

**IN NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT- V**

**CA. 320 of 2023**

**In**

**CP. No. 200 of 2023**

Company Application under Section 230  
of the Companies Act, 2013

**The Indian Performing Right Society  
Limited**

.....Applicant

Vs

**Novi Digital Entertainment Private  
Limited**

.....Respondent No. 1

**Star India Private Limited**

.....Respondent No. 2

*In the matter of*

**Novi Digital Entertainment Private  
Limited and Anr.**

.....Original

Applicants/

Respondents

**Order Dated: 09.02.2024**

**Coram:**

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

**Appearance of parties:**

**For the Applicant:** Counsel for the Applicant

**For the Respondents:** Senior Adv. Navroz Seervai a/w Siddharth Ranade, Kaazvin Kapadia, Raghav Bhargava, Mihir Dalawai i/b Trilegal (PH)

**ORDER**

**Per: Madhu Sinha Member (Technical)**

*This Company Application is filed by Applicant, namely The Indian Performing Right Society Limited, (hereinafter referred to as “**the Applicant**”) seeking the following reliefs under Section 230 of the Companies Act, 2013:*

- a) For seeking a copy of the Company Application No. CA(CAA) 48/MB/2023 filed by the Respondents for seeing Approval of a Scheme of Amalgamation of Novi Digital Entertainment Private Limited, Respondent No. 1 and Star India Private Limited, Respondent No. 2 as the Applicant is a creditor of the Respondents and its rights may be affected on account of the proposed Amalgamation.*
- b) In order to protect and secure the interest of the members of the Applicant and to raise objections, if any, or to intervene in the matter, the Applicant need to go through the documents /proceedings as filed by the Respondents before NCLT and therefore, the Applicant has preferred this Company Application for directing the Respondents to furnish a copy of the captioned Application and all other connected documents, annexures, applications/petition filed in the captioned Application, to the Applicant.*
- c) Grant four weeks’ time to Applicant to file the objections against the scheme after the receipt of the copies of the First Motion Application and other documents as mentioned in the prayer clause (b) above.*

## **FACTS OF THE CASE AND SUBMISSIONS BY THE APPLICANT**

1. The Applicant is a non-profit making body established in the year 1969 and is also a Copyright Society registered under Section 33 of the Act ("the Act"). The Applicant monitors, protects and enforces the rights, interest and privileges of its members comprising of Authors (i.e., lyricists), Music Composers and Publishers of Literary (i.e., lyrics) and/or Musical Works (i.e., musical compositions) as well as on behalf of the members of other International Societies. It has been authorized as per the Copyright Act, 1957 to publish the tariffs for collecting royalty payable by the entities which uses, displays any of the work of its members.
2. The Respondents in their broadcasting (satellite or otherwise) and streaming activities utilizes various literary and musical works in which copyright subsists in various forms i.e. either by the communication to the public or performance of the literary or musical works stand alone or utilization thereof in any form such as Sound Recording or Cinematograph Film. Such literary and Musical works are first authored by the author and composer members of the Applicant and therefore the Respondents are liable to pay royalty to Applicant as per the tariffs published by the Applicant under the Copyright Act, 1957 and hence they are the Creditor of the Respondents for the amount due and payable and not paid by the Respondents.
3. The Applicant came to know about an Order dated 08.05.2023 (Hereinafter referred to as the **“Order”**) passed by the Hon'ble National Company Law Tribunal, Mumbai Bench in First Motion Company Application No. CA(CAA)48/MB/2023 of Scheme under Sections 230-232 of the Companies Act, 2013 filed by the Respondents. The Hon'ble Tribunal in para 12 & 13 of said Order directed the respective Respondents to obtain consent from the unsecured creditors constituting 90% in value before the final hearing. However, none of the Respondents have approached the Applicant till date to secure its consent in terms of the Order.  
  
It is the case of the Applicant that the Respondents have been utilizing the Underlying Works belonging to the Applicant for which the Respondents

are responsible and liable to pay royalty as per the copyright Act. This is an admitted position as in the year 2018, the Respondents entered into a one-time settlement with the Applicant for the payment of dues for the period 21.06.2012 to 31.03.2018.

4. It was further submitted that the Respondents have neglected to pay dues to the Applicant for the period commencing from 01.04.2018 to 31.03.2024 in total violation of the provisions of the Copyright Act, 1957. The total amount due to the Applicant from 01.04.2018 to 31.03.2023 is Rs. 1,28,22,92,877/- (exclusive of all taxes/levies) as per its published tariff.
5. It was stated that the Applicant is an Unsecured Creditor of the Respondents. However, the Respondents have failed to obtain consent from the Applicant as per the Order dated 08.05.2023 passed by the Hon'ble Tribunal in CA(CAA)48/MB/2023 of Scheme under Sections 230-232 of the Companies Act, 2013. The Applicant therefore has a serious apprehension and a reason to believe that the liability which is crystalized under the Copyright Act, 1957 has been either extinguished / undervalued in the books of the Respondents and has been wrongly shown in the scheme and documents provided in First Motion Application No. CA(CAA)48/MB/2023.
6. The Applicant further submitted that since no consent of the Applicant was obtained this Scheme is in violation of law and based on suppression of material facts hence would be illegal if implemented.
7. The Applicant being a responsible institution decided to ascertain the factual correctness of their apprehension before raising an objection against the scheme before the Hon'ble NCLT and accordingly decided to procure a copy of the Application together with annexures as filed in the captioned matter by the Respondents. Hence this Application.

