

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

**DATED 15<sup>th</sup> February, 2012**

**M.A.No.288 of 2011 and R.A.No.13 of 2011**

**in**

**PETITION No.166(C) OF 2010**

Asia Net Satellite Communications Ltd. - Applicant/Original Respondent  
Vs.  
Zee Turner Ltd. - Respondent/Original Petitioner

**BEFORE:**

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON  
HON'BLE MR. P.K. RASTOGI, MEMBER**

For Applicant in M.A. : Ms.Shirin Khajuria, Advocate  
No.288/11 and R.A.No.13/2011)/  
Original Respondent

For Respondent / Original : Mr.Maninder Singh, Senior Advocate  
Petitioner Mrs.Prathiba M. Singh, Advocate  
Mr.Tejeev Singh Bhatia, Advocate  
Mr. Vadivelu Deenadayalan, Advocate  
Mr.Upender Thakur, Advocate

**ORDER**

**R.A.No.13 of 2011**

This Review Application has been filed for review and clarification of the Final Order dated 22.07.2011 and Final Decree dated 09.09.2011 passed by this Tribunal in Petition No.166 (C) of 2010.

2. This Tribunal in its final order dated 22.07.2011 had passed the following order :

*"We therefore, without entering into any controversy pass a Decree for the remainder sum of Rs.1,49,15,653/- calculated as under :-  
Rs.5,90,84,740 - Rs.4,41,69,147/-."*

The applicant has challenged the final order of this Tribunal contending that the order has failed to make the adjustment for two amounts :

- (a) TDS for the years 2007-08 & 2009-10 not accounted by the Zee Turner Ltd. in its claim.
- (b) The sum of Rs. 11,05,245/- which was the excess billing for the month of July 2009 - Delayed activation but billing done earlier.

Further, the Tribunal had directed the applicant to pay costs of the Petition quantified at Rs. 7,26,002.75. Of this amount, a sum of Rs. 6,76,000/- was the Court fees for the Petition paid by the Petitioner. The petitioner submits that the fee of the Petition as stated in the Decree may be refunded to the Petitioner as this Tribunal in its

Order dated 7<sup>th</sup> October 2010 in MA No. 33/2010 in Petition No. 12 of 2002, held that this Tribunal has no power to fix ad-valorem court fee u/s 16(a) of the Act.

3. The applicant in its submission about the TDS for the year 2007-08 and 2009-10 has submitted that the Decree for the reminder sum of Rs.1,49,15,653/- as granted by this Court be reduced to the extent of Rs. 12,41,579/-, being the TDS amounts paid by the review petitioners on behalf of Zee Turner Ltd. for the financial year 2007-08 & 2009-10 and remains yet to be accounted for by Zee Turner Ltd. For the year 2007-08, an amount of Rs. 1,56,630/-, being the TDS deducted in March 2008, remains to be accounted for by Zee Turner Ltd. For the financial year 2009-10, the TDS amounting to Rs. 10,84,949/- is yet to be adjusted by Zee Turner Ltd.

4. Regarding excess billing for the month of July 2009, the applicant has submitted that the Tribunal in its order had stated at para 46 :

*"Mr. Maninder Singh would contended that in view of the stand taken by the petitioner, that for the aforementioned purpose allegedly an agreement was arrived at between the parties that the bill for the Month of July 2009 would be payable only for 10 days no Decree for the aforementioned sum need to be passed."*

In view of the above submissions, it was submitted by the applicant that inclusion of this sum of Rs.11,05,245/- in the decretal amount was an error, which needs to be reviewed.

5. In its reply, the respondent /petitioner submitted that the order of this Tribunal was passed on 22.07.2011 and the Review Application has been preferred on 20.10.2011, i.e. after a period of, approximately, 3 months had elapsed since the passing of the order dated 22.07.2011 and there is no explanation whatsoever given in the application for seeking condonation of delay.

6. On merit, the respondent submits that in so far as the TDS for the final year 2009-10 is concerned, during the course of proceedings before this Tribunal, the TDS certificates for the said year was not an issue and for the said year, the returns have already been filed by the petitioner in the month of September, 2010 itself and since the TDS certificates had not been provided by Asianet to Zee Turner within the time, Zee Turner could not claim any benefit of such TDS certificates. The TDS certificates have for the first time being provided by Asianet to Zee Turner in the month of November, 2011 and the period for claiming refund due to payment of additional tax from the Revenue

Department is also over. In this view of the matter, Zee Turner has not got any benefit of TDS deposited by Asianet, however, Zee Turner is willing to write to the Income Tax Department for refund of money and if such benefit is given to Zee Turner in the near future then the same will be extended to Asianet.

