

HIGH COURT OF CALCUTTA**Bench: The Hon'ble Justice Ravi Krishan Kapur****Date of Decision: 17th May 2024**

Ordinary Original Civil Jurisdiction
(Commercial Division) ORIGINAL SIDE
CS/210/2018
(CS- COM/ 140/2024)
IA NO: GA/1/2018 GA/2/2019 GA/4/2021
CS/23/2018
(CS-COM/93/2024)
(CS/58/2024)
IA NO: GA/1/2018 GA/3/2019
CS/155/2018
(CS-COM/131/2024)
IA NO. GA/1/2018
IA NO. GA/2/2018
IA NO. GA/3/2018
IA NO. GA/5/2022

VODAFONE IDEA LIMITED ... PLAINTIFF**VERSUS****SAREGAMA INDIA LIMITED & ANR. ... DEFENDANT(S)****SAREGAMA INDIA LTD ... PLAINTIFF****VERSUS****VODAFONE IDEA LIMITED ... DEFENDANT(S)****THE INDIAN PERFORMING RIGHT SOCIETY LTD ... PLAINTIFF****VERSUS****VODAFONE IDEA LTD. ... DEFENDANT(S)****Legislation:**

Sections 13, 14, 17, 18, 19, 30, 33, 34, 34A of the Copyright Act, 1957
Order XX, Rule 5 of the Supreme Court Rules, 2013

Subject: Dispute regarding the requirement for Vodafone Idea Ltd. To obtain a separate license from The Indian Performing Right Society Ltd. (IPRS) and pay royalties for commercially exploiting the musical and literary works of IPRS members as part of the sound recordings.

Headnotes:

Copyright Law – Licensing and Royalty Payments – Commercial Exploitation of Sound Recordings – Whether Vodafone Idea Limited is required to obtain a license from IPRS and pay royalties before commercially exploiting musical and literary works incorporated into sound recordings. Held, Vodafone is statutorily obliged to procure licenses from IPRS and pay royalties, even if it has entered into agreements with Saregama India Limited for the exploitation of sound recordings. [Paras 1-32]

Rights of Authors – Amendments to the Copyright Act – Interpretation – The amendments to the Copyright Act in 2012 grant specific rights to authors of literary and musical works, including mandatory royalty sharing for public communication of such works. The statutory changes prohibit authors from renouncing their rights to royalties, and commercial exploiters of such works are required to comply with these provisions. [Paras 20-24]

Role of Saregama – Assignment of Rights – Legal Limitation – Saregama, having assigned its rights in musical and literary works to IPRS, cannot grant Vodafone rights to exploit these works. Any assignment by Saregama to Vodafone is void under the amended Copyright Act. [Paras 25-30]

Decision: Vodafone is required to obtain licenses from IPRS and pay royalties for the exploitation of musical and literary works in sound recordings. The interim orders restraining IPRS from claiming royalties from Vodafone are vacated, and Vodafone is directed to comply with the statutory requirements. [Paras 31-32]

Referred Cases:

- IPRS vs. Rajasthan Patrika Pvt. Ltd. 2023 SCC OnLine Bom 944
- IPRS vs Aditya Pandey, 2012 SCC Online Del 2645
- Principal Chief Conservator of Forests & Anr. Vs. J.K. Johnson & Ors. (2011) 10 SCC 794
- Central Bank of India & Ors. Vs. Workmen etc. AIR 1960 SC 12

Representing Advocates:

For Vodafone Idea Ltd.: Mr. S.N. Mookherjee, Senior Advocate; Mr. Arunabha Deb, Advocate; Mr. Soumabho Ghose, Advocate; Mr. Deepan Kumar Sarkar, Advocate; Ms. Ashika Daga, Advocate; Mr. Samriddha Sen, Advocate; Mr. Ashish Bhan, Advocate; Ms. Kirti Balasubramanian, Advocate; Mr. Aayush Mitruka, Advocate; Ms. Lisa Mishra, Advocate

For Saregama India Ltd.: Mr. Debnath Ghosh, Advocate

For The Indian Performing Right Society Ltd.: Mr. Avijit Dey, Advocate; Mr. Anindya Kumar Mitra, Senior Advocate; Mr. Abhrajit Mitra, Senior Advocate; Mr. Soumya Ray Chowdhury, Advocate; Mr. Himangshu Bagai, Advocate; Mr. Sarosij Dasgupta, Advocate; Mr. R. K. Ganguly, Advocate; Ms. Susrea Mitra, Advocate; Mr. S Biswas, Advocate

Judgment on : 17.05.2024

Ravi Krishan Kapur, J.:

1. All these suits and applications have a common theme and by consent of the parties were heard analogously.
2. Vodafone India Ltd. (Vodafone) is carrying on business of providing telecommunication services. In providing such services, Vodafone also offers its customers Value Added Services (VAS) inter alia in the form of pre-recorded Caller Ring Back Tone (CRBT) whereby any caller may select songs for personal listening or as caller tunes.
3. Saregama India Ltd. (Saregama) is a company incorporated under the provisions of the Companies Act, 1956 engaged in the manufacture, sale and publication of sound recordings including digital downloads which include both film and non-film songs.
4. Indian Performing Right Society (IPRS) is a company duly incorporated under the Companies Act, 2013 and is a copyright society within the meaning of section 33 of the Copyright Act, 1957 (the Act). IPRS is also a non-profit body primarily established to protect and enforce the rights, interests and privileges of its members comprising of authors of original works, music composers and publishers associated with such works. Briefly, IPRS accepts from an author or owner exclusive authorization to administer any rights particularly in relation to literary and musical works by issuing licences and charging licence fees with the ultimate aim of protecting the collective interests of authors of such underlying literary and musical works.
5. The crux of the issue in these proceedings is whether Vodafone is required to obtain a separate licence from IPRS and pay royalty before commercially exploiting the musical and literary works of its members as part of the sound recording.

