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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of decision: 05<sup>th</sup> May, 2025*+ **CS(COMM) 461/2022****THE FOUNDRY VISIONMONGERS LIMITED .....Plaintiff****Through: Mr. Shantanu Sahay and  
Ms. Vareesha Irfan, Advocates****versus****SINGARAJAN VFX PRIVATE LIMITED & ANR.....Defendants****Through:****CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringement of copyright along with other ancillary reliefs.

**CASE SET UP BY THE PLAINTIFF**

2. The brief facts of the present case are as follows:

2.1. The plaintiff, a company based in the United Kingdom, was established in 1996 and is a leading innovator of visual effects (VFX) and image processing technologies for motion pictures, animations, commercials, broadcast post-production, among others.

2.2. The plaintiff's software programs have revolutionized the concept of animation by providing magnificent visual effect sequences and have gained much popularity worldwide. The plaintiff has a well-established clientele



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including Warner Bros, The Moving Picture Company, Weta Digital, Framestore, Sony Pictures Imageworks and Digital Domain.

2.3. The plaintiff's software programs are extremely popular in India and they are used by leading Indian studios such as PrimeFocus, EFX, Prasad and Red Chillies for their work.

2.4. NUKE is the plaintiff's flagship software program for rendering VFX and is used for works including films, commercials and short forms and stereo and stereoscopic conversion. The various versions of the NUKE software come in four editions, namely, NUKE, NUKE X, NUKE STUDIO and NUKE RENDER (hereinafter collectively referred to as 'NUKE software programs').

2.5. The plaintiff carries on its business, *inter alia*, sale, distribution and marketing of its NUKE software programs in India through Ark Infosolutions Private Limited (hereinafter 'ARK'), located in New Delhi, which is the plaintiff's authorized reseller/ distributor in India. The plaintiff's email confirming ARK to be its exclusive distributor/ reseller in India has been exhibited as **Ex-P1**. Retail invoices showing sale of the plaintiff's software programs in India through ARK has been marked as **Mark C**.

2.6. The plaintiff is the owner of copyright in the NUKE software programs, including their respective user instruction manuals, which are 'literary works' capable of protection within the meaning of the Copyright Act, 1957 (hereinafter 'Act'). The plaintiff also has copyright registrations for various NUKE software programs in the United States of America. Copyright registration certificates for the plaintiff's NUKE software programs have been marked as **Mark D**.



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2.7. The plaintiff has spent and continues to spend considerable amount of money in research, development and upgradation as well as advertising and promotion of its software programs which translates into millions of dollars in global revenue sales.

2.8. The plaintiff maintains an extensive and updated database of all its licensees who have acquired valid licenses for its software. The plaintiff has also significantly invested to install security mechanisms (colloquially known as ‘phone home technology’) into its software to check whether its software programs are being used in accordance with the terms of its End-User License Agreement (hereinafter ‘EULA’). This is done by recording specific information about the usage of the software program by the host and computer on which it has been installed and used. This information is transmitted to the plaintiff’s servers which automatically reviews the details of the software and the computer system on which it is installed to check if the software is being used beyond the scope of EULA. Accordingly, the aforesaid mechanism logs the information as an incident report of an infringement known as an ‘infringement hit’. Each infringement hit accounts for the number of times the pirated/ unauthorized software is used by an individual. The plaintiff can then check the infringement hits from a database which consolidate all the infringement hits it receives along with such corresponding data relating to the computer and the online network the computer system is part of to identify the infringing user of the software. A sample of the EULA of the plaintiff’s software has been marked as **Mark E**.

2.9. The defendant no.1, a company incorporated in 2022, claims to be a major visual effects studio based out of Chennai offering innovative special effects and animation solutions pertaining to animation and VFX industry.



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2.10. The defendant no.1 maintains an interactive website accessible at [www.singarajanstudios.com](http://www.singarajanstudios.com) as well as profiles on third-party social media platforms such as Facebook and LinkedIn. Extracts from the defendant no.1's aforesaid website have been exhibited as **Ex-P5**. Extracts from the defendant no.1's profiles on third-party social media platforms have been exhibited as **Ex-P6**. The defendant no.2 is one of the directors of the defendant no.1. As per the plaintiff's internal license database, the defendants have no license of the NUKE software programs. The email dated 4<sup>th</sup> July 2022 from the plaintiff's representative Mr. Chris Davies mentioning the license entitlements of the defendant no.1 has been exhibited as **Ex-P8**.

