Cabinet okays peace talks with Vodafone under Indian laws to break deadlock over Rs 20,000 crore tax dispute

The Cabinet Committee on Economic Affairs (CCEA) has authorised the finance ministry to begin conciliation talks with Vodafone under Indian law to break the deadlock over the 20,000-crore tax dispute that has come to exemplify, at least to outsiders, the difficulties of doing business in India.

The outcome of the conciliation process, for which no time frame has been set, will not be binding and will be under the Indian Arbitration & Conciliation Act. Vodafone had sought conciliation under an international law, the United Nations Commission on International Trade Law.

"We will accept the Vodafone offer to enter into a non-binding conciliation," Finance Minister P Chidambaram said after the CCEA meeting.

The outcome of the non-binding conciliation will have to be brought back to the cabinet for approval and implementation. "If both sides, that is Vodafone and the government represented by the cabinet, agree on the outcome of the non-binding conciliation, then the matter will be taken to Parliament by way of amendment to the Income-Tax Act," Chidambaram said.

He tacitly acknowledged the shadow the Vodafone affair has cast over India's image as a stable investment destination. "It is in India's interest to resolve the case, but the final process will have to be approved by Parliament," he said, adding that Indian laws allow such conciliation.

It's far from clear if Vodafone will accept the offer for conciliation under Indian law. While Vodafone's spokesperson told ET in an email the company had no comments at this stage, a lawyer representing it said the telco will have to think hard before abandoning the option of pursuing its case before international panels. "The implications of the government proposing conciliation under the Indian Arbitration & Conciliation Act require evaluation from diverse standpoints, including ability to pursue bilateral investment treaty arbitration and the legal question of jurisdiction generally," said Fereshte Sethna of DMD.

DMD is the litigation firm that represented Vodafone in its epic tussle with the income-tax authorities before the Bombay High Court and the Supreme Court. Independent legal experts were not too optimistic about Vodafone accepting the government offer.

"The cabinet approval today to accept Vodafone's offer doesn't really sound like an acceptance... Options before the government was to either accept Vodafone's offer for conciliation under UNCITRAL, and to that the government has made a counter offer for conciliation under the Indian Arbitration Act," said Mukesh Bhutani, managing partner, BMR Legal.

He also questioned the legality of the process, saying the conciliation act did not provide for conciliation where the sovereign is a part of the process. The government would reportedly like to settle the case after waiving the interest and penalty on the Rs 8,000-crore demand, but it is likely that Vodafone will ask for more. The finance ministry will appoint a conciliator in consultation with

Prime Minister Manmohan Singh, who is said to strongly favour resolving the nearly seven-year-old tax dispute in amicable fashion.

This (cabinet decision) should be communicated to Vodafone in a day or two that we accept the offer of a non-binding conciliation" the finance minister said, indicating that the government is not likely to act on the tax demand till the conciliation process is complete. "The tax demand has already been made. Whatever the status of the tax demand today will continue."

The case relates to Vodafone's $11-billion acquisition of Indian telecom company Hutchison Essar in 2007. Indian tax authorities imposed a principal tax liability of Rs 7,899.9 crore on Vodafone for failing to deduct tax on its $11-billion payment to Hutchison Telecommunications International.

After the company won the case before the Supreme Court in January 2012, the government amended the income-tax law retrospectively in the March 2012 budget to revalidate the tax demand. There is also an interest liability of Rs 6,251.84 crore while the remaining amount consists of penalty.

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