6. For convenience, the particulars of the proceedings filed by the respective parties are set out hereinbelow:
- a) CS 23 of 2018 has been filed by Vodafone. In this suit, Vodafone inter alia seeks a declaration that IPRS (the defendant no.2) is not entitled to any claim whatsoever including that on account of licence fees from Vodafone. In an application being GA 1 of 2018, seeking interim reliefs by an ex parte ad interim order dated 1 October 2018, both the defendants i.e. IPRS and Saregama had been restrained from raising any claim on Vodafone on account of royalty for the usage of VAS upon Vodafone depositing a sum of Rs.3.5 crores with the Registrar, Original Side, High Court at Calcutta. In terms of the said order, the above amount is still lying to the credit of the suit. GA 3 of 2019 is an application filed by IPRS seeking vacating of the order dated 1 October, 2018. By orders dated 7 July, 2022 and 15 December, 2022, copies of the Memorandum of Settlement and the New Agreement dated 20 September 2019 respectively executed by and between Vodafone and Saregama on the basis whereof a settlement had been arrived at between Vodafone and Saregama were directed to be brought on record.
- b) In point of time, the next suit filed was CS No 155 of 2018 by Saregama inter alia seeking an injunction against Vodafone from exploiting the copyright in the sound recordings or allied copyright works in relation to VAS provided by Vodafone. In this suit, an application being GA 1 of 2018 has been filed seeking interim reliefs. GA 2 of 2018 has been filed by Vodafone inter alia seeking stay of the suit. GA 3 of 2018 has been filed by Vodafone seeking impleadment of IPRS in this suit. GA 5 of 2022 is an application filed by IPRS inter alia seeking impleadment in this suit and seeking restraint orders on the withdrawal of the sum deposited in terms of the order dated 1 October, 2018.
- c) The third suit being CS 210 of 2018 has been instituted by IPRS inter alia seeking restraint orders on Vodafone from authorizing the public

performance or communicating to the public IPRS's repertoire of musical and literary works or any part of the same or doing any act infringing IPRS's copyright in any of the non Saregama works. In this suit, an interlocutory application being GA 1 of 2018 has been filed by IPRS seeking interim reliefs in the form of an injunction restraining Vodafone from exploiting any of the musical and associated literary works recorded in the sound recordings and cinematograph films without payment of royalty to IPRS. By an ad-interim order dated 12 October 2018, Vodafone was directed to deposit a sum of Rs.2.5 crores with the Registrar Original Side. In the event of such amount being deposited, Vodafone was allowed to continue with its VAS being provided to its subscribers. GA 2 of 2019 is an application filed by Vodafone for impleadment of Sony and Tips being two other independent music companies. GA 4 of 2021 is an application filed by IPRS seeking vacating of the order dated 12 October 2018 or in the alternative an injunction restraining Vodafone from exploiting the rights of IPRS without making payment of Rs.18 crores for the period until 31 March, 2019 and also to disclose the data and logs of the content being exploited by Vodafone.

7. On behalf of IPRS, it is contended that Vodafone has no lawful authority to commercially exploit the music and literary works incorporated in the sound recording of the members of IPRS without obtaining a valid licence. This is a mixed question of law and fact. Vodafone has not produced any licence from IPRS or any other music company which permits Vodafone to commercially exploit the music and literary works in the sound recordings. None of the agreements relied on by Vodafone, whether the Master Agreement dated 14 March 2014 read with the agreement dated 16 June 2016 or the agreement dated 20 September 2019 grants Vodafone any such right.
8. It is also contended that the Memorandum of Settlement dated 7 July, 2022, entered into between Vodafone and Saregama does not assist the case of

Vodafone in contending that it has any authority or licence to play such recordings. The Master Agreement dated 20 March, 2014 has ceased to have any effect or relevance and has become inoperative after 31 March, 2021. The agreement dated 20 September, 2019 has since expired. It is also contended that no right in respect of the underlying musical or literary works incorporated in the sound recording could have been granted by Saregama to Vodafone. In any event, neither Saregama nor any other music company has any authority to grant any licence in respect of any such works or to permit commercial exploitation thereof. In fact, clause 3 of the Memorandum of Settlement read with clause 5 of the New Agreement dated 20 September 2019 executed by and between Saregama and Vodafone stipulates that any licence for exploitation of the literary and musical work incorporated in the sound recordings have to be obtained by Vodafone from IPRS upon payment of royalties and at Vodafone's own cost and responsibility. Admittedly, no such licence has been obtained by Vodafone from IPRS. It is also categorically stipulated that, Vodafone's obligation towards Saregama remains independent of the obligation which Vodafone owes to IPRS.

9. It is further contended that, on a combined reading of inter alia sections 19, 30, 30A of the Act, any licence which is granted in contravention of the terms and conditions of the rights granted to the Copyright Society shall be void. Sections 13, 14 and 17 of the Act must be read alongwith sections 18, 19, 30, and 30A of the amended Act. Pursuant to the amended provisions, IPRS has entered into fresh agreements in 2017 with all the music companies including Saregama whereby the music companies have assigned their rights in respect of the underlying musical and literary works incorporated in the sound recordings in favour of IPRS including the right to collect all royalties in respect thereof. Thus, on a conjoint reading of sections 33, 34, 34(1)(a), 34(1)(c), of the Act, read with the third and fourth proviso of

18(1), and sections 19(8), (9) and (10) of the Act and the agreements entered into between IPRS with all other music companies and the authors of the literary musical works, any arrangement to grant a licence by and between Vodafone and Saregama is non est in law. In support of such contentions, reliance is placed on the decision in IPRS vs. Rajasthan Patrika Pvt. Ltd. 2023 SCC OnLine Bom 944.