2.11. The plaintiff, in June 2022, was informed that the defendants have been using unauthorized/ pirated versions of the plaintiff's NUKE software programs. Upon investigation, it was revealed that the defendants have been using the pirated/ unauthorized versions of the plaintiff's NUKE and NUKE X software programs in particular on at least 33 computer systems, details of which (including MAC address, IP address, domains, the first, last and total instances of infringement, etc.) are provided in paragraph no.37 of the plaint. The number of infringement hits per MAC address resulted in a total of 2331 infringement hits generated against the defendants' computer systems. Extracts from the plaintiff's phone home database showing pirated/ unauthorized use of its NUKE software programs by the defendants have been exhibited as **Ex-P9**.

2.12. Considering the quantum, pattern and frequency of the defendants' infringing use of the NUKE software programs, it is not out of place to speculate that the defendants continue to engage in pirated/ unauthorized use



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of the plaintiff's software programs and may have more computer systems that those identified in the plaint.

2.13. The defendant no.1, in its website, has put various recruitment/ internship openings including those for 'VFX Prep Artists' having experience with various NUKE software programs. This shows that the defendants are using the plaintiff's NUKE software programs without procuring any genuine license for such use. Hence, the defendants have infringed the plaintiff's copyright subsisting in the NUKE software programs.

### **PROCEEDINGS IN THE SUIT**

3. Summons in the suit and notice in the application for interim injunction were issued to the defendant on 11<sup>th</sup> July, 2022. On the same date, an *ex-parte ad interim* injunction in favour of the plaintiff and against the defendants was granted, which was made absolute on 18<sup>th</sup> April 2023. On 11<sup>th</sup> July 2022, a Local Commissioner was also appointed and the commission was executed on 19<sup>th</sup> July 2022.

4. As recorded in the order dated 18<sup>th</sup> April 2023, summons were served to the defendants through speed post and courier on 1<sup>st</sup> August 2022 and 30<sup>th</sup> July 2022, respectively. Despite service, the defendants did not entered appearance in the suit. Accordingly, there were proceeded against *ex-parte*.

5. To be noted, the defendants had approached the plaintiff for a settlement and agreed to purchase licenses for the plaintiff's software, but the settlement fell through due to default in payment on behalf of the defendants. Accordingly, counsel for the plaintiff sought to lead evidence. An affidavit dated 17<sup>th</sup> August 2023 of the plaintiff's witness Mr. Nripendra Kashyap was filed, which was exhibited as **Ex PW1/A**.



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6. The plaintiff's witness Mr. Nripendra Kashyap was examined-in-chief on 9<sup>th</sup> January 2024.

7. On 15<sup>th</sup> January 2025, counsel appearing on behalf of the plaintiff sought to file evidence by way of an affidavit to prove damages and evidence in this regard was recorded on 8<sup>th</sup> February 2024. A fresh affidavit dated 17<sup>th</sup> April 2025 in respect of computation of damages was filed on 22<sup>nd</sup> April 2025.

### **ANALYSIS AND FINDINGS**

8. I have heard the counsel for the plaintiffs and perused the material on record.

9. The plaint has been duly verified and is also supported by the affidavit of the plaintiffs. In view of the fact that no written statement has been filed on behalf of the defendants, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/ denial has been filed on behalf of the defendants in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted.

10. From the averments made in the plaint and the evidence on record, the plaintiff has been able to prove that it is the owner of the copyright in the NUKE software programs.

11. The plaintiff has filed sufficient documents demonstrating infringement of copyright in the NUKE software programs of the plaintiff by the defendants, which include an email from its representative stating no license entitlement of the defendants for the NUKE software programs and the plaintiff's internal infringement database showing the extent of pirated/ unauthorized usage of the NUKE software programs on the defendants'



computer systems.

12. Further, the following findings emerge from the report of the Local Commissioner dated 26<sup>th</sup> July 2022:

- a. The plaintiff's software was found to be uninstalled on 30<sup>th</sup> June 2022 on two computers;
- b. Full cracked/ unlicensed versions of the plaintiff's software were found on three computers though currently not installed on those computers;
- c. Files created by using the plaintiff's software were found on several computers.

13. In view of the above, a clear case of infringement of the plaintiff's copyright in the NUKE software programs by the defendants is made out. The aforesaid has resulted in unlawful gain to the defendants and unlawful loss to the plaintiff.

14. At this stage, it is pertinent to note that despite service, the defendants have not entered appearance in the suit. The settlement between the parties also failed. Further, since the defendants have failed to take any requisite steps to contest the present suit despite having suffered an interim injunction, it is evident that they have no defence to put forth on merits.

15. In view of the discussion above, the plaintiff would be entitled to a decree of permanent injunction against the defendants in terms of prayer clause contained in paragraph no.54(a) of the plaint.

