



*Sakshi Singhal*  
*Senior Associate*

## COPYRIGHT LICENSING BY SOCIETIES

The Division Bench of the Delhi High Court (**HC**), on April 15, 2025, in the case of *Azure Hospitality* case,<sup>1</sup> opined that entities carrying on the business of issuing or granting licenses for copyrighted works must either be registered as a copyright society or be a member of one, and that the right to license works under Section 30 of the Copyright Act, 1957 (**Act**), is subject to the regulatory scheme of Section 33 of the Act.

### Brief Facts

Phonographic Performance Limited (**PPL**) asserted its ownership over public performance rights for a vast repertoire of sound recordings, claiming to own 80-90% of all sound recordings ever created in India, by virtue of assignment deeds from the original owners under Section 18(1) of the Act.

PPL was previously registered as a copyright society between 1996 and 2014, but its application for re-registration was rejected, and as of the date of this judgment, it is not a registered copyright society nor a member of one.

PPL had discovered that Azure Hospitality Private Limited (**Azure**) was exploiting sound recordings (music) in its restaurants and outlets without obtaining a license. Consequently, PPL issued a cease-and-desist notice and filed a civil suit seeking permanent injunction against Azure.

A Single Judge of the HC granted an *ex parte ad interim* injunction,<sup>2</sup> restraining Azure from using PPL's copyrighted works. Azure's application to vacate this injunction was dismissed by the Single Judge, who instead, allowed PPL's injunction application.

Aggrieved by this, Azure filed the present appeal.

### Parties' Contentions

#### Azure:

- Contended that Section 33 of the Act was specifically intended to prevent cartelisation and monopolisation in the music industry.
- Argued that any entity "*carrying on the business of issuing or granting licenses*" for copyrighted works, which PPL admittedly was, must be registered as a copyright society under Section 33(3) and adhere to the strict tariff regime outlined in Section 33A of the Act.

<sup>1</sup> *Azure Hospitality Private Limited v. Phonographic Performance Limited*, 2025 LiveLaw (Del) 446.

<sup>2</sup> *Phonographic Performance Ltd. v. Azure Hospitality (P) Ltd.*, 2025 SCC OnLine Del 1239, decided on 03-03-2024.

- Submitted that the Single Judge’s interpretation, allowing PPL to operate outside these regulations, would defeat the statutory purpose of Section 33(1) and Chapter VII of the Act, effectively rendering them meaningless.
- Highlighted that a proviso to a section cannot be interpreted to defeat the main provision.

**PPL:**

- Countered that Azure’s aim was to exploit PPL’s legitimately-owned recordings free of charge.
- Asserted its right as the *bona fide* owner of the sound recordings to permit their exploitation on its own terms.
- Distinguished its licensing activities as voluntary under Section 30, arguing that it should not be subjected to compulsory licensing regulations.

**HC’s Judgement & Reasoning**

The HC observed that:

- Copyright subsists in sound recordings, and the producer is their first owner.
- PPL, as an assignee under Section 18(1), became the owner of copyright for the assigned sound recordings under Section 18(2). Section 30 permits a copyright owner to license their work.<sup>3</sup>
- Section 33(1) unequivocally prescribes any person or association from “*carrying on the business of issuing or granting licences in respect of any work in which copyright subsists,*” except under or in accordance with registration granted under Section 33(3) of the Act.<sup>4</sup>
- The term “business” is of wide import, and PPL is admittedly engaged in the business of issuing or granting licenses for sound recordings.<sup>5</sup>
- While PPL was previously a registered copyright society, its re-registration was rejected, and it is currently not a registered society.<sup>6</sup>

Based on the above observations, it concluded *prima facie* that PPL could not issue or grant licenses for its sound recordings without either being a registered copyright society or a member of one.<sup>7</sup> However, to balance equities and prevent Azure from exploiting PPL’s repertoire completely free of charge during the interim period, the Court modified the Single Judge’s order. It directed Azure to make payments to PPL for playing the recordings based on the Tariff Rate applicable to RMPL,<sup>8</sup> effectively treating PPL as if it were a member of RMPL. This payment would be subject to the final outcome of the suit.<sup>9</sup>

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<sup>3</sup> Paragraph 20.5 of the Order.

<sup>4</sup> Paragraph 20.10 of the Order.

<sup>5</sup> *Ibid.*

<sup>6</sup> Paragraph 9 of the Order.

<sup>7</sup> Paragraph 26 of the J Order.

<sup>8</sup> Recorded Music Performance Limited (RMPL) is currently the only registered copyright society for sound recordings.

<sup>9</sup> Paragraph 27 of the Order.

