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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM No.48304/2016 & W.P.(C) No.12076/2016

M/S EVENT AND ENTERTAINMENT MANAGEMENT ASSOCIATION (EEMA) Petitioner

Through: Mr. Ramji Srinivasan, Senior Advocate with Mr.Kumar Sudeep and Mr. Tushar Bhardwaj, Advocates.

Versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Sanjeev Narula, CGSC and Ms.Vinita Sadihar, Advocate for Respondent UOI.
Dr. Ashwani Kumar, Senior Advocate with Mr. Jagdish Sagar, Mr. Neeraj Gupta and Ms. Smitakashi Talukdar, Advocate for Respondent No.3/PPL.
Mr. Himanshu Bagai, Advocate for Respondent No.4
Mr. Jay Savla, Advocate for Respondent No.5.
Mr. Sameer Parekh, Mr. Tanuj Agarwal and Ms. Swati Bhardwaj, Advocates for Respondent No.6.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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29.12.2016

CM No.48304/2016

1. The learned Senior Advocate for the respondent/applicants had yesterday, relied upon some orders passed in their favour by this Court, today he relies upon a few more similar orders, they are in: (i) CS(COMM) No.328/2016, Novex Communication Private Limited Vs. Hotel Crowne

Plaza, decided on 07.04.2016; (ii) CS(COMM) No.385/2016, Novex Communication Private Limited Vs. The Royal Plaza, decided on 22.04.2016; (iii) CS(COMM) No.1086 /2016, Novex Communication Private Limited Vs. M/s Sky Lounge Bar- Svenska Design Hotel, decided on 12.08.2016; (iv) CS(COMM) No.1150/2016, Novex Communication Private Ltd. Vs. M/s Pegs Down & Ors., decided on 24.08.2016; (v) Novex Communication Pvt. Ltd. Vs. M/s Hype, New Delhi & Anr.; (vi) Novex Communication Pvt. Ltd. Vs. M/s The Lodhi Hotel & Anr.; and (vii) Novex Communication Pvt. Ltd. Vs. M/s The Suryaa Hotel & Anr. (all dated 30.08.2016); (viii) TM No.13795/16, Novex Communication Pvt. Ltd. Vs. M/s ITC Maurya, New Delhi & Anr.; (ix) TM No.13793/16, Novex Communication Pvt. Ltd. Vs. M/s Holiday Inn Hotel & Anr.; (x) TM No.13794/16, Novex Communication Pvt. Ltd. Vs. M/s Pride Plaza Hotel & Anr.; and (xi) TM No.13792/16, Novex Communication Pvt. Ltd. Vs. M/s Dusit Devarana & Anr. (all dated 19.09.2016); (xii) order dated 24.09.2016 passed in Novex Communication Private Limited Vs. M/s Park Plaza & Anr.; and (xiii) order dated 18.10.2016 passed in C.S. No.3325/16.

2. Mr. Ramji Srinivasan, the learned Senior Advocate for the petitioner contends that the order of 23.12.2016 has restrained the applicants from carrying on or issuing or granting licenses of copyrighted works as a Society, therefore, the respondents cannot carry out similar activity by subterfuge, in any other method. He submits that the Government of India has rightly initiated proceedings against them in terms of its Office Memorandum dated 06.10.2016.

3. Dr. Ashwani Kumar, the learned Senior Advocate for the respondent No.3 states that *de hors* this application and without prejudice to the rights

and contentions of the applicants, the proceedings initiated by the Government of India may continue and be decided on its merits. Referring to the said OM, he emphasises that the inquiry is only against respondent No.4 i.e. The Indian Performing Right Society Limited and not against respondent No.3/Phonographic Performance Limited. The learned counsel for the Government of India states that presently no inquiry is pending against respondent No.3, however, the latter's request for withdrawal of the application for re-registration as a Society has not been conceded as yet. The learned counsel for respondent No.4/The Indian Performing Right Society Limited submits that presently there is no restraint order against the proceedings initiated by the Government of India under the aforesaid OM.

4. The learned counsel for the petitioner submits that the respondents have all along refused to disclose any documents to substantiate their claim of assignments of copyrights or shown any documents that they are authorized agents of specific works by copyright owners. He submits that the assignment deeds would have to be in the mode prescribed under Section 19 of the Copyright Act, 1957 (hereinafter to be referred as 'the Act'). Consequently, in the absence of any such document or assignment deed showing their rights as assignees or authorized agents, the respondents cannot seek to exploit or monetize or otherwise recover monies of the copyrighted works from the public at large.

