Neutral Citation Number: [2025] EWHC 340 (Ch)

Claim No: CR-2024-007626

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

IN THE MATTER OF LONDON ANTIAGING CLINIC LTD
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
Strand, London

Date: 21 February 2025

Before:

HODGE MALEK KC (sitting as a Deputy High Court Judge)

- -

Between :

MARKO VENTURES LTD

Claimants

- and –
LONDON ANTIAGING CLINIC LTD

Defendants

- -
- -

Simon Passfield KC (instructed by Veale Wasbrough Vizards LLP) for the Applicant
Oliver Hyams (instructed by Reed Smith LLP) for London Med Aesthetics Limited and Dr Andreas Androulakakis.

Hearing dates: **22 January 2025, 14 February 2025**

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JUDGMENT

Introduction

1. This is an application dated 12 December 2024 ("the Application") made pursuant to para.12(1)(c) of Schedule B1 to the Insolvency Act 1986 ("the 1986 Act") for an administration order in respect of London Antiaging Clinic Ltd ("the Company") and the appointment of Nicholas Charles Simmonds and Christopher Richard Newell ("the Proposed Administrators") of Quantuma Advisory Ltd ("Quantuma") as joint administrators.

2. The Application is made by Marko Ventures Ltd ("MVL") which is the majority shareholder and principal funder to the Company. There is no dispute that MVL is a creditor of the Company, albeit its standing to bring the application was in issue. Until the final hearing on 14 February 2025 the Application was opposed by the other shareholder in the Company, namely London Med Aesthetics Ltd ("LMA") and one of its two directors, Dr Androulakakis. LMA has permission to appear on the Application as its shareholding in the Company amounts to an interest which justifies its appearance. The Application was argued at the hearings by Simon Passfield KC on behalf of the Applicant and Oliver Hyams on behalf of LMA and Dr Androulakakis. Veale Wasbrough Vizards LLP ("VWV") act as solicitors for both MVL and to a limited extent the Proposed Administrators.

3. In support of the Application, MVL filed two witness statements from Mr Marrero (12 December 2024 and 20 January 2025) and three witness statements from Mr Simmonds (6, 8 and 20 January 2025). Dr Androulakakis filed two witness statements in opposition to the Application (8 and 15 January 2025). After the hearing on 22 January 2025 further evidence was filed in the form of a third witness statement from Mr Marrero (10 February 2025) and fourth witness statement from Mr

Simmonds (11 February 2025). All the evidence and submissions have been carefully considered.

The Company

4. The Company was incorporated in England and Wales on 13 August 2018 (Company No. 11512503). At the date of the Application the directors of the Company were and remain Dr Andreas Androulakakis and Mr Vasileios Koutroulis. Mr Koutroulis is the Company's managing director and Dr Androulakakis is the chairman. Dr Androulakakis was sole director from incorporation until 12 June 2023, when Mr Koutroulis was appointed as a second director.

5. The shareholding of the Company is split between two shareholders:

   (1) LMA with 10,000 ordinary shares.

   (2) MVL with 9,445 ordinary shares and 5555 preference shares.

6. LMA itself is jointly owned by Dr Androulakakis and his wife Kallopi Makri, each with 50 ordinary shares.

7. As noted below, MVL is the principal funder of the Company and has provided a significant amount of financial support for the business. The shareholders and directors in MVL are Mr Marrero and Mr Koutroulis. MVL was incorporated on 31 January 2022.

8. Both MVL and LMA are persons with significant control over the Company as majority (60%) and minority (40%) shareholders respectively.

9. The Company carries on the business of a health, beauty and wellbeing clinic known as The Galen Clinic at 9 Queen Anne Street, London W1G 9HW which is also its registered office. Thus the Company's centre of main business is within England and Wales. The Galen Clinic is the primary asset of the Company which consists of a 10 year lease from 30 October 2018 with a balance sheet value of £5,982,488 (albeit Mr Simmonds considers that the actual value is significantly less), a rent deposit of £154,000, and equipment, fixtures and fittings with a balance sheet value of £739,082. The Company's operations did not start until September 2023 when it commenced providing aesthetics treatments and it was not until April 2024 it received a licence for surgery to be conducted from the Galen Clinic.