10. On behalf of Vodafone, it is contended that Saregama is the first owner of the literary and musical works incorporated in the sound recordings. In any event, the copyright in the sound recordings is independent of the musical and literary works therein. Thus, there is no requirement for Vodafone to obtain any licence from IPRS for exploitation of the sound recordings. In such circumstances, there is no question of paying any royalty to IPRS. In the framework of the Act, the producer of a sound recording is to be the first owner of the copyright in the musical and literary works incorporated therein. Moreover, when a musical or literary work is commissioned for a sound recording under a contract of service for valuable consideration, the ownership in respect thereof no longer vests with the author of the said musical or literary work but rather with the producer of the sound recording who becomes the first owner of the said sound recording. Section 17(c) of the Act has remained unaltered even post amendment. As a result, the authors and owners of the musical and literary works part with their rights when engaged in an agreement for valuable consideration. Accordingly, the use of sound recordings does not require any separate licence from IPRS in respect of the musical and literary works incorporated in such sound recordings.
11. There has also been no change in respect of an independent copyright in the sound recordings brought about post amendment of the Act. In fact, on a combined reading of section 13(1)(c) read with sections 13(3) and 13(4) of

the Act, sound recordings have been preserved as a separate class of work in respect whereof copyright would subsist independently. As such, there is no question of payment of royalty to IPRS or to the owners of the literary and musical works incorporated in such sound recordings. Any right to royalty would accrue in favour of the author of the musical and literary work in a sound recording only if such works are used independent of the said sound. In support of such contentions, reliance is placed on the decision in IPRS vs Aditya Pandey, 2012 SCC Online Del 2645.

12. It is further contended that the issue of payment of royalties for exploitation of the literary and musical works in sound recordings must be borne out of the assignment agreement entered into between the assignor and the assignee. This is also a natural consequence of section 18(1) read with section 19(10) of the Act, since the producer (owner) of the sound recordings and the author of the literary or musical works incorporated in the sound recordings are to equally share royalties for use of the same.

13. By an assignment deed dated 22 May 2017, executed by and between Saregama and IPRS, Saregama assigned the rights of public performance and mechanical rights of the musical and literary works to IPRS. The assignment is only effected to enable IPRS as a “collecting agent” of the royalties in respect of the assigned musical and literary works and do not confer any rights as to the title or ownership in the assigned works. In such circumstances, it is alleged that any licence issued by Saregama to Vodafone for commercially exploiting the sound recordings does not interfere with the rights assigned by Saregama to IPRS.

14. It is also submitted that the disputes which had arisen between Vodafone and Saregama with respect to the agreements (Master Agreement) dated 14 March 2014 and five subsequent non-exclusive licence agreements dated 14 March 2014 and dated 31 May 2014, 1 December 2015 and 10

December 2015 respectively have been settled by executing a Memorandum of Settlement dated 20 September 2019. Saregama has agreed to withdraw the suit being CS no 155 of 2018 upon release of the sum of Rs.3.5 crores along with interest accrued thereon in terms of the order dated 1 October 2018. It was also agreed that, Vodafone would be required to pay the royalties for the copyright on the contents made available to Vodafone by Saregama for Vodafone's VAS business to IPRS and collection organisations operating in any part of the territory. All payments of royalties under past, new or future agreements are solely to be borne by Vodafone. By a letter dated 2 December, 2020, Saregama had confirmed receipt of Rs.6,41,54,244 plus taxes in terms of the settlement for the period from April 2017 to July 2020 and that no amount remained due and payable to Saregama by Vodafone.

15. In IPRS vs. Eastern Indian Motion Pictures (1977) 2 SCC 820 a footnote to the concurring judgment of Krishna Iyer, J. reads as follows:

20. A cinematograph is a felicitous blend, a beautiful totality, a constellation of stars, if I may use these lovely imageries to drive home my point, slurring over the rule against mixed metaphor. Cinema is more than long strips of celluloid, more than miracles in photography, more than song, dance and dialogue, and, indeed, more than dramatic story, exciting plot, gripping situations and marvellous acting. But it is that ensemble which is the finished product of orchestrated performance by each of the several participants, although the components may, sometimes, in themselves be elegant entities. Copyright in a cinema film exists in law, but Section 13(4) of the Act preserves the separate survival, in its individuality, of a copyright enjoyed by any "work" notwithstanding its confluence in the film. This persistence of the aesthetic "personality" of the intellectual property cannot cut down the copyright of the film qua film. The latter right is, as explained earlier in my learned Brother's judgment set out indubitably in Section 14(1)(c). True, the exclusive right, otherwise called copyright, in the case of a musical work extends to all the sub-rights spelt out in Section 14(1)(a). A harmonious construction of Section 14, which is the integral yoga of copyrights in creative works, takes us to the soul of the subject. The artist enjoys his copyright in the musical work, the film producer is the master of his combination of artistic pieces and the two can happily coexist and need not conflict. What is the *modus vivendi*?

