

Vodafone ready for a long legal battle to settle all tax claims, says Vodafone counsel Harish Salve

Harish N Salve, counsel for British multinational telecom major Vodafone, said all legal options are open for the company, including an arbitration claim against the Indian government under the India-Netherlands Bilateral Investment Treaty (BIT), should talks fail to iron out contentious tax issues between the two.

"All legal options are open, including BIT claim," Salve said in reply to a specific query, days after the company got a fresh reminder from the I-T department asking it to pay Rs 14,000 crore. Section 9 of BIT provides that by notifying the host-state of its "intentions", the investor can trigger the dispute-settlement mechanism under BIT.

Once a notice is served, the treaty allows a three-month window to resolve the dispute amicably. If that fails, a conciliation will be initiated, provided both sides agree. Otherwise, arbitration proceedings can be initiated under the United Nations Commission on International Trade Law (UNCITRAL).

Vodafone got a favourable ruling from the Supreme Court on the Rs 11,000-crore tax demand made by the Indian government, but the case was quickly reopened by the government by way of a retrospective amendment in the budget. Vodafone reacted by saying that it would countermand the court's pronouncement of January 2012, and that it "had no liability to account for withholding tax on acquisition of indirect interests in Hutchison Essar in 2007". The company had said this amounted to denial of justice and breach of the Indian government's obligations under BIT to accord fair and equitable treatment to investors.

The Shome Panel, set up by the government, subsequently recommended that such laws only be applied with prospective effect. It also recommended that penalty and interest in such cases be waived. The government is yet to take a call on these recommendations, though indications are that they may be accepted.

Salve said the two sides were "trying" to sort out these issues, but refused to speculate on whether they would work or not. He did, however, indicate that the telco was ready for a long-drawn legal battle to settle all tax claims. Salve also criticised the retrospective amendment saying it created an atmosphere of uncertainty among investors. "That this has happened, after the PM's commitment to resolve issues through court, shows that no one in the government can be trusted," said Salve. He said that the government's attempts at overturning tax laws with retrospective effect have had a "terrible" effect on potential investors. "I know of a number of clients who have reviewed plans for investment in India for want of certainty," he said.

The fresh tax claims against the company have again brought these issues to the fore. It has since been asked to pay another Rs 3,500 crore in connection with a demerger scheme. Vodafone was also asked to pay another Rs 8,500 crore in another deal involving transfer pricing.

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