



Intellectual Property Appellate Board

Delhi Registry –Cum-Bench

G-62 to 67 & 196 to 204, August Kranti Bhawan, Bhikaji Cama Place,
New Delhi – 110 066

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Original Application No.

OP (SEC - 31D)/1/2020/CR/NZ

- | | | |
|----|---|---------------------|
| 1) | RAJASTHAN PATRIKA PRIVATE LIMITED | APPLICANT/APPELLANT |
| | Versus | |
| 1) | PHONOGRAPHIC PERFORMANCE LIMITED
INDIA | RESPONDENT |
| 2) | SAREGAMA INDIA LIMITED | |
| 3) | SONY MUSIC ENTERTAINMENT INDIA PVT.
LTD. | |
| 4) | ZEE ENTERTAINMENT ENTERPRISES
LIMITED | |
| 5) | SUPER CASSETTES INDUSTRIES PRIVATE
LIMITED | |
| 6) | YESH RAJ FILMS PRIVATE LIMITED | |
| 7) | TIPS INDUSTRIES LIMITED | |
| 8) | EROS INTERNATIONAL FILMS PRIVATE
LIMITED | |
| 9) | TIMES MUSIC/JUNGLEE MUSIC
A DIVISION OF BENNETT COLEMAN &
COMPANY LIMITED | |

Original Application No.

OP (SEC - 31D)/2/2020/CR/NZ

- | | | |
|----|---|---------------------|
| 1) | HT MUSIC AND ENTERTAINMENT CO. LTD. | APPLICANT/APPELLANT |
| | Versus | |
| 1) | PHONOGRAPHIC PERFORMANCE LIMITED
INDIA | RESPONDENT |
| 2) | SAREGAMA INDIA LIMITED | |
| 3) | TIPS INDUSTRIES LTD | |
| 4) | LAHARI MUSIC PRIVATE LIMITED | |
| 5) | ZEE ENTERTAINMENT ENTERPRISES LTD. | |
| 6) | SONY MUSIC ENTERTAINMENT PVT. LTD. | |

CORAM

HON'BLE SHRI JUSTICE MANMOHAN SINGH
HON'BLE SHRI. N. SURYA SENTHIL
HON'BLE S.P. CHOCKALINGAM

CHAIRMAN
TECHNICAL MEMBER (COPYRIGHTS)
TECHNICAL MEMBER (COPYRIGHTS)

ORDER SHEET

01/10/2020

Counsel for the Applicant/Appellant :
Counsel for the Respondent :

1. A fresh application Under Section 31 of the Copyright Act, 1957, read with Rule 31 of the Copyright Rules, 2013. Alongwith the petition an interim application has also been filed. Issue notice for 02.11.2020.
2. Earlier on 18.09.2020 a detailed order has been passed in a batch of matters having the similar issues. The said order is reproduced below:

ORDER SHEET

18/09/2020

1. The above-mentioned seven applications have been filed. The facts and legal issues are common. For the purpose of convenience of passing the order, the details are taken from SR. No. 18/20. The said applicant and other applicants have filed the applications under Section 31D of the Copyright Act, 1957 for fixing the royalty for broadcast of sound recording through radio, by way of a Statutory License.
2. As per Section 31 D of the Copyright Act, 1957, read with Rule 31 of the Copyright Rules, 2013, on receipt of the application, a public notice is to be issued of IPAB's intention to fix royalties for communication to the public of literary or musical works and sound recordings under a Statutory License as per section 31D and suggestions are to be invited for determining the same.
3. Rule 31 clearly obligates the IPAB to fix royalties for communication to the public of literary or musical works and sound recordings under section 31D, as follows:
 - (i) *The Board shall immediately after its constitution either suo motu or on receipt of a request from any interested person, give public notice of its intention to fix royalties for communication to the public of literary or musical works and sound recordings under section 31D and may invite suggestions for determining the same. Such notice shall be given separately for radio and television broadcasting.*
 - (ii) *The notice under sub-rule (1) shall be published by the Board in the Official Gazette and shall be re-published in two daily newspapers having circulation in the major part of the country and shall be posted on the website of the Copyright Office and the Board.*
 - (iii) *Any owner of copyright or any broadcasting organization or any other interested person may within thirty days from the date of publication of public notice under sub-rule (1) shall give suggestions with adequate evidence as to the rate of royalties to be fixed including different rates for different works and different formats.*
 - (iv) *The Board shall, after giving an opportunity being heard to the persons who made relevant suggestions under sub-rule (3), consider such suggestions, as it deems fit.*