21. The solution is simple. The film producer has the sole right to exercise what is his entitlement under Section 14(1)(c) qua film, but he cannot trench on the composer's copyright which he does only if the "music" is performed

or produced or reproduced separately, in violation of Section 14(1)(a). For instance, a film may be caused to be exhibited as a film but the pieces of music cannot be picked out of the sound track and played in the cinema or other theatre. To do that is the privilege of the composer and that right of his is not drowned in the film copyright except where there is special provision such as in Section 17, proviso (c). So, beyond exhibiting the film as a cinema show, if the producer plays the songs separately to attract an audience or for other reason, he infringes the composer's copyright. Anywhere, in a restaurant or aeroplane or radio station or cinema theatre, if a music is played, there comes into play the copyright of the composer or the Performing Arts Society. These are the boundaries of composite creations of art which are at once individual and collective, viewed from different angles. In a cosmic perspective, a thing of beauty has no boundary and is humanity's property but in the materialist plane on which artists thrive, private and exclusive estate in art subsists. Man, the noblest work of the Infinite Artist, strangely enough, battles for the finite products of his art and the secular law, operating on the temporal level, guards material works possessing spiritual values. The enigmatic smile of Mona Lisa is the timeless heritage of mankind but, till liberated by the prescribed passage of time, the private copyright of the human maker says, "hands off".

22. The creative intelligence of man is displayed in multiform ways of aesthetic expression but it often happens that economic systems so operate that the priceless divinity which we call artistic or literary creativity in man is exploited and masters, whose works are invaluable, are victims of piffling payments. World opinion in defence of the human right to intellectual property led to international conventions and municipal laws, commissions, codes and organisations, calculated to protect works of art. India responded to this universal need by enacting the Copyright Act, 1957.

23. Not the recommendations in conventions but provisions in municipal laws determine enforceable rights. Our copyright statute protects the composite cinematograph work produced by lay-out of heavy money and many talents but does not extinguish the copyrightable component parts in toto. The music which has merged, through the sound track, into the motion picture, is copyrighted by the producer but, on account of this monopoly, the music composer's copyright does not perish. The twin lights can coexist, each fulfilling itself in its delectable distinctiveness. Section 14 has, in its careful arrangement of the rights belonging to each copyright, has a certain melody and harmony to miss which is to lose the sense of the scheme.

24. A somewhat un-Indian feature we noticed in the Indian Copyright Act falls to be mentioned. Of course, when our law is intellectual borrowing from British reports as, admittedly it is, such exoticism is possible. "Musical work", as defined in Section 2(p), reads:

(p) musical work means any combination of melody and harmony or either of them printed, reduced to writing or otherwise graphically produced or reproduced.

Therefore, copyrighted music is not the soulful tune, the superb singing, the glorious voice or the wonderful rendering. It is the melody or harmony reduced to print, writing or graphic form. The Indian music lovers throng to listen and be enthralled or enchanted by the nada brahma, the sweet concord of sounds, the raga, the bhava, the laya and the sublime or exciting singing. Printed music is not the glamour or glory of it, by and large, although the content of the poem or the lyric or the song does have appeal. Strangely enough, 'author', as defined in Section 2(d), in relation to a musical work, is only the composer and Section 16 confines 'copyright' to those works which are recognised by the Act. This means that the composer alone has copyright in a musical work. The singer has none. This disentitlement of the musician or group of musical artists to copyright is un-Indian, because the major attraction which lends monetary value to a musical performance is not the music maker, so much as the musician. Perhaps, both deserve to be recognised by the copyright law. I make this observation only because art in one sense, depends on the ethos and the aesthetic best of a people; and while universal protection of intellectual and aesthetic property of creators of 'works' is an international obligation, each country in its law must protect such rights wherever originality is contributed. So viewed, apart from the music composer, the singer must be conferred a right. Of course, law-making is the province of Parliament but the Court must communicate to the lawmaker such infirmities as exist in the law extant."

16. In this background, the Statement of Objects and Reasons to the

Amendment Act 27 of 2012 inter-alia provides as follows:—

"2. The Act is now proposed to be amended with the object of making certain changes for clarity, to remove operational difficulties and also to address certain newer issues that have merged in the context of digital technologies and the Internet. The two World Intellectual Property Organisation (WIPO) Internet Treaties, namely, WIPO Copyright Treaty (WCT), 96 and WIPO Performances and Phonograms Treaty (WPPT), 1996 have set the international standards in these spheres. The WCT and the WPPT were negotiated in 1996 address the challenges posed to the protection of Copyrights and Related Rights by digital technology, particularly with regard to the dissemination of protected material over digital works such as the Internet. The member countries of the WIPO agreed on the utility of wing the Internet treaties in the changed global technical scenario and adopted them consensus. In order to extend protection of copyright material in India over digital works such as internet and other computer networks in respect of literary, dramatic, musical and artistic works, cinematograph films and sound recordings works of performers, it is proposed amend the Act to harmonise with the provisions of the two WIPO Internet Treaties, to the extent considered necessary and desirable. The WCT deals with the protection for the authors of literary and artistic works such as writings, computer programmes; original databases; musical works; audio visual works; works of fine art and photographs. The WPPT protects certain "related rights" which are the rights of the performers and producers of phonograms. However, India has not yet signed the abovementioned two treaties, Moreover, the main object to make amendments to the Act is that it is considered that in the knowledge society in which we live today, it is imperative to encourage creativity for promotion of culture of enterprise and innovation so that creative

people realise their potential and it is necessary to keep pace with the challenges for a fast growing knowledge and modern society.”