5. The learned Senior Advocate for respondent No.3/applicant submits that the respondents are legitimate assignees of copyrighted works or are otherwise duly authorized agents of copyright owners and seek to enforce their rights under Section 18(2) and Section 30 of the Act. He states that the websites of respondents show that they are the owners of approximately one

million songs and other copyrighted works and submits that the statute protects the rights and interests of an owner of a copyright; that insofar as such owner exercises its rights under section 18(2) and/or section 30 read with Section 19 of the Act, there is no bar to the copyright owner or his agents or an assignee from monetising the copyrighted works. He submits that section 33 is a scheme whereby the Society registered under that section can carry on the business of issuing or granting licenses in respect of any work in which copyright subsists. Nevertheless, the first proviso to Section 33 sub-section (1) secures the rights of a copyright owner to continue to have the right to grant licenses in respect of his own works consistent with his obligations as a member of the registered copyright society. The said proviso reads as under:-

“33. Registration of copyright society-

(1)

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

6. Mr. Srinivasan relies upon the judgment of the High Court of Bombay in *Leopold Cafe & Stores Vs. Novex Communications Pvt. Ltd.* reported as MANU/MH/1015/2014 (decided on 17.07.2014) to urge that the present respondents cannot carry out the business of issuing or granting licenses for copyrighted works which was exploited under Section 33 of the Act. However, he fairly concedes that a legitimate assignee under Section 18(2) of the Act or a duly authorized agent under Section 30 can exploit and

monetize the copyrighted works or otherwise seek protection of copyright.

7. It is not the case of either party that in the absence of a society under section 30, all rights of copyright owners would be obliterated or there would be an embargo on the enjoyment or monetization of such rights. *Leopold Cafe* (supra) on which the petitioner has relied held that sections 30 and 33 must coexist and have to be construed harmoniously. It reasoned:

“..... What Section 33 forbids is an engagement in the 8 of 10 NMSL14512014.DOC "business of issuing and granting" licenses in works in which copyright subsists. This cannot mean that a copyright owner cannot appoint an agent to grant any interest on behalf of the copyright owner. That is something that Section 30 in terms permits. The express permission in Section 30 cannot be occluded by an extension of the express prohibition in Section 33. All that the two sections, read together, require is that the factum of agency must be disclosed so that the licensee knows that it has a valid license from the copyright owner; i.e., that it is made known by the agent that it is acting on behalf of the holder of copyright in the works in question, even though the licensee may throughout deal only with the agent and never directly with its principal. The minute the principal is undisclosed and the license is issued and granted in the agent's own name, the prohibition in Section 33 comes into play....”

8. Indeed, the learned Senior Counsel for the petitioner fairly concedes that the order of 23.12.2016 cannot be read to the extent that it obliterates all rights of copyright owners. However, he submits that for the respondents to show that they are assignees of copyrights or agents of the copyright owners, all that is required, in the interest of all, is that the respondents disclose the relevant documents to substantiate their rights. It would follow logically that to the extent that the petitioners or any party through them seeks to use

copyrighted works during events organized by them, as a compensatory arrangement, with consent of the copyright owners would have to be adhered to. The respondents claim to be the assignee/agents of the copyrighted works under section 18 and 30 of the Act, hence as an interim measure it is agreed between the parties that:-

- (i) By 31.12.2016, the respondents will, in deference to the confidential information as may be, upload on their respective websites the assignment deeds alongwith the list of songs pertaining to such assignment deed;
- (ii) Within four weeks from today the respondents will put in place a search option on their websites so that the owner of the copyright can be identified through the search engine.
- (iii) The respondents will also try to explore the possibility of accepting payments through Internet Payment Gateways and endeavour to put in place the requisite systems in this regard within four weeks.
- (iv) Upon the petitioners' intimating the respondents that they propose to hold an event in which copyrighted works will be used, the respondents will issue an invoice for the royalty of the copyrighted works alongwith a letter or document confirming that they are the owners/ assignees/ authorised agents of the copyrighted works; monies shall be paid by the petitioner or the holder of the event i.e. user of the copyrighted work to the respondent in terms of the invoice prior to holding of the event or as per such arrangement as may be agreed between the parties. Should the petitioners seek copies of claimed assignment deeds or authorization in favour of the respondents apropos the copyrighted works, such information/documents shall be supplied to the petitioner within a week from such request. Furthermore, should the petitioner have any dispute apropos monies paid to the respondents apropos

the copyrighted works, the monies shall not be deemed to be appropriated by the respondents and the petitioner shall have the right to take recourse to legal remedies.

9. List before the Roster Bench for further proceedings on 24.04.2017, the date already fixed.

10. A copy of this order be given *dasti* to the parties under the signatures of the Court Master.

DECEMBER 29, 2016
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True Copy
Hoshyar Singh
12-2016
COURT MASTER
Delhi High Court
New Delhi

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NAJMI WAZIRI, J.