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Rolls Building
London
EC4A 1NL

Date: 24 January 2025

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

**IN THE MATTER OF ASCENSION HEALTHCARE PLC (IN ADMINISTRATION)
AND IN THE MATTER OF PRO BONO BIO ENTREPRENEUR LIMITED (IN
ADMINISTRATION)
AND IN THE MATTER OF PBB DEVICES LIMITED (IN ADMINISTRATION)
AND IN THE MATTER OF ASCENSION HEALTHCARE DEVELOPMENT
LIMITED (IN ADMINISTRATION)**

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

**BEFORE DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE RAQUEL
AGNELLO KC**

BETWEEN:

**CLARE KENNEDY, ALASTAIR PAUL BEVERIDGE and BENJAMIN JAMES
BROWNE in their capacity as joint administrators of ASCENSION HEALTHCARE
PLC (in administration), PRO BONO BIO ENTREPRENEUR LIMITED (in
administration), PBB DEVICES LIMITED (in administration) and ASCENSION
HEALTHCARE DEVELOPMENT LIMITED (in administration)**

Applicants

- and -

FONDS RUSNANO CAPITAL SA

Mr William Willson (instructed by Taylor Wessing LLP) on behalf of the Applicants

Hearing date: 29 November 2024

JUDGMENT

Introduction

1. By applications dated 11 November 2024 , the above named Administrators of the four companies (1) Ascension Healthcare Plc (“AHP”) (2) Pro Bono Bio Entrepreneur Limited (“PBBEL”) (3) PBB Devices Limited (“PBBDL”) and (4) Ascension Healthcare Development Limited (“AHDL”) (together ‘the English administration companies’) seek orders pursuant to paragraph 71 of Schedule B1 of the Insolvency Act 1986 (IA86) that the Administrators be permitted to dispose of certain fixed charge assets belonging to the companies. Paragraph 71 states as follows :

- “(1) The court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.*
- (2) An order under sub-paragraph (1) may be made only—(a) on the application of the administrator, and (b) where the court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.*
- (3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security—(a) the net proceeds of disposal of the property, and (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property at market value”.*

2. The phrase ‘market value’ is defined in paragraph 111 of Schedule B1 IA 86 as ‘*the amount which would be realised on a sale of the property in the open market by a willing vendor*’. I will deal later in this judgment with any relevant case law and the applicable legal principles.

3. On 29 November 2024, I heard the four applications. The applications had been listed as matter of urgency. On 4 December 2024, I made the orders sought and also abridged the time for service of the applications, with the written judgment of the reasons for making the orders to be handed down at a later date. This is the judgment of the reasons for the orders I made on 4 December 2024.

The Respondent

4. The Respondent, Fonds Rusano Capital SA (‘Fonds’) to the four applications is the holder of the security over the various assets belonging to the companies. The evidence filed on behalf of the Applicants shows that Fonds is a Russian state/government owned societe anonyme incorporated/registered under the laws of Luxembourg with a registered office at 25C Boulevard Royal, L-2449 Luxembourg. The administrators were appointed as administrators of the English Administration companies on 8 November 2024. These companies are part of a group of companies which includes companies incorporated in Malta and in England. According to the group structure chart in the evidence, AHP is indirectly majority owned by JSC Rusnano, a Russian State established/funded company that is, according to the evidence, 100% owned by the Russian government. Rusnano owns AHP through its wholly owned subsidiaries, Fonds and RN Consulting SA (‘RN’). Fonds is the holder of fixed charges over assets of the English Administration Companies and this forms the subject matter of the four paragraph 71 applications before me.

Service of the paragraph 71 applications

5. The four paragraph 71 applications were issued on 11 November 2024, but prior to their issue, the evidence shows that solicitors acting on behalf of the administrators sent correspondence as well as the unissued applications with the supporting evidence to the contacts which the English Administration Companies had in relation to Fonds. Ms Kennedy, one of the Administrators, has set out in her first witness statement 11 November 2024 details of those who have acted on behalf of Fonds in previous dealings with the English Administration companies. Ms Patterson, solicitor at Taylor Wessing (TW), solicitors acting on behalf of the Administrators, has also set out in her evidence details of the contacts with Fonds. According to the evidence filed, Mr Maxim Sakharov is the only remaining director of Fonds who has executed documentation on behalf of Fonds as recently as May 2024. He is based in Moscow.

Mr Dimitry Perminov has been described in correspondence as ‘supervising Ascension on behalf of Rusnano’ and who has also witnessed the execution of documentation by Fonds in May 2024. Ms Karina Nikolaeva sent several emails on behalf of Fonds of the management of AHP during the last 6 month period prior to the hearing before me. A Mr Germogen Korolev is also copied into correspondence. The unsealed paragraph 71 applications and supporting evidence with a covering letter dated 11 November 2024 were sent to the emails of the above named individuals with read receipts in relation to Mr Perminov, Mr Korolev and Ms Nikolaeva being generated.

6. Earlier correspondence which was sent to Fonds Contacts include the letter dated 16 October 2024 which set out the background details to the involvement of the administrators pre-appointment, their contingency options review, the accelerated marketing process which had taken place as well as details of the financial position of the companies themselves. That letter contains details of the transaction, the likely return to Fonds and seeks from Fonds its consensual release of the securities held over the English Administration Companies. The letter also states that in the event that consent is not forthcoming, then applications will be made to the court for orders pursuant to paragraph 71 Schedule B1 IA 86. There were read receipts generated from Mr Perminov and Mr Korolev. A follow up letter was sent dated 28 October 2024 which generated read receipts for the same two contacts.
7. The Notices of Intention to Appoint Administrators of 31 October 2024 were sent via email to the Fonds contacts and this generated read receipts from Mr Perminov, Mr Korolev and Ms Nikolaeva. The Notice of Intention to Appoint Administrators of 31 October 2024 were also served by *huissier de justice* at the registered office of Fonds. No replies were received from anyone on behalf of Fonds.
8. By orders dated 15 November 2024 ICC Judge Burton granted permission pursuant to rule 6.37 of the Civil Procedure Rules 1998 to the Administrators to serve (1) the sealed paragraph 71 applications and the supporting evidence, (2) the application for service out and the supporting evidence and (3) all subsequent documentation in relation to the paragraph 71 applications by the following service methods :-
‘ (a) delivery by the bailiff/huissier de justice to the registered office of the

*Respondent, which is at 25C Boulevard Royal, L-2449, Luxembourg (“the Registered Address”); and
(b) certified post/registered post to the Registered Address.
The Service Out Papers will be deemed served 2 business days after delivery.*

*2. In addition, the Applicants shall provide notification of the Paragraph 71 Application by sending the Service Out Papers to the following email addresses (Mr Sakharov being the sole director of the Respondent company):
(a) Dmitriy.Perminov@rusnano.com.
(b) Karina.Nikolaeva@rusnano.com.
(c) maxim.sakharov@rusnano.com.
(d) germogen.korolev@rusnano.com (together, “the Fonds Contacts”).’*