17. The amendments proposed in the Bill, inter alia, seeks to:-

- “(i) to (vii) * * * *
- (viii) give independent rights to authors of literary and musical works in cinematograph films;
 - (ix) clarify that the authors would have rights to receive royalties and the benefits enjoyed through the copyright societies;
 - (x) ensure that the authors of the works, in particular, author of the songs included in the cinematograph films or sound recordings, receive royalty for the commercial exploitation of such works;
 - (xi) to x (xiii) * * * *
 - (xiv) introduce a system of statutory licensing to broadcasting organisations to access to literary and musical works and sound recordings without subjecting the owners of copyright works to any disadvantages;
 - (xv) * * * *
 - (xvi) make provision for formulation and administration of copyright societies by the authors instead of the owners;
 - (xvii) make provision for formulation of a tariff scheme by the copyright societies subject to scrutiny by the Copyright Board;

18. Significantly, while introducing the provisos in section 18 and section (9) and (10) in section 19 of the Act, the Report of the Standing Committee of Parliament recommended as follows:-

“10.20 The Committee observes that one of the plain objectives of the proposed legislation is to ensure that the authors of the works, in particular authors of songs included in cinematograph films or sound recordings, receive royalty for the commercial exploitation of such works. With a view to remove any element of ambiguity which may give rise to complications or different interpretations in future, and also to protect the right of authors and music composers to claim their royalties in non-film works, the Committee recommends following amendments in clauses 6 and 7 of the Bill:”

19. For convenience, the relevant provisions of the amended Act are set out hereinbelow:

13. Works in which copyright subsists.—(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—
(a) original literary, dramatic, musical and artistic works; (b) cinematograph films; and (c) [sound recording].

- (2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless— (i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;
- (ii) in the case of an unpublished work other than a [work of architecture], the author is at the date of making of the work a citizen of India or domiciled in India; and
- (iii) in the case of a [work of architecture], the work is located in India.

Explanation.—In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist— (a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work; (b) in any 1 [sound recording] made in respect of a literary, dramatic or musical work, if in making the 1 [sound recording], copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a record shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or, as the case may be, the 1 [sound recording] is made.

(5) In the case of a 2 [work of architecture], copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

14. Meaning of copyright.-- For the purposes of this Act, copyright means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely--

(a) in the case of a literary, dramatic or musical work, not being a computer programme,--

- (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
- (ii) to issue copies of the work to the public not being copies already in circulation;
- (iii) to perform the work in public, or communicate it to the public;
- (iv) to make any cinematograph film or sound recording in respect of the work;
- (v) to make any translation of the work;
- (vi) to make any adaptation of the work;
- (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme:

(i) to do any of the acts specified in clause (a);

[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programmer:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.]

(c) in the case of an artistic work,--

- [(i) to reproduce the work in any material form including-- (a) the storing of it in any medium by electronic or other means; or
- (b) depiction in three-dimensions of a two-dimensional work; or
- (c) depiction in two-dimensions of a three-dimensional work;]
- (d) in the case of a cinematograph film,-- [(i) to make a copy of the film, including-

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- (a) a photograph of any image forming part thereof; or
- (b) storing of it in any medium by electronic or other means;]
- [(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film.]

(iii) to communicate the film to the public;

(e) in the case of a sound recording,--

(i) to make any other sound recording embodying it ⁶[including storing of it in any medium by electronic or other means];

[(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;]

(iii) to communicate the sound recording to the public.

Explanation.--For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation].

Section 16. No copyright except as provided in this Act. No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

17. First owner of copyright.—Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: Provided that— (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

[(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such

address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;] (d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

[(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

(e) in the case of a work to which the provisions of section 41 apply, the international organisation concerned shall be the first owner of the copyright therein.

[Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of section 13.]

[emphasis added]

18. Assignment of copyright.—(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof: Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence. 3 [

Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void: Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilisation of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.] [emphasis added]

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression “assignee” as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

19. Mode of assignment.—1 [(1)] No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3) The assignment of copyright in any work shall also specify the amount of 3 [royalty and any other consideration payable], to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4) Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within period of one year from the date of assignment, the assignment in respect of such right shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7) Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994].

(8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void.

(9) No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall. [emphasis added]

(10) No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilisation of such work in any form.] [emphasis added]

30. Licences by owners of copyright.—The owner of the copyright in any existing work of the prospective owner of the copyright in any future work may grant any interest in the right by licence in [writing by him] or by his duly authorised agent: Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence. Explanation.—Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

[30A. Application of [section 19].—The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.] 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 the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recording shall be carried out only through a copyright society duly registered under this Act:

Provided also 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 (38 of 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 form 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 relevant rights and the ability and professional competence 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 Copyright 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 copyrights 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 (27 of 2012) shall get itself registered under this Chapter within a period of one years form 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 [authors and other 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 [authors and other owners of rights] concerned [or for non-compliance of sections 33A, subsection (3) of section 35 or and section 36 of any change carried out in the instrument by which the copyright society is established or incorporated and registered by the Central Government without prior notice to 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 subsection (4) and that Government shall appoint an administrator to discharge the functions of the copyright society.

34. Administration of rights of owner by copyright society.—(1) Subject to such conditions as may be prescribed,— (a) a copyright society may accept from an [author and other owners of right] exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and (b) an [author and other owners of right] shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation: Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may—
(i) issue licences under section 30 in respect of any rights under this Act;
(ii) collect fees in pursuance of such licences;
(iii) distribute such fees among [author and other owners of right] after making deductions for its own expenses;
(iv) perform any other functions consistent with the provisions of section 35.

