



Rs.3,52,555.35p as dues of monthly subscription fees as on 7 August 2012. The respondent did not appear despite service of notice and hence, the petition has proceeded against it *ex parte*.

According to the petitioner, the respondent had entered into two agreements with M/s Zee Turner Ltd. for supply of channels distributed by it. One of the agreements was executed on 17 September 2010 for a monthly subscription of Rs.18,933/- plus service tax; it came into effect from 1 April 2010 and ended on 31 March 2011. The other agreement was executed on 17 October 2010 for a monthly subscription of Rs.14,705/- plus service tax; it came into effect from 1 April/February 2009 and ended on 1 March 2010

The respondent had also executed an agreement with M/s Asianet Communications on 29 November 2010 for supply of its channels for a monthly subscription fees for Rs.5,100/, excluding taxes. The agreement was for a very short duration as it came into effect from the date of the execution and ended on 31 December 2010.

The respondent had executed yet another agreement with M/s Star Den Media Services Pvt. Ltd. on 22 March 2011 for supply of its channels for a monthly subscription fee for Rs.52,145.10p, excluding taxes. The agreement commenced from 1 January 2011 and ended on 31 December 2011.

It is further the case of the petitioner that on the basis of agreements executed with them, it took over the sets of channels previously controlled and distributed by Zee Turner and Star Den with effect from 1 July 2011. Further, the petitioner's predecessors-in-interest also authorized it to collect their respective outstanding dues from all the MSOs, including the respondent. The petitioner also took over distribution of the channels of Asianet with effect from 30 September 2011 and, like the other two, the latter also authorized it to collect its outstanding dues from all the MSOs, including the respondent.

It is also the case of the petitioner that after stepping into the shoes of its three predecessors-in-interest, it raised invoices against the respondent for payment of monthly subscription fees as also the dues of the previous three distributors. The respondent, however, failed to make payments against the invoices and, as a result, the outstanding against the respondent accumulated to Rs.3,52,555.35p. And for recovery of that amount this petition is filed.

No reply is filed on behalf of the respondent to controvert the statements and allegations made in the petition.

The petitioner examined as its witness, one Amiya Ranjan Pati, working as Deputy General Manager in the company. The witness identified the two subscription agreements between the respondent and Zee Turner dated 17 September 2010 and 17 October 2010 which are

marked as Exhibit PW-1/1(Colly.). He also identified the respondent's subscription agreement with Asianet dated 29 November 2010 which is marked as Exhibit PW-1/2. He also identified the subscription agreement between the respondent and Star Den dated 22 March 2011, which is marked as Exhibit PW-1/3. He also identified the five invoices raised by the present petitioner against the respondent, which are marked as Exhibit PW-1/4 (Colly.). He lastly identified the five invoices raised by the present petitioner against the respondent, which are marked as Exhibit PW-1/5 (Colly.).

There are altogether six invoices. The first one dated 12 August 2011 is for the month of July 2011. The invoiced amount is Rs.78,399.14p, out of which Rs.71,078.10p is the subscription charges and the rest are taxes; **any previous outstanding is shown as nil**. In the next invoice (dated 29 August 2011) for the month of August 2011, the previous invoiced amount (Rs.78,399.14p) is shown as the outstanding, to which the subscription charges (Rs.71,078.10p) and taxes are added to arrive at the invoiced amount of Rs.1,56,798.29p. The same pattern continues in the next four invoices, that is to say, the invoiced amount of the last invoice is shown in the next invoice as the previous outstanding to which the subscription charges for the next month is added to come to the invoiced amount. It needs to be noted here that the subscription fees for the months of July, August and September 2011 are charged at the

rate of Rs.71,078.10p (plus taxes) and for the months of October, November and December 2011 and January to March 2012 @ Rs.5,100/- (plus taxes). The last two invoices are dated 7 February 2012 and 6 March 2012 and are for the months of February and March 2012 respectively. In the last invoice dated 6 March 2012, the 'previous period outstanding' is shown as Rs.2,63,323.93p to which the subscription charges of Rs.5,100/- and taxes are added to arrive at the invoiced figure of Rs.2,68,949.23p.

At this stage, it needs to be recalled that out of the four agreements between the respondent and the petitioner's predecessors-in-interest, three had already come to end before the petitioner took over the channels previously controlled by Zee Turner and Asianet and it was only the respondent's agreement with Star Den that was subsisting in July 2011 and which finally came to end on 31 December 2011.

None the less, in invoices raised by the petitioner for the months of July, August and September 2011, the subscription fee is charged @ Rs.71,078.10p. In the petition there is absolutely no explanation for charging subscription fee at that rate but the amount is apparently the aggregate of the subscription fees under the respondent's agreement with Zee Turner (Rs.18,933) and the respondent's agreement with Star Den (Rs.52,145.10p). There is no explanation whatsoever how and why subscription charges are being raised under the agreement that had come

to end on 31 March 2011, that is to say, even before the petitioner took over the channels previously controlled by Zee Turner.

Further, from the month of October 2011, the subscription charges are reduced to Rs.5,100/- per month. This again remains completely unexplained for, Rs.5,100/- was the subscription fee in the agreement with Asianet which had ended long ago on 31 December 2010.

In July 2011 when the petitioner claims to have taken over the channels previously controlled by Zee Turner, Asianet and Star Den, the only agreement relating to the respondent that remains subsisting was with Star Den that was to come to end on 31 December 2011. It would have been, therefore, understandable if from July to December 2011, subscription charges were raised at the rate of Rs.52,145.10p as stipulated under the agreement between the two dated 22 March 2011. But the invoices present a completely different picture and the discrepancy between the two is not explained anywhere.

We are sorry to observe that the petition filed by the petitioner is the most sketchy possible and so is the evidence (though remaining *ex parte*) adduced on its behalf. The agreements between the petitioner and Zee Turner, Asianet and Star Den that form the basis for its claim to recover their dues against the respondent are not brought on record.

The extracts from the ledger accounts reflect the position as per the invoices and are of no help in explaining the anomalies with regard to the

amounts at which subscription charges are raised. The rates at which subscription fee has been raised from July 2011 to March 2012 remain completely unexplained. There is no averment that even though the respondent's agreements with the petitioner's predecessors-in-interest had come to end, the petitioner nevertheless continued to supply those channels to the respondent and the channels supplied by the petitioners were used by the respondent to its benefit by retransmitting them to its subscribers. All these questions remain unanswered. In those circumstances, we are unable to see how the petitioner can get the decree for the amount claimed by it or even for any lower amount.

We see no merit in the petition. It is accordingly dismissed.

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**(Aftab Alam)**  
**Chairperson**

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**(Kuldip Singh)**  
**Member**

/sks/