



2024:DHC:5550-DB



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

% Judgement delivered on: 29.07.2024

+ **RFA(COMM) 291/2023 and CM APPL. 64249/2023**

M/S TRINITY CONSULTANTS

..... APPELLANT

versus

M/S REDEFINE ONLINE EXPRESS
(OPC) PRIVATE LIMITED

..... RESPONDENT

Advocates who appeared in this case

For the Appellant : Mr.Aman Avinav, Advocate.

For the Respondent : Mr.Kshitiz Mahipal, Mr.Parvesh Kaushik,
Ms.Khairun Nisa and Ms.Shirin Raza,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

JUDGMENT

VIBHU BAKHRU, J.

1. The appellant – M/s. Trinity Consultants (hereafter *Trinity*) has filed the present appeal impugning the judgment and decree dated 27.09.2023 (hereafter *the impugned judgment*) passed by the learned Commercial Court in CS (COMM) No.3/2022 captioned *M/s. Redefine Online Express (OPC) Pvt. Ltd. v. M/s. Trinity Consultants* and the counter claim filed by Trinity and registered as CS(COMM) No.424/2022 captioned *M/s. Trinity Consultants v. M/s. Redefine Online Express (OPC) Private Limited*.



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2. In terms of the impugned judgment, the learned Commercial Court had dismissed the counter claim and decreed the suit filed by the M/s. Redefine Online Express (OPC) Private Limited (hereafter *Redefine*) for a sum of ₹22,13,618/- along with interest at the rate of 12% per annum with effect from 28.02.2021 till its realisation.

3. Trinity claims to be a partnership firm under the Indian Partnership Act, 1932 bearing Registration No.1808/2002. It is, *inter alia*, engaged in the business of licensing/letting and sub-licensing/sub-letting commercial spaces.

4. On 16.12.2019, the parties entered into a registered Leave and License Agreement (hereafter *the Agreement*) for a hotel property bearing the address No.E-147, Saket, New Delhi -110017 along with fixtures, fittings and other movable assets (hereafter *the scheduled property*). The scheduled property comprised of 15 (fifteen) fully furnished guest rooms and 2 (two) fully furnished guest suites, which included televisions, air conditioners, heaters, geysers, ward robes and other fittings and fixtures. The Agreement indicates that Trinity was carrying on the business of running a hotel business under the name and style of 'TRINITY ART HOTEL', from the premises in question, prior to licensing the scheduled property to Redefine.

5. The term of the license was for a period of five years commencing from the date of execution of the Agreement, that is, from 01.12.2019 to 01.12.2024. The parties had agreed that Redefine would pay license fee/monthly compensation of ₹6,00,000/- (Rupees Six Lacs) per month for



occupying the scheduled property, in advance, on or before 7th day of each calendar month.

6. Redefine also furnished the interest free security deposit of ₹24,00,000/-, which was required to be refunded to Redefine at the time of vacation of the scheduled property in accordance with the terms of the Agreement. Nation-wide lock down was imposed on 25.03.2020 on account of outbreak of COVID-19 pandemic. Admittedly, the parties negotiated the settlement whereby, Trinity agreed to reduce the license fee for a certain period and to not dispute that Redefine paid the reduced licence fee for the given period.

7. Redefine sent the termination notice dated 06.02.2021 terminating the Agreement with effect from 28.02.2021 and offered to hand over the possession of the scheduled property. Redefine also called upon Trinity to refund interest free security deposit of ₹24,00,000/-.

8. Trinity responded to the said legal notice by a letter dated 10.02.2021 and claimed that the termination notice was contrary to the express terms of the Agreement and, thus, was illegal and arbitrary. Trinity referred to Clause 6.4 of the Agreement, which stipulated that in case the Agreement was terminated prior to the expiry of the lock-in period of eighteen months, Redefine would pay the license fee/monthly compensation for the remaining lock-in period along with any encumbrances.

9. Since the Agreement was terminated within the said lock-in period, Trinity demanded license fee/monthly compensation for the remaining period of 108 days along with other sums.



