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CYBER APPELLATE TRIBUNAL

(Chapter X of the Act)

The Central Government by notification shall establish one or more appellate tribunals to be known as Cyber Appellate Tribunal (CYAT). The Central Government will also in such notification specify the matters and places in relation to which the CAT may exercise jurisdiction (see sec 48).

Let us discuss briefly below the composition of CYAT, procedure followed in appointment of the Chairperson and Members of Cyber Appellate Tribunal, powers of the chairperson of CAT and procedure and powers of CYAT.

10.1 Composition of Cyber Appellate Tribunal-

The Cyber Appellate Tribunal shall consist of a Chairperson and such number of other Members, as the Central Government may appoint by notification in the Official Gazette.

Provided that the person appointed as the Presiding Officer of the Cyber Appellate Tribunal under the provisions of this Act immediately before the commencement of the Information Technology (Amendment) Act, 2008 shall be deemed to have been appointed as the Chairperson of the said Cyber Appellate Tribunal under the provisions of this Act as amended by the Information Technology (Amendment) Act, 2008. (Sec 49(1))

The selection of Chairperson and Members of the Cyber Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India.(sec 49 (2)).

Further Subject to the provisions of this Act--

- (a) the jurisdiction, powers and authority of the Cyber Appellate Tribunal may be exercised by the Benches thereof;
- (b) a Bench may be constituted by the Chairperson of the Cyber Appellate Tribunal with one or two Members of such Tribunal as the Chairperson may deem fit;
- (c) the Benches of the Cyber Appellate Tribunal shall sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson of the Cyber Appellate Tribunal, by notification in the Official Gazette, specify;

(d) the Central Government shall, by notification in the Official Gazette, specify the areas in relation to which each Bench of the Cyber Appellate Tribunal may exercise its jurisdiction.

(4) Notwithstanding anything contained in sub-section (3), the Chairperson of the Cyber Appellate Tribunal may transfer a Member of such Tribunal from one Bench to another Bench.

(5) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member of the Cyber Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of more Members, the case or matter may be transferred by the Chairperson to such Bench as the Chairperson may deem fit.(see sec 49(3))

10.2 Appointment of Chairperson and Members of CYAT.

In appointment of the Chairperson and Members of Cyber Appellate Tribunal, following rules have been followed.

- a person, shall be such person who has been, or is qualified to be, a Judge of a High Court(sec 50 (1).
- The Members of the Cyber Appellate Tribunal, except the Judicial Member to be appointed under sub-section (3) of sec 50, shall be appointed by the Central Government from amongst persons, having special knowledge of, and professional experience in, information technology, telecommunication, industry, management or consumer affairs. however, a person shall not be appointed as a Member, unless he is, or has been, in the service of the Central Government or a State Government, and has held the post of Additional Secretary to the Government of India or any equivalent post in the Central Government or State Government for a period of not less than one year or Joint Secretary to the Government of India or any equivalent post in the Central Government or State Government for a period of not less than seven years.(see sec 50(2) and the proviso).
- The Judicial Members of the Cyber Appellate Tribunal shall be appointed by the Central Government from amongst persons who is or has been a member of the Indian Legal Service and has held the post of Additional Secretary for a period of not less than one year or Grade I post of that Service for a period of not less than five years(sec 50(3))
- The Chairperson or Member of the Cyber Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.(sec 51(1)).

- Before appointing any person as the Chairperson or Member of the Cyber Appellate Tribunal, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member. (sec 51(2)).
- An officer of the Central Government or State Government on his selection as the Chairperson or Member of the Cyber Appellate Tribunal, as the case may be, shall have to retire from service before joining as such Chairperson or Member. (sec 51(3)).

10.3 Powers of the Chairperson of CYAT

- The Chairperson of the Cyber Appellate Tribunal shall have powers of general superintendence and directions in the conduct of the affairs of that Tribunal and he shall, in addition to presiding over the meetings of the Tribunal, exercise and discharge such powers and functions of the Tribunal as may be prescribed(sec 52A.).
- Where Benches are constituted, the Chairperson of the Cyber Appellate Tribunal may, by order, distribute the business of that Tribunal amongst the Benches and also the matters to be dealt with by each Bench (sec 52B).
- On the application of any of the parties and after notice to the parties, and after hearing such of them as he may deem proper to be heard, or suo motu without such notice, the Chairperson of the Cyber Appellate Tribunal may transfer any case pending before one Bench, for disposal to any other Bench.(sec 52C).
- If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Cyber Appellate Tribunal who shall hear the point or points himself and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard" it.". (sec 52D.)

10.4 Appeal to CYAT

Section 57 of the Act provides for appeal to the CAT. Sub-section (1) provides that any person who is aggrieved by the order of the Controller or an adjudicating officer, has the right to appeal under this Act to CAT having jurisdiction in the matter. However, this right is subject to the provisions of sub-section (2) which prohibits any appeal against any order of an adjudicating officer made with the consent of the parties. Further the appeal under this section has to be filed within forty five days from date of order of the Controller or an adjudicating officer, CAT can entertain the appeal

after the expiry of the period if satisfied that there was sufficient cause for not filing appeal within the prescribed period(see sec 57(3) and proviso).

10.5 Procedure and Powers of the CYAT

The appeal filed before CAT shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal(S. 57(6) of the IT Act).

However the Act provides that CAT is not bound by the procedure laid down by the Code of Civil Procedure, 1908. However, it shall be guided by the principles of natural justice Section 58(1). But the CAT has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (sec 58(2)).

Section 61 of the Act bars the jurisdiction of all other courts to entertain any suit or proceeding in respect of any matter which an adjudicating officer or the CAT is empowered under this Act to determine. The section further provides that 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 under this Act. But this bar of jurisdiction is not applicable for disputes involving claims more than five crores rupees (read sec 61 with sec 46(IA) of the IT act As amended, 2008).

High Court is the court for an appeal against the order of the CAT (Section 62). The appeal can be made on any question of fact or law arising out of the order appealed against.

The Central Government in exercise of its rule-making power under section 87 of the Act framed the Cyber Regulations Appellate Tribunal (Procedure) Rules, 2000 *Vide* G.S.R. 791 (E), dated 17.10.2000 for regulating the procedure to be followed in applications made to the CRAT.