IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 01.12.2021

PRONOUNCING ORDERS ON : 08.12.2021

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Civil Suit Nos.407 and 413 of 2020
(Comm.Suits)

M/s.Novex Communications Pvt.Ltd.,
Rep. by its authorised Signatory
Mr.S.Swaminathan
Having its Office at
17/7, NRCS Towers, 4th Floor
Kodambakkam High Road
Nungambakkam
Chennai 600 034. ..Plaintiff in C.S.Nos.407 and 413 of 2020

. Vs.

DXC Technology Pvt. Ltd.,
Rep. By Mr. Nachiket Suthankar
Managing Director-India
Having Registered Office at
Maruthi Concorde Business Park
Sy No.30/3
Konappan Agrahara Village
Begur Hobli
Hosur Road
Bangalore-560100 . ..Defendant in C.S.No.407 of 2020

Cognizant Technologies Solutions India Pvt. Ltd.,
Rep.by Mr.Thirumalai Narayanan, Managing
Director – India. Having Registered Office at
5/535, Okkiam Thoraipakkam Old
Mahabalipuram Road. Kancheepuram

Chennai -600 096. ..Defendant
in C.S.No.413 of 2020

Prayer in C.S.No.407 of 2020: Civil Suit has been filed under Order IV, Rule 1 of O.S.Rules R/W Order VII Rule 1 of the C.P.C., and under Sections 51, 55 and 62 of the Copyright Ac, 1957, praying to pass a judgment and decree for:-

a) that this Hon'ble Court be pleased to issue a judgment and decree of Mandatory Injunction restraining Defendant, its directors, their servants, employees, agents, assignees, licensees, representatives, and/or any person claiming through them or acting on their behalf, from publicity performing or in any manner communicating the sound recordings of the songs assigned and authorized to the Plaintiff or allowing their premises or any premises under their control to the Plaintff or allowing their premises or any premises under their control to be used for the said purposes, without obtaining non-exclusive public performance rights in sound recordings fromthe Plaintiff, or otherwise infringing the copyright in any work owned and protected by the Plaintiff;

b) that this Hon'ble Court be pleased to issue a judgment and decree of Mandatory Injunction directing the Defendant, to hand over all disks, Cds, laptops, mobile phones, SD cards, flash drives, hard disks, computers and other mdedia contraining the Plaintiff copyrighted works and used byt he Defendant and to deliver them up for destruction.

c) that this Hon'ble Court be pleased to issue a judgment and decree directing the Defendant to pay the Plaintiff, initial Damages in the sum of Rs.51,60,000/- (rupees Fifty-One Lakhs and Sixty Thousand Only) for illegal exploitation of the sound recordings of the songs assigned and licensed to the Plaintiff.

d) that this Hon'ble Court may be pleased to pass a Preliminary Decree in favour of the Plaintiff directing the Defendant to render true and complete details of all the in house events held by them over the last three years prior to institution of the present Suit where on ground performance rights were exploited and for a final Decree in favour of the Plaintiff for the amount the Plaintiff is found entitled to on account of using sound recordings of the Plaintiff, without any authorization from the Plaintiff.

e) that this Hon'ble Court may be pleased to pass a judgment and decree in favour of the Plaintiff directing the Defendant to provide free and unlimited access to all offices and in-house events of the Defendant in order to monitor the usage of the Plaintiff's sound recordings;

f) For costs; and

g) For such other and further orders and reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case may require.

Prayer in C.S.No.413 of 2020: Civil Suit has been filed under Order IV, Rule 1 of O.S.Rules R/W Order VII Rule 1 of the C.P.C., and under Sections 51, 55 and 62 of the Copyright Ac, 1957, praying to pass a judgment and decree for:-

a) that this Hon'ble Court be pleased to issue a judgment and decree of Permanent Injunction restraiing Defendant, its directors, their servants, employees, agents, assignees, licensees, repressentatives, and /or any person claiming through them or acting on their behalf, from publicly performing or in any manner communicating the sound recordings of the songs assigned and authorized to the Plaintiff or allowing their premises or any premises under their control to be used for the said urposes, without obtaining non-exclusive public performance rights in sound recordings from the Plaintiff, or otherwise infrincging the copyright in any work owned and protected by the Plantiff;

b) that this Hon'ble Court be pleased to pass a judgment and decree of directing the Defendant to hand over all disks, Cds, laptos, mobile phones, SD cards, flash drives, hard disks, computers and other media

containing the Plaintiff copyrighted works and used by the Defendant and to deliver them up for destruction.

c) that this Hon'ble Court be pleased to pass an Order directing the Defendant to pay the Plaintiff Damages in the sum of Rs.1,50,00,000/- [One Crore and Fifty Lakhs Only] for illegal exploitation of the sound recordings of the songs assigned and authorized to the Plaintiff.

d) that this Hon'ble Court be pleased to pass a Preliminary Decree in favour of the Plaintiff directing the Defendant to render true and complete details of all the in house events held by them over the last three years prior to institution of the present Suit where on ground performance rights were exploited and for a final Decree in favour of the Plaintiff for the amount the Plaintiff is found entitled to on account of using sound recordings of the Plaintiff, without any authorization from the Plaintiff.

e) that this Hon'ble Coourt may be pleased to pass a judgment and decree in favour of the Plaintiff mandatory inunction directingthe Defendant to provide free and unlimited access to all offices and in-house events of the Defendant in order to monitor the usage of the Plaintiff's sound recordings;

f) For costs; and

g) For such other and further orders and reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case may require.

C.S.No.407 of 2020

For Plaintiff : Mr.P.V.Balasubramaniam
for BFS Legal

For Defendant : Mr.Premchander
Mr.N.C.Vishal

C.S.No.413 of 2020

For Plaintiff : Mr.P.V.Balasubramaniam
for Mr.Vandhiyathevan Veera

For Defendant : Mr.K.Harishankar
Asst.by Ms.Aishwarya Nathan

COMMON JUDGMENT

The term "*hirfat al-adab"* is occasionally used in Arabic texts to express the disappointment felt by a poet or a man of letters who leads a life of poverty and full of uncertainties, even threats to his life.*Hirfa*, it is said, connoted a dual meaning viz., profession/ practising a craft and misfortune/grief. *Adab*means the display of verbal acuity and literary culture. Therefore,Arabic writers from the early Abbasid period are said to have used the punning phrase "*hirfat al-adab*" to refer to both "exercising the profession of a man of letters" and "misery inherent in being a man of letters."(See Seeger A. Bonebakker, THE MISERY OF THE MEN OF LETTERS. SOME QUOTATIONS FROM THEIR POERTY, Istituto per l'Oriente C. A. Nallino,Quaderni di Studi Arabi, Vol. 19 (2001), pp. 147-161.)