16. Counsel for the plaintiff also presses for the relief of damages sought in the plaint. In this regard, reference may be made to Rule 20 of the Delhi High Court Intellectual Property Rights Division Rules, 2022. For ease of reference, the same is as set out below:



**“20. Damages/Account of profits**

*A party seeking damages/account of profits, shall give a reasonable estimate of the amounts claimed and the foundational facts/account statements in respect thereof along with any evidence, documentary and/or oral led by the parties to support such a claim. In addition, the Court shall consider the following factors while determining the quantum of damages:*

- (i) Lost profits suffered by the injured party;*
- (ii) Profits earned by the infringing party;*
- (iii) **Quantum of income which the injured party may have earned through royalties/license fees, had the use of the subject IPR been duly authorized;***
- (iv) The duration of the infringement;*
- (v) Degree of intention/neglect underlying the infringement;*
- (vi) Conduct of the infringing party to mitigate the damages being incurred by the injured party;*

*In the computation of damages, the Court may take the assistance of an expert as provided for under Rule 31 of these Rules.”*

[Emphasis Supplied]

17. As noted above, in the present case, the infringement hits recorded on the plaintiff's aforesaid phone home technology as well as the report of the Local Commissioner clearly show unauthorised use of the plaintiffs' NUKE software programs on multiple computer systems of the defendants.

18. To be noted, the defendants had approached the plaintiff for a settlement and agreed to purchase licenses for the plaintiff's software programs, however, they failed to make the complete payment for the same. The defendants also did not bother to enter appearance in the present suit. Therefore, it appears that the defendants have deliberately infringed the plaintiff's copyright in its NUKE software programs.

19. Recently, in a similar case of copyright infringement titled ***Dassault Systemes & Ors. v. Advanced Engineering Solutions & Anr.***, 2025 SCC OnLine Del 994, wherein the defendants were proceeded against *ex-parte*, I had awarded damages to the tune of Rs. 2,78,34,320/- and cost of Rs.



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3,21,000/- in favour of the plaintiff and against the defendants.

20. In the present case, in the initial affidavit dated 7<sup>th</sup> February 2024 of the plaintiff's witness Mr. Nripendra Kashyap, it is mentioned that the plaintiff would have earned approximately Rs. 1,81,62,560/- if the defendants had chosen to purchase genuine versions of the plaintiff's software programs.

21. *Vide* order dated 25<sup>th</sup> November 2024, the plaintiff was directed to file an affidavit disclosing the specifications of the various software programs which were found to be in violation by the defendants and, in a commercial engagement situation, would have covered the infringing value referred to hereinabove.

22. Subsequently, the plaintiff filed a fresh affidavit dated 17<sup>th</sup> April 2025 claiming a sum of Rs. 22,60,894.71/-. The aforesaid amount has been calculated on the basis of proposal dated 9<sup>th</sup> September 2022 shared by the plaintiff with the defendants in an attempt to amicably settle their dispute. The said proposal specified the purchase value amounting to USD 37,828.40/- (Rs. 30,14,526.28/- on 9<sup>th</sup> September 2022). This proposal was accepted by the defendants and a sum of USD 9,457.10/- (Rs. 7,53,631.57 on 9<sup>th</sup> September 2022) was released towards the first payment of the purchase order. However, no subsequent payments for the remaining amount of USD 28,371.30/- (Rs. 22,60,894.71/- on 9<sup>th</sup> September 2022) was made by the defendants.

23. Therefore, the defendants have deprived the plaintiff of potential revenue and caused injury to its business interests to the tune of at least Rs. 30,14,526.28/-, of which the sum of Rs. 22,60,894.71/- was not paid by the defendants to the plaintiff.



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24. Consequently, a decree of damages of Rs. 22,60,895/- is passed in favour of the plaintiff and against the defendants in terms of the prayer clause contained in paragraph no.54(d) of the plaint.

25. The plaintiff has also filed a statement of costs dated 20<sup>th</sup> March 2024 towards court fees, legal costs and miscellaneous expenses including the fees of the Local Commissioner as per which the plaintiff has incurred costs/ expenditure of approximately Rs. 6,55,108/-.

26. In the facts and circumstances of the case, I am of the view that costs of Rs. 5,00,000/- in terms of the prayer clause contained in paragraph no.54(e) of the plaint is liable to be awarded in favour of the plaintiff and against the defendants.

27. Counsel for the plaintiff does not press for the remaining reliefs claimed in the suit.

28. Let the decree sheet be drawn up accordingly.

29. All pending applications stand disposed of.

**AMIT BANSAL, J**

**MAY 05, 2025**  
**ds**