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THE SEAT (LEGAL PLACE) OF THE ARBITRATION

JURISDICTION

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INTEREST

THE ALLOCATION AND THE ASSESSMENT OF COSTS AND GENERAL

REJECTION OF ALL OTHER CLAIMES AND REQUESTS

A. THE NAMES OF THE PARTIES AND THEIR RESPECTIVE REPRESENTATIVES

1. The Claimant (Applicant) in this arbitration is [], company no. [], whose registered office is at [], represented by its []. The Respondent, is [], company no. [], whose registered office is at []. The Respondent is represented by [] and [] of [].
2. The Claimant is the tenant and the Respondent is the landlord of the [] at [] ("the Property"). A dispute has arisen relating to the level of rent and service charges to be paid in respect of the Property by the Claimant to the Respondent during the Protected Period, under what I am calling "the Act".

B. THE APPOINTMENT OF THE ARBITRATOR; THE PROCEDURAL HISTORY

3. **The Appointment of the Arbitrator-** The Claimant made an application to the Dispute Appointment Service (DAS) of the Chartered Institute of Arbitrators (CI Arb) dated 12 September 2022 for the appointment of an arbitrator, stating that the Parties had failed to agree relief from payment during the Protected Period under the Commercial Rent (Coronavirus) Act 2022 ("the Act"). I was approached to be the sole arbitrator in this matter and, having declared my independence and impartiality, I was appointed as the sole arbitrator by the DAS on 2 May 2023. The Claimant had paid the CI Arb DAS Appointment Fee of £6,000.00 plus VAT, which also covers my fixed fee; £500.00 (no VAT) represents the CI Arb DAS Appointment Fee itself.
4. I wrote to the Parties in an email of 03 May 2023, stating that it was my privilege to have been appointed as the arbitrator in this case and stating that it was my intention to hold a Preliminary Meeting as soon as possible and setting out various available dates. I also set out the proposed Agenda for the Preliminary Meeting.
5. The Preliminary Meeting took place by Zoom on Monday 12 June 2023.
6. **Directions-** Following the Preliminary Meeting, I emailed the Parties on 13 June 2023, attaching my Directions, in which I ordered and directed as follows;
7. The Claimant (Applicant) in this arbitration is [], company no. [], whose registered office is at [], represented by []. The Respondent is [], company no. [], whose registered office is at []. The Respondent is represented by [] and [] of [].
8. The Claimant is the tenant and the Respondent is the landlord of the [] at [] ("the Property").
9. The live issues in this arbitration comprise:
10. The level of rent to be paid to the Respondent by the Claimant in respect of the Property for the Protected Period;
11. The level of Service Charges to be paid by the Claimant to the Respondent in respect of the Property, also for the Protected Period (viability was added subsequently);
12. Interest;
13. Costs- the fees of the tribunal; the fees of the arbitral institution concerned, the CI Arb; and the legal and other Costs of the Parties.
14. The Parties shall use all reasonable endeavours to establish and agree as soon as reasonably practicable the level of the Service Charge for the Property during the Protected Period.
15. The Terms of the arbitrator are as sent to the Parties on 23 May 2023. The tribunal has jurisdiction finally to resolve the live issued in the arbitration.
16. The Claimant shall serve its Claims Submissions no later than Close of Business 28 days from the date of the Preliminary Meeting, that is **4 July 2023**.
17. The Respondent shall serve its Defence Submissions by Close of Business on the day 28 days after the service of the Claims Submissions.