10. Redefine handed over the possession of the scheduled property to Trinity on 28.02.2021. The possession was accepted by Trinity on 01.03.2021. This was acknowledged by Trinity in its undated letter (Ex. P5) whereby Trinity also claimed that a sum of ₹34,51,482/- was due on the termination of the Agreement. Trinity also annexed a tabular statement setting out the details of said claimed sum. It claimed that after adjusting the security deposit of ₹24,00,000/- from the aforesaid sum, a sum of ₹10,51,482/- was due and payable by Redefine.

11. Since the dispute between the parties remained unresolved, Redefine instituted CS(COMM) No.3/2022 before the learned Commercial Court claiming a sum of ₹22,13,618/- along with interest at the rate of 24% per annum for the period of nine months till the date of filing of the suit which was quantified at ₹3,98,451/- and further interest at the rate of 24% per annum till the date of payment.

12. In its plaint, Redefine acknowledged the liability to pay a sum of ₹5,01,500/- for the month of January, 2021 and a sum of ₹5,90,000/- for the month of February, 2021. It also acknowledged the liability to pay the electricity charges of ₹97,482/- and water charges of ₹22,500/-, which were additionally due and payable. It claimed that against the aforesaid amounts, Redefine had paid a sum of ₹3,58,000/- and thus, acknowledged that a sum of ₹8,53,482/- was due and payable. However, Redefine also claimed that it was entitled to deduct a sum of ₹6,67,100/- on account of office furniture, laptops, televisions and other appliances, which it claimed were not returned to Redefine at the time of handing over the scheduled property. Redefine claimed that after adjustment, a sum ₹1,86,382/- was payable by it to



Trinity. After adjusting, the said amount from the security deposit, Redefine claimed that a sum of ₹22,13,618/- was recoverable from Trinity.

13. The suit and counter claim were clubbed and tried together.

14. Based on the rival contentions, the learned Commercial Court framed the following issues: -

“1) Whether the plaintiff was entitled for premature termination of the Leave and License Agreement dated 16.12.2019? (OPP)

2) Whether the defendant is entitled to the complete payment of the license fee as agreed between the parties for a lock-in period of Leave and License Agreement dated 16.12.2019? (OPD)

3) Whether the defendant is entitled for any damages on account of termination of the agreement by the plaintiff? (OPD)

4) Whether the plaintiff is entitled for recovery of the suit amount of Rs.26,12,069/- from the defendant, as prayed for? (OPP)

5) Whether the parties are entitled for any interest? If so, at what rate and for which period? (OPP)

6) Relief.”

15. Both parties led their evidence. Mr. Rakesh Kumar, director of Redefine filed his affidavit by way of evidence (Ex.PW-1/A). He was cross examined by the learned counsel for Trinity. Mr. M.S. Juneja, partner of Trinity filed his affidavit by way of evidence (Ex.DW1/A). The said witness was also cross examined on behalf of Redefine.

16. The learned Commercial Court decided all the issues in favour of Redefine and against Trinity, and also awarded the cost of litigation assessed at ₹50,000/- in favour of Redefine.



17. The learned Commercial Court held that Section 32 of the Indian Contract Act, 1872 was applicable as there was clear stipulation in the Agreement regarding *force majeure*. The learned Commercial Court referred to Clause 13 of the Agreement and concluded that the outbreak of COVID-19 constituted a *force majeure* as referred to in the said Clause as such an event was outside the control of the parties. Consequently, Redefine was entitled for pre-mature termination of the Agreement.

18. The learned Commercial Court also rejected Trinity's claim for payment of license fee charges from the months of March, 2021 to May, 2021. The learned Commercial Court held that mere entitlement to forfeit the interest free security deposit was not enough and it was necessary for Trinity to prove the losses and damages for the breach of the Agreement.

19. The learned Commercial Court also rejected Trinity's claim on the ground that it was an unregistered partnership firm as deposed by DW-1 in his cross examination. The learned Commercial Court did not accept Trinity's claim that the scheduled property was let out to health care workers from the nearby hospital during lock down period, as no such witnesses from the hospital were ever examined.

