

**IN THE MATTER OF AN ARBITRATION
AND IN THE MATTER OF THE COMMERCIAL RENT
(Coronavirus Act 2022).**

Case No: DAS-01386-Y9P5Z.

Between:

XXX Limited

Applicant

And

XXX Limited

Respondent

FINAL CONSENT AWARD.

Before a Tribunal comprised of:

Professor Ike Ehiribe FCI Arb., C.Arb., QDR

Sole Arbitrator

Introduction

Parties

1. The Applicant in this reference, xxx Ltd, is a business tenant at the premises described as xxxxxxxxxxxxxxxxx, England (hereinafter referred to as the Premises).
2. The Applicant is represented in this reference by xxxxxx who is the xxxxxxxx for the Applicant.
3. The Respondent, xxxxxx Limited of xxxxxxxxx is the Landlord of the said premises in question.
4. The Respondent is represented in this reference by xxxxxxxxx of xxxxxx, xxxxx, x2x2.
5. The Premises is the subject-matter of a lease agreement entered into by the Parties on 08 August 2003.

Factual Background.

6. With the onset of the Covid -19 pandemic the Applicant through letter dated 02 August 2022 wrote to the Respondent to notify the Respondent that its business tenancy had been adversely affected by the Coronavirus Pandemic and as a consequence its xxxxx had been closed and subjected to restrictions for the period between 21 March 2020 to 18 July 2021.
7. The Applicant also advised that throughout the period in question, that is 21 March 2020 to 18 July 2021, rent had fallen due and service charge and insurance has been demanded and accordingly, the accrued rent debt is protected by way of the Commercial Rent (Coronavirus) Act 2022 (the "2022 Act").
8. By virtue of the same letter of 02 August 2022, the Applicant issued its section 10 notice to the Respondent advising of its intention to refer the resolution of this matter to arbitration pursuant to the provisions of the 2022 Act.

9. Accordingly, the Applicant lodged an application pursuant to the provisions of the Commercial Rent (Coronavirus) Act 2022 with the Chartered Institute of Arbitrators (CI Arb) pursuant to Section 10.4 of the 2022 Act on or around 13 September 2022.

The Dispute

10. The Application pertains to the dispute between the Applicant and the Landlord of the said premises in respect of outstanding Rent, Service Charges and Insurance arising from the Applicant's occupation of the premises in the period 21 March 2020 until 18 July 2021.

11. The Applicant sought relief from payment of a protected debt in relation to the premises pursuant to the Commercial Rent (Coronavirus) 2022 Act and pursuant to section 11(1) of the 2022 Act, advanced its formal proposal of resolving the matter in the following terms:

“You waive 201 days rent. We pay remaining rent service charge and insurance cost due in respect of the protected period by way of 24 equal monthly instalments beginning one month after your acceptance.

This proposal is made on the basis that no further sums will be due in respect of the protected period, no interest is charged on the late payment and the parties pay their own legal and professional fees arising, if any.”

12. The Applicant's section 11 formal proposal was supported by: (a) the Applicant's Summary of statutory accounts for the period between 2015 to 2021 and (b) the Applicant's Summary of management accounts for the period between 2017 and the first half of 2021.

Procedural Matters

13. By letter of 21 March 2023, the Chartered Institute of Arbitrators advised the Parties that following the Applicant's said application, the President of the Chartered Institute of

Arbitrators in London had appointed Professor Ike Ehiribe FCIArb, C.Arb.,QDR Chartered Arbitrator as the sole arbitrator to determine the dispute between the Parties.

14. By letter of 22 March 2023, Professor Ike Ehiribe wrote to the Parties to advise them of: (a) the institution of the arbitral tribunal; (b) the commencement of the arbitration; and (c) a road map for the future conduct of the arbitration including request for convenient dates for a Preliminary Meeting/Case Management Conference to be conducted by Zoom or any other agreeable virtual platform etc.

15. By email of 27 March 2023, xxxxxxxx, xxxxxxxx for the Applicant, wrote to the Tribunal with the Respondent in copy, to apply for a stay of proceedings for six weeks on the basis that the Parties were in dialogue and were close to an agreement.

16. The Tribunal, by email of the same date of 27 March 2023 in reply, granted the stay of proceedings as sought up until 15 May 2023. The Tribunal in addition directed the Parties to forward the terms of agreement to the Tribunal for those terms to be incorporated into a consent award.

Settlement Terms

17. By email of 25 April 2023, xxxxxxxx for the Applicant wrote to inform the Tribunal with the Respondent in copy, that the Parties have agreed terms as follows:

- “ 1. The agreed protected period costs are £789,295.28 comprising £663,811.17 rent. £114073.77 service charge and £11,410.34 insurance.***
- 2. The Parties have agreed to share these costs equally.***
- 3. Hence, the Respondent will waive £394,647.64 and collect the balancing from the Applicant by way of 24 equal monthly instalments.”***

Seat of the Arbitration

18. The seat of this arbitration is London in England.

Award

19. The Tribunal having reviewed and approved the Parties Terms of Settlement as set out in paragraph 15 above hereby further award by consent as follows:

- a) Each party shall bear their own legal and other costs in the proceedings;
- b) There shall be no further order as to costs; and
- c) That these proceedings are hereby terminated.

Publication

20. As regards publication, pursuant to section 18 of the 2022 Act the award has to be published on the website of the Chartered Institute of Arbitrators in London in an anonymised manner.

Date of the Award

21. This Award is made by me Professor Ike Ehiribe, FCIArb, C.Arb., QDR, Chartered Arbitrator, this 15th Day of May 2023.

Signature

Professor Ike Ehiribe, FCIArb, C.Arb., QDR., Chartered Arbitrator.

Sole Arbitrator