

COURT OF APPEAL

CANADA
 PROVINCE OF QUEBEC
 REGISTRY OF MONTREAL

No: 500-09-029888-229
 (500-17-119144-213)

MINUTES OF THE HEARING

DATE : February 11, 2022

THE HONOURABLE CHRISTINE BAUDOIN, J.A.

APPLICANT	COUNSEL
AIR INDIA LTD	Mtre PATRICK OUELLET Mtre IOANA JURCA Mtre MARC-ANTOINE CÔTÉ (<i>Woods</i>) Absents
RESPONDENTS	COUNSEL
CC/DEVAS (MAURITIUS) LTD DEVAS EMPLOYEES MAURITIUS PRIVATE LIMITED TELECOM DEVAS MAURITIUS LIMITED CCDM HOLDINGS LLC DEVAS EMPLOYEES FUND US LLC TELECOM DEVAS LLC	Mtre MATHIEU PICHÉ-MESSIER Mtre PHILIPPE BOISVERT Mtre KARINE FAHMY Mtre AMANDA AFEICH Mtre DAYEON MIN Mtre IRA NISHISATO (<i>Borden Ladner Gervais</i>) Absents
IMPLEADED PARTIES	COUNSEL
AIRPORT AUTHORITY OF INDIA	Mtre WILLIAM BROCK Mtre COREY OMER Mtre AMÉLIE LEHOULLIER

	Mtre ÉLOISE NOISEUX (<i>Davies Ward Phillips & Vineberg</i>) Absents
INTERNATIONAL AIR TRANSPORT ASSOCIATION	Mtre MARTIN POULIN Mtre ANTHONY RUDMAN Mtre CLAUDE MORENCY (<i>Dentons Canada</i>) Absents
REPUBLIC OF INDIA	ABSENT AND UNREPRESENTED

DESCRIPTION: **Motion for leave to appeal from a judgment dismissing an application to quash a seizure before judgment** (Articles 9, 18, 19, 30 paras. 2(7) and 3, and 357 C.C.P.)

Clerk at the hearing : René Gutknecht	Courtroom: RC-18
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HEARING

9:30 Continuation of the hearing held on February 8, 2022. The parties were excused from appearing in Court.
BY THE JUDGE: Judgment – see page 3.
Conclusion of the hearing.

René Gutknecht, Clerk at the hearing

JUDGMENT

[1] I am seized with an Application for leave to appeal by Air India Ltd from a judgment dated January 8, 2022, by the Superior Court of Québec (the Honourable Michel A. Pinsonnault), dismissing in part its application to quash a seizure before judgement by garnishment authorized *ex parte* on December 21, 2021, and reducing the scope of that seizure to 50% of its funds held by International Air Transport Association (“IATA”).

[2] Justice Pinsonnault summarizes the context of the present litigation and makes the following determinations:

[1] Pending the homologation of two foreign arbitral awards rendered against the Republic of India in favour of Plaintiffs, this case involves two seizures before judgement by garnishment effected in the hands of IATA that were authorized *ex parte* at the behest of Plaintiffs who are seeking to execute their arbitral awards in excess of USD 111M due by the Republic of India but against the assets of two of its state-owned agencies, namely the Airport Authority of India and Air India, Ltd.

[2] Despite the fact that they are distinct legal entities who were not parties nor involved in the arbitration process nor were they condemned to pay any amount of money to Plaintiffs, the latter obtained two authorizations to seize before judgement by garnishment the assets of the Airport Authority of India and Air India, Ltd. in the hands of IATA on the basis that they are the alter egos of the Republic of India and as such, their assets are subject to seizure just as if they belonged to the Republic of India.

(...)

[32] Both AAI and Air India were never- nor were ever alleged to have been- parties to the arbitration proceedings that gave rise to the Treaty Awards nor were they personally condemned to pay any sums of money to Plaintiffs in connection therewith.

[33] Moreover, there are no allegations that AAI and Air India have acted in any manner whatsoever that could give rise in the minds of Plaintiffs to a serious and objective fear or apprehension that without the Seizures, the recovery of their claim pursuant to the Treaty Awards would be seriously jeopardized.

[3] According to article 30, para. 2 (7) *C.C.P.* “judgments confirming or quashing a seizure before judgment” may be appealed only with leave of a judge of the Court if the matter at issue is one that should be submitted to that Court, for example because it involves a question of principle, a new issue or an issue of law that has given rise to conflicting judicial decisions.¹

¹ *Demco Démolition inc. c. Cérat*, 2017 QCCA 1832, para. 10 to 13 (J. Bich).

[4] According to Air India Ltd, that is the case here. It submits that the matter raises a new issue of law, namely: whether the assets of a state-owned company with a distinct legal identity and no involvement in the original claim between the Plaintiffs and the Republic of India, can be validly seized *ex parte* before judgment in the hands of another third party (IATA), to pay the debt of the State itself, on the basis of a *prima facie* claim that it is the *alter ego* of the State and without any allegation that it was used by the State to dissemble fraud, abuse of right or a contravention of a rule of public order. According to Air India Ltd, such a determination amounts to the lifting of the corporate veil in reverse, contrary to articles 309 and 317 of the *Civil Code of Québec*.

[5] Without expressing an opinion on the merits or on the chances of success in appeal, I am satisfied that the present matter is one that should be submitted to the Court.

FOR THESE REASONS, THE UNDERSIGNED:

[6] **GRANTS** the application for leave to appeal;

[7] **GRANTS** leave to appeal;

[8] **PLACES** the case on the roll of **May 13, 2022**, in room **Pierre-Basile-Mignault** at 9:30 a.m., for a hearing of **90 minutes** in duration;

[9] **ORDERS** the appellant, after having notified a copy upon all the parties, to file in the Office of the Court, no later than **March 8, 2022**, five copies of a written argument not exceeding **15 pages**. All documents necessary for the adjudication of the appeal (judgment under appeal, pleadings, excerpts from depositions, etc.) shall be attached;

[10] **ORDERS** International Air Transport Association, after having notified a copy upon all the parties, to file in the Office of the Court, no later than **March 8, 2022**, five copies of a written argument not exceeding **15 pages** and of his supplementary documents;

[11] **ORDERS** the respondents, after having notified a copy upon all the parties, to file in the Office of the Court, no later than **April 5, 2022**, five copies of a written argument not exceeding **15 pages** and of his supplementary documents;

[12] **DIRECTS** the parties' attention to article 376 *C.C.P.* and section 55 of the *Civil Practice Regulation*, which read as follows:

376. The appeal lapses if the appellant does not file a brief or a memorandum within the time limit for filing. The appellate clerk issues a certificate of lapse of appeal, unless an appellate judge is seized of an application for an extension.

A respondent or any other party that does not make a timely filing of its brief or memorandum is precluded from filing and cannot be heard at the hearing unless so authorized by the Court of Appeal.

55. Format. The memorandum shall include a title page, a table of contents and be paginated consecutively.

The provisions relating to briefs (including the final requirements) apply to memoranda with the necessary adaptations.

[13] **REMINDS** the parties about Practice Direction G-3 (latest revision: April 20, 2021) which strongly encourages them to attach a technological version of their brief or memorandum and their book of authorities to each hard copy of those documents. The technological version must be saved on a USB key and must be in PDF format that allows keyword searches and includes hyperlinks from the table of contents to the brief, memorandum or book of authorities and, where applicable, from the argument to the schedules. If the Word version of their argument is available, parties are also invited to put that version on the USB key.

[14] **THE WHOLE**, legal costs to follow.

CHRISTINE BAUDOUIN, J.A.