#### **REPLY FILED BY THE RESPONDENT NO. 1**

8. It is the case of the Respondent that the Applicant has no locus to file the present Application as it is not a creditor of the Respondent as per audited financial statements and in terms of Section 230(4) of the Companies Act, 2013 read with Rule 9 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

9. The Applicant, in the captioned Application has merely claimed to be an unsecured creditor of the Respondent No. 1. It was submitted that along with the captioned Company Scheme Application, Respondent No. 1 placed on record its audited financial statements along with a list of its unsecured creditors, duly verified and authenticated by the statutory auditor. The Applicant is not a creditor of the Respondent No. 1 as per the audited financial statements of the Respondent No. 1. Similarly, the Applicant is not shown as a creditor in the list of creditors of Respondent No. 1 duly authenticated and certified by the statutory auditors of the Respondent No. 1. In fact, the Applicant is not a creditor either of the Transferor or Transferee Companies.
10. It was further submitted that the Scheme has been unequivocally approved by the shareholders and Respondent No. 1 is in the process of obtaining consent from its unsecured creditors in terms of the Order of this Hon'ble Bench dated 08.05.2023.
11. However, there is no averment made as to the basis of such claim or quantum of debt that is allegedly owed to the Applicant by Respondent No. 1. Therefore, in light of the abovementioned facts also, the Applicant has no locus to file the present Application opposing the proposed Scheme.
12. Without prejudice to the contention that no debt exists in law, including no actual demand has been raised by the Applicant, in the present case no amounts are payable in respect of the Underlying Works. It is submitted that the Applicant's alleged entitlement namely under the provisions of the Copyright Act, 1957 (Copyright Act) referred above is subject matter of various proceedings which are presently sub judice before the Hon'ble Division Bench of Delhi High Court and the Hon'ble Division Bench of Bombay High Court. In fact, it may also be noted that the Respondent No. 1 is not a party to any of these proceedings and therefore no orders passed in these proceedings would directly result in any form of liability upon the Respondent No. 1. Further, even in these proceedings (to which the Respondent No. 1 is not even a party), the defendants therein are not currently required to pay any amount of royalty to the Applicant (i.e., IPRS, who is the plaintiff in those proceedings).

13. As set out, the Applicant has not even raised any claim upon the Respondent No. 1. Without prejudice to the foregoing, in the alternative, assuming without admitting to any liability, the Applicant's claim as set out in the Application at best can be classified as a disputed claim, which can be pursued, if at all (subject to limitation) against the amalgamated entity before a competent court of law. Furthermore, the affidavits in replies of both the Respondents categorically mention that the liabilities/obligations of any kind of the Transferor Company will be transferred to and become the liabilities/obligations of the Transferee Company. Thus, the sanction of the scheme will not impair or extinguish any creditor's claim.
14. The Transferor and Transferee Companies are both financially healthy entities with a positive net-worth and the Scheme is beneficial for all stakeholders of both companies.
15. In light of the aforesaid, it is submitted that the present Interlocutory Application lacks any merit whatsoever. It was prayed that the present Application ought to be dismissed with costs.

**REPLY FILED BY RESPONDENT NO. 2**

16. It is the case of Respondent No. 2 that it made certain payments in June 2018 towards royalties for the period 21.06.2012 to 31.03.2018 under a letter agreement. The letter agreement was done on a without prejudice basis, and was not to be treated as a precedent for any future agreements. The letter agreement therefore, definitely does not convert the Applicant's status to that of a creditor in respect of amounts now claimed to be due for the period between 01.04.2018 to 31.03.2023 vis a vis Respondent No. 2. In addition to the above stated, the Applicant had issued a legal notice dated 31.05.2022 on Respondent No. 2 to pay royalties to its members for underlying works. Respondent No. 2 vide its letter dated 25.06.2022 categorically disputed the claim of the Applicant.
17. It is the further case of the Respondent that the Applicant has no locus to file the present Application as it is not a creditor of the Respondent as per audited financial statements and in terms of Section 230(4) of the

