

TELECOM DISPUTES
AND
ALTERNATIVE DISPUTE
RESOLUTION

PRESENTATION
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DISPUTE RESOLUTION

- LITIGATION (TRADITIONAL DISPUTE RESOLUTION)
- ARBITRATION (EMPHASIS ON EXPEDIENCY)
- MEDIATION (AMICABLE RESOLUTION)

WHAT IS ARBITRATION ?

ARBITRATION IS A PRIVATE DISPUTE RESOLUTION MECHANISM WHEREBY TWO OR MORE PARTIES AGREE TO RESOLVE THEIR CURRENT OR FUTURE DISPUTES BY AN ARBITRAL TRIBUNAL, AS AN ALTERNATIVE TO ADJUDICATION BY THE COURTS OR A PUBLIC FORUM ESTABLISHED BY LAW. PARTIES BY MUTUAL AGREEMENT FORGO THEIR RIGHT IN LAW TO HAVE THEIR DISPUTES ADJUDICATED IN THE COURTS/PUBLIC FORUM. ARBITRATION AGREEMENT GIVES CONTRACTUAL AUTHORITY TO THE ARBITRAL TRIBUNAL TO ADJUDICATE THE DISPUTES AND BIND THE PARTIES. (REF: VIDYA DROLIA & ORS. VS. DURGA TRADING CORPORATION)

PRE-REQUISITES FOR ARBITRATION

- ARBITRATION AGREEMENT
- ARBITRATION AGREEMENT MUST BE IN WRITING
- DISPUTES MUST BE ARBITRABLE I.E. CAPABLE OF BEING RESOLVED BY ARBITRATION

AIRCEL DIGILINK INDIA LTD. VS UNION OF INDIA (UOI) (2005, TDSAT)

"22. IF WE REFER TO THE PROVISIONS OF THE ACT, PARTICULARLY, SECTION 15, IT IS QUITE CLEAR THAT THE ONLY EXCEPTION IS WHEN THERE IS ARBITRATION UNDER SECTION 7B OF THE INDIAN TELEGRAPH ACT, 1885, AND IN NO OTHER DISPUTE WITHIN THE JURISDICTION OF TDSAT THE MATTER CAN GO TO THE ARBITRATION. STATUTE IS CLEAR. BY JUDICIAL PRONOUNCEMENT NO FURTHER PROVISO CAN BE ADDED TAKING AWAY JURISDICTION OF TDSAT EXCEPT MRTP, INDIVIDUAL CONSUMER DISPUTES AND DISPUTE FALLING UNDER SECTION 7B OF THE INDIAN TELEGRAPH ACT, 1885. EVEN OTHERWISE JURISDICTION OF ARBITRATION IS BARRED BY NECESSARY IMPLICATION. PROVISIONS OF SECTION 89 OF THE CODE OF CIVIL PROCEDURE HAS NO APPLICATION INASMUCH AS JURISDICTION OF CIVIL COURT TO TRY ANY DISPUTE UNDER THE ACT IS BARRED. A COURT, THEREFORE, CANNOT, FRAME QUESTION ARISING OUT OF THE DISPUTE IN TELECOM SECTOR AND REFER THE SAME TO ARBITRATION. ONLY TWO OTHER PROVISIONS WHICH ARE TO BE READ ALONG WITH THE ACT ARE THOSE UNDER THE INDIAN TELEGRAPH ACT, 1885, AND THE INDIAN WIRELESS TELEGRAPHY ACT, 1933. TDSAT WILL HAVE JURISDICTION IN RESPECT OF ANY DISPUTE AS MENTIONED IN SECTION 14 OF THE ACT. IT WILL ALSO HAVE THE JURISDICTION IF DISPUTE ARISES IN RESPECT OF DIRECT ACTIVITIES IN TELECOM SECTOR I.E. THOSE RELATING TO THE TELECOM SERVICES. DISPUTE BETWEEN TWO SERVICE PROVIDERS AS LANDLORD AND TENANT WOULD CERTAINLY BE OUTSIDE THE AMBIT OF THE ACT. THOSE DISPUTES OVER WHICH TDSAT HAS NO EXCLUSIVE JURISDICTION AND WHERE THE THIRD PARTY'S INTEREST LIKE THE CONSUMERS IS NOT IN ISSUE OR WHERE THERE DOES NOT EXIST ANY PUBLIC INTEREST, THE DOMESTIC FORUMS CHOSEN BY THE PARTIES BY WAY OF AN ARBITRATION AGREEMENT MAY BE HELD TO BE VALID."

