

## **WYNK LIMITED VS. TIPS INDUSTRIES LIMITED – BATTLE FOR STATUTORY LICENSE**

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### **I. INTRODUCTION**

In a judgment delivered on October 20, 2022, and made available on September 29, 2023, in the case of *Wynk Ltd. and Anr. vs. Tips Industries Ltd.*<sup>1</sup> (hereinafter referred to as the “**Case**”), the division bench of the Hon’ble High Court of Bombay (hereinafter referred to as the “**Division Bench**”) affirmed the order dated April 23, 2019 of a Single Judge of the Hon’ble High Court of Bombay holding that the statutory licenses under Section 31D of the Copyright Act, 1957 (hereinafter the “**Copyright Act**”) are restricted to traditional non-internet-based radio and television broadcasting and performances alone and that Section 31D has no application to any internet-based offering. The Division Bench also observed that the statutory intent of Section 31D of the Copyright Act did not envisage obtaining a statutory license by an entity for its private profit motives.

### **II. FACTUAL BACKGROUND OF THE CASE**

The appeal arose from an order dated April 23, 2019 passed by a Single Judge of the Bombay High Court in *Tips Industries Ltd. vs. Wynk Music Ltd. and Anr.*<sup>2</sup> granting an injunction restraining Wynk Music Ltd. (hereinafter referred to as “**Wynk**”) from exploiting Tips Industries Limited’s (hereinafter referred to as “**Tips**”) copyright in audio files through their streaming service.

Wynk operates an internet-based music streaming service with an over-the-top downloading facility. Tips holds copyrights in a repertoire of over 25,000 sound recordings.

Wynk and Tips entered into negotiations for an extension of the licence that was previously granted to Wynk to use copyrighted recordings belonging to Tips. The negotiations did not fruition into a meaningful arrangement and disputes broke out between the parties. Consequently, Tips repeatedly called upon Wynk to discontinue using its repertoire for any purpose. In response, Wynk asserted rights as a ‘broadcaster’ and invoked Section 31D of the Copyright Act offering to pay in aggregate, Rs. 1.41 crores towards royalty for broadcasting the repertoire, a sum which was substantially lower than the royalty demanded by Tips during the negotiations. Section 31D of the Copyright Act deals with statutory licenses for

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<sup>1</sup> COMAPL/315/2019; CNR: HCBM020152542019

<sup>2</sup> 2019 SCC OnLine Bom 13087

broadcasting of literary, musical works and sound recordings in consideration of royalties to be paid to the owner of rights in the manner and rate fixed by the Commercial Court

### **III. ISSUES BEFORE THE COURT**

The primary contention placed for consideration before the Division Bench was whether internet-based services fell within the purview of Section 31D of the Copyright Act, and if so, whether Wynk was right to invoke Section 31D of the Copyright Act and exercise a statutory license in respect of its download/purchase business.

### **IV. SUBMISSIONS ON BEHALF OF WYNK**

Counsel for the Appellant, Wynk made the following arguments:

- a) that Section 31D of the Copyright Act, covers all forms of dissemination, and there is no prohibition on the inclusion of internet-based services under Section 31D;
- b) that Section 31 of the Copyright Act served as an exception to the generality of other provisions of the Act, and contemplated scenarios in which the owner of a copyright could be compelled to grant a license;
- c) that Section 31D has a public interest element to it and does not amount to expropriation;
- d) that Section 31D was intended not to permit monopolistic control over copyright-protected works such as sound recordings and was the statutory imperative against copyright hoarding;
- e) that large organizations such as Tips exercised a stranglehold over licenses for their copyright-protected repertoire and demanded ever-increasing license fees;
- f) that the medium of broadcast was immaterial in so far as the applicability of Section 31D was concerned and confining the applicability of the provision to a particular medium would amount to confining the statute to older technology, and hence a broader view must be preferred by the courts;
- g) that Tips was indirectly hoarding copyright-protected work which is as much a social menace as any other form of hoarding and one of the reasons behind the enactment of Section 31D which forces the copyright owner/hoarder to part with a license to such work immediately upon being given a notice; and

- h) that there is no meaningful distinction between internet-based radio and offline radio, apart from a few technical and physical differences.