18. The Claimant may, if so advised, then serve a Reply, restricted to matters and points raised already raised, by Close of Business on the day 21 days after the service of the Defence Submissions.
19. All Submissions shall be accompanied by all and any relevant supporting materials and evidence.
20. The arbitration shall proceed on documents-only, unless a Hearing is agreed by the Parties or ordered by the tribunal.
21. The tribunal shall then produce and hand down a Final Award save as to Costs, which shall be written and reasoned.
22. All communications from a Party to the tribunal or from one Party to the other Party shall be copied to the other Party or the tribunal as the case may be.
23. Costs of the Preliminary Meeting and these Directions are Costs in the Arbitration.
24. Either Party may apply to vary these Directions.
25. **The Claims Submissions-** The Claims Submissions (Written Statement) of the Claimant came in with an email of 03 July 2023 and I emailed the Parties on 21 July 2023, setting out that the Defence Submissions were now due in on Tuesday 1 August 2023 and also enquiring what progress had been made on establishing and agreeing the level of the Service Charge in relation to the Property. I also set out that we might have made an error on my Terms, in that the fee already paid to the CI Arb DAS might be payable in any event. My Terms sent to the Parties and dated 25 July 2023 made it clear that the tribunal's fees of £6,000.00 plus VAT (if applicable) were payable whatever the outcome of the Arbitration.
26. **The Respondent's Defence Submissions and the Claimant's Reply**
27. The Respondent's Defence Submissions were served with an email from [] of 31 July 2023. The Claimant's Reply to the Respondent's Defence Submissions then came in with an email of [] of 14 August 2023.
28. Neither Party requested a Hearing.
- C. THE FACTS AND BACKGROUND TO THE DISPUTE**
29. The Claimant is the tenant and the Respondent is the landlord of the Property under a lease granted on [] ("the Lease").
30. [], for the Respondent, had written to the CI Arb DAS on 21 October 2022, noting the lack of engagement on the part of the Claimant and, in particular, that the Claimant had failed to provide meaningful financial information and noting also that the Respondent had made a counteroffer to the Claimant. This counteroffer was attached to that letter.
31. [], for the Respondent, wrote to the Claimant on 23 September 2022, setting out the reasons for not accepting the Claimant's proposal of 12 September 2022, including because of the lack of sufficient evidence to substantiate the reasonableness of the offer made, that the requested waiver of [] rent amounted only to [] of the rent that fell due during the Protected Rent Period, and requested further information.
32. The Respondent also made a Counter-proposal, which set out that the Respondent would accept payment of [] of the Protected Rent, being []; to be paid by standing order over 12 equal monthly instalments; subject to completion of a settlement agreement and payment in full of all outstanding service charge sums and all outstanding insurance rent payment. The Respondent had previously proposed negotiation/mediation or arbitration in a letter of 12 August 2023.
33. The Parties have agreed that the tenancy under the Lease is a business tenancy.
34. The agreed protected rent on the account relating to the Property amounts to []. This includes the Service Charge element.
35. The protected rent comprises rent, service charges and insurance ("the Protected Rent").
36. The Claimant seeks relief from payment under the Commercial Rent (Coronavirus) Act 2022 ("the Act") in relation to the agreed protected rent.

D. THE SEAT (LEGAL PLACE) OF THE ARBITRATION

37. The Seat (Legal Place) of the arbitration is London, England (under Section 95(2) of the Arbitration Act) (“the Arbitration Act”).

E. JURISDICTION

38. I have jurisdiction to decide the live issues, including Costs, in this arbitration (paragraph 9. of Procedural Order No. 1 dated 12 June 2023) and the Parties have not challenged my jurisdiction, having assessed that the dispute is eligible for arbitration under the Act. The tribunal finds that it has been properly constituted. The award is to be in writing, contain reasons and signed by me as the arbitrator and may be published by the CI Arb, subject to the redaction of confidential information.

F. THE LIVE ISSUES IN THE ARBITRATION

39. The live issues in the arbitration are now whether the Claimant’s business is viable or would have been viable, if relief from payment of the debt in respect of the agreed protected rent had been granted, before the reference to arbitration was made;

40. Whether relief from payment should be granted;

41. The level of rent to be paid to the Respondent by the Claimant in respect of the Property for the Protected Period;

42. The level of Service Charges and Insurance Rent Payments, if any, to be paid by the Claimant to the Respondent in respect of the Property, also for the Protected Period;

43. Interest; and

44. Costs- the fees of the tribunal; the fees of the arbitral institution concerned, the CI Arb; and the legal and other Costs of the Parties.

G. THE SUBMISSIONS OF THE PARTIES ON THE LIVE ISSUES IN THE ARBITRATION

45. The Submissions of the Claimant

46. The Claimant sets out in its Claims Submissions (Written Statement) that the Parties had failed to agree the relief from payment of the Protected Rent due in accordance with the Commercial Rent (Coronavirus) Act 2022 (“the Act”) and that the Claimant served notice of arbitration on 2 August 2022.