20. On a combined reading of the aforesaid sections, the amendments brought into effect in 2012 have radically changed the legal framework concerning the rights of authors of the original literary, dramatic, musical and artistic works. In fact, the amendments have the effect of reversing the prevalent position of law under the unamended Copyright Act. The amendments have been brought about inter alia with the intention to protect the rights of the authors of the original literary and musical works. As a

consequence, authors of original literary and musical works, who had always been given unsympathetic treatment are now entitled to claim mandatory royalty sharing on each occasion when a sound recording is communicated to the public. The amendments cannot be interpreted to be merely clarificatory in nature. Post amendment, substantive rights have now been granted to the authors of original works which prohibit contracts whereby authors were forced to license away their rights for even future technologies. An elaborate scheme has also been incorporated for payment of royalties to the authors of these works which is inter alia recognized in the Act and the Rules framed thereunder. Section 33A provides for a Tariff Scheme by copyright societies. Rule 56 pertains to a Tariff Scheme. Rule 57 also provides for an appeal mechanism against determination of such tariff scheme. Rule 58 pertains to a distribution scheme. In effect, post amendment, the entire spectrum pertaining to competing claims of the different stakeholders having specific rights under the Act has undergone a sea change. The underlying object being that creative work ought to belong to the authors and that the author should have a share in all future commercial exploitation of their work (except cinema hall).

21. To give an example, a young author unknowingly assigns all his rights for a pittance in all future technologies and subsequently comes to learn that the big corporates have earned zillions. To some, this is trading. To others, misfortune. And now, the passive authors of the original works at least have a statutory remedy. The protection is all the more justified in an era of even changing technology. The aim is to protect parties with weaker bargaining powers from being compelled to contract all their rights to a stronger party. To this extent, "copyright is not seen merely as an economic tool, a property right but as something like an extension of the personality of the author – something for his benefit and that of his heirs." [The Globalization of

Copyright- A Paper For The Conference of The Australian Copyright Society, November 2005 – Robin Jacob and The Background Score To The Copyright (Amendment) Act, 2012 – Prashant Reddy, 5 NUJS Law Review 469 (2012)].

22. Ordinarily, the normal function of a proviso is to make an exception or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. However, at times a proviso may wholly or partly be a substantive enactment adding to and not merely excepting something or qualifying what goes before, as it speaks the last intention of the makers. [Rhondda Urban District Council v. Taff Vale Fly. Co., (1909) AC 253, Kerala v. P. Krishna Warriar, AIR 1965 SC 59 and Motiram Ghelabhai v. Jagannagar, (1985) 2 SCC 279]. Thus, there can be no rule that a proviso should always be restricted to the scope of the main enactment and can never rise to a substantive right in favour of a party. (Dattatraya Govind Mahajan v. State of Maharashtra, (1977) 2 SCC 548, Ishwarlal Thakaral Almania v. Motabhai Nagjibhai, (1966) 1SCR 367). In this context, the decisions of Union of India & Ors. vs. Dileep Kumar Singh (2015) 4 SCC 421 and Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa, (1987) 2 SCC 469 relied on by Vodafone are distinguishable and inapposite.
23. On a true construction of the added provisos to section 17 and 18 and also sub sections (8), (9) and (10) of section 19 of the Act, it is clear that the Act now grants additional rights to the authors of musical and literary works. It is true that there has been no amendment to sections 13 and 14 of the Act, nevertheless as a rule of construction, provisions of a statute must be read in conjunction as a whole and cannot be interpreted in isolation. In this background, section 13 and 14 of the Act, when read in conjunction with the provisos and sub sections of section 17, 18 and 19, provides for a change in the position of the law which now grants specific rights to the authors for the

works upon payment of an equal share of royalty to the authors and prevents unlawful commercial exploitation of the said works without obtaining a licence from IPRS and making payment of royalty.

24. In view of the above, although sections 13 and 14 of Act confers no specific rights to the author of the literary and musical works, the subsequent amendments to the Act and the incorporation of the provisos therein categorically provides a right of equal sharing of royalty to such authors indicating a liability upon the commercial exploiters of such works to pay the legitimate share of royalty to the authors. For the above reasons, there is no merit in the contention that since there has been no change to sections 13 or 14 of the Act there has been no change brought about post amendment. The words 'subject to the provisions of this section and the other provisions of this Act' obviously refers to all the provisions of the Act including sections 17, 18, 19 and the other sections. [Adani Gas Limited vs. Union of India (2022) 5 SCC 210]. Moreover, in view of section 33, 34 and 34A of the Act, read with the third and fourth provisos to section 18 of the Act, authors have also been prohibited from renouncing their rights of royalty for exploitation of their works in any form other than cinematographic films in a cinema hall. In fact, the author's rights to receive royalties for utilization of such sound recordings has now been categorically recognised and preserved.

25. In such circumstances, although in view of section 17 (c) of Act, Saregama is considered to be the first owner, however the subsequent amendments brought about to section 17 and 18 of Act in the form of the provisos clearly recognise the right of an author of the literary and musical works in a sound recording which now has an overriding effect over the claim of the first owner of copyright. Accordingly, despite the first owner granting a licence to exploit the sound recordings, the rights of an author to claim royalties cannot be bypassed nor circumvented. Though Saregama may

have assigned the rights of exploitation of the sound recordings to Vodafone as first owners, Vodafone post amendment of the Act is bound and statutorily obliged to pay IPRS royalty to the authors of the literary and musical works incorporated in the sound recordings. Accordingly, there is no merit in the contention raised by Vodafone that there is no change in law brought about by the Copyright (Amendment) Act of 2012 and the same stands rejected.

