

In the matter of an  
Arbitration

and in the matter of The Commercial Rent (Coronavirus) Act 2022

THE CORNBREAD HOUSE	Applicant
LIMITED	
v	
ARCH COMPANY	Respondent
PROPERTIES LIMITED	
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AWARD	
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## Introduction & the Parties

### Introduction

1. The dispute relates to rent, service charges and interest due from the Applicant to the Respondent under a lease dated 20<sup>TH</sup> April 2015 (of which the Applicant took an assignment in January 2018) of commercial premises at Arch 254 Paradise Row, Bethnal Green, London E2 ("the Premises"). The applicant is the tenant under the Lease and the Respondent is the Landlord.
2. The applicant carries on business at the premises running a sit in and take away restaurant under the trading name of Arepa & Co.
3. Arrears of rent and service charge of £70,022.97 ("the Arrears") have arisen and the Applicant has made an application under The Commercial Rent (Coronavirus) Act 2022 ("the Act") for relief. In addition, there is an outstanding rent review which relates to the relevant period.

### The Parties

4. The Applicant is The Cornbread House Limited a company registered in England & Wales under registration number 08431129. The Applicant has been represented throughout by Mr Wright of Protected Rent Debt.
5. The Respondent is The Arch Company Properties Limited a company registered in England & Wales under registration number 11516452. The respondent has been represented throughout by Ms Ali of Realty Law.

## Jurisdiction and Seat of Arbitration

6. The parties unfortunately were unable to resolve their disputes in relation to the Arrears and the applicant commenced the arbitration pursuant to the Act. The Act itself provides the jurisdiction and the seat of the arbitration is England & Wales.
7. I was appointed as the arbitrator on 30 September 2022.
8. The referral is for an arbitration on the papers only with no oral hearing.

## Procedural and Interlocutory Matters

9. I issued direction to the parties on 3 October 2022, and I confirm the parties have fully complied with the directions made.
10. I review the evidence and submissions from the parties in the succeeding paragraphs of this award. Under the Act I am required to determine the arbitration in set and specific stages, and I review the relevant evidence at each applicable stage.

## The Statutory Requirements.

11. I set out in outline the statutory requirements which must be met under the Act;

### 13 Arbitration awards available

(1) This section sets out the awards open to the arbitrator on a reference under this Part.

(2) If the arbitrator determines that—

(a) the parties have by agreement resolved the matter of relief from payment of a protected rent debt before the reference was made,

(b) the tenancy in question is not a business tenancy, or

(c) there is no protected rent debt,

the arbitrator must make an award dismissing the reference.

(3) If, after assessing the viability of the tenant's business, the arbitrator determines that (at the time of the assessment) the business—

(a) is not viable, and

(b) would not be viable even if the tenant were to be given relief from payment of any kind,

the arbitrator must make an award dismissing the reference.

(4) Subsection (5) applies if, after making that assessment, the arbitrator determines that (at the time of the assessment) the business—

(a) is viable, or

(b) would become viable if the tenant were to be given relief from payment of any kind.

(5) In that case the arbitrator must resolve the matter of relief from payment of a protected rent debt by—

(a) considering whether the tenant should receive any relief from payment and, if so, what relief, and

(b) making an award in accordance with section 14.

### 14 Arbitrator's award on the matter of relief from payment

(1) This section applies where the arbitrator is considering how to resolve the matter of relief from payment of a protected rent debt as required by section 13(5).

(2) Before determining what award to make the arbitrator must consider any final proposal put forward to it by a party under section 11.

(3) Where both parties put forward final proposals under section 11—

(a) if the arbitrator considers that both proposals are consistent with the principles in section 15, the arbitrator must make the award set out in whichever of them the arbitrator considers to be the most consistent;

(b) if the arbitrator considers that one proposal is consistent with the principles in section 15 but the other is not, the arbitrator must make the award set out in the proposal that is consistent.

(4) Where only the party making the reference to arbitration puts forward a final proposal under section 11, the arbitrator must make the award set out in the proposal if the arbitrator considers that the proposal is consistent with the principles in section 15.

(5) Otherwise, the arbitrator must make whatever award the arbitrator considers appropriate (applying the principles in section 15).

