



2025:DHC:2561-08



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 8 April 2025*

*Pronounced on: 15 April 2025*

+ FAO(OS) (COMM) 41/2025, CAV 106/2025, CM APPL. 16177/2025, CM APPL. 16178/2025 & CM APPL. 16179/2025

**AZURE HOSPITALITY PRIVATE LIMITED** .....Appellant

Through: Mr. Dayan Krishnan and Ms. Swathi Sukumar, Sr. Advs. with Mr. S. Santanam Swaminathan, Mr. Kartik Malhotra, Mr. Anindit Mandal, Mr. Rishabh Agarwal and Mr. Ritik Raghuvanshi, Advs.

versus

**PHONOGRAPHIC PERFORMANCE LIMITED** ...Respondent

Through: Mr. Rajiv Nayar and Mr. Akhil Sibal, Sr. Advs. with Mr. Ankur Sangal, Mr. Raghu Vinayak Sinha, Ms. Sucheta Roy, Mr. Shaurya Pandey, Ms. Jahnavi Sindhu and Ms. Sugandh Shahi, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT**

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**15.04.2025**

**C. HARI SHANKAR, J.**

**1.** The appellant, Azure Hospitality Private Limited<sup>1</sup>, is the defendant before a learned Single Judge of this Court in CS (Comm) 714/2022<sup>2</sup>. By judgment dated 3 March 2025, the learned Single

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<sup>1</sup> "Azure", hereinafter

<sup>2</sup> **Phonographic Performance Limited v Azure Hospitality Private Limited**



Judge has allowed IA 16777/2022 preferred by the respondent - plaintiff/ Phonographic Performance Limited<sup>3</sup> and rejected IA 17272/2022 preferred by the appellant Azure under Order XXXIX Rule 4 of the CPC.

**2.** The learned Single Judge, has pending disposal of CS (COMM) 714/2022 restrained Azure, its directors, partners, licensees, assignees, officers and all others acting on its behalf from “doing any act including exploitation / use of PPL’s copyrighted works in any of its outlets till the final adjudication of the suit.

**3.** Aggrieved thereby, Azure has filed the present appeal.

**4.** We have heard Mr. Dayan Krishnan and Ms. Swathi Sukumar, learned Senior Counsels for Azure and Mr. Akhil Sibal, learned Senior Counsel for PPL, at length. Learned Senior Counsels have also filed written submissions.

### Facts

**5.** The facts are brief.

**6.** Various record labels which owned sound recordings and were admitted the “first owners” of such recordings within the meaning of Section 17<sup>4</sup> of the Copyright Act, 1957, have assigned the said

<sup>3</sup> “PPL”, hereinafter

<sup>4</sup> **17. First owner of copyright.** – Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:  
Provided that—



recordings to PPL by virtue of assignment deeds executed under Section 18(1)<sup>5</sup> of the Copyright Act, 1957. There is no dispute that,

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- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work, in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;
- (b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- (c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- (cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;
- (d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- (dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

Explanation. – For the purposes of this clause and Section 28-A, “public undertaking”, means –

- (i) an undertaking owned or controlled by Government; or
- (ii) a Government Company as defined in Section 617 of the Companies Act, 1956 (1 of 1956); or
- (iii) a body corporate established by or under any Central, Provincial or State Act;]

(e) in the case of a work to which the provisions of Section 41 apply, the international organisation concerned shall be the first owner of the copyright therein.

Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of Section 13;

<sup>5</sup> 18. **Assignment of copyright. –**

- (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence:

Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to



consequent on such assignment, PPL is entitled to be treated as the owner of copyright in the assigned sound recordings for the purposes of the Copyright Act by virtue of Section 18(2)<sup>6</sup>.

7. According to the assertions in the plaint before the learned Single Judge, PPL has a monopoly in the sound recording market. It owns and controls public performance rights of over 400 music labels with 45 lakh international and domestic sound recordings. It also admittedly owns 80 to 90% of all sound recordings ever created in the country.

8. The assignment deeds executed by the original first owners of the sound recordings in favour of PPL assigned, to PPL, the public performance rights in respect of the sound recordings. This also entitles PPL to grant licenses to others who desire to publicly perform the said sound recordings.

9. Between 7 May 1996 and 21 June 2014, PPL was a copyright society within the meaning of Section 33(1) and (3)<sup>7</sup> read with Section

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contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilisation of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.

<sup>6</sup> (2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

<sup>7</sup> 33. **Registration of copyright society.** –

(1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:



2(ffd)<sup>8</sup> of the Copyright Act. The Copyright (Amendment) Act, 2012<sup>9</sup> amended Section 33 of the Copyright Act by inserting therein sub-Section (3A)<sup>10</sup>, the second proviso to which required every copyright society already registered prior to the 2012 Amendment Act, to once again get itself registered under Chapter VII of the Copyright Act (which deals with copyrights societies) within a year of commencement of the 2012 Amendment Act. It is not in dispute that in view thereof, PPL surrendered its pre-existing registration as a copyright society and applied for re-registration, which was rejected.

**10.** On coming to know that Azure was, in restaurants and other outlets run by it, exploiting the sound recordings in which PPL held copyright (as an assignee under Section 18) without obtaining any license from it, PPL, on 20 July 2022 issued a notice to Azure calling on it to cease and desist from continued exploitation of the said sound

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Provided further that the business of issuing or granting license in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act:

Provided also that a performing rights society functioning in accordance with the provisions of Section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

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(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

<sup>8</sup> (ffd) "copyright society" means a society registered under sub-section (3) of Section 33;

<sup>9</sup> "the 2012 Amendment Act" hereinafter

<sup>10</sup> (3-A) The registration granted to a copyright society under sub-section (3) shall be for a period of five years and may be renewed from time to time before the end of every five years on a request in the prescribed form and the Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society under Section 36:

Provided that the renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty:

Provided further that every copyright society already registered before the coming into force of the Copyright (Amendment) Act, 2012 shall get itself registered under this Chapter within a period of one year



recordings. On Azure failing to do so, PPL instituted CS (COMM) 714/2022 before this Court, seeking a decree of permanent injunction restraining Azure as well as all others acting on its behalf from exploiting or using the copyrighted works in respect of which PPL had been granted license by the original owners of the sound recordings under Section 18(1), the full repertoire of which is to be found at <https://www.pplindia.org/songs>, apart from damages and costs. The plaint was accompanied by IA 16777/2022 under Order XXXIX Rules 1 and 2 of the CPC, seeking an interlocutory injunction in the following terms:

“It is therefore most respectfully prayed that this Hon’ble Court be pleased to grant the following reliefs in favour of the Plaintiffs:

- (a) A decree of interim injunction restraining the Defendants, its directors, partners or proprietors, licensees, assigns, officers, servants, agents, representatives, contractors, sister concerns and any other person working for and on behalf of the Defendants from doing any act including exploitation/ use of the Plaintiff’s copyrighted works in the repertoire available on Plaintiff’s website <https://www.pplindia.org/songs>, in any of its outlets, including the outlets mentioned Paragraph No. 14 of the Application, which amounts to infringement of the Plaintiff’s copyright;
- (b) an order of ex-parte ad-interim injunction in terms of prayer (a);
- (c) pass such other order as this Hon’ble Court may deem fit and proper in the facts and circumstances of this case.”

**11.** By order dated 14 October 2022, a learned Single Judge of this Court issued summons in the aforesaid CS (COMM) 714/2022 as well as notice in IA 16777/2022. Further observing that PPL had managed



to make out a *prima facie* case in its favour, the learned Single Judge directed that there would be an *ad interim ex parte* order of injunction restraining Azure in terms of prayer (a) in IA 16777/2022 till further orders.

**12.** Azure, by way of response filed IA 17272/2022 under Order XXXIX Rule 4 CPC, seeking vacation of the *ex parte ad interim* injunctive order dated 14 October 2022.

**13.** By the impugned order, the learned Single Judge, as already noted, has proceeded to allow IA 16777/2022 filed by PPL and dismissed IA 17272/2022 filed by Azure.