2.Perhaps, it would not be out of place, rather unfortunately though, to extend the spirit behind "*hirfat al-adab*" to artists at large. The case before this Court echoes the lament of the artist-community, who touch the soul of millions of people, cutting across language, geographic and even religious identities among others. However, neither history nor

the present seems to be sparse with instances of artists who perished penniless. One may argue that a true artist would not prioritise food and roof over his artistry, but he too is human. Applause and awards encourage them, but do not help feed their families or pay their rents. They are no businessmen who intend selling their cherished art for gold and many of them know not how to. Would the law come to their rescue in protecting them from being exploited by businesses that make more than a living out of the artists sweat and blood? The reason for this Court's indulgence into this pensive prelude will unfold as it proceeds to deal with a very significant issue that has arisen in the present case.

3.This Court, on perusing the pleadings in both the suits and hearing the learned counsel on either side, framed the following common preliminary issue under Order XIV Rule 2(2)(b) of Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC") :

> "*Whether the plaintiff is legally permitted to issue or grant license under the Copyright Act without being the copyright society under the Copyright Act as contemplated under Section 33 of the Copyright Act, 1957?*"

As the issue involved in the two suits are identical, they were heard together and are being decided by way of this common judgment.

The Facts:

4.The relevant facts to appreciate the controversy at hand are as under:

a) The common plaintiff to both the suits is engaged in the business of protection of copyright subsisting in sound recording of various film songs, in their capacity as an assignee, licensee or authorised agent of various copyright holders. The plaintiff has entered into various assignment agreements with the owners of sound recordings and acquired rights, including the rights for on-ground public performance of sound recordings of the songs contained in various films. Thus, by virtue of the assignment deeds, the plaintiff claims that they have been assigned the right to grant license in respect of the on-ground performance rights. On this basis, the plaintiff claims exclusive copyright with respect to the exploitation of the on-ground performance

rights of various sound recordings that have been mentioned in the Schedule appended to the two plaints.

b) The grievance of the plaintiff, in the two suits, is that the respective defendants, without obtaining the requisite license from the plaintiff by paying the fees, had infringed the copyright of the plaintiff by playing the songs at the events conducted by them. The defendants in both the suits, apart from contesting the case on merits, have taken a preliminary objection on the very claim made by the plaintiff, stating that the plaintiff being neither a copyright society nor a member of the copyright society, cannot issue or grant any license or claim license fees in terms of Section 33 of the Copyright Act, 1957 (hereinafter referred to as "the Act"). Since this objection touches upon the very competence of the plaintiff to institute these two suits in this Court, a preliminary issue was framed in terms alluded to in paragraph 1, *supra*.

5.Heard Mr.P.V.Balasubramaniam, learned counsel for the plaintiff, Mr.Premchander and Mr.K.Harishankar, learned counsel for the defendants.

The Contentions of the Plaintiff:

6. The learned counsel for the plaintiff contended as under:

- The plaintiff, by virtue of the assignment agreements executed in their favour by the owners of copyright, has become the absolute owner of the copyright under Section 18(2) of the Act.
- The plaintiff being the owner of the copyright has the right to issue licenses to any person, and such a right is recognised under Section 30 of the Act.
- The plaintiff being the owner of the sound recording that was assigned in their favour, must be taken to be the owner of the "work" since the definition of "work" under Section 2(y) of the Act also includes a sound recording.
- The plaintiff has a separate copyright in the sound recording and hence, their independent right is recognised under

Section 30 of the Act. This right cannot be whittled away by the other independent rights like literary, dramatic, musical and artistic works even though they form part of a sound recording.

- There is a distinction between the owner of a sound recording and the original content creators who are the authors of the underlying literary, musical or artistic work, and it is the latter category of persons whose right is recognisedunder Section 33 of the Act, wherein, the role of the copyright society comes into play.
- There is no necessity for the owner of the copyright to be registered under Section 33(3) of the Act since the right of the owner is specifically recognised under Section 30 of the Act. That apart, a reading of Section 34 shows that joining a copyright society is entirely a voluntary act that is left to the decision of the copyright owner.
- A combined reading of Sections 18, 30 & 33 of the Act makes it clear that the owner of the copyright is entitled to independently issue licenses and collect royalties. The

legislature did not mandate that the copyright owner should necessarily issue a license and collect the fees only through a copyright society. If such an interpretation is given, the exclusive rights given to the owners of the copyright under Sections 17, 18, 19 & 30 of the Act would be rendered otiose.

- The learned counsel also relied upon the following judgments to substantiate his submissions:i) ***Indian Performing Right Society v. Eastern Indian Motion Pictures Association and Ors***. reported in 1977 2 SCC 820, ***Gramophone Company of India Ltd. v. Super Cassette Industries Ltd.*** reported in 2010 SCC OnLine Del 4743, ***Leopold Café & Stores &Anr v. NovexCommunications Pvt.Ltd.***reported in 2014 SCC Online Bom 4801, ***ICSAC v. Aditya Pandey*** reported in (2017) 11 SCC 437, ***PPL v. Cri Events Pvt. Ltd.*** reported in 2021 SCC OnLine Del 1 and ***Novex Communications (P) Ltd. v. Lemon Tree Hotels Ltd. and Anr.***reported in 2019 SCC OnLine Del 6568.

The Contentions of the Defendant:

7.On the other hand, the learned counsels appearing on behalf of the respective defendants contended as under:

- The admitted case of the plaintiff is that they are carrying on with the business of licensing sound recordings for all forms of exploitation of copyright in sound recordings.
- The second proviso to Section 33 of the Act specifically prohibits the business of issuing and granting license in respect of literary, dramatic, musical and artistic works incorporated in a sound recording, except through a copyright society. Hence, on the admitted case of the plaintiff, the bar imposed under the Act disentitles the plaintiff from making any claim in the present suit.
- The plaintiff is only claiming to be the owner of a singular right namely,on-ground performance rights, and the plaintiff cannot be taken to be the owner of the "*work*". Hence,the plaintiff cannot take advantage of inclusion of the term "sound recording" within the definition of"work" under

Section 2(y)(iii) of the Act. The assignment of this singular right alone falls out of the assignment deeds relied upon by the plaintiff. Consequently, the plaintiff cannot trace their right to Section 30 of the Act which permitsonly the owner of the "work" to grant license, and not the owner of the any "right". The legislature had consciously omitted the word "right" under Section 30 of the Act, whereas, Section 33 of the Act speaks about both "work" and "right".

