

**European Regional Workshop on Dispute Resolution**

*Geneva Switzerland, 31<sup>st</sup> August – 2<sup>nd</sup> September, 2004*

*ITU, Montbrillant Building, Room- K*

**2<sup>nd</sup> September, 2004  
Geneva**

**Address by:**

**Mr. Justice D.P.Wadhwa,  
Chairperson,  
Telecom Disputes Settlement &  
Appellate Tribunal (TDSAT)  
New Delhi (India)  
E-mail: dpwadhwa@justice.com  
[Tele No. +91-11-26882176]**

The Telecom Dispute Settlement and Appellate Tribunal (TDSAT) was established in the year 2000 by a substantive amendment in the Telecom Regulatory Authority of India Act, 1997. Prior to the passing of the amendment, it was one of the functions of the Telecom Regulatory Authority of India (TRAI) “to settle disputes among service providers”. After the 2000 amendment, the dispute settlement powers have been conferred on the Telecom Disputes Settlement & Appellate Tribunal (TDSAT), an independent statutory Tribunal. The amendment came about on account of various considerations - the growing feeling that regulator alone was not enough to further the objective of healthy competition and protection of interests of consumers and the perceived need to infuse the dispute settlement mechanism with more credibility, transparency and independence.

## 2. The TRAI Act under Section 14\*<sup>1</sup> delineates the functions of

---

14\*<sup>1</sup>. **Establishment of Appellate Tribunal**- The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to -

(a) adjudicate any dispute:

(i) between a licensor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers;

Provided that nothing in this clause shall apply in respect of matters relating to -

the Tribunal and confers upon it an unparalleled jurisdiction, wholly different from any of the dispute settlement telecom regulatory bodies in the world. TDSAT has been vested with the power of adjudicating any dispute between a licensor and a licensee; two or more service providers; and between a service provider and a group of consumers; and also to hear and dispose of appeals against any direction or decision or order of TRAI. Thus, the Tribunal is not only an Appellate body but also a dispute settlement body and in this lies its unique distinction. The mandate of the Tribunal is sweeping and exclusive as

---

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);

(B) the complaint of an individual consumer maintainable before a consumer Disputes Redressal forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal commission established under Section 9 of the Consumer Protection Act, 1986 (68 of 1986);

(C) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act 1885 (13 of 1885);

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

**14A. Application for settlement of disputes and appeals to Appellate Tribunal-** (1) The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute referred to in clause (a) of Section 14.

(2) The Central Government or a State Government or a local authority or any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.

(3) Every appeal under sub-section (2) shall be preferred within a period of thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the Central Government or the State Government or the local authority or the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the period.

(4) On receipt of an application under sub-section (1) or an appeal under sub-section (2), the appellate Tribunal may, after giving the parties to the dispute or the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

jurisdiction of a Civil Court has been barred by Section 15\*<sup>2</sup> of the Act. There is a debate going on if, in view of Section 15\*<sup>3</sup>, arbitration is also barred. The argument is based on the latter portion of the provision of this Section which says that no Civil Court or Authority can issue any interim order in the matters under the exclusive jurisdiction of the TDSAT. Its independence is further underscored by the fact that it is empowered to hear appeals from the orders of the Regulator i.e. TRAI and TRAI is no longer the 'judge of its own cause'. Individual consumer disputes have to go to Consumer Forum under the Consumer Protection Act, 1986. Appeal against the orders of TDSAT lie to the Supreme Court only on substantial questions of law which

---

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the dispute or the appeal and to the Authority, as the case may be.

(6) The application made under sub-section (1) or the appeal preferred under sub section (2) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the application or appeal finally within ninety days from the date of receipt of application or appeal, as the case may be:

Provided that where any such application or appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the application or appeal within that period.

(7) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness, of any dispute made in any application under sub-section (1), or of any direction or order or decision of the Authority referred to in the appeal preferred under sub-section (2), on its own motion or otherwise, call for the records relevant to deposing of such application or appeal and make such orders as it thinks fit.

**14C. Qualifications for appointment of Chairperson and Members-** A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he-

(a) in the case of Chairperson, is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court;

(b) in the case of a Member, has 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.

make TDSAT the final fact-finding body. Supreme Court in the case of Cellular Operators Association of India and others vs. Union of India and others {(2003) 3 Supreme Court Cases 186}<sup>\*4</sup> has dwelt in considerable detail on the ambit of jurisdiction of TDSAT.

3. Composition of the TDSAT is a blend of judicial, administrative and technical experience. The TDSAT consists of a Chairperson and not more than two Members to be appointed by the Central Government in consultation with the Chief Justice of India. The Chairperson has to be a sitting or retired Judge of Supreme Court of India or the Chief Justice of a High Court. A Member has to be a

<sup>\*2</sup>15. **Civil Court not to have jurisdiction**- No Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

<sup>\*3</sup> 8. **Power to refer parties to arbitration where there is an arbitration agreement** – (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

- (2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.
- (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

9. **Interim measures, etc. by Court** – A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court -
- (i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or
  - (ii) for an interim measure of protection in respect of any of the following matters, namely -
    - (a) the preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement.
    - (b) Securing the amount in dispute in the arbitration.
    - (c) The detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

former Secretary to the Government of India or of similar rank in the Central Government or the State Government or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration. The Chairperson and every member can hold office for a term not exceeding three years. However, the Chairperson cannot go beyond the age of 70 years and the Members 65 years. Terms and conditions of the Chairperson or Member cannot be varied to his disadvantage after his appointment. The Chairperson or the Member of TDSAT cannot be removed on charges of abuse of his position etc. by the Central Government unless the Supreme Court on a reference being made to it in this behalf by the Central Government holds, after an enquiry, that the Chairperson or the Member ought to be removed.