9. The third witness statement of Ms Amy Patterson dated 26 November 2024 sets out the steps taken on behalf of the Administrators to serve the relevant documents and notice of the hearing. Having considered the contents of that witness statement as well as the exhibits to the witness statements, I am satisfied that the documents referred to in the order dated 15 November 2024 were served in accordance with the terms of that order. The one issue which arose during the hearing as set out in the third witness statement of Ms Patterson relates to the adjourned date of the hearing of the paragraph 71 applications. The paragraph 71 applications stated that the hearing of the applications was listed to be heard on 25 November 2024. As the applications and supporting evidence were deemed served on 20 November 2024 in accordance with the order dated 15 November 2024, this would have provided a very short period prior to the hearing of the applications. The administrators sought and obtained from the court a direction that the paragraph 71 applications were relisted to be heard on 28 November 2024. Notice of the relisted hearings on 25 November 2024 was provided by email on 21 November 2024 to the four contacts referred to in the order dated 15 November 2024. The hearing before me on 28 November 2024 was thereafter adjourned to 29 November 2024 due to lack of court time for the matter to be heard on 28 November 2024. The applications were therefore served in accordance with the order of 15 November 2024 and I heard them on 29 November 2024. I should add that the applications were before me in court on 28 November 2024 and there was no representation or communication in relation to the Respondent. I adjourned the applications to be heard on 29 November 2024 in open court.
10. Mr Willson, counsel on behalf of the Administrators has informed me that no communication has been received either in relation to the service in accordance with

the terms of the order dated 15 November 2024, or from the notification via email that the date of the hearing was adjourned from the 25 November 2024 to 28 November 2024. Some of the emails generated a read receipt.

11. I am aware, during the course of writing this judgment, that Fonds have now instructed solicitors and have issued an application pursuant to Insolvency Rule 12.59 seeking to set aside or revoke the orders which I made on 4 December 2024. Directions for the hearing of that application have been given by the court on 30 December 2024. Fonds have also sought permission to appeal the order of 4 December 2024. This judgment relates to the reasons as to why I made the orders on the paragraph 71 applications on 4 December 2024. I will set out the legal principles, the factual background, the valuation evidence and the application of the principles to the facts of this case.

Urgency

12. As is set out in the evidence and is dealt with below in more detail, the applications came before me as a matter of urgency. The sale agreement which has been entered into between the Administrators and the buyer contains a four week long stop date after which either party may terminate the sale agreement. Currently, the buyer is effectively funding the ongoing trading of the English Administration Companies and it is not prepared to continue to do so without certainty in relation to the fixed charge assets. There is a transitional services agreement between the buyer and the English administration companies. The English Administration Companies are insolvent and unable to fund their continued operation and trading without external funding which, as is set out below, is not available to them. There is also a risk during the current period when the floating charge assets having been sold and the fixed charge assets remain subject to the charges, that information exchange with the relevant notified body in relation to the FlexiSEQ Ce Mark (as defined below and in the evidence) will be delayed. This creates a risk of termination of the existing CE mark certification process. The evidence also indicates that in the event that the paragraph 71 orders are not granted, then the position of the English Administration Companies is such that the administrations will be terminated and the companies will go into liquidations.

Abridgement of Time

13. As part of the applications before me, the administrators sought orders for the abridgement of time for the hearing of the applications. The grounds for the proposed abridgement related to the urgent nature of the applications which I have set out above and is also demonstrated by the factual background which is set out below (including the current inability of the companies to continue to operate without funding or completion of the sale agreement). The evidence demonstrates that Fonds has been aware that paragraph 71 applications may need to be made from the letter dated 16 October 2024 sent to those who were the contacts representing Fonds as is described below. The unissued application with supporting evidence was sent on 11 November 2024.
14. Whilst the effective date for service in accordance with the service out order made by ICC Judge Burton is 20 November 2024, I am satisfied that this is a case appropriate for an abridgement of time as requested. The applications are urgent as I have set out in this judgment. There is evidence that the respondent is aware of the proposed applications, the evidence and unissued applications having been served via the emails which the English Administration Companies had used in the past. There has been no reply either to emails sent or to the service of the applications and evidence in accordance with the order of ICC Judge Burton. In my judgment, Fonds is clearly aware of the precarious financial position of the English Administration Companies. Negotiations have been taking place with Fonds for some time relating to a proposed sale of the shares in the English Administration companies. Fonds are therefore aware of the inability of the companies to continue as a going concern and also of the difficulties of raising further funds or lending due to the sanctions detailed below. The effect of the paragraph 71 orders are of course significant because they allow the Administrators to sell secured assets and effectively override certain rights of the secured creditor. However I have to weigh that against the financial position of the companies and the urgency of the position. Taking all of those issues into account as well as the silence from Fonds, I abridged the time for the hearing of these applications.

Legal Principles

15. I have set out above paragraph 71 of Schedule B1 IA 86. There is essentially a two stage test. Firstly, the court needs to be satisfied that the court considers that the disposal of the property would be likely to promote the purpose of administration in relation to the company (or companies) and secondly, that as a condition, there be

applied towards discharging the sums secured by the security, the net proceeds of disposals of the property and any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property at market value.

16. In *O'Connell v Rollings [2014] EWCA Civ 639*, the Court of Appeal set out the principles governing these types of applications. In summary, in that case, the Court of Appeal considered an appeal from the decision of Mr Justice Warren granting an order for the sale of the company's assets free of the fixed charge security. The order which had been granted considered that the bid process for purchasing the business and assets of the company was open and fair, that the administrators needed an order in order to allow them to complete the sale of the business and assets of the company and that there was a risk of the administrators losing the offer to purchase if the order under paragraph 71 was not made. The evidence before the Judge indicated that the offer made was the only offer on the table and furthermore that the Administrators did not have the funds to continue to trade the company as a going concern and therefore had sought to sell the business and assets of the company at what they submitted was the best price they could achieve. The Appellant had sought an adjournment before the judge so that he could submit further evidence. The application was adjourned overnight but thereafter the Judge heard the application and granted the order pursuant to paragraph 71.
17. The Court of Appeal set out certain general principles relating to the approach to be taken by the court to paragraph 71 applications:-
 - (1) At paragraph 47, Lord Justice Kitchen stated *'the jurisdiction to exercise the discretion conferred by that paragraph [71] arises if the sale in issue is "likely to promote for the purposes of the administration in respect of the company";* and
 - (2) In the exercise of the discretion, the Court of Appeal agreed with Mr Justice Warren, that the court had to balance the relative prejudice to the charge-holder (if the order was made) against the relative prejudice to those interested in the promotion of the administration (if the order was refused).
18. The appeal was mainly concerned with a contract race, with offers or purported offers being made and the criticism by the Appellant, as secured creditor, about the timing

imposed by the administrators in relation to the offers being made. In relation to the issue of value, the Court of Appeal noted that the parties were agreed that it was incumbent upon the administrators to obtain on the sale the proper and fair value of the business and assets they were selling. The Appellant argued that the administrators had failed to do this. The Court of Appeal dismissed the appeal concluding (paragraph 66) that it was satisfied that the Administrators did achieve a proper price for the business and assets of the company.