- On a demurrer, it was also submitted that even the owner of the "work" in respect of literary, dramatic, musical and artistic works incorporated in a sound recording can grant license only through a copyright society as per the second proviso to Section 33 of the Act.
- The business conducted by the plaintiff namely, issuing license for the sound recordings and collecting royalties, is not regulated by any law and therefore, the plaintiff is exploiting the situation by claiming exorbitant amounts in the guise of collecting royalty. The spirit of the Copyright (Amendment) Act, 2012 is to tackle such a scenario, by

introducing formulating rules to ensure that the working of the copyright society is made completely accountable.

- Section 33(3) highlights the importance of safeguarding the interest and convenience of the public and the authors of literary, dramatic, musical and artistic works and if a free hand is given to persons who claim to be assignees or agents of the original owners, it will defeat the spirit behind Section 33 of the Act.
- Before the Act was amended in the year 2012, a Parliamentary Standing Committee was appointed to get the views on each and every amendment that was proposed to be made to the Act. While doing so, the Committee, had in its mind, the object of the proposed amendment, wherein, independent rights were sought to be given to the authors of the literary and musical works in cinematographic films and sound recordings. Various suggestions and objections were received by the committee and ultimately, the amendments were brought into force. By virtue of the amendment with respect to issuing or granting license for literary, dramatic,

musical and artistic works incorporated in a sound recording, the only source contemplated was a copyright society.

- The third proviso to Section 18 of the Act makes it abundantly clear that the right to receive royalties cannot be assigned or waived by the author of the literary or musical work, and it has to be shared on an equal basis with the assignee of the copyright for utilization 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.
- The amendment brought in the rights of the authors of the work on par with the owner of the work and is the reason why the exploitation of the copyright for granting license and collecting royalties was commonly rooted through the copyright society,whose functioning is regulated under the Rules.
- The judgments of the Delhi and Bombay High Courts relied upon by the learned counsel for the plaintiff did not take these vital aspectsinto consideration. In any event, these

judgments are merely persuasive and do not bind thisCourt in interpreting the plain and unambiguous provisions of the Act.

8. The plaintiff in these suits traces their right, either as the owner of the copyright by virtue of the assignment agreements, or is acting as an agent for the actual owner of the copyright. The preliminary issue that has been raised by the defendants is that the business activities of the plaintiff will amount to carrying on the business of issuing or granting licenses which is statutorily barred under 33 of the Act, as the plaintiff is admittedly not a copyright society or a member of any copyright society.

9. To answer this issue, it is first necessary to set out the relevant legal provisions:

Section 2(d) of the Act defines an author to mean as under:

"*(i) in relation to a literary or dramatic work, the author of the work;*

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

(iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph;

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

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created."

A copyright society is defined in Section 2(ffd) of the Act as under

"*(ffd) "copyright society" means a society registered under sub-section (3) of section 33."*

(xx) "sound recording" means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced;]

(y) "work" means any of the following works, namely:— (i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a [sound recording];

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 utilization 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 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 utilization 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.]

(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.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence."

"**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 by 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.

(3) The assignment of copyright in any work shall also specify the amount of royalty and any other consideration payable], to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4) Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7) Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994)].

(8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void.

(9) No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.

(10) No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilization of such work in any form."

"***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.— Where 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."

"**33. Registration of Copyright society:**

(1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 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:

Provided further that the business of issuing or granting licence 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.

(2) Any association of persons who 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 application to the Central Government.

(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.

(3A) 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 (27 of 2012) shall get itself registered under this Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012.

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the 1 [authors and other owners of right] concerned, cancel the registration of such society after such inquiry as may be prescribed.

(5) If the Central Government is of the opinion that in the interest of the authors and other owners of right concerned or for non-compliance of sections 33A, sub-section (3) of section 35 and section 36 or any change carried out in the instrument by which the copyright society is established or incorporated and registered by the Central Government without prior notice to it], it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society."

10. In the year 1709, the British Parliament enacted the Copyright Act commonly known as the "*Statute of Anne*", for the "*encouragement of learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies, during the Times therein mentioned.*" The Act came into force on 10.04.1710, and is acknowledged to be the first full-fledged copyright statute in the world. The Statute of Anne was repealed by the Copyright Act, 1911 which was enacted to give effect to the United Kingdom's obligations under the Berne Convention of 1886. Copyright insound recordings were recognised for the first time under

Section 19 of the Copyright Act, 1911 which read as follows:

> *"19.—(1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sound may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts."*

11.The Copyright Act, 1911 was made applicable to British India, with some modifications, through the Indian Copyright Act, 1914. This Act was repealed and replaced by the Copyright Act, 1957. The Copyright Act, 1957 is an amending and consolidating Act, and is an exhaustive statement of copyright law in this country. This is clear from Section 16 of the Act which reads thus:

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

12. Section 13 of the Act declares the works in which copyright subsists. Section 13(1)(b) &(c) states that copyright shall subsist in cinematograph films and sound recordings throughout India. Section 13(4) clarifies that the copyright in a cinematograph film or a sound recording shall not affect the separate copyright in any work, in respect of which or substantial part of which, the film, or as the case may be, the sound recording is made. Sections 14(1)(d) & (e) explain the content of the right in the context of a cinematograph film and a sound recording and run thus:

"***(d) in the case of a cinematograph film***,—

(i) to make a copy of the film, including:

(A) a photograph of any image forming part thereof; or

(B) 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 film"

(iii) to communicate the film to the public;

(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."

13.In ***Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Assn.,*** reported in ***(1977) 2 SCC 820,*** the question for consideration before the Hon'ble Supreme Court was whether in view of the provisions of the Copyright Act, 1957, an existing and future right of a music composer, lyricist etc.was capable of assignment and whether the producer of a cinematograph film could defeat the same by merely engaging the same person?