47. The Claimant notes that the lease of the Property is dated [] between the Parties and the term granted was [] years from []. The Property is a [], says the Claimant, and the Lease is a business tenancy, with a passing rent of [] per annum, with effect from []. The Claimant continues that the Claimant is charged [] of the whole site service costs and that the Respondent is also obliged to insure the estate and that the Lease reserves both the service charge and the insurance payments as rent.

48. The Claimant submits that Section 3 of the Act says that the rent, service charges and insurance costs, including VAT due under the Lease will be protected if the tenancy was adversely affected by coronavirus and attributable to a period within the protected period. The Claimant continues that adversely affected by coronavirus is defined under Section 4 of the Act as being the subject of a closure requirement. The protected period is defined, says the Claimant, under Section 5 of the Act as the period beginning 21 March 2020 and ending 18 July 2021.

49. The Claimant states that the Respondent accepts that the tenancy was adversely affected by coronavirus throughout the protected period and that the Respondent had accepted the Claimant’s calculation of the protected rent, including service charge and insurance in a table in paragraph 3 of the Statement of Case, with a total balance of [].

50. The Claimant then turns to Viability and notes that the tribunal is required by the Act to assess the viability of the tenant’s business but that viability is not defined in the Act, although the statutory provisions are supplemented by the Guidance and the Code. The Claimant then states that the Guidance state that the absence of a definition of “viability” is deliberate, because of the vast array of different business models and sets out various

dictionary definitions of “viability”. The Claimant goes on to set out that paragraph 79 of the Guidance says that “in making the assessment of viability a key question is whether, protected rent aside, the tenant’s business has or will in the foreseeable future have the means and ability to meet its obligations and to continue trading” and says this would appear to be the key test. The Claimant goes on to set out that viability is to be considered as at the time of the assessment per Section 13(3) of the Act and submits that viability is not a single point but an ongoing position and that the maximum period over which the protected period over which the protected period rent debt may be spread or deferred if relief is granted is 24 months and submits that it would be in the spirit of the Act to take this as the future period.

51. The Claimant also sets out that Annex E in the Code contains a table of indicators plus categories of evidence which the tribunal may use to assess viability and that this is not a mandatory list, which the Claimant is required to work through to demonstrate viability and that, rather the Code says that tenants may wish to consider producing some of the evidence listed. The Claimant concludes by submitting that gross profit margin and net profit margin are most informative in this instance in determining viability.
52. The Claimant notes that the tenant’s business is not defined in the Act but that it makes commercial and common sense to consider the specific business being carried out at the premises. The Claimant submits that the position is implied in Section 16(1)(b) of the Act, which directs to consider the tribunal to consider previous rental payments under the business tenancy from the tenant to the landlord and that this is a clear reference to the specific business tenancy and to the specific rent paid at the specific premises to a specific landlord. The Claimant continues that the tribunal is directed to have regard to the assets and liabilities of the tenant, including any other tenancies to which the tenant is a party. The Claimant states that it operates and pays rent on over [] in the UK and that it makes no commercial nor common sense to do this or give any weight to it, as the protected rent is massively outweighed by size of the business as a whole and submits that, in any case, Section 16(1)(d) of the Act gives the tribunal the right to consider the business at the premises.
53. The Claimant attaches a copy of the Claimant’s in house management accounts for the business being carried on at the premises for 2017 to 2020, which, says the Claimant, show a strong history of pre-pandemic profitability, the material impact of coronavirus and the gradual improvement in revenue and profitability. The Claimant concludes that it is clear that the Applicant’s business meets the thresholds set by the key and supportive tests and it is therefore viable in accordance with Section 13(4) of the Act. The Claimant, in its Reply to the Respondent’s Submissions, the Claimant repeats its submission that the Claimant’s management accounts are more than sufficient to assess whether or not the business is viable and also what, if anything, the business can afford.
54. The Claimant then turns to whether, having dealt with viability, the tribunal should make an award for relief in accordance with Section 14 of the Act and that the principles to be applied are those set out in Section 15, which requires that the award should be aimed at preserving or restoring and preserving the viability of the business, so far as is consistent with preserving the landlord’s solvency. The Claimant continues that the landlord’s solvency is not at risk in this instance, so far as the Claimant is aware.
55. The Claimant sets out that the Respondent’s formal proposal was set out in the Respondent’s solicitors’ letter of [] and proposed a payment of [] rent by way of 12 equal monthly instalments and payment on completion of the protected service charge sums and insurance rent due in full. The Claimant continues that, assuming the tribunal’s award is effective 1 September 2023, this would mean payments of [] and [] in 2024, both of which would, as the Claimant puts it, throw the business back in the red. The Claimant submits that this would not be consistent with the arbitrator’s principle set out