19. The wording 'proper price' does not appear in paragraph 71 but it does appear in other cases in relation to of paragraph 71 (or its predecessor, section 15 IA 86). In my judgment, the phrase is referring to the administrators having obtained the proper and fair value of the business and assets they were selling on the facts of the case. As is clear from the judgment itself, the Court of Appeal considered carefully that (1) the administrators were unable to continue to trade the company as a going concern so either they sold the business or assets of the company or the company would go into liquidation; (2) there was no funding to enable the administrators to trade until the outcome of an arbitration hearing, (3) the administrators had carried out an open marketing process in order to obtain the best price. In my judgment, paragraph 71 does not create a hypothetical type of exercise whereby the market value is to be assessed on the basis that the willing vendor can wait to see if better offers are made. The Court of Appeal carefully took into account the facts of the case before it as being relevant to its determination as to whether the Appellant could persuade the court that effectively the assets were not sold at a proper price. This, in my judgment, demonstrates the relevance of the facts of the case relating to the price obtained by the administrators and the court being satisfied that this represents, 'the amount which would be realised on a sale of the property in the open market by a willing vendor', or in other words, 'the proper price'.

20. Equally relevant to the case before me is the approach taken by the Court of Appeal to the argument that the administrators could and should have delayed the sale. In relation to that point, the Court of Appeal stated as follows (at paragraph 28):-

“The Administrators could not continue to trade....there was therefore a considerable degree of uncertainty attaching to the value of MSL’s intellectual property rights. The Administrators therefore decided to conduct a marketing exercise....with a view to selling the business and assets of the company such as they were for a fair and proper

price. The sale realised a substantial sum, enabled a transfer of the company's 17 employees and avoided the accrual of further liabilities. Had the sale fallen through, there was a real risk the Administrators would have been forced to put the company into liquidation”.

21. A further appeal point related to the first part of the paragraph 71 test, being satisfying the court that the disposal of the property would be likely to promote the purpose of administration in respect of the company. The Appellant argued that on the facts, it was overwhelmingly likely that the unsecured creditors would receive no dividend. Accordingly, in practice, the administrators, *‘had no constituency to serve other than the secured creditors’* (paragraph 69). The Appellant was one of the secured creditors and relied upon the prejudice he would suffer by the proposed sale and that this factor should have been given particular weight.

22. At paragraph 70, Lord Justice Kitchen stated :-

‘I accept that, on the basis of the proposed sale to Mr Palma and the release by Mr Rock of his security, Mr O’Connell was the only secured creditor and accordingly his interests were a matter to which the Administrators had to have particular regard, but I do not accept this meant the Administrators were precluded from agreeing the sale to Mr Palma without Mr O’Connell’s consent. It is accepted that the judge had jurisdiction under paragraph 71 of Schedule B1 to make the order sought because he was satisfied that the sale was likely to promote the purposes of the administration, namely to achieve a better result for the creditors as a whole than an immediate winding up. The question then was how the discretion that provision conferred upon should be exercised. The judge balanced, as he was bound to, the prejudice that would be suffered by Mr O’Connell if he made the order against the prejudice that would be felt by all those interested in the promotion of the purposes specified in the administration if he did not. In considering the latter, the judge properly took into account that the Administrators had engaged in a process which would leave Mr O’Connell no worse off than if he had sold the assets secured by the Debenture himself, and also the interests of all other creditors and potential creditors, including the employees of the company and its landlords. Everybody agreed that an administration would achieve a better result for the creditors as a whole than would be likely if the company were wound up and that an administration would necessarily involve, in due course, a sale of the assets and business of the company on a going concern basis for the best price that could be achieved. That is precisely what the Administrators sought to do.’

23. This passage led to a submission by Mr Willson that effectively the court was adopting “the ‘no worse off ‘ test”, well known in restructuring plans pursuant to part 26A of the Companies Act 2006. I do not consider that I need to deal with such a submission in any detail. It seems to me that the passage above provides helpful

guidance to be followed in relation to dealing with the exercise of discretion and weighing up the respective prejudice. This becomes particularly relevant in the case before me.

24. On the facts, Fonds is a secured creditor who has an interest in the assets proceeds. The purpose of the administrations are in relation to PBBEL and PBBDL, to achieve a better result for the creditors as a whole than would be likely if PBBEL and PBBDL were wound up, or alternatively, in relation to both these companies and AHP and AHDL, to realise property in order to make a distribution to the secured creditors. This does not mean that particular weight needs to be given to the position of Fonds, but it does mean, in my judgment, that particular attention must be given to the process the administrators engaged in and whether I am satisfied that the outcome of that process did not make Fonds any worse off but also taking into account the interest of all other creditors, including the employees. The sale as a going concern enables the employees to be transferred over rather than face a redundancy process in relation to eventual liquidations. In my judgment, in accordance with *O'Connell*, I can consider whether the sale as a going concern in the administration would achieve a better result than likely if the companies were placed into liquidation.
25. In the more recent case of *Duffy v. MJF Pensions Trustees Ltd [2020] EWHC 1835* (Ch), ICC Judge Jones held that on the facts, there was no other conclusion than that the same will promote the purpose of the administration. He held that it would result in a distribution to a secured creditor and that the administrators had decided that this is the only purpose which can be achieved. As to value, on the evidence before him, he held that, '*market value has been tested, expert advice has been obtained and the sum offered is at market value*'. I was also referred to the case of *Re Sky Building Ltd [2020] EWHC 3139(Ch)* where ICC Judge Jones refused to make an order pursuant to paragraph 71 on the grounds that the court could not be satisfied that the financial condition under paragraph 71(3) had been satisfied. There was no market testing and the expert valuation report valued the property at £600,000 but there was further evidence that a willing purchaser might pay £3.45m. The Judge posed himself the question as to why a potential purchaser may be willing to pay £3.45 million. The Judge concluded that he could not be satisfied of market value on the untested evidence before him and therefore was not satisfied that the condition prescribed in

paragraph 71(3) will be met. In those circumstances, the Judge did not consider it right to exercise his discretion. At paragraph 38, he stated :-

'38. Against that conclusion and in any event Ms Williamson has submitted that the urgency of the matter means the court must approach this on the basis that it is in the interest of creditors because otherwise there is no realistic alternative proposal. Indeed, it is inevitable, she submits, that the value will fall bearing in mind (amongst other matters) the effects of winter, the a willing back to back sale purchaser may no longer exist and the risk of the local authority exercising its rights. This is "the bird in the bush" and the court should not deprive the lien holders, particularly those who have not joined the objectors, of the only certain chance of receiving a distribution (some 10p in the £) from this sorry state of affairs.

39. The problem with that approach is that whilst the power is discretionary and those matters are relevant considerations to the extent accepted, the emphasis of paragraph 71 is upon recompense via the net proceeds of sale for those whose rights are removed. It requires valuation evidence that can be relied upon. I must consider the rights of those with security which will be discharged if an order is made. In my judgment it cannot be right to remove their security from the property when the evidence of value is inadequate notwithstanding those circumstances.'