### **The Impugned Judgment**

**14.** The learned Single Judge has, in passing the impugned judgment, relied on the orders of a learned Single Judge of this Court in *Novex Communication v Lemon Tree Hotels*<sup>11</sup>, and of the High Court of Bombay in *Novex Communications v Trade Wings Hotel*<sup>12</sup>. Additionally, reliance has been placed on the judgment of the Supreme Court in *Entertainment Network India v Super Cassette Industries*<sup>13</sup>.

**15.** The findings of the learned Single Judge in the impugned judgment may be enumerated thus:

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<sup>11</sup> 2019 SCC OnLine Del 6568, referred to, hereinafter, as “Novex v Lemon Tree”

<sup>12</sup> 2024 SCC OnLine Bom 252, referred to, hereinafter, as “Novex v Trade Wings”

<sup>13</sup> (2008) 13 SCC 30



(i) From *Novex v Lemon Tree*, the learned Single Judge has culled out the following propositions:

- (a) Under the first proviso to Section 33(1) of the Copyright Act, an owner of copyright in his individual capacity, would continue to have the right to grant licenses in respect of his own works.
- (b) Grant of such licenses would, however, have to be consistent with the obligation of the copyright owner as a member of a registered copyright society, meaning that the licenses could not be granted in respect of a right already granted by the owner-licensor to a copyright society.
- (c) The second proviso to Section 33(1) conferred the right to grant a license in respect of any literary, dramatic, musical or artistic work, embedded in cinematographic work or sound recording, only on a registered copyright society.
- (d) The second proviso did not, however, create a bar to grant of a licence in respect of the sound recordings itself, as distinguished from the literary, dramatic, musical or artistic work embedded in the sound recording.



(e) Section 34<sup>14</sup> sets out the rights of a copyright society.

(f) Under Section 55(1)<sup>15</sup> of the Copyright Act, an infringement suit could be instituted only by the owner of copyright. In other words, the copyright society could not sue for infringement of the copyright. Ergo, the independent right of the copyright owners to sue for infringement subsisted.

(ii) The decision in *Novex v Lemon Tree* was followed by a Single Bench of this Court [incidentally of one of us (C. Hari Shankar, J.)] in *Phonographic Performance Ltd. v Canvas*

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<sup>14</sup> 34. **Administration of rights of owner by copyright society. –**

(1) Subject to such conditions as may be prescribed,—  
(a) a copyright society may accept from an author and other owners of right exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and  
(b) an author and other owners of right shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation:

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may—  
(i) issue licences under Section 30 in respect of any rights under this Act;  
(ii) collect fees in pursuance of such licences;  
(iii) distribute such fees among owners of rights after making deductions for its own expenses;  
(iv) perform any other functions consistent with the provisions of Section 35.

<sup>15</sup> 55. **Civil remedies for infringement of copyright. –**

(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.



### **Communication<sup>16</sup>.**

(iii) Azure sought to distinguish the judgment in *Novex v Lemon Tree* as having been rendered at a time when there was no copyright society for sound recordings. In the present times, such a copyright society in the form of Recorded Music Performance Limited<sup>17</sup> was in place. Azure therefore sought to contend that the decision in *Novex v Lemon Tree* was not, therefore, applicable. However, this argument was not acceptable as the decision in *Novex v Lemon Tree* was not based on the existence or non existence of a copyright society.

(iv) Similarly, in *Novex v Trade Wings*, the High Court of Bombay held that

- (a) under Section 18(2), PPL/Novex became the copyright owners of the sound recording assigned to them by the original owner,
- (b) Section 30<sup>18</sup> empowered the owner/assignee, who became owner by assignment, to grant a license to exploit the sound recordings in respect of which he had become the owner, and

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<sup>16</sup> Order dated 17<sup>th</sup> December, 2021 in CS (Comm) 671/2021

<sup>17</sup> “RMPL”, hereinafter

<sup>18</sup> **30. Licences by owners of copyright.** –

The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing by him or by his duly authorised agent:

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

*Explanation.* – When a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.



(c) Sections 34 and 35 distinguished between the right of the owner/author and the right of the copyright society.

(v) The judgment of the Supreme Court in *Entertainment Network India v Super Cassette Industries* held that the 1994 amendment of the Copyright Act did not take away the owner's rights but merely provided the owners with an opportunity to exploit the copyright held by them either themselves or through a copyright society. The copyright society did not, therefore, take away the right of the owner of copyright to grant licenses for exploiting of the recordings in respect of which ownership was held.

(vi) Section 33(1) did not take away the right of the owners to grant copyright by license under Section 30.

(vii) The second proviso to Section 33(1) dealt with authors of underlying works, and was inapplicable to sound recordings.

(viii) The fact that PPL was earlier registered as a copyright society would make no difference.

(ix) Following this, the learned Single Judge has reasoned thus, in paras 34 to 39 of the impugned order:

“34. I have carefully examined the judgments passed by the Bombay High Court and the Madras High Court. I would respectfully beg to differ with the findings of the Madras High Court, while concurring with the findings of



the Bombay High Court for the reasons set out hereinafter.

35. As per the scheme of the Copyright Act, Section 18 gives a copyright owner the right to assign the copyright and upon such assignment, the assignee shall be deemed to be the owner of the copyright in the same manner as the owner. Section 30 of the Copyright Act gives the right to an owner, which would also include an assignee, to grant a licence in his works either by himself or through an agent.

36. Section 33 of the Copyright Act comes into play only where owners, who are members of a copyright society, have assigned the right to give licenses to a copyright society. The expression “no person or association of persons” occurring in Section 33(1) of the Copyright Act would not include ‘owners’, who are not members of a copyright society. Even in respect of owners, who are members of a copyright society, the position is clarified by the first proviso to Section 33 (1) that such an owner shall be free to grant licenses in respect of his own works in his individual capacity. The only limitation on such an owner is that the licenses granted by him would have to be consistent with his obligations as a member of a registered copyright society i.e., an owner cannot grant a license in his individual capacity, in respect of a work, which he has already exclusively licensed to a copyright society.

37. The right of giving a license in his works is an inherent right of a copyright owner under Section 30 of the Copyright Act. This right would necessarily include the ‘business of issuing or granting licence’, the expression which occurs in Section 33 (1) and the second proviso thereto. Therefore, the second proviso to Section 33 (1) cannot put any fetters on the inherent right of a copyright owner to grant licenses in respect of his works or engage in the ‘business of issuing or granting licence’.

38. Further, the second proviso to Section 33 (1) makes it clear that the ‘business of issuing or granting of licenses’ would vest with a copyright society, only with respect to a ‘literary work’, ‘dramatic work’, ‘musical work’ or ‘artistic work’, as embedded in a ‘cinematographic work’ or a ‘sound recording’ and not in the ‘cinematographic work’ or ‘sound recording’ itself.

39. Therefore, in my considered view, Section 33



cannot override the provisions of Section 30 of the Copyright Act which gives an absolute right to an owner of the copyright to grant any interest in the copyrighted work by way of a license.”

(x) The learned Single Judge has thereafter, referred to Section 34 of the Copyright Act. He holds that the use of the word expression “may accept”, in Section 34 implies that the copyright society also had a right not to accept authorisation from the owner. Similarly, Section 34(b) empowered the owner to withdraw the authorisation. It could not have been the intention of the legislature that, if the owner retained the right to license or withdrew the authorisation from the copyright society, the copyrighted work could not be licensed by the owner itself.

Following this line of reasoning, the learned Single Judge has, in the judgment under challenge, allowed the IA 16777/2022 filed by the PPL and dismissed the IA 17272/2022 filed by Azure.

