

SUPREME COURT UPHOLDS DECISION TO WIND UP DEVAS

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The Supreme Court on Monday upheld a National Company Law Tribunal (NCLT) decision to wind up Devas (Digitally Enhanced Video and Audio Services), once touted as a move to revolutionise digital media and broadcasting services via satellite but ended up as a case of fraud and corruption under CBI investigation. It noted that what started out as 'DEVAS' (gods) "ultimately turned out to be 'ASURAS' [demons]".

"If the seeds of the commercial relationship between Antrix [commercial arm of the Indian Space Research Organisation (ISRO)] and Devas were a product of fraud perpetrated by Devas, every part of the plant that grew out of those seeds, such as the agreement, the disputes, arbitral awards, etc., are all infected with the poison of fraud. A product of fraud is in conflict with the public policy of any country, including India. The basic notions of morality and justice are always in conflict with fraud," Justice V. Ramasubramanian, who authored the judgment for a Bench led by Justice Hemant Gupta, wrote.

Antrix's petition

The NCLT's direction in May last to wind up Devas came on a petition filed by Antrix, which had argued that its agreement with Devas spoke about three components, namely, DEVAS2 Technology, DEVAS services and DEVAS device, none of which existed either on the date of formation of Devas or on the date of execution of the agreement or on the date of termination of the agreement and not even on the date of winding up the company. Antrix had accused Devas of violation of the SATCOM policy, manipulation of minutes of meetings and of the "shocking nature" of the financial fraud involved.

Not only the Devas management, officials of Antrix as well as the officials of the Department of Space are facing prosecution for fraud, criminal conspiracy and offences under the Indian Penal Code and the Prevention of Money Laundering Act.

"We do not know if the action of Antrix in seeking the winding up of Devas may send a wrong message to the community of investors, but allowing Devas and its shareholders to reap the benefits of their fraudulent action, may nevertheless send another wrong message, namely that by adopting fraudulent means and by bringing into India an investment of Rs. 579 crore, the 133 investors can hope to get tens of thousands of crores of rupees, even after siphoning off Rs. 488 crore," Justice Ramasubramanian observed.

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