26. Mr Willson referred me to *Townsend v Biscoe* [2010] WL 3166608, a decision of Mr Registrar Simmonds relating to what costs, charges and expenses can be deducted before payments of the realisation proceeds to the charge holder. The order of Mr Justice Blackburne had directed that the costs of the paragraph 71 application should be paid *'as an expense of the administration incurred in the realisation of the property'*. The dispute to be resolved by the Judge in that case related to whether the 'net proceeds' should be construed narrowly to include only the estate agents' charges and solicitors charges for actually selling the properties. The Judge rejected this submission and held that 'net proceeds of sale' pursuant to paragraph 71 includes all proper costs, charges and expenses reasonably incurred in the preservation and realisation of an asset. This includes, therefore, the remuneration of the administrators and their solicitors in seeking to realise the property as well as the costs of the valuation evidence produced. Reference was made in the *Townsend* judgment to the well known principles of *Berkeley Applegate* and the fact that in *Berkeley Applegate* relief cases, the court allows the costs properly incurred by the relevant office holder in connection with the sale. That would include the office holder's costs and those of the legal and other professionals. This case effectively enables me to define 'net proceeds' as set out in paragraph 71.

27. As to the ‘market value’, one of the early section 15 IA 86 cases (which is now paragraph 71), namely *Re AVR Aviation Ltd [1989] BCLC 664* is useful. In that case, Mr Justice Knox considered an application pursuant to section 15 IA 86 (now paragraph 71). In that case, the argument being made on behalf of the opposing secured creditor was that the power in section 15 was only available in cases where there was a dispute in relation to the valuation of property. The Judge disagreed and stated as follows:-

‘It does seem to me that it was not the intention of section 15(5)(b) to introduce as a figure for the amount which would be realised on the sale of the property in the open market by a willing vendor, anything which was significantly less than what one would anticipate a secured creditor could himself realise. That would seem to me to be an intention that it would be capricious to attribute to Parliament which, a priori would not be anxious to dilute the rights and security of a secured creditor’.

28. Mr Willson did not refer me to any other authorities which dealt with the test relating to market value as set out in paragraph 71 and paragraph 111, Schedule B1 IA 86. I have already set out my judgment above on certain aspects of the law as applicable to the case before me. As I have already held that the ‘proper price’ will depend upon the facts, I turn now to consider the facts in this case.

Background to the paragraph 71 applications

29. According to the evidence, the Ascension Group operated a UK-based pharmaceutical and medical device business, developing and marketing nanotechnology drug and medical device products and therapies for haemophilia A and arthritis. According to the witness statement of Ms Kennedy dated 11 November 2024, there are two primary asset classes within the group being (1) a pipeline of products to treat haemophilia that have completed what is known as Phase 2 clinical trials and are ready to commence Phase 3 clinical trials (‘the Haem A Assets’) and (2) a suite of products for the treatment of joint pain and osteoarthritis (the SeqTech Assets). Successful completion of the Phase 3 Clinical trials would enable regulatory approval to be sought in the UK, EU and the USA to be able to market the Haem A Assets.

30. The ownership of the Ascension Group assets is divided as between various companies in the group, including two Maltese companies, being Cantab

Biopharmaceuticals Patents Ltd (CBPL) and Sequeessome Technology Holdings Ltd (STHL). According to the evidence, (1) AHP owns ‘the Ascension Trademarks’’, (2)PBBEL owns the ‘FlexiSEQStock’, the ‘FlexiSEQTrademarks and the ‘supplier contracts’(c) AHDL owns the ‘clinical trial data’ and(d) PBBDL holds the ‘FlexiSEQ CE mark’. The asset position is further complicated because the FlexiSeq CE Mark has an outstanding application to the relevant notified body pursuant to Regulation (EU) 2017/746 (the MDR Application) which means that its value at best is contingent as it is unable to be realised by the Administrators.

31. The asset holding of the Maltese Companies is as follows:- (1) STHL owns all the ‘SeqTech Patents’ and (2) CPBL owns all the ‘Haem A Patents’. According to the evidence of Ms Kennedy, the management of the English Administration Companies have informed her that these assets held by the Maltese companies are, alongside the assets owned by the English administration companies, key to the business of those four companies. The fragmented state of the ownership of assets relevant to the business of the English Administration Companies is significant in relation to the value of the assets for the purposes of determining the market value that a willing vendor would be able to obtain for the assets.

32. The security which was granted to Fonds arises pursuant to the assignment of a loan agreement dated 25 June 2015 whereby Fonds became the lender of the sum of USD\$15 million to AHP. The original lender was Knight Therapeutics. The maturity of the loan was extended until 31 December 2024. The security for the loan is certain debentures, pledges and other securities which are governed by English law. The fixed charge assets which are set out in Part 1 of Appendix 1 to Ms Kennedy’s first witness statement dated 11 November 2024 comprises (1) the ‘Ascension Trade Marks, (2) the FlexiSEQ Trade Marks (3) the Flexi SEQ CR Mark (4) the clinical trial data (5) the licences (as defined in the security documentation and (6) the ‘other intellectual property’. There are also floating charge assets but I do not need to set them out for current purposes. There is no challenge by the Administrators to the validity of the fixed charges.

33. There is a further significant liability of AHP relating to amounts due under a convertible loan agreement dated 18 August 2020 entered into with, the Future Fund (part of British Business Bank) and certain existing investors including Fonds. There is according to the evidence approximately £18.6 million due under the convertible loan agreement. According to the evidence, Future Fund does not oppose the sale of the fixed charge assets or the manner in which the Administrators are seeking to sell them pursuant to the paragraph 71 applications.
34. There are seven employees in the English Administration Companies. Many of these have been employed by the Ascension Group for over a decade and who have, according to Ms Kennedy, a highly specialised skillset.

Financial position of the Ascension group

35. The Ascension Group has been reliant on capital from investors and third party lenders for the group to operate as a going concern. As appears in the evidence, its revenue from the FlexiSEQ products is insufficient to enable the group to trade as a going concern without requiring additional capital from investors and/or third party lenders. The Haem A Assets are currently in clinical trials and therefore do not produce any income. Historically the group relied upon raising capital to continue to operate as a going concern, but the raising of further capital has become very restricted and/or practically impossible by reason of the Russia (Sanctions) (EU Exit) Regulations 2019 (RSR 2019).

(a) RSR 2019 and the sanctions context

36. Rusnano, Fonds and RN have not been expressly designated by the Secretary of State as a ‘designated person’ subject to an asset freeze pursuant to the RSR 2019. The chairperson of Rusnano, Mr Kulikov, is designated as being subject to the asset freeze prohibitions in the RSR 2019. As Ms Kennedy states in her first witness statement, there is no reasonable cause to suspect that Mr Kulikov owns or controls, whether directly or indirectly Rusnano, Fonds or AHP(within the meaning of regulation 7(1) of the RSR 2019) such that his designation would otherwise have the effect of one or more of Rusnano, Fonds , RN or AHP being subject to the asset freeze prohibitions in the RRS 2019.

37. As a result of the designation of Mr Kulikov, his position has been disclosed in two OFSI (Office of Financial Sanctions Implementation) licence applications. These applications dealt with the extensions for the repayments of loans made. No issue was raised by OFSI in relation to the position of Mr Kulikov or was any suggestion raised that the Ascension Group was subject to an asset freeze due to it being controlled by a designated person. The Russian State has not been designated as being subject to an asset freeze pursuant to the RSR 2019.