## **V. SUBMISSIONS ON BEHALF OF TIPS**

Counsel for the Respondent, Tips made the following arguments:

- a) that the ambit of Section 31D of the Copyright Act, is limited and confined solely to traditional radio and television and does not cover internet-based services;
- b) that Section 31D of the Copyright Act must be read along with the rules;
- c) that while Section 31 was held by the Supreme Court to be a form of expropriation, Section 31D of the Copyright Act was in fact even more expropriatory as it did not contain the same checks and balances contained in Section 31;
- d) that as per rule 29(1) of the Copyright Rules and its proviso, no notice was tenable unless the royalty amount to be paid had first been determined by the Commercial Court, which had not been done in the present instance;
- e) that when the Copyright Act was amended to introduce Section 31D, internet facilities were in existence, and the legislature, in its wisdom, did not include the word internet but expressly limited the scope of the provision to radio and television which is evident on a reading of the rules;
- f) that Section 31D (1) of the Copyright Act provided for the overall entitlement, while Section 31D (3) was the specific clause circumscribing the scope of operation of Section 31D; and
- g) that if Wynk's interpretation of the scope of Section 31D was held to be correct, then the need to enter into agreements with copyright holders would be done away with and entities would be able to obtain licenses at arbitrary rates totally against the will of the copyright holder.

## **VI. ANALYSIS OF THE COURT**

- a) The Division Bench drew an initial distinction between services that are internet-based and those that are not internet-based and the degree of control available to the end user over the copyrighted content. In doing so, the Division Bench observed that in internet-based services such as those offered by Wynk, a user could exercise complete control

over the content it wished to enjoy, whereas in radio-type services, such control was missing.

- b) The Division Bench agreed with the submission made on behalf of Wynk with respect to the intent of Section 31 being a deterrent to ‘copyright hoarding’.
- c) The Division Bench agreed with the submission made on behalf of Tips that Rule 29(4) of the Copyright Rules deals with the contents of the notice to be given under Section 31D (2) of the Copyright Act by a broadcasting organisation. Rule 29(4) of the Copyright Rules dealt with every single technical aspect which directed to and only to broadcast through radio and television as opposed to internet-based services offered by Wynk.
- d) The Division Bench agreed with the submission made on behalf of Tips that internet services existed when Section 31D was introduced by way of an amendment and that there was statutory intent behind expressly limiting the language to radio and television.
- e) The Division Bench agreed with the argument made on behalf of Tips that Section 31D (1) provided for the overall entitlement, while Section 31D (3) was the specific clause circumscribing the scope of operation of Section 31D.
- f) The Division Bench observed that since Wynk was not a non-profit organization, it permitted its users access to copyright-protected material *interalia* via “caching” which is lending, hence falls within the definition of commercial rental under Section 2 (fa) of the Copyright Act.
- g) The Division Bench overspend that unless royalty rates were fixed, under the third proviso to Rule 29 (1) of the Copyright Rules, no notice under Section 31D (2) could have been issued by Wynk.
- h) The Division Bench finally affirmed the findings of the Single Judge and reiterated that statutory licenses under Section 31D of the Copyright Act are restricted to traditional non-internet-based radio and television broadcasting and performances alone and that Section 31D of the Copyright Act has no application to any internet-based offering.

## **VII. CONCLUSION**

In a well-considered judgment, the Division Bench dismissed the appeal filed by Wynk, thereby upholding the order of the Single Judge. The Division Bench refused to permit Wynk

to invoke Section 31D of the Copyright Act to utilize the Tips repertoire. The restriction on the applicability of statutory licensing of sound recording under Section 31D to non-internet-based radio and television broadcasting and performance was re-affirmed by the Division Bench.

The Division Bench firmly observed that the statutory intent of Section 31D of the Copyright Act was not intended to obtain a statutory license for private profit motives.

The judgment in this Case will provide much relief to copyright holders by virtue of the essential safeguards against statutory licensing, particularly under Section 31D of the Copyright Act laid down by the Court. With an increasing number of businesses venturing into online music streaming services, the judgment in this Case will assist in ironing out some of the intricacies associated with copyright law.

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