials over a period of almost two years (including Dr.Madhavan Nair) a non-binding MoU was entered into between Forge Advisors and the Petitioner. Pertinently, Dr.Kasturiranganhas not been charged with any criminal offence either under CBI, PMLA or Enforcement Directorate proceedings or in the arbitration proceedings in Hon'ble Delhi High Court. Therefore, it cannot be said that the negotiations between ISRO, Antrix and Forge Advisors were part of any conspiracy and/or a fraud.

(14) Dr. K.N. Shankara, Mr. V.R. Katti and Mr. MYS Prasad, are not accused of any wrongdoing yet they were the ones who recommended the execution of the Devas Agreement. Therefore, no fraud can be alleged in the execution of the Devas Agreement.After lengthydiscussions, the Devas Agreement was executed on 28.01.2005 and was duly signed on behalf of the Respondent Company by a person authorized to sign by the Respondent Company. Since the Respondent Company had not raised any objection regarding the authority of the signatory to sign on this behalf, no objection can be heard by a third party in this regard. Subsequently, when Dr.Radhakrishanan becamethe Chairman of ISRO and Antrix,he appointed one Dr. B.N. Suresh to examine the Devas

Agreement to review the same. Further it is alleged, the allegations made by the Petitioner that actions of the Respondent Company were contrary to TRAI recommendation is false.

(15) On January 28, 2005, Devas and Antrix executed an "Agreement for the Lease of Space Segment Capacity on ISRO/ANTRIX S-BAND Spacecraft by Devas Multimedia Pvt.Ltd."For almost five years thereafter, Antrix and Respondent Company together worked intensely to develop a first of its kind Integrated Satellite System in India. This system was uniquely capable of deliveringstate-of-the-art communication applications for consumer applications, rural development, e-governance, emergency communications, remote connectivity and secure and strategic services.The Devas Agreement provided that "Antrix shall lease to DEVAS" 5 C X S transponders of 8.1 MHz capacity and 5 S x C transponders of 2.7 MHz capacity "on the Primary Satellite 1 (PS1) with technical performance and other specifications which were to be used as provided in the Agreement. Antrix was also given the right to appoint a senior officer to the Devas Board of Directors to act as an observer without voting rights. Antrix appointed V.R. Katti as its nominee to the Devas Board and thus, was well aware of all material developments as the Respondent Company built its business.

(16) Antrix, ISRO began to take opinions from law ministry and law officer as how to repudiate the contract.Antrix began investigating possible avenues.On 8.12.2009, Dr.Radhakrishnan appointed Dr. B.N. Suresh, Former Member, Space Commission and Director of the Indian Institute of Space and Technology, to chair a committee to comprehensively review the Devas Agreement.

(17) The Respondent Company received a letter dated 25.02.2011 from the Petitioner terminating the Devas Agreement under

Article 7(c) and Article 11 of the Devas Agreement. There was no suggestion of any fraud in the letter of termination. In fact, the amount received by Antrix from theRespondent Company was returned by the Respondent Company without encashing the same. It is clearly establishes that Antrix/ISRO wanted to utilize the S-Band which was very much within Antrix's main objects and the Respondent Company agreed to facilitate to commercially utilize the S-Band,alegal and bona fidebusiness. The business and purpose of the Agreement was well within the Memorandum of Association of both the Antrix as well as Devas (the Respondent Company) and was a bona fide business activity. During the entire process,right upto entering the Devas Agreement, many persons including persons at the highest positions in the government/Antrix, were involved and it is not as if something was done secretly. In the board meeting of Antrix in which the Devas Agreement was approved, many directors were present who have not been made accused persons.Out of the said people,one Director was a working-IAS officers namely Mr. S. K. Das.

(18) By not launching GSAT6-A by 01.07.2010, Antrix was in material breach of the Devas Agreement. The GSAT6-A satellite been launched by then, as it should have been under the Devas Agreement, the Respondent Company would have been in a position to, and would have, immediately rolled out its AV business while waiting for the technology advances of the TD-LTE infrastructure to mature in 2011 before rolling out its broadband wireless access services. Further, the ICC Arbitral Tribunal eventually concluded that Antrix had wrongfully repudiated the Devas Agreement.

(19) It is apparent that the Petitioner cannot identify with specificity, a single fraudulent or illegal act that the Respondent Company has committed. Therefore, the present Petition is an abuse of process of this Hon'ble Tribunal and

should be dismissed. A bare perusal of the Devas Agreement will show that the Respondent Company actually undertook an obligation to pay huge sums to the Petitioner for availing the S-Band spectrum.

(20) The Petitioner has failed to establish that the affairs of the Respondent Company were conducted in a fraudulent manner and that the Respondent Company was formed for an unlawful purpose and/or the persons concerned in the formation and management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith. There is no material on record for this Hon'ble Tribunal to form an opinion that it would be proper that the Respondent Company be wound up.

(21) The Letters Rogatory confirm that European Telecommunications Standards Institute (ETSI) owned the right to a certain technology developed years after the Respondent Company and Antrix entered into Devas Agreement. The Letters Rogatory do not purport that ETSI was the exclusive holder of any intellectual property rights that would have been required for the Respondent Company to have the "ability to design" DMRs or CIDs. Moreover, the Letters Rogatoryconfirms that ETSI held no intellectual property rights that would stand in the way of the Respondent Company developing its hybrid-telecommunications plan for India. As the Letters Rogatory explain, ETSI "does not hold any patent linked to the technology of [the DVB-SH] standard," but rather only holds the "copy rights of the standard." This is consistent with the nature of the development of any telecommunications standard like the newly developed 4G and 5G standards. No one entity holds the intellectual property rights to these standards; rather, the intellectual property rights are pooled into entities like the ETSI, which in turn offers the standard freely for licensing. As

the Letters Rogatory make clear, "there is no way" for ETSI even to "know whether people have downloaded the standard."

(22) The Petitioner alleges that the Technical Advisory Group was "kept in the dark" about the Agreement which is simply false. Antrix's own investigation showed that TAG received a briefing on the deal in November 2004, months before the Agreement was concluded, and that this briefing took place after the High-Power Committee's review and recommendation endorsing the deal. In addition, TAG was apprised of Devas's technological developments through a presentationto TAG on 26.12.2008.

(23) Antrix presents no evidence that Mr.Bhaskaranarayana acted fraudulently or unlawfully in writing the minutes circulated in October 2009. Indeed, the Respondent Company submitted its application for an experimental license to the WPC in August 2008. It is denied that Antrix is a victim of fraud and/or corruption as alleged or at all. On the contrary, the Respondent Company, its shareholders, officers and investors are victim of fraud which is described in the sequence of events. The Petitioner be put to strict proof of all the false allegations being made herein. It is also strange that none of the shareholders have filed any complaint, yet the Petitioner Antrix is filing false and frivolous complaints. The investors of the Respondent Company are world renowned equity shareholders, and it is inconceivable that they will invest into an illegal project. In fact, the investors had meetings with ISRO and DOS before investing in the Respondent Company and its project. Without prejudice, even if any technical violation were to be assumed, it cannot be a ground to winding up the Respondent Company. The Respondent Company can cite various examples where criminal cases against Companies have been undertaken but no winding up proceedings have been filed nor any winding up orders passed

against the said Companies. For example, Satyam Computers, IL&FS etc.

(24) The Petitioner has failed to establish that the affairs of the Respondent Company were conducted in a fraudulent manner and the Respondent Company was formed for an unlawful purpose and the persons concerned in the formation and management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith. There is no material on record for this Hon'ble Tribunal to form an opinion that it would be proper that the Respondent Company be wound up.

4. The Regional Director (South Eastern Region), Ministry of Corporate Affairs, has filed a Reply dated 22.03.2021, on behalf of the Respondent No.2, by inter alia stating as follows:

(1) The Tribunalby an interim an order dated 19.01.2021 had appointed the Official Liquidator, attached to the Hon'ble High Court of Karnataka, Bengaluru as a Provisional Liquidator of M/s. Devas Multimedia Private Limited.The Respondent No. 2 had accorded its sanction for filing winding up proceedings against Devas Multimedia Pvt. Ltd, vide Gazette Notification dated 18.01.2021, which is in compliance ofSection 272 (1) (e) of the Companies Act, 2013. The Respondent No.2 accorded the sanction as an executive act in exercise of statutory powers and the granting of sanction to any person for filing winding up Petition is envisaged under the Companies Act, 2013. Further, Respondent No.2 cannot be a mute spectator and allow any Company to fraudulently manage their affairs, which can be detrimental to the public interest. The role of the R2 is to regulate the Companies' statutory processes and protect the public interest in accordance with law. The contents of affidavit in objection are baseless and beyond the scope of law. The sanction is relatable to section 272 (1) (f) of

the Act and not related to the second proviso to Section 272 (3) of the Act. The said proviso is applicable and confined only to the Registrar.

(2) The bare reading of the Section 272 (3) and the proviso of the Section clearly states that the same is not applicable to any other person as defined in 272(1)(f). The proviso cannot be extended far from the section or sub section and when the proviso is inserted with a particular sub-section and there is no ambiguity in the language with regard to its applicability. The interpretation of any statute or provisions is warranted when there is any ambiguity or no expressed intent is available, but in the present case the proviso being quoted by the Respondent is expressly applicable to the approval sought by the Registrar only. The Hon'ble Supreme court of India also held that a proviso is generally added to an enactment to qualify or create an exception to what is in the enactment, and the proviso is not interpreted as stating a general rule. The proviso cannot be used for interpreting the main enactment and it should not be given greater or more significant role in interpretation of the main part of the enactment.

(3) The ex-management of the Respondent No.1 had miserably failed to prove its bona-fide and there are ample instances of the same against the ex-management of the Respondent No.1. On a proper appreciation of the facts presented to the Union to India and in the petition, it would be clear not only that it was incorporated for a fraudulent purpose but also that the affairs of the Respondent Company were being managed in fraudulent manner. From the findings available so far, it is apparent that the Respondent/DMPLactually conducted its business in a dishonest manner. The conspiracy involves the officials of both Petitioner and Respondent Company as they concealed primary facts from the Government of India and obtained certain approvals fraudulently and therefore, the

officials of the Petitioner Company are also facing corruption charges.

(4) The officials of the Petitioner Company at the relevant point of time conspired to enter an agreement with the Respondent Company. The incorporation of the Respondent Company was for the purpose of entering into the agreement but in reality, it was always supposed to be controlled by the Foreign or US based Directors. The incorporation of R1 Company as an Indian company was itself an act of deception and in order to create a smokescreen, from behind which the foreign nationals and entities rolled out their conspiracy. No reference to Forge Advisors LLC or Devas LLC can be found in the incorporation documents of DMPL. The later events of incorporating DMAI, the promoters of DMPL found a surreptitious method of retaining a hold over DMPL. The significant agreement between the Petitioner and the Respondent Company is now sought to be termed as a mere ministerial act by the Respondent, it involves frittering away national resources in a manner unknown to law and in utmost bad faith. It was not even signed by any Director of the Respondent Company.

(5) The subsequent actions of the Respondent Company also reflects that this company was incorporated for the sake of paper compliance as foreign Directors were inducted in the company and subsequently one wholly owned US subsidiary (Devas Multimedia America Inc.) was incorporated with the money received from foreign entities more or less finding its way to the US subsidiary of DMPL. The US entity has taken away more than 250 Crores from the DMPL, though the foreign investment was allowed for the sake of developing the promised technology indigenously and for generating huge employment in India. The Respondent Company obtained license by making false claims but after receiving such

approval and license they never did any significant business and only took away the money from India.

(6) The Respondent No.2 further states that aroundRs.500 Crores out of the total foreign investment to the tune of 579 Crores has taken out of the country for what cannot be called proper purpose. The fact of taking away the money and not deploying it for the stated purpose is a fact which is never disputed or denied by the ex-management of the R1 Company also. It is falsely represented by the ex-management of the Respondent Company that they were in the position to honour the agreement, but no substantial evidence was produced by the Company to support their claim. It is beyond comprehension that the company was granted a license to provide ISP services and they have received 579 Crores on the basis of approval from FIPB board, but they provided the ISP services for few people for few months only in small locality. It is evident that the company has earned only INR 80000 by providing the ISP services but spend around 500 Crores and this observation alone is enough to prove that the company was running their affairs in a fraudulent manner.

(7) Further, the Provisional Liquidator has filed three reports namely OLR 14/2021, OLR 23/2021 and OLR 31/2021 in the instant case. From the reports of the Provisional Liquidator, it is evident that the Respondent Company is not maintaining any registered office, which is in violation of Section 12 of Companies Act, 2013. Further, it is also ascertained by the Provisional Liquidator that the statutory audit has not been properly conducted and the statutory auditor has not performed duties entrusted on him as per Section 143 of the Companies Act, 2013. The findings of the Provisional Liquidator have corroborated the aspects of fraud, which the Petitioner Company has made out in the present Petition. He has also found that the Respondent Company was in fact

bearing the litigation expenses of shareholders for pursuing the case against Union of India in Bilateral Investment Treaty arbitrations and other litigations without showing any receivable towards this amount incurred and without mentioning this fact in its financial statements/Directors' report. This is in grave violation of the basic tenets of Company law which is that a company is a separate legal entity and separate from its shareholders and depicts the way of siphoning out of money undertaken by the Respondent Company.

(8) The findings of the Provisional Liquidator have also brought out instances of false reports of compliances done by the Respondent Company such as disclosing that AGM of 2019 was held on 30.09.2019 in the registered office at Kaveriappa layout whereas evidently the company did not have any registered office functional at that time. The nature of the Respondent Company's functioning such as not having registered office, not maintaining books of account and records, performing only paper compliances – are similar to shell entities and is indicative of the fraudulent nature of its existence and operations. Further, the fact that the ex-Directors have failed to provide effective assistance to the Provisional Liquidator further goes to show fraudulent intent and unwillingness of the management of the Respondent Company to comply with law of land.

(9) Further, the Registrar of Companies, Karnataka has submitted his report dated 12.02.2021,U/s.272(5) of the Companies Act, 2013 stating that DMPL is liable to be wound up, and such a fraud company should not continue on the rolls of Registrar of Companies and has supported the winding up Petition. Further, the agreement between the Petitioner Company and the Respondent Company to provide the S-Band spectrum was illegal and voidsab-initio.

(10) The Resource i.e. the spectrum is a scarce public good and the Government of India exercises control over this resource as trustee only. The Supreme Court of India had recognized the "Doctrine of Public Trust" and observed that the principal duty of the state, as trustee of public resources, is to protect the resources and use them for the benefit of the public. Any natural resource or public property which is of special consequence can be impressed with public trust only. It is important to highlight that the Government can only manage the resources and allow the private parties to enjoy those resources, but that permission cannot be granted without following an open and fair process. The government has an affirmative duty to act as trustee in regard to these resources and the courts have an obligation to ensure that the government and its agencies fulfil this duty and therefore, the Supreme Court of India recognized the Doctrine of Public Trust to ensure that Government fulfil its duty as trustee.The officials of the Central Government are entrusted to act in bona-fide manner while performing their public duty but in the present case as evident, various officials, who were entrusted to do so failed to perform their public duty. However, the mala-fide actions of these officials cannot be allowed to cause any further harm to the public interest. The incorporation of the Respondent Company is result of those mala-fide actions and hence it will be in public interest to wind up the Respondent Company.

(11) They have relied upon the following judgements in support of their case:

i. Collector of Malabar v. ErimmalEbrahimHajee.[1]

ii. K.L. Patel v. LalbhaiTrikumlal Mills Ltd.[2]

iii. Seth Gulabchand v. Seth Kudilal.[3]

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[1]AIR 1957 SC 688: 1957 SCR 970
[2]AIR 1958 SC 512 : 1959 SCR 213
[3]AIR 1966 SC 1734 : 1966 (3) SCR 623

iv. Dularia Devi v. Janardan Singh[4]
v. ShrishtDhawan v. M/s. Shaw Brothers[5]
vi. S.P. Chengalvaraya Naidu v. Jagannath[6]
vii. Commissioner of Customs v. Essar Oil[7]
viii. State of West Bengal v. Ashish Kumar Roy[8]
ix. State of Maharashtra v. Swanstone Multiplex Cinema[9]
x. Pawan Kumar Dutt v. Shakuntala Devi[10]
xi. SEBI v. KanaiyalalBaldevbhai Patel[11]
xii. HariShankaran v. Union of India[12]

5. The case was listed and heard on various dates viz., 19.01.2021, 08.02.2021,02.03.2021, 23.03.2021, 30.04.2021, 03.05.2021, 05.05.2021, 06.05.2021, 07.05.2021 and 10.05.2021.And it was reserved for orders on 10.05.2021 and pronouncing the judgement today.

6. Heard Shri Tushar Mehta, Learned SGI and Shri N. Venkataraman, Learned ASG for the Petitioner; Shri Rajiv Nayar, Learned Senior Counsel for the Respondent No.1;Mrs.AnuradhaDutt,Learned Senior Counsel for the Impleading Applicant in CA No. 11 of 2021, **through Video Conference.**We have carefully perused the pleadings of all the Parties, the extant provisions of the Companies Act, 2013, the Rules made there under and various citations cited and relied upon by the Parties.