38. The English Administration Companies are subject to the financial restrictions contained in regulation 16 of the RSR 2019, the relevant parts are set out here:-

16.— Dealing with transferable securities or money-market instruments

(1) A person ("P") must not, directly or indirectly, deal with a transferable security or money-market instrument falling within paragraph (2) if P knows, or has reasonable cause to suspect, that P is dealing with such a transferable security or money-market instrument.

(2) A transferable security or money-market instrument falls within this paragraph if it has a maturity exceeding 30 days and is issued after 1 August 2014 by—

(a) a person mentioned in any of paragraphs 1 to 5 of Schedule 2;

(b) a person, other than an individual, which is—

(i) incorporated or constituted under the law of a non-UK country, and

(ii) owned by a person within sub-paragraph (a); or

(c) a person, other than an individual, acting on behalf or at the direction of a person within sub-paragraph (a) or sub-paragraph (b).

(3) A person ("P") must not, directly or indirectly, deal with a transferable security or money-market instrument falling within paragraph (4) if P knows, or has reasonable cause to suspect, that P is dealing with such a transferable security or money-market instrument.

(4) A transferable security or money-market instrument falls within this paragraph if it has a maturity exceeding 30 days and is issued after 12 September 2014 by—

(a) a person mentioned in any of paragraphs 6 to 11 of Schedule 2;

(b) a person, other than an individual, which is—

(i) incorporated or constituted under the law of a non-UK country, and

(ii) owned by a person within sub-paragraph (a); or

(c) a person, other than an individual, acting on behalf or at the direction of a person within sub-paragraph (a) or

sub-paragraph (b).

[

(4A) A person ("P") must not, directly or indirectly, deal with a transferable security or money-market instrument falling within paragraph (4B) if P knows, or has reasonable cause to suspect, that P is dealing with such a transferable security or money-market instrument.

(4B) A transferable security or money-market instrument falls within this paragraph if it has a maturity exceeding 30 days

and is issued on or after 1st March 2022 by—

(a) a person, other than an individual, which is—

(i) incorporated or constituted under the law of any part of the United Kingdom, and

(ii) owned by a person falling within Schedule 2; or

(b) a person, other than an individual, acting on behalf or at the direction of a person within sub-paragraph (a).

(4C) A person ("P") must not, directly or indirectly, deal with a transferable security or money-market instrument falling within paragraph (4D) if P knows, or has reasonable cause to suspect, that P is dealing with such a transferable security or money-market instrument.

(4D) A transferable security or money-market instrument falls within this paragraph if it is issued on or after 1st March 2022 by—

(a) a person connected with Russia, which is not—

(i) a person falling within Schedule 2,

(ii) a person, other than an individual, which on 1st March 2022 is domiciled in a country other than Russia, or

(iii) a person, other than an individual, which on 1st March 2022 is a branch or subsidiary, wherever located, of a

person mentioned in paragraph (ii);

(b) a person, other than an individual, which is owned by a person falling within sub-paragraph (a); or

(c) a person, other than an individual, acting on behalf or at the direction of a person within sub-paragraph (a) or

sub-paragraph (b).

....

(7) For the purposes of this regulation, and regulations 17 (loans and credit arrangements) [, 59 (exceptions relating to loans and credit arrangements) and 60ZZA (exceptions relating to investments in relation to Russia)]- (exceptions relating to loans and credit arrangements), a person ("C") is "owned" by another person ("P") if P—

(a) holds directly or indirectly more than 50% of the shares in C, or

(b) holds directly or indirectly more than 50% of the voting rights in C.'

39. Rusnano holds indirectly more than 50% of the shares of AHP which is therefore considered to be owned by Rusnano in accordance with Regulation 16(7), being a person connected to Russia. Those restriction therefore include a prohibition on granting new loans and credit with a maturity exceeding 30 days to person connected to Russia. Regulation 17 of RSR 2019 states :-

'17.— Loans and credit arrangements

(1) A person ("P") must not directly or indirectly grant a relevant loan if P knows, or has reasonable cause to suspect, that

P is granting a relevant loan.

(2) A person must not directly or indirectly enter into any arrangement to grant a relevant loan if the person knows, or has reasonable cause to suspect, that the arrangement relates to a relevant loan.

(2A) A person must not make funds or economic resources available to a relevant entity ("E") where the purposes of

making those funds or economic resources available is to enable E to grant a relevant loan on or after 16th December 2022.

]

(3) Paragraphs (1) [, (2) and (2A)]- are subject to [Part 7 (Exceptions and licences)].

(4) A person who contravenes a prohibition in paragraph (1) [, (2) or (2A)] commits an offence.

(5) In this regulation—

[[...]

"category 1 loan" means a loan or credit—

(a) with a maturity exceeding 30 days,

(b) made or granted to—
(i) a person falling within Schedule 2,
(ii) a person, other than an individual, which is—
(aa) incorporated or constituted under the law of a non-UK country, and
(bb) owned [...] by a person within paragraph (i), or
(iii) a person, other than an individual, acting on behalf or at the direction of a person within paragraph (i) or paragraph (ii), and
(b) which is first made or granted at any time after IP completion day;'

...

"category 3 loan" means a loan or credit—
(a) with a maturity exceeding 30 days,
(b) made or granted to a person, other than an individual, which is—
(i) connected with Russia,

...

"category 4 loan" means a loan or credit—
(a) made or granted to the Government of Russia,
(b) which is first made or granted at any time on or after 1st March 2022;
*]*⁵*[*

"category 5 loan" means a loan or credit—
(a) with a maturity exceeding 30 days,
(b) made or granted to a person, other than an individual—
(i) which is connected with Russia, other than—
(aa) a person which on [29th October 2022]¹³ is incorporated or constituted in a country other than Russia, or
(bb) a person which is owned by a person falling within paragraph (aa),
(ii) a person which is owned by a person within sub-paragraph (i), or
(iii) a person which is owned by a person connected with Russia who is an individual,
(c) which is first made or granted at any time on or after [29th October 2022]¹³, and
(d) which is not a category 1 loan, a category 2 loan, a category 3 loan or a category 4 loan'

40. The effect of these provisions, as submitted by Mr Willson, is that they prevent future investments via equity or future borrowing. Licence applications can be made for certain matters, such as the ones made for the extension of the existing borrowing, but new borrowing is restricted.

(b)The effect of the RSR 2019 on the financial position of the English Administration Companies

41. The RSR 2019 came fully into force on 31 December 2020 and this has therefore restricted the raising of new capital by the Ascension Group. According to the first witness statements of Ms Kennedy, third parties have also been unwilling to engage

with the Ascension Group given the links with Russia and the prohibitions set out in Regulations 16 and 17. The financial position of the Ascension Group has deteriorated further with the war in Ukraine. The evidence shows that various attempts were made by the directors of AHP to distance the group from its Russian connections including a solvent sale to an Armenian biopharma company, MetaMedica AM LLC, but ultimately these attempts, including a proposed Part 26A restructuring plan, failed or were not viable options.

