Neutral Citation Number: [2023] EWHC 1701 (Ch)

Case No: CR-2023-MAN-000324

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
SITTING AT MANCHESTER

IN THE MATTER OF AARTEE STEEL GROUP LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Manchester Civil Justice Centre,
1 Bridge Street West,
Manchester,
M60 9DJ

Date: Monday 27 March 2023

Before:

HIS HONOUR JUDGE HALLIWELL
(Sitting as a Judge of the High Court)

- -

Between:

AARTEE BRIGHT BAR LIMITED
(IN ADMINISTRATION)

Applicant

- and -

AARTEE STEEL GROUP LIMITED

Respondent

- -
- -

MR DAVID MOHYUDDIN KC for the **Applicant**
MR CHRISTOPHER BOARDMAN KC for the **Respondent**

- -

APPROVED JUDGMENT

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HIS HONOUR JUDGE HALLIWELL:

1. The Applicant, Aartee Bright Bar Limited, is in administration. Michael John Magnay, Gemma Quinn, and Richard Dixon Fleming are joint administrators. They were appointed, on 6 February 2023, by FGI Worldwide LLC as floating charge holder.

2. The Applicant has applied, in turn, for an administration order in respect of Aartee Steel Group Limited ("the Respondent Company"). This is the application before me. It came before me on Friday 24 March but the hearing did not conclude until about 4.45pm. At the end of the hearing, I made a winding up order in respect of the Respondent Company having exercised my statutory jurisdiction, under *Para.13(1)(e)* of *Schedule B1* to the *Insolvency Act 1986*, to treat the application as a winding up petition. However, in view of the fact that, by then, there was insufficient time for me to give reasons for my judgment, I said I would do so this morning, on Monday 27 March. I am doing so now. For the record, I am giving those reasons at a hearing conducted remotely. The hearing before me on Friday was attended in person.

3. Mr David Mohyuddin KC appears on behalf of the Applicant and Mr Christopher Boardman KC appears on behalf of the Respondent Company. They each attended the hearing on 24 March and are again present at the remote hearing this morning. I pay tribute to them for the skill with which they have presented their respective cases.

4. The Respondent Company is the sole shareholder of the Applicant itself and an associated company, Aartee Bright Bar Property Limited ("Bright Bar Property"). The Respondent Company and its subsidiaries were involved in the manufacture of iron, steel, steel, and ferro-alloys. Its centre of main interests is in England and Wales.

5. The Applicant issued its application for an administration order, through its administrators, on the footing that it is a creditor of the Respondent Company and the Respondent Company is insolvent. It contended that, whilst there was no requirement for it to identify the particular objective which the administration was designed to achieve, administration was likely to achieve a better result for the company's creditors as a whole than if the company were wound up without first being placed in administration. Administration would thus satisfy the statutory objective in *Para.3(1)(b)* of *Schedule B1* to the *Insolvency Act 1986*. If not, the Applicant contended, at the very least, it was reasonably likely to achieve the statutory objective, in *Para.3(1)(c),* of realising property to make a distribution to one or more secured or preferential creditors.

6. By way of background, the Respondent Company recently applied for an order providing, under *Para.81(1)* of *Schedule B1* to the *Act*, for the appointment of the Applicant's administrators to cease to have effect. This application came before HHJ Stephen Davies on 15 March 2023. Following a contested hearing, Judge Davies dismissed the application, see *[2023] EWHC 606 (Ch).*

7. The present application before me was opposed on a range of grounds. Firstly, the alleged debt was disputed. So too was the proposition that the administration was reasonably likely to achieve the purpose of administration. In any event, if (contrary to his primary submissions) the essential preconditions for an administration were satisfied, Mr Boardman submitted that I should decline to make such an order in the exercise of my discretion. He also submitted it would be inappropriate for me to make a winding up order. Whilst this was preferable to an administration order, he submitted that I should not make any such order.

8. The Applicant has filed three witness statements from Mr Magnay, one dated 10 March and two dated 23 March 2023. The Respondent Company has filed witness statements from Kumar Trehan, Gianpiero Repole, Bart Peczkowski and Sanjeev Gupta.

9. I shall deal first with the issue of disputed debt. The issue about the Respondent Company's indebtedness to the Applicant was relevant to the Applicant's standing and the statutory condition of insolvency.

