

IN THE MATTER OF AN ARBITRATION BETWEEN:

[REDACTED]

(Applicants)

AND

[REDACTED]

(Respondent)

COMMERCIAL RENT (CORONAVIRUS) ACT 2022

AND

THE ARBITRATION ACTS

FIRST AND FINAL AWARD

MISS KAY LINNELL (ARBITRATOR)

Brick Kiln Cottage
The Avenue
Herriard
Basingstoke
Hampshire
RG25 2PR

FIRST AND FINAL AWARD OF KAY LINNELL

1. This Award is my First and Final Award and is issued with reasons following an application under the Commercial Rent (Coronavirus) Act 2022 (the Act) to apply for relief from payment of protected rent debts under a business arbitration.
2. This Award is issued on the matter of relief from payment is given in a way that is consistent with the section 15 principles aimed at preserving or restoring and preserving the viability of the business of the tenant so far it is consistent with preserving the landlord's solvency.
3. The landlord is required where appropriate to submit evidence for the arbitrator to consider on its solvency which would be judged on the criteria set out in 15 3 that the landlord is likely to become unable to pay its debts as they fall due.

trading as (the Respondent) is the tenant of the premises on the ground and basement floors of (the premises) under a lease dated . The tenants were represented in this arbitration by . The landlords in the are (the Applicants). The landlords were presented in this arbitration by

5. Rent is defined as an amount payable possession and use of premises plus a service charge plus interest on the unpaid amount. Protected rent occurs during a period in which the tenancy was adversely affected by coronavirus and was subject to a closure requirement beginning on 21st of March 2020 and ending on 18 July 2021. The relief available under the Act might be writing off the whole or any part of the debt, giving time to pay the whole or any part of the debt by instalment and reducing to no interest otherwise payable under the terms of the tenancy in relation to the whole or part of the protected rent debt. Under part 3 of the act section 23 gives a temporary moratorium on the enforcement of protected rent debts and the conclusion of an arbitration.
6. The Applicants and the Respondent agree that arrears of £ plus VAT relating to the periods 24 June 2020 to 28 September 2021 and 25 March 2021 to 12 April 2021 are protected rent debt as defined in Sections 2 and 3 of the Commercial Rent (Coronavirus) Act 2002.
7. A dispute arose concerning the payment of protected rent debt and an application was made on 10 June 2022 under Section 11(1) of the Act with a formal proposal. On 26 July 2022 the Respondent made a formal proposal to pay 50% of the protected arrears in the sum of £ +VAT in three weekly instalments and that the Applicants waive any entitlement to interest. Each party to bear its's own costs and that the Applicants bear the Arbitrator's costs.

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8. The Applicants put forward a revised formal proposal on 12 August 2022 that the arrears are paid in full in five equal instalments and that interest on the arrears are waived. In addition each party bears its own costs and that the arbitrator's fees are shared equally
9. I, Kay Catherine Sheila Hilary Linnell was appointed as Arbitrator in this dispute by the Chartered Institute of Arbitrators as arbitrator in this reference under case number DAS-01328-K4P1M. I was appointed on 7 November 2022.
10. I issued my standard terms and conditions and engagement letters on 8 November 2022 and these were returned on 14 November 2022 from the Applicants and 17 November 2022 from the Respondent.
11. On 13 November 2022 I informed both Parties that I have been forwarded the following documents on 28 October 2022:
 - a) Original letter including Applicant's formal proposal dated 10 June 2022;
 - b) Respondent's proposal dated 26 July 2022;
 - c) Applicant's revised formal proposal dated 12 August 2022; and
 - d) Respondent's response to Applicant's revised formal proposal dated 8 September 2022.
12. I requested a limited disclosure exercise with a specific request for financial data to enable me to review the submissions exchanged to date. This did not exclude either party sending any other document to me, copied to the other party that is considered relevant. All documents are held confidentially and not disclosed to any other person. Specifically I requested the financial accounts and details of all relevant financial intercompany arrangements with its associated companies and parent (including joint banking and financial guarantees – if any) for the Respondent including full accounts for the years ended 2020, 2021 and 2022 financial periods and in addition any budgets or forecasts for the current trading period.
13. On 2 December 2022 some financial information was provided by the Respondent including a confirmation that there are no parent/group company financial /banking guarantees. However there is a Distribution and Services Agreement between [REDACTED] and [REDACTED] referred to in [REDACTED] proposal dated 26 July 2022 (paragraphs 22 – 30) which was provided.
14. After my review was completed I wrote again to the Parties on 5 January 2023 and asked for the 31 December 2021 accounts for [REDACTED] and a full set of the latest 2021 draft accounts for [REDACTED] (the tenant) including a detailed Profit and Loss page) as I was only provided with the statutory accounts. The 31 December 2021 were provided on 5 January 2023. The detailed profit and loss account pages were provided to me on 30 January 2023.
15. I also requested the latest available financial accounts for both [REDACTED] and [REDACTED] (the landlords) as I am also required to consider whether any rent

