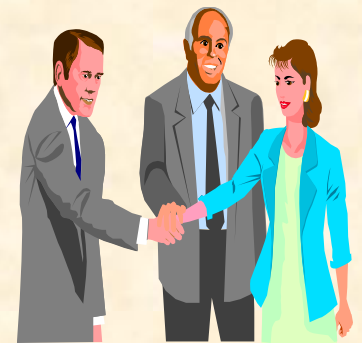




*“DISPUTE RESOLUTION AND
REDRESSAL OF CONSUMER
GRIEVANCES IN TELECOM,
BROADCASTING AND CABLE SECTORS”*

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Lucknow – 22.08.2009*



- » **Inter-active monologue**
- » **Know about TDSAT**
- » **Question – Answer Form**

- **Question 1:**
- Who / what is TDSAT?
- **Answer 1:**
- Statutory Body under TRAI Act, 1997 - since year 2000.
- Jurisdiction over all telecom disputes.
- Jurisdiction extended to Cable and Broadcasting in January, 2004.
- Exclusive jurisdiction over telecom matters
- Court of first instance - wide powers – any dispute
- Both Appellate and Original jurisdictions.

- **Question 2:** Can I file a petition / case in civil courts?
- **Answer 2:** No. Civil Court's jurisdiction is expressly barred.

- **Question 3:** Can I file a petition / case in TRAI?
- **Answer 3:** No.

- **Question 4:** Can I file a petition / case in High Court?
- **Answer 4:** High Court has writ jurisdiction but generally they send telecom cases to TDSAT.

- **Question 5:** Can I get my dispute settled through an Arbitrator, if my License issued by the Government / Interconnect Agreement provides for an arbitration clause?
- **Answer 5:** No.

- **Question 6:** Can I approach TDSAT in a case where the Government amends another Service Provider's license, which affects my rights / interests?
- **Answer 6:** Yes.

- **Question 7:** Can I approach TDSAT if I am an individual Subscriber?
- **Answer 7:** No - Have to approach Forums like Consumer Forums. But as a Group – You can.

- **Question 8:** Can I challenge the orders of TRAI?
- **Answer 8:** Yes – 30 days limitation apply.

- **Question 9:** Can TDSAT entertain issues relating to Restrictive Trade Practice etc?
- **Answer 9:** Express exclusion in TRAI Act – but TDSAT can entertain disputes based on rights and liabilities arising out of TRAI Act / Regulations, even if such Regulation incidentally trenches on the subject of RTP or MTP.

- **Question 10:** Can I approach TDSAT if an MSO or a Broadcaster is not providing me signals to start service?
- **Answer 10:** Yes. You can.
- Under '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.
- If you are a new signal seeker, then you have to apply to MSO /Broadcaster and provide the details like:
 - (i) Your Registration Certificate with the Post Office under the Cable Act;
 - (ii) The Service Area within which you intend to provide service, expected Subscriber numbers etc.;
 - (iii) And in case of Cable Operator-provide SLR, where exists otherwise negotiate subscriber base on the basis of evidence of both the parties including base of similarly placed Cable Operators and local survey.
 - (iv) And in case of MSO-provide List of cable operators within their subscriber base.
- Within 60 days the MSO / Broadcaster has to provide signals on mutually agreed terms or refuse, with reasons. Upon refusal you can approach TDSAT.

- **Question 10 A:**
- Whether this Interconnect Agreement can be oral or should be in writing?
- **Answer 10 A:**
- Earlier TRAI's Regulation recognized both oral and written agreements.
- Recently 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.

- **Question 11:** Can I approach TDSAT if an MSO or a Broadcaster is threatening disconnection on grounds like under-declaration, non-payment of Subscription Fee etc?
- **Answer 11:** Yes. you can.
- Rule is that normally the agreed subscribers base will remain fixed except in exceptional circumstances and in such cases Service Provider seeking a change in the subscribers base has to provide reasons and accompanying evidence including local survey.
- Before disconnection the MSO / Broadcaster has to follow the rules like:
 - (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.
- But you must remember that if you have defaulted in your payment, then you can't take the benefit of the 'Must Provide clause'.

- **Question 12:** Can I approach TDSAT if an MSO or a Broadcaster alleges that I am pirating their signals?
- **Answer 12:** Yes. But only if you are not pirating.
- you have to operate only in Service Area mentioned in your Agreement.
- If you wish to operate beyond that Area, then you need to negotiate with the Broadcaster / MSO regardless of the fact that you may be holding postal Registration for a larger area / new area.
- Subscription Fee has been agreed / fixed on the basis of agreed Service Area also.
- So if you wish to serve in larger area, then the Subscription Fee has to be re-negotiated.

- **Question 13:**

- Can my MSO / Broadcaster pressurize me to take signals from my competing MSO in the same Service Area?

- **Answer 13:**

- 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.

- **Question 14:** TRAI Regulation provides that the terms of the contract should be reasonable, but who has to decide the reasonableness of the terms?
- **Answer 14:** Reasonableness of terms has to be decided by an authorized forum like TDSAT and not by any single party to the contract.
- **Question 15:** In case of a dispute re non-provision of signals, which party should file a petition in TDSAT?
- **Answer 15:** Operator seeking signals should negotiate with supplier of signals and in case negotiations fail, then the signal Seeker has to approach TDSAT.

- **Question 16:** How would TDSAT deal with my petition?
- **Answer 16:** Proceedings before TDSAT are very simple.
- CPC is not applicable.
- TDSAT has ample flexibility to mold its procedures.
- TDSAT gives reasonable time to both the parties to file their pleadings.
- TDSAT hears both the parties patiently.
- Principles of Natural Justice apply.

- **Question 17:** Can I be penalized, if I violate TDSAT's Orders?
- **Answer 17:** Yes.
- On willful failure to comply with order of TDSAT, you are liable to pay fine upto one lakh rupees. It increases in case of subsequent / continuing defaults.

- **Question 18:** Can TDSAT pass an Interim Order?
- **Answer 18:** Yes.

- **Question 19:** Is there an Appeal against the Order of the TDSAT and where?
- **Answer 19:** Appeal from TDSATs Final Orders lie directly to Supreme Court.
- But only on substantial Questions of Law.
- No appeal can be filed against interim Orders of TDSAT.

- **Question 20:** Whether “Level Playing Field” is my right?
- **Answer 20:** Yes. Article 21 of the Constitution refers to “right to life”. It includes “opportunity”. When Article 19(1)(g) of the Constitution confers fundamental right to carry on business to a company, it is entitled to invoke doctrine of "Level Playing Field".

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

THANK YOU