10. *Paragraph 12(1)* of *Schedule B1* lists the eligible applicants for an administration order. They include, in para.*12(1)(c),* "one or more creditors of the company". For this purpose, "creditor" is defined in *para.12(4)* to include a "contingent creditor and a prospective creditor". In these respects, the statutory jurisdiction is not materially different from *s.124(1)* of the *Insolvency Act 1986* which provides that any creditor or creditors is or are entitled to present a winding up petition and, for this purpose, creditor or creditors includes any contingent or prospective creditor or creditors.

11. The statutory condition for an administration order in *Para.11* of *Schedule B1* requires the court to be satisfied that the company is or is likely to become unable to pay its debts. In the case of an application for a winding up order, *s.122(1)(f)* of the *Act* expressly provides that a company may be wound up if unable to pay its debts. By *s.123(1)(e),* this is deemed to be so if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due. This provides a cash flow test of insolvency. Alternatively, *s.123(2)* provides a balance sheet test so a company is deemed unable to pay its debts if proved to the satisfaction of the court that the value of its assets is less than the amount of its liabilities taking into account its contingent and prospective liabilities. Contingent and prospective liabilities can thus

be taken into account when considering whether a company is insolvent on a balance sheet basis.

12. In the present case, the Applicant's case was simple and straightforward. The Applicant maintains it is a creditor of the Respondent Company because it was shown as such in the latter's most recent audited accounts, approved by the board and its auditors DKF Smith Cooper Audit Limited on 14 April 2022. In these accounts, produced for the year ending on 31 December 2021, the Respondent Company was shown to have current liabilities to creditors falling due within one year of £8,760,000. This had apparently been rounded up from its debt of £8,759,632.42 to the Applicant, itself recorded on the Applicant's intercompany ledger and arising from a series of historic transactions during the period 2011-2014. The transactions are listed at pp.54-56 of the application bundle. During his submissions before me, Mr Mohyuddin demonstrated that the Respondent Company's corresponding indebtedness can be traced back through a series of company accounts to the time of the historic transactions themselves.

13. The Respondent Company does not trade. It is an investment holding company only and it has two subsidiaries only, the Applicant itself and Bright Bar Property, each of which is in administration with the same administrators.

14. Mr Mohyuddin submits that the Respondent Company is demonstrably insolvent on a cash flow and balance sheet basis.

15. He submits that it is insolvent on a cash flow basis because it is clear from the Respondent Company's own accounts that its debt to the Applicant was repayable on demand and, by letter dated 27 February 2023, the Applicant, through its administrators, served a demand for payment. Notwithstanding this demand, the debt

has not been repaid and it remains outstanding. Relying on the judgment of Harman J in *Cornhill Insurance plc v Improvement Services Ltd* [1986] 1 WLR 114, Mr Mohyuddin submits that I can infer that the Respondent Company is insolvent from its failure to pay a debt which was undisputed for many years and cannot reasonably be disputed now. On analogy with the test of standing, he submits there can be no *bona fide* dispute on substantial grounds.

16. Mr Mohyuddin also submits that the Respondent Company is insolvent on a balance sheet basis. Whilst it has not filed accounts showing its financial position since its accounts for the year ending on 31 December 2021, Mr Mohyuddin submits that, based on these accounts, the Respondent Company must now be taken to be insolvent on this basis. It can be seen from its balance sheet, on 31 December 2021, that the Respondent Company's fixed assets were then confined to the value of its shareholding in its two subsidiaries now in administration, the Applicant and Bright Bar Property, and some unidentified "additions". According to the notes to its accounts, it was also entitled to £4,000 in respect of "amounts owed by group undertakings". This was treated as a current asset. Since the Respondent's shareholding in its two subsidiaries was valued at £8,756,000 and the "additions" were stated to amount to £1,500,000, it was thus shown to have total assets of £10,260,000.

17. The aggregate value of the Respondent Company's shareholding in its two subsidiaries and the amounts owed to it by the group undertakings, namely £8,760,000, was exactly equal to the Respondent Company's own indebtedness to such undertakings. At least, this is how it was shown in the Respondent Company's December 2021 accounts. During the hearing, neither party was able to confirm

whether the Respondent Company's assets were calculated in these amounts so as to encompass the value of the debt owed to the Applicant by the Respondent Company itself on the footing that the Respondent Company was itself shareholder. However, in the absence of evidence to the contrary, this is overwhelmingly likely.