The Supreme Court answered the aforesaid question in the affirmative after referring to the provisions of Section 17(1)(c) of the Act and opined as under:

"*This takes us to the core of the question, namely, whether*

the producer of a cinematograph film can defeat the right of the composer of music ... or lyricist by engaging him. The key to the solution of this question lies in provisos (b) and (c) to Section 17 of the Act reproduced above which put the matter beyond doubt. According to the first of these provisos viz. proviso (b) when a cinematograph film producer commissions a composer of music or a lyricist for reward or valuable consideration for the purpose of making his cinematograph film, or composing music or lyric therefor i.e. the sounds for incorporation or absorption in the sound track associated with the film, which as already indicated, are included in a cinematograph film, he becomes the first owner of the copyright therein and no copyright subsists in the composer of the lyric or music so composed unless there is a contract to the contrary between the composer of the lyric or music on the one hand and the producer of the cinematograph film on the other. The same result follows according to aforesaid proviso (c) if the composer of music or lyric is employed, under a contract of service or apprenticeship to compose the work. It is, therefore, crystal clear that the rights of a music ...

composer or lyricist can be defeated by the producer of a cinematograph film in the manner laid down in provisos (b) and (c) of Section 17 of the Act"

14.In a short concurring opinion, V.R Krishna Iyer, J demonstrated

the apparent unfairness that permeated the law, as it then stood, which had the effect of leaving the musician and the artist out in the cold. Krishna Iyer, J harmonised Section 13(4), 14(1)(c) (presently re-enacted as Section 14(1)(d) post the 1994 Amendment) and Section 17(1)(c) in the following manner:

> "*The film producer has the sole right to exercise what is his entitlement under Section 14(1)(c) qua film, but he cannot trench on the composer's copyright which he does only if the "music" is performed or produced or reproduced separately, in violation of Section 14(1)(a). For instance, a film may be caused to be exhibited as a film but the pieces of music cannot be picked out of the sound track and played in the cinema or other theatre. To do that is the privilege of the composer and that right of his is not drowned in the film copyright except where there is special provision such as in Section 17, proviso (c). So, beyond exhibiting the film as a cinema show, if the producer plays the songs separately to attract an audience or for other reason, he infringes the composer's copyright.*"

15.Notwithstanding the aforesaid exposition by Krishna Iyer, J, the harsh after effects of a literal interpretation of Section 17 became evident as could be seen from the decision of the Division Bench of the Calcutta

High Court in ***Eastern India Motion Pictures v. Performing Right Society Ltd.,*** reported in AIR 1978 Cal 477,wherein, it was observed thus:

> *"The law of copyright prevailing in India is applicable. The legal position is clearly concluded by the decision of the Supreme Court in the above mentioned case of the Indian Performing Right Society Ltd. v. Eastern India Motion Pictures, (1977) 2 SCC 820 : AIR 1977 SC 1443. The Supreme Court has clearly laid down that when a cinematograph film producer commissions a composer of music or a lyricist for reward or valuable consideration for the purpose of making his cinematograph film or composing music or lyric therefor i. e. the sounds for incorporation or absorption in the sound track associated with the film, which are included in a cinematograph film, he becomes the first owner of the copyright therein and no copyright subsists in the composer of the lyric or music so composed unless there is a contract to the contrary between the composer of the lyric or music on the one hand and the producer of the cinematograph film on the other."*

16. It took the Parliament nearly 30 years to correct this historical injustice meted out to artists and composers, whose rights were trampled

upon and rendered nugatory on account of the producers assigning their rights in films to movie companies for big money. Three provisos have now been incorporated into Section 18(1)by the Copyright Amendment Act, 2012 (Act 27 of 2012), invalidating any assignment of royalty by the author except to the heir of the author and providing for an equal share in the royalties between the assignee and the author. The reasons which impelled the Parliament to incorporate the aforesaid amendments is evident in the following passages from the 227th Report of the Parliamentary Standing Committee on the Copyright (Amendment) Bill, 2010:

> "*When a song or music is incorporated in a film, it is relating to synchronization right of author and music composer which is assigned to the producer of the film as per section 17 (b) or in the absence of agreement, film producer is the first owner. However, film producer is also getting other independent rights of author and music composer of their works envisaged in section 13 of the Act. As per section 17 (b), he further assigns these rights to the music companies for upfront lump-sum amount. When the films songs are performed separately and independently through TV /Radio, restaurants, airlines, auditoriums or public functions etc. film, producer becomes the first owner*

and authors/music composers lose economic benefits of exploitation of their works to music companies who become ultimate owners of these works.

The Committee can only conclude in the light of the long standing infirmity in the copyright law outlined above that proposed amendments in section 17 and 18 were overdue. It has taken more than thirty years for the legislature to act upon a Supreme Court directive which indeed is a very sad state of affairs. The Committee emphatically recommends that this long standing infirmity in the copyright law needs to be removed without any further delay.

Committee's attention has also been drawn to section 13 (3) (a) of the Act which provides that copyright shall not subsist in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work. Section 13(4) .further provides that copyright in a cinematograph film or sound recording shall not affect the separate copyrigJht in any work in respect of which or a substantial part of which, the film or sound recording is made. The proposed amendments in section 17, 18 and 19 are the reiteration of what is already provided in section 13 of the Act. In short, the proposed amendments in section 18

will protect interests of authors in the event of exploitation of their work by restricting assignments in unforeseen new mediums and henceforth author of works in films will have right to receive royalties from the utilization of such work in any other form except to the legal heirs or to a copyright society and any other contract to the contrary shall be void."

17. As stated *supra*, the claim of the plaintiff in these suits is premised on their rights held by them as assignees of the copyright under Section 18(2) of the Act. This is so except in one case where the plaintiff is the authorised agent for one of the owners of sound recording rights, namely, Yash Raj Films.

Section 18 (2) reads as follows:

"(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."

18.It is now necessary to notice Section 2(d) (v) of the Act, which defines an author in relation to a sound recording as the producer. On a combined reading of Sections 2(d), 2(y), 17 and 18 of the Act, it would

be evident that a sound recording is a "work" within the meaning of the Act, whose "author" is the producer. Consequently,by virtue of Sections 17 & 18, it would appear that the "author" i.e., the producer is the first owner of the copyright in a sound recording and can validly assign the same in the mode and manner contemplated under Section 19 of the Act.

19. Section 30 of Chapter VI of the Act titled "Licenses" enables the owner of the copyright to grant any interest in the copyright, by a license granted in writing by him or by his duly authorised agent. The decision of the Supreme Court in ***ICSAC v. Aditya Pandey*** reported in (2017) 11 SCC 437, brings out the distinction between copyright of a work and a license to use the work. In the case of an assignment under Section 18, the ownership of the copyright is transferred to the assignee, whereas, a licensee under Section 30 merely acquires a right of user with the ownership still vesting with the owner/licensor. Section 30-A of the Act then goes on to state that the mode and manner specified for assignment of a copyright under Section 19, shall, with necessary adaptations and modifications, apply in relation to a license granted under Section 30 of the Act.