## Rival Submissions

### **16. Submissions of Mr. Dayan Krishnan and Ms. Swathi Sukumar**

**16.1** Mr. Dayan Krishnan and Ms. Swathi Sukumar, learned Senior Counsels for Azure, submit that Section 33 of the Copyright Act was essentially intended to pervert cartelization, whereby one person such as PPL could, by obtaining licenses from the original first owners of the sound recordings, acquire ownership of the bulk of the available



sound recordings and, thereafter, allow their dissemination only by providing licenses at exorbitant prices or as in the case of PPL, requiring the person, who wish to play the sound recording, to take a license for the entire repertoire of recordings even if he was interested in only one, or a select few. Learned Senior Counsel rely on the words “carrying on business of issuing or granting licenses” as contained in Section 33(1). Once it is found that a particular entity is carrying on the business of issuing or granting licenses in respect of the copyrighted works, the contention is that Section 33(1) applies straightforwardly, and there is a prohibition in such a person engaging in such a business except in accordance with a copyright licence issued under Section 33(3). It is pointed out that, in para 2.1 of the impugned judgment, the learned Single Judge has noted the fact that, even in the plaint, PPL has claimed to be “engaged in the business of issuing licenses for public performance of sound recordings.”. It is submitted that, while there is no absolute prohibition on engaging in such a business, any person choosing to do so is subjected to the strict tariff regime envisaged by Section 33A<sup>19</sup> of the Copyright Act, which were inserted in the Copyright Act by Section 20 of the 2012 Amendment Act. Such a person, it is submitted, is required to register himself as a copyright society and publish his tariff in the prescribed manner so

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**<sup>19</sup> 33-A. Tariff scheme by copyright societies. –**

(1) Every copyright society shall publish its tariff scheme in such manner as may be prescribed.

(2) Any person who is aggrieved by the tariff scheme may appeal to the Commercial Court and the Board may, if satisfied after holding such inquiry as it may consider necessary, make such orders as may be required to remove any unreasonable element, anomaly or inconsistency therein:

Provided that the aggrieved person shall pay to the copyright society any fee as may be prescribed that has fallen due before making an appeal to the Commercial Court and shall continue to pay such fee until the appeal is decided, and the Board shall not issue any order staying the collection of such fee pending disposal of the appeal:

Provided further that the Commercial Court may after hearing the parties fix an interim tariff and direct the aggrieved parties to make the payment accordingly pending disposal of the appeal.



that any person who wishes to exploit any recording or recordings in which such person holds copyright is able to do so by making payment on the basis of the published tariff. The entire effort in the scheme envisaged by Section 33(1) read with Section 33A is, it is submitted, regulation of the business of bulk copyright holders granting licenses in respect of the sound recordings of the subject matter in which they hold copyright. The idea is to prevent cartelization, monopolization and syndicating. Such a bulk owner of copyright forms a category *sui generis*, the regulation of which is sought to be ensured by Section 33(1) read with Section 33A. The interpretation placed by the learned Single Judge on the provision of the Copyright Act, it is submitted, would defeat this purpose and in effect reduce Section 33(1) to a dead letter.

**16.2** Adverting to the proviso to Section 33(1), which unquestionably forms the basis of the impugned judgment of the learned Single Judge, the learned Senior Counsel submit that a proviso cannot be so interpreted as to defeat the purpose of the main Section. The proscription contained in the main Section 33(1) cannot, therefore, be sought to be defeated by the proviso to the said sub-Section. The words “consistent with his obligations as a member of the registered copyright society” as contained in the proviso to Section 33(1), it is submitted, emphasises this. Any person who is a bulk owner of copyrighted material and is engaged in the business of licensing of granting license or exploitation of such material, in other words, according to learned Senior Counsel, is firstly required to register himself as a copyright society and, even if he grants licenses



in respect of his own words in individual capacity, can do so only consistent with his obligations as a member of the registered copyright society. This is made clear by the use of the words “in his individual capacity”.

**16.3** What the impugned judgment of the learned Single Judge effectively permits, it is submitted, is for an entity, such as PPL, to circumvent the regulatory scheme put in place by Section 33(1) read with Section 33A of the Copyright Act, by not registering itself as a copyright society and becoming the owner within the meaning of Section 18(2) of the Copyright Act in respect of a bulk of existing sound recordings and thereafter issuing licenses to persons desirous of playing the sound recording at exorbitant rates at their own unreasonable terms. In this context, learned Senior Counsel emphasises the fact that it is an admitted position that PPL monopolises the bulk of sound recordings available for dissemination.

**16.4** Learned Senior Counsel, therefore, seek to distinguish a bulk owner of copyrighted material, who is in the business of issuing or grant licenses in respect of copyrighted work within the meaning of Section 33(1), from a person who is *bona fide* granting licenses in respect of the copyrighted works without being exclusively engaged in the business of doing so. Such a person, submit learned Senior Counsel, would be entitled to the benefit of Section 30 of the Copyright Act whereas a person who is in the *business* of issuing or granting licenses in respect of the copyrighted work cannot claim that benefit.



**16.5** Learned Senior Counsel have also placed reliance on the 227<sup>th</sup> Report of the Department-Related Parliamentary Standing Committee on Human Resource Development<sup>20</sup> with respect to the Copyright (Amendment) Bill 2010<sup>21</sup>, which consequent to grant of Presidential assent, was enacted as the 2012 Amendment Act. They have particularly emphasized paras 17.1, 17.3, 17.5 to 17.8 and 21.1 to 21.6 of the report of the PSC, which read thus:

“17.1 Clause 19 of the Bill seeks to insert a new section 33A in the Act providing for Tariff Scheme by copyright societies. The proposed section mandates that every copyright society shall publish its tariff scheme in such manner as may be laid down by rules. Any aggrieved person may appeal against the tariff scheme to the Copyright Board which may, after holding enquiry, make orders to remove any unreasonable element, anomaly or inconsistency therein. The aggrieved person shall continue to pay such fee that had fallen due before making the appeal until the appeal is decided and the Board shall not stay the collection of such fee pending disposal of the appeal. However, the Board may, after hearing the parties, fix interim tariff to be paid by the aggrieved party.

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17.3 Divergent views were expressed by the various stakeholders on the proposed amendment. Its negative impact was highlighted by organisations representing music industry like South India Music Companies Association, Indian Music Industry and copyright societies like Phonographic Performance Ltd. and Indian Performing Right Society Ltd. in the following manner:

- this provision can result in unreasonable hindering of the rights of producers / sound recording labels to enter into private agreements with licensees wishing to exploit the work.*
- conditions imposed on the copyright societies would be extremely burdensome. As the tariff would be*

<sup>20</sup> “PSC”, hereinafter

<sup>21</sup> “the 2020 Amendment Bill” hereinafter



perennially open to challenge by any person anywhere in the country, the owner of the copyright will be burdened with litigations.

- it will encourage owners / authors not to join the society and license their rights directly as their license fees will not fall under the jurisdiction of the Copyright Board.

- insertion of Section 33A appears to be contrary to the Amendment Act of 1994, whereunder copyright societies were given a free hand to deal with and value the work of owner of copyright.

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17.5 The Committee notes that various stakeholders including the existing copyright societies had certain reservations against the proposal. Committee's attention has been particularly drawn by the apprehension about copyright societies coming up with high tariff schemes drawn up solely at their discretion. The Committee was also given to understand that at present there was no check on the formulation of tariff scheme but merely a requirement of publication by the society. With the proposed amendment coming into effect, the aggrieved person would have no alternative but to pay the fee as per the tariff scheme and may face unnecessary hardships before the appeal was decided and the relief, if any, at the end of the appeal may not prove be sufficient for the loss caused.

17.6 The Committee would like to point out that *even during its deliberations with the copyright societies especially the Phonographic Performance Ltd (PPL) and the Indian Performing Rights Society Limited (IPRS), it was felt that they were not very forthcoming about their tariff schemes in spite of specific queries in this regard.* The only information which was shared with the Committee was that tariff scheme was negotiated with the users and the same was available not only on their respective websites but published in the Official Gazette also. However, on being asked, other stakeholders categorically pointed out that no tariff scheme of these societies was put in the public domain either on their website or in the Official Gazette.