20. The learned Commercial Court also noted that PW-1 had admitted that it had not deposited TDS on the amount paid by him to Trinity after March, 2020, therefore, Trinity would be at liberty to deduct the amount of TDS from the amount of ₹22,13,618/-.

REASONS AND CONCLUSIONS

21. At the outset, it is material to note that there is no real dispute as to



the documentary evidence produced by the parties. There is no dispute that the parties had entered into a Leave and License Agreement. In terms of the Agreement, the possession of the scheduled property was handed over to Redefine for monthly license fee/compensation of ₹6,00,000/-. The recitals of the Agreement also indicate that a hotel under the name and style of TRINITY ART HOTEL was being operated from the premises in question. The scheduled property also included plant and machinery, including lifts, generator sets, air conditioners, furniture and fixtures etc. Admittedly, the scheduled property comprised of fifteen rooms and two guest suites which were equipped and fully furnished.

22. In terms of the Agreement, Redefine was obliged to pay ₹6,00,000/- per month, as a license fee/compensation for use and occupation of the scheduled property. There is no dispute that Trinity had agreed to reduce the licence fee payable in the wake of the COVID-19 pandemic. There is also no serious dispute that Redefine had agreed to pay the reduced amount till December, 2020.

23. In its plaint, Redefine had admitted its liability to pay the invoices for the months of January, 2021 and February, 2021 (₹5,01,500/- for the month of January, 2021 and ₹5,90,000/- for the month of February, 2021). The invoices for the said amounts were produced by Redefine (Ex.P-2) and the same were admitted.

24. In addition, Redefine also admitted its liability for a sum of ₹97,482/- as electricity charges and a sum of ₹22,500/- as water charges. Thus, Redefine accepted that it was liable to pay a sum of ₹8,53,482/- till the date



of handing over the possession of the scheduled property on 28.02.2021. There is also no dispute that against the aforesaid admitted amount, Redefine had paid an amount of ₹3,58,000/- on 15.01.2021 as stated in its plaint. Thus, Redefine acknowledged in its plaint that a sum of ₹8,53,482/- was payable to Trinity as on 28.02.2021. As noted above, Redefine claimed that it was entitled to adjust the sum of ₹6,67,100/- from the said sum on account of furniture, laptops, television and other appliances belonging to it which were lying in the premises. However, there is no averment in the plaint that Redefine was prevented or in any manner obstructed from removing any of its assets or belongings from the premises in question.

25. The only averment made in the plaint in regard to the claim of adjustment of ₹6,67,100/- is set out in Paragraph 10 of the plaint. The same is reproduced as under: -

“10. That the plaintiff had clear the all the dues up to the month of December 2020 and also made a payment of Rs.3,58,000/ on 15.01.2021 against the demand of Rs.50,1500/- for the month of January 2021 and for the month of Feb 2021, the defendant had raised a demand of Rs.5,90,000/- but the plaintiff had handed over the possession to defendant on 28.02.2021. Further the Electricity charges of Rs. 97482/- and water charges of Rs.22500/- were additional dues and whereas plaintiff's office furniture, laptops, T.V. & other appliances of about Rs.6,67,100/- were not returned to plaintiff at the time of handover and the same are still lying within the suit property. It is also pertinent to mention here that the plaintiff had spent an amount of Rs.10,00,000/- on Kitchenware and office renovation which are



permanent fixtures on the suit property.”

26. It is clear from the above that there is no allegation that Trinity had usurped the said assets or prevented Redefine from removing the same. There is also no explanation as to why said assets (furniture, laptops, television and other appliances) were not removed by Redefine before handing over the scheduled property to Trinity.

27. It is also relevant to refer to Clause 6.2 of the Agreement, which is set out below:-

“6.2 The Licensee shall use and keep the *Scheduled Property* in good condition at their own cost during the subsistence of this agreement and shall deliver back the same in good condition, as it was at the time of their occupation, to the Licensors on the determination or earlier termination of the permission to use the *Scheduled Property*, as granted through this agreement.”