in Section 15(1)(a)(ii) of the Act, which requires the tribunal to preserve the viability of the business. The Claimant contrasts this with the Claimant's formal proposal to pay [] by way of [] equal instalments that, the Claimant says, would keep the Claimant's business in the black, as the Claimant puts it and this is consistent with the arbitrator's principle in Section 15(1)(a)(iii) of the Act. The Claimant sets out two tables which compare the effect on the Claimant's business at the premises of the two formal proposals.

56. The Claimant sets out that the Claimant's formal proposal is made on the basis that no further sums would be due in respect of the protected period, that no interest is paid and the Parties pay their own legal Costs. In any event, says the Claimant, the Respondent has waived its right to charge to claim interest, by agreeing the Claimant's determination of the protected rent debt.
57. In the Claimant's Reply to the Respondent's Submissions, the Claimant confirms that the protected rent debt of [] is agreed. With regard to the citing by the Respondent of previous arbitral decisions, the Claimant submits that the tribunal is not bound by any other award or agreement and that each award and agreement will turn on its own merits.
58. Also in the Claimant's Reply to the Respondent's Submissions, the Claimant submits that the test is whether the tribunal considers that the Claimant's business is viable or would become viable were it to given relief or not, provided the landlord's (Respondent's) solvency is preserved. In the same Reply Submission, the Claimant sets out a table, which shows that the Claimant's business, as the Claimant puts it, would be pushed back into the red, under the Respondent's formal response and also submits that the Claimant's formal proposal is consistent with the arbitrator's principle, whereas the Respondent's formal response.
59. With regard to Costs, the Claimant notes that the tribunal is required to make an award requiring the Respondent to reimburse the Claimant half of the arbitration (tribunal) fees paid to the CI Arb, unless I consider it more appropriate to award a different proportion. Finally, the Claimant notes that the Act Section 19(7) requires the Parties to bear their own legal or other Costs.
60. **The Submissions of the Respondent**
61. The Respondent accepts that the Claimant has applied for the appointment of the arbitrator and served notice on the Respondent in accordance with Section 10(1)(a) of the Act, the Claimant submits that the Applicant has failed to discharge the burden of showing that its business is viable for the purpose of Section 13(3) of the Act or, alternatively, to consider and determine what amount, if any, of the protected rent debt the Claimant can afford to pay and how quickly, while preserving viability for purposes of Section 15 of the Act.
62. The Respondent notes that, as requested by the tribunal, the Parties have agreed the Protected Rent Debt at [], which relates to the period from 20 March 2020 to 18 July 2021.
63. The Respondent then sets out the provisions of Section 13 of the Act, which contains the awards that a tribunal can make in this connection. The Respondent continues that the existence and amount of the protected rent debt is agreed, that there is no dispute that the Claimant's tenancy of the Property is a business tenancy for the purpose of the Act and there has been no agreement on the matter of relief from payment of the protected rent debt and that, as such, the provisions of Section 13(2) of the Act have been met.
64. As to viability, the Respondent says that the Claimant has failed to adduce sufficient evidence to discharge the burden of proving that its business is viable for the purposes of Section 13(3) of the Act. The Respondent continues by setting out in a list of 13 items of financial and business information requested of the Claimant and submits that, in breach of the Code and despite repeated requests, the Claimant has failed to provide the information requested and sets out and attaches the relevant correspondence.

