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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO.3524 OF 2016**

IN

SUIT (L) NO. 1136 OF 2016

Phonographic Performance Limited ...Plaintiffs

Versus

Welcom Hotel Rama International (ITC) & 4 Ors. ...Defendants

NOTICE OF MOTION (L) NO.3525 OF 2016

IN

SUIT (L) NO. 1137 OF 2016

Phonographic Performance Limited ...Plaintiffs

Versus

Corum Hospitality & 4 Others ...Defendants

NOTICE OF MOTION (L) NO. 3526 OF 2016

IN

SUIT (L) NO. 1138 OF 2016

Phonographic Performance Limited ...Plaintiffs

Versus

Mynokos Blu & 4 Others ...Defendants

NOTICE OF MOTION (L) NO.3527 OF 2016

IN

SUIT (L) NO. 1140 OF 2016

Phonographic Performance Limited	...Plaintiffs
<i>Versus</i>	
British Brewing Company Pvt. Ltd. & 4 Ors.	...Defendants

NOTICE OF MOTION (L) NO.3528 OF 2016

IN

SUIT (L) NO. 1141 OF 2016

Phonographic Performance Limited	...Plaintiffs
<i>Versus</i>	
YMCA International Centre & 4 Others	...Defendants

NOTICE OF MOTION (L) NO.3529 OF 2016

IN

SUIT (L) NO. 1142 OF 2016

Phonographic Performance Limited	...Plaintiffs
<i>Versus</i>	
Neon The Disc & Others	...Defendants

NOTICE OF MOTION (L) NO.3530 OF 2016

IN

SUIT (L) NO. 1143 OF 2016

Phonographic Performance Limited	...Plaintiffs
<i>Versus</i>	
Impresario Entertainment & Hospitality Pvt. Ltd. & 4 Others	...Defendants

NOTICE OF MOTION (L) NO.3531 OF 2016

IN

SUIT (L) NO. 1144 OF 2016

Phonographic Performance Limited	...Plaintiffs
<i>Versus</i>	
J W Marriott & 4 Others	...Defendants

NOTICE OF MOTION (L) NO. 3537 OF 2016

IN

SUIT (L) NO. 1148 OF 2016

Phonographic Performance Limited	...Plaintiffs
<i>Versus</i>	
Titos Resorts & Hospitalities Pvt. Ltd. & 4 Ors.	...Defendants

NOTICE OF MOTION (L) NO. 3599 OF 2016

IN

SUIT (L) NO. 1178 OF 2016

Phonographic Performance Limited	...Plaintiffs
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Versus
K-2 Club and Lounge & Ors. ...Defendants

NOTICE OF MOTION (L) NO. 3601 OF 2016

IN

SUIT (L) NO. 1179 OF 2016

Phonographic Performance Limited ...Plaintiffs

Versus
Park Hayat Goa Resort & Spa & Ors. ...Defendants

NOTICE OF MOTION (L) NO. 3602 OF 2016

IN

SUIT (L) NO. 1180 OF 2016

Phonographic Performance Limited ...Plaintiffs

Versus
Bhandari Farms & Rersorts & Ors. ...Defendants

NOTICE OF MOTION (L) NO.3544 OF 2016

IN

SUIT (L) NO. 1152 OF 2016

Phonographic Performance Limited ...Plaintiffs

Versus
China Gate Group & 4 Others ...Defendants

Mr. Ravi Kadam, Senior Advocate, with Mr. Gauraj Shah, i/b Mr. Vishal Gupta, for the Plaintiffs in all the matters.

Mr. Rajiv Narula, i/b Jhangiani & Narula, for Defendant No. 1 in NMSL/3530/2016.

Mr. Amey Nargolkar, i/b Mr. Sushanth Murthy, for Defendant No. 3 in SL/1143/2016.

CORAM: G.S. PATEL, J

DATED: 21st December 2016

PC:-

1. Suit (L) No. 1178 of 2016, Suit (L) No. 1179 of 2016 and Suit (L) No. 1180 of 2016 are filed today. Mentioned. Taken on board. The following order will cover those Suits as well.

2. Mr. Kadam tenders a set of draft amendments. These are taken on record. Leave to amend in terms of the drafts handed in. Amendments to be carried out, without need of reverification, on or before 22nd December 2016. A copy of the amendments will be handed over to the Advocates who are present today in Court. The other Defendants will be served before the next date.

3. This group of matters is taken together for ad-interim relief. It is brought in urgency because the Plaintiffs apprehend that in the forthcoming festive season and especially on Christmas and New Year's Eve, one or more of the Defendants, who run various types of hotels, restaurants, bars and other similar establishments, will host events or play one or more musical works in which the Plaintiffs claim to have copyright. The performances in question

may be live events or recorded events, and there are some establishments that will play recorded music.