7. Shri N.Venkataraman, Learned ASG for the Petitioner, after arguing the case at length, has filed Written Submissions on 05.05.2021,by inter alia stating as follows:

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[4] 1990 (Supp) SCC 216
[5] (1992) 1 SCC 534
[6] (1994) 1 SCC 1
[7] (2004) 11 SCC 364
[8] (2005) 10 SCC 110
[9] (2009) 8 SCC 235
[10] (2010) 15 SCC 601
[11] (2017) 15 SCC 1
[12] (2019) 6 SCC 584

(1) The fraudulent actions of Respondent No.1 fall squarely within provisions of Section 271(c) and the Petitioner has placed on record their submissions, documents, and arguments in support of the same, which go on to establish the fact that Devas was formed for a fraudulent and unlawful purpose and the affairs of the company have been conducted in a fraudulent manner. In fact, every action of Devas is fraudulent, and these acts of fraud are good enough reasons to wind up the Company under Section 271(c). And Clause 4 along with the Third and Fourth Recitals to the Antrix Devas agreement dated 28.01.2005 defines Devas Services and Additional Affidavit dated 07.04.2021 filed by Devas and the Rejoinder Affidavit dated 02.05.2021 by the Petitioner proves the act of fraud which meets the requirement of Section 271(c) of the Companies Act, 2013.

(2) There is no policy or licensing procedures prevalent either in 2005 or thereafter for Devas Services. Consequently, the act of fraud committed by Devas is promising to deliver a bouquet of services which had no governing policy in India and no licensing procedures. It is evident that the MoU dated 28.07.2003 and the proposal for Joint Venture dated 15.04.2004 laid the foundation of fraud which translated into the Devas Antrix agreement dated 28.01.2005. On 09.06.2004, the then officials of Antrix prepared a note in which Agenda 9 was to consider the note on new business opportunities which had been described as a Joint Venture proposal from Forge Advisors USA for Satellite based services for 13 delivery of video, multimedia and information services through mobile receivers in vehicles and mobile phones and in Para 3 of the said note records the facts that then Chairman of ISRO who was also the Secretary of DoS and the Chairman of Antrix, constituted a committee headed by Dr. K.N Shankara, Director, Space Application Center, Ahmadabad,

which later came out with the unsigned Shankara Committee Report approving Devas Services. It is self-evident that the Shankara Committee comprising of Dr.Shankara and the rest of the Members are all officers working under the control of the then Chairman of ISRO. This self-appointed committee generating an unsigned self-serving report which has no locus standi in law and is in complete defiance to the SATCOM Policy requirement of a CoS represented by various Ministries to decide any technology application, more so when it is any new service involving satellites.

(3) Further, coming to the aspect of ownership, Article 12(a) refers to the warranties given by Antrix to Devas and vide Article 12(a)(iii) and 12(a)(v), there is a positive confirmation that Antrix through ISRO can build, launch and provide lease capacity of satellites and Antrix through ISRO has the ownership and right to use the IPR used in the manufacture and launch of the satellites.

(4) The Additional Affidavit filed by Devas through Shri M.G Chandrashekar dated 07.04.2021 does not dispute the fact of agreement dated 28.01.2005, Devas did not have ownership or the right to use the IPR in the design of DMR and CID. The affidavit clarifies it only meant a future discovery and invention and not something in present on the date of signing the agreement dated 28.01.2005. The mutual warranties issued both by Antrix and Devas vide Articles 12(a) and (b) is unambiguous and unequivocal. Both the parties had confirmed that they were owners and had IPR rights over the respective subjects and the Rejoinder Affidavit dated 02.05.2021 filed by Shri RakeshSasibhushan reiterates and had confirmed that Antrix through ISRO owns and also possess the rights over the satellites. Whereas Devas is taking a contradictory stand by saying Article 12(b) should be read as future discoveries. Such an interpretation is impossible to

conceive since Article 12(b)(iv) uses an affirmative language "Devas has ownership and the right to use IPR". In the absence of ownership and possession of IPR rights, Article 12(b)(vi) would be rendered redundant and useless. The Additional Affidavit of Shri M.G.Chandrashekar dated 07.04.2021maintains complete silence on Article 12(b)(vi).

(5) There is no policy in place for Devas Services. There are no protocol licenses available in India which could have been issued for Devas Services. Likewise, even to lease a transponder satellite, Devas required an allotment letter to be issued by the DoS and no such allotment letter has been produced. There was no licensing regime for Devas Services and the telecom policy broadcasting policy and SATCOM Policy governing telecommunications, broadcasting and internet services contain multiple clearances, approvals, permissions besides major and minor licenses to be issued by various Ministries and various departments under these Ministries. Devas could not produce a single approval, permission, authorisation, or a license required to do Devas services using S-DMB technology and hiring the Satellite Transponder Capacity from the DoS. Thus, proving conclusively and without an iota of doubt, the multiple actions of fraud.

(6) It is a common fact that an ISP license can only enable a service provider to render internet service and an approval for IPTV services can only enable a service provider to provide television services through the same internet to the subscriber or customer base. In addition to the fact that an ISP licensee with IPTV authorization can render its services only using wired line network and cannot use the wireless network including satellite unless specific license, permission and clearances are obtained, except for delicensed (free) band. More specifically, an ISP licensee with IPTV cannot render

Devas Services which besides various technical requirement and parameters also needs to be rendered in a wireless form and any wireless service again requires compliance with series of licensing procedures and approvals, which are conspicuous by their absence in the present case. It is a common fact that no one can perform Devas Services using an S-Band transponder facility by merely holding an ISP license for internet and IPTV services.Further, a meek attempt had been made by Devas that the ISP services which was issued originally was amended to include IPTV service and therefore Devas could have rendered Devas Services with the said license. This submission is not only a technical tragedy but a legal mockery of the licensing regime in India.

(7) The share subscription agreement refers to Antrix agreement states that the portion of the investment will be utilized for payment of upfront capacity fee in S-Band transponders. The share subscription agreement conveys the intention that portion of the investment will go towards payment of upfront fee. But neither the application dated 02.02.2006 filed before FIPB nor does that FIPB approval and the ISP license issued by DoT dated 02.05.2008 through various clauses referred abundantly in the earlier sections of this written submission, had in unequivocal terms made it clear that the license is only for ISP services and the list of shareholders has catalogued the list of shareholders whose 100% FDI will be only towards rendition of ISP services. There is a complete mismatch between the agreement dated 28.01.2005, the FIPB approval, the DoT licenses and section 2.3 of the share subscription agreement.

(8) Further, when monies could not have been diverted for any other purpose other than ISP license, how did the shareholders allow the monies to be used for payment of upfront capacity fee for space segment capacity in S-Band

transponders. It is a conceded fact that the 479 Crores diverted out of India is with the complete knowledge of the board and sent through banking channels outside India, 50% of which towards business support services without receiving any such services and the balance 50% towards litigation expenses when there was no litigation relating to the ISP license issued by DoT dated 02.05.2008. All the shareholders are, therefore, parties to the fraud of illegal diversions of both within India and outside India. More importantly, clause 7.11 concedes the fact that every shareholder has done the due diligence expressing satisfaction. Therefore, every shareholder is conscious of the decision taken to become a shareholder and, in the process, an investor and be a party to the acts of fraud committed by Devas.

(9) Further, the Respondent has been continuously adjourning the matter before this Tribunal whereas they plead exactly the contrary before the US District Court. While passing its order dated 29.03.2021 the US district Court, Western District of Washington at Seattle in which the Respondent was the Petitioner, had held as "Intervenors have asked this Court to hold an evidentiary hearing to assess Respondent's allegations of fraud against the Petitioner. Even if this matter were not on appeal, the Court has jurisdiction to consider the issue, the Court would decline to do so at this time."Therefore, two things are clear that even though it is only a secondary Court dealing with enforcement and should not proceed to hear the case of fraud, the Court expresses the view that it has jurisdiction to consider the issue and for the time being would decline not to deal with it.

(10) It is shocking that the Respondent before this Tribunal pleads there is no urgency in deciding the case of fraud whereas before the US District Court, it wants the matter to be examined. In other words, it wants to delay and protract

before this Hon'ble Tribunal which alone has the competence and jurisdiction to decide the allegations of fraud in terms of Section 271 of the Companies Act, 2013.Therefore, the Respondent cannot be blowing hot and cold seeking hearing on the allegations of fraud before the US Court and seeking a deferment before this Tribunal on the ground that there is no urgency.

8. Shri Rajiv Nayar, Learned Senior Counsel for the Respondent No.1, after arguing the case at length, has also filed Written Submissions dated14.05.2021, by inter alia stating as follows:

(1) The present Petition ought to be dismissed on the ground of limitation alone. Section 3 of the Limitation Act, 1963 provides that irrespective of whether limitation has been raised as defence, it is the duty of the Tribunal to examine as to whether the petition is barred by limitation. The R1 Company has shown the averments particularly para 3 of the synopsis, List of Dates and Para 7 of Petition states that although the fraud occurred in 2005 but the Petitioner discovered the fraud in August 2016. It is well-established law that only the petition has to be examined to determine whether it is within limitation. The Petitioner failed to disclose that the limitation to file a winding up is 3 years when the right to apply accrues. Furthermore, Section 433 of the Companies Act, 2013 provides that Limitation Act, 1963 is applicable to proceedings before this Tribunal. Section 17 of the Limitation Act, 1963 provides that when there is a fraud, the cause of action shall begin to run from the date the fraud is discovered. In this case, it is admitted that fraud was discovered in 2016. It may also be pertinent to point out that in the Hon'ble High Court of Delhi in OMP (Comm) 11/2021 i.e., proceedings for setting aside the ICC Award, Petitioner has filed an amendment application dated 10.11.2016 stating that they have discovered fraud in 2016.

(2) The Final hearing could only take place after advertisement of the Petition, as advertisement of the Petition is mandatory before any final winding up order is passed. It is not a defence of the R1 Company but something which the Petitioner ought to have pointed out and it is the duty of this Hon'ble Tribunal under the provisions of law enumerated hereinafter to advertise the Petition at an appropriate stage but definitely before any final winding up order is passed. Sections 468 and 469 of the Companies Act, 2013, inter alia, empower the Central Government to make rules, inter alia, applicable to winding up. It is seen from Section 468(2)(i), the Central Government is empowered to make rules, in exercise of which the Central Government has framed the Companies (Winding Up) Rules, 2020. These rules specify the procedure for hearing of Winding up Petitions and procedure of winding up proceedings.Before passing of a final winding up order and after admission of the Petition, this Tribunal is mandatorily required to invite the objections through publication of advertisement of Petition by giving not less than 14 days' notice before the hearing. Thereafter, the Tribunal must hear and consider all the objections filed/received in pursuance of the said advertisement before passing a final winding up order. The Companies (Court) Rules, 1959 framed under the old Companies Act, 1956 and the present Companies (Winding Up) Rules, 2020 are parimateria to each other in respect of the requirement of advertisement prior to passing a winding up order. Further, in response to the submission of the R1 Company as to mandatory requirement of advertisement before passing winding up order, Petitioner's Counsel opposed the publication on the following false and frivolous grounds:

i. All the judgments cited by R1 Company were passed under the old Companies Act, 1956 on the basis of Rule

24(2) of the old Companies (Court) Rules, 1959 which specifically excluded winding up Petitions while empowering the Company Court to dispense with the publication. However, under the new winding up rules (i.e. Companies (Winding Up) Rules, 2020) there is no rule which is similar to Rule 24(2) of the Companies (Court) Rules, 1959. In this regard this submission of the Petitioner is ex facie untenable because the earlier position regarding advertisement of a winding up Petition being a mandatory condition precedent is brought forward under the new Companies Act.

ii. The second frivolous argument raised by Petitioner's counsel was that the words 'if any' appearing in Rule 5 of the Companies (Winding Up) Rules, 2020, evidence that this Hon'ble Tribunal is vested with a discretion to dispense with publication of advertisement. The words "if any" do not relate to the discretion to advertise but discretion to hear the company before directing advertisement. Therefore, in view of the aforesaid preliminary grounds, this Hon'ble Tribunal ought to pass a judgment on the aforesaid two preliminary issues raised by the R1 Company before proceeding on merits.

(3) The entire argument of the counsel for Petitioner has been that the Agreement dated 28.01.2005 entered by Petitioner and R1 Company was obtained by fraud and detailed clauses were shown to this Hon'ble Tribunal saying that the Devas Agreement was a sham. In this regard, it is contended that the Tribunal has no jurisdiction to determine whether the Devas Agreement is fraudulent or not. This is being examined by CBI, Enforcement Directorate and to the extent permissible by the Hon'ble Delhi High Court hearing the challenge to the ICC Award.

(4) The Counsel for Petitioner argued on 03.05.2021 that the R1 Company was formed with Rs.1,00,000 share capital. It is a common commercial practice to incorporate a company with limited capital and the required capital is infused subsequently and the entire capital required is not infused at the time of incorporation itself. Furthermore, the foreign investors invested in R1 Company after meeting government officials and satisfying themselves and the seriousness of the government to undertake its obligations under the Devas Agreement. However, the said Devas Agreement was illegally and unlawfully terminated. Thereafter, each of the shareholders brought their own actions against the Government of India. The money was admittedly used for the payment of lawyers and did not go back into the pockets of the shareholders. Therefore, there is no question of any money laundering. Furthermore, there is no complaint from any shareholder of the R1 Company of any fraud and/or misappropriation or money laundering. The Respondent No.2 and the Petitioner have not shown any scheduled and/or predicated offence, without which there cannot be any allegation of money laundering. Therefore, these investors invested the money after due diligence and thus it cannot be said that R1 Company was incorporated to indulge in any unlawful and/or illegal purpose. The allegation that Devas Agreement was obtained by fraudcannot be raised before this Hon'ble Tribunal as this very argument is subjudice in various other proceedings including CBI, PMLA and even challenge to the ICC Award is pending before the Hon'ble High Court of Delhi in OMP (Comm.) No. 11 of 2021.

(5) In terms of Companies (Auditor's Report) Order, 2003, Companies (Auditor's Report) Order, 2015 and Companies (Auditor's Report) Order, 2016,all auditors requireto include in the Auditor's report of each financial and a statement for FY

2010-11 to 2014-15, FY 2015-16 and FY 2016-17 and onwards "Whether any fraud on or by the company has been noticed or reported during the year. If yes, the nature and the amount involved is to be indicated". The balance sheet of 2016 clearly states that "To the best of our knowledge and belief and according to the information and explanations given to us, we report that no case of fraud has been committed on or by the Company or by its officers or employees during the year." Even in 2019-20, which is the last balance sheet it is stated that: "(x) Fraud by company or its officers and employees According to the information and explanation given to us, there are no frauds reported by the company or any fraud has been noticed or reported during the year. This Hon'ble Tribunal would know that the auditor finalizes a balance sheet from the information given by the company and the management. In any event, Petitioner never challenged the aforesaid statements.

(6) In fact, in the balance sheets it is doubtful whether Petitioner is a going concern. It is Petitioner along with the Government which is playing a fraud on R1 Company. Since Petitioner has the liability of the ICC Award, ISRO has stopped giving any further work of leasing of transponder in a satellite, and/or for promotion and exploitation of space products etc., developed by ISRO and has incorporated a new company called New Space India Pvt. Ltd. and all new work is being diverted to this company. If a private person had done this, the Tribunal would have no hesitation in calling it a fraud.

(7) It is correct that the Auditor has been informed by the management that there has been no fraud on the company and/or there has been no fraud by any of its officers. Even if the year 2016 is taken to be knowledge of fraud, it is inconceivable how on the one hand the management of Petitioner company would inform their auditor that no fraud

has been committed on the company, and on the other hand the Petitioner would continue to file applications before the Hon'ble High Court of Delhi for amendment of its challenge to the ICC award, on the ground that a fraud has been perpetrated on Petitioner and thereafter file the present petition on the same ground of fraud, which is being opposed by R1 Company.

(8) In any event, if Petitioner through its balance sheet is representing to the world that no fraud has been perpetrated on it, then under the principles of estoppels it cannot argue that in the very same time period, a fraud was perpetrated on it on any ground whatsoever. This further demonstrates that the allegations in the petition are merely an afterthought, after a unanimous arbitration award was rendered in 2015 by the ICC Arbitral Tribunal, which consisted of a former Chief Justice of India(Dr.AS Anand) against the Petitioner and in favour of R1 Company.

(9) A lot of emphasis was laid by the Counsel for Petitioner as to how the officers of Petitioner colluded with R1 Company to enter into the Devas Agreement. It is not only false but reading of a few documents will show that several officers, who are not accused participated in this process and thus, no finger can be raised against R1 Company.The Board of Directors of Petitioner considered first the negotiations and then the Devas Agreement that was to be executed. Like all companies, the Board of Directors also formed a committee to examine in detail the proposed contract and advantages of executing the same.