WHAT IS MEDIATION ?

MEDIATION IS A NEUTRAL PROCESS TO FACILITATE THE PARTIES TO ARRIVE AT AN AMICABLE MUTUALLY AGREED SETTLEMENT WITH THE AID OF A NEUTRAL MEDIATOR.

ADVANTAGES OF MEDIATION

- **PARTIES HAVE CONTROL OVER THE OUTCOME OF THE PROCESS**
- **CONFIDENTIAL**
- **ELEMENT OF FINALITY**
- **REPAIRING OF RELATIONSHIP**

TDSAT MEDIATION CENTRE

- TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL (TDSAT) MEDIATION PROCEDURES HAVE BEEN NOTIFIED BY THE TDSAT TO FACILITATE THE PROCESS OF MEDIATION.
- THE MEDIATION CENTRE OF TDSAT HAS BEEN ESTABLISHED TO FACILITATE PARTIES TO ARRIVE AT A MUTUALLY AGREED RESOLUTION OF THEIR DIFFERENCES WITH THE HELP OF TRAINED MEDIATORS.
- CHAPTER A OF THE TDSAT PROCEDURE DEALS WITH THE PROCESS OF MEDIATION.

- AS PER THE LATEST DATA, OF THE TDSAT MEDIATION CENTRE , OUT OF 535 CASES REFERRED TO MEDIATION CENTRE 201 CASES HAVE BEEN SUCCESSFULLY SETTLED BY THE TDSAT MEDIATION CENTRE. 9 CASES ARE PRESENTLY PENDING WITH THE MEDIATION CENTRE.

PRE-LITIGATION MEDIATION

- THE TDSAT MEDIATION CENTRE ALSO HAS PROVISION FOR PRE-LITIGATION MEDIATION.
- THE PRE-LITIGATION PROCESS IS MUCH MORE COST EFFECTIVE THAN THE SCHEDULE PRESCRIBED IN THE COMMERCIAL COURTS ACT.

ROLE OF COUNSELS FOR PARTIES IN MEDIATION

- THE COUNSELS FOR THE PARTIES AID THE PARTIES AID THE PARTIES IN ARRIVING AT AN INFORMED DECISION
- AID IN NEGOTIATING AND DISCUSSING THE BEST POSSIBLE OPTIONS FOR THE CLIENT
- AID THE MEDIATOR IN MAINTAINING DECORUM DURING THE PROCESS
- ASSIST IN DRAFTING OF SETTLEMENT AGREEMENT .

ONLINE DISPUTE RESOLUTION

- A NUMBER OF PARTIES BENEFITTED DURING THE COVID PERIOD WHEN MEDIATION PROCEEDINGS WERE CARRIED OUT THROUGH VIDEO CONFERENCING.
- VIRTUAL MEDIATION PROCEEDINGS HAVE GREAT POTENTIAL TO BE AN EFFECTIVE TOOL OF ADR AS PARTIES EVEN FROM REMOTE LOCATIONS CAN PARTICIPATE IN THE NEGOTIATIONS AND DISCUSSIONS IN CASE TRAVEL IS NOT POSSIBLE.

NATURE OF DISPUTES WHICH CAN BENEFIT FROM MEDIATION

- PRIVATE DISPUTES WHICH ARE NOT IN THE NATURE OF DISPUTES IN REM
- DISPUTES RELATING TO SUBSCRIPTION CHARGES, RECOVERY OF STBS, ETC.
- DISPUTES PERTAINING TO SALE OF BANDWIDTH BETWEEN DIFFERENT LICENSEES (SERVICE PROVIDERS)

THANK YOU