

Tips Industries Ltd vs Wynk Ltd. And Anr on 18 June, 2024

Author: R.I. Chagla

Bench: R.I. Chagla

2024:BHC-OS:8927

3,4-COMIP 26.

Kavita S.J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL IPR SUIT NO.26 OF 2019

Tips Industries Limited

Versus

Wynk Ltd. (now known as Xtelify Ltd.) & Anr.,

AND

COMMERCIAL IPR SUIT NO.70 OF 2019

Tips Industries Limited

Versus

Wynk Ltd. (now known as Xtelify Ltd.) & Anr.,

Sanjay Chadha a/w Rohan Kadam, Rucha Vaidya for Plaintiff in Suits.

Mr. Rishi Mody a/w Archi Gala i/b Singh & Singh / Malhotra & for Defendants in both the Suits.

Ms. Bijal R. Patel, Company Secretary of Plaintiff in both the present.

Ms. Priti Naik, Representative of Plaintiff in both the Suits

KAVITA
SUSHIL
JADHAV
Digitally signed
by KAVITA
SUSHIL JADHAV

Mr. Abhishek Roy - Head Legal & Regulatory for Defendants in

Suits present.

Date: 2024.06.20

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CORAM : R.I. CHAGLA, J.
DATED : 18TH JUNE, 2024.

ORDER :

1. The learned Counsel appearing for the Plaintiff in the above Suits have sought amendment in the cause title of both the Suits in accordance with the Draft Amendment which is taken on record and marked 'X' for identification. This change is for the limited purpose of substituting the name of Defendant No.1 with its new name.
2. The Plaintiff is permitted to carry out the amendment in the cause title of both the Suits in accordance with the Draft Amendment marked 'X' forthwith. Re-verification is dispensed with.
3. The Plaintiff and Defendants in both the Suits have arrived at a settlement. The Consent Terms dated 17 th June, 2024 have been tendered and taken on record and marked 'Y' for identification. The Consent Terms have been signed by the Plaintiff and Advocate for the Plaintiff as well as Defendants and Advocate for the Defendants in both the Suits. Appended to the Consent Terms is the copy of the Board Resolution and / or Authorization (Annexure A), digitally signed by 3,4-COMIP 26.2019, COMIP 70.2019.doc Company Secretary of the Plaintiff authorizing the signatory to execute the Consent Terms. Further appended to the Consent Terms are the copies of Power of Attorney of Defendant Nos. 1 and 2 authorizing the signatory to execute the Consent Terms (Annexure B).
4. I am satisfied that the Consent Terms are in order, not contrary to law and have been drawn by the parties of their own volition in reflection of their true intentions.
5. The undertakings in the Consent Terms being accepted as undertakings to the Court.
6. In Clause 3 of the Consent Terms the parties have agreed that that their rights will be governed by the Judgment dated 23 rd April, 2019 passed by the learned Single Judge in Commercial Notice of Motion No.72 of 2019 and Commercial Notice of Motion No.95 of 2019. They have agreed that the said Judgment will be the final Judgment on the inter se rights of the parties qua the Plaintiff's Repertoire and with respect to Section 31-D of the Copyright Act, 1957, as presently enacted on the date of these Consent Terms. The parties have agreed that the agreement recorded in Clause 3 of the Consent Terms are subject to any 3,4-COMIP 26.2019, COMIP 70.2019.doc other contractual relationship between the parties such as the Licensing Arrangement (as covered in Paragraph 5 of

the Consent Terms) or any other licensing arrangement that the parties may enter into in the future.

7. The Defendant No.1 has undertaken in Clause No.4 of the Consent Terms to pay a total sum of INR 12,00,00,000/- plus applicable taxes, as a full and final settlement of its use of the Plaintiff's repertoire for the period between 1st September, 2016 to 10th September, 2020. The manner of payment of INR 12,00,00,000/- has been mentioned in sub- Clause (i) to (iv) of Clause 4 of the Consent Terms. In sub clause (i) of Clause 4 it is mentioned that the Defendants had already deposited INR 5,00,00,000/- pursuant to an Order dated 25th June, 2019 passed by this Court in Commercial Appeal No.424 of 2019 with Commercial Appeal No.425 of 2019. This amount is credited to the aforementioned Suits under the Judgment dated 20th October, 2022 passed by this Court in Commercial Appeal No.424 of 2019 with Commercial Appeal No.425 of 2019. In sub-Clause (ii) of Clause 4 of the Consent Terms, the parties have unconditionally agreed and consented to the Plaintiff withdrawing the said sum of INR 5,00,00,000/- alongwith withdrawal of all accrued 3,4-COMIP 26.2019, COMIP 70.2019.doc interest (if any) from the Prothonotary and Senior Master of this court and / or any other office where the said amount is held.

8. Accordingly, the Prothonotary and Senior Master of this Court is directed to release of sum of INR 5,00,00,000/- to the Plaintiff upon Plaintiff applying for the same alongwith accrued interest.

9. The remainder tranche of INR 3,50,00,000/- mentioned in sub-Clause (iii) of Clause 4 of the Consent Terms shall be paid by Defendant No.1 to the Plaintiff on or before 31st July, 2024.

10. The third tranche as per sub-Clause (iv) of Clause 4 of the Consent Terms will depend on the balance outstanding dues (i.e. after adjusting INR 5,00,00,000/- as mentioned in sub-Clause (ii) of Clause 4 of the Consent Terms and INR 3,50,00,000/- as mentioned ins sub- Clause (iii) of Clause 4 of the Consent Terms, from the total amount of INR 12,00,00,000/- and the amount payable shall be paid by the Defendant No.1 to the Plaintiff on or before 30th September, 2024.

11. Both the above Suits are disposed of and decreed in accordance with the Consent Terms.

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12. In view of the disposal of the Suits, the Interim Applications filed in the above Suits do not survive and accordingly are disposed of.

13. Drawn up decree/order is dispensed with unless the parties seek drawn up decree/order, in which case they are entitled to apply.

14. A soft copy of the Consent Terms will be uploaded as the second order in the matter.

15. The Registry is to ensure that the hard copy of the signed Consent Terms is permanently retained on file as part of the record and is not sent for destruction in the ordinary course.

16. Court fees are to be refunded in accordance with the Rules. For the purposes of Section 43 of the Maharashtra Court Fees Act and the proviso to that Section, today's date is the date of making a claim for repayment. The Prothonotary & Senior Master will issue a certificate for a refund of Court Fees computed according to the Rules. He will act on production of an authenticated copy of this order without requiring a separate application.

[R.I. CHAGLA, J.]