42. According to the evidence, the proposals also included seeking the agreement of Fonds to lift its security interest. Fonds confirmed that it was unwilling to sell its shares for less than their book value. According to the most recent financial accounts for the AHL for the year ended 31 December 2020, the intangible assets in the sum of £187 million consists of £177 m for the Haem Patents and £10m for the SeqTech Patents. Both of these assets are owned by the Maltese companies and therefore, Ms Kennedy concludes that book value of the rest of the intangible assets in the Ascension group is nil. This includes the intellectual property owned by the English Administration Companies which are subject to the fixed charge.
43. In September 2024, Alix Partners UK LLP were instructed to advise on contingency planning options. It was anticipated that cash would run out at the end of the month. Although further receipts were anticipated, these were calculated to be insufficient to meet the Ascension Group's costs. As is set out above and in the evidence before me, there was no ability to secure additional financing. Alix Partners identified several options, but the only viable options, according to Ms Kennedy, was the proposed pre-pack administration sale of the English Administration Companies' assets.

The Pre- pack sale

44. Paragraph 5 of the first witness statement of Ms Kennedy explains that the decision to run an accelerated sales process was made due to the rapidly depleting cash reserves of the three English Administration Companies. There was no ability to obtain external funding or new capital so as to extend the marketing process beyond 26 September 2024. It was considered that the group would run out of cash by that

date. This estimate took into account the time and resources needed to draft and negotiate all of the necessary transactional documentation.

45. The accelerated marketing process involved contacting 43 potential offerors covering both trade and financial investors with relevant exposure to the core markets of the Ascension Group. The evidence refers to them being sent a ‘teaser’ which contained information about the group and its business. Ms Kennedy states that the list of 43 was developed by her firm’s research in conjunction with input from the management team at the Ascension Group. Meta Medica was contacted as it had expressed interest. A call was held but on 26 September 2024 with it, but MetaMedica confirmed that it would not be participating in the process stating that the tight timeline (dictated by the lack of funding available to enable the group to continue as a going concern) was ‘extremely challenging’ for it to meet. Other potential offerors declined or expressed no interest.
46. One offer was received by letter dated 2 October 2024. The proposed buyer, AH Development Healthcare Limited, comprises a consortium of directors/investors in the English Administration Companies. The key terms of the offer after discussions were:-
- (1) The purchase of the assets of the English Administration Companies for a consideration of £1,000,000 in cash (with additional deferred consideration of £50,000 payable upon Further Completion and (a) the administration of PBBDL being extended for at least 6 months and (b) the certificate being granted pursuant to the MDR Application and transferred into the name of the Buyer).
 - (2) The transfer of all the employees.
 - (3) The entry into a transitional services agreement (‘the TSA’) between the Buyer, PBBDL, PBBEL and the Administrators pending the outcome of the MDR Application.

The report of the evaluator

47. The buyer was connected to the company and therefore it sought and obtained an evaluator’s report in accordance with regulation 7 of the Administration (Restrictions

on Disposal to Connected Persons) Regulations 2021, in relation to the consideration to be provided for the relevant property and the grounds setting out that the substantial disposal is reasonable in the circumstances. I was taken to the report prepared by Nick Elliott of Stag Advisory LLP where the evaluator's conclusion is that the consideration to be provided for the relevant property and the grounds for the substantial disposal are reasonable in the circumstances. I set out below a very brief summary of the contents of that report.

48. That report notes that the vendors have been unable to engage accountants/auditors to work with them to produce and file financial statements at Companies House. The last filed accounts are for the year ending 31 December 2020. The evaluator had before him the management accounts to August 2024 which show a negative position on profit and loss (£2,170,000), fixed assets of £184,066 and long term liabilities of £142,370,00 with net assets of £38,539. These are statements for the group rather than individual companies. The report also notes that the assets are fragmented and that significant parts of the assets are held by the two Maltese companies which includes various patents. This therefore clearly sets out the difficulty in seeking to realise the assets belonging to the English Administration Companies with their business being linked and necessitating access to the Maltese companies assets. The approach to the sale, which is set out in the final sale agreement set out below, was also considered by the evaluator. The intellectual property asset valuation report by Gordon Brothers International LLC and a report from Mamo TCV Advocates were also considered by the evaluator. The evaluator summarised that the consideration being offered was well in excess of the valuation which had been set out in the reports. The conclusion reached was that the evaluator was satisfied that the consideration provided and the grounds for the substantial disposal connected to the vendors was reasonable in all the circumstances.

The final sale agreement

49. As part of the pre pack administration sale, the Administrators would need to obtain the consent of Fonds as the secured creditor to release its security over the charged assets. As this has not proved possible, the Administrators agreed with the Buyer that upon their appointment as administrators, (i) they would sell the floating charge assets to the Buyer; (ii) they would (if they had failed to obtain the consent of Fonds to the

release of the fixed charges) apply to Court for an order under Paragraph 71 to release the fixed charge assets from the English security; and (iii) (in the event of an order being made) they would immediately sell the fixed charge assets to the Buyer. As consent was not provided by Fonds, the paragraph 71 applications have been made.

50. The above terms have been incorporated into the final terms of the sale agreement with the floating charge assets being transferred to the Buyer, the employees being transferred and the initial consideration of £280,000 being paid by the Buyer reflecting the allocation of the overall sale consideration to the floating charge assets. If the paragraph 71 applications are granted, then according to the final sale agreement, the balance of the initial consideration, being £720,000, will be paid by the Buyer to the administrators, representing the allocation of the sale consideration to the fixed charge assets. There is an additional deferred consideration in the sum of £50,000, but that is only payable effectively once the relevant licences have been granted.

51. The administrators were appointed on 8 November 2024.

The valuation evidence- Gordon Brothers report

52. As referred to in the evaluator's report, the administrators have obtained and relied upon various reports relating to the value of the assets. As is clear from the evidence referred to above and as set out in Mr Willson's submissions as well as in his oral submissions before me, the valuation of the fixed assets represents challenges and difficulties because of the fragmentation of the asset ownership in the Ascension Group. Additionally, from the evidence before me, I accept Mr Willson's submission that the existence of the sanctions in relation to the RSR 2019 has made it difficult for the English Administration Companies to find interested buyers for its assets. The shareholding of AHP makes the English Administration Companies unattractive. This, in my judgment, also affects the value of the fixed assets.

53. As is set out in the Gordon Brothers valuation report dated 22 October 2024, the assets of the Maltese companies are key to the business of the English administration companies. This is because, as set out above, the Maltese companies own all the patents in respect of Seq Tech assets and all the patents in respect of Haem A Assets.

As set out in the report, this means that any prospective buyer of the English administration companies' assets would need to acquire the assets of the Maltese companies in order to unlock the value in the English administration companies. Mr Geurts of Gordon Brothers was provided with information by AHP relating to the business and also held a number of calls with the management team to obtain an understanding as to the nature of the English administration companies' assets and the Maltese companies' assets. Mr Geurts considered, by reason of the fragmented nature of the assets held, that the value of the English Administration Companies' assets could only be assessed on the basis of a percentage of a buyer being able to acquire either the Maltese companies' assets (alongside the English Administration Companies' assets) or enter into a 'collaboration agreement' with the Maltese companies. Such an agreement envisages (a) the granting of an exclusive, worldwide perpetual licence in respect of the Maltese Companies' Assets by the Maltese Companies in favour of a buyer of the English Administration Companies' Assets or (b) a revenue share agreement (with a pledge not to sue the other party for intellectual property infringement).

