
DELHI HIGH COURT GRANTS INJUNCTION AGAINST AN LONDON SEATED INVESTMENT ARBITRATION INITIATED BY VODAFONE

S Ravi Shankar¹

In a recent Judgment Union of India Vs Vodafone Group PLC United Kingdom (2017) SCC Online Delhi 9930 dated 22nd August 2017, Delhi High Court granted injunction restraining Vodafone Group PLC United Kingdom from taking any action in furtherance of the notice dated 15th June 2015 and notice of Arbitration dated 24th January 2017, investment arbitration initiated under India-UK Bilateral Investment Protection Agreement between Republic of India and United Kingdom. The main ground for the grant of injunction was because the subsidiary of Vodafone Group PLC, VIHBV had already initiated a similar investment treaty arbitration for similar relief under the Bilateral Investment Promotion and Protection Agreement (BIPA) between the Republic of India and the Kingdom of Netherlands for the promotion and protection of investments.

Background of the case: M/S Hutchinson Telecommunications International Limited earned capital gains on the sale of stakes to Vodafone International Holdings B.V (VIHBV) in an Indian Company by the name of Hutchinson Essar Limited for a consideration of 11.1 Billion USD on 8th May,2007. The acquisition of stake in HEL by VIHBV was held liable for tax deduction at source under S.195 of the Income Tax Act,1961 and since VIHBV failed to honour its tax liability, a demand under Section 201(1)(1A)/220(2) for non-deduction of tax was raised on VIHBV. However Supreme Court of India quashed the said demand raised by the Income tax department.

Subsequently, Government of India brought in a retrospective Amendment to Section ((1) and Section 195 of the Income Tax Act read with Section 119 of the Finance Act, 2012 re-fastened the tax liability on VIHBV. Aggrieved by the above said retrospective tax amendment, VIHBV the subsidiary company of Vodafone Group PLC, invoked the arbitration clause provided under the Bilateral Investment Promotion Protection Agreement between Republic of India and Kingdom of Netherlands for the promotion and protection of investments. While the above said proceedings under BIPA with Netherlands was pending.

Hence Government of India filed suit in the Delhi High Court, alleging that both the entities belong to the same investment entity and initiating two different proceedings under two bilateral investment treaties against the same host state, is an abuse of process of law. In support of the said contention Orascom TMT investments S.a.r.lVs People's Democratic Republic of Algeria (ICSID Case No.ARB/12/35). In the said award the tribunal held that the entity which controls various entities, initiates proceedings through those entities against a

¹ The author is an international Arbitration lawyer from India and Senior Partner of Law Senate Law Firm, New Delhi

same host state for the same cause of action, then it is an abuse of process of law, which should not be allowed.

Conclusion: Bilateral investment treaty is to protect the investor, who comes forward to invest in a foreign country, to protect him from any State action of expropriation. But some investors misuse the mechanism provided and weaken the system. Such an action is surely an abuse of process of law.