20.This Court will now got into Section 33 which is the epicentre of the present *lis*. Section 33 in Chapter VII, as originally enacted, dealt with "*performing rights societies*" which were defined in Section 2(r) to mean as under:

> *"(r) "performing rights society" means a society, association or other bqdy, whether incorporated or not, which carries on business in India of issuing or granting licences for the performance in India of any works in which copyright subsists;"*

Section 33, as originally enacted in 1957, read as under:

> *"38. Every performing rights society shall, within the prescribed time and and in the prescribed manner, prepare, publish and file with file with the Registrar of Copyrights, statements of all fees, charges or royalties which it proposes to collect for the grant of licences for performance in public of works in respect of which it has authority to grant such licences.*
>
> *(2) If any such society fails to prepare, publish or file with the Registrar of Copyrights the statements referred to in sub-section (1) in relation to any work in accordance with the provisions of that sub-section, no action or other proceeding to enforce any remedy, civil or criminal, for infringement of the performing rights, in that work shall be commenced except with the consent of the Registrar of Copyrights."*

21.The entire Chapter VII was repealed and substituted by the

Copyright (Amendment) Act, 1994, which introduced the concept of a "*copyright society*". A copyright society is defined under Section 2(ffd) to mean a society registered under Section 33(3) of the Act. Section 33, as originally substituted by Act 54 of 1994 was as follows:

"***COPYRIGHT SOCIETIES***

Section 33 (1) No person or association of persons shall, after coming into force of tho Copyright (Amendment) Act, 1994 commence or, carry on tho 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 tho registered copyright society:

Provided further 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 shall bo deemed to bo a copyright society for the purposes of this Chapter and every

such society shall get itself registered within a period of one year from tho date of commencement of the Copyright (Amendment) Act, 1994.

(2) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do tho business specified in sub-section (j) to the Registrar of Copyrights who shall submit the application to the Central Government.

(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 bo 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.

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be

prescribed.

(5) If the Central Govornmcnt is of tho opinion that in the interest of the owners of rights concerned, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for auch period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society."

22.Though envisaged with an intent to benefit authors of the work, Section 35 of the Act placed these societies under the collective control of the owners with little or no room for authors. By 2008, a situation reached, where, these Copyright Societies were completely under the control of the owners who ignored the interests of the authors and composers. The following observations of the 227th Report of the Parliamentary Standing Committee on the Copyright (Amendment) Bill, 2010 captures the grim situation that preceded the Copyright (Amendment) Act, 2012:

"16.3 The Committee was informed that a joint

representation from some of the world-famous and renowned authors and composers of film lyrics and music compositions was received by the Department in 2008 and 2009. Serious concerns had been voiced by them about exploitation /non-protection of rights and interests of authors and composers by Film Producers and Music Companies. The Department was aware of the problems in the functioning of the copyright societies. It was further informed that in the background of the amendment was the functioning of the Indian Performing Rights Society, a copyright society founded by authors and music composers including music publishers. As per the existing provisions, owners of rights were to administer the society. In 1993, there was an agreement between IPRS authors, composers members and recording companies to share performing right royalties collected by IPRS on 50:50 basis between the owners of rights i.e. recording companies and authors and composers. There was some internal trouble between these parties due to some court cases in 2007. In 2008, the owner members under sections 33 to 38 of the Act and rules made thereunder decided to change the nature of membership of IPRS. They made only owner of rights as members and authors and composers as ordinary members thereby debarring authors and composers from attending the Governing Council and thus dominating IPRS by virtue of

their numbers. They also amended the Memorandum of Association and Articles of Association of IPRS by introducing these changes in the memberships of IPRS. This led to a few recording companies owning music rights dominating IPRS, a copyright society meant for authors and composers. The owner members further created trouble in distributing the royalties collected by them by making a condition that authors and composers had to give an undertaking stating that they did not own any rights in the songs for which they were receiving royalties. Against this backdrop, the amendment has been proposed to make clear that the societies can only be formed by the authors and not by the owners. The idea is to streamline the functioning of the copyright societies by ensuring adequate transparency in fixing and distributing the royalties as uptill now there was arbitrariness in fixing the rates and their distribution. The amendment will ensure collective administration of works by authors on reasonable terms."

Section 35, post the Copyright (Amendment) Act 2012, has placed the authors on par with owners of copyright, in the control over the copyright society.

23.By the Copyright (Amendment) Act 2012, a new second

proviso was added to Section 33. The earliersecond proviso was

relegated to the third proviso and a new clause, namely, Clause (3-A) was inserted apart from certain amendments to Clause (5). Section 33, as amended by the Copyright (Amendment) Act, 2012 reads as follows:

> "***33. Registration of Copyright society***.—
>
> *(1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 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:*
>
> *Provided further that the business of issuing or granting licence 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.

(2) Any association of persons who 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 application to the Central Government.

(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.

(3A) 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 (27 of 2012) shall get itself registered under this Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012.

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the authors and other owners of right]

concerned, cancel the registration of such society after such inquiry as may be prescribed.

(5) If the Central Government is of the opinion that in the interest of the authors and other owners of right concerned or for non-compliance of sections 33A, sub-section (3) of section 35 and section 36 or any change carried out in the instrument by which the copyright society is established or incorporated and registered by the Central Government without prior notice to it, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society."

24. Clause (1) of Section 33 makes it clear that "*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 licenses 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 as a copyright society under

Section 33(3). The word "*person*" has not been defined in the Act. Section 2(42) of the General Clauses Act, 1897 defines a "*person*" as under:

> *"(42) "person" shall include any company or association or body of individuals, whether incorporated or not;"*

25.A similar prohibition contained in the second proviso to Section 33 is in respect of the "*business of issuing or granting license*" relating to literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings.

26. A careful examination of Section 33(1) and the second proviso shows that its operation is confined to prohibiting the commencement and carrying on of the business of issuing or granting licenses, and does not touch upon the right of the owner, in his individual capacity, to continue to have the right to grant licenses in respect of his own works. This becomes all the more evident from the first proviso to Section 33 which expressly recognizes the right of an owner to issue a license in his individual capacity, with the caveat that the exercise of such a right must be consistent with his obligations as a member of any copyright society.

27.It was contended by the learned counsel for the plaintiffs that by virtue of Section 30 of the Act, the owner of a copyright has an unfettered right to grant a license. It was contended that this right accrues to the assignee under Section 18(2) by virtue of which the assignee steps into the shoes of the owner to exercise all of the rights conferred under the Act. Consequently, it was impermissible for this right to be controlled or whittled down by the provisions of Section 33.

