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DoT panel wants surplus VSNL land hived off, blames Tatas for delay

NEW DELHI: A telecom department panel has recommended that the government park surplus land controlled by Tata Communications into a realty company, the first of three possible methods that had been proposed for the separation of the land from the company, earlier known as VSNL, when it was privatised in 2002.

The three-member panel investigating the delay in the demerger of the 773 acres of surplus land after the privatisation of VSNL, the former long-distance monopoly, has also held the Tatas responsible for the impasse. It has said the government must acquire 51.12% stake in this realty firm and nominate majority directors in it.

"From the beginning, their (Tatas) approach was to resist it (demerger) on the pretext of various issues... they tried to push through other alternatives such as sale of surplus land by public auction, retention of surplus land by VSNL etc," the panel said in its report, a copy of which was reviewed by ET.

A detailed set of questions to Tata Industries , a holding company of the Tata Group, did not elicit a response at the time this story was being written. The panel, headed by SR Rao, an additional secretary in the department of telecom (DoT), submitted its report on April 21. Senior department officials confirmed receiving the report, but declined to discuss its content.

The report also said according to the agreement between the government and Tatas, alternative methods for the separation of the land need not be explored till it became apparent that demerger was not feasible. "(Other possibilities need not be) undertaken unless it becomes crystal clear without any doubt that the demerger was not possible."

"The clarity that the demerger is not possible can only come if the scheme of arrangement is rejected by the competent court. So far we have not fulfilled any such scheme before the competent court," the report said.

Instead the government must "compulsorily exercise" the demerger option and house the land in a separate company, said the committee. It further added that the telecom department's earlier proposal for auctioning the land, as it would fetch maximum benefits to all shareholders, was "not supported by any due diligence on record".

VSNL was acquired by a subsidiary of Tata Sons , the holding company of the Tata Group, in 2002 when it was privatised by the Atal Bihari Vajpayee-led NDA government. But the 773 acres of land, spread over five locations in Delhi, Kolkata, Chennai and Pune, was not part of the deal.

Last month, Communications Minister Kapil Sibal had asked the telecom department to find out why it was taking so long to decide what to do with the land.

In a directive on March 15, Sibal said according to the 2002 agreement between the buyer and seller, the strategic partner or the buyer was responsible for spinning off the surplus land into a separate company. "In this regard, the strategic partner (Panatone Finvest, a Tatas subsidiary) is in default of discharging its legal obligations," the letter said.

The three-member committee set up on Sibal's direction, in its report, also said the Department of Disinvestment (DoD), which had carried out the entire process of strategic sale, had also opined "the strategic partner was in default of discharging its legal obligations in terms of the shareholders agreement".

This panel added that the disinvestment department had recommended the government take immediate action to ensure compliance and safeguard its interest.

The Tatas had bought a 45% stake in VSNL in a two-step transaction-25% directly from the government and 20% from minority shareholders through an open offer-without ownership rights for the 773 acres of surplus land.

The rights to the surplus land stayed with the shareholders who owned the company before the divestment. The salt-to-software conglomerate has subsequently raised its stake to just over 50% by buying shares from the market. The agreement between the buyer (the Tatas) and the seller (government) outlined three methods for the separation of the land from the company.

The first option was by spinning off the asset into a separate company with the same shareholding that VSNL had before the selloff. This is the method that the Rao committee has recommended.

The second option was to directly sell the land through an auction while the third was for TCL to get the land valued by an expert appraiser.

In the third case, 45% of the value would be paid in cash by the Tata Group to the government and minority shareholders who had tendered in the open offer by the group in 2002. Tata Communications would get to keep the land.

All three options are so designed that the government and public shareholders, who held 51% and 49%, respectively, prior to the disinvestment, derive all the value. The Tata Group companies that acquired 45% of the shareholding in the initial divestment would not benefit. Only those Tata entities that had bought the extra 5% would gain from the enhanced value of the land.

The Tatas had objected to the demerger on the grounds that they would have to bear the cost-capital gains tax and stamp duty-of hiving off the land into a separate company.

But the DoT committee probing this issue has pointed out that the attorney-general, in its opinion way back in 2005, had said the "demerger could be enforced by way of specific performance and the plea of high cost involved would make no difference". The report also adds the department of legal affairs had endorsed this position.

After examining a lengthy series of communications between both parties on this issue, the probe panel said the objections raised by the Tatas "regarding demerger of surplus land were nothing but repetition".

The report alleged that despite the government clarifying its stand multiple times, the Tatas had delayed creating a company to hold the land assets in violation of its contractual obligations.

It further stated that the Tatas created the "resulting company, namely Hemisphere Properties India Limited, with an authorised capital of Rs 25 lakh instead Rs 10 crore as approved by the government and with all private directors on the board and informed DoT of it on January 2005", but the process failed to take off as VSNL subsequently said demerger was not possible under Article 391-394 of the Companies Act based on the legal opinion of retired justice Bhagwati.

However, legal opinion obtained by the DoT held a completely contrary view that the demerger of surplus land is possible under the same article of the Companies Act, the report said.