The Supreme Court's verdict revoking the 122 contentious telecom licences awarded in 2008 has derailed the business plans of international operators with stakes in the Indian telecom space. UAE-based Etisalat lost 15 telecom licences, Bahrain Telecommunications Company (Batelco) lost six licences, and Norway's Telenor and Russia's Sistema lost 22 and 21 licences respectively. These companies expressed shock over the verdict, and noted that they had been treated unfairly and penalised for faults the court found in government procedures.

Nonetheless, having paid top dollar in picking up stake and rolling out telecom networks in the country, some of these affected companies are putting up a strong fight to protect their investments here.

Sistema JSFC, which has a 56.68 per cent stake in Sistema Shyam TeleServices Limited (SSTL) and offers mobile services under the MTS brand, recently issued a notice to the government, invoking the right to protect its investments under a bilateral treaty. "The cancellation of SSTL's licences following Sistema's billion dollar investments in the Indian cellular sector is contrary to India's obligation under the Bilateral Investment Treaty (BIT), including obligations to provide investments with full protection and security, and obligations not to expropriate investments," reads the company's official statement.

Sistema has invoked Clause 9.1 of the BIT signed between the governments of the Russian Federation and India for the promotion of mutual protection of investments, which came into effect on August 4, 1996. This allows the company to initiate proceedings against the Indian government before an international arbitration tribunal set up in accordance with the arbitration rules of the United Nations Commission on International Trade Law, or any other forum, in case the dispute is not resolved in six months.

"We have always maintained that all our investors are being penalised for acting in good faith and in reliance on the appropriateness of the procedures established by India's telecommunications authorities," says SSTL's president and chief executive officer, Vsevolod Rozanov.

Sistema, which serves about 15 million subscribers and employs 3,500 personnel in the country, has approached the government to protect its investment of $3.1 billion. The company also plans to contest the Supreme Court order by filing a review petition shortly. This would make it the first among the many affected groups to file a formal review petition against the verdict.

Telenor, which has a 67.6 per cent stake in Uninor, a joint venture (JV) with realty company Unitech Limited, is keen to protect its investments worth over Rs 140 billion in the country. On behalf of the company, the Norwegian government has intensified its diplomatic efforts to discuss various issues related to the 2G controversy and the possible way forward. “We expect the government to arrive at a fair outcome that does not risk our lawful investment. We also need to make sure that there is a framework for continuing our operations in the country,” says Sigve Brekke, managing director, Uninor, and Asia head, Telenor.

With the relationship between the two partners souring over the past year, Telenor issued a notice for indemnity and compensation to Unitech on February 21, 2012. Not unexpectedly, both companies have taken their dispute to the Company Law Board, where they have sued each other.

Going forward, Telenor has decided to bring down the curtain on Uninor, which caters to about 40 million subscribers at present. “The idea is to start afresh and participate in the auctions with a new partner. We have initiated talks with people who can be our prospective partners,” claims a senior company official. After obtaining the necessary approvals from the Foreign Investment Promotion Board, Telenor plans to set up a new company in which it would have a 74 per cent stake.

Batelco has been the first to announce its plans to exit operations in India. The company plans to sell its stake back to its partner, the Siva Group, for Rs 8.6 billion – the same price at which it had bought the 42.7 per cent stake in the Indian JV, S Tel Private Limited, in 2009.

Etisalat, which had bought 45 per cent stake in Swan Telecom (renamed Etisalat DB Telecom Private Limited) in 2008, also plans to shut down operations in India. “The decision of the Supreme Court has removed Etisalat’s ability to operate. The decision has been taken in order to protect the interests of all stakeholders and to avoid further costs at this time of rapid change and continued uncertainty in the Indian telecom sector,” read a company statement.

The company will be taking a $829 million hit in its Indian earnings after the cancellation of licences. It will take a call on coming back to India only when it sees clarity on the auction process, and stable policy, legal and regulatory frameworks.

However, before exiting the sector, Etisalat is taking action against its Indian JV partners on grounds of fraud and misrepresentation. It has initiated legal proceedings against Vinod Goenka and Shahid Balwa, both promoters of DB Realty and Majestic Infracon, a DB group company.

There is no predicting the outcome of these court cases. So far, SSTL and Uninor are the only two companies that plan to continue operations in India post the cancellation of their licences. Meanwhile, the Telecom Regulatory Authority of India would do well to outline a future course of action to bring in transparency in the sector. Otherwise, the uncertainty generated by the current legal situation may deter investments in 3G and 4G networks.