- (v) *The Board shall within a period of two months from the last date of receipt of suggestions, determine separate rates of royalty to be paid to the owners of literary or musical work and sound recordings for radio and television broadcasting respectively.*
4. Accordingly, the public notice to be published as above is attached with this order. The registry of the IPAB is directed to inform Department of Publication, Ministry of Urban Development, Civil Lines, Behind Vidhan Sabha Metro Railway Station, New Delhi, Delhi 110054. [Phone: 011 2381 7823] to publish the enclosed notice in the Official Gazette within one week. The one step that has to be taken by the Applicants to get it re-published in the newspaper after having published in the official gazette through the newspapers. Thereafter, the Applicants are directed to get the Gazette Notification of the Public Notice published in Times of India (English) and Dainik Bhaskar (Hindi). The copy of the public notice as published in the official gazette shall also be uploaded on the website of IPAB and the Copyright Office. Though as per the draft Copyright Amendment Rules, 2019, the issuance of Gazette Notification and public notice have been done away with; since the said rules have not come into force the aforementioned directions are issued in compliance of the Copyright Rules, 2013.
 5. The above-mentioned petitions are first taken/listed on 15.09.2020. The learned counsels for the parties have made their submissions for some time with regard to interim prayer sought by the applicants. The matter was adjourned for today i.e., 18.09.2020.
 6. In the meanwhile, on 17.09.2020, seven applications for leave to intervene in the present petitions have been filed on behalf of Indian Performing Rights Society Ltd.
 7. The interim replies on behalf of Sony Music Entertainment Pvt. Ltd. in SR. Nos. 18, 19 & 21 have also been filed on 18.09.2020. Further written notes were received from Lahiri Musicals Respondent no.4 in S.R.no. 21/2020/CR/Del and from Super Cassettes Industries Pvt. Ltd. Respondent no.2 in SR no.25/2020/CR/Del
 8. The matters were discussed for some time with the learned counsels for the parties and various suggestions were made. It was agreed by the parties that in spite of long hearing in the interim applications filed in the seven petitions, why not main petitions/applications after the completion of pleadings and hearing of all the parties, be decided once the procedure prescribed under Rule 31 of the Copyright Rules, 2013 is completed. Rule 31(5) provides that within two months time from the date of receipt of suggestions the IPAB shall determine the rate of royalty to be paid to the owners of the copyrights. Almost all the counsels appeared are agreeable that once the procedure envisaged under Rule 31 is complied with, the hearing may be conducted from the next day itself through video conferencing.
 9. Few applicants and respondents have also filed short submissions as directed by us.
 10. Since all the parties are agreeable to the suggestions in the main petitions, the following directions are issued.
 - a) The respondents are allowed to file the detailed replies along with the documents within the period of four weeks as well as the written submissions and compilation of documents. The applicants are granted two weeks' time thereafter to file the response/rejoinder if any to the replies once the replies are received. The Applicants and Respondents are allowed to file the written submissions and as well as compilation of documents.
 - b) As far as the seven applications filed on behalf of Indian Performing Rights Society Ltd. for leave to intervene in the present matters, leave is granted and to be listed as Respondent. Even otherwise, they have to be heard being aggrieved party.

11. As agreed by all the parties, no adjournment is likely to be granted. All the above seven petitions/applications are listed for final disposal on 02.11.2020 at 2.30 PM. The matter shall be taken up on day-to-day basis, till the arguments are completed in all the matters.

