

# Telecom Disputes Settlement and Appellate Tribunal



## Genesis of Regulation in Telecom

**Telecom Regulatory Authority of India Act (TRAI)** was enacted in 1997. This Act established a Telecom Regulatory Authority of India (TRAI), whose Chairperson was to be a sitting or retired Judge of the Supreme Court or a Chief Justice of a High Court and the Members were to be persons having special knowledge of, and personal experience in,

telecommunication, industry, finance, accountancy, law, management and consumer affairs.

Apart from regulatory functions, TRAI was also empowered to adjudicate upon disputes among Service Providers or between the Service Providers and a group of Consumers on matters relating to technical compatibility and interconnection between the Service Providers, revenue sharing arrangement between Service Providers and quality of telecommunication services and interests of consumers. TRAI was vested with the power to issue directions to the Service Providers. Appeals from the decisions of TRAI lay to the High Court and appeals therefrom lay to the Supreme Court. The jurisdiction of civil courts was barred.

The adjudicatory powers of TRAI were challenged before the Delhi High Court on the ground that TRAI did not possess jurisdiction to issue directions to Department of Telecom (DoT) in the latter's capacity as Licensor. The High Court held that TRAI does not possess the power to issue directions to the Government in latter's capacity as Licensor. The result of the above challenge was that no separate dispute settlement mechanism was available to adjudicate upon disputes between the Licensor and Licensee for quite some time.

## The formation of Telecom Disputes Settlement and Appellate Tribunal (TDSAT)

In order to bring in functional clarity and strengthen the regulatory framework and the disputes settlement mechanism in the telecommunication sector, the TRAI Act of 1997 was amended in the year 2000 and TDSAT was set up to adjudicate disputes and dispose of appeals with a view to protect the interests of service providers and consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector. In January 2004, the Government included broadcasting and cable services also within the purview of TRAI Act. After coming into force of the relevant provisions of the Finance Act 2017, the jurisdiction of TDSAT stands extended to matters that lay before the Cyber Appellate Tribunal and also the Airport Economic Regulatory Authority Appellate Tribunal.

## Composition of TDSAT

The Tribunal consists of a Chairperson and two Members appointed by the Central Government. The Chairperson should be or should have been a Judge of the Supreme Court or the Chief Justice of a High Court. A Member should have held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration.

## Powers and Jurisdiction

The Tribunal exercises jurisdiction over Telecom, Broadcasting, IT and Airport tariff matters under the TRAI Act, 1997 (as amended), the Information Technology Act, 2008 and the Airport Economic Regulatory Authority of India Act, 2008. The Tribunal exercises original as well

as appellate jurisdiction in regard to Telecom, Broadcasting and Airport tariff matters. In regard to Cyber matters the Tribunal exercises only the appellate jurisdiction.

### **Procedure**

- i. The Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908;
- ii. It has the power to regulate its own procedure;
- iii. It is to be guided by the principles of natural justice;

Tribunal has the same powers as are vested in a civil court under the CPC in respect of:

- i. summoning and enforcing the attendance of any person and examining him on oath;
- ii. requiring the discovery and production of documents;
- iii. receiving evidence on affidavits;
- iv. subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;
- v. issuing commissions for the examination of witnesses or documents;
- vi. reviewing its decisions;
- vii. dismissing an application for default or deciding it ex parte;
- viii. setting aside any order of dismissal or any application for default or any order passed by it ex parte; and
- ix. any other matter which may be prescribed.

In addition, the Tribunal can call for the records relevant to disposing of a Petition or appeal, for the purpose of examining the legality or propriety or correctness of any decision or of any order etc of TRAI.

### **Nature of proceedings**

- i. The Tribunal is the Court of first instance except cyber matters.
- ii. Every proceeding before the Tribunal is deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860);
- iii. The Tribunal is deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)
- iv. Tribunal's Orders are executable as a decree of civil court.

### **Appeals**

In respect of Telecom, Broadcasting and Airport tariff matters, the Tribunal's orders can be appealed to the Supreme Court but only on substantial questions of law. However, no appeal lies against an interlocutory order or against any decision or order made by the Tribunal with the consent of the parties. In regard to Cyber matters, the Tribunal's order can be appealed before High Court.