

\$~21 to 42 & SB-1 (2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 17/2021, CM Nos.1332/2021, 8563/2021 & 14132/2021**

ENTERTAINMENT NETWORK INDIA LIMITED Appellant

versus

INDIAN PERFORMING RIGHT SOCIETY
LIMITED & ORS.

..... Respondents

+ **RFA 18/2021, CM Nos.1338/2021 & 1340/2021**

DIGITAL RADIO MUMBAI
BROADCASTING LIMITED

..... Appellant

versus

INDIAN PERFORMING RIGHT SOCIETY
LIMITED & ORS.

..... Respondents

+ **RFA 19/2021, CM Nos.1348/2021 & 1350/2021**

SOUTH ASIA FM LIMITED

..... Appellant

versus

INDIAN PERFORMING RIGHT SOCIETY
LIMITED & ORS.

..... Respondents

+ **RFA 20/2021, CM Nos.1500/2021 & 1502/2021**

DB CORP LTD

..... Appellant

versus

RFA 17/2021 & connected matters

page 1 of 9

- INDIAN PERFORMING RIGHT SOCIETY
LIMITED & ORS. Respondents
- + **RFA 25/2021, CM Nos.1884/2021 & 1886/2021**
- MUSIC BROADCAST LIMITED Appellant
- versus*
- TIPS INDUSTRIES LTD & ORS. Respondents
- + **RFA 26/2021, CM Nos.1905/2021 & 1907/2021**
- RELIANCE BROADCAST NETWORK LIMITED Appellant
- versus*
- INDIAN PERFORMING RIGHT SOCIETY
LIMITED & ANR. Respondents
- + **RFA 29/2021, CM Nos.1943/2021 & 1945/2021**
- NEXT RADIO LIMITED Appellant
- versus*
- INDIAN PERFORMING RIGHT SOCIETY
LIMITED & ORS. Respondents
- + **RFA 30/2021, CM Nos.1988/2021 & 1990/2021**
- TV TODAY NETWORK LTD Appellant
- versus*
- INDIAN PERFORMING RIGHT SOCIETY LIMITED.. Respondent
- + **RFA 32/2021, CM Nos.2090/2021 & 2092/2021**
- RAJASTHAN PATRIKA PRIVATE LIMITED Appellant
- versus*

INDIAN PERFORMING RIGHT SOCIETY
LIMITED & ORS. Respondents
+ **RFA 50/2021 & CM Nos.3229-31/2021**

HT MEDIA LIMITED & ANR. Appellants

versus

INDIAN PERFORMING RIGHT SOCIETY
LIMITED & ORS. Respondents
+ **RFA 238/2021, CM Nos.16758-59/2021 & 21235/2021**

YASH RAJ FILMS PVT LTD Appellant

versus

INDIAN PERFORMING RIGHT SOCIETY
LTD AND ORS Respondents
+ **RFA 239/2021**

YASH RAJ FILMS PVT LTD Appellant

versus

INDIAN PERFORMING RIGHT SOCIETY
LIMITED AND ORS Respondents
+ **RFA 240/2021 & CM Nos.16771-72/2021**

YASH RAJ FILMS PVT LTD Appellant

versus

INDIAN PERFORMING RIGHT SOCIETY
LTD AND ORS Respondents
+ **RFA 241/2021 & CM Nos.16719-20/2021**

YASH RAJ FILMS PVT LTD Appellant
RFA 17/2021 & connected matters *page 3 of 9*

versus

INDIAN PERFORMING RIGHT SOCIETY
LTD AND ORS Respondents
+ **RFA 242/2021 & CM Nos.16709-10/2021**

YASH RAJ FILMS PVT LTD Appellant

versus

INDIAN PERFORMING RIGHT SOCIETY
LIMITED AND ORS Respondents
+ **RFA 243/2021 & CM Nos.16765-66/2021**

YASH RAJ FILMS PVT LTD Appellant

versus

INDIAN PERFORMING RIGHT SOCIETY
LTD AND ORS Respondents
+ **RFA 244/2021 & CM Nos.16776-77/2021**

