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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 7/2022**

NOVEX COMMUNICATION PRIVATE LIMITED Plaintiff

Through : Mr.C.M.Lall, Sr Advocate with
Mr.Jasdeep Singh Dhillon, and
Ms.Ananya Chugh, Advocates.

versus

NEHRU PLACE HOTELS PRIVATE LIMITED Defendant

Through : None.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **06.01.2022**

1. The hearing has been conducted through Video Conferencing.

IA No.171/2022

2. Since the urgent reliefs are sought by the plaintiff, the requirement of pre-institution mediation is dispensed with.

3. The application stands disposed of.

IA Nos.169-170/2022

4. Exemption allowed, subject to all just exceptions.

5. The applications stand disposed of.

CS(COMM) 7/2022 & IA No.168/2022

6. Plaintiff files this suit for permanent injunction, restraining infringement of copyright, damages, rendition of accounts of profit, etc against the defendant.

7. The learned senior counsel for the plaintiff submits in the year 2002 the plaintiff company was established and presently it is the copyright owner of a large repertoire of sound recordings. For the use of these sound recordings the plaintiff issues licenses authorizing public performance of

these sound recordings. These licenses include public performance licenses to hotels, restaurants, lawns, discotheque, resorts, malls and other venue for communication to the public on a commercial basis.

8. It is submitted during April 2017, Eros International Media Limited vide Authority Letter and Deed of Partial Assignment Agreement has transferred 'On ground performance rights' in respect of "sound recordings" of the songs contained in the films/albums which are a part of the repertoire of EROS in favour of the Plaintiff as it's 'Assignee'. Various other companies have also assigned their rights in favour of the plaintiff.

9. The learned senior counsel for the plaintiff alleges on 08.09.2021 the authorised representative of plaintiff visited the premises of defendant and found to be blatantly infringing the plaintiffs copyrights by playing and publicly performing and commercially exploiting the songs of label of EROS. Thereafter on 20.09.2021, a legal notice was issued to the defendant calling upon it to (i) cease and desist from violating Plaintiffs copyrights; (ii) give an undertaking to the Plaintiff that they would not infringe the Plaintiffs copyright; and (iii) to contact the Plaintiffs representative for taking the requisite authorisation; etc. amongst other demands. However, the defendant has failed to reply to the said legal notice and is unauthorizedly, illegally and with malafide intent using and commercially exploiting the intellectual property rights of the Plaintiff in varied sound recordings without the knowledge, permission or authority of the Plaintiff.

10. Considering the above, the plaintiff has a *prima facie* case; *balance of convenience* lies in its favour; and in case the defendant is not restrained *ex parte*, the plaintiff shall suffer irreparable loss and injury.

11. In the circumstances, summons of the suit and notice of injunction

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application be issued to defendant through all modes/email and whatsapp returnable before the Joint Registrar on 04.04.2022.

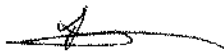
12. Till the next date of hearing, the defendant, its partners, directors, their servants, employees, agents, assignees, licensees, representatives, third party event management companies, third party event organizers or otherwise and/or any person claiming through them or acting on their behalf, are restrained in terms of prayer (a) of the injunction application till the next date of hearing, unless the defendant pay the requisite fee to plaintiff and seek its license. Compliance of Order 39 Rule 3 CPC be made by plaintiff within one week.

13. Upon completion of service/pleadings, the matter be listed before this Court. Order *dasti*.

YOGESH KHANNA, J.

JANUARY 06, 2022

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IN THE HIGH COURT OF DELHI AT NEW DELHI
(ORDINARY ORIGINAL JURISDICTION)

I.A. NO. _____ OF 2021

IN

CS (COMM) NO. _____ OF 2021

IN THE MATTER OF:

Novex Communications Private Limited ... Plaintiff

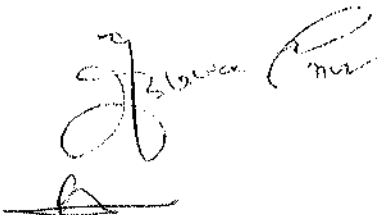
Versus

Nehru Place Hotels Private Limited ... Defendant

APPLICATION ON BEHALF OF THE PLAINTIFF UNDER
ORDER XXXIX RULES 1 & 2 READ WITH SECTION 151 CPC
FOR EX-PARTE AD-INTERIM INJUNCTION

MOST RESPECTFULLY SHOWETH:

1. That the Applicant is Plaintiff in the accompanying suit of Permanent Injunction, Rendition of Accounts and Damages against the Defendant, the contents of the Plaint may kindly be read as part and parcel of the present application and the same are not being repeated herein for the sake of brevity and to avoid prolixity.
2. That the Plaintiff states that the Defendant being engaged in the business of hospitality services, conducts and organizes various events, festivals and celebrations throughout the year where the sound





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recordings of the Plaintiff are used and played. The sound recordings of the Plaintiff are also played on a day to day basis by the Defendant in its restaurants, lounges, bars, discs, gyms, cafes etc.