28. In terms of the said Clause, Redefine was obliged to return the scheduled property in a good condition (as it was during its occupation), at the time of determination or earlier termination of the Agreement. Thus, Redefine was obliged to remove all its belongings prior to handing over the scheduled property to Trinity.

29. It is admitted that Redefine had not issued any letter of communication calling upon Trinity to hand over the assets, which it claimed were lying at the premises in question. This was expressly admitted by DW-1 in his cross examination in response to Question no.14. It is also material to note that neither the letter of handing over possession (Ex.P-4) issued by Redefine nor the letter issued by Trinity acknowledging handing



over of the possession of the scheduled property (Ex.P-5 Colly) contained any reference to the assets of Redefine. In addition, there is no material on record to indicate the details of such assets or to establish their valuation.

30. In the aforesaid circumstances, we are unable to accept that Redefine had established that it was entitled to recover a sum of ₹6,67,100/- from Trinity. First of all, Redefine had failed to establish that it owned the assets as described or that the same were in existence at the material time. There are no details as to the said assets. Redefine has also not produced any evidence of purchase of the said assets. Second, Redefine has failed to establish that any such assets were left in the premises. Third, there is no averment that Trinity had obstructed the removal of the said assets. It is merely averred that Trinity had not returned the said assets. But there is no evidence that Trinity had taken over possession of the same or borrowed it at any point of time.

31. The learned Commercial Court gravely erred in proceeding that Redefine had proved its claim to the said extent.

32. In view of the above, Redefine had clearly admitted its liability to pay ₹8,53,482/- till handing over the possession of the scheduled property on 28.02.2021. The same is also not in dispute.

33. Thus, the principal dispute is regarding the counter claim filed by Trinity. The averments regarding its claim of a sum of ₹34,51,482/- is sketchy and the counter claim does not specifically mention the details of such amount. However, the break up of the said amount is reflected in the letter acknowledging the acceptance of the possession of the scheduled



property pursuant to the termination notice (Ex.PW-5 Colly). Trinity had demanded a sum of ₹34,51,482/- in the said letter and a statement setting out the breakup of said amount is annexed in the said letter. The tabular statement as set out in the annexure to the said letter is set out as under:-

"No.	Description	Amount
1	Bill for License Charges for the Month of January 2021	₹5,01,500.00
2	Bill for License Charges for the Month of February 2021	₹5,90,000.00
3	Penalty for Early Exit for Month of March, April and May 2021	₹21,24,000.00
4	Repair/Service Charges to Generator	₹35,000.00
5	Repair/Service Charges to Passenger Lift	₹31,700.00
6	BSES Bill Pending as on 28th February 2021	₹97,482.00
7	Water Bill Pending for Feb 2021 @ 22500 pm	₹22,500.00
8	Repairs to the Rooms (Lump Sum)	₹1,00,000.00
9	Repairs to the Reception & Steps (Lump Sum)	₹2,00,000.00
10	Income Tax Deducted but not deposited	₹1,47,300.00
	Less Payment Received 15th January 2021	₹3,98,000.00
		₹34,51,482.00"

34. As noted above, there is no dispute that Redefine had acknowledged the liability in regard to the bill for the months of January and February 2021 (amount mentioned at serial nos. 1 & 2 of the tabular statement). Redefine also acknowledges its liability to pay the electricity charges of ₹97,482/- and water charges of ₹22,500/- (amount mentioned at serial



numbers 6 & 7 of the tabular statement).

35. As is apparent from the above, Trinity also claimed an amount of ₹35,000/- for repair and service charges for generator set; ₹31,700/- for repair and service charges for passenger lift; ₹1,00,000/- for repairs of rooms (Lump Sum); and ₹2,00,000/- for repair of reception and steps. These claims are set out at serial numbers 4,5,8 & 9 of the tabular statement.

36. Trinity has not produced any credible evidence to establish its claim in regards to such repairs/service charges. It is also material to note that the said statement was annexed to the letter accepting taking over of the possession of the scheduled property. Therefore, it is unlikely that at the material time, any such expenditures were incurred. In absence of any evidence produced by Trinity regarding incurring any expenditure on repairs, Trinity's claim for the same is required to be rejected.

