

GOVT TO USE SC ORDER TO COUNTER DEVAS' ARBITRATION CASES ABROAD

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Move comes day after the Supreme Court upheld earlier orders by tribunals to wind up Devas

NEW DELHI : Finance minister Nirmala Sitharaman said on Tuesday the Narendra Modi administration would contest multiple arbitration awards won by shareholders of Devas Multimedia Pvt. Ltd over a cancelled contract on the strength of the Supreme Court's validation of the fraud charges against the company.

A day after the apex court upheld the earlier orders of the National Company Law Tribunal (NCLT) and its appellate tribunal to wind up Devas, the Bangalore-based company, which had partnered with state-owned Antrix Corp. to offer broadband wireless services, the minister said that the government would fight till the end. The apex court on Monday held Devas' appeal against the liquidation order unsustainable.

Sitharaman explained that the government would defend the cancellation of the satellite capacity lease deal in 2011, relying on the Supreme Court decision. India is now fighting legal battles with Devas' overseas shareholders over enforcement of the arbitration awards the latter have won under India's bilateral investment protection deals with some nations, as damages for the cancelled deal.

Three Mauritius-based shareholders of Devas—Devas (Mauritius) Ltd, Telcom Devas Mauritius Ltd and Devas Employees Mauritius Pvt. Ltd—had earlier this year won orders from a Canadian court to seize some amounts collected by the International Air Transport Association (IATA) on behalf of the Airport Authority of India (AAI) and Air India (AI). The two public sector entities were targeted as proxies for the government of India.

"Loss shall not be borne by the Government of India. This is Prime Minister Modi's government. We shall fight it till the last," Sitharaman told reporters.

In response to a query on whether the Supreme Court of India's finding of alleged fraud will be adequate ground for international courts to undo the arbitration awards won by the company, the minister said that other nations would not be in a position to ignore the Supreme Court order. "We will take all these facts before the courts because no country which respects the rule of law will ignore these facts," she said.

An email sent to an external spokesperson for Devas' shareholders on Tuesday remained unanswered.

Meanwhile, the liquidation proceedings of Devas are underway. An official liquidator has already been appointed. Also, the government intends to invoke the Insolvency and Bankruptcy Code (IBC) provisions to recover any loss, if at all, suffered by the government from the personal assets of the persons named by investigating agencies. IBC allows liquidators and resolution professionals to review the past conduct of the management and shareholders within a certain period and recover from their personal assets any losses suffered by the stakeholders due to their actions in certain cases.

"The liquidator will take stock of the situation and take a call on recovery from the personal assets of the persons already named in the first information report," said an official informed about discussions in the government. These individuals have unlimited liability, the official said on condition of anonymity.

International arbitrations were triggered in this case after the cancellation of the Devas-Antrix satellite capacity leasing deal in 2011 by Antrix, citing "force majeure." Devas signed the deal to offer mobile multimedia and broadband wireless services in India.

In 2015, the three Mauritius based Devas shareholders had won \$562.5 million in damages plus 18% annual interest in arbitration. In October 2020, they also secured an arbitration award of \$111 million-plus interest, as compensation for the expropriation of 40% of interests in the satellite/terrestrial communications business owned by Devas, according to the information given by the three entities.

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