54. Mr Geurts considers therefore that the 'probability basis' of valuation is the most appropriate and logical approach. His report actually went further than this and stated that in his opinion, value could only be assessed on this basis. Mr Geurts provides as an example of this type of approach, the valuation of IP assets based on their licensing potential in considering multiple licensing scenarios.
55. Mr Geurts produced a summary table in his report which shows a range of values for the 'market value in situ of IP assets' which ranged from £13,400 (where there was a 0% prospect of obtaining a "collaborative agreement") to £5,047,130 (where there was a 100% prospect of obtaining a "collaborative agreement"). The report also sought to divide up the fixed assets valuation (based on the probability basis) as between the four English Administration Companies. Based on a 10% probability as assessed in the Mamo opinion (as detailed below), the market value was assessed as £516,000 with Ascension Healthcare PLC at £13,400, Ascension Healthcare Development Ltd at £250,700, PBBDL at £24,800 and PBBL at £227,900. Mr Geurts

concludes that the sale of the fixed charge assets at £720,000 was his recommendation.

56. As submitted by Mr Willson, the division as to the value of the fixed charge assets as between the four companies was not something which caused concern because it was clear from the evidence that there was no prospect of any distributions to either preferential or unsecured creditors because the value broke with the secured creditors. I agree and have therefore only set out what Mr Geurts set out in this respect without further discussion. There is no need to consider each of the four English Administration Companies separately for the purposes of paragraph 71 applications.

The report of Mamo

57. The administrators considered that in order to be able to form a view as to the percentage likelihood of a buyer being able to acquire the Maltese companies assets or achieve a collaboration agreement, it was necessary for them to obtain an opinion from a Maltese lawyer as to the prospects of success/probability of a buyer obtaining the full 'marriage' value of both the English Administration Companies' assets and the Maltese companies' assets. This was explained in the letter of instruction dated 21 October 2024 as being either the acquisition of the Maltese assets or the entry into a collaboration agreement. This included an assessment of the insolvency procedures in Malta because the Maltese companies themselves are insolvent, according to the evidence.
58. Mamo TCV Advocates (Mamo) who provided the opinion are the Ascension Group's incumbent Maltese counsel. Ms Kennedy sets out in her first witness statement that other Maltese counsel had been approached to provide the opinion but none was able to clear conflicts which would include obtaining sanction from their Russian sanctions committee. Due to the urgency of the matter, Mamo were retained but the letter of instruction sets out clearly their duties and responsibilities as expert including reference to the relevant provisions in the CPR. Whilst Mamo is not independent due to their previous involvement, I see no reason to discount the value of their expert opinion, on the evidence before me, on the issues raised.

59. According to the report, under Maltese law, there are two insolvency processes, a Maltese CVL and a Maltese winding up application. Mamo explains in its report, why the Maltese CVL is not a viable option. In relation to a Maltese winding up court application, the Maltese court will appoint the Maltese “Official Receiver” as liquidator. There is no timeline for any sale process and no law similar to paragraph 71 allowing assets to be sold without the consent of the secured creditor. According to Mamo, the Official receiver would seek the Maltese Court’s directions on the exercise of its powers to seek to sell the secured assets without the consent of Fonds and free from the security held by Fonds. With this legal background in mind, Mamo concludes that the percentage probability of a buyer of the English Administration Companies being able to achieve either the acquisition of the Maltese assets or a collaboration agreement as being no more than 10%.

Calculation of the ‘net proceeds’

60. As is set out in the introduction, market value is defined as ‘the amount which would be realised on a sale of the property in the open market by a willing vendor’.
- Paragraph 71 (3) states that the sums which must be put towards discharging the sums secured by the security are (1) the net proceeds of sale and (2) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property at market value.
61. The Administrators’ position is that the net proceeds which will be payable to Fonds is the sum of £202,079 due in relation to the consideration paid for the acquisition of the assets subject to the fixed charges. There is also an additional £50,000 which will be due as deferred consideration when this become due.
62. The sum of £720,000 has been allocated, as set out in the evidence, as being the proceeds of sale relating to the fixed charge assets. From this sum, the following deductions are sought to be made by the Administrators. I have set out the various headings as detailed in Mr Willson’s skeleton argument and in the evidence :-

- (1) £459,881 which comprises fees, costs and expenses of preserving and realising the fixed charge assets. These are broken down into five separate cost points/centres in relation to pre-administration costs:
- (a) £65,906 for the time costs incurred by AlixPartners' Corporate Finance team in the marketing process which preceded the pre-pack administration sale.
 - (b) £100,200 for the time costs incurred by AlixPartners' Turnaround and Restructuring team (in relation to which the administrators are managing directors/partners) relating to the pre-pack administration sale (including supporting the Corporate Finance team in the marketing process, reviewing the terms of the offer letter, negotiating the commercial terms of the sale agreement with the buyer and instructing Gordon Brothers in relation to the valuation).
 - (c) £249,815 for the time costs of TW – the solicitors to the Administrators – with the legal aspects of the pre-pack administration sale, which include (i) preparing/negotiating the sale agreement (ii) considering the terms of the offer letter (iii) drafting/negotiating the TSA/legal manufacturer agreement in respect of the FlexiSEQ Products (iv) preparing the Paragraph 71 applications (v) liaising with Maltese counsel with regard to expert evidence of Maltese law (vi) liaising with Gordon Brothers in relation to expert evidence of valuation (vii) liaising with Leading Counsel in relation to advice on issues arising in relation to the RSR 2019.
 - (d) £36,960 for the time costs of Counsel, including in relation to (i) preparing the Paragraph 71 applications (ii) liaising with Maltese counsel with regards to expert evidence of Maltese law (iii) liaising with Gordon Brothers in relation to expert evidence of valuation.
 - (e) £7,000 for the time costs of Gordon Brothers in relation to the valuation.
- (2) £58,040 which comprises the post-administration costs of respectively (a) the administrators (b) TW and (c) Counsel to prepare for and attend the hearings of

the Paragraph 71 applications (as well as preparing for and attending the service out application).

