

NALSAR University of Law

Dispute Settlement in Indian Telecom Sector



By
Bangaru Laxmi Jasti
Research Associate,
Centre for Aerospace and Defence Laws (CADL)

Introduction

- ❖ In the telecom sector, both the formal and informal methods are employed for dispute resolution.
- ❖ Choice of a particular method depends upon the country specific situation, its prevailing ethos, its legal framework and the status of telecom development in that country.
- ❖ With the growth of the sector and impact of new technologies, the rate of disputes and complexity in the disputes had also increased. To cope with the latter, variants of dispute resolution practices have surfaced.

Types of Dispute Resolution

- ❖ Dispute avoidance/prevention
- ❖ Adjudication by Courts
- ❖ Judicial Mediation
- ❖ Adjudication by Regulators
- ❖ Adjudication by Tribunals
- ❖ Alternate Dispute Resolution (ADR) Processes: Negotiations, Mediation and Arbitration
- ❖ Ombudsman

Dispute Avoidance/Prevention

- ❖ Countries such as US have adopted mechanisms for dispute avoidance in regard to telecommunication. Wherefore, corporate dispute management in many countries has shifted focus to anticipating disputes and preventing them, rather than waiting for them to become legal actions.

Adjudication by Courts

- ❖ Adjudication per se involves interpretation of statutes and law. Decisions based on such interpretations, which are binding in nature, are usually given by courts when a dispute is brought before them.
- ❖ Adjudication by courts is a formal process where a third party invariably a public official decides a dispute between the two or more parties on the basis of facts brought forward and the interpretation of relevant laws and statutes as applicable in the case.

Advantages and Disadvantages

- ❖ The courts are creatures of law and the constitution and enjoys a pre-eminent and visible status to deliver justice and adjudicate disputes in accordance with the law.
- ❖ Its decisions are enforceable but does not preclude aggrieved parties to appeal to a higher court for obtaining the desired outcome.
- ❖ Adherence to the principle of natural justice and transparency involved in the decision making process.
- ❖ The decision-makers are neutral, knowledgeable and competent entities and inspire confidence among the disputing parties

Contd...

- ❖ It is regarded as a time-consuming and costly process
- ❖ The adjudicatory process is adversarial in character and does not contribute to maintaining long-term commercial relationships
- ❖ Resolution of complex issues in telecommunications may not be amenable to a purely legalistic approach as followed in courts

Judicial Mediation

- ❖ Judicial mediation is generally used for a process where the court encourages the litigants to try mediation for resolution of a dispute. An additional merit of this process is its non adversarial character and flexibility in regard to procedures to be followed.
- ❖ In ***Salem Advocate Bar Association V. Union of India***, the Supreme Court, cited section 89 of the Civil Procedure Code 1908 which provides for settlement of disputes outside the court in cases where, in the Court's view, there exist elements of a settlement which may be acceptable to the parties.

Adjudication by Regulators

- ❖ In a monopolistic environment, it is the government which acts as a regulator in different spheres of activities. In a liberalized environment where promoting healthy competition and protection of consumer interest are the objectives, the government's regulatory role diminishes and the institution of independent regulators emerge to ensure a level playing field and meet the other objectives of a competitive environment.
- ❖ Closely linked with regulation is the adjudicatory role of a regulator. This role takes into account inevitability of conflicts/disputes in a competitive environment and desirability of having in place an impartial and independent regulatory body to lay down the ground rules, ensure their compliance and resolve issues arising in a particular sector.

Advantages and Disadvantages

- ❖ A regulator is perceived as a neutral, knowledgeable and professional person who is well-equipped to do justice to complex issues arising in the telecommunications field;
- ❖ A regulatory body follows well established procedures for adjudication of disputes where the disputants have an opportunity to air their view points;
- ❖ A regulatory body is equipped with professional staff and has a well structured channel for decision making. This inspires confidence among the stakeholders;
- ❖ The decision of regulator is appealable.
- ❖ Regulatory decisions have legal potency as these are based on powers conferred by the statute

Contd....

Disadvantages

- ❖ multilayered examination of issues and adherence to lengthy and cumbersome procedures like courts that account for delay in disposition time
- ❖ There is no finality about the decision of a regulatory body. A large number of issues finally land up in courts for adjudication.
- ❖ The regulator's functioning is bounded by statutory provisions which reduces its flexibility in tailoring a solution to the needs of the situation.
- ❖ Statutory status does not make the regulator impervious to subtle political interference/influence or undue influence from industry in handling important issues.

Adjudication by Tribunals

- ❖ This mechanism substitutes the role of regulator in the dispute resolution process and is to be found in India, Denmark and Malaysia. There are important differences in the working of this mechanism in these countries in structural and functional aspects.

Alternative Dispute Resolution (ADR) Processes: Negotiation, Mediation and Arbitration

- ❖ ADR is an alternative or complementary to regulatory-based and court-based adjudication. It has emerged as an efficient and potent method of dispute resolution since the seventies
- ❖ Disputants favour this method for two reasons, first, it is both time sensitive and cost effective, and secondly, it is not adversarial in character and conducive to long term collaboration.
- ❖ A major drawback of ADR methods like mediation and arbitration is that the outcome achieved through these processes is not legally enforceable in all cases. If, however, an agreement is the result of negotiation or mediation, it is enforceable as a contract.

