

NOTES

Sub: *Appeal filed by Hotel Association of India – Appeal No.17(C) of 2006 before Telecom Disputes Settlement & Appellate Tribunal challenging Notification dated 21.11.2006 issued by TRAI & Judgment dated 28 May, 2010 rendered by the Hon’ble Tribunal in the above appeal.*

Hotel Association of India had filed an appeal, agitating the case of its members, being Appeal No. 17(C) of 2006 before the Telecom Disputes Settlement & Appellate Tribunal, challenging the legality and/or validity of two Notifications, both dated 21.11.2006 issued by TRAI. By reason of the said Notifications, hotels with rating of three stars and above, heritage hotels and other hotels, motels and inns and commercial establishments providing for boarding and lodging and having 50 or more rooms were excluded from the protection of price regulations which was extended to other commercial establishments and other cable subscribers across the country.

During the pendency of the above appeal, at the instance of the Registry of the Hon’ble Tribunal, or at the instance of TRAI an objection was raised that Hotel Association of India has a number of Members and, therefore, court fee should be paid as if all of the Members are parties before the Hon’ble Tribunal. In view of the objection and for avoiding time lapse, an application was filed on behalf of Hotel Association of India for transposing Hotel Association of India as one of the respondents in the appeal. The said application was allowed and Hotel Association of India was transposed as respondent no. 6 in the appeal. The appeal was thereafter pursued on behalf of the appellant no. 2, viz. East India Hotels Ltd as the appellant.

The challenge to the Notifications, both dated 21.11.2006 was made on various grounds such as –

- (i) The impugned Notifications are contrary to and inconsistent with the judgment rendered by the Hon’ble Supreme Court of India on 24.11.2006 in a common judgment passed in Civil Appeal No.2061 of 2006 titled as “Hotel & Restaurant Association & Anr vs. Star India Private Limited & Ors” and Civil Appeal No.2247 of 2006 filed by Hotel Association of India.
- (ii) TRAI was under a statutory obligation to protect the consumers, particularly having regard to Sections 11 (1)(b), 12 and 13 of Telecom Regulatory of India Act, 1997; and has committed an illegality by refraining from regulating the tariff in respect of the specified category of hotels.

- (iii) The clarification made by TRAI amongst consumers and one group of commercial consumers with the other was illegal and without jurisdiction. TRAI for the purpose of determining the said notification/order has failed to state any rationale therefore. Further, in doing so, it has failed to consider that broadcasters being monopolistic, the prices cannot be left to free market forces. The hotels with star ratings are required to provide cable connections in the rooms as per the guidelines issued by the Ministry of Tourism. In such circumstances, the hotels having star ratings and other heritage hotels have no other option but to enter into subscription agreement with the Broadcasters on their dictate.
- (iv) The impugned Notifications are discriminatory, not being based on any intelligible differentia, inasmuch as no reason has been assigned as to why other similarly situated commercial establishments have been left out from the purview of the regulations.

After a detailed analysis of the submissions made by the parties, the Hon'ble Tribunal vide a detailed judgment dated 28.5.2010, set aside the impugned Notifications in the appeal and held as under:-

- a) There cannot be any doubt or dispute that different rates could be fixed for different consumers. However, TRAI was required to apply its mind thoroughly as to whether it was necessary to provide for a regulatory regime, be it for their domestic consumers or the commercial consumers. The Act provides for the same but the need and extent therefore, was required to be considered. But no serious attempt was made by TRAI in relation thereto
- b) There is nothing on record to show as to on what materials, TRAI has arrived at a conclusion that the commercial establishments had the mechanism and wherewithal to protect themselves. TRAI, while emphasizing the only underlying objective to identify the commercial establishment has not assigned any cogent reason as to why a necessity was felt to change the definition. No basis for taking the said purported underlying premise has been spelt out. TRAI has not made any effort to identify different establishments separately and in fact, the viewpoint of Supreme Court of India had not been taken seriously.
- c) Though according to TRAI there are several safeguards provided to keep an eye over the developments in the market, nothing has been brought on record to show that the same had been carried out.
- d) The Tribunal cannot shut its eyes to the fact that all hotels worth its name whether it has been placed in the category of star hotel or not, cannot

afford not to provide the channels of the major broadcasters and that too the popular ones. Therefore, for all intent and purport, they are required to arrive at negotiated settlement with the broadcasters. The argument of market force vis-à-vis the bargaining power of the hoteliers, is beyond controversy and depending upon need of each category of hoteliers there exists huge inconsistency in the rates, which may lead to a conclusion that hotels have not been very successful in utilizing their so-called bargaining power and/or their position to fend for themselves.

- e) The manner of usage may not be very relevant for the purpose of putting a clause of users of the cable and broadcasting services as out of the purview of the regulatory regime. Any assessment of the need for protection should have been supported by cogent and valued reason. According to TRAI, the need for protection did not exist for the star rating hotels, there is nothing to show as to how the said need was assessed.
- f) It is difficult to understand as to why clubs, malls, cinema halls, restaurants, commercial hospitals and other commercial establishments, where the viewers are different from the owners of the premises have been treated differently.
- g) The Hon'ble Tribunal, on the basis of the discussions in the judgment set aside both the notifications/orders dated 21.11.2006 and has directed the TRAI to consider the case of commercial establishments once over again in a broad based manner. However, no directions are issued with regard to refund of any amount.
- h) The Hon'ble Tribunal has also held that as Hotel Association of India (transposed as respondent no. 6 in the appeal) continued to support the appellants (East India Hotels Ltd.). Further, it is also not the case where the majority of the hotels are not interested in the subject matter of the present dispute and therefore, directed and permitted that the Hotel Association of India may be permitted to represent their members before TRAI, in the future proceedings.