26. The judgment of IPRS vs. Aditya Pandey (Supra) relied on by Vodafone is distinguishable and of no assistance. With utmost respect, the views expressed by the Learned Judge insofar as the amended Act are concerned were wholly unnecessary and obiter. In this decision, the disputes had arisen in the year 2006 and discussion on the amendments brought up in 2012 was unnecessary. The finding that the 2012 amendment does not alter the provisions of the Act (Para 31) is per incuriam and has been passed inter-alia ignoring the Statements of Objects and Reasons of the Amendment Act of 2012 and the purpose behind introduction of proviso (3) and (4) of section 18, proviso (8), (9) and (10) of section 19, proviso to section 17 and sections 30A, 33, 33A, 34 and 35 of the Act. The additional protection of rights of authors of such literary and musical works has been simply ignored in the said judgment. In this background, reliance on the decisions in *Principal Chief Conservator of Forests & Anr. vs. J.K. Johnson & Ors.* (2011) 10 SCC 794 and *Central Bank of India & Ors. vs. Workmen etc.* AIR 1960 SC 12, to contend that the Statements of Objects and Reasons are not relevant and should not also be looked into is only an attempt to obfuscate issues. Ordinarily, as a principle of statutory interpretation reference to the Statements of Objects is permissible for understanding the background, the antecedents, state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute was sought to remedy. (*Sanghvi Jeevraj Ghewar Chand v. Secretary., Madras Chillies, Grains & Kirana Merchants*

Workers Union, AIR 1969 SC 530 and Devadoss v. Veera Makali Amman Koil Athalur AIR 1998 SC 750).

27. In IPRS vs Rajasthan Patrika Pvt Ltd (Supra) it has inter-alia been held as follows:

“53. It cannot be said that since the literary and musical works of such authors get subsumed in the sound recording, which under Section 13(1) (c) is also a work in which copyright subsists, the entitlement of authors of such works to collect royalties would be taken away, despite specific guarantee of such rights by way of amendment in the year 2012, manifested by introduction of proviso to Section 17, third and fourth provisos to Section 18 and subsections (9) and (10) in Section 19 of the Copyright Act. The plaintiff - IPRS has indeed made out a strong prima facie case to hold that communication of the sound recording to the public on each occasion amounts to utilization of such underlying literary and musical works, in respect of which the authors thereof have a right to collect royalties. It cannot be disputed that in the Indian context, when radio stations, including the radio stations of the defendants herein, communicate sound recordings, they could be part of cinematograph films or otherwise. But, most of the sound recordings communicated to the public through such radio stations are the part of film music, and therefore, both, the third and fourth provisos to Section 18 read with sub-sections (9) and (10) of Section 19 of the Copyright Act come into operation.

54. The third proviso to Section 18 read with sub-section (9) of Section 19 of the Copyright Act clearly provides that authors of such literary and musical works are very much entitled to claim royalties to be shared on an equal basis with an assignee of the copyright for utilization of such works in any form other than communication of the works to the public along with the cinematograph film in a cinema hall. A communication to the public of sound recordings that form part of the cinematograph film from radio stations is indeed a form of communication other than communication in a cinema hall along with the cinematograph film. Thus, the authors of such literary and musical works are entitled to claim royalties on each occasion that such sound recordings are communicated to the public through radio stations, including radio stations of the defendants herein.

55. As regards sound recordings that do not form part of any cinematograph film, as per the fourth proviso to Section 18 and subsection (10) of Section 19 of the Copyright Act, the authors of such literary and musical works have the right to collect royalties for utilization of such works in any form. Thus, this Court is of the opinion that the plaintiff - IPRS, while espousing the cause of its members, who are authors of such literary and musical works, has indeed made out a strong prima facie case for grant of interim reliefs in the present applications.”

28. The Master Agreement relied on by Vodafone is also of no assistance. Firstly, the Master Agreement is dated 14 March, 2014 and is of an unspecified duration. In the light of section 19(5) of the Act, the Master Agreement is deemed to be only for a period of five years which admittedly expired on 13 March, 2019. Secondly, the Master Agreement refers to an annexed agreement which would only be entered in the future between the parties. The agreement between Vodafone and Saregama dated 16 June, 2016 is one such annexed agreement which categorically records as follows:

13. “Notwithstanding anything to the contrary contained herein Vodafone may be required to procure licences from any copyright society/organisation operating in any part of the Territory during the term. Procurement of any such copyright society/organisation licences shall be the sole responsibility of Vodafone at its sole cost and the Service Provider shall not be held responsible for the same in any manner whatsoever.”

29. In such circumstances, on a combined reading of Master Agreement dated 14 March, 2014 read with the annexed agreement dated 16 June, 2016, it is unequivocally clear that Saregama has not and could not have granted any right to Vodafone to exploit the underlying musical and literary works incorporated in the sound recording. Vodafone is now statutorily obliged to procure licences from IPRS. This fact is also evident from the Memorandum of Settlement dated 20 September, 2019 and the agreement dated 20 September, 2019. The fact that there is an independent obligation on Vodafone to obtain such licences from IPRS has also been recorded and confirmed by Saregama as reflected in the order dated 1 October, 2018. There is no other valid mode of assignment which Vodafone has been able to produce or rely on to exploit the underlying musical and literary works of the members of IPRS. For such purposes, any attempt to rely on any of the different agreements vis a vis Vodafone and Saregama is distorted, misleading and untenable.

