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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 90/2021, I.A. 18985/2022 & I.A. 19686/2022**

SUPER CASSETTES INDUSTRIES PRIVATE LIMITED

..... Plaintiff

Through: Mr. Neel Mason and Mr. Ujjawal
Bhargava, Advs.

versus

MUSIC BROADCAST LIMITED

..... Defendant

Through: Mr. Jayant Mehta, Sr. Adv. with Mr.
Sagar Chandra, Ms. Urvashi Garg,
Ms. Kriti Ramudamu and Mr. Udit
Dedhiya, Advs.

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+ **CS(COMM) 320/2021, I.A. 4641/2022 & I.A. 4708/2022**

SUPER CASSETTES INDUSTRIES PRIVATE LIMITED

..... Plaintiff

Through: Mr. Neel Mason and Mr. Ujjawal
Bhargava, Advs.

versus

RAJASTHAN PATRIKA PRIVATE LIMITED

..... Defendant

Through: Mr. Abhishek Malhotra and Ms.
Subhalaxmi Sen, Advs.

11

+ **CS(COMM) 132/2021, I.A. 6820/2021, I.A. 9642/2021, I.A.
24979/2023 & I.A. 25017/2023**

SUPER CASSETTES INDUSTRIES PRIVATE LIMITED

..... Plaintiff

Through: Mr. Neel Mason and Mr. Ujjawal
Bhargava, Advs.

versus

DB CORP. LTD. (RADIO DIVISION)

..... Defendant



Through: Mr. Abhishek Malhotra and Ms.
Subhalaxmi Sen, Advs.

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+ CS(COMM) 321/2021, I.A. 15246/2023 & I.A. 15247/2023

SUPER CASSETTES INDUSTRIES PRIVATE LIMITED

..... Plaintiff

Through: Mr. Neel Mason and Mr. Ujjawal
Bhargava, Advs.

versus

T.V. TODAY NETWORK LIMITED

..... Defendant

Through: Mr. Abhishek Malhotra and Ms.
Subhalaxmi Sen, Advs.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

13.03.2024

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I.A. 18985/2022 in CS(COMM) 90/2021, I.A. 4708/2022 in CS(COMM) 320/2021, I.A. 25017/2023 in CS(COMM) 132/2021 & I.A. 15246/2023 in CS(COMM) 321/2021

1. These applications have been filed under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 ('**CPC**') by the plaintiff alleging disobedience and violation of the interim injunction granted by this Court on 09th November, 2021 ('**injunction order**'). Present suit was filed seeking decree of permanent injunction alleging sound recordings forming part of plaintiff's repertoire and for which plaintiff owns copyright ('**plaintiff's works**') were being broadcasted by defendants/FM channels without a valid statutory licence under Section 31D of Copyright Act, 1957 ('**the Act**') read with Rule 29 of the Copyright Rules, 2013 ('**the Rules**').
2. The issue essentially revolves around broadcast of sound recordings on



FM Radio, in which copyright is owned by plaintiff. There are *inter alia* three regimes for licensing of copyrighted works available under the Act:

- a. Voluntary licence – under Section 30 of the Act;
 - b. Compulsory licence – under Section 31(1)(b) of the Act; and
 - c. Statutory licence – under Section 31D of the Act.
3. Out of the aforesaid three regimes, issue in these matters relates to statutory licence being availed by defendants. For availing a statutory licence, provisions of Section 31D of the Act and Rule 29 of the Rules must be necessarily complied with. Parties are *ad idem* on these aspects.
4. For ease of reference, the said provisions are extracted as under:

31D. Statutory licence for broadcasting of literary and musical works and sound recording.--*(1) Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section.*

(2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the ²[Commercial Court].

(3) The rates of royalties for radio broadcasting shall be different from television broadcasting and the ²[Commercial Court] shall fix separate rates for radio broadcasting and television broadcasting.

(4) In fixing the manner and the rate of royalty under sub-section (2), the ²[Commercial Court] may require the broadcasting organisation to pay an advance to the owners of rights.

