

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF ECONOMIC AFFAIRS

LOK SABHA
UNSTARRED QUESTION NO-1870
TO BE ANSWERED ON MONDAY, MARCH 14, 2022/ PHALGUNA 23, 1943 (SAKA)

BIT ARBITRATION

1870. **Shri Pinaki Misra**

Will the Minister of **FINANCE** be pleased to state:-

- (a) the details of reasons for not complying with the awards of the arbitral tribunal of ICC and two Bilateral Investment Treaty (BIT) arbitration brought under India-Mauritius BIT and India-Germany BIT:
- (b) the details and the current status of the freezing and seizure of assets in Quebec and France including the steps taken by the Government for releasing the assets:
- (c) the steps taken by the Government to comply with or challenge the said awards: and
- (d) the steps taken by the Government not to deter foreign investments in light of the Devas, Cairn and Vodafone cases?

ANSWER

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE

(SHRI PANKAJ CHAUDHARY)

(a) & (c) The Antrix-Devas dispute arose from the agreement entered into on 28.01.2005 by and between Antrix Corporation Limited and Devas Multimedia Private Limited, India (Devas). The Hon'ble Supreme Court vide its judgment dated 17.01.2022 upheld the decisions of the NCLT and NCLAT dated 25.05.2021 and 08.09.2021 and ordered the winding up of Devas on the ground that Devas was a company formed for fraudulent purposes and that its activities had been conducted in a fraudulent and unlawful manner. The Hon'ble Supreme Court has held the agreement dated 28.01.2005 to have been signed in contravention to Indian laws in a fraudulent manner and every proceeding that springs out of such an agreement to be fruits of a poisonous tree.

The judgment of the Hon'ble Supreme Court also held the directors and shareholders (who are also investors in Devas) to have participated actively in the fraud. These directors and shareholders apart from the winding up process are also facing criminal trials for offences under the Prevention of Money Laundering Act 2002 (PMLA) and the Prevention of Corruption Act 1988 (PC Act), before the Special Courts of CBI and ED, and penalty adjudication for Foreign Exchange Management Act 1999 (FEMA) violations.

Since a serious case of fraud and corruption are involved, the awards are being contested worldwide both at the seat of the Awards and also other enforcing Courts. Government of India has engaged Counsels in all jurisdictions.

(b) As regards the seizure of assets in France, even though there are media reports regarding these orders, no official service has been made on the Government.

As regards the seizure of assets in Quebec, Airports Authority of India and Republic of India have engaged Counsels to protect its interests in foreign jurisdictions.

(d) In the Cairn and Vodafone cases, the Taxation Laws (Amendment) Act, enacted in August 2021, has, inter alia, withdrawn the retrospective taxation of gains arising from indirect transfer of assets located in India. This has provided certainty and predictability in taxation, which is important for encouraging foreign investment.

In the Devas Case, since it involves large scale fraud, it may not affect foreign investments as it is case specific and may not travel beyond the factual matrix of the Devas Case.