ORDER SHEET IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE

IA NO: GA-COM/1/2024, GA-COM/2/2024 APOT/211/2024 WITH CS-COM/140/2024

VODAFONE IDEA LTD.
VS
THE INDIAN PERFORMING RIGHT SOCIETY LTD.

-And-

CC-COM/9/2024

THE INDIAN PERFORMING RIGHT SOCIETY LTD. VS VODAFONE IDEA LTD. & ORS.

(Commercial Division)

BEFORE
The Hon'ble Justice I.P. MUKERJI
-And-

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 10th July, 2024

Mr. S.N. Mookherjee & Mr. Ratnanko Banerji, Sr. Advs. with Mr. Arunabha Deb, Mr. Soumabho Ghose, Mr. Deepan Kr. Sarkar, Ms. Ashika Daga, Ms. Lisa Mishra & Mr. Raunak Das Gupta, Advs. ...for Vodafone Idea Ltd.

Mr. Anindya Kr. Mitra & Mr. Abhrajit Kr. Mitra, Sr. Advs. with Mr. Soumya Ray Chowdhury, Mr. Sarosij Dasgupta, Mr. Himanshu Baghi, Ms. Susrea Mitra, Mr. Subhojit Roy & Mr. Ramanuj Ray Chowdhury, Advs. ...for the Indian Performing Right Society Ltd.

Two applications are before us.

The first is an application (GA-COM/2/2024) filed by the appellant for modification of our order dated 22nd May, 2024.

The second is a contempt application (CC-COM/9/2024) filed by the respondent alleging willful violation of the said order by the appellant and its officers mentioned in the petition.

Mr. S.N. Mookherjee, learned senior advocate appearing for the appellant/petitioner, showed us the part of our order dated 22nd May, 2024 directing the appellant to deposit "all earnings and collections from

17th May, 2024 from the subject matter of the order of injunction i.e. "IPRS repertoire of musical and literary works or any part of the same."

Learned counsel submitted that according to the tariff prescribed by The Indian Performing Right Society Ltd., only 8% of the gross revenue was payable to the society as royalty/license fee for use of Caller Ring Back Tone – CRBT. The appellant was liable to pay royalty or license fee at the above rate for the use of Caller Ring Back Tone only. Any other service was not covered by the said order. Therefore, the order dated 22nd May, 2024 should be modified accordingly.

Mr. Abhrajit Mitra, learned senior advocate moving the contempt application, argued that the appellant was a licensee for value added services in addition to CRBT for utilization of literary and musical works by cinematograph films for inter alia electronic/digital media by sale/download/streaming services etc. Furthermore, there was some additional value added services like advertising video and subscription video. Each service had a separate tariff. All these tariff rates will appear from the tariff charts annexed to the contempt petition at pages 157, 164 and 165 thereof.

Mr. Mookherjee clarified that his client was not availing of any "advertising video or subscription video" service.

The above contentions of the parties can be decided even prima facie after filing of affidavits in both the applications. Let affidavits be filed in each of the applications according to the following direction:

Affidavit-in-opposition be filed by 26th July, 2024. Affidavit-in-reply thereto may be filed by 9th August, 2024.

List both the applications on 14th August, 2024.

The order dated 22^{nd} May, 2024 with regard to deposit is modified to the following extent :

The appellant will prepare a numerical list of subscribers availing of caller tune services only. They will also prepare a separate list of subscribers availing of caller tune services as well as the electronic 3

download service mentioned in clause 3B at page 157 of the contempt

petition and another list, who are availing one of the services.

The appellant shall also make a declaration of the gross revenue

from each of the services.

The appellant shall deposit 8% of the gross revenue from CRBT,

3% of the gross revenue from the electronic download and 11% from a

combination of both the services availed of by the subscribers instead of

depositing their entire earnings and collections etc.

This would apply to the revenue earned from tomorrow that is

11th July, 2024.

All questions with regard to any penalty payable for non-payment

of license fee or late payment thereof or recovery of any excess deposit

made by the appellant are kept open.

The above information shall be furnished on a monthly basis by

filing an affidavit before this court with copies to the Joint Special

Officers and the respondent for their information and necessary action.

The interim order as modified will continue till the disposal of the

appeal or until further order whichever is earlier.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

K. Banerjee A.R. (C.R.)