INTERIM PRAYER

12. NOTE OF ARGUMENTS ON BEHALF OF THE APPLICANT

- a) The Copy Right Board (for short 'CB') vide its Order dated 25.08.2010 (*Pg.44/V1 at para.30.27(a)*), decided upon the Rate of 2% of net advertisement earnings of each FM radio station accruing from the radio business only for that radio station to be distributed to the content owners on a *pro rata* basis, as the rate for the compulsory license for broadcast of sound recordings by Radio Broadcasters. For arriving at 'net advertisement earnings', all Government and municipal taxes paid, if any and commission paid towards the procurement of such advertisements to the extent of 15% of such advertisement earnings shall be excluded. The finding by the Copyright Board has not been set aside by any Court or Tribunal and is still subsisting.
- b) The CB order was challenged and courts decided not to interfere:
- Madras High Court - ***Phonographic Performance Limited v. Entertainment Network Pvt. Ltd., (M.P. to. 1, 2 to 2 & 2 to 2 of 2010 in C.M.A. to. 3293, 3382 to 3385 & 3387 of 2010) Order dated 22nd December 2010.*** The appeal is still pending before the Hon'ble Madras High Court for final disposal.
 - Supreme Court - ***Phonographic Performance Limited & Ors. v. Entertainment Network Pvt. Ltd & Ors,***
(SPL (C) 5727-5735 of 2011) Order dated 5th April 2011

Delhi High Court - Phonographic Performance Limited & Ors v. Union of India and Ors. 2015(63) PTC178(Del)
- c) In ***Entertainment Network India Ltd. vs. Super Cassettes industries Ltd. and Ors.*** ((LPA No. 448 of 2011 (Para 9) it was held that, assuming the factual matrix of a case is similar to that of the CB Order and other factors also have some kind of similitude, there cannot be an interdiction with regard to a previous order passed by the Tribunal. Therefore, the Order passed by the Copyright Board can be relied upon as precedent for the present matter.
13. It was submitted by Dr. Abhishek Manu Singhvi, Senior Counsel that if an order for maintenance of *status quo* before the expiry of the CB order on 30th September, 2020 is not passed, the Applicant will have to negotiate the terms of Voluntary License Agreements with all 11 (out of 14) music providers in a span of less than two weeks. Dr. Singhvi has given eight reasons for continuation of the status quo of the order dated 25.08.2010.
14. It is a matter of fact that the Applicant has already received E-mail dated 9th August 2020 from PPL proposing rates of royalty with effect from 1st October, 2020 for broadcast of the repertoire owned by them. The Applicant has also received various communications from Music Labels proposing to enter into Voluntary Licenses and negotiating the rates of royalty. The Applicant has also been intimated by Saregama India Limited. Sony Music Entertainment India Pvt. Ltd. and Tips Industries Limited that they are no longer a part of PPL and have withdrawn their repertoire from PPL for radio broadcast. Thus, in the event Status Quo is not granted, the Applicants shall be forced to enter into Voluntary Agreements with various Music Labels for exploitation of the repertoire.
15. On behalf of the applicants, it is also stated that TIPS has filed a Suit against the Applicants before the Hon'ble High Court of Bombay for infringement of Copyright, despite the fact that the Compulsory License granted pursuant to the CB Order is valid till 30th September, 2020.