(6) An award under this section may—

(a) give the tenant relief from payment of the debt as set out in the award, or

(b) state that the tenant is to be given no relief from payment of the debt.

(7) Where an award under subsection [\(6\)\(a\)](#) gives the tenant time to pay an amount (including an instalment), the payment date must be within the period of 24 months beginning with the day after the day on which the award is made.

(8) In subsection [\(7\)](#) “the payment date” means the day specified in the award as the day on which the amount concerned falls due for payment.

(9) An award giving the tenant relief from payment of a protected rent debt is to be taken as altering the effect of the terms of tenancy in relation to the protected rent constituting the debt.

(10) Subsection [\(9\)](#) means, in particular, that—

(a) the tenant is not to be regarded as in breach of covenant by virtue of—

(i) non-payment of an amount written off by the award, or

(ii) failure to pay an amount payable under the terms of the award before it falls due under those terms;

(b) a guarantor of the tenant’s obligation to pay rent, or a former tenant who is otherwise liable for a failure by the tenant to pay rent, is not liable in respect of anything mentioned in paragraph [\(a\)\(i\)](#) or [\(ii\)](#);

(c) a person other than the tenant who is liable for the payment of rent on an indemnity basis is not liable—

(i) to pay any unpaid protected rent written off by the award, or

(ii) to pay an amount payable under the terms of the award before it falls due under those terms;

(d) any amount payable under the terms of the award is to be treated for the purposes of the tenancy as rent payable under the tenancy.

(11) In this section “final proposal” means—

(a) the revised formal proposal put forward by a party under section 11(4), or

(b) if there is no revised formal proposal put forward by a party, the formal proposal put forward by the party under section 11(1) or (2).

## 15. Arbitrator’s principles

(1) The principles in this section are—

(a) that any award should be aimed at—

(i) preserving (in a case falling within section 13[\(4\)\(a\)](#)), or

(ii) restoring and preserving (in a case falling within section 13[\(4\)\(b\)](#)),

the viability of the business of the tenant, so far as that is consistent with preserving the landlord's solvency, and

(b) that the tenant should, so far as it is consistent with the principle in paragraph (a) to do so, be required to meet its obligations as regards the payment of protected rent in full and without delay.

(2) In considering the viability of the tenant's business and the landlord's solvency for the purposes of subsection (1), the arbitrator must disregard anything done by the tenant or the landlord with a view to manipulating their financial affairs so as to improve their position in relation to an award to be made under section 14.

(3) For the purposes of this section, the landlord is "solvent" unless the landlord is, or is likely to become, unable to pay their debts as they fall due.

12. The Act requires a systematic and staged approach to be adopted by the arbitrator. If the Pre-arbitration and Eligibility requirements are not met in any respect, I must make an award dismissing the claim. Only if the pre-arbitration and eligibility requirements have been met, may I proceed to make an award for relief.

## Application of the Statutory Requirements

### Pre-Arbitration

13. The first stage is the pre-arbitration stage the requirements of which must have been attended to before a reference to arbitration can be made.
14. These require a notice of intention to arbitrate to be given to the other party. An arbitration cannot be started until the prescribed period has lapsed after the notice of intention has been given.
15. The Applicant, who is the Tenant is not under a CVA, IVA or compromise or arrangement which has either been applied for or approved or sanctioned.
16. The Applicant gave Notice of Intention to Arbitrate to the Respondent on 2 August 2022, and the Referral to Arbitration was made on 30 September 2022.
17. I am satisfied therefore that the pre-arbitration stage has been complied with.

### Eligibility

18. Are the Premises business premises?
19. I am satisfied on the evidence produced to me that the tenancy under which the Applicant occupies the Premises is a business tenancy. The Applicant (as Tenant) operates a restaurant business at the Premises and that is a business. Furthermore, the Respondent does not contend otherwise.
20. Are the Arears a Protected Rent Debt?
21. I am required to be satisfied that the rent arears which are the subject of the arbitration are a "protected rent debt". The parties agree the protected rent debt at £70,022.97 exclusive of VAT.
22. This is a two-stage evaluation. First, I must be satisfied that the sum in dispute is rent as defined by the Act. This would include sums payable in consideration for being in possession of the

premises, a service charge, interest, and VAT. Second, I must be satisfied that the tenancy was adversely affected by coronavirus and the unpaid rent is attributable to occupation of the premises during a “protected period”.