10. On 10 June 2024 LMA, MVL, Dr Androulakakis and the Company entered into a shareholders agreement in respect of the Company ("SHA"). Dr Androulakakis was a party to the SHA for the purposes of giving various undertakings set out at clause 11. The SHA refers to 3 convertible loan notes issued by the Company totalling £500,000 in favour of Klaus Schuster. Clause 5 of the SHA provides, inter alia:

> "**5. MATTERS REQUIRING CONSENT OF THE SHAREHOLDERS**
>
> 5.1 The Shareholders shall, for as long as they hold Shares, procure (so far as is possible in the exercise of their rights and powers) that the Company shall not, without the prior written consent of Marko and LMA:
>
> …
>
> 5.1.12 pass any resolution for the Company's winding up or present any petition for its administration;
>
> …

5.2 Each Shareholder undertakes to the other Shareholders that at all times during the continuance of this agreement it shall:

5.2.1 promote the best interest of the Company and ensure that the Business is conducted in accordance with good business practice, in each case if and for so long as it is within their power and authority to do so;

5.2.2 exercising all voting rights and powers of control available to it in relation to the Company so as to give full effect to the terms and conditions of this agreement; and

5.2.3 comply in all respects with the Articles.

5.3 The Company shall, and the Shareholders shall procure that the Company shall, conduct the Business:

5.3.1 on arms' length terms; and

5.3.2 in the normal course of business."

11. As to the duration of the SHA clause 15 provides, inter alia:

"**15. DURATION OF AGREEMENT**

15.1 Upon a party ceasing to hold any Shares in any manner permitted or authorised by this agreement, this agreement shall cease to bind that party.

15.2 This agreement shall terminate forthwith if:

15.2.1 the Company becomes insolvent (except by reason solely of its inability to repay loans or other sums outstanding to the Shareholders) or goes into liquidation (except for the purposes of a bona fide reconstruction or amalgamation pursuant to which the company resulting therefrom agrees to be bound by or assume the obligations of the Company);

15.2.2 the Company shall have an administrator appointed or any person shall take any steps including filing documents with any court of competent jurisdiction and giving notice of intention to appoint an administrator for the purpose of placing a company in administration or the Company shall have an administrative receiver, receiver or manager appointed over any part of its assets or undertaking or shall suffer any similar event in any jurisdiction; or

15.2.3 all the Shares shall be held by one Shareholder.

…".

12. As one would expect the SHA contains an entire agreement clause at clause 20 which provides, inter alia:

> "**20. WHOLE AGREEMENT**
>
> 20.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any arrangements, understanding or previous agreement between them relating to the subject matter they cover.
>
> …".

13. The SHA contains a dispute resolution clause providing for any disputes between shareholders in connection with the SHA to be referred to an expert for determination (clause 14).

14. It was LMA's case that it was an implied term of the SHA that the shareholders in the Company would not be able to place it into administration, based on debts owing, or alleged to be owing, to them. This was disputed by MVL and is one issue that I had to resolve on the issues of MVL standing as a creditor to bring the Application or at least as a factor in exercising my discretion whether or not to make an administration order.

MVL's funding and investment in the Company

15. The Company has had significant financial support from MVL under two arrangements:

(1) A loan note instrument dated 26 September 2021 ("the Loan Note Instrument") by which the Company created £400,000 Unsecured Convertible Loan Notes 2024 ("the Loan Notes") which were issued to MVL.

(2) A loan agreement between the Company and MVL dated 12 June 2023 ("the Loan Agreement") under which MVL agreed to make a term loan facility up to a maximum aggregate amount of £3 million ("the Facility"). There were 3 amendment agreements increasing the amounts under the Facility:

(a) 5 October 2023 recording that the Company had drawn down £3 million under the Facility (and £1,450,000 additional advances) and increasing the amount of the Facility to £5.5 million.

(b) 29 February 2024 recording that the Company had drawn down £5.5 million and increasing the Facility to £6.5 million.

(c) 8 May 2024 recording that the Company had drawn down £6.5 million and increasing the Facility to £7.5 million.

16. As regards the Loan Notes:

(1) The Maturity Date is 26 September 2024 (3 years after the date of the Loan Note Instrument, per clause 1.1).

(2) Interest accrues on the Loan Notes at 5% above the Bank of England rate and is payable in cash on redemption or payment (Schedule 2, para.1.1).

(3) Schedule 2, para.4 provides as to once the Maturity Date has been reached:

> "**4. MATURITY DATE**
>
> At any time or after the Maturity Date, the Noteholders shall have the right, by service of an Exercise Notice on the Company, to require repayment by the Company of, all the principal amount of the Notes then in issue (so far as not redeemed in accordance with paragraph 3 above or converted pursuant to schedule 4) together with all interest accrued thereon up to an including the redemption date. Where the

Noteholders serve an Exercise Notice pursuant to this paragraph, the Company shall pay the Noteholders such repayment amounts within 10 Business Days of receipt of the Exercise Notice. Failing service of an Exercise Notice, the Notes shall remain outstanding and continue to accrue interest until repayment or conversion."