(5) The names of the authors of the principal performers of the work shall, except in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast.



(6) No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.

(7) The broadcasting organisation shall--

(a) maintain such records and books of account, and render to the owners of rights such reports and accounts; and

(b) allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast, in such manner as may be prescribed.

(8) Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 2012.

29. Notice for Communication to the Public of literary and musical works and sound recordings.—*(1) Any broadcasting organization desirous of communicating to the public by way of broadcast or by way of performance of a published literary or musical work and sound recording under sub-section (1) of section 31D shall give a notice of its intention to the owner of the copyright and to the Registrar of Copyrights before a period of five days in advance of such communication to the public and shall pay to the owner of the copyright, in the literary or musical work or sound recording or any combination thereof, the amount of royalties due at the rate fixed by the Board in this regard:*

Provided that in case of communication to the public by way of broadcast or by way of performance of a newly published literary or musical work or sound recording or any combination thereof, which has been published within the said period of five days of such communication and which do not form part of the scheduled programmes, the notice shall, be given before such communication to the public:



Provided further that in case of communication to the public by way of broadcast or by way of performance of any published literary or musical work and sound recording or any combination thereof, in unforeseen circumstances, the notice shall, be given within twenty-four hours of such communication to the public:

Provided also that any broadcasting organization shall give a notice under this Chapter only after the royalty to be paid is determined by the Board under rule 31 and published in the Official Gazette and in the website of the Copyright Office and the Board.

(2) Every such notice shall be in respect of works belonging to one owner only.

(3) Separate notices shall be given for communication to the public by way of radio broadcast or television broadcast or by way of performance of a literary or musical work and sound recording which has already been published.

(4) The notice under sub-rule (1) shall contain the following particulars, namely:—

(a) Name of the channel;

(b) Territorial coverage where communication to public by way of radio broadcast, television broadcast or performance under sub-rule (3) is to be made;

(c) Details necessary to identify the work which is proposed to be communicated to the public by way of radio broadcast, television broadcast or performance under sub-rule (3);

(d) Year of publication of such work, if any;

(e) Name, address and nationality of the owner of the copyright in such works;



(f) Names of authors and principal performers of such works;

(g) alterations, if any, which are proposed to be made for the communication to the public by way of radio broadcast, television broadcast or performance of the works, reasons thereof, and the evidence of consent of the owners of rights, if required, for making such alteration;

(h) Mode of the proposed communication to the public, i.e. radio, television or performance;

(i) Name, if any, of the programme in which the works are to be included;

(j) Details of time slots, duration and period of the programme in which the works are to be included;

(k) Details of the payment of royalties at the rates fixed by the Board; and

(l) Address of the place where the records and books of account are to be maintained for inspection by the owner of rights.

(emphasis supplied)

5. In this context, injunction order was passed by the Predecessor Bench, in the following terms, noting that defendants had not complied with Rules 29(4)(i), (j), and (k) of the Rules:

“34. The defendant, its directors, employees, etc. are accordingly restrained from broadcasting/communicating to the public and/or otherwise exploiting the plaintiffs copyright works through the defendant’s FM Radio channels/stations without complying with Rule 29, especially, with Rule 29(4)(i)(j) and (k) of the Copyright Rules, 2013.”



6. Defendants have since filed appeals, namely, *FAO(OS)(COMM) 142/202*, *FAO(OS)(COMM) 141/2021*, *FAO(OS)(COMM) 158/2021*, and *155/2021*. These appeals are pending before Division Bench of this Court and are listed next on 16th July, 2024.

7. Issue, in the meantime, arises on their applications under Order XXXIX Rule 2A, CPC of alleged non-compliance of Rule 29(4) of the Rules by defendants. It is an admitted position that the notices which were being issued under Rule 29(4) by defendants earlier in 2020 have now been replaced with a revised notice which is effected from November, 2021.

8. At this stage, therefore, the remit of this Court would be to assess whether these notices are complying with Rule 29(4) or not, and in particular Rules 29(4)(i), (j), and (k) of the Rules.