4. Budgetary allocations based on need are made available to TDSAT annually by the Parliament in its annual budget through the Department of Telecommunications. Chairperson, TDSAT enjoys all the necessary powers to carry out the required functions of the TDSAT.

- 
- (d) Interim injunction or the appointment of a receiver;
  - (e) Such other interim measure of protection as may appear to the court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

17. **Interim measures ordered by arbitral tribunal.** – (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

5. The Act enjoins upon the TDSAT to deal with all matters before it as expeditiously as possible and make endeavour to dispose of these within 90 days from the date of filing of application/appeal. TDSAT has all the powers of a Civil Court. It is, however, not bound by strict rules of procedures as applicable to a Civil Court. TDSAT, has however, to observe the rules of natural Justice.

6. Chapter IV of the Act deals with the constitution, jurisdiction and powers of the TDSAT and the procedure for the exercise of the jurisdiction and enforcement of its orders.

---

<sup>4</sup>Pattanaik, C.J., speaking for himself and Sema, J., said:-

"...Having regard to the very purpose and object for which the Appellate Tribunal was constituted and having examined the different provisions contained in Chapter IV, more particularly, the provision dealing with ousting the jurisdiction of the civil court in relation to any matter which the Appellate Tribunal is empowered by or under the Act, as contained in Section 15, we have no hesitation in coming to the conclusion that the power of the Appellate Tribunal is quite wide, as has been indicated in the statute itself and the decisions of this Court dealing with the power of a court, exercising appellate power or original power, will have no application for limiting the jurisdiction of the Appellate Tribunal under the Act. Since the Tribunal is the original authority to adjudicate any dispute between a licensor and a licensee or between two or more service providers or between a service provider and a group of consumers and since the Tribunal has to hear and dispose of appeals against the directions, decisions or order of TRAI, it is difficult for us to import the self-contained restrictions and limitations of a court under the judge-made law to which reference has already been made and reliance was placed by the learned Attorney-General. By saying so, we may not be understood to mean that the Appellate Tribunal while exercising power under Section 14 of the Act, will not give due weight to the recommendations or the decisions of an expert body like TRAI...."

Sinha J., in his concurring judgment said:-

"Sub-section(7) of Section 14-A confers a wide jurisdiction upon the Tribunal. The Tribunal being an expert body is entitled to exercise its appellate jurisdiction both on fact as also in law over a decision or order/decision/direction of the authority. Its power to examine the correctness, legality or propriety of the order passed by the authority as also in relation to the dispute must be held to be a wide one."

In para 31 of his judgment Sinha J., said:-

"The rule as regard deference to expert bodies applies only in respect of a reviewing court and not to an expert tribunal. It may not be the function of a court exercising power of judicial review to act as a supermodel as has been stated in Administrative Law by Bernard Schwartz, 3<sup>rd</sup> Edn., in para 10.1, at 625; but the same would not be a case where an expert tribunal has been constituted only with a view to determine the correctness of an order passed by another expert body. The remedy under Section 14 of the Act is not a supervisory one. TDSAT's jurisdiction is not akin to a court issuing a writ of certiorari. The Tribunal although is not a court, it has all the trappings of a court. Its functions are judicial."

7. The administrative support of the Tribunal has been strengthened over the last four years. It has experienced clerical and administrative staff equipped to deal with all the filing and registration of matters and other administrative work. For technical and legal support, Advisors and Consultants to the Tribunal have been appointed. An exuberant Bar rendering able assistance to the Tribunal has also developed in the last four years.

8. Since the inception of the TDSAT, it has rendered a number of decisions and has strived create an authoritative body of law to help guide the players in the industry in their future operation with minimal legal hurdles. This has brought a measure of stability and consistency in the industry. The issues agitated before the Tribunal, upon which it has adjudicated, have ranged from interconnectivity, interpretation of interconnect agreements, levy of licence fees and interest, computation of licence fees and interest after `migration' from a fixed licence fee regime to a revenue sharing regime.

9. Central Government issued a notification on 9<sup>th</sup> of January 2004 {No. S.O. 44 (E)} notifying "Broadcasting and Cable services" to be the "telecommunication services" under Clause (k) of sub-section (i) of Section 2 of the TRAI Act, 1997, thus bringing within the purview of TDSAT disputes arising under these laws. This step has opened up a whole plethora of cases before the TDSAT pertaining to disputes between Broadcasters, Cable Operators and Consumers on supply of



signals, individual pricing of channels versus price of bouquet of channels, interpretation of TRAI's Broadcasting and Cable tariff order etc.