16. It is stated on behalf of the applicants that there has been no change in circumstances since the grant of CB order. There been a steep decline in the growth of Radio Industry. The various reasons are explained/given and the listeners do not have to pay any subscription fee.
17. The appellants submit that a combined perusal of the Copyright Act, 1957 read with Section 92 of the Trade Marks Act, 1999, enjoins IPAB with wide powers including that of granting Interim Orders. The IPAB has also the power to pass interim orders vide Section 19A (2) of the Copyright Act, 1957, of course with regard to the dispute concerning Assignment of Copyright. As per Section 31C (5) of the Copyright Act, 1957, the IPAB has also got powers to pass an *ex-parte* Order. As per Section 31D (4) of the Copyright Act, 1957, the IPAB while fixing the rate of royalty as under Section 31D (2) of the Copyright Act, 1957, may require the Broadcasting organization to pay an advance to the owners of right. Further as per Section 33 A (2) of the Copyright Act, 1957, the IPAB has also the power to fix an Interim Tariffs. As per Section 95 of the Trade Marks Act, 1999, the IPAB has also the power to pass Interim Orders in relation to appeals. Therefore, the appellants submit that an interim relief be granted to the applicants by determination of an interim rate of Royalty/license fee to be paid by the applicant for broadcast of sound recordings through radio.
18. The respondents contended that the applicant is paying royalty @ 9-10% to several Music Labels under voluntary licenses. The applicants are playing the music of 14 parties through its radio stations. Ten out of those 14 parties are being paid as per the Copyright Board Order, except the following four.
- **Yash Raj Films Pvt. Ltd. (YRFPL)** – The applicant is paying YRFPL 2% of Net Advertisement Revenue (prorated as per the Copyright Board Order) pursuant to Order in Yash Raj Films Pvt. Ltd. v/s. Music Broadcast Ltd. dated 6th January, 2012 of the Hon'ble High Court of Delhi in CS (OS) 287 of 2012. For all 39 stations of the applicant on which YRFPL's music is played, the overall average comes to 2%.
 - **Super Cassettes Industries Pvt. Ltd. (T-series)** – The applicant had to enter into a Voluntary Agreement dated 25th January, 2015 SCIPL in view of the order obtained dated 25th September, 2010 obtained by it which provided that the Copyright Board order is not applicable to T-Series (Super Cassettes Industries Pvt. Ltd.) & Others in WP (C) 6255 of 2010, paragraph – 12). In F-Y 19-20, the applicant paid T-Series 3.63% of the Net Advertising Revenue.
 - **Zee Entertainment Enterprises Limited** – All the time the Copyright order was passed, ZEE did not exist. The applicant has thus entered the Voluntary Agreement with ZEE dated 12th July, 2019, effective from 5th April, 2019. In the FY 2019-20, the applicant paid ZEE 1.76% of the Net Advertising Revenue.
 - **Bennett Coleman & Co. Ltd.** - The applicant's agreement with Bennett Coleman is for the limited repertoire of speed records which consists of Punjabi Music and is played on few radio stations (regional music). Accordingly, the market in which the music is played is paid is much smaller thus amounting to a higher percentage of the net advertising revenue. In FY 2019-20, the applicant paid Bennett Coleman & Co. Ltd 3.72% of the Net Advertising Revenue.

The said facts are not denied on behalf of the applicants. Mr. Amit Sibal, Sr. Advocate submits that M/s Super Cassettes Industries Pvt. Ltd and M/s Lahiri Music Private Limited are not bound by the order passed by the Copyright Board in the year 2010 as they were not the members of the Society. Therefore, any interim order (if passed) will not apply to the said companies. The similar submissions are made by Hemant Singh, Advocate who is appearing on behalf of Zee Entertainment Enterprises Ltd.

19. On 18.05.2020, the Interim Order was opposed by the respondents only on the grounds that the applicants cannot rely upon the 2010 orders passed by the Copyright Board. IPAB has no power to grant interim orders, no irreparable loss to the applicants, unnecessarily urgency creates by the applicants as these petitions could have been filed earlier point of time, the balance of convenience is in favor of the respondents.
20. On hearing the arguments and deliberations raised by both the sides, we are of the opinion that the status quo should be maintained till the newly constituted board arrives at an equitable royalty rate based on the documents submitted and hearing

their elaborate submissions, after complying with the time bound statutory procedures as envisaged. The Supreme Court in the case of Super Cassettes Industries Pvt. Ltd vs. Music Broadcast Pvt. Ltd. 2012(50) Para 44 also observed that the Copyright Board had the incidental powers to preserve *status quo* though not provided by the statute so that the relief sought is not ultimately rendered otiose.