(4) Schedule 2, para.6 specifies in relation to events of default:

"**6. EVENT OF DEFAULT**

6.1 The principal amount of the Notes then in issue shall, on receipt by the Company of an Exercise Notice from the Majority Noteholders, automatically be redeemed together with all interest accrued thereon up to and including the date of redemption if:

(a) an administration order is made in relation to the Company; or (ii) an order is made or an effective resolution is passed for the winding-up, liquidation or dissolution of the Company (except for the purpose of reorganisation, reconstruction or amalgamation on terms previously approved in writing by the Majority Noteholders);

(b) the Company is deemed for the purposes of section 123(1) Insolvency act 1986 to be unable to pay its debts or compounds or proposes or enters into any reorganisation or special arrangement with its creditors generally.

(c) default is made by the Company in the due performance or observance of any material indebtedness and such default is not remedied within a period of 14 days following receipt of the Exercise Notice referenced to in this paragraph 6;

(d) default is made by the Company in the due performance or observance of any material obligation (other than for the redemption of principal monies outstanding on the Notes or the payment of interest accrued thereon) on its part contained in this instrument and such default is not remedied within a period of 14 days following receipt of the Exercise Notice referred to in this paragraph 6;

(e) without Consent, the Company grants any Encumbrance over any part of its undertaking or assets, other than an Encumbrance granted in the ordinary course of trading; or

(f) default is made by the Company in the due performance or observance of any material indebtedness and such default is not remedied within a period of 14 days following receipt of the Exercise Notice referred to in this paragraph 6.

6.2 The Company shall give notice in writing to the Noteholders immediately upon the Company becoming aware of the occurrence of an event specified in paragraph 6.1 above, containing reasonable details of that event."

17. As regards the Loan Agreement:

(1) The purpose of the Facility is expressed at clause 3 as follows:

"**3. Purpose**
The Borrower shall apply all amounts borrowed by it under the Facility towards the payment of development and installation costs incurred by it in connection with the clinic to be operated by the Company at 9 Queen Anne Street, London W1G 9HW. The Lender is not bound to monitor or verify the application of any amount borrowed under the Facility."

(2) The Repayment Date is 12 June 2018 being 5 years after the date of the Loan Agreement (clause 1.1 definition), on which date the loans should be repaid in full (clause 5.1).

(3) Interest is to accrue at 6.5% per annum (clause 6.1).

(4) As regards events of default, clause 10 provides, inter alia:

"**10. Events of Default**
Each of the events or circumstances set out in this Clause 10 is an Event of Default (save for Clause 10.10 (*Acceleration*)).

10.1 Non-Payment

The Borrower or LMA do not pay on the due date any amount payable pursuant to the Finance Documents unless:

10.1.1 its failure to pay is caused by administrative or technical error; and

10.1.2 payment is made within three Business Days of its due date.

10.2 Other Obligations

10.2.1 Any Obligor does not comply with any provision of the Finance Documents (other than, in respect of the Borrower, those referred to in Clause 10.1 (Non-Payment)).

10.2.2 No Event of Default under Clause 10.2.1 above will occur if the failure to comply is capable of remedy and is remedied within ten Business Days of the earlier of the Lender giving notice to the relevant Obligor or any Obligor becoming aware of the failure to comply.

…

10.5 Insolvency

10.5.1 Any Obligor is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts, or by reason of actual or anticipated financial difficulties commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

10.5.2 The value of the assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities).

10.5.3 A moratorium is declared or imposed in respect of any indebtedness of an Obligor.

10.6 Insolvency Proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

…

10.6.3 the appointment of a trustee in bankruptcy, a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor or any of their assets;

…

10.10 Acceleration

> On and at any time after the occurrence of an Event of Default which is continuing the Lender may:
>
> 10.10.1 by notice to the Borrower:
>
> (a) declare that the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Document be immediately due and payable, whereupon they shall become immediately due and payable; and/or
>
> (b) declare that the Loans be payable on demand, whereupon it shall immediately become payable on demand by the Lender; and/or
>
> 10.10.2 exercise any or all of its rights, remedies, powers or discretions under the Finance Documents, including enforcing the Security under the Share Charge."