9. A bare perusal of Section 31D and Rule 29 would suggest that a broadcasting organisation which proposes to broadcast or publish sound recording shall give a prior notice to owner of the copyrighted work, stating its intention and providing details of duration of the programmes and territory in which it is to be broadcasted. On the basis of this prior notice, royalty is to be paid in the manner and rate which is decided by the Commercial Court.

10. It is an admitted position that the rates which are currently valid were determined by the Intellectual Property Appellate Board (**‘IPAB’**) *vide* order dated 31st December, 2020 and stands extended by an order of this Court dated 27th September, 2021.

11. Payment of royalty is, therefore, pegged to the prior notice of intent to broadcast along with the details as prescribed to be given by the broadcaster.

12. It is also an admitted position that as per the order of the IPAB of 2020, the mandate of the broadcaster is to be paid 25% of the royalty estimated *vide*



each prior notice in advance. The balance 75% is to be paid at the end of the calendar month.

13. For the purposes of assessing compliance, a perusal of the revised notice provided by the defendants is necessary. For ease of reference, the extract of the notice served by the defendants in CS(COMM) 90/2021 dated 24th August, 2022 is as under:

By Email

August 24, 2022

To,
Super Cassettes Industries Private Limited
E-2/16, White House, Ansari Road,
Darya Ganj, New Delhi-110002

Re: Issuance of Notice under Rule 29 of the Copyright Rules, 2013 for invoking the Statutory License granted under Section 31D of the Copyright Act, 1957 for the month of September 2022

Dear Sirs,

This is in relation to the captioned matter.

Please note that we are desirous of broadcasting the published sound recordings which form part of your repertoire under the Statutory License granted to all broadcasting organizations, including radio broadcasting organization, under Section 31D of the Copyright Act.

Therefore, in compliance with Section 31D read with Rule 29, the present notice is being sent to you as well as to the Registrar of Copyrights to put you to notice of our intention to broadcast the published sound recordings which form part of your repertoire, as per the details given below, for the month of September 2022.



Kindly note that the payment for the broadcast of sound recordings is also being made as per the Order dated 31st December, 2020 passed by the Hon'ble Intellectual Property Appellate Board ("IPAB Order") in OP (SEC-31D)/3/2020/CR/NZ, fixing the rate of royalty, *inter alia*, for broadcast of sound recordings through FM radio, under Section 31D of the Copyright Act, 1957. Further, please note that *vide* Order dated 27th September 2021 passed by the Hon'ble Delhi High Court in C.O. (COMM. IPD-CR) 3-14/2021, radio broadcasting organizations can continue to make payment of royalty for broadcast of sound recordings with effect from 1st October 2021, as per the royalty rates determined by IPAB Order, pending final determination of the revised statutory royalty rates by the Commercial Courts of the Hon'ble Delhi High Court.

The advance royalty amount of Rs 2,10,000/- (Rupees Two Lakh Ten Thousand Only), which is 25% of the estimated royalty, is paid by Music Broadcast Limited (MBL) through RTGS /NEFT method from our Bank number: 08352120000029 on 23rd August, 2022 for the month of September 2022. The payment advice is also attached herein for your reference.

Without prejudice to the rights and contentions of Music Broadcast Limited to contend that compliance with Rule 29(4) of the Copyright Rules, 2013 is 'directory' and not mandatory, please find below, in compliance of the provisions of Rule 29(4) of the Copyright Rules, 2013, the requisite information pertaining to the intended broadcast of the sound recordings which form part of your repertoire through FM radio:

Section 31D(2): Intended Duration of Broadcast through FM Radio	September 2022
29(4)(a): Name of the Channel	Radio City
29(4)(b) and Section 31D(2): Territorial coverage where communication to public by way of radio broadcast is to be made	The broadcast shall be done through the 39 radio stations operated by MBL at Bangalore, Delhi, Mumbai, Hyderabad, Lucknow, Chennai, Jaipur, Ahmedabad, Vadodara, Surat, Pune, Nagpur, Coimbatore, Vizag, Ahmednagar, Jalgaon, Sangli, Solapur, Nanded, Akola, Patna, Kanpur, Madurai, Nasik, Kolhapur, Udaipur, Kota, Bikaner, Ajmer, Jamshedpur, Patiala, Agra, Bareilly, Gorakhpur, Hissar, Jalandhar, Karnal, Ranchi, Varanasi.
29(4)(c): Details necessary to identify the work which is proposed to be communicated to the public by way of radio broadcast	We intend to broadcast all published sound recordings which form part of your repertoire. The details necessary to identify the sound recordings proposed to be communicated to the public by MBL by way of radio broadcast are enclosed in the attached Annexure 1, with the relevant details in Columns 1 and 2.
29(4)(d): Year of publication of sound recording	The year of publication of the sound recordings proposed to be communicated to the public by MBL by way of radio broadcast are enclosed in the attached Annexure 1, with the relevant detail in Column 6.



29(4)(e): Name, Address, Nationality of the owner of copyright of such sound recording	Name: Super Cassettes Industries Private Limited Address: E-2/16, White House, Ansari Road, Darya Ganj, New Delhi-110002 Nationality: Indian
29(4)(f): Name of authors and principal performers of such sound recordings	The names of the authors and principal performers of the sound recordings proposed to be communicated to the public by MBL by way of radio broadcast are enclosed in the attached Annexure 1 , with the relevant details in Columns 3, 4, and 5 .
29(4)(g): Alterations, if any, made to the sound recording, reasons thereof, and the evidence of consent of the owners of rights, if required, for making such alteration	No fresh alterations will be made to the sound recordings other than what is technically necessary for broadcasting, in accordance with Section 31D (6) of the Copyright Act, 1957.
29(4)(h): Mode of communication to the public	Radio broadcast through FM Radio.
29(4)(i): Name, if any, of the programme in which the sound recording is to be included	The name, if any, of the programmes, in which the sound recordings proposed to be communicated to the public by MBL by way of radio broadcast, are to be included, are enclosed in the attached Annexure 2 , with the relevant detail in Column 1 .
29(4)(j): Details of time slots, duration and period of the programme in which the works are included	The details of time slots, duration and period of the programme in which the sound recordings proposed to be communicated to the public by MBL by way of radio broadcast, are included, are enclosed in the attached Annexure 2 , with the relevant details of time slots, duration and period of the programmes, in Columns 2, 3, and 4 .
29(4)(k), 31D(2) and 31D(4): Details of the payment of royalties at the rates fixed by the Board	The payment of royalties is based on the Order dated 31 st December, 2020 passed by the Hon'ble Intellectual Property Appellate Board ("IPAB Order") in OP (SEC-31D)/3/2020/CR/NZ. Please note that <i>vide</i> Order dated 27 th September 2021 passed by the Hon'ble Delhi High Court in C.O. (COMM. IPD-CR) 3-14/2021, radio broadcasting organizations can continue to make payment of royalty for broadcast of sound recordings with effect from 1 st October 2021, as per the royalty rates determined by IPAB Order, pending final determination of the revised statutory royalty rates by the Commercial Courts of the Hon'ble Delhi High Court.



	The details of the royalty payment as estimated by Music Broadcast Limited on the basis of the earlier months broadcast, for the month of September 2022, are as per the enclosed document at Annexure 3 . Please note that the estimation of the total intended royalty amount is approx. Rs. 8,07,862/-, 25% whereof is Rs. 2,10,000/-. Therefore, as per Para 215(e) of the IPAB Order, we are depositing 25% advance royalty being Rs. 2,10,000/- , under the compliance of Rule 29, subject to adjustment of the amount every calendar month.
29(4)(l): Address of the place where the records and books of account are to be maintained for inspection by the owner of rights:	Music Broadcast Limited 5 th Floor, RNA Corporate Park, Off Western Express Highway, Kalanagar, Government Colony, Bandra East, Mumbai, Maharashtra - 400051.