37. In so far as Trinity's claim for TDS is concerned, PW-1 admitted that the same was not deposited after March, 2020. The learned Commercial Court also decreed that Trinity would be entitled to deduct the said amount from any sum payable to Redefine. Since, there is no dispute that Redefine had not deposited the TDS, which it had deducted, it is necessary for Redefine to account for the same. Trinity's claim in this regard is required to be accepted. Since, we find that there is no dispute as to the quantum of the TDS, we accept that Trinity would be entitled to a sum of ₹1,47,300/- as claimed by it on account of income tax deducted at source, but not deposited by Redefine.

38. The only contentious issue that requires to be addressed is, whether



Trinity's claim for monthly charges/compensation for the months from March, 2021 to May, 2021 is established.

39. The Agreement expressly provided that the same was not determinable at the instance of either parties during the lock-in period, save and except as provided for in the Agreement.

40. Clause 6.4 of the Agreement also specifically provided that if Redefine vacated the scheduled property prior to the expiry of the lock-in period, it would be liable to pay compensation for the entire remaining period of the lock-in period, along with agreed increments. Clause 6.4 of the Agreement is set out below:

“6.4 The Licensee covenants that in such circumstances wherein the Licensee vacates the Scheduled Property/hand-over the occupation of the Scheduled Property in favour of the Licensor, prior to the expiry of the Lock-in period, it shall be liable to make complete payment of Licence Fee/ Monthly Compensation for the entire remaining period of the “Lock-in Period” alongwith agreed increments thereto in favour of the Licensor.”

41. Thus, in terms of the Clause 6.4 of the Agreement, Redefine is obliged to pay a monthly license fee/compensation for the period from March, 2021 to May, 2021.

42. The learned Commercial Court rejected the claim made by Trinity essentially on three grounds. First, it held that Redefine was entitled to terminate the Agreement on account of a *force majeure* event. Second, that Trinity could not maintain the claim because it was an unregistered firm. And third, that Trinity had not established any loss or damages.



43. We find that none of the three reasons are sustainable. Redefine claimed that the Agreement was terminated on account of *force majeure* and relied upon Clause 13 of the Agreement in support of its contention. Clause 13 of the Agreement is set out below: -

“13. FORCE MAJEURE/ACT OF GOD

13.1 “Force Majeure” shall mean any such event beyond the control of the affected party, which could not be anticipated upon formation of the contract, and the effects of which are compelling and unforeseeable. A Force Majeure event may make it temporarily or permanently impossible to perform all or any part of a party's obligations.

13.2 If at any time during the term of the Leave & License agreement, the *Scheduled Property* is damaged or destroyed on account of war, riots, fire, earthquake or any other eventuality/act of god or for any reason whatsoever, so as to render the *Scheduled Property* (or part thereof) unfit for the use of the LICENSEE then, and in such event, the Licensors shall not be responsible for any Force Majeure or the situation beyond the control of Licensor and in such case this agreement shall be deemed to have come to an end. The parties shall not be held liable for any breach of the terms and conditions of this agreement when such breach results from a Force Majeure event.

13.3 The party affected by a Force Majeure event shall inform the other party as soon as it has become aware of such event. The party shall describe such event in detail and inform the other party of any relevant element capable of allowing its precise identification, and to determine its



effects as to performance of its contractual obligations. The party invoking a Force Majeure event shall then inform the other party in writing of its delayed performance/inability to honour the terms of this agreement due to the occurrence of the Force Majeure within a reasonable period.

13.4 A party failing to fulfill its obligation to inform in compliance with the procedure described in the above paragraph may not invoke a force Majeure exemption.

13.5 The obligations of the party invoking “Force Majeure” shall be suspended as long as they cannot be performed due to a “Force Majeure” event. Nevertheless, such party shall, as far as it is possible, remedy the situation with due diligence. A “Force Majeure” event shall not give rise to any legal right or claim for damages by the affected party.”

44. It is Redefine’s case that it had invoked the aforementioned clause. PW-1 was specifically cross examined on the question whether Redefine had ever invoked the *force majeure* clause. The relevant questions put to him and his responses are extracted below: -

“Q6. Did you ever invoke *force majeure* clause as per the Leave and License Agreement?