4. When the Notices of Motion were first moved before me, I noticed that there was no listing anywhere of the works in which the Plaintiffs claim to have rights as owners of copyright within the meaning of Section 30 of the Copyright Act, 1957. I asked Mr. Kadam for the Plaintiffs whether it was possible to publish a list of these works. He responded saying that there were over a million titles. In any case, this list has now been uploaded on the Plaintiffs' website and the titles are available for being checked. In matters of copyright enforcement, I believe it is necessary, especially in this digital age with its proliferation of material, and, as Mr Kadam himself points out, that 'publication' extends to publication on the Web, to ensure the maximum possible transparency. A person who needs a license must know for what he needs that license and from whom, and at what rate.

5. Quite understandably, it has not yet been possible to upload the individual assignment agreements but the assertion in the plaint is that the Plaintiffs are the assignees under written documents of the copyright in these works and this specifically includes performance rights. The assignment rights are defined in Clause 2 of a sample agreement annexed to the Plaint. The other agreements are said to be similar. These rights include public performance or communication to the public, radio broadcasting and so on.

6. All these Defendants were not equally placed. Some are restaurants at which no special events are planned for either the Christmas or New Year's Eve. They merely play music in the background as they do for rest of the year. The Plaintiffs have two types of licences. The first is an annual or background licence. This is evidently, as the name suggests, an annual fee and covers all the works in the Plaintiffs' repertoire. The second is an event license for specific events. Neither licence is per work, but is either annual or per event.

7. It is always possible for defendants who hold a special events to now check whether their performers are likely to play any of the songs in the Plaintiffs' repertoire. If so, they must obtain a licence. For others, those like Mr. Narula's client, the 1st Defendant in Suit (L) No. 1143 of 2016, an annual or background licence will need to be obtained.

8. Mr. Narula, however, disputes the Plaintiffs' ownership of copyright at least to the extent that he says that it is not demonstrated that such copyright in any of these works actually vests in the Plaintiffs. The underlying assignment agreements are not disclosed. This does not, of course, mean that Mr. Narula's clients are entitled to play music in which they themselves have no copyright without an appropriate licence from the owner, whoever that may be. Mr Narula accepts this but suggests that rather than paying the Plaintiffs, he will deposit the annual licence fee in accordance with the Plaintiffs' tariff or as indicated by them, in Court. I accept this. The amount must be deposited on or before 24th December 2016. This deposit is entirely without prejudice to

the rights and contentions on all sides. It is clarified that this is only an annual or background licence and does not extend to any special event such as New Year's Eve or Christmas eve. Any special event requires an event license.

9. Other Defendants in this group who propose to hold special events during this season will obtain the necessary event licences. They will, at their option, either make payment to the Plaintiffs directly or may deposit the amount in Court. In either case, these payments or deposits are to be made on or before 24th December 2016.

10. If any of these Defendants make payment to the Plaintiffs, and should there then be a rival claim of ownership in respect of any of the works, it goes without saying that the Defendant who has paid the Plaintiffs will not be liable to the third party claimant. That evidently will be a dispute between the Plaintiffs and the third party claimant.

11. Those Defendants who do not obtain either of these licences (*i.e.*, either an annual/background licence or an event licence) will not be entitled to play any part of the Plaintiffs' repertoire either as background music or at or during any event, as the case may be.

12. The 3rd Defendant in Suit (L) No. 1143 of 2010 is Phoenix Mills Limited. It does not of its own host any event or run any kind of establishments. It manages a mall in which there are various establishments. Obviously, it is the responsibility of each of these

establishments to obtain the necessary licence(s). Phoenix Mills Limited will only be required to pay a licence fee if it hosts any special event or plays background music in its mall.

13. Mr. Kadam clarifies that there are some establishments that have, between filing of the Suit and today, already obtained necessary licence. This order will not, obviously, extend to such parties.

14. In order to ensure that there is clarity, Mr. Kadam's clients will upload their schedule of tariff to their website. This is to be done by the end of the day today.

15. This is a temporary ad-interim order to hold the parties over till after the present festive season, *i.e.*, till 20th January 2017. I will make the Notices of Motions returnable at an early date.

16. All Affidavits in Reply to be filed and served on or before 6th January 2017. Affidavits in Rejoinder, if any, to be filed and served on or before 13th January 2017. List all the Notices of Motion for hearing and final disposal on 18th January 2017.

17. The question whether the Defendants are entitled to demand inspection of all the agreements of assignment deeds in favour of the Plaintiffs will have to be decided at a later stage.

(G. S. PATEL, J.)