23. In relation to the first part of this evaluation I am satisfied on the evidence provided to me that the sum in dispute is rent as defined by the Act. It is common ground that the Applicant is required to pay a sum for the occupation of the premises, as well as service charges.
24. In relation to the second part of the evaluation I am informed by the parties’ proposals and supporting evidence that the rent arrears relate to rent and service charges due during the period 25 March 2020 to 18 July 2021.
25. All businesses (including restaurants) in the hospitality sector were subject to mandatory closure orders and restrictions whilst permitted to open from 21 March 2020 to 18 July 2021. This information has been taken from the Government website: [www.gov.uk/government/publications/commercial-rent-code-of-practice/commercial-rent-code-of-practice-following-the-covid-19-pandemic#annex-a-timelines](https://www.gov.uk/government/publications/commercial-rent-code-of-practice/commercial-rent-code-of-practice-following-the-covid-19-pandemic#annex-a-timelines).
26. The statements of account produced in evidence by the parties clearly demonstrate the areas of rent and service charges all relate to the period 21 March 2020 to 18 July 2021. I am satisfied that all of the areas constitute protected rent debt.
27. The accounting information produced in evidence by the Applicant reveals that the Applicant achieved turnover in the period to 31 March 2019 of £ [Redacted] and made a loss of £[Redacted] in the period to 31 March 2020 turnover of £[Redacted] was achieved and a loss of £[Redacted]. Restaurants were required to close from 21 March 2020 and therefore the accounts for the period to 31 March 2020 would not have been affected by the consequences of the closure orders. The accounts for the period to 31 March 2021 show that turnover fell to £[Redacted] and the Applicant made a modest profit of £[Redacted]. The management accounts for the three-month period show turnover of £[Redacted] and a net profit of £[Redacted], which is an improving position following the end of the coronavirus closures and restrictions.
28. Considering the trading performance of the Applicant before, during and after the lockdown period, I am satisfied that the tenancy was adversely affected by coronavirus and the unpaid rent is attributable to occupation of the premises during a protected period.
29. Have the parties reached agreement on the matter of relief from payment of the protected rent debt?
30. It is clear from the proposals and evidence produced by the parties that they have not reached such an agreement.

31. Is the tenant's business viable or would be viable if given relief from payment of the protected rent debt?
32. The Respondent contends that the Applicant is viable and for that reason says the Applicant should not be granted any relief. The Applicant says, in essence, that it is viable but without relief would cease to be viable.
33. The accounting information produced in evidence by the Applicant reveals that the Applicant achieved turnover in the period to 31 March 2019 of £[Redacted] and made a loss of £[Redacted], in the period to 31 March 2020 turnover of £[Redacted] was achieved and a loss of £[Redacted]. Restaurants were required to close from 21 March 2020 and therefore the accounts for the period to 31 March 2020 would not have been affected by the consequences of the closure orders. The accounts for the period to 31 March 2021 show that turnover fell to £[Redacted] and the Applicant made a modest profit of £[Redacted]. The management accounts for the three-month period show turnover of £[Redacted] and a net profit of £[Redacted], which is an improving position following the end of the coronavirus closures and restrictions.
34. No evidence has been produced to suggest there would be any material impact on the Respondent from any sort of relief being granted to the Applicant.
35. I am satisfied from the evidence produced that the Applicant's business is viable or would be viable if granted relief, as on the evidence, the applicant appears to be trading sufficiently well to be sustainable.
36. I am satisfied that all eligibility criteria have been met.

