



HIGH COURT OF AUSTRALIA

8 April 2026

CCDM HOLDINGS LLC & ORS v THE REPUBLIC OF INDIA
[2026] HCA 9

Today, the High Court unanimously dismissed an appeal from the Full Court of the Federal Court of Australia. The appellants were assignees of, and had been substituted as parties for, Mauritian investors who obtained an arbitral award in the Netherlands against the Republic of India, the respondent. The appellants sought to have their award recognised and enforced in Australia under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) ("the New York Convention").

The focus of the appeal was the issue of whether India's act of ratification of the New York Convention amounted to a waiver of foreign State immunity from jurisdiction for recognition and enforcement of a foreign arbitral award to which India is a party in the courts of other State parties to the New York Convention. In answer, India raised numerous other issues including with respect to its reservation to the New York Convention that it would apply the Convention only to differences arising out of legal relationships which are considered as commercial under the law of India.

The primary judge in the Federal Court of Australia concluded that by its act of ratification of the New York Convention India had waived its foreign State immunity within ss 10(1) and 10(2) of the *Foreign States Immunities Act 1985* (Cth), and had submitted to the jurisdiction of the courts of any State party to the New York Convention in proceedings for the recognition and enforcement of a foreign arbitral award to which India is a party.

The Full Court of the Federal Court of Australia concluded that even on the assumption that India had waived its foreign State immunity, the effect of India's reservation to the New York Convention was that the content of the obligations of other State parties, including those of Australia, had been correspondingly reduced so that any waiver of foreign State immunity by India would extend only to differences arising out of legal relationships which are considered as commercial under the law of India, and that the arbitral award did not fall within that commercial category.

The High Court unanimously held that the New York Convention displays neither a clear nor an unequivocal intention that entry into the Convention involves such a waiver of India's foreign State immunity. Rather, the indications from the text and context of the New York Convention suggest that State ratification was not intended to constitute, in and of itself, a waiver of foreign State immunity. Accordingly, India could not be said to have waived its foreign State immunity simply by ratifying the New York Convention.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.