28.Upon a careful consideration of the aforesaid submissions, this Court is unable to agree. It is no doubt true that the assignee becomes an owner by virtue of Section 18(2) of the Act and is, therefore, legally entitled to issue licenses under Section 30 as the owner of the copyright. Section 30 merely recognises the right of the owner to grant a license and does not make a distinction between individuals and business entities in the matter of granting license. That distinction is, however, at the heart of Section 33 which clamps a prohibition on the "*business of issuing or granting licenses*" except through copyright societies [Clause(1) and second proviso to Section 33], while retaining the right of the owner, in

his individual capacity, to exercise the right of licensing his works conferred on him by Sections 18(2) and 30 of the Act.

29.The expression "business" implies continuity (See ***State of M.P v.Mukesh***, 2006 13 SCC 197) and is defined as "*a commercial enterprise carried on for profit*" (See Black's Law Dictionary, Ninth Edition, West Publishing). To put it in simple terms, the right of an owner, in his individual capacity, to exploit a right by issuing a license remains untouched. However, when it comes to the "*business*"i.e., a commercial enterprise of issuing licenses, the law, as it presently stands, requires it to be routed only through a copyright society registered under Section 33(3) of the Act.

30. This is further evident from the word "*only*" occurring in the second proviso to Section 33 which clearly indicates that the business of granting licenses can be done by a copyright society alone. It is too fundamental a principle that if a statute requires a thing to be done in a particular manner, it should be done in that manner only, all other alternative means of performance being expressly prohibited (vide ***Taylor v. Taylor***, 1875 1 Ch D 426).

31.The argument that the second proviso interferes with the right of the copyright owner under Sections 18 and 30 of the Act is clearly misconceived. Section 33(1) and its second proviso do not touch upon the right of an owner, nor does it debar him from dealing with the business of issuing licenses for his works in his individual capacity. It merely regulates the mode and manner of its exploitation through the business of licensing by routing it through a copyright society.

32.The aforesaid conclusion is also fortified from the reasons which impelled the Parliament to introduce the second proviso. Tabling the amendments on the Floor of the Rajya Sabha on 17.05.2012, the then Minister of Information and Broadcasting is stated to have observed as under:

> *In the past what has happened is that those who have money power have sought the assignments of the creators intellectual property unconditionally to themselves and, then, use those assignments for the purposes of exploiting their works, not just in cinema, but through other media, the result of which has been that the artist who is the creator of*

intellectual property gets no share of the profits. That has been the legacy of this industry in the past.

We want to correct that legacy. We want to ensure that the author, the music composer and the artist have equal share in the profits that the assignee makes through other media, and it is in that context that we have amended Section 17 of the Act, wherein, we say the following. The proviso in that Section reads: 'Provided further that in the 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.' So, the right of the author is preserved. The right of the author is protected."

33.The Minister then alludes to the purpose of the intended amendments to Sections 18,19 and 33 of the Act, and observes as under:

Similarly, in Section 18, which deals with assignments, we have added another proviso which states: '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 utilization 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 contrary to that shall be void." What is the purpose of this? The purpose of this is that in the past, these rights used to be assigned. The author had no share in the exploitation of that work through another medium, and now we are ensuring that the author has equal share in the distribution of the profits made by the assignee through another medium. The same is being protected with respect to the literary or musical works included in a sound recording. So, the author is being protected and the music composer is being protected so that they have equal share in the profits that will be earned through other media. We have also decided to determine the mode of assignment which is reflected in Section 19 which states. "No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilization of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall." The same applies to sound recordings, the idea being, you can have the work assigned, but you cannot have the royalties

assigned. You can use that work through other media, but there can be no assignment of royalty. So, the author and the music composer would share royalty with the producer, the assignee, in equal terms. That is really the concept behind these amendments, protecting the right of the author and the music composer. We have had to, therefore, amend clauses in The Copyright Act in respect of copyright societies, wherein we are ensuring equal representation of both authors and composers and owners of rights in copyright societies so that the member of the copyright society are not limited only to producers. There is equal representation of the creators of copyright as well as those who exploit the copyright.

Therefore, we have made amendments in Section 33 to that effect, I will quickly refer to it. We have added a proviso to section 33: "Provided further that the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph film or a sound recording shall be carried out only through a copyright society duly registered under this Act; provided also that the registration granted to a copyright society under sub-Section 3 shall be for a period of five years and may be renewedfrom time to time before the end of every five years; provided further that the renewal of the

registration of a copyright society"—and this is important —"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." ***So, the authors are now sharing the ownership of the copyright.They are equal partners in this enterprise; the share it equally. Therefore, the copyright societies which collect royalties, collect the monies, will share those monies equally with the authors.*** *That is the amendment that was required under The Copyright Act. That we have done so that the authors and other owners are also equally represented in these societies."*

34. In the considered opinion of this Court, the aforesaid statement by the Minister on the Floor of the Lok Sabha clearly points to the deficient state of the law prior to the amendment, and the considerations that moved the law makers to plug the loopholes, thereby, rehabilitating a class of persons who had been out in the penumbra ever since the decision of the Supreme Court in ***Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Assn.,*** reported in ***(1977) 2 SCC 820***.

35.The legitimacy of using such speeches on the Floor of the

House to ascertain the true intent of a Parliamentary enactment has been approved by the Constitution Bench of the Supreme Court in ***Kalpana Mehta v. Union of India,*** reported in ***(2018) 7 SCC 1***, wherein, it was observed as under:

> *"We have referred to these authorities to highlight that the reports or speeches have been referred to or not referred to for the purposes indicated therein and when the meaning of a statute is not clear or ambiguous, the circumstances that led to the passing of the legislation can be looked into in order to ascertain the intention of the legislature. It is because the reports assume significance and become relevant because they precede the formative process of a legislation.*
>
> *The Court held that the speech made by the mover of the Bill explaining the reasons for introducing the Bill can certainly be referred to for ascertaining the mischief sought to be remedied and the object and the purpose of the legislation in question. This was in consonance with the juristic thought not only in the western countries but also in India as in the exercise of interpretation of a statute, everything which is logically relevant should be admitted."*

36.In the backdrop of the aforesaid, it is clear that the mischief preceding the Copyright (Amendment) Act, 2012 was that copyright societies had been taken over by owners, relegating authors and composers to the background. Secondly, by virtue of Sections 17 and 18, authors and composers had absolutely no share in the royalties. The Copyright Amendment Act, 2012 sought to remedy this by first, undoing the unfairness of the earlier regime by making authors and composers on par with owners in the matter of administration of copyright societies. This was done by amending Section 35. The next step was to amend Section 18 & 19 to provide for equal share of the royalties to the author. Section 33 was then amended to ensure that the business of issuing licenses in copyrights were routed only through copyright societies so that the aggregate of the royalties so collected, could be shared equally between the authors and composers on the one hand and the owners of the copyright on the other. It is therefore impossible to accede to the argument of the learned counsel for the plaintiff that notwithstanding the clear mandate of Section 33(1) and its second proviso, the business of licensing works in sound recordings can be done by business entities like the plaintiff,*dehors* the aforesaid provisions. Such an interpretation

would defeat the very purpose of the 2012 Amendment and would be obfuscated in as much it would divert the revenue from royalties which were to be pooled in through copyright societies, to be shared equally between the owner and author.