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reduction would effect preserve solvency of the landlord. The solicitor for the Applicants has confirmed on 10 January 2023 that the Applicants consider that relief from payment would not pose a risk to its solvency, it also considers that evidence of solvency (e.g. its accounts) will not be relevant for the purposes of this arbitration. As a result the Applicants have not provided their financial statements and I am content to accept their assertion as discharging my responsibility as arbitrator in this respect without disclosure of their accounts.

16. I have now considered the financial accountants of the Respondent and in particular the relationship with [REDACTED] [REDACTED] [REDACTED]. The Respondent describes this relationship in the Respondent’s response to Applicants’ revised formal proposal dated 8 September 2022 at points 8, 9 and 10 upon which I rely
17. I have reviewed the detailed accounts for the Respondent and the sales figure of the takings schedules for the branch at [REDACTED], one of [REDACTED] branches. The schedule of the detailed profit and loss account for [REDACTED] for the two years ended 31 December 2020 and 31 December 2021 using the final figures show turnover, gross profit and for all 59 branches of:

	2021	2020
	<u>£'000</u>	<u>£'000</u>
Turnover	[REDACTED]	[REDACTED]
Gross Profit	[REDACTED]	[REDACTED]
Other Income	[REDACTED]	[REDACTED]
Operating Expenses	[REDACTED]	[REDACTED]
Interest Income	[REDACTED]	[REDACTED]
Interest Expense	[REDACTED]	[REDACTED]
Tax	[REDACTED]	[REDACTED]
Net Profit	[REDACTED]	[REDACTED]

18. The gross profit has fallen from 61.43% in 2020 to 43.69% in 2021 giving evidential support to the Respondent’s explanation of a 0% purchasing subsidy in 2020 to support the company from its subsidised buying arrangements.
19. The 2021 expenses have increased with outsourced work and external costs increasing by £ [REDACTED]) and wages and salaries increasing by £ [REDACTED]) a 36% rise in direct costs. This is considered by the increase in sales of £ [REDACTED] as a 55% increase in trading activity. These results demonstrate that [REDACTED] [REDACTED] is returning to a sustainable net profit going forward based on its centralised buying relationship with [REDACTED] [REDACTED].

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20. I am satisfied that there is no need to consider the financial viability of [REDACTED] or its global parent [REDACTED] in these proceedings as the Respondent has stated there is no guarantee or underwriting of liability.
21. I have also considered the financial viability of the Respondent based on the latest available Balance Sheet as at 31 December 2021 and I have no concerns about solvency issues based on my examination.
22. I note the impact of the Coronavirus on the business has been eased by a discount purchasing subsidy from [REDACTED] [REDACTED] and UK Government grants of £176K in relation to furlough wages support.
23. I note that the Parties are unable to agree the protected rent of £[REDACTED] plus VAT that should be paid during the Commercial Rent Coronavirus protected period covering the periods from 24 June 2020 to 28 September 2020 and 25 March 2021 to 12 April 2021 although that figure is agreed as the protected arrears. It is further agreed that interest on the arrears is waived, each party will bear their own costs and the arrears may be paid in instalments. The disagreed points referred to me for determination are whether 50% or 100% of the arrears should be paid; whether that payment should be made in 5 or 3 instalments and whether the parties should share the Arbitrators fee equally.

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I, Kay Catherine Sheila Hilary Linnell as Chartered Arbitrator do hereby consider, make and publish my Final Award.

The Award

- 1) I award and direct that The Respondent shall pay to the Applicant the sum of [REDACTED] plus VAT in 4 equal instalments starting on 1 March 2023;
- 2) The interest be waived due to the Applicant on the arrears pursuant to clause 2.4.2 of the Lease;
- 3) Each party bears its own costs in the Arbitration and the Respondent shall make a payment of 50% of the Arbitration costs to the Applicant on or before 28 February 2023

Published by me this 8th day of February 2023 in Basingstoke, England.

Miss Kay Linnell

Chartered Arbitrator

Date _____