63. The costs which are claimed by the administrators are set out in a spread sheet which is at CK1, the exhibit to Ms Kennedy's first witness statement. I have considered carefully the sums being sought and the categories. In my judgment, the categories claimed are all properly costs and expenses which can be claimed in accordance with the principles set out in *Townsend* as being expenses incurred in connection with the sale. Ms Kennedy states that these costs and expenses do not include costs relating to the sale of the floating assets or the general administration expenses, but are those which have been incurred in connection with the fixed charge sale process. The wording comes from Kerr & Hunter on Receivers and Administrators (21st edition) at paragraph 25.71. Additionally, the overlap between this principle and *Berkeley Applegate* jurisdiction is also discussed in Lightman and Moss (6 th edition) at 20-042.
64. In my judgment, as appears from the evidence and this judgment, these applications are concerned with assets which have particular difficulties in relation to their realisation as well as cross border issues relating to Maltese ownership of assets which are needed for the business of the English Administration Companies. The fragmented ownership of the assets complicates the issue even further. The RSR 2019 further complicates issues which need to be considered and dealt with. Moreover, the need for all of these matters to be dealt within a compressed timeframe due to the lack of funding available to the companies to continue to trade as going concerns has considerably increased the complexity.
65. Turning to the quantum being claimed, the points I have set out in the preceding paragraph are equally applicable here in relation to the sums being claimed. As explained to me by Mr Willson, the sums incurred are actually higher than the ones set out above. The actual sums claimed are lower because VAT has not been charged on them. The administrators have taken the view that it is appropriate to reduce the sums claimed effectively by seeking the above sums as inclusive of VAT. This, in my judgment, effectively reduces the sums claimed by a substantial sum. Mr Willson

explained that the decision to effectively reduce the sums claimed by providing the sums as being inclusive of VAT was so as to enable there to be sums payable to Fonds. I accept that this is one of those cases where the complexities, both on the facts and legally are such that the cost could well become disproportionate to the actual realisations, but that does not prevent the sums being properly incurred. In those circumstances and bearing in mind the issues I have set out above, I do not consider that any further reductions should be made in relation the sums claimed. The sums claimed, which are inclusive of VAT, stand to be deducted from the proceeds of sale.

The Paragraph 71 applications

66. Applying the tests set out in paragraph 71 and applying the guidelines set out the cases I have referred to above, I am satisfied that it is appropriate to make the paragraph 71 orders in the terms of the orders made on 3 December 2024.

(1) The disposal of the property is likely to promote the purpose of the administrations

67. In my judgment, having weighed carefully the evidence, I am satisfied that the disposal of the secured assets is likely to promote the purposes of the administrations. In relation to PBBEL and PBBDL, the purposes of the administration include a better result for the creditors as a whole than would be achieved if the companies were wound up. The sale agreement which includes the sale of the fixed assets enables a sale as a going concern which, in my judgment, benefits the creditors as a whole. I have already referred above to the position of the employees who were transferred rather than facing redundancy if the companies were wound up. In relation to AHL and AHDL, in my judgment, the disposal of the fixed charge assets is also likely to promote the purpose of a distribution to the secured creditor. That is clear from the evidence I have set out above. The latter also applies in relation to PBBEL and PBBDL in relation to the purpose also being to enable there to be a distribution to secured creditors.

(2) Satisfaction of the condition pursuant to paragraph 71(3) Schedule B1, IA 86

68. In my judgment, having considered carefully the evidence, including the valuation evidence, the evidence of lack of funding for the companies to continue as going concerns and/or continued trading, the inability of the companies to obtain further

funding for continued trading due to RSR 2019 as well as the fragmentation of the assets needed to continue the business of the companies, I am satisfied that the realisation was at a proper price (using the phrase adopted by the Court of Appeal in *O'Connell*) for the reasons set out below and also as appears earlier on in this judgment.

69. The administrators carried out a marketing process which was over a compressed timetable and involved sending 'teasers' to a list of potential purchasers, including those who had expressed an interest in the past. Only one offer was made for the business, which consisted of those connected with the companies. Accordingly, I have also had the benefit of the evaluator's report and his conclusion that the disposal was reasonable in the circumstances. I have also considered the reports of Gordon Brothers and Mamo.
70. It is clear from the facts in this case that the sale of the business including the fixed assets had to be carried out in the compressed timetable due to the lack of funding. Equally, it is also clear from the evidence before me that the shareholding of AHL as well as Regulations 16 and 17 of the RSR 2019 resulted in a stigma being attached to the companies and in particular their ability to attract potential buyers.
71. Additionally, the business of the English Administration Companies required access to the assets held by the Maltese companies in order for it to be viable. There was, as the evidence sets out, real uncertainty relating to the possibility of either reaching a collaboration agreement with the Maltese companies or being able to acquire those assets. The situation is further complicated by the urgent nature of the disposal and Maltese insolvency law. I note that the valuation was based upon a percentage basis applying the probability basis of valuation.
72. As I have already set out above, in reaching the conclusion that the same was at a proper price, I have considered carefully the facts. This accords with the approach taken by the Court of Appeal in *O'Connell*.

(3) Discretion

73. As the passages from *O'Connell* and *AVR* set out above demonstrate, paragraph 71 is a provision which requires a careful consideration of the facts as well as weighing up the factors in relation to the exercise of my discretion as to whether to make the orders sought. The effect of orders made pursuant to paragraph 71 is that the holder of the relevant security will lose the ability to realise the security itself as and when it would normally be entitled to do so. The cases which I have referred to above, such as *O'Connell*, demonstrate instances where the holder of the security has objected to the order being made. In this case, Fonds is not before me or represented although I am satisfied that the service of these proceedings in accordance with the order of ICC Judge Burton is valid. I have considered and dealt with this case on the basis of the facts before me on the evidence. In weighing up the prejudice that would be suffered by Fonds if I make the orders as compared to the prejudice suffered by those interested in promoting the purpose of the administrations, I have taken into account the following.

74. The assets are not easy to realise. That affects the market value. The test relates to a willing vendor of the assets. That means the four English Administration Companies and not the Maltese companies and their assets. The lack of funding compressed the period for marketing and the methodology adopted. It also affected the assessment of the probability value by a reduced percentage. In my judgment, based on the facts of this case, Fonds is no worse off than if it had sold the secured assets. The same issues in relation to lack of funding and an inability to obtain that funding due to RSR 2019 would arise for the secured creditor seeking to sell as arose for the administrators. As secured creditor, Fonds is prejudiced by the orders I have made, but it is a question of weighing up that prejudice, including my conclusion that it is no worse off, alongside factors on the other side.

75. Fonds is fully aware of the precarious financial position of the English Administration Companies. For the past 18 months attempts have been made to seek a sale of the shareholding or some realisation of the security held so as to enable the English Administration Companies to obtain funding or sell the business without the issues arising from RSR 2019. Those attempts were not successful, but in my judgment, Fonds is therefore aware of the financial position of the companies as well as the difficulties which arise by reason of RSR 2019. It has to date not elected to seek

to realise its security in the knowledge that the position of the companies was such that some form of insolvency was very likely to occur.

76. Furthermore, communications have been sent to Fonds Contacts (as defined in the first witness statement of Ms Kennedy and as is set out above), including the letter dated 16 October 2024 (see the details in that letter set out above), a follow up letter on 28 October 2024 and the unsealed paragraph 71 applications including evidence on 11 November 2024. Despite these communications, Fonds has taken no action or presented any evidence to this court.

77. As to the prejudice faced by those promoting the administration, in my judgment, the interest of the creditors as a whole is served by promoting the administrations in relation to PPEL and PPDL. In relation to all four English administrations companies, the making of the paragraph 71 orders also makes it likely that the purposes in relation to these administrations can be achieved. Otherwise as the evidence demonstrates, the English Administration Companies will go into liquidation, therefore preventing the sale to the buyer as well as reducing the value of the assets, including the fixed assets.

78. For those reasons I determined to make the orders sought in the terms set out in the order made by me.