37.It is also necessary to notice the following passage from the statement of the then Minister for Information and Broadcasting at the time of moving the Amendment Bill on the Floor of the Lok Sabha on 22.05.2012,which tells the sad tale of the shehnai maestro Ustaad Bismillah Khan who was reduced to penury in the last days of his life:

> "*But broadly one of the things which we wish to do is to ensure that the authors are the owners of the copyright and whereas the copyright can be assigned, the right to royalty cannot be assigned. This is the amendment that we are moving that you can get the assignment from the artist whether it is a music composer or a literary composer but when it comes to payment of royalties through other mediums, then the producers and the authors must share that royalty in equal measure. So, this is the first*

amendment that I have brought and I am commending it to this House for adoption.

We have also consequentially brought about changes in the Copyright Societies because in the Copyright Societies all the producers control the Copyright Societies because the provision said that the owner of the copyright shall be in the management of the Society and because of Section 17(1)(b), the producer became the owner of the copyright. So, the authors were thrown out of the Copyright Societies and only the producers became owners of the copyright societies and they decided to negotiate with music companies and they decided to sell those works, especially Hindi songs which are famous throughout the world to music companies. They made a killing on them and the poor artist was left in the lurch. I remember, it was a very sad day, when Ustaad Bismillah Khan came to me and he said that he does not have money to pay his rent. I cut a cheque for him for one whole year so that he could pay his rent. It was a very sad day for me because here was a man who held up the most precious traditions of our culture and he was on the street. I have known of artists like Ravi who could not pay their hospital bills because the producers would not part with their royalty. There are other instances but I do not want to go into these questions. The fact of the matter is that a time

has come to correct all these things."

38. In an article titled "*The Touch of 'Jadoo' in the Copyright (Amendment) Act, 2012: Assesment of the Amendments to Sections 17,18 and 19*, (2012) 5 NUJS L Rev 529, learned author Mr. Udit Sood has examined the after effects of the statutory changes effected post the 2012 Amendment. In the context of the amendments to Section 33 he observes thus:

> *"The first proviso to § 33(1) enables "an owner of copyright… in his individual capacity" to grant licenses "in respect of his own works consistent with his obligations as a member of the registered copyright society". Hence, an individual owner may issue licenses in respect of his own works. However, in case it is a 'business' of issuing licenses for the kinds of works mentioned above, then the same would stand precluded. In this context, I submit that an author (i.e. the 'individual' who is predominantly envisaged in the first proviso) is someone whose 'business' is to create. The individual, who is first and foremost concerned with authoring works, and whose secondary activity is licensing these works, would not be considered as one carrying on the aforesaid 'business'. However, if it is an entity whose primary activity is to collect copyrights (by*

assignment) and license them to persons/entities who are concerned with the exploitation of the work, then the entity would be in the "business of issuing or granting licenses". A loose parallel, I suppose, could be made with non-practicing entities or 'patent trolls' whose business model comprises of purchasing and enforcing patents. Similarly, the draft Copyright Rules define 'copyright business' as "the business of issuing or granting license in respect of a right or set of rights in specific categories of works as conferred by the Act and includes the functions referred to in sub-section (3) of § 34". [Rule 2(b).] Therefore, how the Court interprets 'business' would be instrumental in an attempt to harmonize the first proviso with the bar under § 33(1)."

39. In interpreting any statute, the role of the Court is to give effect to the will of the legislature. Where ambiguities exist, the Courts, no doubt, have the power to take recourse to external and internal aids to construe a provision in line with the intention of the legislature. Having examined the background leading to the Copyright (Amendment) Act, 2012, this Court is of the considered opinion that in view of Section 33 (1) and its second proviso, the business of granting or issuing licenses in

respect of any work in which copyright subsists, can be undertaken only through a copyright society registered under Section 33(3) of the Act.

40. The learned counsel for the plaintiff invited the attention of this Court to the decision of the Bombay High Court in ***Leopold Café & Stores &Anr v. Novex Communications Pvt. Ltd***, reported in ***2014 SCC Online Bom 1324***. In that case, the question before the Bombay High Court was whether Novex Communications could grant licenses on behalf of owners of copyrights in various works. The Court found that the prohibition contained in Section 33 squarely applied to Novex Communications. This is clear from the following observations:

> "*In what manner precisely has Novex been conducting itself in the matter of the grant of copyright licenses and collection of license fees? Dr.Tulzapurkar, learned senior counsel for the Plaintiffs, submits that correctly read, the various documents annexed to the plaint and to the affidavit in reply indicate that Novex is "carrying on the business of issuing or granting licenses in respect of" works in which copyright subsists. The prohibitions in Section 33, therefore, clearly apply to Novex."*

Mr. Bhatt is correct in his submission that acting as an agent it would necessarily have to indicate so on its licenses. However, the licenses to which Mr. Bhatt do not indicate any such agency. There are, also, as I have noted earlier, several other documents to indicate that Novex has throughout demanded from various hotels, restaurants etc. that licenses be obtained from it directly. If Novex is carrying on business and issuing licenses in this manner, then, in my view, it is doing so directly in contravention of the prohibition in Section 33. I do not believe that Novex is entitled to continue to "carry on the business of issuing or granting licenses" in this manner. There is no doubt that this is precisely what Novex is doing."

The learned single Judge has harmonized Sections 30 and 33 in the following manner :

"*It is not, I believe, the mere "carrying on of business" that is interdicted by Section 33. It is the carrying on of the business of issuing or granting licenses in its own name, but in which others hold copyright. Every agent also "carries on business", but that is the business of agency, with the agent functioning as such, i.e., clearly indicating that it is acting on behalf of another, one who holds the copyright. This is the only manner in which both Section 33 and Section 30 can be harmonized. An absolute bar even on an*

> *agency, invoking Section 33, would undoubtedly run afoul of the plain language of Section 30 and render the words "or by his duly authorised agent" entirely otiose. I very much doubt it could have been the legislative intent of Section 33 to compel every copyright owner to set up a separate division to monitor the use of its works."*

It was eventually found that the principal was undisclosed and Novex Communications had issued and granted licenses in its own name bringing it within the net of the prohibition contained in Section 33. That is precisely the case here. The only difference is that Novex was the defendant before the Bombay High Court, and is now a plaintiff before this Court.