This notice is in respect of sound recordings belonging to Super Cassettes Industries Pvt. Ltd. only as the owner of the said sound recordings, in accordance with Rule 29(2) of the Copyright Rules, 2013.

This is for your information, perusal and records and you are requested to take notice and acknowledge the present notice.

Thanking you,

For Music Broadcast Limited

Authorized Signatory

CC:

The Registrar of Copyrights
Boudhik Sampada Bhawan
Plot No. 32, Sector 14, Dwarka
New Delhi - 110078

14. As is evident from the above notice in the tabulation provided, column on the left spells out the particular rule/provision, compliance of which is necessitated for the purposes of the notice; and column on the right provides the relevant and necessary details. In this notice, following aspects are suitably covered:

- (i) **Details of territories** in which the broadcast is to be made as per Rule 29(4)(b);



- (ii) **Identification of the works** which are proposed to be broadcasted as per Rule 29(4)(c). In this regard, an issue is raised by counsel for plaintiff, in that, details of the specific song which is being played have to be provided. However, it is also admitted that the rates of royalty, as prescribed by the IPAB order of 2020, are not pegged on the basis of each song but on the duration/time period and territory of broadcast with respect to any part of repertoire of the copyright owner. In other words, royalty is ‘*song agnostic*’ and details of the works are not necessitated. In any event, defendants have stated in respect of this category that they intend to broadcast **all** sound recordings which form part of the plaintiff’s repertoire. Considering this over inclusion by defendants themselves, plaintiff is fully protected and specifications in any event may not be necessary. Furthermore, in Annexure-1 of the above notice, full repertoire is listed containing columns providing the following details: *Song name; Album name; Principal performer/artist [in compliance of Rule 29(4)(f)]; Author/composer [in compliance of Rule 29(4)(f)]; Author/lyricist [in compliance of Rule 29(4)(f)]; Year of publication [in compliance of Rule 29(4)(d)]; and Music label*. It is noted that the repertoire would change from month to month.
- (iii) **Year of publication**, as per Rule 29(4)(d) is provided in Annexure-1 (noted above);
- (iv) **Name, address, and nationality of the copyright owner** (in this case, the plaintiff), as per Rule 29(4)(e), has been provided in the aforesaid notice.



- (v) **Names of authors and principal performer** as per Rule 29(4)(f) are part of Annexure-1 (noted above).
- (vi) **Alterations, if any, proposed to be made** as per Rule 29(4)(g) have been clarified, in that, no fresh alterations are to be made other than what is technically necessary.
- (vii) **Mode of communication to the public** as per Rule 29(4)(h) is through the radio broadcast on the FM Radio Channel.
- (viii) **Name of the programme** in which the sound recording is to be included, as per Rule 29(4)(i), has been provided as part of Annexure-2. Perusal of Annexure-2 would show that the names of the programmes have been detailed out. For ease of reference, first entry in Annexure-2 is extracted as under:

MUMBAI

	A	B	C	D	E
1					
2		Monday to Friday to Saturday			
3		1	2	3	4
4		Programme Name	Time Period	Duration	Time Slot
		Smaran with Rj Avadhesh	5 am to 7 am	2 hour	Lean Time (5 am to 6 am) And Other Time (6 am to 7 am)
5				Monday to Saturday	
6					

Considering that Rule 29(4)(i) requires just the name of the programme, details as provided in Annexure-2 would amount to full compliance of the said Rule.

