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LITIGANTS WELFARE ASSOCIATION

Regd.

(Promoted exclusively to protect the interest of Innocent litigants)

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The Chairman,
Telecom Regulatory Authority of India,
New Delhi – 110 001.

Kind perusal to: Shri Sanjeet Singh, Advisor
(Consumer Affairs)

Sir,

Sub: forward our suggestion on consultation paper in Complaints/ Grievance Redressal in the Telecom Sector – reg:

We learned with immense happy that the TRAI seeks consultation on very important Consumer Grievance Redressal issue. We very glad in forwarding our suggestion for your kind consideration and necessary action:

ISSUES FOR CONSULTATION:

3.1 Detailed and reasoned comments on the following issues are requested:

Q1: Is the complaint redressal mechanism, as presently existing, adequate or is there a need to strengthen it?

➤ Certainly; inadequate; the Telecom Consumer are having millions of Grievance from billion of Consumers. But, they unaware and not access the present Redressal System.

➤ **Q2: Are there any specific changes that can be made to the existing system to improve it?**

1. We do not accept that the present grievance redress through Consumer Redressal Forum seems as costly and lengthy for small issues. The general consumers aware Consumer Redressal only through Consumers Courts, such as District Consumer Dispute Redressal Forum, State and National level.

2. Unfortunately; the S.C. had barred aggrieved telecom Consumers in approaching Consumers Forums. The order would modify suitably enable the telecom consumers to approach the consumer court.
3. In recent statistics as on 31.01.2016; there are 1,00,19,68,757 mobile consumers in our country against its total population of 1,29,52,291,543. Around 80.30% of the populations are having mobile connection alone.
4. At present, the services providers themselves are having own system to redress in the name of Nodal Officers as well as Appellate Authorities only comply the statutory obligations. But, they are originally not redressing the grievances.
5. The TRAI advice to the telecom consumers to approach the Consumer Forum for Redressal, if the consumer not satisfied with the Redressal system of Service Providers through the subsection 8 of section 14 of Telecom Regulatory Authority of India Act, 1977.
6. But unfortunately/ errantly, the Hon'ble Supreme Court had bared the telecom consumers in approaching Consumer Forums for their redress considering Justice Markandey Katuj had passed an Exparty order in the case of General Manager Telecom Vs. M. Krishnan in Civil Appeal No. 7687 of 2004.
7. The Order directed the Telecom Consumers to seek remedies through the Indian Telegraph Act, 1885 by barring remedy through Consumer Protection Act, 1988.

8. The Telephone was invented by Alexander Graham Bell in the year 1876. In 1878, the first telephone exchange was established at New Haven. In the year 1882, first telephone exchange was opened at Calcutta in India having only 93 subscribers. In the year 1885, when the Indian Telegraph Act was enacted. Now around 80.3% of the populations are using the mobile service alone
9. The large bench of Hon'ble Supreme Court of India in the case of Indian Medical Association Vs. Santha, it had clearly observed that the Section 3 of the Consumer Protection Act is the provisions of the Act shall be in addition to and not in derogation to any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers.
10. His Lordship Markandey Katuj, J. (same judge) in “State of U.P. Versus Jeet S. Bisht” (supra), in para No.66 of the judgment has observed as under :-

“66. It is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent.”
11. Several mobile service providers have been granted licenses to provide mobile telephone services to the consumers. To regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interest of service providers and consumers of the telecom sector and for matters connected therewith, the Parliament has passed “The Telecom Regulatory

Authority of India Act, 1997". Under the Telecom Regulatory Authority of India Act, 1997, the 'telecommunication services' have been defined.