## Relief

37. Under the Act relief from payment of a Protected Rent Debt may be one or more of:
- 37.1 Writing off the debt or a part of it;
  - 37.2 Giving the tenant time to pay all or part of the debt, which includes making payment by instalments;
  - 37.3 Reducing or writing off any interest otherwise due under the tenancy.
38. I have not made an award dismissing the reference under any of the eligibility criteria and I am satisfied that the Applicant's business is viable or would be viable if granted relief. I turn now to the question of what, if any relief should be given to the Tenant.
39. Section 15 (1) of the Act requires me to have regard to the following principles when considering my award:
- 39.1 An award should aim to preserve or restore the viability of the Tenant's business; and

- 39.2 The Tenant should, so far as consistent with the first principle be required to meet its obligations.
40. I am also required by section 14(2) of the Act to consider the various proposals put forward by the parties and to make an award in the terms of the proposal which is most consistent with the principles of the Act. If I do not consider any of the proposals to be consistent with the principles of the Act, I may make my own award.
41. The Applicant and the Respondent have made widely divergent proposals, with little change as the arbitration has progressed. The parties have maintained their initial positions.
42. The Applicant seeks relief for the entire protected rent debt or in the alternative the Applicant should be awarded time to pay the sums outstanding.
43. The Applicant justified its proposal on the following grounds (among others):
- 43.1 Without the relief requested, the Applicant will cease to be viable;
  - 43.2 That its proposal upholds the principles of the Act of viability, solvency and sharing the consequences of the disruption caused by the pandemic;
  - 43.3 The Applicant suffered because its business interruption insurer declined to pay the Applicant's claim;
  - 43.4 The business is being rebuilt but turnover is still below pre-pandemic levels, costs of living issues and the rise in costs are having an adverse effect on its business also. Nevertheless, the Applicant expects its business to produce a profit albeit at a reduced level
44. The Respondent submitted a formal proposal dated 17 October 2022 and made the following proposal:
- 44.1 The Applicant to discharge the whole of the outstanding protected rent debt of £[Redacted] interest free over 24 monthly instalments; and
  - 44.2 Immediately pay upon the determination of a rent review to pay the balance of the uplifted rent
  - 44.3 Interest to be waived, but if the Arbitrator determines that payment is to be made by more than one instalment, the respondent should pay interest at the contract rate.
45. The Respondent justifies its proposals on the following grounds (among others);
- 45.1 It has already granted a three-month rent free period to the Applicant at a cost of £[Redacted] excluding VAT;
  - 45.2 The Applicant's business has grown and it can afford to pay the arrears;
  - 45.3 The Applicant reduced a director's loan from £[Redacted] to £[Redacted] using funds that could have been used to meet the rent arrears;
  - 45.4 The Applicant's bank statement showed that it had cash in the bank of £[Redacted] as at 16 August 2022;
  - 45.5 The Applicant has made a profit on average of £[Redacted] per month for the last 15 months and can therefore afford to pay the Protected Debt in full over 24 months;
  - 45.6 The Respondent also relies on the principles of the Act in support of its position, particularly the statement in the Code that tenants who can pay their protected rent debt in full should do so.

46. On 15 November 2022 the Applicant served its Revised Formal Proposal. The Revised Formal Proposal served by the Applicant rejects the Respondent's proposal and repeats its previous proposal.
47. The Applicant prays in aid of its proposal the intention a stated on the Code of Practice, requiring the parties to act in good faith and submits that accordingly the Code does not require a standard of proof to the same standard as would be expected in court proceedings. I agree with this as a point of principle as arbitrations under the Act are intended to be dealt with swiftly and inexpensively and the same standard of proof that may be required in say court proceedings or full-blown arbitral proceedings would not be appropriate in relation to arbitrations under the Act. Nevertheless, the onus lies with the party proving a fact or making a submission to ensure that the fact or submission is supported by adequate evidence.
48. I am asked by the Applicant to infer that the Respondent might seek to use financial information provided by the Applicant in this arbitration for some ulterior purpose such as to gain an advantage in a rent review or other negotiations. This allegation has not been supported by any evidence and there have not been detailed submissions on the point. Accordingly, I am not able to draw the inference I am being invited to draw.
49. The Applicant submits that it improved the premises during lockdown to ensure the business could reopen and be compliant with the coronavirus restrictions imposed on reopening and that it used the grant support it received for that purpose.
50. The Applicant relies on the Act and the Code in support of its submission that landlords should share the consequences of the lockdown with their tenant and submits further that because the Respondent is a far wealthier outfit than the Applicant, the Respondent should waive the protected rent debt and the Applicant should have total relief from payment of it.
51. The Applicant submits that without the relief that it seeks it will cease to be a viable business. It says that it needs the cash that it has in the bank as working capital and that its working capital requirements increased when its business interruption insurer declined to accept the Applicant's claim.
52. The Applicant complains that the Respondent has not disclosed evidence in relation to its financial position. I note, the Act and Code do not require landlords to disclose evidence of the impact coronavirus may have had on their businesses. They may do so if they wish, but it is not mandatory. But in the absence of such evidence, I am entitled to infer that there had been no material impact on the Landlord's business as a consequence of the coronavirus lockdowns and restrictions.
53. In respect to the issue raised by the Respondent that the Applicant had repaid most of a director's loan, the Applicant explained that the loan was made as a matter of urgency to keep the business afloat during the coronavirus difficulties and was intended as a short-term liquidity measure,