- (ix) **Details of time slots, duration, and period of the programme**, as per Rule 29(4)(j), are also provided in Annexure-2, as per the defendants. Perusal of Annexure-2 would show that the time slot of the programme is provided; for example, in the above extract, for the programme '**Smaran**', the time slot of 5 am to 7 am is provided



along with the details of *Lean Time 5 am to 6 am* and *Other Time 6 am to 7 am* (as per the categorisation provided by the IPAB). However, the chart does not specify the ***duration and period of the programme in which the works are to be included***. To further clarify, while the time slot on the ***programme*** has been provided from 5 am to 7 am, the exact duration for which the plaintiff's repertoire is being played ***within that time slot***, i.e., the duration and the period has not been provided in the chart. Counsel for the defendants has, however, drawn attention to another chart in which the specific durations for broadcast have been given, appended as Annexure-3 to the above notice. A perusal of Annexure-3 would, however, show that the durations are pegged ***as per territory*** and not as per programme. For ease of reference, first few columns of Annexure-3 are extracted as under:

4			Lean Time		
			Intended Duration in Hrs and Mins	Royalty Rates as per IPAB Order in Rs.	Estimated Royalty Amount in Rs.
5	Location	Station Category			
6	Agra	B	7:18:13	113	825
7	Ahmedabad	A	15:39:41	150	2349
8	Ahmednagar	C	9:55:49	75	745
9	AJMER	C	7:08:49	75	536
10	Akola	C	9:55:49	75	745
11	Bangalore	A	0:38:15	150	95
12	Bareilly	C	7:24:47	75	556
13	BARODA	B	4:14:47	113	480
14	BIKANER	C	9:44:48	75	731
15	DELHI	A+	56:25:43	188	10608
16	Gorakhpur	C	7:30:39	75	563
17	Hissar	D	6:19:43	38	240
18	HYDERABAD	A	0:43:37	150	109
19	JAIPUR	A	5:59:20	150	898
20	Jalandhar	C	5:53:01	75	441

(Rest of the columns relate to details of Other Time, Prime Time, total intended duration, and total estimated royalty). It, therefore,



transpires that even though some details are provided in compliance of Rule 29(4)(j), it may not be in the manner which the plaintiff desires or the Rule provides for. It is, therefore, agreed by defendants that they shall henceforth provide the details of the duration and period in which plaintiff's works are being included as part of the programme [of which the time slot is already indicated along with the details provided as per Rule 29(4)(i)]. This would provide immediate clarity to the plaintiff who desires to understand as to what duration are their repertoire songs being played within each of the programme/time slots. It would also facilitate compliance of Rule 29(4)(j) which seems to have been the nub of a long-standing dispute.

- (x) **Details of the payment of royalty** as per Rule 29(4)(k) are provided for by the defendants and there is no quarrel between the parties on this issue.
- (xi) **Address of the place** where the records and books of accounts are maintained for inspection are also provided as per Rule 29(4)(l). In this regard, however, certain observations are necessary. Considering that the framework of Section 31D and Rule 29(4) is premised on a prior notice being given where the intent to play a particular sound recording in the future is to be notified - either more than 5 days in advance [*as per Rule 29(1)*], or immediately before a new publication [*as per first proviso to Rule 29(1)*], or within 24 hours of broadcast [*in case of an unforeseen circumstance as per second proviso to Rule 29(1)*], there is no visibility to a copyright owner as to what has ultimately been broadcasted, in order to tally



and reconcile with the prior notification. In this regard, counsel for defendants state that they provide full log-sheets of the broadcast to the plaintiff at the end of each calendar month, receipt of which is admitted by counsel for plaintiff. Therefore, the plaintiff has complete visibility of what has actually been played and is in a position to tally the same, and if there is any discrepancy in the reconciliation, they are obviously at liberty to notify the defendants in this regard. It must be emphasized that a valuable right of inspection is provided to plaintiff under Section 31D(7) read with Rule 30. Needless to state that plaintiff will always be at liberty to exercise this valuable right of inspection in a reasonable time frame with due written notification to defendants, and the defendants would have to comply with the noted provisions.

15. In this conspectus as narrated above, the immediate concern of the parties may be ironed out, subject of course to various other rights and contentions of the parties, which would be adjudicated as part of the suits.

16. Accordingly, the applications are disposed of in terms of directions/observations as noted above.

CS(COMM) 90/2021, CS(COMM) 320/2021, CS(COMM) 132/2021 & CS(COMM) 321/2021

1. List on 13th August, 2024.
2. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 13, 2024/MK/sc