YASH RAJ FILMS PVT LTD Appellant

versus

INDIAN PERFORMING RIGHT SOCIETY
LIMITED AND ORS Respondents
+ **RFA 245/2021 & CM Nos.16717-18/2021**

YASH RAJ FILMS PVT LTD Appellant

versus

INDIAN PERFORMING RIGHT SOCIETY
LTD AND ORS Respondents
+ **RFA 246/2021, CM Nos.16721-22/2021**

YASH RAJ FILMS PVT LTD Appellant
RFA 17/2021 & connected matters *page 4 of 9*

versus

INDIAN PERFORMING RIGHT SOCIETY
LTD AND ORS Respondents
+ **RFA 247/2021 & CM Nos.16763-64/2021**

YASH RAJ FILMS PVT LTD Appellant

versus

INDIAN PERFORMING RIGHT SOCIETY
LIMITED AND ORS Respondents
+ **RFA(OS) 5/2021, CM Nos.1359/2021 & 13332-33/2021**

THE INDIAN PERFORMING RIGHT SOCIETY LTD Appellant

versus

ENTERTAINMENT NETWORK (INDIA) LTD Respondent
+ **RFA(OS) 6/2021, CM Nos.1362/2021 & 11688/2021**

THE INDIAN PERFORMING RIGHT SOCIETY LTD Appellant

versus

CRI EVENTS PRIVATE LIMITED & ORS. Respondents
+ **CA (COMM.IPD-CR) 1/2021, IA Nos.11708/2021, 11711-13/2021**

TIPS INDUSTRIES LTD.Appellant

versus

ENTERTAINMENT NETWORK
(INDIA) LTD. & ORS. Respondents

Present : Mr Sagar Chandra, Ms Sakshi Pandey and Ms Urvashi Garg, Advs. for appellant in RFA No.25/2021 and respondent no.2 in RFA No.238/2021.

Mr Sai Krishna Rajagopal, Mr Munish Mehra, Ms Deepshikha Sarkar, Ms Pallavi Sondhi and Ms Namrata Dubey, Advs. for Indian Performing Right Society Ltd.

Mr Abishek Malhotra, Ms Shilpa Gamnani and Ms Anjali Tiwari, Advs. for Music Broadcast Ltd.

Mr Harsh Kaushik, Mr S.S. Ahluwalia, Mr Abhay Chattopadhyay, Ms Anushree, Ms Astha Pandey and Mr Mohit Bangwal, Advs. for Tips Industries Ltd.

Mr Akhil Sibal, Sr. Adv. with Mr Ankur Sangal, Ms Sucheta Roy and Ms Trisha Nag, Advs. for Saregama India Ltd.

Ms Gayatry Roy, Mr Akshay Agarwal and Ms Ankita Tiwari, Advs. for Yash Raj Films Pvt. Ltd.

Ms Mamta Jha and Mr Sambhav Jain, Advs. for Zee Entertainment Enterprises Ltd.

Mr Neel Mason, Mr Uday S. Chopra, Mr Vihan Dang, Mr Shivang Sharma and Ms Devangini Rai, Advs. for Eros and Super Cassettes Industries Pvt. Ltd.

Mr Neeraj K. Gupta, Mr Lilian Das, Mr Ranjeet Kumar Singh and Mr Josian Manoharan, Advs. for Phonographic Performance Ltd. India

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% **20.12.2021**

[Physical Hearing/Hybrid Hearing (as per request)]

1. Learned counsels for the parties say a broad consensus has been arrived at with regard to the issues that would arise for consideration in the above-captioned matters. The issues placed before us read as follows:

“1. Whether the Intellectual Property Appellate Board (‘IPAB’) exceeded its jurisdiction or in any event erred by (a) returning the legal findings with respect to the rights of authors and music

composers; and (b) proceeding to fix a royalty rate for underlying works viz. literary and musical works in a sound recording and issuing directions consequent thereto in a proceeding under Section 31D of the Copyright Act, 1957 pertaining to radio broadcast of sound recordings only?