I state that the Leave and License Agreement was terminated on account of *force majeure*.

Q7. How did you invoke the force majeure clause under the Leave and License Agreement?

I had given the notice dated 6 February 2021 mentioning the fact of suffering the



huge loss during the lockdown period.”

45. It is at once clear from the above that Redefine had not invoked the *force majeure* clause (Clause 13) for avoiding the Agreement. In terms of Clause 13.3 of the Agreement, Redefine was obliged to inform Trinity immediately on becoming aware of any *force majeure* event which prevented it from performing its obligation. In terms of Clause 13.5 of the Agreement, the obligation of the party invoking the *force majeure* would be suspended so as long as the same cannot be performed due to the *force majeure* event. Thus, any force majeure did not absolve Redefine from carrying on its obligation; it merely stood suspended so long as the same could not be performed due to *force majeure*.

46. A plain reading of Clause 13.4 of the Agreement also indicates that a party failing to inform the other party, would not be entitled to exemption on account of *force majeure*.

47. In the present case, it is admitted that in view of the outbreak of COVID-19 and the nationwide lock down, the parties entered into negotiations and Trinity had agreed to reduce the license fee/monthly compensation to enable Redefine to tide over the situation resulting from the pandemic. Redefine’s obligation to pay the license fee/monthly compensation was partly waived on account of the outbreak of COVID-19. In this view of the matter, even if it is accepted that COVID-19 could be considered a force majeure, it would not absolve Redefine of its obligation to pay the license fee, the same stood addressed.

48. The termination notice also clearly indicates that Redefine had



terminated the Agreement on account of a commercial difficulty faced by it and not on the ground that it was impossible to perform its obligation. It is necessary to refer to Paragraph numbers 3 and 4 of the termination notice (Ex.A-5), which sets out the reasons for terminating the Agreement. The same are set out as below: -

“3. That my client had suffered a huge loss during the Lockdown due to non running/use of the above said premises in question for period of 6 months and my client was also not received any payments from the Fab Hotels since March 2020 and agreement with them was also terminated with effect from 31.08.2020 and the my client is in Arbitration proceedings with Fab Hotels also.

4. That my client is not in position to continue to suffer huge loss and to make payment of the license fee for the above mentioned property as the same was not in use due to commercial hardship faced by my client due to Corona Epidemic and Lockdown, therefore in such circumstances my client is left with no option but to terminate the Lease and License Agreement dated 16.12.2019 with effect from 28.02.2021.”

49. It is apparent from the above that Redefine had terminated the Agreement not on account of any impossibility to perform but because it did not find it commercially expedient to continue operating the hotel.

50. The nationwide lock-down – which is the basis of the learned Commercial Court’s decision that it was impossible to perform the Agreement on account of *force majeure* – was imposed by the Notification No.40-3/2020-DM-1(A) issued by the Ministry of Home Affairs dated 24.03.2020. The relevant extract of the said Notification is set out below: -



“Whereas in exercise of the powers under section 6(2)(i) of the Disaster Management Act. 2005, the National Disaster Management Authority (NOMA). has Issued an Order no. 1-29/2020-PP (Pt.II) dated 24.03.2020 (Copy enclosed) directing the Ministries Departments of Government of India, State/Union Territory Governments and State/ Union Territory Authorities to take effective measures so as to prevent the spread of COVID-19 in the country, Whereas under directions of the aforesaid Order of NOMA, and in exercise of the powers, conferred under Section 10(2)(1) of the Disaster Management Act. The undersigned, in his capacity as Chairperson, National Executive Committee, hereby issues guidelines, as per the Annexure, to Ministries Departments Government of India, State/Union Territory Governments and State/ Union Territory Authorities with the directions for their strict implementation. This Order shall remain in force, in all parts of the country for a period of 21 days with effect from 25.03.2020.

7. Hospitality Services to remain suspended
Exceptions:

a. Hotels, homestays, lodges and motels, which are accommodating tourists and persons stranded due to lockdown, medical and emergency staff, air and sea crew.”

