Share transfer needs I-T nod, says NDTV; Adani rejects claim

FE BUREAU
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NEW DELHI TELEVISION (NDTV) on Thursday said a transfer of its shares would require the income tax (I-T) department's approval. Adani Group termed NDTV's claim "without merit or basis in law or fact" and an attempt to "inordinately delay" the deal.

The media firm, in a regulatory update, said the I-T department had "provisionally" attached shares held by RRPR Holding (RRPRH), a promoter group firm, in 2017 and also barred founder-promoters Radhika and Prannoy Roy from selling stake following a dispute in reassessment of taxes.

In a 2018 notification, the department reiterated that attachment would remain in place until completion of the reassessment proceedings, NDTV, said, quoting a letter it received from RRPRH.

According to the loan agreement RRPRH signed with Vishvapradhan Commercial Private (VCPL) in 2009, I-T had estimated a capital gains tax of ₹175 crore "arising on the sale of controlling interest in NDTV to VCPL".

The department has to clarify whether the provisional attachment on RRPRH's shares held in NDTV was valid. Further, RRPRH also intimated that the promoters (Roys) as individuals would also require independent approvals to deal with any assets, including indirect shareholding in NDTV. RRPRH also asked VCPL, an indirect subsidiary of Adani Enterprises through which the group had exercised rights to acquire a 99.5% stake in RRPRH, to jointly move the I-T department.

Adani Enterprises refuted the promoters' statement. "The I-T orders only applies to the shares of NDTV held by RRPRH and in no manner restricts it from completing the formalities in relation to allotment of shares to VCPL on exercise of the warrants," it said in an exchange notice, adding NDTV's contention lacks "bona fides and has no merit or basis either in law or in fact and is misconceived".

The media firm said the I-T dept had 'provisionally' attached shares held by RRPRH in 2017 and barred Radhika and Prannoy Roy from selling stake

It also denied that prior nods were required from the I-T department as the order was issued against the Roys individually and do not relate to their ownership in RRPRH.

The Adani Group company has also called upon RRPRH to withdraw the letter immediately and "cease and desist from repeating the misconceived and misleading statements".

Legal experts said NDTV's interpretations of the provisions were flawed. "(Section 281 of the I-T Act) is triggered in case when there is a transfer of an asset or when a charge is created on an asset whereas in the present case, new shares in RRPRH have been issued (resulting in passing on 99.5% shareholding in RRPRH to Adani) and hence no transfer has taken place by either Roys so as to trigger provisions of Section 281," Vishwas Panjiar, partner at Nangia Andersen said.

'I-T department nod not needed for Adani to acquire NDTV shares'

VCPL, according to the statement, has called upon RRPR to 'cease and desist' from 'repeating the misconceived and misleading statements'

NEW DELHI: The Adani group believes that there is no restriction by tax authorities on it acquiring a stake in NDTV, a statement that has also been backed by tax experts.

The Adani group has acquired a little-known firm, VCPL, that lent over Rs 403 crore to NDTV's founders more than a decade ago in exchange for warrants that allowed the company to acquire a stake of 29.18 per cent in the news group at any time.

Adani has since exercised those rights but NDTV says such conversion is barred by income-tax authorities.

The Adani group in a statement said Vishvapradhan Commercial Pvt Ltd (VCPL) has informed that the income tax department orders only apply to share of NDTV held by RRRP Holding Pvt Ltd (a promoter of NDTV) and in no manner restrict RRPR from completing the formalities in relation to allotment of equity shares to VCPL.

"The IT orders have been issued against RRPR only and for the purpose of securing RRPR's continued ownership over the said NDTV shares. The IT orders have not been issued against Prannoy Roy and Radhika Roy individually and do not relate to their equity ownership in RRPR," it said, citing a reply received from VCPL.

Against this background, "the suggestion that Prannoy Roy and Radhika Roy will need prior approval of the Assessing Officer under Section 281 of the Income Tax Act, 1961 is wholly misconceived and has no basis."

"It is clear that RRPR will remain the absolute owner of the said NDTV shares even after RRPR has completed the steps required under the Notice and hence, the question of any prior approval of the Assessing Officer does not arise," it said.

VCPL, according to the statement, has called upon RRPR to "cease and desist" from "repeating the misconceived and misleading statements" and take all necessary steps to convert the warrants into equity.

Tax experts have also backed the Adani group on the issue.

Nangia Andersen LLP Partner Vishwas Panjiar said the position adopted by NDTV appears to be based on a flawed interpretation of provisions of Section 281 of the Income-tax Act, 1961.

"Section 281 is triggered in case when there is a transfer of an asset or when a charge is created on an asset whereas in the present case, new shares in RRPR have been issued (resulting in passing on 99.5 per cent shareholding in RRPR to Adani)

"... hence no transfer has taken place by either Roys so as to trigger provisions of section 281 (though Adani has the right to acquire entire equity shares held by the Roys in RRPR, this transfer does not seem to have been effectuated as yet)," Panjiar said.

Sharing similar views, Sudit K Parekh & Co LLP Partner Anita Basrur said Section 281 applies when there is a transfer of an asset or when a charge is created on an asset.

"In the present case, the warrants held by VCPL are being converted to equity shares of RRPRH. There is no transfer but new shares are being issued. This does not trigger provisions of Section 281," she said.

AMRG & Associates Senior Partner Rajat Mohan said though RRPR Holdings Private Limited, holding 29.18 per cent of NDTV, was restricted by the income tax department from transferring said shares through a 2017 attachment order, that order never restricted RRPRH from carrying out restructuring by raising capital or converting previously issued share warrants.

"The tax position adopted by NDTV seems to be on a wrong footing as every private company enjoys a separate legal entity status. Therefore, any capital restructuring of RRPRH would not need permission from the income tax department under section 281.

"Also, there has been no jurisprudence available under section 281 that approves the lifting of the corporate veil to restrict the indirect transfer of assets," Mohan added.

NA Shah Associates LLP Partner Ashok Shah said Section 281 of the Income Tax Act is intended to protect interest of revenue on collection of income tax. However, this does not declare the share transfer void ab initio. PTI

'Tax nod not required for Adani-NDTV deal'

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