18. Whilst the entry for "additions" of £1,500,000 was itself undefined, the Respondent Company's share capital was recorded in the same amount elsewhere in its accounts. This was said to be allotted, called up and fully paid. However, the allotment of an additional £1,500,000 of share capital was not and is not reflected in an asset which can be realised to meet the Respondent Company's indebtedness to the Applicant. It appears from the notes to its accounts that the shares were historically issued in exchange for the repayment of a £1,500,000 loan from a related group company.

19. Mr Boardman submitted that, regardless of whether the Applicant is a creditor and thus has standing to apply for an administration order, the Respondent Company has not been shown to be insolvent on a cash flow or balance sheet basis. When dealing with the issue of cash flow insolvency, he submitted that the notes about the alleged debt in the Respondent's Company's account were internally inconsistent since they stated that, whilst the debt had no fixed date of repayment, they also stated that it was repayable on demand. Moreover, he submitted that, given the longevity of the debts, the Applicant's right to sue for the recovery of the debts could be statute barred. He also emphasised that the debts are disputed and the *Cornhill Insurance* principle is thus inapplicable. They are disputed on the basis that they are now of considerable age and, quite apart from the issue of limitation, the individuals most recently in a position of responsibility and control of the Respondent Company do not have first

hand knowledge of the origin of the alleged debts and have had insufficient time to fully investigate.

20. In his witness statement, Kumar Trehan confirmed that he is a former director and ultimate beneficial owner of the Respondent Company. He stated that the transactions which gave rise to the alleged debt took place seven years before his appointment as a director and, as a director of the Applicant and the Respondent Company, he never considered the putative debt to be an asset which was properly due and payable.

21. Gianpiero Repole was a director of the Applicant and Respondent Company from 31 July 2019 to 31 August 2022. He is now executive vice president of Reibus International. In his witness statement, he confirmed that the alleged debt was incurred over eight years before his appointment as a director of both companies. He stated that he had never considered the transactions - denoted in his statement as "inter company receivables" - to be repayable on demand. They were, he says, consolidated at "holdco level" and not immediately collectible.

22. Bart Peczkowski was appointed director of the Applicant and the Respondent Company on 31 August 2022. He stated that, in his case, the transactions giving rise to the alleged debt were incurred over eleven years before his appointment as director of both companies and the amount, which, as he puts it, the administrators seek to enforce has been recorded in the company's accounts since the period ending on 31 December 2014. However, he stated that the intercompany transactions have historically been treated inconsistently in the Applicant's accounts where it is not stated that the indebtedness is repayable on demand rather it is stated that "all

amounts shown under debtors fall due for payment within one year". This was a point taken up by Mr Boardman in his submissions before me.

23. Sanjeev Gupta is a director of the Respondent Company and its ultimate beneficial owner. He was appointed director upon acquisition of the Aartree Group on 16 February 2023. He is a director of several companies within the group. In similar terms to other witnesses who made statements for the Respondent Company, he stated that the transactions giving rise to the alleged debt first took place over twelve years before his appointment. He confirmed that they are currently under investigation.

24. Mr Magnay has taken the opportunity to respond in his second witness statement dated 23 March. He observed that the debt is clearly stated in the consolidated accounts which have been audited by the company accountants.

25. To the extent it is in issue, I was and am satisfied of the Applicant's standing to make the application and, notwithstanding the skill and ingenuity with which Mr Boardman's submissions were presented, I was and am persuaded that the statutory tests of insolvency in *Para.11(a)* of *Schedule B1*, and *ss.122* and *123* of the *1986 Act* are all satisfied.

26. To qualify as a creditor, the Applicant is not required to show that the debt is immediately payable. A contingent or prospective creditor qualifies as a creditor and can thus apply for an administration order, or present a winding up petition. A contingent creditor is one to whom the company may become liable at some future date under an existing obligation. A prospective creditor is one whose debts will become due in the future whether on a date already known or determinable by reference to a future event.

