

INTRODUCTION

In the matter of Azure Hospitality Private Limited ('Azure') Vs. Phonographic Performance Limited ('PPL'), the Delhi High Court ('DHC') has held that PPL cannot grant a license unless it is registered as a copyright society or is a member of a copyright society.

BRIEF FACTS

PPL (ownership of copyright claimed in the assigned sound recordings as per Section 18(2) of the Copyright Act, 1957) issued a cease-and-desist notice to Azure for continued exploitation of playing sound recordings in their restaurants and other outlets without obtaining any license.

KEY HIGHLIGHTS OF THE JUDGEMENT

1. It is an admitted position that PPL is engaged in carrying on the business of issuing or granting licenses in respect of the sound recordings assigned to it by the original copyright owners.

PPL was a registered copyright society, between 7th May 1996 to 21st June 2014, and therefore cannot now refute the applicability of Section 33 of the Copyright Act, 1957 with respect to the nature of business carried on by it.

2. Regulating, strengthening and fool proofing of Copyright Societies was recommended in the 227th Report of the Department-Related Parliamentary Standing Committee on Human Resource Development ('Committee') to avoid instances of arbitrariness, arm twisting and volatile negotiations by copyright societies. The regulating factors included well defined balanced tariff scheme, functioning of the Copyright Board and copyright societies ensuring that all stakeholders are benefited.

The Committee pointed out during its deliberations with the copyright societies, that it felt that PPL was not very forthcoming about the tariff schemes.

3. The DHC in the present matter held that the two Novex judgements (*Novex Communication v Lemon Tree Hotels [2019]* and *Novex Communications v Trade Wings Hotel [2024]*) relied by PPL on Section 30 of the Copyright Act to exempt PPL from the requirement of being a member of registered copyright society is unfounded and the learned judges have failed to notice the words "or in respect of any other rights conferred by this Act contained in Section 33(1)".

The findings in *Novex v Trade Wings*, postulate that Section 30 (Licenses by owners of copyright) and Section 33 (Registration of Copyright societies) operate in separate chapters of the Copyright Act. The rights envisaged under Section 33(1) do not curtail the power of the owner to grant any interest in the copyright by license under Section 30. The statutory right conferred under Section 30 is subject to Section 33(1).

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)

4. The requirement of PPL being registered as a copyright society or a member of the registered copyright society to issue or grant licenses is absolute and non-negotiable.
5. Recorded Music Performance Limited ('RMPL') is an entity registered as a copyright society under Section 33(3) for dealing in sound recordings. Therefore, if PPL were to be a member of RMPL, PPL could grant licenses at the Tariff rates applicable to RMPL.

In view of the foregoing findings, another observation made by the DHC is whether PPL can maintain the present suit at all. The counsels did not orally argue this contention at the Bar and therefore, the DHC has left this issue open.

JUGDEMENT

The DHC ordered Azure to make payment to PPL as per RMPL's tariff.

GENERAL COMMENTS

PPL issues legal notices to companies claiming damages that are exorbitant and unjustified. PPL has further settled claims of exceedingly high amounts as compared to the tariff rates of a registered copyright society. RMPL's tariff rates are half of PPL's current tariff rates as displayed on their websites and PPL has claimed additional monetary compensation over and above the statutory limits.

The present DHC judgement is not conclusive owing to the right of appeal available to parties and the pending suit before the lower court. However, the judgement is provocative to comprehend, 1) Whether PPL will be held accountable for its past arbitrary acts? And 2) Whether PPL will accept the DHC judgement and surrender to be regulated under the framework of law.

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INTELLECTUAL PROPERTY PRACTICE

The Firm is a leading full service commercial law firm with the best national presence among all law firms in India. The Firm represents national and international companies doing business in India and offers a high quality, business-oriented service to its clients. The Firm takes great pride in its client servicing approach, which is focused on clarity, accessibility and providing business solutions.

Intellectual Property (IP) law is a key focus of the Firm for many years and the Firm is considered one of the leading law firms in India for IP law. The IPR practice also works in tandem with corporate and commercial practice of the Firm as a strategic partner providing effective and innovative IP solutions on transactional matters such as Strategic Alliances, Joint Ventures, and Mergers & Acquisitions.

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- **Benchmark Litigation 2024:** Commercial & Transactions, Construction, Insolvency, Intellectual Property, International Arbitration, Tax, and White-Collar Crime.
- **India Business Law Journal (IBLJ) Indian Law Firm Awards 2024:** Labour & Employment, Media & Entertainment, Aviation, International Trade (WTO, BIT Arbitration)

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- Rohit Kochhar has been acclaimed as one of the "Top Managing Partners" in the country.
- 13 Senior Partners/Partners across different offices have been recognized amongst India's ***"Top 100 Individual Lawyers"***.

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