

Young ITA Newsletter



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Featured in this Issue

- ⚖️ 60 Second Interview with Philip Tan, Young ITA Internal Communications Co-Chair
- ⚖️ Updates from the Young ITA Regional Chairs
- ⚖️ Young ITA Event Reports
- ⚖️ Writing Competition and Award 2023–2024
- ⚖️ Career Opportunities





REGIONAL UPDATES

Singapore: What the SGCA's Ruling in Republic of India v. Deutsche Telekom means for Confidentiality of Arbitration Proceedings

Brief overview

The Singapore Court of Appeal (SGCA) in its recent judgment on 9 June 2023 in [The Republic of India v. Deutsche Telekom AG](#),⁹ analysed the availability of confidentiality protections after information regarding the arbitration is already available in the public domain.

Factual Background

Deutsche Telekom AG (DT), a German company and former Devas Multimedia Private Limited (Devas) shareholder, was in an agreement with Antrix Corporation Ltd. (Antrix), an Indian state-owned entity, for leasing communication satellites. After the agreement terminated, DT commenced arbitration proceedings in Geneva, alleging violation of India–Germany bilateral investment treaty. Thereafter, with the final award issued in DT's favour, DT commenced enforcement proceedings in Singapore and obtained an *ex parte* order allowing DT the leave to enforce the

final award. DT requested that enforcement proceedings commencing in Singapore be held privately, with party identities concealed, court files sealed, and judgment details redacted. Proceedings were transferred to the Singapore International Commercial Court (SICC), which dismissed India's attempt to set aside the Leave Order allowing DT the leave to enforce the final award. India then appealed SICC's dismissal.

DT commenced enforcement against India in USA and Germany, meanwhile, Antrix initiated winding-up proceedings against Devas in 2021 before India's National Company Law Tribunal (NCLT), subsequently upheld by the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court of India. The SGCA's judgment is summarised and analysed below:

I. Loss of Confidentiality

India justifying court intervention by asserting that third parties misused arbitration-related information to negatively portray India. DT advocated for open justice since the dispute hinged on matters of public interest.



REGIONAL UPDATES

The SGCA noted that the parties were involved in several legal proceedings, with significant information available on the internet. Additionally, decisions of the Indian judiciary to wind up Devas were publicly available, further eroding confidentiality.¹⁰ Hence, SGCA found that once information has entered the public domain, the principle of confidentiality no longer applies.¹¹

SGCA relied upon *Re Tay Quan Li Le-on*,¹² wherein Singapore High Court, while balancing privacy and open justice in arbitration under the [Singapore] International Arbitration Act, acknowledged its power to issue sealing orders but stressed their infrequent use to maintain public confidence in the judicial system. The SGCA opined that parties opt for arbitration owing to its private nature. Rather than asserting that it lacks inherent confidentiality, it aligns better with parties' expectations to consider the proceedings confidential, with disclosures allowed in accepted circumstances.¹³

Further, the SGCA emphasized that arbitration proceedings are private by default¹⁴ but highlighted the court's ability to initiate open hearings without party requests.¹⁵ Where necessary, the

court can issue directions¹⁶ to safeguard parties' confidentiality interests, in alignment with the UNCITRAL Model Law on International Commercial Arbitration.

II. Inherent powers of Court

The SGCA held that the inherent powers of the court must be exercised judiciously based on the touchstone of necessity. Open justice entails scrutiny of all parties' conduct, and a party's wish to avoid negative exposure does not justify departing from this principle.

Though Singapore law recognises both privacy and confidentiality as foundational tenets, the principle of open justice would not outweigh the need to preserve confidentiality in international arbitration.¹⁷ Concluding, it is likely in India's interest to apprise the public of its perspective, considering the controversy surrounding DT's enforcement efforts.

Concluding remarks:

- The SGCA stated that privacy is the default position under the IAA, suggesting that explicit confidentiality agreements would better



REGIONAL UPDATES

- serve parties' expectations than relying on a vague implied duty.
- The Singapore law provides that if a matter is deemed legally significant, the court may authorise publication of written judgements (in redacted form) in legal journals. Where, however, a party reasonably wishes privacy, the court may give directions for sanitised publications.
- While some jurisdictions recognise implied confidentiality, disclosure of material is permissible with consent, by order/leave of the court, or in the interests of justice. For example, in Hong Kong, there is a stipulation of an express duty of confidentiality under the [Arbitration Ordinance. \(Cap. 609\)](#).

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Andes Petroleum Ecuador Ltd. v. Occidental Expl. & Prod. Co., No. 21-3039-CV, 2023 WL 4004686 (2d Cir. June 15, 2023).

Id. (citing Scandinavian Reinsurance Co. Ltd. v. St. Paul Fire & Marine Ins. Co., 668 F.3d 60, 72 (2d Cir. 2012)).

Id.

Id.

Id.

2023 SCC Online SC 495.

2023 SCC Online Del 5148.

Bhaskar Raju and Ors. v. Dhar maratnakara Rai Bahadur Arcot Nar ainswamy Mudaliar Chattram and Other Charities, Supreme Court, Curative Petition (C) No. 000044 of 2023, Order dated 26 September 2023.

The Republic of India v. Deutsche Telekom AG, [2023] SGCA(I) 4.

¶37, *Supra* note 9.

¶28, *Supra* note 9; *Dorsey James Michael v World Sport Group Pte Ltd* [2014] 2 SLR 208.

Re Tay Quan Li Leon [2022] 5 SLR 896.

¶17, *Myanmar Yaung Chi Co. v Win Win Nu* [2003] 2 SLR 547.

Section 22(1) of the Singapore International Arbitration Act.

¶16, *Supra* note 9.

Section 23 of the Singapore International Arbitration Act.

AAY and others v. AAZ [2010] SGHC 350.

Sect. 57(4), Arbitration Act; Sect. 23(4), IAA. Examples can be seen in *VV and another v. VW* [2008] SGHC 11; *ABC Co v. XYZ Co Ltd* [2003] SGHC 107.

Emmott v Michael Wilson & Partners [2008] EWCA Civ 184.