17.7 The Committee, taking into account the viewpoint of both the stakeholders i.e., the copyright societies and the users, observes that *there is no denying the fact that the process of fixing tariff by the copyright societies is not transparent. As per the existing system, the copyright societies are free to fix tariffs without any*



*visible basis / criteria. There is no system of broad-based consultations by these societies as is done in other sectors such as telecom, insurance, broadcasting and electricity. The Committee observes that in these sectors, stakeholders are consulted before tariff is fixed and notified. However, such a system is completely lacking in case of copyright societies. As a result, there are instances of arbitrariness, arm twisting and negotiations by these societies.*

17.8 *The Committee is of the firm view that the proposed amendment will result in the introduction of a system of a transparent formulation of tariff scheme by the collective administrative copyright societies, which will be subject to scrutiny by the Copyright Board on receipt of appeal by the aggrieved party.* At the same time, the Committee would like the Department to take note of the concerns of the various stakeholders and provide for a transparent process of tariff fixation by the copyright societies with necessary changes in the relevant rules. The Committee would also take the opportunity to observe that for putting in place a well-defined and balanced tariff scheme, functioning of Copyright Board as well as copyright societies also needs to be regulated, strengthened and made foolproof so as ensure that all the stakeholders are benefited. The Committee would be giving its recommendations in this regard in the later part of the Report.

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21.1 A number of stakeholders who deposed before the Committee were not satisfied with the functioning of the copyright societies. Issues relating to the Societies membership, administration, control, royalty distribution licensing and tariff schemes came under a lot of criticism during the deliberations of the Committee. It was emphasized again and again that the copyright societies were not functioning in a transparent manner and that there were no regulations to control their functioning.

21.2 To have a proper understanding about the functioning Copyright Societies, the Committee sought details in this regard from the Department. The Committee was informed that at present there were four Copyright Societies registered under section 33 of the Act, as follows:-

- Society of Copyright Regulation of India Producers for Films and Television (SCRIPT) for managing rights of Producers or Cinematograph Films and Television Works;
- Indian Performing Right Society Limited (IPRS),



for managing rights of musical works created by authors (lyricists), music composers and music publishers (Film Publishers). Other rights owners such as music companies owning rights are also members.

- Phonographic Performance Ltd (PPL) for managing rights of Sound Recording. Music or recording companies are members and

- Indian Reprographic Rights Organisation (IPRO) for managing rights of Photocopy/reprographic rights. Authors and publishers are its members.

21.3 On a specific query about the guidelines/norms or rules/regulations governing the functioning of Copyright Societies, the Committee was informed that a copyright society is a collective administration Society formed by copyright owners registered under section 33 of the Act. The minimum membership required for registration of a society is seven. As provided in section 34 of the Act, a copyright society has the power to issue license in respect of rights administered by it, collect fees in pursuance of such licenses, and distribute such fees among owners of copyright after making deductions for the administrative expenses. The Committee was also informed that every copyright society has to submit to the Registrar of copyrights under section 36 such returns as may be prescribed. The administration of Copyright Societies is regulated by Rules 12 to 14 P of the Copyright Rules, 1958. Rule 14 P clearly lays down that every copyright society has to file an annual return with the Registrar of Copyrights giving details of the annual meeting of owners held immediately preceding the filing of return, the up-to-date list of owners of rights, audited accounts. Tariff scheme and the Distribution scheme etc.

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21.5 The Committee observes that inspite of there being provisions in the Act and rules framed thereunder regulating the copyright societies, over the years a disturbing trend in their functioning has been developing which has led to disputes between the major stakeholders and resultant court cases. The Department has also admitted that the administration of copyright societies has been taken over by the owners whose interest is different from that of the authors and in many cases authors are being deprived of their benefits. Another area of concern noticed by the Committee is the Tariff Scheme for the Copyright Societies. Although as per Rule 14J of the Copyright Rules, 1958, a Copyright Society has to frame a Tariff Scheme setting out the nature and quantum of fees or royalties, no provision is there for governing or regulating the



system of fixation, collection and distribution of royalty under section 33 of the Act. A system of formulation of a Tariff Scheme by the Collective Administrative Societies has accordingly been brought as section 33A under the proposed legislation. The Committee feels that this is a step taken in the right direction *and will put an end to the arms-twisting negotiations of Copyright Societies.*

21.6 The Committee would like to draw the attention of the Department to Section 33 of the Act which empowers the Central Government to regulate the functioning of Copyright Societies. As per this provision the registration of a Copyright Society can be suspended for not more than one year or cancelled by the Central Government after conducting an inquiry, in the event of it being managed in a manner detrimental to the interests of owners of rights. Not only this, Section 36 clearly provides that every Copyright Society has to submit to the Registrar of Copyright Society annual returns. Under this very section, any officer duly authorized by the Central Government can call for any report or records of any Copyright Society so as to inquire that the fees collected by it in respect of rights administered by it are being utilized or distributed in accordance with the provisions of the Act. The purpose for highlighting all these provisions is that had the Central Government played a more pro-active role, perhaps things would not have reached such an alarming level. The Committee can only conclude that with the proposed provision relating to Tariff Scheme and use of powers already there in the Act/rules by the Central Government through its authorized officers, copyright societies will be functioning as envisaged under the Copyright Law.”

**16.6** Learned Senior Counsel submits that Section 33 cannot be so interpreted as to permit an entity such as PPL to bypass Section 33(1) – which is intended to subserve a salutary purpose – by indirectly obtaining ownership of copyrighted material as an assignee under Section 18(2) and thereafter to capitalize on the proviso to Section 33(1). PPL, in other words, under the proviso of Section 33(1), cannot be permitted to do indirectly what it cannot do directly under the main Section 33(1) read with Section 33A.



**16.7** It is further submitted that it is not as though there is no registered copyright society dealing in sound recordings. It is pointed out RMPL is in fact an entity registered as a copyright society under Section 33(3) for dealing in sound recordings. The menace of cartelization has, however, so permeated the music Industry that few original first owners of sound recordings give the license to a copyright society such as RMPL, to further grant licenses for exploitation of the sound recordings, and the bulk of the licenses in respect of the sound recordings is monopolized by entities such as PPL. Copyright, as a fundamental principle, is not intended to confer unguided monopoly on persons. In case the interpretation placed by the learned Single Judge on the first proviso to Section 33(1) is to be accepted, it would not only efface the main part of Section 33(1) but would entirely defeat Chapter VII of the Copyright Act and relegate the statute to the position in which it was prior to 1994, when Chapter VII was substituted. A person who desired to play copyrighted sound recordings would not, in such a situation, have any remedy against unreasonable tariffs put in place by an entity such as PPL.

**16.8** Reliance is also placed by learned Senior Counsel for Azure on paras 60, 87, 88 and 124 of the judgment of the Supreme Court in *Entertainment Network*, which read thus:

“60. In Copinger and Skone James on Copyright (15th Edn., 2005, Paras 2-5, p. 27, Vol. 1), it is stated:

*“Finally, it is considered a social requirement in the public interest that authors and other rights owners should be encouraged to publish their work so as to permit the widest possible dissemination of works to the public at large. These four fundamental principles are cumulative and*



interdependent and are applied in the justification of copyright in all countries, although different countries give varying emphasis to each of them. To generalise, it is true to say that in the development of modern copyright laws, the economic and social arguments are given more weight in Anglo-American laws of common law tradition, whereas, in continental law countries with civil law systems, the natural law argument and the protection of authors are given first place.

*... The protection of copyright, along with other intellectual property rights, is considered as a form of property worthy of special protection because it is seen as benefiting society as a whole and stimulating further creative activity and competition in the public interest."*

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87. *The Act seeks to maintain a balance between the interest of the owner of the copyright in protecting his works on the one hand and the interest of the public to have access to the works on the other. The extent to which the owner is entitled to protection in regard to his work for which he has obtained copyright and the interest of the public is a matter which would depend upon the statutory provisions.*

88. Whereas the Act provides for exclusive rights in favour of owners of the copyright, *there are provisions where it has been recognised that public has also substantial interest in the availability of the works.* The provisions relating to grant of compulsory licence must be viewed having regard to the aforementioned competing rights wherefor an appropriate balance has to be struck. For the said purpose, we may notice the broad features of the Act.