(10) Shankara Committee Members:

Sl. No.	Members of Shankara Committee	Accused
1.	Dr. K.N Shankara, Director, Space Application Centre (SAC), Chairman Shankara Committee	

2.	Mr. V.R Katti, Programme Director, Geo stationary satellite system (**GEOSAT**), Isro Satellite Centre (**ISAC**)	
3.	Mr. A. Bhaskarnarayana, Director, SPCO, ISRO	Accused
4.	S.V Ranganath, Joint Secretary, Department of Space	
5.	Mr. M.Y.S. Prasad, Director, Master Control Facility (**MCF**)	
6.	Mr. K.R SridharaMurthi, Executive Director, Antrix	Accused

The 54th Board meeting of Petitioner held on 11thJune 2004:

Sl. No.	**Directors present during Board Meeting**	**Accused**
1.	Shri G. Madhavan Nair – Chairman	Accused
2.	Shri SK Das – IAS and Member (Finance) of the Space Commission	
3.	Dr. PS Goel - Director of ISRO Satellite centre and member Space Commission	
4.	Dr. SS MeenakshiSundaram, Member Space Commission	
5.	Dr. RR Navalgund, Director, Space Application Centre, ISRO Ahmedabad.	
6.	Shri. P. Ravindra Reddy, Director, MTAR Technologies in Hyderabad	
7.	Shri SridharaMurthi(Executive Director)	Accused
8.	Shri. Chandy Andrews, Chief Controller of Accounts, DOS & Director (Finance & Accounts), Antrix. [As a special invitee].	

57th Board meeting of Petitioner held on 24thDecember 2004

Sl. No.	**Directors present during Board Meeting**	**Accused**
1.	Shri G. Madhavan Nair – Chairman	Accused
2.	Dr. PS Goel Director of ISRO Satellite centre and member Space Commission	
3.	Dr. SS MeenakshiSundaram, Member Space Commission	

4.	Shri. P. Ravindra Reddy, Director, MTAR Technologies in Hyderabad	
5.	SridharaMurthi(Executive Director)	Accused
6.	Shri. Chandy Andrews, Chief Controller of Accounts, DOS & Director (Finance & Accounts), Antrix. [*As a special invitee*]	

(11) During the hearing of 03.05.2021, Counsel for Petitioner stated that the Devas Agreement was never placed before any authority and that various authorities like ICC (INSAT Coordination Committee), TAG (Technical Advisory Group) never saw the Devas Agreement. In the 122nd TAG meeting, the Devas Agreement was discussed. At this meeting, the following members were present from Ministry of Communications Department of Telecommunications Shri ArunGolas, DDG (Sat), TEC, Shri A.K. Kalla, DGM, BSNL, Shri P.K. Pandey, Jt. DDG.(Radio) BSNL, Shri Rupendra Kumar, Director (Sat), TEC, Shri Devendra Singh, Director (LR-l), DOT, from Wireless Planning & Coordination Wing, Shri G.K. Agrawal, DWA Ministry of Science & Technology India Meteorological Department, Shri R.C.Bhatia, ADGM (Sat.Met);Dr.Sant Prasad, DOG (Sat.Met.),IMO; Shri A.K. Sharma, Director/IMD Ministry of Information & Broadcasting Doordarshan; Shri D.P. Singh, Director (Engg); Shri J.M. Kharche, Dy. Director (Engg). All India Radio; Shri Y,K. Sharma, Director, Engg (TC); Smt. Ruchl Srivastava, Dy. Director (Telecom)24 Department of Space Applications Centre, Shri K, Bandyopadhyay, Group Director, SAE INSAT Master Control Facility,Shri B.V. Kanade,GD, PUC'. ISRO Satellite Centre INSAT Programme Office, Shri A. Bhaskaranarayana, Prog. Director, INSAT, ISRO HQ – Accused,Dr.S.V.Kibe, Dy.Director, IPO, ISRO HQ, Shri M.L. Hasija,Group Director, SEOG-D, SAC, New Delhi, Shri S. Sayeenathan, DD, FMO. As can be seen only three of the

Members were accused in the CBI charge sheet and, therefore, it cannot be said that the resolutions are tainted.

(12) In the 64thmeeting of ICC held on 23.06.2001, a decision was taken that DoS will acquire and allocate the necessary transponder capacity from foreign satellites for meeting specific customer requirements. For private customers, Government funds will not be used. In order to take care of this, DoS will use its commercial wing Antrix which will enter into back-to-back agreements between the foreign satellite source and the Indian customers. The 65th Meeting of the ICC shows that MoU between Antrix and VSNL (TATA Company) was approved which reaffirms the point that Antrix (Petitioner herein) is only a marketing arm of DoS. Antrix provides transponder lease service; launch services; mission support services, etc to third parties.

(13) It has been stated by the Suresh Committee Report which was set up by Dr. K. Radhakrishnan, who was the Chairman of Petitioner, Secretary of DOS, Chairman of ISRO as well as Chairman of Space Commission at the relevant time to comprehensively examine the Devas Agreement. The Committee stated that it is a usual practice for name not to be mentioned. In any event, the Cabinet was aware that a private party was going to use the transponder capacity in the satellite for which approval was being sought and even then, the approval was granted. It may also be noted that the Devas Agreement was terminated on account of force majeure and not due to any fraud committed by R1 Company. In fact, it was Petitioner which admittedly was unable to perform its obligations under the Devas Agreement due to the alleged force majeure. Further, the letter records that force majeure has occurred on 23.02.2011 in view of the policy decision of Central Government and since the force majeure cannot be anticipated, it is likely to be indefinite.

(14) Under provisions of Section 73 of the Indian Contract Act, 1872, if a party commits breach of a contract, the innocent party can treat the breach as rescission of the contract and sue for damages. Further, the Counsel for Petitioner tried to misinterpret the clauses of the Devas Agreement to allege fraud. Firstly, it is reiterated that this cannot be the scope of Section 271(c) and in any event is ex facie untenable. A bare perusal of the recitals of the Devas Agreement will show that there is no edifice to build the allegation of fraud. The clauses clearly demonstrate that neither Petitioner nor R1 Company intended to bypass any procedural requirement and/or approval from any Government Authority. Therefore, all allegations that there was any concealment from any department and/or ministry of the Government of India are false and misleading. If the Devas Agreement provided that all permissions have to be taken by the parties, then the allegation that no permission was taken is baseless. As can be seen from the terms of the Devas Agreement, the satellite was still to be built, launched successfully in orbit before the same could be leased. Parties had sufficient time to take all requisite permissions before the actual leasing of transponder.

(15) In fact, R-1 Company, in order to undertake the experiment of its technology, applied for an experimental license to Wireless Planning and Coordination Committee ("WPC"). Indeed, a successful experiment of Devas technology was achieved which was reported to WPC. Therefore, to presume that parties under the Devas Agreement would not have obtained permission is fallacious. On 7.05.2009, the WPC granted the R-1 Company a license to conduct a short term "Experimental/Trial of wireless equipment at Bangalore", which allowed the R-1 Company to use all parts of its system, including terrestrial reuse of spectrum. On 15.07.2009, the R-

1 Company's experimental license was extended through 30.09.2009.

(16) After successful experimental trial by R-1 Company in September 2009, R-1 Company prepared an elaborate and detailed Application with description of the R-1 Company's Integrated Satellite System with all technical parameters for frequency authorization/operating license to be submitted to WPC/DoT. The same was submitted to Petitioner/ISRO in 2010 and was finalized in consultation with Petitioner/ISRO personnel. In February 2011, the Devas Agreement was illegally terminated, and R1 Company's application was never sent by Petitioner/ISRO to WPC/DoT. Therefore, R1 Company had taken all necessary steps towards application to WPC/DoT.

(17) It is evident from the Devas Agreement, R-1 Company never represented that it had a patented technology. It was capable of delivering hybrid services. Moreover, R-1 Companyrepresented that it had the ability to design Digital Multimedia Receivers (DMR) and Commercial Information Devices (CID), which were components used for providing hybrid services. The DVB-SH technology was developed in 2007 and what is known as a transmission system. In 1998, WorldSpace was using a hybrid system by providing Digital Audio Broadcasting (DAB)for satellite - terrestrial digital audio to small user terminals. This was a hybrid technology using both satellite and terrestrial components. WorldSpace successfully used the ITU – DS and ITU-DH Standard for transmission system. In 1998 XM Radio and Sirius Radio used their own TDM-QPSK and TDM-COFMD technologies and not the ETSI technology.

(18) In 2004, Mobile Broadcasting Satellite (MBSAT) provided hybrid Satellite/terrestrial Digital Multimedia Broadcasting to small user terminals in Japan and South Korea and Japan

while using a geo-stationary satellite. Even though TV and Audio broadcast was main objective for the technologies, being digital in nature the technology they could support video, audio and data (multimedia) services. All these satellite-based multimedia broadcasting systems adopted different technologies. None of them used DVB-SH technology. Therefore, the allegation that the hybrid technology required to provide Devas services did not exist back then is completely false and incorrect. Furthermore, it is pertinent to mention that the founders of R1 Company and the engineers working on Devas system were fully involved in the implementation 35 WorldSpace service- the pioneers in satellite digital radio which started service in 1998 over Africa and in 2000 over India/Asia. Three key persons who were involved in the establishment of fully operational WorldSpace system including radio receivers designed and built in India by BPL, India, R1, Mr.Venugopal and Ram Viswanathan and a host of other technocrats and engineers who also worked at R1 Company.

(19) The Petitioner filed a rejoinder dated 02.05.2021 alleging that the affidavit of the ex-Director of R1 Company does not deal with two-way interactive services. The R1 Company filed a sur-rejoinder dated 04.05.2021 stating that initially the allegation of Petitioner was that that DVB-SH technology was only patented in 2007 and, therefore, in 2005 there was no technology for rendering Devas services as defined in the Devas Agreement. It is in these circumstances that the Respondent Company dealt with the allegation of DVB-SH. It is submitted that two-way interactive services are not even rendered by DVB-SH technology. The R1 Company's sur-rejoinder dated 04.05.2021 demonstrated the concept of two-way interactive services and how that was also available with the R1 Company. At this stage, the Petitioner then filed

another rejoinder dated 05.05.2021 to the surrejoinder saying that these services should have been in a box in January 2005 when the Devas Agreement was signed. Respondent No.1 provided a response to this base allegation in the further affidavit of ex-director of R1 Company dated 05.05.2021.

(20) An amount of Rs. 582.65 croreswas received by the Company till 31.03.2011 and till termination the same was used and retained in India only to implement the Devas Agreement and only about Rs. 69 crores were invested in Devas US subsidiary who was providing technical help to R1 Company for the purpose of the Devas Agreement. A sum of Rs. 58 crores were paid to Petitioner as upfront capacity reservation fees. A sum of Rs. 21 crores were in FDs and a sum of Rs. 114 croreswere kept in mutual funds. Subsequently, a sum of Rs. 21 crores lying in the bank account has been frozen. It is only after the Devas Agreement was rescinded in February 2011, that the investors who had put in money and the company itself used the funds to make payments admittedly to various lawyers for the various arbitration proceedings including the ICC arbitration proceedings. It is absurd to suggest that the investors who brought in the money would indulge in money laundering since there was no need for them to send the money to India. In fact, admittedly these moneys have gone to lawyers who did the case and therefore, charge of money laundering is ex facie fallacious.

(21) The argument raised by counsel for Petitioner on 03.05.2021 and again reiterated today verbally is that FIPB permission was only for internet services. Therefore, money brought into the country could not have been used for paying even upfront fee for lease as per Devas Agreement. It is unfortunate that this Tribunal is being mislead at every stage. It is important to look at every document as false plea are being raised by counsel for Petitioner and taking advantage of COVID-19

documents are not being shown to this Hon'ble Tribunal. A perusal of the ISP License of R1 Company makes it clear that SDMB Multimedia services can be provided under the ISP License. Antrix mistakenly equates the services to be provided with the methods through which those services can be provided. The Internet Service Provider licence dated 02.05.2008, provides that Devas could "set up and operate the Internet Services in the licensed service area". R1 Company described its services and its company completely and correctly in its application to the FIPB. Nowhere did R1 Company pledge to the FIPB or any other government agency that its sole raison d'etre would be provisioning of internet services—whether basic or value add. R1 Company properly disclosed to the FIPB that the Company was a dynamic, revolutionary provisioner of satellite and hybrid-based multimedia platforms, and that as a part of its technology it would be bringing Internet to hundreds of millions of Indians.

(22) It is settled law that fraud cannot just be presumed, it must be proved. So even it is proved that FIPB approval/ISP does not cover Devas Services it cannot prove fraud for which other ingredient of fraud i.e., its knowledge must be proved. Therefore, it must be first proved that FIPB approval/ISP did not cover Devas Services which itself can be proved only by bringing in expert technical witnesses. The case of R1 Company is that FIPB approval/ISP was sufficient to provide Devas Services. It may be proved wrong in a trial, but it is also plausible that the same could also cover Devas services.

(23) R1 Company moved to ManipalCenter and later to a commercial building in Jayanagar as its regular offices. Further, R1 Company had an office in Metro Center in Washington and before the cancellation of the Devas Agreement, there were more than 50 employees. The real employment opportunities would have come into picture after

successful launch of the satellites by Petitioner. If the project had taken off there would have been more than 1000 employees. Once the Devas Agreement was terminated most employees left and only a handful were left. In fact, the R1 Company had a Company Secretary namely Mr.Vinod Sunder. Most of the records of the company have been seized in January 2017 by Enforcement Directorate of which the company has no record. CBI has also earlier raided and took several documents. Therefore, to only disclose the current position is yet another way of misleading this Hon'ble Court.

(24) The present Petition has been filed for ulterior purposes and is mala fide. It has been filed only after the order of the Hon'ble Supreme Court of India dated 04.11.2020 wherein it was held that the R1 Company can move the Hon'ble Delhi High Court for deposit of monies by the Petitioner. The entire petition is a bid to thwart enforcement proceedings either before the Hon'ble Delhi High Court or outside India and on this ground alone this Petition should be dismissed. The mala fide is also apparent from the fact that the authority which gave the Petitioner sanction to file the present petition is not only made a party (Respondent No.2) to the proceedings but chooses to argue for about 2 hours to support the case of the Petitioner.The Petitioner has failed to disclose any act, omission, concealment or abuse of position or any connivance with the intent to deceive to gain undue advantage and/or to injure the company or its shareholders or its creditors or any other person.The Petitioner has failed to disclose any misfeasance or misconduct in the formation of management of affairs and/or that it is proper that the company be wound up, which is a requirement U/S.271 (c).

(25) The allegation that in the 104thmeeting of Space Commission dated 26.05.2005 there was no discussion of Devas Agreement. This is not correct as Devas Services have been

mentioned and it is for this reason that Member (Finance) stated that they should have a backup for utilization of capacity. It may also be noted that Mr.Kasturirangan was head of Space Commission, ISRO and Petitioner at the relevant time and had been involved in negotiations with Forge LLC. Additionally, the Petitioner has failed to disclose all minutes and resolution of space Commission and Petitioner. Therefore, without the same no finding can be returned that these issues were placed before the concerned authorities.

(26) Further allegation has been made by Petitioner in its written submissions that incorporation of Devas subsidiary in America namely Devas Multimedia America Inc. ("DMAI") and making payment for business support services is also fraudulent. The allegation is preposterous as it can be understood if a shareholder or creditor makes such an allegation, Petitioner has no locus to make this allegation.In any event, it was with the approval of the board of directors of R1 Company that a business support agreement was entered into and the money owed to DMAI was sent out through proper banking channel. The aforesaid allegation at the highest (through denied) can be a FEMA violation but does not constitute fraud.Accordingly, the Petitioner's allegations that the R1 Company's payments to DMAI were a sham has no basis in fact. The R1 Company made payments to DMAI under established agreements for business services that were necessary for the R1 Company to satisfy its obligations under its Devas Agreement.The R1 Company has also relied on the following judgements:

i. P Srinivasa (T.) vs. Fleming India[13]passed by the Hon'ble High Court;

[13][1990] 68 CompCase 506 (Kar)

ii. MadhusudanGordhandas and Co. v. Madhu Woollen Industries Pvt. Ltd.[14]passed by the Hon'ble Supreme Court of India;

iii. Nehru Place Hotels vs. Bhushan Ltd.[15]passed by the Hon'ble High Court of Delhi;

iv. Mvi. Ahmadur vs. Registrar of Companies[16]passed by the Hon'ble High Court of Guwahati;

v. Falcon Gulf vs. Industrial Designs Bureau[17]by the Hon'ble High Court of Rajasthan

vi. Jagatjit Industries Ltd. vs. Jagatjit Brown Forman, CO[18]passed by the Hon'ble Delhi High Court (DB);

vii. National Conduits vs. S.S. Arora[19];

viii. Lal Chand vs. Radhakrishan[20];

ix. Natural Resources Allocation[21];

9. Shri N.Venkataraman, Learned ASG for the Petitioner, has also filed rejoinder Written Submissions on 14.05.2021, by inter alia stating as follows:

(1) The submissions made by Devas on the strength of the four decisions would no longer hold good in view of the vital changes that had taken place through the new Companies (Winding Up) Rules, 2020 and in the IBC, 2016. In light of the same, the referred judgments become inapplicable to the present Companies Act, 2013. Devas is a non-performing Company since day one and does not involve any creditors, bankers or any other stakeholder. All the above three parties are duly aware of the winding up proceedings under Section 271(c) and one of the shareholders has impleaded itself before

[14][1972] 42 Comp Cas 125
[15]182 (2011) DLT 300
[16]1972 SCC OnLineGau 7
[17]1993 SCC OnLine Raj 193
[18]APP 5/2004
[19](1968) 1 SCR 43
[20](1997) 2 SCC 88
[21]In Re: Special Reference No. 1 of 2012, (2012) 10 SCC 1

this Tribunal and the shareholders are pursuing enforcement action in various jurisdictions because of the appointment of the Provisional Liquidator by this Tribunal vide its order dated 19.01.2021. All the parties connected to the case are aware of the present proceedings.