65. The Respondent goes on to submit that, on the basis of what the Claimant calls the extremely limited information provided by the Claimant, this has been wholly insufficient to allow the Respondent the ability to address the viability of the Claimant's business. In particular, the Respondent states that one page document purporting to show its in-house management accounts for the years [] to [] as support for the contention that the Claimant's business is viable is unsubstantiated and unaudited and that this document falls considerably short of the expectations of the Code, paragraphs 85-93 and Annex E and is insufficient to discharge the burden on the Claimant. The Respondent also notes that the audited accounts of the Claimant are yet to overdue and were, at the time of the Respondent's Submissions in [].
66. Having cited the case of [], where, says the Respondent, the tribunal concluded that the very sparse evidence adduced by the applicant was inadequate to discharge the burden of showing that its business was viable, the Respondent notes that the applicant in that case was in the same group of companies as the Claimant. The Respondent also submits that the Claimant has not provided sufficient information to allow either the tribunal or the Respondent to make any assessment as to the viability of the Claimant to make the required payments. The Respondent accepts that such decisions (of other tribunals) are not binding but submits that it is clear from other decisions reached within the same arbitration scheme that the failure of the applicant to provide evidence from the wide variety of banking and accounting information available to it would be taken adversely in the context of such an arbitration reference as the current one.
67. The Respondent then turns to the question of the Relief sought by the Claimant and states that its submissions are without prejudice to its contention that the Claimant has failed to adduce sufficient evidence to discharge the burden of showing that its business is viable for the purposes of Section 13(3) of the Act. The Respondent notes that, should the Claimant's business be considered viable, the tribunal is required to consider whether the Claimant should be given any relief from payment of the protected rent debt and, if so, what relief. The Respondent also notes that the tribunal has the power to give a tenant relief from payment of the debt or state that the tenant is to be given no relief from payment and refers me to Section 14(6) of the Act. The Respondent continues by setting out the options I have, as follows:
68. Writing off the whole or any part of the debt;
69. Giving time to pay the whole or any part of the debt, including by instalments: and/or
70. Reducing, including to zero, any interest otherwise payable by the tenant in relation to the whole or any part of the debt. The Respondent also notes that, if the tribunal gives the tenant more time to pay, the payment date must be made within the period of 24 months beginning the day after the day on which the award is made.
71. The Respondent then sets out what it describes as the key principles that the tribunal must apply, as set out in Section 15(1) of the Act. The Respondent accepts that even if the protected debt is written off entirely, this would not impact the Respondent's solvency, although the Respondent submits that it must be considered that such a write off would be detrimental to the individuals investing in the relevant pension schemes.
72. The Respondent then sets out that Section 14(2) of the Act requires the tribunal the consider the final formal proposals advanced by the Parties. The Respondent then sets out the two final formal proposals made by the Parties and submits that the Claimant's formal proposal effectively to pay [] of the protected rent debt and none of the service charge over the maximum period of 24 months is not consistent with the principles set out in Section 15 of the Act, whereas the Respondent's formal proposal to pay [] of the protected rent debt and the service charge in full over 12 months is entirely consistent with the principles set out in Section 15 of the Act. With regard to the service charge element, the Respondent notes that any reduction to the service charge payable by the Claimant would be a direct

cost to the Respondent's members and submits that, if the tribunal considers that both formal proposals are consistent with Section 15 of the Act, that the Respondent's formal proposal is most consistent with that Section.

73. With regard to the legal Costs of the Parties, the Respondent accepts that Section 19(7) provides that each Party must meet its own legal or other Costs. With regard to the fees of the tribunal, the Respondent reserves the right to make submissions in relation to these following receipt of the award of the tribunal.

H. THE REMEDIES REQUESTED BY THE CLAIMANT

74. The Claimant requests that the tribunal to decide that the business of the Claimant at the premises is viable and that relief from payment is awarded on the basis of the Claimant's formal proposal of [] to pay [] by way of 24 equal instalments.
75. The Claimant requests that the tribunal decide that no interest should be payable by the Claimant.
76. The Claimant requests that the tribunal decide that each side should bear 50 % of the fees of the tribunal, which are £6,000.00 plus VAT, that have been paid by the Claimant to the CI Arb and, accordingly, that the Respondent should reimburse the Claimant with 50 % of the fees of the tribunal, being £3,000.00.
77. The Claimant requests that the tribunal order that each Party shall bear its own legal and other Costs.