18. This funding has in effect allowed the business of the Company to function, covering substantial start up and running costs of the Company. The Company relatively recently started operations at the Galen Clinic and has been running at a loss and income has not yet reached a level to cover ongoing operating costs. Although both MVL and LMA and those behind them would appear to agree that its business is fundamentally sound and hope in the medium to long term will turn into a profitable business, it clearly has not reached that stage. This is not surprising in the early years of a developing business. Without the continued financial support of MVL or the introduction of an external funder, the Company is unable to cover its operating costs. It does not appear that LMA itself is either willing or able to inject funds to provide this necessary support.

MVL's Demands for Payment/Repayment

19. It appears that under the current arrangements between the shareholders and the running of the Company, MVL and its shareholders are no longer prepared to

continue to support the Company whilst Dr Androulakakis remains a director with LMA as minority shareholder. Whilst MVL has made increasing amounts available to the Company, the Company continues to run at a loss, there are significant unsecured creditors, and there are concerns that Dr Androulakakis and LMA have taken out substantial sums from the Company's bank accounts not for the benefit of the Company. By letter dated 2 December 2024 MVL's solicitors, Farrer & Co wrote to Dr Androulakakis and LMA setting out claims for breach of director's duties against Dr Androulakakis, unfair prejudice against Dr Androulakakis and the Company, and breach of the SHA by Dr Androulakakis and the Company. All the allegations relate to use of funds in the Company's bank accounts, particularly a number of payments out of the Company's bank accounts in favour of LMA, which MVA says that it did not discover until September 2024 when it first got access to the relevant bank statements. The letter demanded a response within only 7 days. It is fair to say that Dr Androulakakis and LMA deny any impropriety. By letter dated 9 December 2024, Dr Androulakakis and LMA's solicitors, Wallace responded seeking until 3 March 2025 for a full response, but pointing out that their clients consider that the allegations are without merit, and are purely tactical. Reed Smith LLP as solicitors for Dr Androulakakis and LMA have proposed referring the parties dispute for expert determination under the SHA. This proposal does not appear to have been taken up so far as the court is aware from the evidence before it.

20. Matters came to a head on 10 December 2024 when MVL served notices/demands on the Company as follows:

(1) A demand and exercise notice in respect of the Loan Notes, given that the Maturity Date had passed seeking repayment of £400,000 plus £105,477.26 accrued interest (£505,477.28) within 10 business days.

(2) A Formal Letter of Demand under the Loan Agreement pursuant to clause 10.10.1 which asserted that there had been an Event of Default under clause 10.2.1 in that in breach of clause 3 £755,062.99 drawn under the Facility had been used for purposes other than the payment of development and installation costs incurred by the Company in connection with the Galen Clinic. The letter demanded immediate repayment of all the outstanding balances of the Facility (£7.5 million) plus interest (£585,317.38), totalling £8,085,317.38. The letter relied on the alleged Event of Default to accelerate the repayment date.

The issuing of the Application and initial hearing

21. On 12 December 2024 MVL issued the Application. The Application was not foreshadowed in correspondence. It was listed for hearing on 9 January 2025.

22. On 17 December 2024 MVL served a statutory demand on LMA in relation to other financial arrangements between them.

23. On 18 December 2024 Mr Marrero as a director of MVL emailed all of the Company's employees in the following terms:

> "Dear All,
>
> I hope this message finds you well.
>
> I am writing to update you on an important development regarding the future of the business.
>
> As you may be aware, the company has been facing significant financial challenges. After careful consideration and discussions with the relevant shareholders, we have made the difficult decision to seek court approval for

> the appointment of an administrator. I understand that this news may cause concern, and I want to assure you that we are fully committed to securing the best possible outcome for all involved, including ensuring that staff will be paid and that your rights and entitlements are protected throughout this process.
>
> A buyout, facilitated by the appointment of an administrator, is being pursued. This means that the company, under new ownership, will hopefully continue to operate with a reduced structure, which will help maintain the business's viability and ensure that employees' jobs are safeguarded.
>
> We anticipate that this transition will be smooth, but we ask for your patience and cooperation as we move forward with this process. As part of the process, the staff will continue to be paid, and we are working closely with Mr Aziz Baig to ensure that all wages and outstanding entitlements are addressed promptly.
>
> We understand the importance of your financial security, and we are taking every step to ensure that you are paid on time. We will keep you updated as the process unfolds. I recognise that these times can be stressful, and I want to assure you that I am fully committed to ensuring a positive outcome for you, the staff, and the business as a whole.
>
> Thank you for your understanding, patience, and continued dedication during this period. If you have any immediate concerns or questions, please do not hesitate to reach out to info@marko-ventures.com."