27. In the present case, the debt is recorded in the accounts of both companies. On this basis, the Applicant is to be treated as a creditor regardless of whether the debt is payable immediately following the service of its demand for payment. Mr Boardman canvassed the issue of limitation. Although limitation merely operates to bar a party from suing on the cause of action, it is well established that a creditor cannot present a winding up petition once the debt is statute barred. In the present case, the indebtedness was incurred before the Respondent's Company's witnesses had any involvement in the Respondent Company's affairs or can be taken to have been cognisant of them. However, there is a clear statement in the Respondent Company's accounts that the indebtedness is payable on demand. Moreover, the repeated references to the relevant debt in the Respondent Company's accounts can be traced back as far as the transactions themselves. As a subsidiary with common directors, the Applicant can be taken to have received the Respondent Companies' accounts. The debt is plainly defined with sufficient clarity to amount to an acknowledgement of the debt within the meaning of s.*29-s.30* of the *Limitation Act 1980.*

28. There remained the more substantial issue of whether the Respondent Company was or was likely to become unable to pay its debts under *para.11(a)* of *Schedule B1.* By virtue of *Para.111(1)* of *Schedule B1*, the Respondent Company's ability to pay its debts is to be construed in the same way as *s.123* of the *1986 Act* so as to encompass cash flow or balance sheet insolvency.

29. I am satisfied that the Respondent Company was and is unable to pay its debts on each basis and, in the hypothetical event that it could be shown the debt is not yet payable, the Respondent can have no real prospect of paying it in the future. On its balance sheet basis as at 31 December 2021, the Respondent Company was shown to

have liabilities of £8,760,000 based on its liabilities to the Applicant. To meet these liabilities, it had investments valued at £10,256,000, made up of £8,576,000 in respect of the value of its 100 per cent shareholding in the Applicant and the other group company Bright Bar Property, together with £1,500,000 in respect of the "additions" and £4,000, in respect of debts owed from group undertakings.

30. The Respondent Company does not trade and there is nothing to suggest that it has any immediately realisable assets. Now that its subsidiaries are themselves in administration, it no longer has any expectation of an income nor does it have assets to meet its liabilities other than its right to a distribution from the administrators of its subsidiaries. In my judgment, it cannot have any realistic expectation that the distributions from the administrators of its subsidiaries will produce anything approaching the amounts allocated to its current liabilities on balance sheet. On its 2001 balance sheet, its net current liabilities amounted to £8,756,000.

31. In my judgment, there cannot be any real doubt that the Respondent Company is insolvent on a balance sheet basis. It is also, in my judgment, insolvent on a cash flow basis.

32. In its accounts for the year ending on 31 December 2021, signed by Mr Repole on behalf of the board and approved by the Respondent Company's auditors, it was confirmed that its indebtedness to the Applicant was repayable on demand. It is true that the note also stated that there was no fixed date for repayment but it was at least implicit that the debt was repayable upon demand. There were no alternative dates for repayment. Such a demand has now been made. It has not been repaid and it is overwhelmingly clear that, had the Respondent Company been minded to pay, it would have been unable to do so from its own funds or resources. Mr Boardman

submits that the company was not and is not motivated to pay because there is an underlying dispute about its indebtedness and, for that reason, he submits that the *Cornhill Insurance* case is distinguishable. However, in my judgment, this matters not for the purposes of determining whether the company is insolvent since the Respondent Company simply does not have the funds to make payment.

33. Whilst it is true that the Respondent Company's witnesses do not themselves have direct knowledge of the indebtedness, this does not greatly assist me. The demand was issued as long ago now as 27 February, a month ago. The present application was issued on 13 March with advance notice. In reality, there is no reason to believe, if the Respondent Company was given the opportunity to investigate the transactions further, this would provide it with grounds to challenge the underlying debts. No substantial grounds for potential challenge have been identified.

34. I am satisfied that the Applicant is to be treated as a creditor and the Respondent Company is insolvent on a cash flow and balance sheet basis. The requirements of *Para 11(a)* of *Schedule B1* and *Section 122(1)(f)* of the *1986 Act* are satisfied.

35. This takes me to the second requirement of *Para 11(b)* of *Schedule B1*, namely. that the administration is reasonably likely to achieve the purpose of the administration, and the hierarchy of statutory objectives in *para.3(1)* of *Schedule B1*. The statutory objectives are

"(a) rescuing the company as a going concern;

(b) achieving a better result for the company's creditors than would be likely if the company were wound up (without first being in administration); or

(c) realising property in order to make a distribution to one or more secured creditors."

36. Relying on *Hammonds v Pro-fit USA Ltd* [2007] EWHC 1998 (Ch), Mr Mohyuddin submits that the Applicant is under no obligation to identify the objective which it intends to achieve. Whilst this may be correct, it remains the case that I must be satisfied an administration order would be reasonably likely to achieve the purpose of administration based on the statutory objectives in *Para.3*.