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124. *The right to property, therefore, is not dealt with its subject to restrict when a right to property creates a monopoly to which public must have access. Withholding the same from public may amount to unfair trade practice. In our constitutional scheme of statute monopoly is not encouraged. Knowledge must be allowed to be disseminated. An artistic work if made public should be made available subject of course to reasonable terms and grant of reasonable compensation to the public at large."*

(Emphasis supplied)



**16.9** For all these reasons, learned Senior Counsel for Azure submit that grant of interlocutory injunction by the learned Single Judge in favour of PPL cannot sustain.

**16.10** In the alternative and without prejudice to the aforesaid submissions, learned Senior Counsel submit that, keeping in mind the principles of balance of convenience and irreparable loss, the learned Single Judge ought to have passed an order of deposit rather than an order of injunction. To a query from the Court as to the rate at which such deposit could have been directed, learned Senior Counsel submit that the deposit could have been at the rate charged by a registered copyright society such as RMPL.

## **17. Submissions of Mr. Akhil Sibal**

**17.1** Mr. Akhil Sibal, learned Senior Counsel for PPL, argued in response to the submissions of Mr. Dayan Krishnan and Ms. Swathi Sukumar, learned Senior Counsel.

**17.2** Mr. Sibal prefaced his submissions by seeking to point out that the appellant Azure is not as innocent, or woebegone, an entity as it makes itself out to be, nor, in fact, can Azure claim to be placed in unreasonably straitened financial circumstances as a result of the order of injunction passed by the learned Single Judge. He submits that, in fact Azure runs 86 high-end restaurants with an overall turnover of ₹ 161 crores. With such a turnover, Mr. Sibal submits that, what Azure



essentially seeks is to play the recordings, of which PPL is a *bonafide* and genuine owner of copyright, free of cost, without paying a penny to PPL. It is because of this, submits Mr. Sibal, that, as a fall-back option, Azure is agreeable to make a deposit. That alternative suggestion, advanced by learned Senior Counsel for Azure, submits Mr. Sibal, is completely unacceptable.

**17.3** Mr. Sibal submits that there are no equities in favour of Azure. PPL is the *bonafide* owner of the sound recordings in respect of which it holds copyright. There is no cardinal sin in PPL being the owner of 80% of the existing sound recordings. If it is, Mr. Sibal submits that PPL is entitled, in law, to permit exploitation of the sound recordings, of which it is the legitimate owner, on its own terms. If a person desires to play any of the said sound recordings, Mr. Sibal submits that payment would have to be made at the rate charged by PPL.

**17.4** Mr. Sibal further submits that it is not as though PPL is the only person engaged in such activities and that there are other players in the market, notably Novex.

**17.5** What Azure essentially seeks to obtain, by the stand it asserts before the Court, submits Mr. Sibal, is to force PPL to obtain a compulsory license for the sound recordings in which it holds copyright. Mr. Sibal submits that the arguments of Azure completely obfuscate the distinction between a compulsory licensee and a voluntary licensee. In the case of a voluntary licensee, there is no regulation. Para 88 of ***Entertainment Network***, on which learned



Senior Counsel for Azure had placed reliance, he submits, deals with a case of a compulsory licensee. A voluntary licensee acts under Section 30, and there is no fetter on such a licensee providing licenses for the work in which he holds copyright on its own, uncanalized, terms.

**17.6** Mr. Sibal has, to support his submissions, placed reliance on Section 17, 18(2), 30, 31<sup>22</sup>, 31D<sup>23</sup>, 33, 34 and 14 (e)<sup>24</sup> of the Copyright Act read with the definition of 'author' in Section 2(d)(v)<sup>25</sup> of the Copyright Act.

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**<sup>22</sup> 31. Compulsory licence in works withheld from public. –**

(1) If at any time during the term of copyright in any work which has been published or performed in public, a complaint is made to the Commercial Court that the owner of copyright in the work –

- (a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or
- (b) has refused to allow communication to the public by broadcast of such work or in the case of a sound recording the work recorded in such sound recording, on terms which the complainant considers reasonable;

the Commercial Court, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry, as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by broadcast, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Commercial Court may determine; and thereupon the Registrar of Copyrights shall grant the licence to such person or persons who, in the opinion of the Commercial Court, is or are qualified to do so in accordance with the directions of the Commercial Court, on payment of such fee, as may be prescribed.

**<sup>23</sup> 31-D. Statutory licence for broadcasting of literary and musical works and sound recording. –**

(1) Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section.

**<sup>24</sup> 14. Meaning of copyright. –**For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

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- (e) in the case of a sound recording,—
  - (i) to make any other sound recording embodying it including storing of it in any medium by electronic or other means;
  - (ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;
  - (iii) to communicate the sound recording to the public.

<sup>25</sup> (d) "author" means,—

- (v) in relation to a cinematograph film or sound-recording, the producer;



## Analysis

**18.** Having considered the submissions of learned Senior Counsel for both sides, we are constrained to observe that negotiating the labyrinths of the Copyright Act, particularly Section 33(1) read with the proviso thereto, is an unenviable task.

**19. An excursion through the Act**

**19.1** It would be useful to scan the provisions of the Copyright Act, to the extent they concern the dispute at hand, before proceeding further.

**19.2** Section 13 sets out the categories of works in which copyright can subsist. Sub-section (1), in clause (c)<sup>26</sup>, declares that copyright shall subsist, throughout India, in sound recordings, *subject to the provisions of the Copyright Act*. Sub-sections (2) and (3) are not of particular relevance, for our purpose. Sub-section (4)<sup>27</sup> preserves the separate copyright in any work in respect of which, or a substantial part of which – classically referred to as the “underlying work” – the sound recording is made. Thus, the copyright in the sound recording of a song by a noted composer would not affect the separate existing copyright of the composer in the song, of which the sound recording is

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<sup>26</sup> 13. **Works in which copyright subsists. –**

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

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(c) sound recording.

<sup>27</sup> (4) The copyright in a cinematograph film or a sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the sound recording is made.



made. The first owner of the copyright in the sound recording would be the producer, and the first owner of the copyright in the song of which the sound recording is made would be the composer, by operation of Section 17(1) read with Section 2(d)(ii)<sup>28</sup>.

**19.3** Section 14 defines “copyright”. It states that “copyright” means the exclusive right, *subject to the provisions of the Act*, to do or authorize the doing of the acts enumerated under the various clauses of the Section. In the case of a sound recording, clause (e) defines “copyright” as being the right, *inter alia*, to communicate the sound recording to the public. There is, in any event, no absolute right to communicate sound recordings to the public, even if one is the copyright owner. It is subject to the provisions of the Copyright Act. This position is again underscored by Section 16<sup>29</sup>, which clarifies that “no person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of” the Copyright Act.

**19.4** Section 17 identifies the “first owner of copyright”. It declares that, *subject to the provisions of the Copyright Act*, the author of a work shall be the first owner of copyright therein. “Author” is defined in Section 2(d) which, in the case of a sound recording, declares the producer of the sound recording to be its author, *vide* sub-clause (iv) thereof. This provision does not really affect the controversy at hand,

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<sup>28</sup> (d) “author” means,—

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(ii) in relation to a musical work, the composer;

<sup>29</sup> **16. No copyright except as provided in this Act.** – No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be



as there is no dispute that the original producers of the sound recordings, which were assigned to PPL, were their first authors.

**19.5** “Work” is defined in Section 2(y), which divides all works, which can form subject matter of copyright into three categories, enumerated in sub-clauses (i) to (iii) thereof, of which sub-clause (iii) individually covers “a sound recording”. Thus, sound recordings constitute an individual and distinct class/category of copyrightable work under the Copyright Act. Sub-clauses (i) and (ii) cover literary, dramatic, musical or artistic works, and cinematograph films, respectively. Nothing, except the “works” identified in sub-clauses (i) to (iii) of Section 2(y), is copyrightable under the Copyright Act.

**19.6** Section 18 deals with assignment. Sub-section (1) generally permits the owner of copyright in any existing work to assign the copyright in the work to any person, either wholly or in part, and conditionally or unconditionally. The provisos to Section 18(1) do not concern us. Section 18(2), which forms, as it were, the cornerstone of PPL’s case, and deems the assignee of copyright, under Section 18(1), to be the owner of copyright in the assigned work, for the purposes of the Copyright Act. Section 19(1) and 19(2)<sup>30</sup> require the assignment to be in writing, and to identify the work, and the extent of rights therein, which have been assigned.

