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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 12076/2016 and CM Nos. 47716/2016, 48304/2016 & 2306/2017**

M/S EVENT AND ENTERTAINMENT MANAGEMENT
ASSOCIATION (EEMA) Petitioner
Through: Mr Abhishek Malhotra, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Mr Bharat Singh, Mr Jasdeep Singh,
Ms Shipli Chaudhari, Advocates.
Dr Ashwani Kumar, Senior Advocate
with Mr Jagdish Sagar, Mr Smitakshi
Talukdar, Advocate and Mr Raushan
Tara Jaswal, Advocates for R3.
Mr Himanshu Bagai, Advocate for R-
4.
Ms Rukhmini Bobde, Ms Raveena
Rai, Ms Mohona Thakur, Mr
Abhiram Naik, Advocates for R-6.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **12.10.2017**

1. The petitioner (M/s Event and Entertainment Management Association) is stated to be a registered society under the Societies Registration Act, 1860. It is stated by the petitioner that its constituent members are companies, institutions and professionals engaged in the Events and Experiential Marketing Industry in India.
2. The petitioner has filed the present petition, *inter alia*, praying as

under:-

- " (a) a Writ of Mandamus or a Writ in the nature of Mandamus directing/ordering the Respondent No.1 to hold necessary enquiry expeditiously against Respondent No. 3, Respondent No. 4 and Respondent No. 5;
- (b) a Writ of Mandamus or a writ in the nature of mandamus to direct the Respondent No. 1 to constitute Copyright Board, so that the disputes of the present nature and others provided for under the Act, to be adjudicated exclusively by the Board, including under Section 19 and 19 A (2) read with Section 30 A of the Copyright Act, can be raised before the Copyright Board.
- (c) A Writ/ Order/ Direction be issued to the Respondent No. 1 and / or Respondent No. 2 to de recognize the said Respondent No. 3 and 4 as Copyright Societies; and, to issue a notification/clarification that Respondent No. 5 is not a registered copyright society as envisaged under the Copyright Act, 1957 and as such is legally barred from carrying out the business of issuing or granting license in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph film or a sound recording.
- (d) An Order restraining the Respondent Nos. 3, 4 and 5, its principal officers, servants, agents, dealers, distributors, retailers, assignees, licensees and anyone claiming through, by or under the said Respondents, from claiming themselves to be the owner of copyright, as they are presently claiming;
- (e) An Order restraining the Respondent Nos. 3, 4 and 5, its principal officers, servants, agents, dealers, distributors, retailers, assignees, licensees and anyone claiming through, by or under the said Respondents, from claiming themselves to be the owner of copyright in any work and thereby threatening with legal proceedings despite the

fact that the said Respondents have no locus;

- (f) An Order directing Respondent No. 6 to issue a direction to its members to not demand from the Petitioner and members of the Petitioner any No-Objection-Certificates, for the purpose of hosting events in the premises of members of Respondent No. 6 and playing musical works therein, issued by either of Respondent Nos. 3, 4 and 5 that are in violation of the law.
- (g) In the alternate, a Writ/ Order/ Direction be issued to the Respondent No. 1 and / or Respondent No. 2 to appoint an Administrator / Administrators to monitor the activities of the said societies working as de facto Copyright Societies pending the disposal of the enquiry of their affairs and till the time they are officially de-recognised and/ or a new mechanism is established;
- (h) A Writ/ Order/ Direction be issued to the Respondent No. 1 and / or Respondent No. 2 to devise a mechanism so that the dues payable as license fees could be collected on behalf of the actual Copyright Owners;
- (i) A Writ/ Order/ Direction be issued to the Respondent No. 1 and / or Respondent No. 2 to open an account/ escrow account in which the dues payable as license fees could be deposited by the Petitioner and other similarly placed entities;
- (j) An Order/ Direction be issued to the Respondent No. 3 and Respondent No. 4 to effect a change of their names with immediate effect so that it does not create any doubt in the minds of the people and establishments in the industry confusing the present entities to their earlier version of being registered Copyright Societies;
- (k) A Writ/ Order/ Direction be issued to the Respondent No. 1 and/ Respondent No. 2 to ensure that the Respondent No. 3 and/ Respondent No. 4 effect a change of their names with immediately so that it does not create any

doubt in the minds of the people and establishments in the industry confusing the present entities to their earlier version of being registered Copyright Societies; and

- (1) An Order restraining the Respondent Nos. 3, 4 and 5, its principal officers, servants, agents, dealers, distributors, retailers, assignees, licensees and anyone claiming through, by or under the said Respondents, from entering into reciprocal arrangement/agreements with foreign copyright societies and also restrain from having control over the said work."

3. The principal grievance articulated by the petitioner in the present petition is with regard to the demand of licence fee by respondent no.3 (hereafter 'PPL'), respondent no.4 (hereafter 'IPRS') and respondent no.5 (hereafter 'Novex') for music played by the constituent members of the petitioner at various venues.

4. The petitioner had addressed a letter dated 11.12.2015 to the Ministry of Human Resources Development, Union of India and respondent no.2, *inter alia*, praying that PPL and IPRS be restrained from collecting licence fee/royalty and an independent administrator be appointed to look into the affairs of both PPL and IPRS.

5. The learned counsel for the petitioner submits that an enquiry is required to be conducted under Section 33(4) of the Copyright Act, 1957 (hereafter 'the Act') as, according to the petitioner, the affairs of PPL and IPRS were being mismanaged. The petitioner also alleges that although Novex is not a copyright society, it is acting as a copyright society and is carrying on the business of issuing licences in respect of works in which copyright exists. It is contended that the actions of PPL, IPRS and Novex

falls foul of the provisions of Section 33(1) the Act.