2. *Whether the Hon'ble Intellectual Property Appellate Board had jurisdiction under S. 31D of the Copyright Act, 1957 to grant a composite license while fixing separate royalty rates for literary and musical works and the rates for sound recordings, considering that the Broadcasters sought fixation of royalty rates for sound recordings only?*

3. *Whether the 2012 Amendment to the Copyright Act, 1957 alters the position of law as it existed prior to 2012 where a separate authorization or license was not necessary from the author of the musical and/or literary work embodied in a Sound Recording when such Sound Recording was broadcast through radio or whether the 2012 Amendment is only clarificatory in nature?*

4. *Whether judgment of the Ld. Single Judge in CS(OS) 666/2006 and CS(OS) 1996/2009 dated January 4, 2021, is liable to be set aside?*

5. *Whether the term 'right to receive royalties to be shared on an equal basis with the assignee' in the 3rd and/or 4th proviso to Section 18 (1) read with Sections 19(9) and 19(10) of the Copyright Act, 1957, can be interpreted to cast an additional liability on the Appellant/broadcasters to pay separate royalty for underlying literary and musical works embodied in the sound recording when such Sound Recording is broadcast through the Radio.*

6. *Whether the Underlying literary and musical works embodied in a Sound Recording are utilized independent of the Sound Recording when such Sound Recording is broadcast through the Radio by the Appellant?*

7. *Whether authors of literary and musical works are entitled to receive/claim royalty to be shared on an equal basis with the assignee (owner of copyright) in respect of literary and musical works authored by them when a sound recording incorporating the said literary and musical works are broadcast by way of radio under the Copyright Act, 1957?*

8. *Whether a Statutory License rate, once fixed under Section 31D of the Copyright Act, 1957 read with the Copyright Rules, 2013 can be restricted only to such works that are published up to the date of such fixation/determination or issue of public notice therefore, or whether once the rate is so fixed, the same will also apply to works that are published after such fixation, but after giving a fresh notice for such newly published works?*

9. *Whether the IPAB has erred in adopting the per needle hour model as the basis for the rates determined, as opposed to the net advertising revenue model adopted by the Copyright Board in 2010?*

10. *Whether Rule 29(4) relied upon by IPAB in adopting per needle hour model as the basis for the rates determined is ultra vires the Copyright Act, 1957?*

11. *Whether the Ld. IPAB committed an error apparent on the face of the record by mistakenly holding that it is fixing a rate that is equivalent to 9% of the NAR earned by radio broadcasters, when in fact, the rates fixed by it in paragraph 210 of the Impugned Judgment, i.e., NPH rate as ₹ 1050 (₹ 750 for sound recordings and ₹ 300 for underlying works), for the Prime Slot in the A+ Cities, does not amount to 9% of the NAR of the radio broadcasters?*

12. *Whether the IPAB erred in determining the quantum of license fee for exercise of statutory license?*

13. *Whether the composite rate determined by the IPAB vide order dated 31.12.2020 must be set aside and the rates of royalty for sound recordings be determined afresh, if the rates for the broadcast of underlying literary and musical works that are embodied within the sound recordings are set aside or quashed?”*

2. On the last date of hearing, we had directed the parties to file a common “convenience” compilation of documents. The said compilation has become rather “inconvenient”, as we are told that a file consisting of around 24,000 pages has been lodged with the Registry. 2.1. The Registry will return the above-mentioned compilation of documents to the Counsel for a pruning exercise.

3. Learned counsels for the parties are requested to re-convene and file a fresh “convenience” file, before the next date of hearing.

4. List the above-captioned matters on 12.05.2022, at the end of the Board, in the category of ‘*After Notice Miscellaneous Matters*’.

RAJIV SHAKDHER, J

TALWANT SINGH, J

DECEMBER 20, 2021

msh

[Click here to check corrigendum, if any](#)