41. The decision of the Delhi High Court in ***Event and Entertainment Management Association*** (EEMA) ***v. Union of India*** reported in ***2017 SCC Online Del 12740***, also concerned the very same plaintiff as in this case. The Delhi High Court found that Novex Communications was carrying on the business of granting licenses in direct contravention of the provisions of Section 33. The Delhi High Court has observed as under:

> "*It is apparent from the plain reading of Section 33(1) of the Act that no person can 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 the act except under and in accordance with registration granted under Section 33(3) of the Act. Since PPL, IPRS and Novex are not registered as copyright societies, they are - by virtue of Section 33(1) of the Act - proscribed from carrying on the business of issuing or granting licences.*"

42.However, it appears that in ***Novex Communications Private Limited v. Lemon Tree Hotels Limited***, 2019 SCC Online Del 6568, another learned single judge of the Delhi High Court has taken the following view:

> "*In my opinion, when the second Proviso to Section 33(1) talks of issuing or granting of license with respect to the musical work in sound recordings, it is only for the musical work in the sound recording and not the sound recording itself. To clarify further, there are two expressions used in the second Proviso to Section 33(1) of the Act, first being a cinematograph film and the second being a sound recording. Both these words are for the earlier copyright works existing and stated in the second*

Proviso being the literary work, dramatic work, musical work or artistic work. In a cinematographic work, all four works being literary work and/or dramatic work and/or musical work and/or artistic work are included, whereas, in a sound recording, only musical or literary work are included. Therefore, it is not as if that the second Proviso to Section 33(1) says that so far as sound recording is concerned, the same cannot be licensed except by a copyright society. Obviously, if this interpretation is given, the same will nullify or render otiose the first Proviso to Section 33(1).”

43.With all due respect, this Court is unable to persuade itself to adopt the aforesaid line of reasoning as it fails to notice the difference between licensing in the individual capacity of the owner and the “*business of issuing or granting license*”, which is the key to understanding the distinction between the first and second proviso to Section 33. According to the learned single judge of the Delhi High Court, the first proviso to Section 33 makes it clear that the right of an owner to grant licenses in his individual capacity is not affected except when it comes to exercising his rights in a manner consistent with his obligations as a member of a registered copyright society. A reference

was then made to Section 34(1)(a) to conclude that copyright societies can have exclusive right to grant licenses only when it obtains an exclusive authorization under Section 34(1) (a), from the owners.

44.It appears that the attention of the learned single judge was not drawn to the legislative history which culminated with the insertion of the second proviso, which would clearly demonstrate that the applicability of the second proviso to Section 33 had nothing to do with Section 34(1)(a). Furthermore, the second proviso is clear to the effect that the "*business of issuing or granting licenses*" shall be carried out only through a copyright society. By authorizing entities other than copyright societies to engage in the business of granting licenses, the Court would be clearly rendering the legislative emphasis on the word "*only*", occurring in the second proviso to Section 33,completely redundant. This would fly in the face of the settled cannons of interpretation that no word or provision should be considered redundant or superfluous in interpreting the provisions of a statute. In the field of interpretation of statutes, the courts always presume that the legislature inserted every part thereof with a purpose, and the legislative intention is

that every part of the statute should have effect.(***Sankar Ram & Co. v. Kasi Naicker*, (2003) 11 SCC 699).**

45.This Court is also unable to subscribe to the observations in the aforesaid judgment to the effect that the second proviso is intended only for cases where copyright societies have acquired an exclusive authorization from the owners under Section 34(1)(a) of the Act. This would completely obliterate the well-defined classes to which the first and second proviso to Section 33 applies. At the risk of repetition, the first proviso, operates only qua an issuance of a license by an owner, in his individual capacity. If the entity involved is in the business of issuing licenses, like the plaintiff in these cases, it would fall within the net of the second proviso, if the work is incorporated into a cinematograph film or a sound recording.

46.Finally, the decisions in ***Gramophone Company of India Ltd v Super Cassette Industries Ltd.*** reported in ***2010 SCC OnLine Del 4743***, and ***ICSAC v. Aditya Pandey*** reported in ***(2017) 11 SCC 437*** deal with cases prior to the Copyright (Amendment) Act, 2012, and therefore, do

not directly deal with the issue presently under consideration.

47.The learned counsel for the plaintiff contended that joining a copyright society is purely optional as is evident from Section 34 of the Act. The right to issue licenses cannot, therefore, be made contingent upon the owner being a member of any copyright society. However, this argument fails to impress this Court. There is no doubt true that an owner need not necessarily join a copyright society. The first proviso to Section 33 makes it clear that the right of an owner to issue licenses, in his individual capacity, remains unimpacted, subject to the rider that such a right must be consistent with his obligations as a member of any copyright society. However, once the grant of license moves from the owner in his individual capacity,and transcends into the realm of a business, Section 33(1) and/or the second proviso applies. The legislative intent is manifestly clear that the business of licensing must be routed only through a copyright society.

48.Reverting to the facts on hand, it is not in dispute that the plaintiff in the two suits is in the business of issuing licenses for on-

ground performance rights in various sound recordings, and that they do not fall within the meaning of a copyright society under Section 33. It must follow that the statutory embargo on the business of issuing licenses in Section 33 applies. The entire cause of action for the suits are therefore misconceived, in as much as it is predicated on a fictitious assumption that the defendants have violated the rights of the plaintiff by failing to obtain licenses from it for on-ground performance rights of various sound recordings. Once it is found that the plaintiff is statutorily barred from issuing licenses in view of Section 33, there can be no question of the defendant being mulcted with liability failing to obtain a license which the plaintiff cannot, in law, grant. It must necessarily follow that the very substratum for the relief of injunction and damages, claimed in the two suits, must crumble like a pack of cards.

49.The preliminary issue is thus answered against the plaintiff in the two suits.

50.In the result, C.S.No. 407 of 2020 and C.S.No. 413 of 2020 will stand dismissed. Considering the facts and circumstances of the case, the

plaintiff in each suit is directed to pay costs of Rs.1,00,000/- [Rupees One Lakh Only] to the respective defendant. Consequently, all the connected applications are closed.

08.12.2021

Internet: Yes
Index : Yes/No
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N.ANAND VENKATESH, J.

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Pre-Delivery Common Judgment in
Civil Suit Nos.407 and 413 of 2020
(Comm.Suits)

08.12.2021