30. In any event, Saregama could not possibly have any right to grant any licence in respect of the underlying musical and literary works incorporated in the sound recordings to Vodafone since Saregama had already assigned the same to IPRS as far back as in 1993 and once again in 2017. Thus, Saregama could not have given anything which it had no right to give. Nobody can give a better title than that he or she possesses. In any event, any such assignment would be void in terms of section 19(8) of the Act. Prima facie, Vodafone and Saregama also appear to be acting in concert with the ulterior aim of defeating the rights of IPRS. Saregama despite being a member of the IPRS has also failed to look after the interests of the authors of the literary and musical works and has acted contrary thereto. Vodafone has been unable to rely on any licence in compliance with section 30A read with section 19 of the Act permitting them to commercially exploit musical and literary works incorporated in the sound recordings.
31. In its new avatar, the amendments provide the authors a right to collect royalties which cannot be defeated nor avoided by reading some of the sections of the Act in isolation and depriving the authors of their now statutorily recognized legal rights. One of the objects of the 2012 amendment is to protect the authors of literary and artistic works and this must now be accepted. In view of the above, IPRS has been able to make out a strong prima facie case on merits. The balance of convenience and irreparable injury is also in favour of orders being passed in favour of IPRS.
32. In the above circumstances, the following order is passed:
- (i) GA No. 1 of 2018 (Old GA No.1068 of 2018) in CS No. 23 of 2018 is dismissed. There is no case far less a prima facie case which Vodafone has been able to demonstrate warranting any order in its favour. The stand of Vodafone that this is an interpleader suit is also inconsistent and irreconcilable. Obviously, the interim order dated 1 October 2018, has in

- effect strangled IPRS from raising any claim on account of royalty and therein lies the real mischief behind filing of the suit and the impact of the ad interim order. For the above reasons, the order dated October 1, 2018 stands vacated. The money lying deposited with the Learned Registrar of this Court in terms of the order dated October 1, 2018 being a sum of Rs.3.5 crores alongwith interest be forthwith made over to IPRS and adjusted against its final claim for outstanding royalties. For such purpose, liberty is granted to the Registrar, Original Side to forthwith encash the fixed deposit created in terms of the order dated 1 October, 2018. To this extent, GA No.3 of 2019 in CS 23 of 2018 (being Old TA No.21 of 2019) filed by IPRS stands allowed.
- (ii) In view of the above and in the light of the Memorandum of Understanding dated 20 September, 2019 no order need be passed in GA No.1 of 2018 in CS No.155 of 2018 and the same stands dismissed. IPRS is both a proper and a necessary party to this suit. There is every possibility of the rights of IPRS being jeopardized and prejudiced and orders being obtained to their detriment. In such circumstances, both GA No.3 of 2018 and GA No.5 of 2022 in CS 155 of 2018 seeking impleadment of IPRS stands allowed. There shall be an order in terms of prayer (a) of GA 5 of 2022 in CS 155 of 2018.
- (iii) During the course of hearing of these applications, pursuant to orders of Court, a Memorandum of Settlement dated 20 September, 2019 was produced. Clause 6 of the Memorandum of Understanding dated 20 September, 2019 provides for withdrawal of CS No.23 of 2018. However, in the absence of any formal application seeking withdrawal, no prayer for withdrawal can be considered. Liberty is granted to Saregama to file an appropriate application for withdrawal of this suit in accordance with law, if so advised.
- (iv) GA No 1 of 2018 (Old GA No.2949 of 2018) in CS No.210 of 2018 stands allowed to the extent that Vodafone is forthwith directed to disclose

the data and logs of actual use made by the Vodafone's subscribers and the works utilized as part of their Value Added Services within a period of five weeks from the date of passing of this order. In default, there shall be an order in terms of prayers (a) and (b) of the Notice of Motion in GA 1 of 2018, CS 210 of 2018. For such purposes, Mr. Ratul Das, Advocate is appointed as a Special Officer. The remuneration of the Special Officer is fixed at 6000 gms. All other costs and charges incurred by the Special Officer are to be borne by IPRS, at the first instance. In the meantime, there shall also be an order of injunction restraining Vodafone its officers, servants, agents and representatives and all others acting for and on their behalf from either engaging themselves or from authorising public performance or communicating to the public IPRS's repertoire of musical and literary works or any part of the same or doing any other act infringing IPRS's copyright in the said works without obtaining a valid licence and making payment of royalty to IPRS. The sum of Rs.2.5 crores alongwith any accrued interest deposited in terms of the order dated 12 October, 2018 be forthwith made over to IPRS and shall be adjusted against IPRS's claim for outstanding royalties as per the published tariff of IPRS.

- (v) GA No.2 of 2019 (Old GA No.1054 of 2019) in CS 210 of 2018 also stands dismissed. Neither Tips nor Sony is a necessary or proper party to this proceeding for effective adjudication of the disputes raised in the suit. By separate deeds of assignment dated 13 June 2000, and 6 December, 1993 respectively, the said music companies had assigned all their rights in the underlying literary and musical works incorporated in the sound recordings to IPRS. In view of the directions passed in GA No 1 of 2018, GA No 4 of 2018 in CS 210 of 2018 also stands disposed of as infructuous.

(vi) With the above directions, all the above applications stand disposed of. The parties are directed to take expeditious steps for early hearing of their respective suits in accordance with law.

(Ravi Krishan Kapur, J.)

Later:

After pronouncement of the judgment, the Advocates appearing on behalf of Vodafone pray for stay of operation of the judgment.

The prayer for stay is considered and rejected.

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