54. In response to the Respondent's submission that the Claimant has plenty of cash in the bank to pay the arrears in full, the Applicant explains that the Applicant accumulates cash on a weekly basis to meet its payroll and VAT payments. It builds up cash to meet such liabilities. If the Applicant was required to pay the protected rent debt in full it would be left with a balance of £10,000. The Applicant has paid its rent in full otherwise than the protected rent debt. I am urged to disregard the fact that the Applicant may have made a profit over the last 15 months because paying the protected rent debt would put the Applicant in a "negative position".
55. The Applicant also says that its cashflow forecast shows that it would not be able to afford to pay the protected rent debt at the rate of £2,500 per month and if required to make such payments it would be necessary to reassess its "business capacity to remain open".
56. The Applicant also makes submission in relation to the Respondent's financial standing and liquidity.
57. The Applicant refers me to two published Award under the CCODR. I confirm I have read both. Awards published under the CCODR scheme may offer helpful guidance, but they are not binding authorities and each case must be determined on their own merits and particular facts. I am urged by the Applicant to take the same approach as the Arbitrator in the KXDNA Award where an apparently wealthy tenant had 45% of a substantial protected rent debt written off but urges also that 100% of the Applicant's protected rent debt should be written off to reflect the disparity between the Applicant's and Respondent's ability to "share the impact of the pandemic".
58. In relation to the second case Wright Brothers Kittyhawk Ltd v Wellington Pub Company Limited, I am invited to follow the arbitrator's award in that case in respect of the approach to be taken in assessing viability and the principle of sharing the consequences of the pandemic but submits that sharing in this case would justify a 100% write off the protected rent debt and not just 50% as in the Wright Brothers case.
59. In the Respondent's Revised Proposal dated 9 December 2022 it makes the following submissions:
60. The Respondent repeats its original proposal but offers to waive interest if I were to order that the Applicant should pay the whole of the protected rent debt in full, but if I am to order payment by instalments it would want to claim interest at the rate of 4% above the base lending rate of HBS from the date of the award until payment. The Respondent states this is the contract rate.
61. The Respondent raises various complaints regarding the validity of the Applicant's Revised Formal Proposal at paragraph 7 of its Revised Formal Proposal. But makes the following proposals without prejudice to its comments made in relation to the validity of the Applicant's Revised Formal Proposal:
- 61.1 The Applicant to discharge the protected rent debt of £70,022.97 excluding VAT by instalments over 24 months;

