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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.O.(COMM.IPD-CR) 4/2024, I.A. 4323/2024 & I.A. 4324/2024

PASSCODE HOSPITALITY PRIVATE LIMITED Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with Ms. Swathi Sukumar, Mr. S. Santanam Swaminathan, Mr. Sumehar Bajaj, Mr. Kartik Malhotra, Mr. Anindit Mandal and Mr. Ritik Raghuvanshi, Advs.

versus

PHONOGRAPHIC PERFORMANCE LIMITED Respondent

Through: Mr. Akhil Sibal, Sr. Adv. with Mr. Ankur Sangal, Ms. Sucheta Roy and Mr. Raghu Vinayak Sinha, Advs.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
23.02.2024

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I.A. 4324/2024 (Exemption from filing deemed/typed copies etc.)

1. Exemption is granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance within four weeks from today or before the next date of hearing, whichever is earlier.
3. Accordingly, the present application is disposed of.

C.O.(COMM.IPD-CR) 4/2024 with I.A. 4323/2024

1. This petition has been filed under Section 31 of the Copyright Act, 1957 (“**the Act**”) seeking revision, determination of licence rates for

utilisation of sound recordings and granting of compulsory licence.

2. Petitioner is the owner of a chain of restaurants/bars. On 21st September, 2022, respondent filed a suit for damages being CS(COMM) 554/2022 against petitioner alleging infringement of copyright by the petitioner. The said suit was subsequently settled and a consent decree dated 09th December, 2022 was passed.

3. As per the terms of the settlement, petitioner was granted a copyright licence for playing the entire repertoire, of which copyright is owned by respondent, for the period of one year commencing from 04th November, 2022 and an amount of Rs.7,80,715/- was agreed as the licence fee.

4. When the question of renewal arose for the year 2023-2024, the respondent demanded Rs.18,13,560/- as the licence for that year, which the petitioner claims is unreasonable and arbitrary and amounts to excessive appropriation by respondent. Petitioner claims that this triggers compulsory licensing under Section 31 of the Act on rates that are reasonable and determined by the Court. Rates published by Recorded Music Performance Limited (RMPL) which is a statutorily recognised copyright society under Section 33 of the Act have been adverted to, as a benchmark.

5. In support of the interim application, Mr. Sandeep Sethi, Senior Advocate for petitioner, claims that an interim arrangement can be arrived at by indicating a reasonable fee which the petitioner can pay for the removal of a licence, subject to determination of this petition.

6. Mr. Akhil Sibal, Senior Advocate for the respondent, however, argues on the maintainability of the petition itself stating that the petitioner's case falls under Section 31(a) and not Section 31(b) of the Act since petitioner is not a broadcasting agency. Further, what has been sought is not akin to

statutory licence but a licence from the respondent who is the owner of the copyrights in the repertoire by virtue of an assignment and, therefore, it is subject to a private negotiation and no interim compulsory licence can be directed by the Court.

7. Issue notice.
8. Notice is accepted by counsel for respondent.
9. Reply be filed within four weeks with copies to the opposing side and rejoinder thereafter, if necessitated, before the next date of hearing.
10. Reply by the respondent will indicate their published rates for all categories for the last five financial years, and specific reasons for escalation in rates in this year 2023-2024 as opposed to the previous year 2022-2023.
11. List on 26th April, 2024.
12. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 23, 2024/mk/rj