37. In the present case, there has never been a suggestion that, if I were to have made an administration order, the administrators would seek to rescue the company as a going concern, nor, indeed, that they would have had any prospect of doing so. The Respondent Company is simply a holding company and its two subsidiaries have been put into administration with a view to realising their assets.

38. In para.33 of his first witness statement, Michael Magnay identified the objective in *Para.3(1)(b)* as the statutory purpose of administration, namely that it would achieve a better result for the company's creditors than if the company was wound up. However, I am not satisfied that a case has ever been made out as to why this is so. In para.35 of his first witness statement, Michael Magnay stated that, following the administration of the Applicant and Bright Bar Property, a preferred bidder emerged for the business and assets of the Applicant. The preferred bidder made an offer with a condition providing for the purchase of three of the properties owned by Bright Bar Property. This offer, he says, provides for the properties to be purchased at a price significantly higher than the breakup value of the properties as confirmed in a valuation provided by Hilco Valuation Services. It has made an alternative offer

providing for the Bright Bar properties to be subject to a license to occupy rather than a contract of sale but at a considerably lower price than the first offer.

39. In his witness statement, Michael Magnay stated that it is a critical term of the first offer that the three properties are purchased and this will maximise their obtainable value. Later, in para.36 of his first witness statement, he states that "as matters currently stand, Bright Bar Property is likely to have surplus funds once all creditors are discharged and, as such, the [Respondent Company] as a shareholder has an economic interest in the administration. It is clear to the administrators that the [Respondent Company] intends to refuse to consent to the sale of any assets by [Bright Bar Property] and, as such, without the cooperation of the [Respondent Company], the Administrators are currently unable to complete on the first offer".

40. I can understand the first part of Michael Magnay's analysis, namely that selling the business investments of the Applicant with three of the properties in the ownership of Bright Bar Properties is likely to achieve a higher value than selling them separately. He has not disclosed the offers because they are commercially sensitive but I am willing to assume his analysis is correct. I would expect the Administrators to obtain suitable professional advice and reasonably act on such advice. If Mr Gupta has now made a rival offer, they can reasonably be expected to take his offer into consideration, to make such requisitions as might be appropriate, to act on their professional advice and do what is necessary to achieve a proper price for the assets as a whole.

41. However, the factual and conceptual basis for the second part of Michael Magnay's analysis requires substantiation, namely that "without the cooperation of the Respondent Company, the Administrators are currently unable to complete on the first

offer". It is implicitly on this basis that he seeks an administration order in respect of the Respondent Company since, according to him, the latter will refuse to consent to the sale of Bright Bar Property's assets if it remains under the control of the current board.

42. During his submissions for the Applicant, I asked Mr Mohyuddin why this might be so in view of the fact that the Administrators are themselves in control of the subsidiaries under *para.67* of *Schedule B1* with all the management powers set out in *para.68*. Is Bright Bar Property contractually required to obtain the Respondent Company's consent to a sale and, if so, on what basis? Alternatively, does the Respondent Company have rights under a trust or some other arrangement which would require the subsidiaries to obtain their consent, or, indeed, is there is some other basis on which the consent of the Respondent Company is required?

43. Mr Mohyuddin did not have specific instructions to enable him to answer these questions so I indicated I would be willing to adjourn the matter until this morning to enable him to do so. However, in view of the urgency of the application from the point of view of his clients, Mr Mohyuddin declined to take up that opportunity. I intend no criticism of Mr Mohyuddin who presented the application at all times with care, skill, and propriety. However, I am not persuaded, in the absence of a cogent explanation, that it is somehow necessary for the Respondent Company to be placed in administration to enable the assets of the two subsidiaries to be advantageously marketed and disposed of at their proper market value. Since the Respondent Company is merely a shareholding company with two subsidiaries only, each of which are in administration, I was not and am not satisfied a case has been successfully made out that a better result for the company's creditors as a whole

would be likely if the Respondent Company were to be placed in administration rather than being wound up.

44. Relying again on Michael Magnay's evidence, Mr Mohyuddin observed that the Respondent Company is part of a VAT group, including the Applicant itself, and observed that the Applicant has an outstanding VAT liability of £2,750,398.06. He submitted that putting the Respondent Company into administration is thus likely to achieve the statutory object in *para.3(1)(c)* of realising property in order to make a distribution to a preferential creditor. In response, Mr Boardman submitted that it is ironic and inappropriate for the Applicant to present its case in this way because it involves the Applicant relying on VAT liabilities generated by the Applicant itself to obtain an administration order against the Respondent Company on the footing that they are grouped together for VAT purposes.