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construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

<sup>30</sup> **19. Mode of assignment.** –

(1) No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or his duly authorised agent.

(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.



**19.7** There can, therefore, be no doubt that PPL was, in respect of the sound recordings, in respect of which copyright was assigned to it by the producers of the sound recordings, the owner of copyright therein, for the purposes of the Copyright Act.

**19.8** One may proceed, now, to Section 30, which permits the owner of copyright in any work to licence the copyright owned by him in the work. Mr Sibal lays great emphasis on this provision, and there is no doubt that, if it is read in isolation, there appears to be no fetter on the terms at which PPL could licence its copyright in the sound recordings assigned to it by the producers thereof, under Section 18(1). There is also no doubt that Section 18, as worded, is not statutorily rendered subject to any other provision of the Copyright Act. This is, in fact, one of the factors which appears to have weighed with the two *Novex* decisions, on which the learned Single Judge relies, in holding that Section 33(1) cannot derogate from the absolute right conferred by Section 30 on PPL as the owner of copyright in the assigned works, to licence the copyright therein, on such terms as it deems appropriate.

**19.9** Sections 31A to 31D deal with certain circumstances in which compulsory licensing can be resorted to, by the Commercial Court. Mr Sibal has cited only Section 31A, and we do not deem it necessary, therefore, to advert to Sections 31B to 31D. Section 31A applies where there is a complaint, by any person, that the owner of copyright in a copyrightable work has refused to allow republication of the work, or its communication to the public. In such circumstances, the Commercial Court can examine whether the ground for refusal is



reasonable. If it is not, the Commercial Court may direct the Registrar of Copyrights to grant, to the complainant, the licence to republish the work or communicate it to the public subject to payment, by the complainant, to the copyright owner, of compensation to be fixed by the Commercial Court. Mr Sibal's contention is that the attempt of Azure, by means of the present appeal, is to indirectly coerce PPL to compulsorily licence the sound recordings in which copyright stands assigned to it, by obtaining such an order from this Court.

**19.10** One reaches, now, Section 33, which is the cornerstone of controversy.

**19.11** Section 33 figures in Chapter VII, which deals with Copyright Societies, and was entirely substituted by Section 11 of the Copyright (Amendment) Act, 1994<sup>31</sup>.

**19.12** Section 33(1) is worded in proscriptive terms. It unequivocally proscribes any person, or association of persons, from “carrying on the business of issuing or granting licences in respect of any work in which copyright subsists *or in respect of any other rights* conferred by (the Copyright) Act”, except to, or *in accordance with*, registration granted under Section 33(3). Section 33(3) deals with registration of copyright societies.

**19.13** The word “business” is a word of wide import. The expression “carrying on business” has been defined by the Supreme Court in

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<sup>31</sup> “the 1994 Amendment Act” hereinafter



*Director of Supplies and Disposals v Member, Board of Revenue*<sup>32</sup>, thus:

“To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive; there must be some real and systematic or organised course of activity or conduct with a set purpose of making profit. To infer from a course of transactions that it is intended thereby to carry on business, ordinarily there must exist the characteristics of volume, frequency, continuity and system indicating an intention to continue the activity of carrying on the transactions for a profit.”

**19.14** In *Assistant Commissioner v Hindustan Urban Infrastructure Ltd*<sup>33</sup>, the Supreme Court held that the expression “carrying on business” is to be understood in a wide sense, and not merely restricted to the activity of buying and selling.

**19.15** While these definitions may not be particularly enlightening, so far as the dispute before us is concerned, the expression “business” across statutes, has an extremely wide and elastic connotation.

**19.16** In the Income Tax Act, 1961, “business” is defined as including any trade, commerce or manufacture or any adventure or concerned in the nature of trade, commerce or manufacture. This definition has been adopted by the Supreme Court in *Narain Swadeshi Weaving Mills v Commissioner of Excess Profits Tax*<sup>34</sup>, which alternatively defines “business” as “some real, substantial and systematic or organised course of activity or conduct with the said purpose”. P. Ramanath Aiyar, in his Advanced Law Lexicon, observes that “the

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<sup>32</sup> AIR 1967 SC 1826

<sup>33</sup> (2015) 3 SCC 745

<sup>34</sup> AIR 1955 SC 176



word ‘business’ is of large significance, and in its broadest sense includes nearly all the affairs in which either an individual or a corporation can be actors”. In *Barendera Prasad v ITO*<sup>35</sup>, the Supreme Court held that the word “business” is one of wide import and it means “an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income”. In *Management of Tata Iron and Steel Company Ltd v Chief Inspecting Officer*<sup>36</sup>, it was held that “the word ‘business’ means a commercial enterprise carried on for profit; a particular occupation for employment habitually engaged in for livelihood or gain”. *State of MP v Mukesh*<sup>37</sup> proclaimed that “the expression business implies continuity”.

**19.17** Thus, it is clear that word “business” is a word of very wide import. Any person who grants licenses to others to exploit sound recordings in which such person holds a copyright can be said to be carrying on the business of issuing and granting such license.

**19.18** In any event, there can be no doubt whatsoever that PPL is most certainly engaged in the business of issuing or granting licenses in respect of copyrighted sound recordings. This position stands recognized in para 2.1 of the impugned judgment itself, in the following words:

“The plaintiff, Phonographic Performance Limited, (PPL) is a company limited by guarantee, registered under the provisions of the Companies Act, 2013, which is engaged in the business of

<sup>35</sup> AIR 1981 SC 1047

<sup>36</sup> AIR 2005 SC 1433

<sup>37</sup> (2006) 13 SCC 197



issuing licences for public performance of sound recordings on the basis of the assignments granted to it by its various member record labels.”

**19.19** To further understand Section 33(1) and its scope and ambit, it becomes immediately necessary to refer to Section 33(3), before which one has to refer to Section 33(2)<sup>38</sup>.

**19.20** Section 33(2) permits any association of persons to do the business specified in Section 33(1) – meaning, the business of issuing or granting licences in respect of copyrighted work or in respect of any other rights conferred by the Copyright Act – to apply for being registered as a copyright society. Admittedly, from 7 May 1996 to 21 June 2014, PPL was registered as a copyright society. It cannot, therefore, lie in the mouth of PPL to contend that the requirement of registration as a copyright society, envisaged by Section 33, did not apply to it.

**19.21** Sub-section (3A) was introduced by Section 19(ii) of the 2012 Amendment Act. The second proviso thereto required every copyright society, already registered before the coming into force of the 2012 Amendment Act, to get itself registered under Chapter VII within a period of one year from the date of commencement of the 2012 Amendment Act. It appears that, in accordance with the said requirement, PPL applied for re-registration as a copyright society, but that the application has not been granted. There is, however, no dispute that, as on date, PPL is not a registered copyright society, or

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<sup>38</sup> (2) Any association of persons which fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (1) to the Registrar of Copyrights who shall submit the



the member of any registered copyright society.

**19.22** Section 33(3) empowers the Central Government to register any applicant, under Section 33(2), as a copyright society. The proviso to Section 33(3), however, provides that, ordinarily, the Central Government would not register more than one copyright society in respect of the same class of works. As “sound recordings” constitute a distinct class of works under Section 2(y)(iii), there would ordinarily be only one copyright society for sound recordings, registered by the Central Government under Section 33(3). At present, the only registered copyright society for sound recordings is RMPL.

**19.23** Reverting back, now, to Section 33(1), the main body of the sub-section prohibits the carrying on of business of issuing or granting licences in respect of (i) any copyrighted work or (ii) any other rights conferred by the Copyright Act, except *under* or *in accordance with* the registration granted under Section 33(3) to a copyright society.

