

Swiss Supreme Court declares request for revision of awards against India inadmissible

by *Practical Law Arbitration*, with *Schellenberg Wittmer Ltd*

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In *Decision 4A_184/2022*, the Swiss Supreme Court declared an application by the Republic of India for revision of an interim and a final award obtained by Deutsche Telekom inadmissible, finding that the interim award was not open to revision and that the request for revision was made out of time, as it was filed more than 90 days after the applicant became aware of the new facts on which it based its application.

Julie Raneda and Géraldine Ineichen, Schellenberg Wittmer Ltd

In a recently published German-language decision, the Swiss Supreme Court (SC) declared the Republic of India's request for revision of two awards inadmissible.

The dispute related to an indirect interest that Deutsche Telekom (DT) held in an Indian company (Devas). Devas and an Indian state-owned entity (Antrix) had entered into an agreement granting Devas the right to use part of India's spectrum capacity on satellites. The Indian government subsequently decided not to allow that use and Antrix terminated the agreement with Devas.

Devas initiated PCA arbitration proceedings against India under the Germany-India bilateral investment treaty. In 2017, the tribunal rendered an interim award on jurisdiction. India made a challenge to that award, which was rejected by the SC. In 2020, the tribunal issued its final award, ordering India to pay Devas USD 93.3 million, which went unchallenged at that time.

In May 2022, India applied to the SC for revision of the interim and final awards, stating that it had obtained knowledge of decisive new facts and evidence. It relied on an Indian Supreme Court decision of 17 January 2022, upholding the National Company Law Tribunal (NCLT) decision of 25 May 2021 to wind up Devas because the company had been incorporated for fraudulent purposes and conducted its business in a fraudulent manner.

The SC declared the application for revision inadmissible, finding that:

- The interim award was challenged in 2017 and the court freely examined the issue of jurisdiction at the time. Therefore, only the court's decision rejecting the challenge was open to revision, not the interim award itself.
- The 90-day deadline to request revision of an award under the Swiss Private International Law Act is triggered by the applicant's knowledge of new decisive facts, not by the definitive establishment of those facts by a judicial authority. India was aware of the facts underpinning the Indian Supreme Court judgment when the NCLT rendered its decision in 2021. Therefore, the application for revision was out of time.
- The Indian Supreme Court judgment did not qualify as "new evidence" permitting revision, as such evidence must have existed at the time the award was rendered.

This case demonstrates that a party that becomes aware of new decisive facts cannot wait until it has gained absolute certainty of those facts, let alone until the facts have been established in a court of law, before filing a request for revision.

Case: [Decision 4A_184/2022 \(8 March 2023\)](#).

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