51. The aforesaid restrictions were significantly relaxed after 31.05.2020. However, even during the initial period of the lock down Redefine was not precluded from using the hotel although, for the limited purpose of accommodating the tourists and persons stranded due to lockdown, medical and emergency staff, air, and sea crew.



52. Undeniably, the outbreak of COVID-19 adversely affected businesses including the hospitality business. However, we are unable to accept that the same rendered it impossible for Redefine to perform its obligation. Redefine's obligations were not contingent upon how its hotel business performed. The outbreak of COVID-19 did not render it impossible for Redefine to perform its payment obligation.

53. In any view of the matter, the aforesaid issue is not of much relevance because Redefine continued to occupy the premises till February, 2021. Even if it is assumed that the *force majeure* event had rendered the scheduled property inaccessible for a brief period of time; the same had abated and there was no obstruction or impediment for Redefine to continue its business of operating the hotel from the scheduled property in February 2021.

54. A plain reading of the termination notice indicates that Redefine had terminated the Agreement on account of alleged loss suffered and thus, had taken a commercial decision not to carry on business from the scheduled property. The termination is contrary to the terms of the Agreement and it cannot be justified on account of the outbreak of COVID-19.

55. The learned Commercial Court erred in concluding that Redefine was entitled to terminate the Agreement on account of the Pandemic.

56. The next aspect to be examined is whether Trinity is entitled to claim the license fee/monthly compensation for the remaining period as claimed. There is no ambiguity in the terms of the Agreement and the parties had specifically agreed that in the event Redefine vacates the occupation of the



scheduled property within the initial period of eighteen months, it would pay the license fee/monthly compensation for the remaining period.

57. Trinity had also established that the scheduled property was not let out till 01.04.2022. DW-1 has testified that the scheduled property was let out to ASKJ Hospitality from 01.04.2022 onwards. He denied the suggestion that the scheduled property was leased prior to April, 2022.

58. In the given circumstances, we are unable to accept that Redefine has no obligation to pay the license fee/monthly compensation for the remaining three months. Even if it is accepted that notwithstanding any express stipulation in the Agreement, only reasonable damages could be awarded for wrongful termination of the Agreement; the period of three months to locate another tenant, cannot be considered as unreasonable. Further, it is established from the testimony of DW-1 that the scheduled property was not been leased or licensed till 01.04.2022.

59. Third question to be examined is whether Trinity's claim could be rejected on the ground that it is an unregistered firm. First, no such objection has been taken in the reply to the counter claim filed by Redefine. No issue in this regard was struck. In the present appeal Trinity has asserted that it is a registered firm. Trinity has also produced the acknowledgment of Registration of Firm and has placed the same on record. Redefine has not disputed the same. Even during the course of the arguments, the learned counsel for Redefine did not advance any submission to question the status of Trinity as a registered firm. In this view, Trinity's counter claim could not have been rejected on this ground.



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60. In view of the above, the impugned judgment passed by the learned Commercial Court is set aside. We hold that Trinity is entitled to a sum of ₹18,00,000/- as license fee/monthly compensation for the months of March to May, 2021. In addition, Trinity is also entitled for the sum of ₹1,47,300/- admittedly deducted by Redefine and not deposited with the Income Tax Authorities as well as the sum of ₹8,53,482/- admittedly payable by Redefine for the period prior to 28.02.2021. Trinity would also be entitled to adjust the aforesaid amounts from the interest free security deposit of ₹24,00,000/-. After the adjustment of the aforesaid amount, Redefine is liable to pay an amount of ₹4,00,782/- to Trinity. Trinity is also entitled to interest at the rate of 12% per annum from the date of filing of the counter claim [CS(COMM) No.424/2022], till the date of payment.

61. The parties shall bear their own costs.

62. A decree sheet be drawn.

63. The amounts deposited by Trinity in the Registry of this Court, if any, are directed to be remitted to Trinity along with accrued interest, if any.

64. The appeal is allowed in the above terms.

65. Pending application(s) also stand disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JULY 29, 2024

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Click here to check corrigendum, if any