

**MOOT COURT SOCIETY | SYMBIOSIS LAW SCHOOL, NOIDA**  
**Symbiosis International (Deemed University), Pune**

**11<sup>th</sup> NASCENT Moot Court Competition, 2021**

**Moot Proposition**

- I. Bright Hotels Limited (“**Bright**”) is a company incorporated under the laws of India. It owns and operates several hotels in various cities across India. Apart from providing restaurant and lodging facilities in such hotels, Bright also enters into lease agreement with entities that are interested in setting up night clubs, shops etc., in the premises of Bright hotels.
- II. Luxe Hospitality Limited (“**Luxe**”) is also a company incorporated under the laws of India. It owns and operates restaurants and clubs in various cities across India. Luxe saw an opportunity of opening a night club in one of the hotels of Bright, which is located in the city of Delhi. As such, Luxe approached Bright and held talks for lease of the ground floor in Bright hotel in Delhi for the purpose of operating a 24 hour night club.
- III. The above talks were successful and a lease deed was executed on 16 August 2018 between Bright and Luxe for lease of ground floor in Bright hotel at Delhi (“**Lease Deed**”). The relevant terms of the Lease Deed are extracted below:

“ ...

Whereas Real Infra Limited has granted leasehold rights in land at ... (“**Land**”) to Bright for a period of 99 years and Bright has developed and constructed a hotel on the Land.

Whereas Luxe proposed to take on lease the ground floor in the hotel (“**Scheduled Premises**”) and Bright accepted the proposal.

Whereas Luxe has proposed to take the Scheduled Premises on lease for the purpose of operating a 24 hour restaurant-cum-night club, which offer has been accepted by Bright, as per the terms and conditions mentioned hereinbelow:

...  
1.

1. In consideration of the monthly lease rent payable under Clause 2, Bright hereby grants lease of the Scheduled Premises to Luxe for a period of 5 years commencing from 16 August 2018 (“**Term**”).
2. The monthly lease rent payable by Luxe to Bright for the entire tenure of this lease is INR 20,00,000 (“**Rent**”). The monthly lease rent must be paid in advance on or before 7<sup>th</sup> day of the concerned month.
3. Further, Luxe has paid and Bright has received the refundable security deposit of INR 1,00,00,000 in consideration of grant of lease of the Scheduled Premises. Bright can adjust from the security deposit any outstanding Rent payable by Luxe.

4. It is agreed by parties that the first three years commencing from 16 August 2018 shall be the lock-in period. This Lease Deed can be terminated by Bright during the lock-in period if Rent is not paid by Luxe for more than one month. Luxe, however, is not entitled to terminate this Lease Deed for any reason during the lock-in period except as provided under Clause 8. After the lock-in period, either party can terminate this Lease Deed by giving one month's advance notice.
5. Luxe is permitted to use the Schedule Premises for the purpose of restaurant-cum-night club twenty-four hours a day. However, Luxe shall ensure that the use of the Schedule Premises is peaceful and no nuisance shall be caused in the Scheduled Premises. Luxe acknowledges the fact that several guests book rooms in the hotel and therefore any nuisance caused in the Scheduled Premises, if not remedied immediately, will amount to breach of this Lease Deed.
6. It is further agreed that Luxe shall not make any structural changes in the Scheduled Premises before obtaining prior permission of Bright. Any non-compliance of this clause will amount to breach of this Lease Deed.
7. If due to any force majeure events including but not limited to flood, fire, earthquake, tempest or any other act(s) of God or for any reason beyond the reasonable control of human beings, or a statutory order/notification of the authorities, the Scheduled Premises cannot be used and/or occupied by Luxe ("Force Majeure Events") for a continued period of 30 days, Luxe shall not be liable to pay any Rent or part thereafter to Bright till the subsistence of Force Majeure Events.
8. If the Force Majeure Event remains for more than 90 (ninety) days, this Lease Deed shall be terminated at the option of Luxe.
9. All disputes arising between the parties with respect to this Lease Deed shall be decided by the courts in Delhi only.

..."

- IV. After executing the Lease Deed, Luxe invested INR 2,00,00,000 for setting up the fit-outs, interiors, modular kitchens etc., and other accessories required for operating a restaurant-cum-night club. Thereafter, the restaurant-cum-night club became operational from 15 January 2019 and became very popular in a short period of time.
- V. Luxe was complying with the terms of the Lease Deed. However, in October 2019, there were instances where the guests of Bright had complained of the loud noise emanating from the night club. They have also reported that nuisance is being created by guests of Luxe, which was very inconvenient for them. All of this led to certain negative reviews for Bright on travel websites with as many as eighty customers of Bright complaining of the loud noise from time to time. Further, during one inspection carried out on 15 December 2019, Bright observed that Luxe has constructed an elevated dance platform inside the Scheduled Premises without taking prior

permission of Bright. The said dance platform is bolted to the ground and has a circular shape with an elevation of 10 inches and diameter of 15 feet.