I. THE REMEDIES REQUESTED BY THE RESPONDENT

78. The Respondent requests that the tribunal decide that the Claimant has failed to adduce sufficient evidence to discharge the burden of showing that its business is viable for the purposes of Section 13(3) of the Act.
79. The Respondent requests that, if the tribunal decides for the Claimant on the issue of viability, that the tribunal order that the Respondent's proposal that the Claimant pay 50% of the protected rent debt and the service charge is entirely consistent with the principles in Section 15 of the Act and should be ordered.
80. The Respondent also requests that the Service Charge and Insurance Rent as claimed should be paid by the Claimant.
81. The Respondent requests that, if the tribunal considers that the Formal Proposals of both Parties are consistent with the principles in Section 15 of the Act, the tribunal should decide that the Respondent's Formal Proposal is the most consistent with these proposals.
82. The Respondent accepts that Section 19(7) of the Act provides that each Party shall meet its own legal or other Costs of the arbitration.
83. With regard to the fees of the tribunal, the Respondent reserves the right to make submissions, following the receipt of the tribunal's award.

J. DISCUSSION AND FINDINGS ON THE LIVE ISSUES IN THE ARBITRATION

84. The burden of proof lies with the Claimant.
85. Looking at Section 13 of the Act, the Parties have not by agreement resolved the matter of relief from payment of the protected rent debt before the arbitration reference was made and therefore the tribunal is not obliged to dismiss the arbitration reference on that ground. The next point in Section 13 is not relevant, in that there is no dispute between the Parties that the lease is a business tenancy and the same applies to the final point, as it is common ground between the Parties that there is a protected rent debt.
86. I then move to Section 13(3) of the Act, which obliges me to make an award dismissing the arbitration reference, if "after assessing the viability of the tenant's business, the arbitrator determines that (at the time of the assessment) the business- (a) is viable, and (b) would not be viable even if the tenant were to be given relief from payment". Only then, am I obliged to move to the question of whether the tenant should receive any relief from payment of a protected rent debt.

87. Viability

88. The first point that I have to decide is whether:
89. By virtue of CRCA Section 16(1), in assessing the Claimant's viability, I must have regard to:
90. Its assets and liabilities (1);
91. The previous rental payments made under the tenancy (2);
92. The impact of coronavirus on the business (3); and
93. Any other information relating to the financial position of the Claimant as I consider appropriate.
94. The Guidance, paragraph 6.4 indicates that viability is to be decided on a case by case basis and that it is the tenant's (Claimant's) responsibility to provide evidence to support their proposal.
95. The Claimant has set out what the Claimant describes as its "in house management accounts for the business being carried on at the premises (to which I am referring as "the Property") for the years []". The figures for [] are described as "fcast", which I take to mean forecast, which I am sure is correct. These figures show, says the Claimant "the strong history of pre-pandemic profitability, the material impact of coronavirus and the gradual improvement in profitability" and the Claimant submits that it is clear, at least to [] on behalf of the Claimant, that the Claimant's business meets the thresholds set by the key and supportive tests and it is therefore viable in accordance with Section 13(4) of the Act.
96. As to viability, the Respondent says that the Claimant has failed to adduce sufficient evidence to discharge the burden of proving that its business is viable for the purposes of Section 13(3) of the Act. The Respondent continues by setting out in a list of 13 items of financial and business information requested of the Claimant and submits that, in breach of the Code and despite repeated requests, the Claimant has failed to provide the information requested and sets out and attaches the relevant correspondence, as I have already set out in this Award.
97. I am proposed to assess the viability of the Claimant's business in a holistic and common sense way (paragraph 6.10 of the Guidance). There follows in the Guidance a table of what are described as simply examples of what might be helpful to the tribunal. The Guidance, at paragraph 6.14 continues that, at the very minimum, the Claimant should provide at least the last 12 months full bank account information, which the Claimant has not done. Management accounts are mentioned in paragraph 6.15 of the Guidance as being "generally useful".
98. In this case, that is all that the Claimant has provided; there are no copy bank statements and none of the other materials listed in the table to the Guidance at p. 27 nor the items as listed by the Respondent at paragraph 5.4 of the Respondent's Submissions.
99. In assessing the submissions and evidence of the Parties, I have taken account of the position that the burden is on the Claimant on its case and on this point in particular. This is amplified by paragraph 6.7, which has the effect that it is the Claimant's responsibility to provide evidence to support their (formal) proposal and to enable the tribunal to determine the viability of the business.
100. I find as a fact that the Claimant has not produced any of the materials set out at a) to n) of paragraph 5.4 of the Respondent's Submissions, despite more information being requested by the Respondent, and that the Claimant has failed, on the evidence provided to the tribunal, to discharge the burden that the business is viable and would be viable even if the Claimant were to be given relief and that the only option open to the tribunal is to decide that the business is not viable and would not be viable even if the Claimant were to be given relief from payment of any kind.
101. **The Protected Rent Debt**
102. Assuming that I would have to determine whether and, if so, what relief should be granted and make an award under CRCA Section 14, I would be able to decide that my award may write off the whole or part of the protected rent debt; extinguish or reduce any interest

