

Vodafone doesn't want tax talks under Indian law; seeks neutral authority

British telecom major Vodafone is not in favour of holding conciliation talks with India over its Rs 20,000-crore withholding tax dispute under Indian jurisdiction, but instead has proposed they be held under a neutral authority, a person familiar with the matter said.

If the talks are held under Indian jurisdiction, "the company fears if the talks fail, it might once again be dragged into litigation under the Indian legal system", the person told ET, asking not to be named.

In an attempt to resolve the five-year-old tax dispute, which has been hurting India's image as an investment destination, the finance ministry took a Cabinet approval, and in a June 11 letter to the telecom major, offered to resolve the dispute under the Arbitration and Conciliation Act, 1996.

India offered to settle differences on three points - if Vodafone's Dutch subsidiary, Vodafone International Holding BV (VIHBV), is liable to pay taxes, interest and penalties under local income-tax laws on its 2007 deal to buy Hutchison Whampoa's assets in India to enter what is still the fastest-growing telecom market in the world.

Vodafone, in turn, has offered that the two sides settle differences under the United Nations Commission on International Trade Law (UNCITRAL) or enter into "amicable talks" that would be outside the purview of any jurisdiction - UNCITRAL or Indian.

Vodafone, in an email, said it is in "talks about talks" with India, indicating the two parties could be holding informal discussions on how to resolve the authority issue.

"We have always said we would like to reach a solution that is acceptable to both parties. However, we will not agree to any proposal that is likely to prejudice our legal position and would run counter to the interests of our shareholders."

Officials in the finance ministry couldn't be reached for their comments on Sunday.

Both Sides Keen to Resolve Row

Another person familiar with the matter said both sides are keen to resolve the matter but discussions are stuck over the issue of jurisdiction. If the finance ministry agrees to Vodafone's proposal, the entire process may get more complicated and delayed further as the ministry will need to again get Cabinet ratification to change the conditions of the conciliation.

The tax case has been the focus of foreign investors, who view it as a symbol of the uncertainty of doing business in India, and the risks overseas firms face if they make huge bets in the country. In its letter to VIHBV in June, India reasoned that the procedure for conciliation under the Indian Act was modelled after the UN treaty.

India's offer followed Vodafone's proposed conciliation under the UNCITRAL after it invoked the bilateral investment treaty between India and the Netherlands last April. Vodafone felt that any resolution must happen in accordance with the UN treaty's provisions, which in the current case call for a formal conciliation mechanism under a neutral jurisdiction.

The first person said the company fears that agreeing to the Indian government's offer might amount to forgoing its 'treaty rights' to seek arbitration under UNCITRAL, which it is currently entitled to.

"If the government accepts the other option of entering into amicable talks outside the purview of any jurisdiction, then the two sides could hold informal discussions to decide on how to proceed on conciliation," the person said.

The 2007 Vodafone transaction was structured as a deal between the Netherlands-registered VIHBV and a Cayman Islands-based company that held Hutchison Whampoa's India assets.

Vodafone said the transaction wasn't subject to capital gains tax — and Vodafone therefore had no obligation to withhold tax — even though the main asset changing hands was a controlling interest in an Indian cellphone company. Indian tax authorities claimed Vodafone needed to withhold tax as the asset being transferred was based in the country.

The Supreme Court in January 2012 agreed with the telecom company's views, but the government later that year tried to sidestep the judgement by changing its tax laws retrospectively.

(Economic Times)