12. Telecom Regulatory Authority of India to regulate the functioning of telecommunication service providers and other matters including and relating to mobile telephones also. Under Section 14 of the said Act, a provision has been made for establishment of Appellate Tribunals to adjudicate any dispute relating to the telecommunication services. For the purpose of facilitation, Sub Section B of Section 14 of the Telecom Regulatory Authority of India Act, 1997 is reproduced as under :-

(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);

13. From the bare perusal of the above said provisions, now it is crystal clear that the telephone services and to be more particular Cellular mobile telephone services have been specifically covered under the Telecom Regulatory Authority of India Act, 1997 and the provisions of the said Act are in addition to the previous Indian Telegraph Act, 1885. From perusal of Section 14 (b), it is very much clear that even when a consumer approaches the Consumer Disputes Redressal Forum, then the provisions of the Telecom Regulatory Authority of India Act, 1997 or the jurisdiction of the Appellate Tribunals established under the Telecom Regulatory Authority of India Act, 1997.

14. The justice Markandaya Katchu's order in imposing restriction in filling medical negligence case before the Consumers Forum in V. Krishan Rao –Vs- Nikhil Super Specialty Hospital was modified by another bench in SLP (C) No.15084/ 2009 dated 08.03.2010 (4) SCALE – 662 wherein it has been observed in Para – 49 & 50 as follows:

“49. In view of the discussions aforesaid, this Court is constrained to take view that the general direction given in paragraph 106 in D'souza (Supra) cannot be treated as binding precedent and those directions must be confined to the particular facts of the case”.

50. “ With great respect to the Bench which decided D'souza (supra) this Court is of the opinion that the directions in D' souza (supra) are contrary to (a) the law laid down in paragraph 37 of Indian medical Association (supra), (b) and paragraph 19 in Dr. J.J. Merchant (supra), (c) those direction in paragraph 106 of D' souza (supra) equate medical negligence in criminal train and negligence fastening civil liability whereas the earlier larger Bench in Mathew (supra) elaborately differentiated between the two concepts, (d) Those directions in D' souza (supra) are contrary to

the said Act which is the governing statute, (e) those directions are also contrary to avowed purpose of the Act, which is to provide a speedy and efficacious remedy to the Consumer. If those general directions are followed then in many cases the remedy under the said Act will become illusory, (f) those directions run contrary to principle of 'Res ipsa loquitur' which has matured into a rule of law in some cases of medical negligence where negligence is evident and obvious".

15. The same observation may be also applicable to the Ex parte order in the case of General Manager Telecom Vs. M. Krishnan, this is barring aggrieved telecom consumers to approach the Consumer Forums.

16. This Association is having high reservation and great displeasures on functioning "Consumer Forums" in our Nation, which are supposed to be functioning in redressing to the aggrieved consumers. However, the right of the Telecom Consumer in approaching before the Consumer Forums may not be denied.

In the above circumstances and facts, we appealed before the Telecom Regulatory Authority of India and the Govt. to do the needful action in modifying the Ex parte order which is barring telecom consumers in approaching Consumers Court.

Q3: Should a separate - independent and appropriately empowered - structure to resolve telecom sector complaints and grievances be established?

Yes, the three members committee at every telecom district/ circle would be empowered.

Q4: If yes, please comment with regard to the organization; its structure; kinds of complaints to be handled and its powers?

Set up with three members redressing panel, it would function in zone or circle level; this panel would empower to enquire telecom complaint within their jurisdiction irrespective of service providers in the line of Electricity Consumer Grievance Redressal Forum. Consumer aggrieved with the decision; the consumer could approach a State Level Appellate Forum, which consist three members, the Chairman of the proposed state level Appellate Forum may be a retired IAS Officer and the remaining two are from the CAG.

Q5: Is establishing an Office of Telecom Ombudsman an option that should be revisited, especially given the experience of the past few years of increasing numbers of complaints?

Not required.

Q6: If yes, how should it be created – the legal framework? What should be its structure? How should it be funded? What types of complaints should it handle? What should be its powers, functions, duties and responsibilities?

As suggested every telecom district should have a three members Forum to hare the complaint one from officer and the remaining two from CAGS. The half percentage of the turnover of the service providers to be deposited with the fund, which would create in the head of “Telecom Consumer Welfare Fund”. This fund mainly would utilise for create awareness among the telecom consumers and redress their grievances. ..

W thanks and regards.

**A.Rajan,
Secretary.**