(2) There are two significant changes in the 2020 rules viz., under the erstwhile 1959 Rules, under Rule 96, upon the filing of a Petition it shall be posted before the Judge in chambers for directions as to advertisements. However, the 2020 Rules use a peculiar expression in the context of advertisements. A reading of Rule 5 in the 2020 Rules would indicate that the expression used regarding advertisement is 'if any'. Therefore, under the 2020Rules, this Tribunal has the discretion to dispense off with advertisement if it deems fit on the facts and circumstances of each case. Therefore, on this very ground, the plea of Devas that advertisement is mandatory must fail. Further, under the erstwhile 1959 Rules, under Rule 24(2), the Judge had a discretion to dispense off with the requirement of advertisement. This discretion was permitted only in non-winding up cases. Under the 2020 Rules, there is no corresponding provision which mandates advertisement of a winding up petition. Therefore, on this ground also, the plea of Devas on advertisement must fail. Therefore, a cumulative reading of both the provisions makes it clear that issuance of advertisements is not mandatory in all cases and if a Tribunal so thinks that in a given case it need not issue advertisement, parties cannot compel the Tribunal to do so. This significant difference in the 2020 Rules had not been brought to the notice of this Tribunal by Devas.

(3) The provisional liquidator has impleaded himself in these proceedings and the concerned court including the accused and their Counsels are aware of the proceedings. Likewise, the PL has also impleaded in proceedings outside the Indian

jurisdiction and the concerned courts and parties are also aware of the same and petitions in opposition are getting filed. Consequently, there is no lack of knowledge or information about the present proceedings. In the circumstances, issuing the advertisement or not doing so is not going to serve any purpose. The whole exercise is a useless empty formality. The plea of non-issuance of advertisement was raised by Devas for the first time during the final lap of arguments and that too orally. Devas had been participating in these proceedings from day 1 i.e., 19.01.2021 and had taken the matter before the NCLAT and also before the High Court and completed all its pleadings by 16.03.2021. It filed subsequently few affidavits and memos which again did not raise this issue. This Hon'ble Tribunal should not entertain this plea on account of this reason too and reject the same as not raised and an attempt to raise it at a belated stage only with a sole objective to delay and defer the proceedings before this Hon'ble Tribunal is to be rejected.

(4) Section 17 of the Limitation Act, 1963 deals with the effect of fraud or mistake. However, Section 17 begins to operate only when a period of limitation in the case of any suit or application is prescribed under the Limitation Act, 1963. Since there is no provision setting out any period of limitation for fraud, one has to take guidance from Article 137 of the Schedule to the Limitation Act, 1963. Devas at the outset had not pleaded this ground anywhere and therefore, is not entitled to raise at this stage. Without prejudice, the submissions made are not sustainable even on merits. The sole argument rendered before this Court is that even according to the Petitioner, CBI had filed its charge sheet on 11.08.2016 and that becomes the starting point on computation of limitation. Petitioner has also filed the same charge sheet in the City Civil Court, Bangalore in November

2016 and consequently, 3 years limitation should be reckoned from the same and if so, the proceedings are barred by limitation.

(5) Devas had erred on facts in limiting its case only on the first CBI charge sheet dated 11.08.2016 or the placement of the same before the City Civil Court in November 2016. CBI did not stop with the first charge sheet; it went on investigating the various elements of fraud that had happened at various points of time based on which it filed a supplementary charge sheet on 08.01.2019. The CBI had issued Letters of Rogatory to various nations seeking particulars of these transactions including in Singapore. When these documents could have been issued by the appropriate authorities, one of the shareholders had taken the matter to Court in Singapore, as a result of which exchange of information is getting delayed in connection with the money trails, beneficial owners and the attendant fraudulent activities. This Hon'ble Court appointed a provisional liquidator on 19.01.2021 and the PL had placed on record three reports namely OLR 14 of 2021 dated 03.02.2021, OLR 23 of 2021 dated 27.02.2021 and OLR 31 of 2021 dated 11.03.2021, in which various information relating to fraud especially the siphoning of funds outside India (though part of the PMLA investigation), has now been nuanced further, showcasing the actual diversion of funds into which entity in the US post the laundering. In the light of the above facts and circumstances, the Petitioner has enough and more time to file this Company Petition before this Tribunal seeking a winding up of Devas U/S.271(c) on the grounds of fraud. The Supplementary charge sheet dated 08.01.2019 is not an independent case. Therefore, going by the own case of Devas, if 3 years have to be reckoned from the date of the supplementary charge sheetdated 08.01.2019, this Company Petition dated 18.01.2021 is very much within the

period of limitation. Therefore, the question of limitation on facts simply does not arise.

(6) The alternative submission of Devas on limitation that the entire transaction in question dates back to 2005 and therefore the limitation period expires in 2008 should fail according to Devas' own submission besides the unambiguous expression employed in Article 137 which mandates institution of a case on fraud based on the date on which the right to apply accrues. The right to apply did not accrue to the Petitioner in 2005 as it was only in 2016 and after that the knowledge on multifarious angles of fraud committed by Devas was acquired by the Petitioner.

(7) It is too well settled a principle of law in India that a same set of actions can lead to plural violations empowering multiple agencies to initiate proceedings under the respective enactments. Though violations are plural in nature, contravening several enactments, the plea of Devas that law should restrict enforcement only under one of the laws and give up the rest should be dismissed at the threshold. It is even more well settled principle of law that it is the respective authority who is empowered to examine the issue and come to a conclusion under the respective enactments, and this has to be done independently without getting influenced in any other manner on the basis of the collateral proceedings. A winding up of a company can be done only under the Companies Act, 2013 and when a petition is filed for the same under Section 271(c), the exclusive jurisdiction to decide and conclude is only with this Hon'ble Tribunal.

(8) In addition, regarding the contours of Section 271(c) and the jurisdiction of this Hon'ble Tribunal to adjudicate the present matter, Devas submitted and argued vehemently that even if there is fraud, this Tribunal must not resort to winding up Devas as it requires something 'extra' to wind up a company.

Several judgments were also cited in support of the proposition that winding up must be the last resort and this Hon'ble Tribunal must explore other options. It is well settled principle of law that it is not permissible to go beyond the language of the statute.

(9) It is neither a case of afterthought nor a case of delay. Even though the ICC Award was issued on 14.09.2015, it was Devas who had obtained the stay as clearly held by the Hon'ble Supreme Court vide its order dated 04.11.2020 and the moment stay was vacated and direction was given for the Delhi High Court to hear the matter, the Petitioner had moved the necessary application to bring on board the aspects relating to fraud to declare even the ICC Award as a nullity.

(10) The Petitioner has not filed the Company Petition either to delay or frustrate any proceedings. In fact, Petitioner has not sought a single adjournment from the date of filing and intentional delay to defeat justice is resorted to only by Devas. Therefore, the submission that Petitioner cannot maintain this petition is clearly illegal and unsustainable.

(11) Devas'contention seeking for cross examination needs to be rejected in toto as Devas did not even press for the same, seriously before this Hon'ble Tribunal in the course of their arguments. This contention is raised out of sheer desperation and frustration besides a clear afterthought solely intended to delay, protract, and abuse and keep abusing the due process of law. The case was first heard on 19.01.2021. The impleading applicant took the matter to NCLAT which rejected the appeal on 11.02.2021 and this order has attained finality. When this Tribunal issued directions to complete all pleadings and fixed the matter for final hearing on 23.03.2021, all pleadings were completed before 22.03.2021. When the matter was about to be taken up for hearing on 23.03.2021, the impleading Applicant approached the Hon'ble High Court of

Karnataka, a day before, challenging the constitutional validity of Section 272(1)(e) of the Companies Act, 2013 and the sanction accorded by the Central Government. When the matter was heard, the company took dates of its convenience staggered over four weeks and completed the hearing on 22.04.2021.

(12) The Hon'ble High Court was pleased to dismiss the Writ Petition with a clear finding that the whole petition is fought by the impleading applicant as a proxy war on behalf of Devas which is nothing but a clear abuse of process of law. It captured vide paras 31 to 41, the multifarious issues and acts of fraud committed by Devas and the High Court was pleased to render a finding that as against all these allegations of fraud, the impleading applicant had not made even a whisper. After upholding the Constitutional Validity, the Hon'ble High Court was pleased to dismiss the Writ Petition on 28.04.2021, imposing a cost of 5 Lakhs.

(13) The Petitioner's Counsel completed the arguments on the 03.05.2021. When the Tribunal wanted to post the matter the following day, Senior Counsel for Devas requested the matter to be heard on 05.05.2021 and agreed to appear and conduct the matter. On the same day, i.e, 03.05.2021, the impleading applicant filed a Writ Appeal in W.A 519/2021 against the order of the Learned Single Judge dated 28.04.2021 rendered in W.P 6191/2021. The Writ Appeal came up for hearing on 05.05.2021 and in spite of repeated pleas in seeking a deferment of this Hon'ble Tribunal hearing the matter which was under progress since the Union of India was arguing the case before this Hon'ble Tribunal, the Division Bench of the Hon'ble High Court declined the request and allowed the Tribunal to proceed with the matter and adjourned the writ appeal to 12.05.2021. Consequently, the learned Senior Counsel for Devas appeared before this Hon'ble Tribunal and

completed arguments. Now, to further frustrate the proceedings Devas had moved the present I.A seeking for cross examination of the officials of Antrix. This request for cross examination, when the proceedings are about to get closed is filed out of sheer desperation and one intended to clearly frustrate the ongoing Tribunal proceedings.

(14) The Petitioner has produced their arguments on SATCOM Policy and the same had also submitted as written submissions and not a single submission raised was denied by Devas. When SATCOM Policy conceives a series of Ministries, Departments, Committee of Secretaries and various other technical committees, even to examine approved services under the SATCOM Policy and legitimate licenses to be issued thereupon, the self-appointed committees and self-generated reports for Devas technology and Devas Services, something not known to the world and which was neither conceived in SATCOM Policy nor for which any licenses were in place, could not have been approved. A surprising stand was taken by Devas that SATCOM Policy does not apply to it at all and applies only to Antrix even under the agreement dated 28.01.2005. Petitioner submits that this agreement which is fraudulent, and a nullity contains a specific clause Article 12(b)(vii). The whole and the sole responsibility vests only with Devas and it is too late in the day for Devas to plead that SATCOM Policy and licensing procedures do not apply to Devas. Furthermore, SATCOM Policy does not deal with only technical details. It also deals with various services and service providers, the process, protocols, permissions and procedures including the manner of grant of licenses. Consequently, this submission of Devas needs to be rejected. The Learned Counsel for the Petitioner has also relied on the following judgements:

i. RamanaDayaram Shetty v. International Airport Authority of Indiapassed by Hon'ble Supreme Court of India[22];
ii. S.G Jaisinghani v. Union of India, passed by Hon'ble Supreme Court of India[23]
iii. KasturiLal Lakshmi Reddy v. State of Jammu,passed by Hon'ble Supreme Court of India[24]
iv. Common Cause, A registered society v. Union of India,passed by Hon'ble Supreme Court of India[25]
v. ShrilekhaVidyarthy v. State of U.P,passed by Hon'ble Supreme Court of India[26]
vi. LIC v. Consumer Education and Research Centre[27]
vii. New India Public School v. HUDA,passed by Hon'ble Supreme Court of India[28]
viii. AkhilBharatiyaUpbokta Congress v. State of MP[29]
ix. Sacchidanand Pandey v. State of WB,passed by Hon'ble Supreme Court of India[30]
x. DharampalSatyapal Limited v. Deputy Commissioner of Central Excise, Gauhati&Orspassed by Hon'ble Supreme Court[31]
xi. Ram DeenMaurya v. State of Uttar Pradesh[32]
xii. May George v. Special Tahsildar&Ors[33]
xiii. Delhi Airtech Services Pvt. Ltd v. State of Uttar Pradesh [34];

[22] 1979 3 SCC 489
[23] 1967 2 SCR 70489
[24] 1990 4 SCC 1489
[25] 1996 6 SCC 530489
[26] 1991 1 SCC 212489
[27] 1995 5 SCC 48
[28] 1996 5 SCC 510489
[29] 2011 5 SCC 2
[30] 1987 2 SCC 295489
[31] 2015 8 SCC 519
[32] 2009 6 SCC 735
[33] 2010 13 SCC 98
[34] 2011 9 SCC 354

xiv. Panther Fincap and Management Services Ltd v. Union of India,passed by the Hon'ble Bombay High Court[35]

xv. SatlujJalVidyut Nigam v. Raj Kumar Rajinder Singh[36]

xvi. BhauraoDagduParalkar v. State of Maharashtra and Ors.

xvii. ShrishtDhawan v. M/s Shaw Brothers[37]

xviii. Venture Global Engineering v. Tech Mahindra Limited[38]

xix. Center for Public Interest Litigation v. Union of India, passed by Hon'ble Supreme Court of India[39]

10. Since the instant Petition is filed Under Sections 271 and 272 of Companies Act, 2013, it is necessary to extract Section271 of Act, which reads under:

"**271.** "A company may, on a petition under section 272, be wound up by the Tribunal:-

(a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States public order, decency or morality;

(c) if on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

[35] 2005 SCC Online Bom 368
[36] 2019 14 SCC 449
[37] 1992 1 SCC 534
[38] 2018 1 SCC 656
[39] 2012 3 SCC 1489

(d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
(e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up."

11. Therefore, the main issues which arise for consideration in the case are as follows:
    (1) Whether the Central Govt. has duly sanctioned the Petitioner to file the instant Petition or not;
    (2) Whether the affairs of Devas have been conducted in a fraudulent manner or it was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance,or misconduct in connection therewith and that it is proper that Devas Company be wound up.

12. The basic and un-controverted facts of case, are as follows:
    (1) Antrix Corporation Limited (Antrix/Petitioner),which is a wholly owned Government of India Company under the administrative control of Dept. of Space, was incorporated on 28.08.1992 under the provisions of Companies Act, 1956 with its principal place of business at AntarikshBhavan, Near New BEL Road, Bangalore 560 231, India.
    (2) Devas Multimedia Private Limited (Devas/Respondent No. 1) a Company incorporated on 17th December,2004, under the provisions of the Companies Act, 1956 with its principal place of business at Preema Gardenia, 357/6 1st Cross, 1 Block, Jayanagar, Bangalore 560 011, India. The majority of Devas' shares are owned by Deutsche Telekom AsiaPvt.Ltd(DTAsia),Telcom Devas MauritiusLtd., (Telcom Devas)andCC/Devas (Mauritius) Ltd (CC/Devas).
    (3) Both the Companies entered into Written Agreement on 28thJanuary, 2005 wherein Antrix agreed to make available

Devas, on lease basis, a part of space segment capacity on Primary satellite 1(PS1) and on option to gain additional capacity on Primary Satellite 2 (PS2) to be manufactured for similar services without any immediate backup in S-Band, on the request made by Devas.In short ,Antrix agreed to build, launch and operate two satellitesand lease spectrum capacity on

thosesatellitestoDevas,whichDevasplannedtousetoprovidedigitalmultimedia broadband casting services across India.In return, Devas agreed to pay to Antrix Upfront Capacity Reservation Fees (UCRF) of USD 20 million per satellite, and lease fees of USD 9 million to USD 11.25 million per annum. The lease term was twelve years, with a right of renewal at reasonable lease fees for a further twelve years.

(4) The said Agreement dated 28thJanuary,2005 was terminated by Antrix, vide proceedings No.Antrix/07/85(02/2011) dated 25thFebruary, 2011 with immediate effect mainly on the ground that the Central Govt. has communicated its policy decision as not to provide orbital slot in S-Band to it by invoking clause of force majeure as defined in Article 11.

