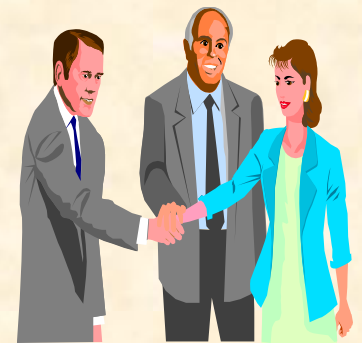




*DISPUTE SETTLEMENT AND
PROTECTION OF CONSUMER RIGHTS
IN TELECOM AND BROADCASTING
SECTORS*

*MANJUL BAJPAI
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STATUS OF DISPUTES SETTLEMENT MECHANISM IN TELECOM AND BROADCASTING SECTORS IN INDIA

- January 2000 - most significant development
- Separation of Regulatory and Adjudicatory functions
- TDSAT was established for settling telecom disputes
- In January 2004 TDSAT was empowered to settle disputes in cable and broadcasting sectors also

- TDSAT is Court of first instance
- It has exclusive jurisdiction over telecom matters
- It's powers are very wide – can settle “any dispute in telecom Sector
- TDSAT has two kinds of jurisdiction –
 - Original Jurisdiction
 - Appellate Jurisdiction

- Original Jurisdiction - person related
 - 1st - Licensor Licencee dispute
 - 2nd - Two or more Service providers
 - Telephony - between BSNL / MTNL and private operators - mostly relate to interconnection issues
 - Cable Operators, MSOs and Broadcasters disputes – mostly relate to interconnection issues

- In telecom - law emanates from a mix of TDSAT's Judgements and TRAI's Regulations, apart from other sources
- Broadcaster must provide its TV channels to MSOs
- MSO must provide its TV channels to Cable Operators
- Defaulter in payment not entitled to benefit of Must Provide Clause
- Signals Seeker to negotiate with supplier of signals
- In case of dispute Signals Seeker to approach TDSAT
- Terms of contract should be reasonable
- Reasonableness to be decided by an authorised forum like TDSAT and not by any single party to the contract.
- Hotels are 'Consumers' and Guests are not 'Consumers'
- Cable Operators, MSOs and Broadcasters are "Service Providers"
- No Exclusive Contract

❖ 3rd -Service Providers and Group of Consumers.

- ❖ Individual consumer must approach Forums like Consumer Forums
- ❖ Two or more persons - Group can approach TDSAT

✓ Appellate Jurisdiction

- ✓ against all orders, decisions and directions of TRAI

❖ Power to review

- Limited power
 - Can file a Review on discovery of new evidence
 - Mistake apparent on the face of the record
 - Other sufficient reason
- **CPC not to apply - Regulate its own procedure**
 - Simple proceedings
 - Flexibility to mould its own procedures
 - **Principles of Natural Justice apply**
 - TDSAT hears both the parties patiently
 - Reasonably balanced order
 - **Orders executable as decrees of Civil Court**

- **Civil Court's jurisdiction is barred**
 - No Civil Court
 - No TRAI
 - No Arbitrator.
 - State High Court – Writ Jurisdiction
- TDSAT has exclusive jurisdiction
- **Jurisdiction over competition issues**
 - Can entertain disputes arising out of TRAI Act or decisions in Telecom, Broadcasting and Cable sectors, even if such decisions incidentally trench upon the subject of UTP, RTP or MTP

- Appeals lie directly to Supreme Court on questions of law
 - Earlier four layered system
 - Now only two layered system
 - Speedy Disposal
 - Most cases in cable and broadcasting sector - issues are factual
 - TDSAT may be the first and last court.
- No appeal against interim orders of TDSAT

SOME SUGGESTIONS

- † To maintain the advantages of a Specialised Tribunal, continuity in the knowledge and expertise gained during litigation needs to be passed on to the succeeding Chairperson and Members
- † To avoid plethora of litigation, important aspects of telecom issues should be codified with clarity to avoid ambiguity and uncertainty
- † And my suggestion to Cable and Broadcasting Industry is to accept each other's presence and role, keeping in mind and recognizing historical developments, while recognizing the new technologies and new scope for provision of services, all in the interest of consumers at large.

THANK YOU