- 61.2 The balance of any uplifted rent following the rent review determination due on 20 April 2020 to be paid on the handing down of that determination;
- 61.3 If the Applicant is unwilling to accept the Respondent's current Revised Formal Proposal to spread the payment by equal interest free payments over 24 months, but the Arbitrator determines that payment is to be made by more than one instalment, the Respondent claims interest at the Contract Rate on the unpaid sums from the date of the award until the date of payment.
62. The Respondent contends that the Applicant has a strong liquidity and can afford to pay the protected rent debt over 24 months and does not require to have the protected rent debt written off to be viable and in view of the funds available to the Applicant it would be reasonable to expect the Applicant to meet its obligations.
63. The Respondent's Revised Formal Proposal is accompanied by a witness statement from John Cook a senior credit manager employed by the Respondent. Mr Cook made the following points:
- 63.1 He rejects the suggestion that by failing to yield to the Applicant's proposal it is uncaring and greedy;
- 63.2 Mr Cook states that the Respondent put in place a coronavirus support programme through its Coronavirus Recovery Team which provided financial support to its tenants to at a cost to the Respondent of £11m which included relief granted to the Applicant of £[Redacted] (ex VAT);
- 63.3 The Respondent does not maintain rent failure insurance.
- 63.4 Mr Cook draws a number of distinctions between the case of Wright Brothers Kittyhawk Ltd -v- Wellington Pub Company Ltd. In particular Mr Cook refutes the point that the Wright Brothers case demonstrates that the Applicant's proposal is the most consistent with the Act because the circumstances of this case are different from those in the Wright Brothers case, not least the £[Redacted] relief already given to the Applicant by the Respondent. Mr Cook makes the point that in the Wright Brothers case, the tenant's business had not returned to pre-pandemic levels whereas in his view the Applicant's post-pandemic turnover and profit is higher than it was before the pandemic lockdowns and restrictions, and it has the means to pay the rent arrears. Mr Cook also makes the point that the Applicant in the Wright Brothers case did not have enough available funds to pay its arrears, whereas the Applicant has sufficient funds available to it to pay its protected rent debt.
- 63.5 Mr Cook comments that the Applicant has failed to adduce evidence to demonstrate that it is unable to pay the protected rent debt; that as the tenant the Applicant has an obligation to repair and decorate the premises under the lease.
64. I am required to consider whether the Final Proposals submitted by the parties are consistent with the principles set out in clause 15 of the Act. The Final Proposals must be such that they; preserve or restore the viability of the tenant while avoiding the insolvency of the landlord, but at the same time ensuring the tenant meets its contractual obligations under its tenancy. It is a balancing act, because in many cases where relief is granted, the nature of that relief may relieve the tenant from

its obligation to pay the protected rent debt in whole or in part. The general policy behind the Act is that landlords and tenants should share the financial burden.

65. If I do not consider that either of the Final Proposals are consistent with the principles of the Act, I must make my own determination of whether relief should be given and if so, what that relief should be.
66. The Applicant has made only one Final Proposal, which is in effect a proposal for total relief from payment of the protected rent debt. The Applicant's Revised Final Proposal was not a revision of its original Final Proposal because the Applicant merely repeated its original proposal. Whether writing off 100% of the protected rent debt would be appropriate requires a consideration of the financial position of both the Applicant and the Tenant. There is no evidence to suggest that the Respondent as the Landlord would become insolvent if relief was granted to the Applicant.
67. The Applicant's financial position is that its trading position has improved since the end of the coronavirus restrictions. Its management account for the year ended 31 March 2022 shows that turnover to be £[Redacted] and profit £[Redacted]. The Applicant's management accounts for the three-month period to 30 June 2022, show turnover of £[Redacted] and profit of £[Redacted]. The Applicant has not adduced its management accounts for the three-month period June to September 2022 and therefore I do not have evidence of the Applicant's trading in the first six months of the current financial year. However, the financial information produced by the Applicant for the year ended 31 March 2022 and for quarter one of the current financial year is indicative of a business that has recovered from the trauma of the coronavirus measures and has stabilised.
68. As of 16 August 2022 the Applicant held £[Redacted] in its bank account. The Respondent submits that the Applicant has sufficient cash available to pay the protected rent debt in full. The Applicant says that it has a policy of building up a reserve in its account to pay its VAT liability each quarter and other liabilities. In addition, the Applicant submits that it needs the sum that it has accumulated for working capital. In response to this the Respondent submits that the Applicant has failed to produce a cashflow forecast. I accept that the Applicant would need working capital to be able to run its business but the Applicant has produced no evidence of what its working capital requirements might be.
69. On the financial evidence that has been adduced in this arbitration I find that the Claimant is able to pay towards the protected rent debt. To be consistent with the principle which requires the tenant to meet its obligations, I find that Applicant should pay towards the protected rent debt. The question then to be answered is to what extent and in what manner the Respondent should share the burden with the Applicant.
70. It is relevant that the Applicant was able to trade to some extent during the period to which the protected rent debt relates. In the financial year to 31 March 2021 the Applicant achieved turnover of £[Redacted] and a modest profit of £[Redacted] (compared to turnover of £[Redacted] and a loss of £[Redacted] in the previous accounting period).