(5) Aggrieved by the said termination, Devas filed a request on 1stJuly,2011for Arbitration dated 29thJune,2011 with the ICC Court and nominated Mr.Veeder QC as an Arbitrator by invoking arbitration clause as available under Article 20 of the Agreement by claiming damages equal to the value of its business, which is quantified as USD 1.41 billion, plus interest and costs.

(6) Finally an Award dated 14th September, 2015 was passed in Case No. 18051/CYK by International Court of Arbitration of the International Chamber of Commerce (ICC Award) in the case titled as Devas Multimedia Pvt. Ltd Vs.Antrix Corporation Ltd by directing Antrix to pay USD 562.5 million to Devas for damages caused by Antrix's wrongful repudiation of the Devas

Agreement; to pay simple interest on USD 562.5 million from 25thFebruary 2011 to the date of this award at the rate of three month USD LIBOR+4 % Antrix is to pay simple interest at the rate of 18% per annum of the amounts in paragraphs 401(b) and (c) from the date of this award to the date of full payment;

(7) In pursuance to the Award, Devas started taking steps in Indian andForeign Courts to enforce the said Award and those proceedings are pending adjudication.

(8) Since the issue in question would have serious ramifications and Devas is suspected to have committed various fraudulent activities righ from it ts incorporation till obtaining ICCAward, the issue has been investigated by two premiere Indian Investigative Agencies namely, CBI and Enforcement Directorate and they have found that various illegal activities have been committed by Devas and its Management and officers in collusion with officers of Antrix. Accordingly, CBI had filed charge sheet dated 11.08.2016 and supplementary Charge sheet dated 08.01.2019 and similarly ED has also initiated similar action. These proceedings are pending adjudication.

(9) However, the proceedings of CBI and ED could not be brought to the notice of ICC Court as the Award was already passed. Therefore, the instant proceedings have been initiated before the Tribunal.

13. Before examining the above issues, it would be appropriate to advert to the relevant findings as recorded in the Award dated 14thSeptember, 2015 passed in Case No. 18051/CYK by the International Court of Arbitration of the International Chamber of Commerce(ICC Award) in the case titled as Devas Multimedia Pvt. Ltd., Vs.Antrix Corporations Ltd, as obtaining the Award and its enforcement proceedings are material issues and have bearing on

the issues raised in the instant Petition.The relevant observations/findings, as recorded in the Award,are as follows:

(1) The agreement was executed on 28.01.2005. From then until 2010, the parties' relationship progressed smoothly. Among other things, necessary licenses and approvals were obtained,work on the satellites progressed. Devas obtained funding from investors and trials relating to Devas' operating system were conducted successfully. In June 2010, however, Dr K. R. Radhakrishnan the Chairman of Antrix as well as the Secretary of India's Department of Space (DOS) and Chairman of the Indian Space Research Organization(ISRO) (an entity that sits under the DOS) and India's Space Commission sought and obtained legal advice about annulling the agreement. Devas says he did so in response to political pressure that had been created by media criticism of the Devas Agreement; Antrix says he did so because India's military needed to use the spectrum that had been leased to Devas. As will become apparent, Dr.Radhakrishnan's motivation is not necessary to determine. The ultimate result of his conduct, however, was a decision by India's Cabinet Committee on Security (CCS) to annul the agreement. Devas was notified of the CCS' decision on 25thFebruary, 2011.

(2) Devas subsequently commenced the arbitration. Devas alleges that Antrix was not entitled to terminate the Devas Agreement and repudiated its obligations by purporting to do so. Devas says that it has accepted that repudiation and it is entitled to damages equal to the value of its business (which it claims is USD 1.41 billion), plus interest and costs.On 30thDecember 2011,Antrix informed the Secretariat that it had filed an application before an Additional City Civil Judge in Bangalore for an' injunction restraining Devas from proceeding in any manner with the purported arbitration before the ICC". The Tribunal understands that the Application was made under

Section 9 of the Indian Arbitration and Conciliation Act 1996, seeking an order permanently restraining this arbitration from proceeding.

(3) On 9thApril, 2012, the Supreme Court of India orderedthat:"the arbitral proceedings before the learned Arbitrator, appointed under the ICC Rules, shall remain stayed". In light of this order, the hearing scheduled for 12thand 13thApril, 2012 did not proceed and the conduct of this arbitration was suspended. The Supreme Court's order remained in place until 10thMay, 2013, when it dismissed Antrix's Application. Antrix filed a Review Petition but, on 29thAugust 2013, that too was dismissed. On 13thMay 2013, Devas asked that the Tribunal proceed with this arbitration, and on 24thJune 2013, the Tribunal directed that the arbitration would proceed.

(4) On 11thOctober, 2013, after consulting with the parties, the Tribunal directed that the hearing would be held in the week beginning 15thDecember, 2014 in New Delhi. It later transpired that, for serious medical reasons, one of the Tribunal Members, based in London, may have been unable to attend the hearing if it took place in New Delhi at that time. In light of this, and the long delay in the arbitration (as noted above the hearing was originally scheduled to take place in April 2012), the geographical venue of the hearing was moved to London.

(5) In terms of the Agreement, Devas was required to pay to Antrix:UCRF of USD 20 million per satellite in three equal installments and a lease fee of USD 9 million (initially), and USD 11.25 million per annum when Devas became cash flow positive.

(6) Para 126of the award reads as under:

"On25thFebruary 2011 Antrix wrote to Devas informing it that the agreement was terminated. The letter stated:

"the Central Government has communicated that it has taken a policy decision not to provide orbital slot in S-Band to our Company for commercial activities including those which are the subject matter of the existing agreements.

In accordance with Article 7(c) of the Agreement, it is declared that Antrix is unable to obtain the necessary frequency and orbital slot coordination as stipulated in the Agreement.

Without prejudice to the inability expressed under Article 7(c), notice of force majeure as defined in Article 11, is expressed. The policy decision of the Central Government acting in its sovereign capacity is the event of force majeure, which has occurred on 23rdFebruary 2011. The force majeure commenced on 23rdFebruary 2011. The scope and duration of the said decision cannot be anticipated. It is likely to be indefinite. It is not possible for Antrix to take any effective step to resume the obligations under the Agreement. The event of force majeure is beyond the reasonable control of Antrix and is clearly covered by Article 11(b) of the Agreement and, in particular, 11 (b)(v) "... act of governmental authority in its sovereign capacity...".Any possibility of resumption of obligations by Antrix under the Agreement stands excluded. The subject Agreement No.ANTX/203/DEVAS/2005 dated 28thJanuary 2005, therefore is terminated with immediateeffect."

(7) On 28th February, 2011(paras 128/129) Devas wrote to Antrix, denying that the Devas Agreement was terminated and stating that, pursuant to Article 20(a) of the Devas Agreement, it was "referring all disputes arising from or under the Agreement to senior management of both parties."On15thApril, 2011,AntrixwrotetoDevasthatreferredtoitsletterof 25thFebruary, 2011andenclosed acheque for the amount of INR 58,37,34,000 (approximately USD 13 million) as a

"reimbursement" of the UCRF. On 18th April 2011, Devas wrote to Antrix, returned Antrix'scheque and stated (inter alia) that Antrix had failed to state a proper basis for terminating the Devas Agreement pursuant to Article 7(c) of the agreement, and that it was not entitled to rely on the force majeure clause in the agreement because the events said to give rise to the force majeure were self-induced.

(8) Para 131 reads as under:

"Asnotedabove,Devascommencedthisarbitrationon 1stJuly2011.Initially,DevasallegedthatAntrix had repudiated its obligations under the agreement, but that it had not accepted the repudiation, and sought specific performance of the agreement. However, Devas later changed its position. On 13thJune, 2013 Devas wrote to Antrix andstated:

"we refer to your letter of 25 February 2011 in which you purported to terminate the above- referenced Agreement.

There clearly was no basis for you to terminate the Agreement and, accordingly, the purported termination of the Agreement by your 25 February 2011 letter was wrongful and in repudiatory breach of the Agreement. Devas was entitled to accept Antrix's repudiatory breach of contract and to bring the Agreement to an end, whilst claiming damages.

Since then, Antrix also has obstructed the expeditious determination of the arbitration proceedings commenced by Devas.

Antrix continues to be in repudiatory breach of the Agreement even today and has clearly evinced its intention not to perform the Agreement. Devas has elected to, and does hereby, accept Antrix's repudiatory breach of the Agreement, bringing the Agreement to an end as a result of Antrix's wrongful actions.

Devas will be amending its claim in the ICC arbitration to

reflect the withdrawal of its claim for specific performance whilst maintaining its claim for damages as a result of Antrix's breaches of contract.

Devas reserves all of its rights including under Indian law and international law."

(9) Antrix may terminate this Agreement in the event,Antrix is unable to obtain the necessary frequency and orbital slot coordination required for operating PS1 on or before the completion of the Pre-Shipment Review of the PS1. In the event of such termination, Antrix shall immediately reimburse Devas all the Upfront Capacity Reservation Fees and corresponding service taxes received by ANTRIX till that date. Upon such termination, neither Party shall have any further obligation to the other Party under this Agreement nor be liable to pay any sum as compensation or damages (by whatever name called)."Antrix then sent a cheque to Devas for INR 58,37,34,000/- (approximately USD 13 million) as reimbursement of the UCRF.

14. The basic facts stated above clearly establish that the incorporation of Devas itself was with fraudulent intention to grab prestigious contract in question from Antrix in connivance and collusion with the then officials of Antrix. Devas was incorporated on 17thDecember, 2004 and was able to obtain the Contract on 28thJanuary, 2005 i.e.in less than 45 days from the date of its inception. It is a matter of fundamental economics, rather common sense that in order to obtain a prestigious, sophisticated contract like the contract in question, the concerned Company should possess adequate experience and infracture the field for a considerable period of time..In the instant case, it is not in dispute that Devas, at the time of entering into contract, did not possessa minimum experience even to qualify to participate in such contract , much less obtain it. However, it is falsely contended that

it has experienced Scientists/Technical experts to get sophisticated technology as were required to provide in terms of Contract in question. It is made possible only with direct collusion and connivance with the then officials of Antrix.

15. It is a settled position of law that misdeeds and illegal acts committed by such Officials of Antrix would not bind the State and those actions have become-initio void and would not result in any legal/civil consequences. It is an absurd contention rose on behalf of Devas, that after obtaining the contract in question in the above manner, it started to obtain necessary licenses to fulfilits obligations under the terms of Contract. Devas did not stop its fraudulent activities even after termination of the Contract in question. By taking advantage,rather misusing the terms of Article 20 (Arbitration Clause) as contained in the Agreement, to pre-empt Antrix to settle the dispute first by referring to senior Management of both the parties, failing which to invoke arbitration clause, has hurriedly rushed to ICC Court on 01st July, 2011 by-passing due procedure as contemplated under the Agreement. Therefore, Antrix/UOI could not succeed in its efforts to invoke proper arbitration in terms of the above article, as the Apex Court of India did not agree to such proposal, mainly on the ground that invoking Arbitration by Antrix would amount to second Arbitration which was not tenable. Devas not only succeeded in takng the arbitration out of India, but also succeeded in conducting it on foreign soil, on the ground that one of Arbitrators could not travel to India, due to health conditions, though the seat of Arbitration shall be at New Delhi in India. In the normal circumstances, arbitration should be conducted at officially designated place. In the instant case, it is relevant to point out here that both the Companies involved are Indian Companies. Hence, the manner in which the Devas resorted to invoking Arbitration was not bonafide and not fair ,and the

same was resorted to in perpetuation of its fraudulent as were being resorted to from the date of its incorporation.

16. Though the validity of Award is subjudice before Hon'ble High Court of Delhi, the Tribunal is only examining the issue to the extent of fraudulent intention/manner on the part of Devas, in order to adjudicate the issue in question in the instant Petition. In this context, it is relevant to extract para 199 of the Award, which says:

"The Tribunal therefore finds that CCS(Cabinet Committee on Security) decision to annul the agreement was an act of a Governmental Authority acting its sovereign capacity for the purpose of Article 11(b)".

Even though Devas suffered this finding, it was able to obtain huge award and making all sorts of efforts for enforcement of such award, which is questioned and sub-judice before Hon'ble High Court of Delhi.

17. Though the termination of the agreement was not in dispute, in fact it was accepted by the R1 Company before the Arbitral Tribunal, on the contrary it has claimed damages. Accordingly, the Arbitral Tribunal decided the case by awarding damages to Devas. Ultimately, the ICC Award is the bone of contention between the parties in various proceedings initiated in India and abroad. As stated supra, ICC Award itself is under challenge and sub-judicebefore the Hon'ble High Court of Delhi. Antrix/ Union of India could not make out the case of fraud before ICC Court, as it was not aware of the fraud committed by the R-1 Company at that point of time. The Union of India came to know about the fraud only in the year 2016, when the CBI investigated the issue and thereafter initiated various proceedings by invoking various provisions of IPC, PMLA, FEMA etc.,against Devas, its officials, and the then officials of Antrix.

18. Shri Rajiv Nayar, the learned Senior Counsel , since beginning of the case, has attempted unduly prolong these proceedings rather than to defend his case on merits, while at the same continue enforcement proceedings. When Antrix and Union of India have suffered huge ICC Award and are facing its enforcement proceedings, Devas, in all fairness, it should wait for the outcome of proceedings pending before Hon'ble Delhi against the validity of the Award. Therefore, this Tribunal would not permit Devas to succeed at both ends and its bounden duty is to protect public interest and to uphold the law. Since Devas is misusing the legal status conferred on it by virtue of its incorporation by filing various proceedings on un-tenable grounds in India and abroad to enforce ICC Award, it would be just and proper for this Tribunal to decide matter as expeditiously as possible. Therefore, in order to achieve his object to stall the proceedings of this Tribunal, he has filed Company Appeal (AT)(CH) No.02/2021 on behalf of Devas Employees MauritiusPvt.Limited beforethe Hon'ble NCLAT, Chennai by questioning the Interim Order dated 19thJanuary, 2021 passed by this Tribunal in the instant case, which was finally disposed of by an order dated 11.02.2021 by directing the Appellant to file necessary Interlocutory Application before this Bench. Accordingly, CA No.11 of 2021 was filed seeking to implead the Appellant therein in the instant case. Further, not satisfiedwith the said order, the said Appellant has again filed W.P No. 6191 of 2021 before the Hon'ble High Court of Karnataka but the same was dismissed by an order dated 28thApril, 2021, with a cost of Rs.5 lakhs. And not satisfied with this order, it has again filed W.A No. 519 of 2021 with an intention to stall the present proceedings. However, the Hon'ble High court has refused to passany interim orders, as insisted.

19. The main contentions raised by Shri Rajiv Nayar, are being dealt with, in the following paragraphs:

(1) With regard to question of limitation in filing this instant petition, it is to be mentioned here, as stated supra, the fraudulent intentions of Devas, prior and from the date of its incorporation, are very clear, and ultimately its fraud and fraudulent activities are unearthed during inquiries conducted by CBI and ED,which resulted in initiating variouscriminal cases against Devas, its management, the then Officers of Antrix. There is a long history of fraud and fraudulent activities committed by Devas and its Management before and after its incorporation. Though termination of Agreement in question is simpliciter, it is in fact result of various fraudulent activities committed by the promoters of Devas, in direct collusion with the then officers of Antrix. Therefore, it is not correct to contend that cause of action arise only when CBI and ED unearthed mischief/fraud etc and filed its charge sheets. There are two types of causesof action which normally arise to reckon question of limitation in judicial proceedings. One time cause of action and continuous cause of action. In some cases like promissory notes, agreements etc, cause of action for judicial intervention will end as per law unless the parties mutually consent to extend period of limitation. In some cases, like fraud/crimes, adverse possession against public property etc, there cannot be any limitation question and they are deemed to be continuous cause of action to take recourse to judicial intervention. It is relevant to point out here that criminal action taken by CBI/ED is not the subject matter in the instant Petition so as to reckon question of limitation. Moreover, criminal proceedings will lead either to exoneration or convicting the accused depending on the merits of the case. However, it will never lead to Winding Up of Devas Company. Therefore, both the Parties have rightly not raisedquestion of limitation in their pleadings. However, the learned Senior Counsel, by contending that it is the duty of

Tribunal to examine it, though not pleaded in their main pleadings, on un-tenable grounds. Since the incorporation of Devas itself is by fraudulent means and it is abinitiovoid and all their consequential actions too, question of limitation does arise in the instant case. And it is a continuous cause of action.

(2) With regard to the contentions that the Tribunal has no jurisdiction to determine whether the Devas Agreement is fraud/fraudulent or not, as these issues are being examined by CBI, Enforcement Directorate, and to the extent permissible by the Hon'ble Delhi High Court hearing the challenge to the ICC Award, are concerned, as stated supra, the instant Petition is filed under the provisions of Sections 271/272 of the Companies Act, 2013 seeking to wind up Devas Company. Admittedly, the Tribunal alone is competent to decide the issue of winding up petition and Civil Courts jurisdiction in this regard have been ousted by virtue of Section 430 of the Act. When fraud is proved in criminal cases, it may lead to imposition of sentence, but will not lead to Winding Up of a Company. As stated supra, the Tribunal will only examine whether the affairs of Company are being conducted in fraudulent manner etc., in terms of Section 271 of the Companies Act, 2013. Therefore, the contention raised that this Tribunal has no jurisdiction ismisconceived and not tenable.

