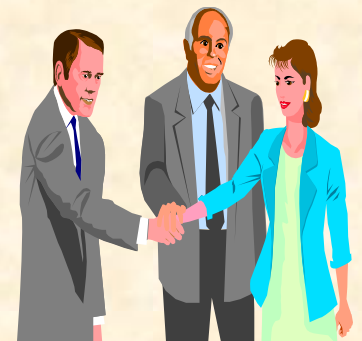




*“REGULATORY FRAMEWORK AND
DISPUTE RESOLUTION IN TELECOM,
BROADCASTING AND CABLE
SERVICE SECTORS”*

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TRAI ACT

- § The TRAI Act was enacted in the year 1997. Originally, TRAI itself had both regulatory and limited adjudicatory functions.

TDSAT

- § The TRAI Act was amended in the year 2000 and TDSAT was created as a statutory body.

EXCLUSIVE JURISDICTION

- § TDSAT is empowered to entertain all telecom disputes.
- § Its jurisdiction was extended to Cable and Broadcasting industry also in January, 2004.
- § It has exclusive jurisdiction to entertain all disputes whether it is telephony, cable or broadcasting.

NO OTHER COURT HAS JURISDICTION

§ Civil Court

Civil Court's jurisdiction is expressly barred under the TRAI Act with respect to cases / matters, which the TDSAT is empowered to determine.

§ TRAI

TRAI was divested of its adjudicatory powers in the year 2000 and it does not have adjudicatory powers.

§ Arbitrator

Arbitrator does not have jurisdiction in Telecom matters.

§ High Court

High Courts have the power to deal with even telecom matters under their writ jurisdiction, but generally, the High Courts have preferred to send telecom cases to TDSAT, even if these are agitated in writ jurisdictions.

APPELLATE AND ORIGINAL JURISDICTIONS – TDSAT's POWERS

- § TDSAT has both Appellate and Original jurisdictions.
- § Under its original jurisdiction, TDSAT is empowered to adjudicate upon any dispute between the Licensor and a Licensee; two or more service providers; and between a service provider and a group of consumers.
- § In its appellate jurisdiction TDSAT can hear and dispose of appeals against any direction, decision or order of TRAI. The Appeal must be filed in 30 days of the impugned order.

POWER TO REVIEW – REGULATE OWN PROCEEDURES - NATURAL JUSTICE - DECREE

- § TDSAT is a Court of first instance and its powers are very wide
- § TDSAT has power to review its own orders.
- § Provisions of CPC do not apply to TDSAT.
- § Empowered to regulate its own procedures.
- § It has to follow principles of natural justice.
- § Orders of the Tribunal are executable as a decree of a civil court.

EXCLUSIONS FROM TDSAT's Jurisdiction

§ Individual Subscriber

Complaints of an individual consumer maintainable before District, State or National Disputes Redressal Forum under the Consumer Protection Act of 1986.

§ Arbitration under Section 7B of Indian Telegraph Act, 1885

A dispute under Section 7B of the Indian Telegraph Act, 1885 between the Telegraph Authority and a consumer. In my opinion, Section 7B has become redundant because its now BSNL which is providing services and not DoT / Government.

'Must provide clause'

- § Every Broadcaster has to provide its TV signals to MSOs and every MSO has to provide its TV channels to Cable Operators, on non-discriminatory terms. You have to apply to MSO /Broadcaster and provide the details. TDSAT has held that
- § Apart from details mentioned in TRAI's Regulations, signal provider is entitled to seek other or further information also because it should be prima facie satisfied that the franchisee would be able to perform its part of contract. Therefore, it may satisfy itself that:
 - § the headend of the distributor has the requisite equipment
 - § franchisee is capable of paying subscription amount.
 - § Re subscriber base - information like:
 - § the number of the direct subscriber SLR submitted to the petitioner by its link / sub-operators,
 - § the declaration before entertainment / service tax authorities etc
 - § may also be irrelevant for the purpose
 - § But some information like subscriber base disclosed to other broadcasters need not be divulged.
- § Within 60 days the MSO / Broadcaster has to provide signals on mutually agreed terms or refuse, with reasons. Upon refusal you can approach TDSAT.

Signals from competing MSO in the same Service Area.

In this context, the Supreme Court has opined that:

- § If the MSO-Agent is a Commercial Agent only for collection of subscription fee, data etc., the agency is valid under the Regulation;
- § If the MSO-Agent of the Broadcaster itself is the Service Provider and that the feed is given to the Signal Seeker through the network of that MSO-Agent, the same is violative of the Regulation.
- § In other words, as long as the feed comes directly from the decoders, even though decoders are provided through the MSO-Agent, it is valid in law.

Interconnect Agreement

- § Earlier TRAI's Regulation recognized both oral and written agreements.
- § In March 2009 TRAI has prescribed that the Subscription Agreement must be in writing.
- § It is now mandatory for MSO to hand over a copy of signed Interconnect Agreement to Cable Operator and obtain an acknowledgement within 15 days from the date of signing.
- § Similarly, Broadcasters are also obliged to follow the same procedure for agreements with MSOs.
- § In a recent Judgment, TDSAT has indicated that even an oral agreement can be valid, because a Regulation of TRAI cannot supersede Central law i.e., Contract Act

TERMS SHOULD BE REASONABLE

- § Terms of the contract should be reasonable.
- § Reasonableness of terms has to be decided by an authorized forum like TDSAT and not by any single party to the contract.
- § Operator seeking signals should negotiate with supplier of signals and in case negotiations fail, then the signal Seeker has to approach TDSAT.

Disconnection on grounds like under-declaration, non-payment of Subscription Fee etc.

Rule is that normally the agreed subscribers base will remain fixed except in exceptional circumstances.

- § Before disconnection the MSO / Broadcaster has to :
- § (i) give a public notice in Newspapers; and
- § (ii) give a specific Notice to you.
- § Notices have to be of 21 days - counted from the date of the latter Notice.
- § Similarly, if a Cable Operator wants to stop re-distributing channels of an MSO to its subscribers, he is also obliged to follow the same rules.
- § Recently TDSAT has held that even consumers are entitled to 21 days notice so as to enable them to either switch over to another channel and / or either individually approach an appropriate forum or as a group of consumers approach TDSAT, for ventilating their grievances.
- § But if you have defaulted in your payment, then you can't take the benefit of 'Must Provide clause'.

Dual Feed

Another issue recently settled by TDSAT is that an Operator can take even dual feed from different MSOs but he has to pay to both MSOs.

Interim Orders

§ TDSAT pass an Interim Order / grant interim reliefs.

Penalty

§ On willful failure to comply with order of TDSAT, the violator is liable to pay fine upto one lakh rupees. It increases in case of subsequent / continuing defaults.

Appeals

§ Appeal from TDSAT's Final Orders lie directly to Supreme Court.

§ But only on substantial Questions of Law.

§ No appeal can be filed against interim Orders of TDSAT.

With this birds eye view of the
general law on the subject, I thank
you for your patient listening.

THANK YOU