Regarding the costs passed in favour of Zee Turner, the respondent submitted that the same has to be paid by Asianet. In any case, Asianet has admitted an amount of Rs. 50,002.75, out of the amount of Rs. 7,26,002.75 and hence, the same has to be immediately paid to Zee Turner Ltd. As regards the remaining amount of Rs. 6,76,000/-, it submitted that at the time of filing the petition there was no pronouncement by this Tribunal to the effect that the court fees was not liable to be paid. Accordingly, the court fees which has already been paid by the Zee Turner Ltd. deserve to be paid to Zee Turner by Asianet as a part of Cost.

7. Regarding delay in filing the application, the applicant requested for condoning the delay, in view of the special circumstances. The applicant submitted that a copy of the Order dated 22<sup>nd</sup> July 2011 was not uploaded either on the same day or the next day but only on the evening of 25<sup>th</sup> July 2011. Based upon information provided by the

advocate appearing for the applicant herein, a copy of the Order dated 22.7.2011 was forwarded by the TDSAT only on 29<sup>th</sup> July 2011 and received by her thereafter. A copy of the decree dated 9.9.2011 was received in the office of the applicant only on 13<sup>th</sup> September 2011. Further, under the limitation Act, the period it takes to receive a true, certified copy of the Order is excluded for calculating the period of limitation and hence, the period from 22.7.11 i.e the date of the Order till 29.7.11, the date the true copy was sent, would be excluded while calculating the period of limitation, which is 30 days. Fresh affidavit was asked for and once again sent by the applicant and the same was delivered in Delhi from Trivandrum only on Monday afternoon, 24<sup>th</sup> October 2011, and filed the day after, on 25<sup>th</sup> October 2011. There has been a delay of 55/10 days in filing the review against the final Order and the decree, which may be condoned.

8. With regard to delay in filing the application (M.A.No.288 of 2011) after the pronouncement of judgment and decree, we condone the delay in the interest of justice and fair play and in view of the explanation offered by the applicant.

9. In our order dated 22.07.2011, we had held that :

*"in view of the assurance given by the counsel for Zee Turner Ltd. that in the event the review petitioner has deposited any amount with the income tax authorities by way of TDS on behalf of Zee Turner Ltd., on furnishing certificate to that effect, due credit thereto shall be given, this Hon'ble Tribunal held that "No further direction is required to be issued".*

The applicant has submitted that for the year 2007-08 it had deducted an amount of Rs. 1,56,630/- being TDS deducted in March 2008 has not been accounted by Zee Turner Ltd. and the respondent has said that it did not claim any benefit of the amount from Income Tax Authorities.

For the year 2009-10, TDS of Rs. 10,84,949/- has not been adjusted by the respondent. The counsel for the respondent submitted that the applicant submitted the TDS certificate only in the month of November 2011 and the period for claiming the refund due to payment of additional tax from the Revenue Department is also over. On the other hand, the counsel for the applicant submitted that the claim can be made to IT department till March 2011. The respondent has agreed to write to the IT department for refund of money and if such benefit is given to Zee Turner, the same will be extended to the applicant.

In view of the submission of the respondent, we direct the respondent to write to the IT department for refund of the amount for the year 2007-08 and 2009-10 and if allowed, the benefit will be extended to the applicant accordingly.

10. Regarding the amount of Rs. 11,05,245/- which was excess billing for the month of July 2009, the respondent has not denied the same on any substantial ground. The request of the applicant is in accordance with our final order which was passed on the submissions of the counsel for the respondent. This amount will be excluded from the amount to be paid by the applicant to the respondent.

11. The applicant has raised the issue of payment of Rs. 6.76 lakhs which is to be paid to the respondent as a part of the cost. It is correct that this Tribunal in its Order dated 7<sup>th</sup> October 2010 in MA No. 33/2010 in Petition No. 12 of 2002, has held that this Tribunal has no power to fix ad-valorem court fee u/s 16(a) of the Act. However, the respondent / original petitioner had filed this petition much earlier to the pronouncement of the order in M.A. No. 33 of 2010. It had already paid the Court Fees and the refund of the fee paid in other cases prior to the announcement of the said judgment depends upon

the outcome of any order by the Competent Court. As there is no order to this effect, we do not find any reason to reduce the reimbursement of the cost to the respondent by the applicant.

12. Both M.A and R.A are disposed of in accordance with above directions.

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**(S.B. Sinha)**  
**Chairperson**

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**(P.K. Rastogi)**  
**Member**

/NC/