21. Since the procedure to fix Royalty takes time beyond 30th September 2020, status quo is to be maintained as an interim arrangement so that broadcasting organisations (radio stations), which are under operation for years together, should not be immediately stopped. The Board may fix the royalty, which may be higher or lower than the one fixed by the Copyright Board vide their Order dated 8 August 2010, after fully hearing the rival contentions, however till the final disposal of these applications this should not be in prejudice to rights and liabilities accrued by either parties out of the status quo. Therefore the rate fixed by the Copyright Board will be applicable retrospectively w.e.f. 01.10.2020.
22. No doubt, Rule 31 does not provide the powers to pass interim orders though other amended rules do. It is a matter of fact that the earlier order dated 25.8.2010 has not been disturbed by any court for the last more than 10 years. Between the years 2010 and 2017, Copyright Board was non-functional and thereafter was later merged with IPAB in the year 2017. As per Section 84 of the Trademark Act, no technical members were appointed for Copyright. The Technical members for Copyright were appointed and joined in the end of August 2020. The present petitions were filed during the 1st week of September, 2020, thus, there is not much delay in filing these petitions. The arrangements as per orders of 2010 were continued for ten years. These contentions were recorded on the basis of submissions made by the counsels for parties on 15.9.2020.
23. As already mentioned that after discussions at the time of hearing conducted on 18th September, 2019 where almost all parties who are covered with the orders passed on 25.8.2010 are agreeable to continue the *status quo* in view of the final date of hearing being fixed. The opposition of the interim prayer which was raised on 15.09.2020 is not now opposed. Therefore, without going into the merits of the case, we direct that till the petitions/applications are decided, the *status quo* shall continue between the parties in as per order of Copyright Board dated 25th August 2010, (even against the parties who were members of Respondent PPL, but left after date of order 2010 till date), It is also made clear except the above mentioned parties who are not covered under earlier orders, this status quo order is not applicable.
24. The above mentioned orders are being passed subject to the following conditions:
 - a. That the applicants shall strictly abide by the schedule.
 - b. That the applicants shall strictly comply Rule 2 of Rule 31 of Rules 2013 once, the publication orders are received.
 - c. Parties to complete pleadings and to file written arguments in time.
 - d. The final orders fixing royalty shall be effective from 1.10.2020.
 - e. Parties who are not covered with the orders dated 25.8.2010, the interim orders will have no bearing.
 - f. That no adjustment is likely to be granted when the main matters are taken up for arguments.
 - g. That liberty is granted to the respondents to move an application if there is a default of any kind on behalf of the applicants.
 - h. Parties are at liberty to negotiate on or before 30.9.2020 for fresh agreements. If materialized IPAB be informed by parties by moving an application.
25. With these directions, the interim applications are disposed of.
26. This order shall have no bearing when the matters are decided on merits.
27. Copy of the Order be given 'Dasti' to all the counsels of the parties.

3. The counsel for the respondent accepted the notice and prepared to file the reply by the next date of hearing. As far as public notice is concerned, it has also been published in earlier connected similar matters. Therefore, the same is exempted. Both the parties shall comply other directions as mentioned in the order dated 18.09.2020 passed in the group of matters. Copy of the order be given “*Dasti*” to all the counsels of the parties.

4. List on 02/11/2020

- Sd/-

-Sd/-

-Sd/-

Hon'ble Shri. N. Surya Senthil
Technical Member (Trademarks)

Hon'ble S.P. Chockalingam
Technical Member (Trademarks)

Hon'ble Shri Justice Manmohan Singh
Chairman

Disclaimer: This order is being published for present information and should not be taken as a certified copy issued by the Board



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Tele No: 011-26180613/14 Email: delhiregistryiab@gmail.com Website: <http://www.ipab.gov.in>

Original Application No.

- 1) M/S. GM MODULAR PVT. LTD APPLICANT/APPELLANT
Versus
1) THE REGISTRAR OF COPYRIGHT RESPONDENT

CORAM

HON'BLE SHRI JUSTICE MANMOHAN SINGH
HON'BLE SHRI. N. SURYA SENTHIL
HON'BLE S.P. CHOCKALINGAM

CHAIRMAN
TECHNICAL MEMBER (COPYRIGHTS)
TECHNICAL MEMBER (COPYRIGHTS)

ORDER SHEET

01/10/2020

Counsel for the Applicant/Appellant : None
Counsel for the Respondent : None

Re-notify on 06.10.2020

Hon'ble Shri. N. Surya Senthil
Technical Member (Trademarks)

Hon'ble S.P. Chockalingam
Technical Member (Trademarks)

Hon'ble Shri Justice Manmohan Singh
Chairman