(3) With regard to the contentions that the Agreement in question was terminated illegally and unlawfully resulting in initiation of action by each Shareholders against the Government of India; the money in question was admittedly used for the payment of lawyers and did not go back into the pockets of the shareholders; no question of any money laundering; there is no complaint from any shareholder of the R1 Company of any fraud and/or misappropriation or money

laundering etcare concerned, it is true that these issues will be examined by respective Courts, as stated supra.

(4) With respect to the contention that the Balance Sheet of 2016 in question clearly states that "To the best of our knowledge and belief and according to the information and explanations given to us, we report that no case of fraud has been committed on or by the Company or by its officers or employees during the year." Even in 2019-20, which is the last balance sheet etc., the mere statements/declarations by Auditors/Charted Accountants would not be deemed to be conclusive proof to establish that there is no fraud or fraudulent activities resorted to in the Company, as the subsequent investigations will prove these.

(5) With reference to the contention regarding advertisement to be published before admission and for final hearing of the Petition in terms of Rules 96/99 or Rules 5 & 7 of CCR 1959/WUR 2020 is concerned, it is true that Advertisement of Petition to be published, depends on the facts and circumstances in a given case. In the instant case, the Tribunal, while passing interim order dated 19th January,2021, appointing Provisional Liquidator, has already afforded adequate opportunity to Devas/Respondent No.1 by making available a copy of Petition with its annexure, and the case is listed on the website of NCLT on previous date of hearing and their Senior Counsels were duly heard and their contentions were duly taken on record by the Tribunal. Therefore, principles of natural justice have been duly followed. As per law, in a Petition filed U/s.271 of the Companies Act, the broad issue to be considered at the time of admission is whether the affairs of a Company are being conducted fraudulently etc., and it is not necessary to order notices to all stake holders at the time of admission, and the Liquidator appointed in the case would cause notification to

those stake holders during the process of liquidation of the Company so as to redress their grievances.

(6) With reference the contention that innocent party can sue for damages if a party commits breach of a Contract, in terms of Section 73 of the Indian Contract Act, 1872, is concerned, it is relevant to point out here that Devas having brought Rs.589 crores into India, without doing any worthwhile service/business in India, has siphoned off/diverted that money out of the Country except less than Rs.100 Cr. under various heads in India. Not satisfied with diversion of funds contrary to law, Devas has dragged Antrix to Arbitration on foreign soil, that too contrary to extant terms of Agreement in question. Devas is only interested in diversion of funds and to get huge damages for nothing. And these acts of Devas are nothing but fraudulent and in fact are fraud committed on Antrix and against public interest.

(7) With reference to the contentions that Mobile Broadcasting Satellite (MBSAT) provided hybrid Satellite/terrestrial Digital Multimedia Broadcasting to small user terminals in Japan and South Korea and Japan while using a geo-stationary satellite; the founders of R1 Company and the engineers working on Devas system were fully involved in the implementation 35 WorldSpace service- the pioneers in satellite digital radio which started service in 1998 over Africa and in 2000 over India/Asia;three key persons who were involved in the establishment of fully operational WorldSpace system including radio receivers designed and built in India by BPL, India etc., are concerned, it is a simple commercial principle that unless a Company is well established over a period of time with all requisite infrastructure in the relevant field, it would not be entitled even to enter into negotiation or to enter into Agreement/contract. It is an admitted position that Devas entered into Agreement in question in less than 45

days of its incorporation in connivance and collusion with the then officers of Antrix. And this bare fact itself is enough to hold that the Agreement in question deemed to be abinitiovoid and Antrix was entitled to forfeit UCRF (Up from Capacity Reservation Fees) paid by Devas. However, in all fairness and not knowing the fraud committed by Devas in the transaction in question, Antrix has returned UCRF by way of cheque. However, not satisfied with return of its deposit and in order to achieve its object of getting liquidated damages, it has rushed to the ICC Court and obtained huge award and started misusing judicial process so as to put pressure on Antrix and UOI to enforce the Award in question.This kind of Company cannot be permitted to misuse its name for ulterior purpose.

(8) In fact World Space India Private Ltd, which is alleged to be subsidiary of Devas, as some of its Directors are working in this Company to render required technical service to Devas, was incorporated on 05.06.1998 with CIN U92131KA1998PTC023812. However, its name was struck off from Registrar of Companies vide gazette Notification on 17.07.2017, U/s. 248(1) of Companies Act, 2013, as it has failed to file balance sheet and Annual returns for the year 2007-08.

(9) So far as the contentions that the Tribunal has to wait till decisions rendered in the cases already initiated by CBI and ED and other connected cases are concerned, as stated supra, they are not at all tenable and this Tribunal is having an exclusive jurisdiction over the issue raised in the instant Petition, in terms of extant provisions of Companies Act, 2013 read with Section 430 of the Companies Act. In this regard, it is relevant to extract section 430 of Companies Act, 2013, which reads as follows:

"430. 'No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which

the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

In this context, it is also relevant to point out here that in terms of first proviso made under Section 273(1) of Act, an order under this Section should be passed within ninety day(90 days) from the date of presentation of the Petition. Since the present Company Petition is filed on 18th January,2021, an order has to be passed by 18th April,2021. Therefore, the Tribunal is also bound to pass appropriate orders as per law".

(10) The serious contention of Shri Rajiv Nayar, that Antrix has not given prior opportunity to Devas before filing the instant Company Petition is concerned, as rightly contended by Shri N.Venkataraman, learned ASG, plain reading of provisions of Section 272 of the Act, would show that any Company, person, any contributory or contributories etc., with due authorisation by Central Government, can file Winding Up Petition. There is no requirement to give prior notice to the Company to be wound up unlike in the case of Registrar, who files Winding up Petition.As stated supra, the Tribunal, at the time of passing an Interim order on 19th January, 2021, has already granted reasonable opportunity to R1 Company through their Senior Counsels. The said Interim Order has become final. Instead of questioning the proceedings by Devas, it has indirectly filed an Appeal before Hon'ble NCLAT,Chennai by Devas Employees Mauritius Private Limited vide Company Appeal (AT) (CH) 02 of 2021. In pursuance to the order of NCLAT, after filing CA.No.11 of 2021

for impleading, it has again resorted to filing W.P.No.6191of 2021 before the Hon'ble High Court of Karnataka, Bengaluru, which was dismissed with cost of Rupees Five Lakhs on 28.04.2021. Aggrieved by this order, it has again filed WA No. 519 of 2021 before the Hon'ble High Court of Karnataka. Shri Rajiv Nayar, while pleading urgency in the cases filed on behalf of Devas and its Shareholders Devas Employees Mauritius Pvt Ltd, on the contrary, he is pleading and resisting the Tribunal to decide the case in order to achieve the illegal object of Devas to abuse process of law.

(11) With regard to the allegation that appointing an Official Liquidator attached to High Court of Karnataka, as Provisional/regular Liquidator, would amount to judge the case of Petitioner and UOI by its own Officer which is contrary to basic principle that no nobody would be permitted to judge his/her own case, is mere misconception of law and a baseless argument raised on behalf of Devas. The affairs of Union of India would be carried out by its officers and those acts of officers would be finally subject to judicial review. Even the acts of errant officials would not bind the state, as in the instant case. The Official Liquidator is an office established by virtue of law and such Liquidator can act as Liquidator to all the Companies, private or public, on his/her appointment as such to any case by Court/Tribunal and he will discharge his statutory duties subject to supervisory authority of Tribunal/Court.

(12) With regard to the contention that the Tribunalis having only summary jurisdiction, as per law, it cannot decide the issues/allegations made in the instant Petition, as those issues are purely triable issues to be decided by competent Civil courts, after adducing evidence etc, are concerned, it is to mentioned here that, as stated supra, the Tribunal alone is the Competent Court to entertain a Petition for Winding up of

a Company and to decide it finally, however, subject to final supervisory and constitutional jurisdiction of Hon'ble High Courts and the Hon'ble Supreme Court of India. Therefore, the Tribunal can entertain the instant Company Petition and consequently order to Wind-up Devas, however, subject to fulfilling the circumstances as mentioned under the provisions of Section 271 of Companies Act, 2013. The facts and circumstances leading to the filing of instant Company Petition, as detailed supra, do not require any evidence to be adduced. Moreover, the ICC Court has already taken ample evidence about the basic facts of the case and the relevant observations and finding of Arbitral Tribunal are already taken into consideration by the Tribunal in the instant case. Therefore, the issue can be decided based on the sufficient rather voluminous documentary evidence produced by the Parties. Therefore, the plea to call for evidence is un-tenable and baseless.

(13) With reference to the contention that several of officers Antrix, who are involved in the alleged misconduct, are scot free, which would go to show that no fraudulent actions have taken place in entering into Agreement in question, andtheir consequentialactions etcare concerned, it is not the case of Devas that appropriate action was not initiated against all erring officers, and in any case, it would not the help the case of Devas. Government may take appropriate disciplinary action against indicted officers in accordance with D & A Rules, 1968, in due course of time. The allegation that the instant Petition is filed with an intention to stall enforcement of the Award in question is not correct, as the issue in the instant case, as stated supra, is whether Devas, which conducted its affairs in fraudulent manner since its inception is a fit case to continue its name on the Register of Registrar of Companies or not, to further facilitate it to perpetuate its

fraudulent activities by abusing process of law,by way filing various cases in various courts situated in India and abroad, so as to force Antrix and Union of India, and to enforce the Award in question, which is questioned and subjudice before Hon'ble Delhi High Court. In this regard, it is relevant to refer to the decision of Hon'ble Supreme Court of India rendered in Kishan v/s. Vijay Nariman Company Private Limited[40] dated 14.08.2018, wherein, it is inter-alia held that when the Arbitration Award is in question before the competentCivil court, further enforcement proceedings including initiation of IBC proceedings against Corporate Debtor are not maintainable. Therefore, Devas cannot treat the amount of Award in question, as Debt in its Accounts and proceed on that basis, as it is only contingent debt.

20. Since the Agreement dated 28.01.2005 in question is the cause of action for all disputes and litigation between the Petitioner and Respondent No.1, it is necessary to examine whether this Agreement at first instance is executed in accordance with law so as to raise legal rights between the Parties. In terms of Section 10 of Indian Contract Act,1872, all agreements are contracts if they are made by free consent of parties competent to enter into the contract, for a lawful consideration and with a lawful object, and are not expressly barred by law to be void. In the instant case, a fundamental question arisesas to whether the competent and duly authorized parties have executed the Agreement for lawful object. In this regard, it is relevant to refer the first paras of Agreement, which reads as under:

"This Agreement ANTX/203/DEVAS/2005 is entered on this twenty eight day of January, 2005 by and between AntrixCorpn. Ltd., having its registered office at AntariskhaBhavan, near New BEL Road, Bangalore 560 094 acting through and represented by

[40] Civil Appeal No.21824 of 2017

the Executive Director, hereinafter referred to an ANTRIX(which expression shall unless excluded by or repugnant to the context be deemed to include its legal representatives, successors in – interest and assigns) of ONE PART

AND

DEVAS MULTIMEDIA PRIVATE LIMITED, INDIA, an Indian Company having its registered office at 102, Eden Park, 20, VittalMaliya Road, Bangalore 560 001, India hereinafter referred to as 'DEVAS' (which expression shall unless excluded by or repugnant to the context be deemed to include its legal representatives, successors in – interest and assigns of the OTHER PART"

There is no mention in the above recital as to who is authorised representative on behalf of Devas. Only Antrix cited Executive Director as its representative and ultimately, one K.R.Sridhar Murthy, Executive Director, signed on behalf of Antrix who is also accused in the criminal case. However, S.R.Gururajsigned on behalf of Devas.In this regard, it is relevant to point out here that thesaid Sree Ram Gururaj, known as S.R.Gururaj, was an Article Clerk of Shri M.Umesh, a Charted Accountant, who was one of Directors of Devas. During investigation, it is revealed that Gururaj was commerce graduate on the date of signing the Agreement and became CA Intermediate in 2007. Since 1997, he was an article clerk and left the job in April/May, 2008. He has given statement dated 15.01.2016 before CBI by stating that the Agreement was signed by him on the instructions of said M.Umesh, his boss. He has further confirmed that he was never an employee of Devas and he has received commission in token for signing the Agreement. Even the incorporation of Devas was made by two individuals namely D.Venugopal and M.Umesh and they are former employees of ISRO."

21. The above facts clearly establish that even the idea to incorporate Devas was with fraudulent intentions coupledwith malafide objects to enter into Agreement with Antrix with no responsibility at all. It is unknown to law that such a prestigious agreement with Govt.Owned Company was got signed by a clerk, paying remuneration for the same. Therefore, the Agreement in question would become void abinitio and it would not create any legal rights, much civil rights to Devas. Thus the incorporation of Devas made with fraudulent intentions isabinitio void and its name should be struck from the Register of Registrar of Companies by virtue of this winding up proceedings. Though the validity of Agreement in question is not the subject matter in the instant case, the fraudulent and unlawful purpose behind incorporation of Devas, would be relevant factors to be taken into consideration by the Tribunal, while deciding the case. And the unlawful object of Devas is to bring foreign funds into India and then siphon off the same by diverting those funds to foreign countries, into dubious accounts. Further, it does not have any commercial antecedent to enter into such prestigious Agreement in questionis another factor to justify Devas to be Wound up. Therefore, we are convinced that the circumstances as mentioned under provisions of Section 271 of Companies Act, 2013 stand fulfilled so as to order Winding Up of R-1 Devas Company.

22. The issue whether the initiation of instant proceedings stands vitiated on the alleged failure of Central Government to afford prior opportunity to Devas before granting permission to Antrix to file the instant Petition is concerned, it is stated that it is no more res integra as the Hon'ble High Court of Karnataka,has already dealt the issue, and dismissed W.P.No. 6191 of 2021(GM-RES) with a cost of Rs.5 Lakhs, by an order dated 28th April,2021.

23. So far as repeated assertions made on behalf of Devas that the Tribunal cannot decide the subject issue as other Courts are

ceased of the matter are concerned, it is once again reiterated that the Tribunal is competent to pass Winding up orders by conjointly reading Sections 271,272 & 273 of Companies Act,2013. The effect of Winding up order passed by the Tribunal is dealt with Under Section 278 of the Companies Act, 2013, which reads as follows:

> "**279.** (1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:
>
> Provided that any application to the Tribunal seeking leave under this Section shall be disposed of by the Tribunal within sixty days.
>
> (2)Nothing in sub-section (1)shall apply to any proceeding pending in Appeal before the Supreme Court or a High Court."

Therefore, any orders passed in the instant case shall be subject to exercise of jurisdiction conferred on constitutional Courts viz.,Hon'ble High Courts and Hon'ble Supreme Court of India.

24. Wehave carefully perused various judgments cited and relied upon by the Learned Senior Counsels for both the Parties, as mentioned supra. The Learned Senior Counsels for both the Parties have filed voluminous documents and cited various judgements, and most of those judgements are judgement per incuriam,and hardly have any ratio decidendi, which can apply to the facts and circumstances of the instant case. Therefore, the learned Senior Counsels who took so much pains to read selective paras, mostly related to those cases, in voluminous judgements, which however do not support their respective cases. Therefore, we are not adverting to all those cases in the judgement to avoid voluminous judgement.

25. However, we would like to refer some of main judgments cited and relied upon by Shri Rajiv Nayar. The following are some of judgments relied upon by him.

i. Asset Reconstruction Company (India) Limited Vs. BishalJaiswal and Another[41]

ii. JagneshShah &Anr. Vs. UOI &Anr.[42]

iii. Mediquip Systems (P) Ltd. vs. Proxima Medical System GMBH[43]

iv. Pradeshiya Industrial & Investment Corpn. Of U.P. vs. North India Petrochemicals Ltd. &Anr.[44]

26. So far as first judgement in Asset Reconstruction Company (India) Limited Vs. BishalJaiswal and another is concerned, the main issue arising for consideration in the case is whether acknowledgement of debt in Balance Sheet would extend period of limitation or not, so as to initiate insolvency proceedings under the provisions of IBC, 2016, in the light of conflicting judgement rendered by Hon'bleNCLAT, contrary to settled position of law. The Hon'ble Supreme Court, by referring to various judgements rendered on the issue, has interalia held that acknowledgement by Debtor as per entry in Balance Sheet extends period of limitation. The following are some of relevant paras of the judgement:

"**14.** The next question that this Court must address is as to whether an entry madein a Balance Sheet of a Corporate Debtor would amount to an acknowledgement ofliability under Section 18 of the Limitation Act.