3. That the Plaintiff is not aware of next event which the Defendant are likely to organize and/or conduct. The Plaintiff states that in view of the past conduct of the Defendant as set-out in the Plaint, the Plaintiff seriously apprehends that at such events that may be organized by the Defendant, the Defendant may further infringe the rights of the Plaintiff.
4. That the Plaintiff thus submits that it is absolutely necessary, and in the interest of justice, that interim and ad-interim orders and injunctions as prayed for should be granted to the Plaintiff failing which the Plaintiff will suffer irreparable harm, loss and injury.
5. The Plaintiff submits that the Defendant is using and playing the sound recording of the Plaintiff in which the Defendant admittedly does not have any rights. In any event, it is clear that Defendant is infringing the Plaintiff's rights. The Plaintiff submits that the balance of convenience is in favour of the grant of interim and ad-interim reliefs to the Plaintiff.

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6. That the Defendant is using the sound recordings of the Plaintiff for various events and functions such are corporate events, celebrity events, social events, celebrations, promotional events, Christmas and New Year Celebrations.

That these events are purely of a commercial character wherein huge amounts are charged by the Defendant from the organisers and hosts for booking of the venue/hall, decorations, catering of food and beverages including non-alcoholic and alcoholic as well as for playing of sound recordings for the entertainment of guests.

7. The Defendant is able to earn huge revenue and profit from these events from the use the Plaintiff's sound recordings which are a must and necessity in these events as no celebration is ever done without music and it also adds to the entertainment value of the events and, ultimately resulting in increasing the profits of the Defendant at the cost of the Plaintiff.
8. That the Plaintiff has a prima-facie case in its favour since the Defendant in the past has been taking the license from the Plaintiff, thus acknowledging the rights of the Plaintiff and, also the fact that the Defendant is aware of its legal obligations to take the authorisation from the Plaintiff for use of its sound recordings. Moreover in the event

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organised on 08.09.2021 the Defendant has admittedly failed to take the requisite authorisation from the Plaintiff. The plaintiff through its legal notice dated 20.09.2021 has also put the Defendant to notice of the infringement however despite the same the Defendant has till date not taken any authorisation or approval from the Plaintiff and neither has the Defendant replied to the said notice.

Moreover the law on the issue of exemptions under section 52(1)(za) is also well settled and it has been held that the use of sound recordings even during a marriage function is subject to copyright license and that it cannot be said that the playing of a DJ during a marriage is one of the core aspects of marriage and therefore the same is not covered in the religious or social scheme of marriage

9. That balance of convenience lies in favour of the Plaintiff and against the Defendant, as the grant of ad interim and interim injunction in favour against the Defendant restraining the Defendant from using the Plaintiff's repertoire of sound recordings would not have any adverse effect on the Defendant as the Defendant not claiming any rights or ownership in the sound recordings of the Plaintiff, whereas if the same is not granted it would severely prejudice the Plaintiff since its rights

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would be continued to be infringed the Defendant leading to further losses to the Plaintiff.

10. That irreparable loss and injury would be caused to the Plaintiff in case the interim orders prayed for are not granted as the repertoires of the Plaintiff are being in an unauthorized way, illegally and with malafide intent being used by the Defendant for commercial purposes to the utter disregard of the Plaintiff's rights in the said repertoire of the songs and there is no way to exactly know the quantum and extent of loss to the Plaintiff as a result of the Defendant's activities. Moreover the quantum of the events held and infringements by the Defendant are much more in the festive season which is ongoing.

PRAYER

In view of the submissions made hereinabove, it is respectively prayed that the following reliefs be granted in favour of the Plaintiff and against the Defendant:

- a) Restrain the Defendant, its partners, directors, their servants, employees, agents, assignees, licensees, representatives, third party event management companies, third party event organizers or otherwise and/or any person claiming through them or acting on their behalf, till the pendency of the suit, from using, playing, exploiting or publicly

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performing in any manner communicating the sound recordings of the songs assigned and /or authorised to the Plaintiff or allowing their premises or any premises under their control to be used for the said purposes, without license from the Plaintiff, or otherwise infringing the copyright in any work owned and protected by the Plaintiff during the pendency of the present proceedings in any event or function including but not limited to any corporate event, celebrity event, promotional event, Christmas, New Year Celebration, social events including but not limited to Birthday parties, Anniversary parties, Engagement party, Reception function, Sangeet and DJ nights, Sagan function, Pre and Post Wedding celebrations, and in-house utilisation in restaurants, halls, lounges, bars, gyms, open spaces, roof-tops, pool-sides etc;

- b) Direct the Defendant to render full and true accounts of all revenues and profits illegally and unlawfully earned from the illegal exploitation of the sound recordings of the songs publicly performed without the Plaintiff's license, on the basis of wilful default;
- c) Direct the Defendant to make recordings of all events organized and held at the Establishment on a day to day basis and file the same before this Hon'ble Court;

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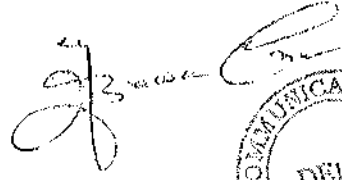
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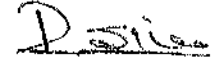
- d) Pass ex parte ad interim orders in terms of the prayers (a) to (c) above;
and /or

- e) Any further orders which this Hon'ble Court may deem fit and proper
in the facts and circumstances of the present case be passed in favour of
the Plaintiff.



PLAINTIFF

THROUGH



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New Delhi
Dated: 15.11.2021



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