24. On 19 December 2024 the Application was served. At that stage the only evidence in support of the Application was Mr Marrero's first witness statement which set out the background to the Company, MVL's standing to apply for an administration order, alleged breach of the Facility Agreement, the financial position of the Company, and details of the Proposed Administrators. There was no mention of what was proposed to be done in the administration and why an administration order is reasonably likely to achieve the purpose of the administration. On the same day, Reborne Longevity Ltd ("Reborne") made an offer to the Proposed Administrators ("the Reborne Proposal"). The letter was signed by Themis Kalapotharakos, a director. The offer was in the following terms:

> "**OFFER LETTER FOR LONDON ANTIAGING CLINIC LTD**

Dear Sirs,

We are the directors of Reborne Longevity Ltd, company no. **16123585** (RL Ltd), a company registered England and owned by holdco Reborne Ltd, company no: **16114495** which has the same UBO's as Marko Ventures Ltd, company no **13882559** (MARKO), the largest creditor of London Antiaging Clinic Ltd (LACL).

Following the application to court by MARKO to appoint an Administrator, we have been invited to make an offer for LACL.

We are pleased to put forward our offer herein in accordance with the following terms:

LIST OF ASSETS

The unencumbered tangible assets include, plant and equipment, office furniture and equipment, computer equipment, leasehold improvements, fixtures and fittings, inventory of consumables, forward order book as listed in ANNEX I.

RL Ltd is prepared to pay for the assets listed for which we have subscribed the purchase price below.

This offer includes the commitment by RL Ltd to take an assignment of the lease of the trading location at 9 Queen Anne Street, W1 with the Landlord Malborough Properties and the right to a novation of outstanding finance agreements in respect of all leased equipment and asset purchases.

PURCHASE PRICE

Our offer is for GBP 75,000 at closing plus an undertaking to include the following elements:

B. If this offer is accepted, MARKO will waive its unsecured claims for GBP 8,604,987.19 total as per breakdown listed below:
- GBP 8,098,673.54 due as MARKO Loan (GBP 7,500,000 loan amount plus GBP 598,673,54 interest accrued till 19/Dec/24)
- GBP 506,313.64 due as MARKO expired loan notes (GBP 400,000 loan amount plus GBP 106,313.64 interest accrued till 19/Dec/24)

C. We undertake to assume the liabilities for most of the LACL aged payables listed in ANNEX II for GBP 416,708.56

D. We will accept the liability for employees listed in ANNEX III to be transferred to RL Ltd

Looking forward to receiving your response to our formal offer above."

25. On 6 January 2025 Mr Simmonds provided his first witness statement which covered the following:

(1) Financial position of the Company: he explained that trade creditors amounted to £603,315.53 and the Company had failed and continued to fail to pay trade creditors when due. He referred to the liability of the Company to MVL under the Facility in the sum of £8,085,317.38 (being the accelerated sum due on the basis of the alleged Event of Default). He said it was evident that the company had been insolvent for months within the meaning of section 123 of the 1986 Act.

(2) Statutory Purpose of the Administration: he explained that he does not consider that it is possible to rescue the Company as a going concern. He stated that any administration would achieve the statutory purpose of achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being an administration).

(3) How the statutory purpose would be achieved. Mr Simmonds deals with this in the following terms:

> "**How statutory purpose of administration will be achieved**
>
> 17. I have engaged Richard Birch of Richard Birch & Co, an independent agent and valuer accustomed to dealing with distressed and insolvent business sales. I did so with a view to assisting me in ascertaining whether a sale of the Company's business and assets might generate realisations for the benefit of the Company's creditors, should the Company enter into administration.
>
> 18. I exhibit at pages 65 and 66 of NCS1 a copy of a recommendation letter prepared by Richard Birch & Co, which states that:

18.1 Richard Birch & Co have been unable to inspect The Clinic, but it has had sight of the Company's current management accounts and list of tangible assets;

18.2 An advert was placed on www.ipbid.com for the sale of the Company's business and assets;

18.3 13 expressions of interest were received and 13 non-disclosure agreements were issued;