15. Several judgments of this Court have indicated that an entry made in the booksof accounts, including the balance sheet, can amount to an acknowledgement ofliability within the meaning of Section 18 of the Limitation Act."

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[41] 2021 SCC OnLine SC 321
[42] (2019) 10 SCC 750
[43] (2005) 7 SCC 42
[44] (1994) 3 SCC 348

Thus, in Mahabir ColdStorage v. CIT,[45]this Court held:

"**12.** The entries in the books of accounts of the appellant wouldamount to anacknowledgement of the liability to M/s. PrayagchandHanumanmal within themeaning of Section 18 of the Limitation Act, 1963 and extend the period oflimitation for the discharge of the liability as debt....."

Likewise, in a case concerning the dishonour of a cheque under Section 138 ofthe Negotiable Instruments Act, 1881, this Court, in A.V. Murthy v. B.S.Nagabasavanna[46], held:

"**5.** It is also pertinent to note that under sub-section (3) of Section 25 of the Indian Contract Act, 1872, a promise, made in writing and signed by the person tobe charged therewith, or by his agent generally or specially authorized in thatbehalf, to pay wholly or in part a debt of which the creditor might have enforcedpayment but for the law for the limitation of suits, is a valid contract. Moreover, inthe instant case, the appellant has submitted before us that the respondent, in hisbalance sheet prepared for every year subsequent to the loan advanced by theappellant, had shown the amount as deposits from friends. A copy of the BalanceSheet as on 31.3.1997 is also produced before us. If the amount borrowed by theRespondent is shown in the Balance Sheet, it may amount to acknowledgement andthe creditor might have a fresh period of limitation from the date on which theacknowledgement was made."

No.3228 of 2020 is concerned Appeal in Civil:

"**57.** In this appeal, the judgment of the NCLAT dated 07.02.2020 is assailed, inwhich the NCLAT has held that entries made in balance sheets of the corporate debtorfor the years ending 2014-2015, 2015-2016, and 2016-2017 cannot amount toacknowledgements of liability, as a result of which the NCLT

[45]1991 Supp (1) SCC 402
[46](2002) 2 SCC 642 ["A.V. Murthy"]

order admitting theappellant's application under Section 7 of the IBC was set aside.

58. Suffice it to say that the basis of the Section 7 application in this case was aDRT decree dated 17.08.2018, pursuant to which a recovery certificate dated19.06.2019 was issued. The Section 7 application averred that the date of the DRTdecree furnished the cause of action and, thus, was the starting point of limitation inthis case.

59. Shri SidharthaBarua, learned counsel appearing on behalf of the appellant, hasargued that this appeal deserves to be allowed and the matter sent back to the NCLATto be decided in accordance with our judgment delivered in Civil Appeal No. 323 of2021."

27. The above judgment admittedly would not apply to the facts and circumstance of the instant caseand it is misquoted. In the instant case, the contention raised on behalf of Devas is that even though question of limitation was not raised by them in their pleadings, it must be considered by the Tribunal, as it is a question of law. It is therefore, contended that the case is barred by laches and limitation as the cause of action arise in the instant case in the year 2016, when investigating Authorities CBI/ED unearthed alleged fraud committed by Devas and its officials and filed charge sheet. This Tribunal has given a finding in the preceding para by holding that cause of action arises in the instant case is a continuous one. Moreover, the facts as narrated supra, the CBI laid its hands on the issue basing various factors coming into light over a long period of time. The instant case is not for initiation of insolvency proceedings under the provisions of Code, basing on acknowledgement of debt in Balance Sheet to save limitation. Therefore, reliance placed on this case is misconceived on facts and law.

28. So far as the case of Jagnesh Shah &Anr. Vs. UOI &Anr.,(2019) 10 SCC 750 is concerned, initially Winding up Petition was filed before the Hon'ble High Court,U/s.433(e) of Companies Act, 1956, on the ground that the Company was unable to pay its debts. Subsequently, it was transferred to Hon'bleNCLT to take up the case under the extant provisions of Code. Accordingly, Hon'bleNCLT has admitted the case U/s.7 of the Code, which was upheld by the Hon'bleNCLAT too. Aggrieved by the orders passed by theCourts below, the Petitioners have filed the above case before the Hon'ble Supreme Court of India, on various grounds as mentioned in the Petition. The instant Petition, as mentioned supra, is filed by Antrix(wholly owned Govt. Company) U/s.271(c), after getting due authorisation vide Notification No.CGDL-E-18012021-224509 dated 18.01.2021. A Winding up Petition can be filed on several grounds as mentioned under provision 1 of Section 272 of the Companies Act, 2013. Therefore, consideration of the issue would depend on what ground the Winding up Petition is filed. Therefore, facts and circumstances as available in Jagnesh Shah(supra) would not be applicable to the facts and circumstances as available in the instant Company Petition.

29. In the case of Mediquip Systems (P) Ltd. vs. Proxima Medical System GMBH, (2005) 7 SCC 42,as stated supra, the initial Winding up Petition was filed U/s.433(e) of the Companies Act, 1956 on the ground that the Company was unable to pay its debts. So this case is also does not support the case of Respondent No.1/Devas, and it is misquoted.

30. Similarly, in the case of Pradeshiya Industrial & Investment Corp of U.P. vs. North India Petrochemicals Ltd. &Anr.,(1994) 3 SCC 348as stated supra, the initial Winding up Petition was filed U/s.433, 434 and 439 of the Companies Act, 1956 on the ground

that the Company was unable to pay its debts. So this case is also misquoted and not applicable to the instant case.

31. So far as the judgements cited and relied upon by Shri N.Venktaraman, the Learned ASG, are concerned, it is to be stated that majority of judgements are totally irrelevant and not applicable to the facts and circumstance of instant case. And mere observations made in those cases would not support the case either. Therefore, we are not adverting those cases specifically.

32. The incorporation of Devas itself was with fraudulent motive and unlawful object to collude and connive with then officials of Antrix and to misuse/abuse process of law, to bring money into India and to divert it under dubious methods to foreign Countries. The Agreement in question was not executed in pursuance to any public notification. DEVAS by declaring itself that it was developing a platform capable of delivering multimedia and information services via satellite and terrestrial systems to mobile receivers, tailored to the needs of various market segments, has requested Antrix for space segment capacity for the purpose of offering S-DMB Service, new digital multimedia and information service including but not limited to audio and video contents etc. By agreeing to the request of Devas, Antrix has decided to make available to Devas, on lease basis a part of space segment capacity on Primary Satellite 1(PS1) and option to gain additional capacity on primary Satellite 2(PS2) to be manufactured for services etc.

33. Devas,while accepting the termination of Agreement in question before ICC Court, later changed its version and claimed huge damages. Though the Tribunal finds that Government of India has sovereign power to frame and change its policies, which includes termination of Agreement in question, it has continued to misuse process of law to its advantage. It has successfully taken Arbitration out of Country contrary to terms of Agreement. And

even without permitting Antrix/Government to take appropriate course of action on the Award, it has precipitated the issue by initiating various proceedings before Indian and Foreign Courts for enforcement of the Award in question, when the validity of Award is under challenge before competent Court. When Devas continues to misuse legal status obtained by virtue of its incorporation as a Company, Antrix, after obtaining due sanction from the Government of India, has filed the instant Petition seeking to Wind up the Company. Even after filing of the instant Petition, instead of proving to the satisfaction of Tribunal that it is not liable to be wound up, as sought for by the Petitioner, Devas has started proxy war by approaching the Hon'ble NCLAT and Hon'ble High Court of Karnataka, through Devas Employees Mauritius Pvt. Ltd., by raising un-tenable grounds one after the other. Even after failing in its effort to stall the proceedings of this Tribunal, so many un-tenable contentions are raised on behalf of DEVAS, viz., there is no urgency in the matter, evidence has to be adduced, this Tribunal has no jurisdiction to decide the case unless all criminal cases pending are decided, filing several frivolous Interim Applications at every stage, threatening the Bench to exit from hearing of the case, making allegations that Bench has predetermined the issue etc. +

34. It is not in dispute that Devas is not carrying out any business operations, after termination of Agreement in question. Admittedly, Devas hardly has any other business except to grab PS1 and PS2 from Antrix in terms of Agreement and to carry out its illegal object to divert money. Devas failed to show any cogent reasons as to why it should not be wound up and to keep its name on the Register of Registrar of Companies, Karnataka. The only reason apparent on record by perusal of various pleadings raised in the instant Petition is that it wants to prosecute enforcement of Award in question, in the name of Company, in the Courts in India and abroad, by abusing process of law. Therefore, the intention of Devas in opposing the instant Petition by raising untenable and baseless

grounds is to abuse the rights conferred by virtue of law, on the Company and to abuse process of law.

35. Since fraudulent activities are attributed to Devas and its officers from the date of its incorporation, as detailed supra, its share holders have no role in the instant proceedings at the present stage, as their liability is limited to their share-holding. Moreover, it is not the case of minority shareholders (Devas Employees Mauritius Pvt. Ltd., impleading Applicant) in I.A.No.11 of 2021, that it has filed any Petition or Application alleging any acts of oppression and mismanagement on the part of management of DEVAS. As per law, once winding up order is passed by Tribunal/Court, it is binding on all concerned including shareholders/stake holders. And shareholders of Devas will be given opportunity by Liquidator appointed in the case to redress their grievances. It is not the case of Impleading Applicant that management of Devas has committed acts of oppression and mismanagement so as to deprive their legal rights. Not a single allegation is made by impleading Applicant against the management of Devas. Therefore, the impleading Application is not at all maintainable and it is liable to be dismissed as it is devoid of merits and it is misconceived.

36. For the aforesaid reasons and circumstances of the case, the law on the issue, we are of the considered view that the Petitioner has established its case beyond doubt that the incorporation of DEVAS/R-1 Company was made in a fraudulent manner and for unlawful purposes. Its management is continuing to resort to fraudulent activities, as detailed supra. We are satisfied that the Petitioner fulfils the requisite conditions, as enumerated, under Section 271(1) (e) of the Companies Act, 2013, so as to pass orders to Wind up Devas by exercising the powers conferred on the Tribunal, under provisions of Section 273 of Companies Act, 2013.

Therefore, the Tribunal is of the considered opinion that it is just and proper and equitable that R-1 Company/DEVAS should be wound up by appointing a Liquidator.

37. A statement of financial position and working results of Devas from 2010-11 to 2018-19, as per Balance Sheets and Annual Reports filed with Registrar of Companies, Karnataka, interalia shows, revenue(sale of services) for thc years 2011 to 2014 are a mere Rs.79,115/ Rs.58,429/ Rs,36,489/- and Rs7,566/- respectively , and nil for the years 2015 to 2019. Similarly, its fixed assets are negligible and it is totally nil for the years 2018-19. A major part of money is being spent towards legal expenses. Therefore, the Liquidator appointed in the case is to be directed to take expeditious steps to liquidate the Company and to file appropriate Application seeking to dissolve R-1 Company/DEVAS.

38. In the light of aforesaid facts and circumstances of the case, after duly considering the legal position on the issue and, by exercising powers conferred on the Tribunal, under provisions of Section 273 of the Companies Act, 2013 and the Companies (Winding Up) Rules, Company Petition bearing C.P.No.06/BB/2021 is hereby allowed by ordering to ~~wound~~ wind up Devas Multimedia Pvt. Ltd/R-1 Company with the following consequential directions:

(1) The provisional Liquidator, who is Official Liquidator, Bangalore, attached to the Honble High Court of Karnataka, appointed vide interim order dated 19th January, 2021, is hereby appointed as Liquidator to take steps to liquidate Devas Multimedia Pvt. Ltd.,/R-1 Company in accordance with law;

(2) All persons associated with the affairs of Devas,and also the Authorised signatories to various pleadings filed in various Courts/Tribunal, on behalf of Devas, before various Courts in India and abroad, including Dr.M.G.Chandrashekhar, who

has filed Affidavit-in-Objection to the instant Petition, are hereby directed to extend full assistance and co-operation to the said Liquidator to discharge his statutory functions;

(3) The Petitioner is directed to advertise this Winding up Order immediately but not later than 14 days from today, in widely circulated news papers in vernacular language and in English Language in Karnataka and also in English Language in widely circulated news paper(s) in India;

(4) The Liquidator is permitted to communicate this order to all the Authorities connected with the case, and also to the Courts, where litigation is pending on the issue;

(5) The Liquidator is directed to follow all extent provisions of Companies Act and the Rules made there under, in conducting the liquidation proceedings in the case;

(6) This winding up order will have the effect in terms of provisions of section 279 of Companies Act, 2013 and it shall not affect the jurisdictions of Hon'ble High Court(s) and the Hon'ble Supreme Court of India.

(7) The Liquidator is directed to take expeditious steps to liquidate the Company in order to prevent it from perpetuating its fraudulent activities and abusing the process of law in enforcing the ICC Award;

(8) Connected IA Nos. 11,12 & 13 of 2021 stand dismissed as infructuous

(9) List the Company Petition after six (6) weeks for report of the Liquidator.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.A No. 11/2021 in
C.P.No.06/BB/2021
U/r 11 & 34 of the NCLT Rules, 2016

Between:

M/s. Devas Employees Mauritius Private Limited
Having its registered office at:
C/o International Proximity
5th Floor Ebene Esplanade,
24 Cybercity,
Ebene 72201.

... Applicant/
Proposed Respondent

And

M/s. Antrix Corporation Ltd
Antariksh BhavanCampus,
Near New BEL Road,
Bangalore- 560094
& Others

... Respondents

Pronouncement of Order: 25th May,2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Applicant : Ms. Anuradha Dutt

For the Respondent : Shri N. Venkataraman, ASG

O R D E R

Per: Rajeswara Rao Vittanala, Member (J)

1. C.A No. 11 of 2021in C.P.No.06/BB/2021 is filed by M/s.Devas Employees Mauritius Private Limited (Applicant/Proposed Respondent) under Rule 11 and 34of the NCLT Rules, 2016, by *inter- alia* seeking to implead the Applicant as a Respondent in

Company Petition No. 06/BB/2021;consequently permit the Applicant to file necessary pleadings and further documents etc.

2. Brief facts of the case, as mentioned in Application, which are relevant to the issue in question, are as follows:

(1) The Applicant is a company incorporated under the laws of Mauritius on 16.04.2009 and is a shareholder of Devas Multimedia Pvt. Ltd. ("Respondent No.2").It holds 3.48% of the issued and paid-up equity share capital.The Applicant subscribed to the equity shares of Respondent No.2 between the year 2009 and 2010 after obtaining requisite approvals from the Foreign Investment Promotion Board. As such, in its capacity as a shareholder, the Applicant has participated in the affairs and management of Respondent No.2 since 2009.The Respondent No.2engaged, inter alia, in the business of delivering broadband wireless access and audio-visual services through an integrated hybrid satellite and terrestrial communication system. The Respondent No.2 entered into an agreement dated 28thJanuary 2005 ("Devas Agreement") with Respondent No.1 herein/Antrix Corporation which is the marketing arm of the Government of India's Space Research Organization ("ISRO"), set up under DOS.

(2) On 25.02.2011, Respondent No.1 herein purported to terminate the Devas Agreement and to thereby cause irreparable loss to Respondent No.2 leading to have no option but to invoke pre-arbitration hearing steps and then arbitration in accordance with the arbitration agreement contained in the Devas Agreement. Since inception, Respondent No.2 invested time, resources and funds (as also by inter alia raising capital from its shareholders) in carrying out acts in furtherance of its obligations under the Devas Agreement. Respondent No.2 had therefore commenced arbitration to pursue its legal remedies.

(3) It was the invocation of arbitration, which Respondent No.2 had commenced to pursue its legal remedies that led to a series of actions on the part of state machinery to arm-twist Devas to give up its claim in the arbitration proceedings and fruits of the Award. One such action is the present winding up petition filed by Respondent No.1 before this Hon'ble Tribunal under section 271 (c) of the Companies Act, 2013 alleging that the entire genesis and object of Respondent No.2 including the actions taken by Respondent No.2 shows that the company had no real substratum except as a conduit for committing illegal actions etc. Since serious allegations have been made against shareholders of Respondent No.2 it is proper and necessary that the Applicant, being a shareholder of Respondent No.2 be heard by this Hon'ble Tribunal before passing any orders in the aforesaid winding up petition. Furthermore, shareholders ought to be made parties to the present winding up petition as the allegations made relate to pre/post incorporation period/events and shareholders.

(4) The allegations being made by the Respondent No.1 are unsubstantiated. Even though various criminal proceedings including charge sheet by CBI, PMLA proceedings, ROC investigation that have been referred to by the Respondent No.1 in its winding up petition do not constitute any 'fraud' by either the company and/or its officers and/or its shareholders. Mere filing of cases by government cannot establish any 'fraud' by either the company and/or its shareholders. The allegations made in the criminal proceedings have to be proved beyond reasonable doubt and a judgment has to be delivered by a court of law before a person can be said to be guilty of any 'fraud', 'cheating' or any such criminal and/or civil offence. It is a fundamental policy of Indian law that a person is deemed to be innocent till proven guilty..In these circumstances the

allegations of 'fraud' based on mere investigation by an agency or charge sheet and/or other complaints which have not been adjudicated upon or charges upheld by any court of law, are mere conjectures based on which this Hon'ble Tribunal cannot hold that there is any 'fraud' in terms of Section 271(c) of the Companies Act, 2013. In any event, the Respondent No.1 is only relying on the charge-sheet and the criminal complaints which are pending adjudication and this Hon'ble Tribunal cannot come to a finding of fraud when the issues are sub-judice.