- VI. Bright issued notice to Luxe on 20 December 2019 on account of above incidents, i.e., nuisance due to loud noise from club, nuisance created by guests of Luxe and unauthorized construction of dance platform. In the notice, Bright gave thirty days' time to Luxe to rectify the breaches and stated that in the event Luxe fails to rectify the breach within said timeline, the Lease Deed shall be terminated.
- VII. Luxe replied to above notice on 18 January 2020 and stated as follows:
- a. Nuisance created by guests were isolated instances which were beyond the control of Luxe and, that as and when such acts occurred Luxe had taken steps to resolve the same. In any event, Bright is well aware of how a night club functions and yet it allowed Luxe to operate a night club for 24 hours a day. Mere inconvenience caused to few guests does not amount to nuisance.
  - b. This aside, as a precautionary measure, Luxe is undertaking sound-proofing work in the interiors of the night club and areas where such sound-proofing work is being undertaken is closed for the public. Only such areas where sound proofing work is completed is open for public.
  - c. The dance platform was constructed by Luxe after informing employees of Bright and that no objection was raised by them.
- VIII. Thereafter, Luxe kept operating the night club. In the meanwhile, the Government of India announced a nationwide lockdown on 24 March 2020 to curb the spread of Covid-19. Several orders were also issued by the Government of Delhi and other State and Central Departments which called for social distancing measures and closure of bars, restaurants, and night clubs.
- IX. In the above backdrop, Luxe wrote to Bright on 25 April 2020 saying that it need not pay the Rent from May 2020 till subsistence of lockdown orders in terms of Clause 7 of Lease Deed. In response to letter of Luxe, Bright vide letter dated 1 May 2020 stated that as Luxe continues to use and occupy the Scheduled Premises and, therefore, must pay Rent. In this regard, Bright informed Luxe that it has to further pay rent to Real Infra Limited, who continues to demand rent from Bright. Accordingly, Luxe was granted 15 days' time for paying the outstanding Rent. However, Luxe did not pay the Rent.
- X. On 16 June 2020, Bright terminated the Lease Deed by reiterating the events mentioned under 20 December 2019 notice and on account of non-payment of Rent and asked Luxe to vacate the premises by 30 June 2020. Bright further stated in its termination notice that Luxe is liable to forthwith pay the Rent for the months of May and June 2020 failing which the Rent shall be adjusted from the Security Deposit.
- XI. Luxe replied to the termination notice on 30 June 2020 and stated that,
- a. It had already cured the breaches, if any, on account of nuisance, and the same was informed vide letter dated 18 January 2020. The area where sound proofing

work was not completed was not open for public and hence no nuisance was being caused to Bright or its customers. In any event, Bright does not have the contractual right to terminate the Lease Deed for breach of Clause 5, especially in view of Clause 4 which does not permit Bright to terminate the Lease Deed on account of nuisance.

- b. The dance platform is not a “*structural change*”. Further, post receiving letter dated 18 January 2020, Bright by its conduct has waived its right to terminate the Lease Deed on this account by allowing Luxe to stay in the premises upto June 2020;
- c. Luxe is not liable to pay Rent for month of May and June 2020 in view of Clause 7 of the Lease Deed;
- d. Luxe has made substantial investment upto INR 2,00,00,000 on the Scheduled Premises to make the restaurant-cum-night club operational and this sudden and illegal termination is a huge loss to Luxe. Therefore, in addition to full refund of security deposit, Bright is liable to pay to Luxe the cost of INR 2,00,00,000, and also the loss of profit which Luxe would have earned had the entire term of the Lease Deed been utilized by Luxe.

XII. Bright in its letter dated 10 July 2020 denied the above averments of Luxe and stated as follows:

- a. The construction of dance platform constitutes a “*structural change*” and such construction is illegal as it is undertaken without prior permission of Bright. In this regard, Bright informed Luxe that prior permission under Clause 6 of the Lease Deed means prior written permission and merely informing the employees of Bright does not comply the requirements of said clause.
- b. Luxe failed to remedy the nuisance “*immediately*” and the number of complaints received by Bright from time to time, reflect the inconveniences being caused to the guests of Bright. The sound-proofing work undertaken by Luxe is not yet complete in entirety and hence does not amount to a remedial action on part of Luxe.
- c. Bright further stated that there is a fresh breach on account of non-payment of Rent.
- d. Hence, the termination is neither sudden nor illegal. In any event, Luxe is put to notice of its breach as early as 20 December 2019.

By giving the aforementioned reasons, Bright stated that the termination is valid and in accordance with terms. It was further stated that Luxe cannot claim any amount from Bright because Luxe had shifted its night club from Bright hotel to another hotel which is only 500 meters away, thereby not impacting Luxe in any manner. Bright also stated that Luxe cannot claim both the cost of investment as well as loss of profit. Further, with the said response, Bright sent a cheque of INR 60,00,000 being the balance security deposit after adjusting the Rent for the months of May to June 2020.

- XIII. Luxe has filed a civil suit before the Delhi High Court (Original Side) for recovery of INR 40,00,000 being the amount deducted from security deposit and INR 2,00,00,000 being the cost incurred by Luxe in setting up the club and INR 50,00,00,000 being the loss of profit of Luxe which Luxe could have earned had the entire term of the Lease Deed been utilized by Luxe.
- XIV. Both the parties have filed their respective pleadings and the Court has directed to file written memorandums by framing appropriate issues and complying with the rules of the competition.

**Notes:**

- i) The names, characters, incidents in this moot proposition are fictitious, and created for academic purposes only.
- ii) The parties are at liberty to frame the issues, and to create sub-issues.
- iii) The maintainability or admissibility of the Civil Suit is not disputed.

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