Ombudsman

- ❖ The institution of Ombudsmen, generally an industry initiative, is efficacious in dealing with consumer-related disputes.
- ❖ In the U.K., the ombudsman for the telecom sector (OTELO) and Internet Services Adjudication Scheme(CISAS), are industry sponsored bodies which provide "a free, independent and effective service" to customers who do not succeed in resolving their complaints through direct communication with their service providers.
- ❖ In Australia, the Telecom Industry Ombudsman(TIO) also deals with complaints by end-users, hears parties to a dispute, makes an independent assessment and thereafter makes its decisions.

Telecom Dispute Settlement and Appellate Tribunal

Introduction

- ❖ In order to bring in functional clarity and strengthen the regulatory framework and the disputes settlement mechanism in the telecommunication sector, the TRAI Act of 1997 was amended in the year 2000 and TDSAT was set up to adjudicate disputes and dispose of appeals with a view to protect the interests of service providers and consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector.
- ❖ The TDSAT was set up under Chapter IV of the TRAI Act.
- ❖ It came into existence on 29 May 2000 and began hearing cases from January 2001.

Relation Between TDSAT and TRAI

- ❖ TRAI enjoyed both regulatory and adjudicatory power and it had original jurisdiction to adjudicate disputes among the service providers and disputes between the service providers and consumers.
- ❖ After the birth of TDSAT in 2000, TRAI lost its dispute resolution jurisdiction.
- ❖ In the case of BSNL V TRAI, it was held that, since the 2000 amendment, TRAI was stripped from its dispute resolution power, so the authority cannot require service providers to seek its intervention if any disputes arise among them. The jurisdiction to hear the dispute and appeal solely rests with TDSAT as the “sole judicial authority” in the communication sector.

- ❖ Section-14 empowers the Central government to establish TDSAT to adjudicate disputes between
- ❖ Licensor and a licensee
- ❖ Two or more service providers
- ❖ Service provider and a group of customers

Composition of TDSAT

- ❖ The Tribunal consists of a Chairperson and two Members appointed by the Central Government.
- ❖ The Chairperson should be or should have been a Judge of the Supreme Court or the Chief Justice of a High Court.
- ❖ A Member should have 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.

Powers and Jurisdiction

- ❖ The Tribunal exercises jurisdiction over Telecom, Broadcasting, IT and Airport tariff matters under the TRAI Act, 1997 (as amended), the Information Technology Act, 2008 and the Airport Economic Regulatory Authority of India Act, 2008.
- ❖ The Tribunal exercises original as well as appellate jurisdiction in regard to Telecom, Broadcasting and Airport tariff matters. In regard to Cyber matters the Tribunal exercises only the appellate jurisdiction.

- ❖ The jurisdiction of the TDSAT is, however, excluded in the following cases:
- ❖ (1) Monopolistic, restrictive and unfair trade practices subject to the jurisdiction of the Monopolies and Restrictive Trade Practices (“MRTP”) Commission established under section 5(1) of the MRTP Act, 1969;
- ❖ (2) Complaint of an individual consumer maintainable before the National and various State Consumer Dispute Resolution Commissions and District Consumer forums established under section 9 of the Consumer Protection Act, 1986; and
- ❖ (3) Disputes between telegraph authority and any other person referred to in section 7B(1) of the Indian Telegraph Act, 1885.
- ❖ In exercise of the power vested in the TDSAT under section 14(b) of the TRAI Act, it does not have the jurisdiction to entertain challenges to the regulations framed by TRAI under section 36 of the TRAI Act.

Procedure

The Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908;

- ❖ It has the power to regulate its own procedure;
- ❖ It is to be guided by the principles of natural justice;

Tribunal has the same powers as are vested in a civil court under the CPC in respect of:

- ❖ summoning and enforcing the attendance of any person and examining him on oath;
- ❖ requiring the discovery and production of documents;
- ❖ receiving evidence on affidavits;

Contd...

- ❖ subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;
- ❖ issuing commissions for the examination of witnesses or documents;
- ❖ reviewing its decisions;
- ❖ dismissing an application for default or deciding it ex parte;
- ❖ setting aside any order of dismissal or any application for default or any order passed by it ex parte; and
- ❖ any other matter which may be prescribed.

In addition, the Tribunal can call for the records relevant to disposing of a Petition or appeal, for the purpose of examining the legality or propriety or correctness of any decision or of any order etc of TRAI.

Nature of proceedings

- ❖ The Tribunal is the Court of first instance except cyber matters.
- ❖ Every proceeding before the Tribunal is deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860);
- ❖ The Tribunal is deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)
- ❖ Tribunal's Orders are executable as a decree of civil court.

Appeals

- ❖ In respect of Telecom, Broadcasting and Airport tariff matters, the Tribunal's orders can be appealed to the Supreme Court but only on substantial questions of law.
- ❖ However, no appeal lies against an interlocutory order or against any decision or order made by the Tribunal with the consent of the parties. In regard to Cyber matters, the Tribunal's order can be appealed before High Court.

END