45. In my judgment, however, there is a more fundamental conceptual difficulty for the Applicant in relying upon *para.3(1)(c)* in this way. *Para.3(1)(c)* provides for an administrator to realise property in order to make a distribution to the company's secured or preferential creditors. However, in the present case, the Respondent Company does not have any property other than shares in its subsidiaries and the two subsidiaries have themselves been placed in administration. It follows that, if the Respondent Company were itself placed in administration, the role of the administrators in realising the Respondent Company's property would be passive in nature. In reality, it is the assets of the subsidiaries that require realisation. Once realised, the Respondent Company will be entitled to a distribution from those assets. No doubt the Respondent Company could require the administrators of the subsidiaries to make a distribution so that the Respondent Company, through its own

administrators, could pass on the proceeds to its own creditors. This might be described as realising its own assets but, if that is so, it only peripherally reflects the kind of process envisaged in *para.3(1)(c)*. In any event, this is almost certainly incidental to the Applicant's underlying reasons for seeking an administration order and cannot explain why the application was perceived to be of such urgency that it had to be resolved immediately on Friday afternoon.

46. Returning to *Para.11(b)* of *Schedule B1*, I am not persuaded that an administration order in respect of the Respondent Company is reasonably likely to achieve the statutory purpose of administration otherwise than in the most superficial respect. However, if the statutory condition in *Para.11(b)* is satisfied, I can see no good reason why the Respondent Company should be placed in administration rather than wound up under the provisions of the *Act*. In reality, the officeholders' task is likely to be simple and straightforward. No doubt it might be more convenient, in some respects, for the tasks to be taken on by officeholders of the two subsidiaries but that would not, in itself, warrant putting the Respondent Company in administration.

47. As I have already mentioned, *para.13(1)(e)* confers on the court power to treat an administration application as a winding up petition and make any order which the court could have made under *s.125* of the *1986 Act*, including a winding up order. Had the Applicants presented a winding up petition, there is, of course, a statutory procedure for service and advertisement. In this way, creditors are given the opportunity to attend to support or oppose a petition. When I made the winding up order on Friday, I short-circuited this procedure. However, as I mentioned at the time, these considerations carry little weight in a case like the present one since the

Respondent Company has not traded and its liabilities are essentially to a subsidiary which, through its Administrators, is itself party to the application.

48. I can see good reason to make a winding up order here. For the reasons I have given, the Respondent Company is plainly insolvent. It is not trading and its liabilities are owed to a subsidiary which is, itself, in administration. The assets of its two subsidiaries, each in administration, are in the course of realisation. I can see no reason why the liquidation of the company should await the completion of the insolvency procedures in respect of its subsidiaries. It was for these reasons that I made a winding up order in respect of the Respondent Company on Friday.

49. For the sake of completeness, however, I should mention an additional point taken by Mr Boardman which it has been unnecessary for me to take into consideration when dealing with the application other than as part of the factual background. Mr Boardman submitted that, were Michael Magnay, Gemma Quinn, and Richard Fleming to be appointed as administrators of the Respondent Company in addition to its two subsidiaries, they would potentially be put into a position of conflict given that there is a dispute about the Respondent Company's indebtedness to the Applicant.

50. On the available evidence, I am not persuaded by this point. Until very recently, the relevant liabilities were treated, in the accounts of each set of parties, as a debt due from the Respondent Company to the Applicant. To the extent that there are differences in the accounting treatment, they are insubstantial. Before me, the case presented on behalf of the Respondent Company was essentially that the officers most recently appointed to a position of responsibility did not have direct knowledge of the putative debts or underlying issues in relation to such debts and these matters thus required further investigation. In the absence of a positive case, I can see no reason

why the Administrators should be precluded from taking office in respect of the Respondent Company. However, my decision to put the company into liquidation is unrelated to this consideration. No doubt the Respondent Company's officers appointed prior to the winding up will obtain further advice once they have had the opportunity to examine and reflect further on this aspect of the case.

51. It was on this basis that I made an order, on Friday afternoon, winding up the Respondent Company with the Applicants' costs treated as an expense of the liquidation.
