

# DISPUTE RESOLUTION SCENARIO IN THE TELECOM SECTOR\*

With the advancements in the field of science and technology,

globalisation having been accepted as the order of the day for world economy, and development of relationship between the developed and developing countries for the common good of the people wherever situated, the provision of world class telecommunications infrastructure and information as a key to rapid economic and social development of the countries of the world, needs no emphasis. Telecom development has come to occupy a place of prime necessity, having wide-spread ramifications on the development of global and national economy. In order to achieve social and economic goals of the country, availability of affordable and effective means of communications for the citizens and the industries is indispensable. The services have to expand universally so as to bring hitherto inaccessible areas within the reach and where the services already exist, the performance has to be toned up to higher levels of efficiency and efficacy.

The telecom industry has a special significance for our country. India's near 22 million line telephone-network is one of the largest in the world and the third largest, amongst emerging economies, after China and Republic of Korea. India offers a vast scope for growth as the ratio of telephone users in India still remains at 2.2 per hundred people of population. The country provides tremendous potential for international cooperation and investment in it. High level of economic development and well-developed telecommunication infrastructure are inter-dependent in the modern scenario and contribute to stimulating each other.

Inasmuch as all activities in the field of industry, investment and man-made relationship are governed by laws, there are bound to be disputes which call for expeditious settlement in the interest of peace, progress and prosperity. A great deal of responsibility has to be shouldered, by the policy makers and legislators, for taking policy decisions and framing of the laws which leave the least scope for ambiguity misinterpretation or deficiencies in legislation. If the disputes do emerge, they must be resolved expeditiously, judiciously and with pragmatism, for their acceptability. The parties must feel satisfied that they have been given a fair deal and justice has been done. Settlement of disputes in the realm such as telecom disputes involves not merely interpretation of laws alone but considerations of policy, reading the mind of the legislators and giving effect to the intention of the parties to agreements. The subject of dispute settlement, therefore, assumes significance if we have to keep pace with the global movements and integration of world economy. Those on whom lies the responsibility of settling disputes, they must be conversant with the global trends in fast changing technology, its management and telecom jurisprudence. It is this complexity which calls for different segments of telecom-sector-society coming together, comprehending their problems and discussing, with openness and transparency, the burning issues as also the matters of moment.

The Telecom. Regulatory Authority of India Act 1997, as amended in the year 2000, is a unique piece of legislation. It has provided for the establishment of the Telecom. Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal, respectively known as TRAI

and TDSAT with the laudable object of regulating the telecommunication services, adjudication of disputes, disposal of appeals and so on so as to protect the interest of service providers and the consumers of the telecom. Sector. The ultimate object is to promote and ensure orderly growth of the telecom sectors. The matters connected therewith or incidental thereto have also been taken care of. Consistently with the mandate, contained in the Constitution of India, the Act aims at separating regulation from adjudication. This separation makes the regulation more effective and, at the same time, gives the adjudication more credibility and acceptability. The Act confers both original and appellate jurisdiction on TDSAT and allows it to regulate its own procedure. It enjoys the powers of a Civil Court. Appeal from the decision of TDSAT lies directly to the Supreme Court of India and only on points of law and not facts. Its decisions are taken by majority and the orders are executable as a decree of a Civil Court. The farsightedness, reflected in the crafting of legislation aims at boosting investors confidence, securing smooth functioning of telecom industry and providing useful services to the consumers. The method of selecting members of the Authority ensures independence of its functioning in dealing with telecom issues. Not only lawyers but Chartered Accountants, Cost Accountants, Company Secretaries and officers are entitled to appear and present the cases before the Appellate Tribunal to assist it in arriving at a just decision of the issues which cannot be called purely legal issues. The Tribunal is authorized to devise its own procedure, obviously, with the purpose of securing simplicity and flexibility.

I wish to stress this Body to pay greater attention on expeditious settlement of disputes, shorn of procedural wrangles. International bodies like International Telecommunication Union (ITU) should also assist in developing model procedure, which could be drawn upon by its member countries. Expeditious settlement of disputes and uniformity in principles of settlement would help in achieving certainty and consistency. The decisions given by adjudicatory bodies in the field of telecommunications should be available to the authorities across the countries so that all can equip themselves with the new and emerging trends or areas of conflict in the sector along with methodologies, adopted for tackling the issues. There may be scope for adopting alternative methods of dispute settlement also such as arbitration, mediation and conciliation but that is a question, I am told, pending for consideration before TDSAT. Needless to say, the dispute settlement in the field of telecommunication, just as in other areas, should aim at saving on time and cost. This seminar would enable exchange of views and sharing of experiences in this specialized area.



\* Inaugural speech delivered at International Seminar on "Dispute Resolution Scenario in the Telecom Sector" on 29th October, 2004, at New Delhi.