

XIV. DECISION

363. After deliberation, and for the reasons of fact and law set out above, the Tribunal decides as follows:

(1) The Tribunal has jurisdiction, under the terms of the Agreement between the Kingdom of the Netherlands and the Republic of India for the Promotion and Protection of Investments, done at The Hague on 6 November 1995, to consider the Claimant's claims for breach of the Agreement.

(2) The Claimant is entitled, in respect of its investments in mobile telecommunications in India, to the protection of the guarantee of fair and equitable treatment laid down in Article 4(1) of the Agreement.

(3) The Respondent's conduct in respect of the imposition of the Claimant of an asserted liability to tax notwithstanding the Supreme Court Judgement is in breach of the guarantee of fair and equitable treatment laid down in Article 4 (1) of the Agreement, as is the imposition of interest on the sums in question and the imposition of penalties for non-payment of the sums in question.

(4) The finding of breach in paragraph (2) entails the obligation on the Respondent to cease the conduct in question, any failure to comply with which will engage its international responsibility.

(5) In the light of the above findings, it is not necessary for the Tribunal to proceed to a determination of the Claimant's other claims.

(6) The costs of the arbitration will be borne equally between the Parties.

(7) The Respondent will reimburse to the Claimant the sum of £ 4,327,294.50 or its equivalent in US Dollars, being 60% of the Claimant's costs for legal representation and assistance, and € 3,000 or its equivalent in US dollars, being 50% of the fees paid by the Claimant to the appointing authority.