10. Ours is a unique legislation creating TDSAT, well equipped to address the transition from the State monopoly to market competition from land line/mobile phone to digital convergence and from a high tariff low subscriber base regime to low tariff and high subscriber base. It is equally geared to deal with complexities, changing dynamics of telecom environment and provides a forum for resolving the conflict of multiple groups.

11. TDSAT is a unique institution in more than one sense. In most of the countries there appears to be no finality about the regulator's decision and contentious cases generally land in Courts with the appeal process involving various layers. This, to my mind, is not conducive to speedy decision in this fast changing sector. As compared to the regimen obtaining in many countries a step forward has been taken in India through distancing the function of regulation from adjudication and reposing adjudicatory function in a specialized appellate mechanism called TDSAT. This has brought about a focused approach towards speedier resolution of telecom disputes and reduced the load on judiciary. It also inspires confidence among the service providers, investors and consumers at large. Supreme Court in a case entitled West Bengal Electricity Regulatory

Commission vs. Calcutta Electricity Company Ltd.\*<sup>5</sup> [(2002) 8 SCC 715], recommended that where there is a regulator under an enactment there should be provision for an appellate tribunal like TDSAT. In that case the State Electricity Regulatory Commission under the Regulatory Commission Act, 1998 fixed certain tariffs for electricity. This was done in the exercise of its functions as the Electricity Regulatory Commission. On appeal to the High Court by the aggrieved party, the order of the Electricity Regulatory Commission was modified and the tariff was reduced. On further appeal by the Electricity Regulatory Commission to the Supreme Court, the order of the High Court was set aside and in that context the Supreme Court recommended the creation of an expert Appellate Tribunal like TDSAT.

12. It is necessary here to ponder over the issue of efficacy of dispute resolution mechanism which is necessary for promoting growth in the telecom sector. In this context institutionalized

---

<sup>\*5</sup> "We notice that the Commission constituted under Section 17 of the 1998 Act, is an expert body and the determination of tariff which has to be made by the Commission involves a very highly technical procedure, requiring working knowledge of law, engineering, finance, commerce, economics and management. A perusal of the report of ASCI as well as that of the Commission abundantly proves this fact. Therefore, we think it would be more appropriate and effective if a statutory appeal is provided to a similar expert body, so that the various questions which are factual and technical that arise in such an appeal, get appropriate consideration in the first appellate stage also. From Section 4 of the 1998 Act, we notice that the Central Electricity Regulatory Commission which has a judicial member as also a number of other members having varied qualifications, is better equipped to appreciate the technical and factual questions involved in the appeals arising from the orders of the Commission. Without meaning any disrespect to the Judges of the High Court, we think neither the High Court nor the Supreme Court would in reality be appropriate appellate forums in dealing with this type of factual and technical matters. Therefore, we recommend that the appellate power against an order of the State Commission under the 1998 Act should be conferred either on the Central Electricity Regulatory Commission or on a similar body. We notice that under the Telecom Regulatory Authority of India Act, 1997 in Chapter IV, a similar provision is made for an appeal to a Special Appellate Tribunal and thereafter a further appeal to the Supreme Court on questions of law only. We think a similar appellate provision may be considered to make the relief of appeal more effective".

mechanisms for settlement of disputes whether in the shape of regulator or an appellate body do play an important role in settlement of disputes. However, we should not lose sight of alternative dispute settlement mechanisms which can play an equally important role involving much less time and cost in sorting out dispute in this sector. I would stress that both official and non official sectors in dispute resolution should play a complimentary role and alternative dispute resolution mechanism be made more effective by providing for oversight roles of institutional mechanisms in the official sector. ITU, World Bank joint study on the subject of dispute resolution has suggested various steps for improving the current dispute resolution method. These suggestions need to be paid greater attention. It is also equally important to focus attention on developing detailed procedure for settlements of disputes by different methods more importantly, the procedures being followed in this respect by regulatory and appellate bodies. There is also a need to develop more transparent procedure in regard to settlement of disputes through ADR methods like mediation & arbitration. It is, therefore, an opportune time now to frame model procedure for each of these important methods which can assist the member countries of ITU to formulate their own procedures in this respect. ITU as an inter-governmental body can take initiative in this regard.

13. Concluding, I would like to thank Mr. Hamadoun I. Toure, Director, Telecommunications Development Bureau for inviting us to

this Seminar and giving me an opportunity to make a presentation on the appellate mechanism obtaining in India which I am privileged to head. I would also like to acknowledge that we have been greatly benefited by the deliberations which have taken place over these three days in this Seminar. I would also like to inform that the TDSAT is in the process of creating its own website ([www.tdsat.nic.in](http://www.tdsat.nic.in)) and important judgments delivered by TDSAT can be accessed by any one who is interested.

Thank you for your attention.

**Justice D.P.Wadhwa,  
Chairperson,  
Telecom Disputes Settlement &  
Appellate Tribunal (TDSAT)  
New Delhi (India)  
E-mail: [dpwadhwa@justice.com](mailto:dpwadhwa@justice.com)  
[Tele No. +91-11-26882176]**