(5) It is further stated that in case Respondent No.2 and/or its shareholders and/or its officers succeed in the aforesaid criminal proceedings it will be a travesty of justice that the Respondent No.2 is already wound up when the shareholders, officers and the company are acquitted of any criminal charge of 'fraud' etc. Since no competent court of law has given a finding of 'fraud' and/or cheating and/or bribery and/or corruption etc.The present petition based on unproved allegations is not maintainable at this stage.

(6) In fact, the Applicant will demonstrate before this Hon'ble Tribunal that the various criminal proceedings, the ROC proceedings and the present winding up proceedings are a mere afterthought and an arm-twisting tactic. Since Respondent No.1 has lost the ICC arbitration award for a sum of USD 562.5 million with simple interest at 18% from date of award to the date of payment, it has resorted to tactics which does not behove a state enterprise. Though Respondent No.1 herein has filed objections in Delhi High Court in OMP No. 11 of 2021 and is resisting execution outside India in various proceedings, it has thought of this novel way to circumvent decision on objections in OMP No. 11 of 2021 pending in Delhi High Court and in various Courts outside India by filing the

present petition. The allegation that the award has been obtained fraudulently is also pending before the Delhi High Court in OMP No.11/2021 and, therefore, no conclusion that the award was obtained fraudulently can be made by this Hon'ble Tribunal.

(7) If the Hon'ble Tribunal allows debtor (Respondent No.1) to file a winding up petition against the creditor i.e., Respondent No.2, the entire law of winding up would turn on its head.The Applicant is directly and vitally affected by the orders passed in the present proceedings as it affects the Applicant's right to participate in the affairs and management of Respondent No.2. Therefore, Applicant ought to be made party to the present winding up petition.

(8) Further the right of shareholders to carry on business through the instrumentality of a company is a right guaranteed under Article 19(1)(g) of Constitution of India and cannot be taken away by this Hon'ble Tribunal acting under the Companies Act,2013 on mere conjectures and allegations without finding of a competent court of law.The orders passed in a winding up petition, including appointment of a provisional liquidator, are drastic and extreme measures and should not be passed merely for the asking in absence of any findings of court of law on 'fraud'.The Hon'ble Tribunal has only summary powers and a finding on 'fraud' can only be given after a full-fledged trial. The allegations of prevention of corruption Act, 420 etc. by CBI Act and Enforcement Directorate of Prevention of Money Laundering Act cannot be tried by this Hon'ble Tribunal.

(9) That failure to participate in the present proceedings will result in severe abridgement and infraction of civil and substantive rights of the Applicant. In the aforesaid circumstances and in accordance with the order of Hon'ble NCLAT the applicant filed present application to be impleaded as a necessary and proper

party and be heard before any further hearing is undertaken in this Hon'ble Tribunal in the winding up proceedings. The Applicant has also relied on following judgments in support of this Application:

a) *Manoj Narula v. Union of India,* (2014) 9 SCC 1
b) *V Ravi Kumar v State &Ors, (2019) 14 SCC 568*
c) *M+R Logistics (India) Private Limited v AGA Publications Limited, Company Appeal No. 667/2020,* decided on 01.02.2021 by the Hon'ble National Company Law Appellate Tribunal
d) *National Textile Workers' Union &Ors v PR Ramakrishnan &Ors, (1983) 1 SCC 228, passed by Hon'ble Supreme Court of India;*
e) *The Hon'ble High Court of Punjab and Haryana in Smt. Keerat Kaur &Ors v Patiala Exhibition Private Ltd, (1990) 70 Com Cas 728 (P&H)*
f) *The Hon'ble High Court of Madhya Pradesh in Gwalior Sugar Co Ltd v Shyam Saran Gupta, AIR 1969 MP 74*

3. The Respondent No.1/Antrix has filed a Reply dated 30.04.2021 to the Application by *inter-alia* stating as follows:

(1) The Hon'ble Tribunal vide its order passed on 19.01.2021, appointed the Official Liquidator attached to the Hon'ble High Court of Karnataka, as the Provisional Liquidator, to take over the affairs of the Respondent. The order dated 19.01.2021 was appealed against in the Hon'ble NCLAT, Chennai by the impleading applicant in the capacity of a shareholder in the Respondent and vide order dated 11.02.2021, the Hon'ble NCLAT permitted the impleading applicant to file an application before this Hon'ble Tribunal with a direction to consider it in accordance with law.

(2) In light of the order of the Hon'ble NCLAT, the impleading applicant has moved the application for impleadment. However, when the matter was listed on 02.03.2021, this Hon'ble Tribunal was gracious enough to permit the Respondent directly to place on record its objections to the company petition filed by the Petitioner. On 15.03.2021, the Respondent has filed its objections to the main company petition. On 22.04.2021, the Petitioner has also filed its rejoinder to the objections filed by the Respondent to the main company petition. The above fact indicates that all the pleadings are complete, and the Respondent is directly contesting the case on its own before this Hon'ble Tribunal. Since the impleading Applicant has not raised any new grounds of submissions that was not submitted by the Respondent in its objections, the rejoinder filed by the Petitioner to the objections filed by the Respondent to the main company petition may also be taken as applicable to the objections raised by the impleading applicant.

4. Heard Mrs. Anuradha Dutt learned Senior Counsel for the Applicant/Proposed Respondent, and Shri N. Venkataraman, learned ASG for the Respondent No.1 **through Video Conference.** We have carefully perused the pleadings of both Parties along with the extant provisions of the law, and Rules made there under.

5. Ms. Anuradha Dutt, Learned Senior Counsel for the Impleading Applicant, after arguing the case, has also filed written submission on 14.05.2021 by inter alia stating as follows:

(1) It has been stated by the Petitioner, in para 13(f)(f) and para 15 of the petition alleges that the shareholders of Respondent No.1 Company were hand-in-glove with the officials of Respondent No.1 Company to commit multiple violations of various laws, and fraudulent activities. At para 31 of the written submissions filed by the Petitioner on 05.05.2021,

Petitioner reiterated its allegation that the shareholders colluded with its officials to perpetrate a fraud. It is well-established that if allegations are made against a person in a proceeding, that person either has to be made a party or given a chance to defend itself.

(2) Every investment made by all of the investors was preceded by a meeting of the investors with the Government of India's officials, the investors satisfying themselves about the Devas Agreement, and the seriousness of the Antrix/Government to undertake its obligations under the Devas Agreement. This Hon'ble Tribunal while looking at the investments asked how so much investment came when Respondent No.1 company had not even started business, and whether the premium on shares was on account of market sentiments. The Respondent No.1 Company and the Impleading Shareholder have not done anything wrong and have nothing to hide. The question is of winding up a company, of its civil death. Hence, this Hon'ble Tribunal is duty bound to examine every aspect in depth, before imposing, as it were, the death penalty on the Respondent No.1 Company.

(3) Further, every investment came into the country with prior FIPB approval. As per Clause 5 of the FIPB approval dated 18.05.2006, the pricing/valuation was required to be as per RBI/SEBI Guidelines and admittedly, there is no allegation that any pricing guidelines have been violated. The provisions of Section 271(c) of the Companies Act, 2013 which have been invoked for filing the present petition does not take within its ambit the question whether there is any asset of the company, or whether there is any business of the company to justify the same remaining on the rolls of the Registrar of Companies. As demonstrated, Respondent No.1 company has assets in form of deposit with Enforcement Directorate – Rs. 79 crores, and

income-tax paid under protest – Rs. 13 crores. Further, the most valuable asset is the ICC Award dated 14.09.2015. The enforcement of the ICC Award is pending before the Hon'ble Delhi High Court in OMP (Comm.) No. 11 of 2021. In fact, the Hon'ble Supreme Court of India in its order dated 04.11.2020 has permitted Respondent No.1 Company to file an application for deposit of money under the award. Therefore, applying the same principles in the present case when there is an extremely valuable arbitration award in favour of the Respondent No.1 Company which it is trying to enforce it cannot be said that the company has no operation and ought not to be wound up.

(4) The Devas Agreement was based on sound business lines with about 13% Internal Rate of Return accruing to Petitioner and was higher compared to other satellite leases. The revenue earnings were vetted by Ministry of Finance, through its Member Finance. Without prejudice, the trial including examination of finance Ministry's officials and examination of other IRR in similar commercial activities of Petitioner (for e.g. with TATA Sky) is necessary before any finding can be given by this Hon'ble Tribunal.

(5) In the present case, the fraud being alleged relates to a private contract between the Petitioner and Respondent No.1 Company, even if the Petitioner is a private limited company owned by the Government of India. The Devas Agreement was never implemented except that the Respondent No.1 Company paid two instalments of upfront capacity reservation fees. The Petitioner never had any loss and/or parted with any property. Even the satellite which had been agreed to be launched was not done so till 2011 i.e., till termination of the Devas Agreement. In these circumstances, there is no question of any fraud, and in any event the alleged fraud relates to the disputes between parties which is pending in various forums,

like the Hon'ble High Court of Delhi, CBI Court, PMLA Court, FEMA adjudication etc.

(6) The fraud contemplated within the meaning of Section 271(c) of the Companies Act, 2013 is such fraudulent conduct which touches the public and must be continuous. A mere allegation of some alleged past illegal conduct which has ceased cannot be made a ground for winding up. Section 271 (c) has been used for winding up where a company floats Ponzi schemes and dupes the general public, which is innocent of the illegal designs of the company. Even in the case of companies like Satyam and IL&FS, where huge fraud has been detected which touched the general public, these companies were not wound up. Instead, the management was taken over under the Companies Act and/or the provisions of IBC.

(7) It is significant to note that the allegations made by the Petitioner are unsubstantiated. Even though documents in various criminal proceedings including charge sheets by CBI, PMLA proceedings, ROC investigation, etc. have been referred to by the Petitioner in its winding up petition, these documents do not establish any 'fraud' by either the Respondent No.1 Company and/or its officers and/or its shareholders. Mere filing of cases by the Government cannot establish any 'fraud' by either the Respondent No.1 company and/or its shareholders. The allegations made in the criminal proceedings have to be proved beyond reasonable doubt and a judgment has to be delivered by a competent court of law before a person can be said to be guilty of any 'fraud', 'cheating' or any such criminal and/or civil offence.

(8) Though Antrix/Petitioner herein has filed objections before the Hon'ble High Court of Delhi in OMP (Comm) No. 11 of 2021 and is resisting execution outside India in various proceedings, it has thought of this novel way to circumvent decision on

objections in OMP (Comm) No. 11 of 2021 pending before the Hon'ble High Court of Delhi and in various Courts outside India by filing the present petition. The entire purpose of advertising is not only procedural but also substantive. She is also relying on the following judgements:

i. *Rajneesh Khajuria v/s Wockhardt Limited and another in Civil appeal No. 8989 of 2019 passed by the Hon'ble Supreme Court of India;*
ii. *Rohit Manjrekar M.S Earth Events (India) Private Limited v/s Registrar of Companies Karnataka, in C.P No. 603 of 2018 passed by the Hon'ble NCLT, Bengaluru*
iii. *Bukhtiarpur Bihar Light Railway Co. Limited v/s Union of India and another in A.F.O.O No. 128 of 1950 passed by the Hon'ble High Court of Calcutta*
iv. *ZTE Corporation v/s Siddarth Garg and others in Co. Appeal No. 25 of 2012 passed by the Hon'ble High court of Delhi*

6. The main issue arise for consideration in the instant Application is whether all Shareholders/Stake holders of a Company facing wound up proceedings filed U/s 271(e) of the Companies Act,2013 must invariable to be impleaded and heard prior to ordering wound up of a Company.

7. As per law, all the Affairs of a Company will be conducted through elected Board of Directors nominated by its Shareholders. All the decisions taken by Board of Directors are binding on its Shareholders/stake holders. However, if such Board of Directors are acting against the interest of Company and its shareholders, Shareholders by convening EGM, can remove such Directors. In case, the interest of minority share holders are being affected by the Board of Directors, such minority shareholders constituting not less than 10 % of total shareholding, can also approach the Tribunal U/ss 241/242 of Companies Act, 2013 by alleging acts of oppression and mismanagement on the part of Board of Directors

and seek appropriate direction(s)a from the Tribunal. In the instant case, the Applicant Company by holding mere 3.48% share holding of issued and paid up equity share capital, has filed the instant Application, that too defending the actions of Devas and going against Antrix. As long as the Applicant has no grievance against the affairs of Devas and its Directors, it has no locus standi to file any Application to implead in winding up petition filed against Devas to support it. Therefore, filing of the instant Application itself is misconceived in facts and law, and thus it is liable to be dismissed on this ground alone. .

8. As rightly pointed out by Shri N.Venkataraman, Learned ASG, when Devas is defending its interest which include the interest of its Shareholders by filing its counter and engaging its legal counsel, it cannot be permitted to be impleaded. And it is not necessary and proper party to the Company Petition to be impleaded. The Applicant is bound by the decisions taken by its main company, wherein it is holding shares. As long as it has no grievances against the affairs of Devas Company, the Applicant has no locus standi to intervene in the main Company Petition. The contention of Applicant that amount awarded is an asset and Antrix is debtor is not tenable and it is baseless, as long as the Award has not attained its finality, through judicial process. Admittedly, the validity of Award is in question and the same is subjudice.

9. The contention that rights of shareholders to carry on business through the instrumentality of a company is a right guaranteed under Article 19(1)(g) of Constitution of India, and it cannot be taken away by this Hon'ble Tribunal acting under the Companies Act,2013 on mere conjectures and allegations without finding of a competent court of law, is mere misconception of law. As stated supra, rights of shareholders can be exercised through Board of Directors elected by them. Every shareholder cannot claim and

defend the cases filed against their Company, whether it is winding up Petition or other cases and, it is the responsibility of Company represented by its Board of Directors, to defend those cases, as a legal entity. It is misconception of law that every share holders/stake holders are to be heard in every case filed against a Company.

10. The Applicant, being minority shareholders trying to defend Devas, when Devas itself defending Winding up Petition. And the contentions raised in the instant Application are similar to contentions raised by Devas in the main company petition. The Tribunal has suitably adverted those contentions and passed separate order dated 25th May,2021,by ordering to wind up Devas Company. Therefore, the Applicant, if so advised, can approach the Liquidator placing its grievances. And there is no law that all shareholders of a Company, which is facing winding up Petition, filed U/ss 271/272 of the Companies Act, 2013, should be impleaded and prior notice to be given. There are cases where Creditors can file petition seeking to ~~wound~~ wind up of a Company on the ground that Company is unable to pay its debts and if debt in question is paid, Petition itself can be closed. But here in, the case is different that the incorporation itself and subsequent affairs are being run in fraudulent manner and unlawful object. The instant Application is nothing but to delay proceedings and to support Devas in the main Company Petition and it is proxy war, as held by the Hon'ble High court in the Writ Petition filed by the Applicant herein. Various contentions raised in the instant Applications are baseless and un-tenable.

11. Since the Tribunal finds that Devas is a fit Company to ~~Wound~~ wind up by way of separate order dated 25th May, ~~2013~~ 2021, the instant Application is not maintainable and it is liable to be dismissed. When the Applicant failed to make out even prima facie case to entertain the instant Application and rights of Applicant as

minority shareholders are not in jeopardy, as alleged, various citations would not support the case of Applicant.

12. We have carefully perused various judgements cited by the Applicant in its support and found that facts and circumstances as available in those cases, would not applicable to the facts of instant case. To Cite few, in the case of Rajneesh Khajria Vs. Wockhard Ltd and another, the issue in the first instance arise out of termination of service. Similarly, the judgement rendered in ZTE Corporation Vs. Siddhant Garg and Ors would not be applicable to the present case. Likewise, the judgement in the case of Rohit Manjrekar Vs earther Events (India) Pvt Ltd. Since the Applicant is held to be no locus standi to file the instant Application, judgements would be of no assistance to it.

13. For the aforesaid reasons and circumstances of the case and the law on the issue and for the reasons given in the judgement dated 25th May, 2021 passed in CP No. 06/BB/2021, We are of the considered view that instant Application is misconceived in law and facts and it is yet another abuse of process of law by Devas through its proxy(the Applicant herein) and thus it is liable to be dismissed.

14. In the result, C.A No. 11/2021 in C.P.No.06/BB/2021 is hereby dismissed as devoid of any merit. However, this order will not come in the way of Applicant to approach the Liquidator appointed in the main Company petition making its claim in the Liquidation estate of Devas, as per law.

15. No order as to costs.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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