71. I need now to determine whether either of the Revised Formal Proposals of the parties are consistent with the principles of the Act. The Applicant only made one formal proposal which it repeated in its Revised Formal Proposal, which was to write off the protected rent debt. For the reasons I have given earlier in this Award I do not consider the Applicant's proposals to be consistent with the principles of the Act, as on the evidence the Applicant is able to make payment and to relieve the Applicant wholly of the need to do so would not be consistent with the requirement that the tenant should meet its obligations.
72. The Respondent's Revised Formal Proposal is couched in the terms of an offer to the Applicant because if the Applicant fails to accept the offer and if I as the Arbitrator make an award under which payments by instalments are to be made, then the Respondent claims interest. Whereas, if the Applicant were to accept the Respondent's offer to pay the protected rent debt over 24 months, interest would be waived. It is a conditional offer which by the nature of that offer is not consistent with the principles of the Act. More particularly, I do not consider that the Respondent's Revised Formal Proposal is consistent with the principle of sharing the burden of the pandemic.
73. Accordingly, having found neither of the proposals from the parties to be consistent with the principles of the Act, I must make my own determination.
74. The Respondent has already voluntarily relieved the Applicant of one quarter's rent of £15,000 exclusive of VAT and that is taken in account in calculating the protected rent debt of £70,022.97. The debt would otherwise have been £85,022.96.
75. Having regard to the point made by the Applicant that it needs working capital, a point which I accept in principle, though the Applicant has produced no evidence as to what the level of working capital might be. I consider, on the evidence it would be appropriate for the Applicant to make payment by instalments so that its cash funds are not severely depleted by having to make an immediate lump sum payment. Having regard to the accounting evidence produced, the Applicant would in my judgment continue to be viable if required to make instalment payments at a suitable level.
76. Taking all the factors referred to on the foregoing paragraphs into account and the principles of the Act I consider that an appropriate relief to provide to the Applicant to be £22,000 in addition to the £15,000 already provided voluntarily by the Respondent. The Respondent does not contend that any relief under this arbitration would place it in financial peril. That would leave a balance of £48,022.97 for the Applicant to pay, which sum plus the VAT on it should be paid by equal monthly instalments over 24 months. Interest to be waived.
77. In relation to the outstanding rent review, The Respondent seeks an order that Applicant should pay the balance of the reviewed rent immediately on the issuance of the determination. The Applicant makes no specific submission on this point. Payment of the balance of a reviewed rent would be provided for in the tenancy itself and there is no need therefore for me to make any such Award.

## Award

78. I grant the following relief to the Applicant:

78.1 £22,000 of the Protected Rent Debt shall be written off; and

78.2 The balance of £48,022.97 shall be paid by the Applicant to the Respondent twenty-four equal instalments commencing on 14<sup>th</sup> January 2023 and on the 14<sup>th</sup> of each month thereafter; and

78.3 The Applicant shall be relieved from paying interest on any part of the Protected Rent Debt.

78.4 The Respondent shall pay to the Applicant 50% of the Arbitration Fee pursuant to section 19 (5) of the Act

79. Pursuant to section 18(2) of the Act, I am required to publish this award. I intend to publish the award on the CCODR website. I have formed the provisional view that sums in paragraphs 27; 33; 44.1; 45.1; 45.3; 45.4; 63.2; 67; 68 & 70 contain commercial information which ought to be redacted from the award pursuant to section 18(4). I will therefore publish the award in full, with those redactions on the CCODR website unless either party indicates to me by 4pm on 6<sup>th</sup> January 2023 that they wish me to do otherwise in which case I will consider any submissions put forward in relation to that issue together with any evidence submitted in support of any such submission.

## Seat of the Arbitration

80. Pursuant to the Arbitration Act 1996 section 95(2), the seta of this arbitration is in England & Wales.



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John Abbott FCI Arb

Seated in England & Wales

30<sup>th</sup> December 2022