**19.24** It is important to understand this provision, and the best way to do so would, perhaps, be to apply it to the facts before us. PPL is an association of persons. It is, admittedly, carrying on the business of granting licences in respect of the copyrighted works assigned to it under Section 18(1) and forming its repertoire. The sub-section, therefore, clearly applies to it. PPL is, therefore, proscribed from granting any licence in respect of the said assigned work, or in respect of the right to communicate it to the public, except *under* or *in*



*accordance with* the registration granted under Section 33(3). PPL cannot possibly grant any licence *under* the registration granted under Section 33(3), since it is not a registered copyright society under the said provision. It has, nonetheless, to carry on the business *in accordance with* the registration granted under Section 33(3). This can only be done *if PPL is itself a member of the registered copyright society, i.e. RMPL*. Viewed in isolation, however, this requirement, as envisaged by Section 33(1), is absolute and non-negotiable.

**19.25** What, then, is the effect of the proviso to Section 33(1)?

**19.26** PPL's contention is that the proviso to Section 33(1) preserves, intact, its right to grant licences in respect of its own works. PPL is the owner of the copyrighted sound recordings assigned to it under Section 18(1), by operation of Section 18(2); ergo, the proviso to Section 33(1) allows it to grant licences in respect of the said assigned recordings, which are "its own works" under the proviso, as it is the owner thereof.

**19.27** PPL, thereby, seeks to interpret the proviso to Section 33(1) as crafting out an exception from the rigour of Section 33(1).

**19.28** With this, we come to the nub of the controversy, and may, therefore, discontinue our journey through the statutory provisions.

## **20. Analysis of the impugned judgment, and the legal position**



**20.1** The two *Novex* judgments on which the learned Single Judge has placed reliance, clearly hold that registration as a copyright society is not mandatory for a person to grant licenses for exploitation of sound recordings in respect of which such person is the deemed owner by virtue of Section 18(2) of the Copyright Act. In other words, these decisions hold that the proviso to Section 33(1) grants a deemed owner of copyright in sound recordings, within the meaning of Section 18(2), the absolute right to grant licenses for exploitation of such sound recordings on its own terms, unfettered by any restrictions which may apply to copyright societies, which would include the tariff envisaged by Section 33A. The proviso to Section 33(1), according to these decisions, is, therefore, essentially aimed and intended at preserving the right of the owner of copyrighted material to grant licenses for exploitation of such material, otherwise conferred by Section 30 of the Copyright Act. The right available under Section 30, in other words, cannot be said to have been undone by Section 33.

**20.2** The entire issue is thorny and, perhaps, legislative intervention may lend greater clarity to the provisions involved. That said, however, we are required to interpret the provisions as they exist today.

**20.3** The difficulty in accepting the interpretation of Section 33(1), and the proviso thereto, as envisaged in the *Novex* decisions, relied upon by the learned Single Judge, is, however, precisely the factor underscored by Mr. Dayan Krishnan, which is that, if such an interpretation is accepted, the main part of Section 33(1) may be



reduced to redundancy.

**20.4** This may be explained thus.

**20.5** The Copyright Act does not envisage grant of license in respect of copyrighted sound recordings by any person other than the first owner of such copyrighted recordings, or the assignee thereof under Section 18. PPL is, unquestionably, the owner of the sound recordings in its repertoire, of which copyright stands assigned to it under Section 18(1). To that extent, PPL's stand is unassailable. The two *Novex* decisions would, therefore, grant him an absolute right to issue licenses in respect of such recordings, on its own terms.

**20.6** Such an interpretation would, however, undisputedly render the words “except under or in accordance with the registration granted under sub-section (3)”, in Section 33(1), completely otiose. Indeed, Section 33(1) would be rendered completely redundant, as it is intended only to introduce this restriction, on persons who desire to carry on the business of issuing or granting licenses in respect of copyrighted work.

**20.7** It is a cardinal principle of interpretation of statutes that the Court must not adopt an interpretation which renders any part of the statutory instrument redundant or otiose.<sup>39</sup> Efforts must be made to lend meaning and purpose to every word contained in a statute.

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<sup>39</sup> Refer **Institute of Chartered Accountants of India v Price Waterhouse, (1997) 6 SCC 312** (para 15)



**20.8** The two *Novex* decisions, as well as the impugned judgment of the learned Single Judge, do not specifically advert to this issue.

**20.9** The fact that every association of persons which carries on the business of granting licences in respect of copyrighted work has to do so in accordance with the registration granted under Section 33(3) – which would require it to either be a registered copyright society or a member of a registered copyright society – also stands clearly recognized by the first proviso to Section 33(1).

**20.10** In our view, the first proviso to Section 33(1) *proceeds on the accepted premise that the owner of copyright, who carries on the business of issuing or granting licences in respect of copyrighted works, is a member of a registered copyright society*. Any other reading of the proviso would require according, to it, a strained, unnatural and illogical connotation. The proviso, even while allowing an owner of copyright to, in his individual capacity, retain the right to grant licences in respect of his own works, clearly states that the exercise of this right has to be *consistent with his obligations as a member of the registered copyright society*. There is no escaping the position, in our considered view, that the concerned copyright owner, who desires to grant licences in respect of his own works, *has, firstly, to be a member of a registered copyright society, and, secondly, can exercise the right to grant licences in respect of his own works only consistent with its obligations as such member*. *The requirement of being a member of a registered copyright society, whether under Section 33(1) or under the first proviso thereto is, therefore, in our*



considered opinion, absolute and non-negotiable.

## **21. The sequitur**

The position that ultimately obtains is, therefore, the following:

- (i) The obligation under Section 33(1) is absolute. Section 33(1) requires any person, who carries on the business of granting licenses in respect of copyrighted works, to do so in accordance with the registration granted under Section 33(3).
- (ii) Be it noted, this sub-section does not specifically state that the person issuing or granting licenses must itself be registered as copyright society under Section 33(3). The issuance of granting of licenses has only to be in accordance with the registration granted under Section 33(3).
- (iii) This is also apparent from the proviso to Section 33(3), which ordinarily permits the central government to register only one copyright society in respect of one class of works. Sound recordings constitute a distinct and individual class of works under Section 2(y)(iii). Thus, ordinarily there would be only one registered copyright society in respect of sound recordings. Such a registered copyright society, we are informed, is already in existence in the form of RMPL.
- (iv) The word “carrying on the business of issuing or granting



licenses" in Section 33(1) would envisage every commercial activity in which licenses in respect of copyrighted works are issued or granted. There is no legitimate basis to read down the ambit of the expression "carry on the business", particularly the word "business".

(v) In any event, it is an admitted position that PPL is engaged in carrying on the business of issuing or granting of licenses in respect of the sound recordings assigned to it by the original copyright owners.

(vi) PPL can, therefore, issue or grant licenses in respect of the sound recordings assigned to it, of which it can claim ownership under Section 18(2), only in accordance with the registration granted under Section 33(3).

(vii) The use of the words "consistent with his obligations as a member of the registered copyright society", contained in the proviso to Section 33(1) are of great significance. They clearly indicate that the legislature envisages any person who is granting licenses in respect of copyrighted works as being a member of a registered copyright society. It would be unrealistic and strained to read the words "consistent with his obligations as a member of the registered copyright society" as contained in the proviso to Section 33(1) as applying only to a situation in which the copyright owner happens to be such a member. Clearly, at the cost of repetition, it is clear that Section



33(1) envisages that the copyright owner, who is issuing or granting licenses in respect of the copyrighted works of which he is the owner, is a member of a registered copyright society.

(viii) This interpretation would also harmonise with the well-settled principle that a proviso to a section cannot derogate or detract from the ambit of the section itself. It has to be read harmoniously with the main section, and cannot dilute its efficacy.<sup>40</sup> The requirement of any person engaged in the business of issuing or granting licenses in respect of copyrighted works, contained in Section 33(1) cannot, therefore, be diluted, much less eviscerated, by the proviso thereto.

(ix) Thus, what the proviso permits is that such a member of a registered copyright society, who may also be holding copyright in respect of his own works – which expression has necessarily to be contradistinguished with the works of which he claims ownership merely as an assignee under Section 18(2) – has the right to grant licenses in respect of such works. Even so, such grant of licenses has to be consistent with the obligations of such a person as a member of the registered copyright society.

