



Cairn Energy wins Arbitration Award

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Context



India has been ordered to return up to \$1.4 billion to Cairn Energy PLC of the U.K. after an international arbitration overturned tax demanded retrospectively – an award the government indicated it may challenge.

The Award

- The three-member tribunal, which also comprised a nominee of the Indian government, unanimously ruled that India’s claim of ₹10,247 crore in past taxes over a 2006-07 internal reorganisation of Cairn’s India business was not a valid demand. India “failed to accord Cairn Energy’s investments fair and equitable treatment” under the bilateral investment protection pact it had with the U.K., it said in a 582-page order.
- The tribunal ordered the government to desist from seeking such a tax and return the value of shares it had sold, dividends seized and tax refunds withheld to recover the tax demand.
- The government was asked to compensate Cairn “for the total harm suffered,” together with interest and cost of arbitration, according to the order.

A taxing journey

A timeline of the conflict

January 2014: Income Tax Department seeks information from Cairn Energy about group reorganisation done in 2006

March 2015: Cairn Energy receives draft assessment order from I-T Department, citing **retrospective legislation to seek ₹10,247 crore** in taxes. Cairn reacts by filing a notice of dispute

May 2018: Pending arbitration proceedings, I-T Department begins selling Cairn shares to recover tax dues

2018: Three-member international arbitration tribunal concludes hearings in tax dispute

December 23, 2020: Cairn Energy wins arbitration

While the order does not contain a provision for challenge or appeal against the award, the government said it would study the arbitration award and “will consider all options and take a decision on the further course of action, including legal remedies before appropriate fora.” Cairn, according to people aware of the matter, can use the arbitration award to approach courts in countries such as the U.K. to seize any property owned by India overseas to recover the money if the award is not honoured.

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- Sources said the total amount payable by the Indian government, including \$200 million of interest and \$22 million of arbitration cost, is \$1.4 billion (about ₹10,500 crore).
- This is the second loss the government has suffered in three months over the retrospective levy of taxes. In September, the U.K.’s Vodafone Group won an international arbitration against the demand of ₹22,100 crore in taxes.

- However, Cairn was the only company against which the government took action to recover retrospective taxes. During the pendency of the arbitration, the government sold Cairn's near 5% holding in Vedanta Ltd., seized dividends totalling ₹1,140 crore due to it from those shareholdings and set off a ₹1,590-crore tax refund against the demand.

Will consider all options: India

- Besides Cairn Energy, the government also slapped a similar tax demand on its erstwhile subsidiary Cairn India (which is now part of Vedanta Ltd.). Cairn India too has challenged the demand through a separate arbitration. In the case of Vodafone, the government took no such action.
- In an unrelated case of penalties levied on Reliance Industries for producing less than targeted natural gas from KG-D6 fields, the government stopped issuing notices soon after the Mukesh Ambani-led firm-initiated arbitration against such move.
- Foreign investors will watch the government's response to both the Cairn and Vodafone awards. The BJP government and its Ministers have, in the past, denounced the introduction of a retrospective tax amendment in 2012 by the previous Congress government as tax terrorism.
- Confirming the award, Cairn in a statement said: "The tribunal established to rule on its claim against the Government of India has found in Cairn's favour." Cairn had challenged the Indian government seeking taxes over an internal business reorganisation using the 2012 retrospective tax law, under the U.K.-India Bilateral Investment Treaty.
- Sources said the government had so far not appealed against the arbitration loss in the Vodafone case and the Cairn Arbitration Award may hasten a decision on it.

Connecting the Article

Prelims Question : Consider the following statements regarding Cairn Energy wins Arbitration Award:

1. Cairn had challenged the Indian government seeking taxes over an internal business reorganisation.
2. Indian government seeking taxes using the 2015 retrospective tax law, under the U.S.-India Bilateral Investment Treaty.

Which of the statements given above is/ are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2

(d) Neither 1 nor 2

Mains Question : India had so far not appealed against the arbitration loss in the Vodafone case and the Cairn Arbitration Award may hasten a decision on it. Explain.