- thereon; give the tenant up to 2 years to pay (including by instalments: or grant the tenant no relief (CRCA Sections 6(2) and 14(6) and (7)). By virtue of CRCA Section 14(2), before determining what award to make, I must consider any final proposal put forward by a party.
103. However, having decided that I am unable to decide that the business was viable and would be viable, I do not have to move whether relief should be granted and to what extent.

K. DISCUSSION AND FINDINGS- INTEREST

104. Section 49 of the Arbitration Act provides that the Parties are free to agree on the powers of the tribunal as regards the award of interest. There being no agreement of the Parties, the default powers in Section 49(3) of the Arbitration Act apply. This broadly gives the power to award simple or compound interest from such dates and at such rates and with such rests as the tribunal as it considered meets the justice of the case. Interest does not arise in this case.

L. DISCUSSION AND FINDINGS- COSTS

105. Arbitration Fees

106. In most instances, the Referral Fee of the CIArb DAS and the fees of the tribunal are to be shared equally between the parties to these arbitrations and this is what I am awarding here (Section 19(5) of the Act). Although the Respondent has stated that it reserves the right to make further submissions on this point. However, I have decided, using my powers under Section 34 of the Arbitration Act, Section 33- Procedural and Evidential Matters, that I should move straight to rule on the Arbitration fees. I have decided that the Referral Fee of the CIArb DAS shall stay where it falls and shall be borne by the Claimant. The fees of the tribunal itself shall be borne equally by the Parties.

107. The Legal and Other Costs of the Parties

108. CRCA Section 19(7) provides that (arbitration fees aside), each Party must bear its own Legal and Other Costs, so this is what I must award.

M. HOLDINGS OF THIS FINAL AWARD

NOW, I, MICHAEL COVER FCIArb, CHARTERED ARBITRATOR, SOLE ARBITRATOR, having carefully considered the Submissions of the Parties and all the materials before me and in full and final resolution of all issues before me, other than Costs, **HEREBY ORDER, DECLARE, AWARD AND DIRECT** as follows:

THE SEAT (LEGAL PLACE) OF THE ARBITRATION

109. The Seat (Legal Place) of the arbitration is London, England.

JURISDICTION

110. I have jurisdiction finally to determine the live issues between the Parties in this arbitration.

THE LIVE ISSUES IN THE ARBITRATION

111. The claim fails and is dismissed.

INTEREST

112. No award on Interest.

THE ALLOCATION AND THE ASSESSMENT OF COSTS AND GENERAL

113. The Appointment Fee of the CIArb DAS of £500.00 (no VAT) shall be borne by the Claimant.
114. The Claimant and the Respondent shall each pay 50% of the fixed fee of the arbitrator of £6,000.00 (plus VAT), which shall be paid to the arbitrator from the funds held

by the CI Arb DAS in the case of the Claimant and by a payment from the Respondent of its 50% share to the CI Arb DAS, which 50% share shall be paid by the Respondent to the CI Arb DAS within 14 days of the handing down of this Award.

- 115. Each Party shall bear its own Legal and Other Costs.
- 116. Should any amounts that are payable resulting from this Final Award save as to Costs be subject to Valued Tax or any equivalent sales tax, then such payments shall bear such tax in addition.

REJECTION OF ALL OTHER CLAIMES AND REQUESTS

- 117. All other claims and requests are rejected.

MADE AND PUBLISHED UNDER MY HAND at the Seat (Legal Place) of the arbitration in London, United Kingdom on 13 October 2023 by **MICHAEL COVER, SOLE ARBITRATOR**, at the IDRC, 1 Paternoster Lane, London EC4M 7BQ, United Kingdom

Signed.....

Dated.....

Michael Cover FCI Arb, Chartered Arbitrator, Sole Arbitrator