6. Dr Ashwani Kumar, learned Senior Counsel appearing for PPL drew the attention of this Court to the counter affidavit filed on behalf of PPL and submitted that PPL is not a copyright society and is not registered as such. He contended that in the circumstances, the question of holding any enquiry and initiating any proceeding under Section 33 of the Act does not arise. He submitted that the PPL is a company incorporated under the Companies Act, 1956 and merely exercises its rights in respect of copyright vested with it.

7. Paragraph 3 and 4 of the PPL's counter affidavit are relevant and are quoted below:-

"3. The Answering Respondent is the owner of sound recording copyright under Section 18(2) of the Copyright Act (the "Act") for the purpose of public performance/communication to the public of its repertoire of sound recordings, on the basis of assignment of the relevant copyrights in its favour by its member companies. As copyright owner, the Answering Respondent issues licences under Section 30 of the Copyright Act for communication to the public/public performance of its repertoire in the form of bulk licences authorising the use of its entire repertoire on as-is-where is basis.

4. There has been no break or interruption in the Answering Respondent's licensing activities since its inception in 1941. Between 07.05.1996 and 21.06.2014, The Answering Respondent was additionally, and of its own volition, a copyright society registered under Section 33 of the Copyright Act, but surrendered its registration on 21.06.2014. There has been no discontinuity in the Answering Respondent's

corporate existence as a company, nor in its corporate name, nor in the Answering Respondent's licensing activities on account of this internal change. The Answering Respondent's licensing activities and its interface with the public have continued seamlessly and without interruption and users of the Answering Respondent's repertoire have not been affected in any way by the Answering Respondent's internal arrangements. Licences have continued to be granted and existing licences have continued to be honoured and renewed, without any effect on the Answering Respondent's licensees or on those applying for licence."

8. Similarly, Mr. Himanshu Bagai, learned counsel appearing for IPRS also submitted that IPRS had withdrawn its application for registration as a copyright society under Section 33 of the Act and although IPRS has reapplied for the same, such registration has not been granted as yet.

9. The fact that neither PPL nor IPRS are registered as copyright societies is not in dispute. The petitioner has also stated in its petition that PPL and IPRS had withdrawn their applications for seeking re-registration as copyright societies and thus, there was no legal basis for them to act as such.

10. At this stage, it is also relevant to refer to Section 33 of the Act; the same is set out below:-

"33. Registration of copyright society.—

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

under or in accordance with the registration granted under sub-section (3): Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society: 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 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 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 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 owners of rights 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 owners of rights concerned, 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."

11. 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.

12. It is also clear that the provisions of Section 33(4) and 33(5) of the

Act apply only to copyright societies and have no application whatsoever in respect of other entities, which are not registered under Section 33 of the Act.

13. Ms Bobde, learned counsel appearing for respondent no.6 submitted that by virtue of proviso to Section 33(3A) of the Act, a copyright society existing as on 21.06.2012 - the date on which the Copyright (Amendment) Act, 2012 came into force - was mandatorily required to register under Chapter VII of the Act within a period of one year. She submitted that since PPL and IPRS were admittedly copyright societies prior to 21.06.2012, they were required to register themselves as copyright societies under the Act and had no option to avoid such registration or withdraw their applications. This contention is not persuasive as the plain import of second proviso of Section 33(3A) is to provide copyright societies as existing on 21.06.2012 a further period of one year to enable them to re-register as copyright societies. There is no obligation on any entity to register itself as a copyright society; however, if they fail to do so, it cannot carry on the basis as indicated in Section 33(1) of the Act without being so registered.

14. In this view, no direction is required to be given to Central Government to carry out any enquiry or conduct any proceedings against PPL, IPRS and Novex under Section 33 of the Act.

15. It was earnestly contended on behalf of PPL, IPRS and Novex that the said parties were only attempting to enforce copyright vested with them. This was stoutly disputed by Mr Abhiram Naik and Ms Bobde. They contended that although PPL, IPRS and Novex were not copyright societies,

they were, in fact, conducting the business of issuing licences, which was specifically proscribed under Section 33(1) of the Act.

16. This Court is not inclined to enter into that controversy in these proceedings. It would be always open for the petitioner and members to resist any proceedings or action initiated by PPL, IPRS and Novex to enforce any right as claimed by them. It is also open for the petitioner and/or its members to file appropriate proceedings under Section 60 of the Act. However, it is clear that since PPL, IPRS and Novex are not copyright societies, a direction to conduct enquiry under section 33(4) of the Act cannot be issued.

17. The learned counsel for the petitioner also made a grievance that respondent no.6 and/or its members are insisting that a No Objection Certificate (NOC) be obtained from PPL and IPRS before holding any event where music is played. This is a matter strictly between the members of the petitioner and owners/managers of venues. However, since it has been clarified that PPL, IPRS and Novex are not copyright societies, they are also not entitled to be treated as such.

18. Insofar as the petitioner's prayer regarding constitution of Copyright Board is concerned, the learned counsel appearing for respondent no.1 informed this Court that steps are being taken to appoint members on the Intellectual Property Appellate Board (IPAB), which would also carry out the functions of the Copyright board and the same is expected to be functional within a period of six months from today. In this view, no further orders are required to be passed in this petition.

19. The petition and all pending applications are disposed of with the aforesaid observations.

OCTOBER 12, 2017
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VIBHU BAKHRU, J