(x) Viewed any which way, therefore, there can be no escaping the position that issuance or grant of licenses for exploiting of works in respect of which a person claims

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<sup>40</sup> Refer *Sales Tax Commissioner v B.G. Patal*, 1995 Supp (1) SCC 429



copyright can only be done if such person is a registered copyright society or a member of a registered copyright society.

## 22. Re. the two *Novex* decisions

The judgments in the two *Novex* decisions, of the learned Single Judge of this Court and the High Court of Bombay, have placed reliance on Section 30 to except PPL from the requirement of being a member of a registered copyright society. In para 31 of the impugned judgment, learned Single Judge notes, as one of the principles contained in *Novex v Trade Wings*, postulate that “Section 33(1) of the Copyright Act does not curtail the power of the owner to grant any interest in the copyright by license under Section 30 of the Copyright Act and that Sections 30 and 33 operate in separate chapters of the Copyright Act”. *In arriving at these findings, we are of the opinion, with great respect to the High Court of Bombay, that the High Court has failed to notice the words “or in respect of any other rights conferred by this Act” contained in Section 33(1).* Thus, the right conferred by Section 30 is also made subject to Section 33(1). The requirement of acting in accordance with the registration granted under Section 33(3), even while issuing or granting licenses in respect of copyrighted works would, therefore, also cover the rights conferred by Section 30. In other words, while exercising the right conferred by Section 30, to issue licenses in respect of the works assigned to it, in respect of which it claims ownership under Section 18(2), PPL has still to act in accordance with the registration granted under Section 33(3).



### 23. 227<sup>th</sup> report of the PSC

**23.1** The 227<sup>th</sup> report of the PSC, on which Mr Dayan Krishnan relies, supports the interpretation that we have adopted. The report was tabled at a time when PPL was a registered copyright society. One of the objections to the introduction of Section 33A in the Copyright Act, as voiced before Parliament by, *inter alia*, PPL, was that the provision would unreasonably hinder the rights of producers/sound recording labels to enter into private agreements with licencees. In other words, regulation of the tariff rates at which exploitation of the copyrighted sound recordings could be allowed, was strongly opposed. The PSC noted that, even during deliberations, the copyright societies, including PPL, was not forthcoming about its tariff schemes despite being specifically queried in that regard. Lack of transparency in the matter of the tariffs at which exploitation of the sound recordings was allowed, was also flagged as a cause of concern, in para 17.7 of the report of the PSC. This resulted in “arbitrariness” and “arm twisting”. The proposed Section 33A was, therefore, felt to be serving a salutary purpose, of introducing transparency in the tariff scheme, as well as a right of appeal, by aggrieved persons, before the Copyright Board.

**23.2** We, in the circumstances, find *prima facie* substance in Mr Dayan Krishnan’s contention that PPL cannot be permitted to, without registering itself as a copyright society or becoming a member of any registered copyright society, issue or grant licences for the sound



recordings in its repertoire at any rate palatable to it. The entire purpose of introducing Section 33A in the Copyright Act would, thereby, stand frustrated. Section 33(1) could plainly be avoided by neither registering oneself as a copyright society, nor becoming a member of any registered copyright society. This would, as Ms Swathi Sukumar submitted, frustrate not only Section 33, but, in fact, Chapter VII of the Copyright Act itself, in its entirety. The requirement of being a member of a registered copyright society, which is clearly intended by the legislature to be mandatory, would become dispensable.

#### **24. The corollary**

**24.1** We, therefore, are unable to accept the principle that PPL was entitled, without either registering itself as a copyright society or becoming a member of any registered copyright society, to issue licenses in respect of the sound recordings assigned to it under Section 18(1) of the Copyright Act.

**24.2** One of the contentions advanced in the written submissions filed by Azure is that, not being a registered copyright society or a member of a registered copyright society, PPL has no enforceable legal right in respect of the sound recordings assigned to it, insofar as their communication to the public by third parties is concerned, as PPL cannot grant any licence for the said purpose in view of the proscription contained in Section 33(1) of the Copyright Act. We have found *prima facie* merit in this contention. The further issue that



would arise would be whether, in such a situation, PPL can maintain the suit at all. We refrain from returning any finding on this contention, as it was not orally argued at the Bar. We, therefore, leave this issue open.

## **25. The Result**

**25.1** We are left with the issue of the order that is to be passed in the present case.

**25.2** While we have expressed our view that PPL could not have granted or issued licences for the exploitation of the sound recordings assigned to it by the producers thereof under Section 18(1) of the Copyright Act, we are conscious that we are adjudicating an appeal against an order passed under Order XXXIX Rules 1 and 2 of the CPC. Our findings, therefore, cannot be regarded as conclusive, or dispositive of the dispute between PPL and Azure, pending before the learned Single Judge in CS (Comm) 714/2022. They are necessarily *prima facie*, and would remain subject to the outcome of the suit.

**25.3** We cannot, therefore, be unmindful of the need to balance equities at this stage, while passing our final order in the present appeal.

**25.4** We are not inclined, therefore, to outrightly reject IA 16777/2022 filed by PPL and adjudicated by the learned Single Judge by the impugned judgment, though that might be the outcome were



our view to be regarded as dispositive of the dispute. The result would then be that Azure, and everyone else, would be entitled to play the sound recordings assigned to PPL, and forming part of its repertoire absolutely gratis, without paying a single farthing to PPL. We are not inclined to permit this, at least at an interim stage when CS (Comm) 714/2022 is still pending before the learned Single Judge.

**25.5** As we have held, there is no embargo on PPL licensing the sound recordings assigned to it and forming part of its repertoire, but, for that purpose, PPL would have either to be a registered copyright society or a member of one. PPL is admittedly not a registered copyright society, though it was one at an earlier point of time. It could, however, still licence the subject sound recordings for playing in the public, but in accordance with the terms of the copyright society registration which, presently, vests only with RMPL. If PPL were to be a member of RMPL – we note, from the website of RMPL that it has nearly 700 members – it could grant licences to others, such as Azure, to play the sound recordings in which copyright stands assigned to it, but at the Tariff rates applicable to RMPL as per the copyright society registration granted to it under Section 33(3). We find, from the website of RMPL, that these rates are on a monthly basis, and based on the nature of the establishment where the recordings are to be played, apart from other incidental considerations.

**25.6** We are, therefore, of the view that, pending disposal of CS (Comm) 714/2022, Azure would be required to make payment, to PPL, payment for playing the recordings on the basis of the Tariff



Rate applicable to RMPL, as if PPL were a member of RMPL. We deem this to be an equitable arrangement as, following on our *prima facie* findings above, if PPL were to permit the sound recordings in its repertoire to be licenced to others for being communicated to the public, that can only be in terms of the registration granted to RMPL, of which PPL would have to be a member. The licensing would, then, have to be as per the Tariff rates charged by RMPL.

**25.7** We are not inclined to agree to the suggestion of Azure that a deposit should be directed, as it appears wholly inequitable, at an interim stage, when the rival claims of the parties are yet to be finally adjudicated, to allow Azure to exploit the sound recordings from PPL's repertoire without paying anything to PPL. The payment as directed above would, however, be subject to the final outcome of CS (Comm) 714/2022.

## Conclusion

**26.** In view of the above discussion, we are unable to sustain the impugned judgment of the learned Single Judge, which would, instead, stand modified as directed hereinafter.

**27.** In accordance with our observations *supra*, therefore, IA 16777/2022 would stand disposed of with a direction to Azure to make payment to PPL as per the Tariff of RMPL, as displayed on its website, and in accordance with the terms thereof, in the event that Azure intends to play any of the sound recordings forming part of



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PPL's repertoire in any of its outlets. Azure and PPL would both place on record before the learned Single Judge, a three-monthly statement of the payments, if any, so made and received. The payment would be strictly subject to the outcome of CS (Comm) 714/2022.

**28.** The appeal stands allowed to the aforesaid extent, with no orders as to costs.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**APRIL 15, 2025/aky/yg/ar**

*[Click here to check corrigendum, if any](#)*