Companies Act, 2013 read with Rule 9 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Applicant, in the captioned Application has merely claimed to be an unsecured creditor of the Respondent No. 2. It was submitted that along with the captioned Company Scheme Application, Respondent No. 2 placed on record its audited financial statements along with a list of its unsecured creditors, duly verified and authenticated by the statutory auditor. The Applicant is not a creditor of the Respondent No. 2 as per the audited financial statements of the Respondent No. 2. Similarly, the Applicant is not shown as a creditor in the list of creditors of Respondent No. 2 duly authenticated and certified by the statutory auditors of the Respondent No. 2. In fact, the Applicant is not a creditor either of the Transferor or Transferee Companies.
19. However, there is no averment made as to the basis of such claim or quantum of debt that is allegedly owed to the Applicant by Respondent No. 2. Therefore, in light of the abovementioned facts also, the Applicant has no locus to file the present Application opposing the proposed Scheme.
20. Without prejudice to the contention that no debt exists in law, including no actual demand has been raised by the Applicant, in the present case no amounts are payable in respect of the Underlying Works, it is submitted that the Applicant's alleged entitlement namely under the provisions of the Copyright Act, 1957 (Copyright Act) referred above is subject matter of various proceedings which are presently sub judice before the Hon'ble Division Bench of Delhi High Court and the Hon'ble Division Bench of Bombay High Court. In fact, it may also be noted that the Respondent No. 2 is not a party to any of these proceedings and therefore no orders passed in these proceedings would directly result in any form of liability upon the Respondent No. 2. Further, even in these proceedings (to which the Respondent No. 2 is not even a party), the defendants therein are not currently required to pay any amount of royalty to the Applicant (i.e., IPRS, who is the plaintiff in those proceedings).
21. Furthermore, the affidavits in replies of both the Respondents categorically mention that the liabilities/obligations of any kind of the Transferor

Company will be transferred to and become the liabilities/obligations of the Transferee Company. Thus, the sanction of the scheme will not impair or extinguish any creditor's claim.

22. The Transferor and Transferee Companies are both financially healthy entities with a positive net-worth and the Scheme is beneficial for all stakeholders of both companies.
23. In light of the aforesaid, it is submitted that the present Interlocutory Application lacks any merit whatsoever. It was prayed that the present Application ought to be dismissed with costs.

### **FINDINGS**

24. We have heard the Counsel for the parties and have gone through the record.
25. On perusal of the pleadings of both parties, it is evident that the Applicant does not feature as a creditor of both Respondent Nos. 1 and 2 as per its audited financial statements and the list of its unsecured creditors, duly verified and authenticated by the statutory auditor. Reliance is placed on **Astorn Research Ltd. (2013 SCC OnLine Guj 1510)** in which it was held that only a creditor as per the audited financial statements of the transferor/transferee companies or a shareholder of the transferor/transferee companies has the locus to intervene in a scheme to oppose the same.
26. In addition to the above stated, the Applicant's name is also not included in the list of 194 unsecured creditors of Respondent No. 1 and 1,215 unsecured creditors of Respondent No. 2 as annexed to the Company Application Scheme No. 48 of 2023. Both the Respondents Nos. 1 and 2 have no secured creditors. Therefore, we are of the considered opinion that since the Applicant is not a creditor of both Respondent Nos. 1 and 2 as per available records they do not have a locus to object to the proposed scheme.



27. It is a fact that Respondent No. 2 made certain payments in June 2018 towards royalties for the period 21.06.2012 to 31.03.2018 under a letter agreement. However, this bench is of the considered opinion that the letter agreement cannot be treated as a precedent for any future agreements. The letter agreement therefore, definitely does not convert the Applicant's status to that of a creditor in respect of amounts now claimed to be due for the period between 01.04.2018 to 31.03.2023 vis a vis Respondent No. 2.
28. The Bench has also procured the affidavits filed in replies of both the Respondent companies which categorically mention that the liabilities/obligations of any kind of the Transferor Company will be transferred to and become the liabilities/obligations of the Transferee Company. Thus, the sanction of the scheme will not impair or extinguish any creditor's claim. Reliance is also placed on **Zee Interactive Multi-Media Ltd. (2002) 3 Comp Cas 733 (Bom)** in which it was held that unless a creditor shows that the scheme is malafide or fraudulent, or that it would adversely affect creditors of the transferee company, or is shown to be contrary to law, the court should not come in the way of bonafide scheme of amalgamation. The court also observes the Respondent's claim that both the transferor and the transferee companies are financially healthy companies with a positive net worth and the Scheme is beneficial for all stakeholders of both companies. Hence, even if the Applicant is proved to be the creditor of the Respondent in future, its interests will be balanced and protected.
29. The court therefore is of the opinion that postponing or staying the process of the Scheme in question based on the claims made by the Applicant at this stage will not be in order, as the locus of the Applicant to object to the Company Application Scheme No. 48 of 2023 is not established. In the event the Applicant's credential as a creditor being established in future, the Scheme provides enough scope for its interest to be protected.

30. Thus, in conclusion, CA. 320 of 2023, is dismissed and none of the reliefs sought for are granted.

SD/-

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

//VLM//

SD/-

**REETA KOHLI**  
**MEMBER (JUDICIAL)**