18.4 Two non-disclosure agreements were returned; and

18.5 No offers for the Company's business and assets were received.

19. Separately, Reborne Longevity Ltd (company number: 16123585) ("**Proposed Purchaser**") has made an offer to purchase the Company's business and assets by way of a 'pre-pack sale' from the Company acting by administrators. A copy of the Proposed Purchaser's offer is exhibited at pages 67 to 74 of NCS1, which can be summarised as follows:

19.1 The Proposed Purchaser will pay £75,000 for the Company's business and assets;

19.2 The Proposed Purchaser will assume liability for the Company's trade creditors;

19.3 The Company's employees will be transferred to the Proposed Purchaser and the liabilities will be assumed by the Proposed Purchaser; and

19.4 The Applicant will waive, for dividend purposes only, its unsecured claims against the Company in the sum of £8,604,987.19.

20. A member of my staff, Pieris Lysandrou, also wrote to Dr Androulakakis (who is another director of the Company) on 18 December 2024. Dr Androulakakis was asked whether he had any interest in making an offer to purchase the Company's business and assets. A copy of this email is exhibited at pages 75 to 76 of NCS1. As at the date of this witness statement, no reply has been received from Dr Androulakakis and no offer has been made, however, we are aware that he has received that email as it was discussed in a telephone call between Mr Lysandrou and Linton Bloomberg of Reed Smith LLP (who have been instructed by Dr Androulakakis).

> 21. The recommendation letter prepared by Richard Birch & Co (pages 65 and 66 of NCS1) concludes that this offer should be accepted for the reasons set out in that letter.
>
> 22. In the event that I am appointed as one of the administrators, I expect to be able to immediately conclude a pre-pack sale of the Company's business and assets, which will have the effect of:
>
> 22.1 safeguarding the position of the Company's employees;
>
> 22.2 see an overall reduction in the Company's unsecured debts by approximately £9,021,695 as the Applicant will be waiving its claim for dividend purposes in the administration (and any subsequently liquidation) and also assuming liability for the Company's trade creditors.
>
> 23. As the Proposed Purchaser appears to be connected to the Company, I understand that an application to the 'pre-pack pool' is being made and a copy of the evaluator's report will be made available to the Court.
>
> 24. Based on the information which I have received from the Applicant, the valuation report from Richard Birch & Co and the Initial Offer, I have prepared an estimated comparative outcome statement which I exhibit at page 77 of NCS1. This statement compares the outcomes in administration and liquidation. As can be seen, from the estimated outcome statement, there is likely to be a better return for the Company's creditors, should the Company enter into administration rather than enter into liquidation first."

26. It should be noted that Reborne is not unconnected with the parties and individuals concerned with the Company. It is a recently incorporated company established for the purposes of a pre-pack purchase of the Company's business and is wholly owned by Reborne Ltd which in turn is owned by Mr Marrero and Mr Koutroulis. The intended outcome of any administration would be that the business of the Company would be taken over by Reborne pursuant to the Reborne Proposal. Reborne is a vehicle for the interests of the two persons who beneficially own both Reborne and MVL. Thus Reborne is considered to be connected to the Company pursuant to

Schedule B1, para.60A(3) to the 1986 Act and the Administration (Restriction on Disposal to Connected Parties) Regulations 2021. An evaluators report dated 8 January 2025 from Mark Parkhouse of Pre Pack Pool Ltd has been submitted. In this report he concludes that he is satisfied that the consideration to be provided for the relevant property and the grounds for the substantial disposal are reasonable in the circumstances.

27. The Reborne Proposal was updated as reflected in Mr Simmonds' second statement. It was offered that Reborne would pay £150,000 (as opposed to £75,000) for the Company's assets. At the hearing on 22 January 2025 it transpired that this was an oral offer to the Proposed Administrators. I then directed that any offer from Reborne must be set out in a formal letter and submitted in evidence for the hearing on 14 February 2025. The current offer is now set out in a letter dated 5 February 2025 from Reborne to Quantum. The merits of the Reborne Proposal are considered below, however its essential elements are as follows:

(1) Reborne agrees that it will:

(a) pay £195,000 on completion (increased from its previous offers of £75,000 and £150,000);

(b) purchase the Company's business and certain of its assets (likely to leave nothing of substantial value behind);

(c) take on all 22 employees and liabilities to them pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006;

(d) take responsibility for the outgoings under the lease for the Galen Clinic's premises, pursuant to a licence to occupy, while negotiating an assignment of the existing lease or taking a new lease with the landlord;

(e) assume the Company's liabilities to those creditors listed in a schedule totalling £494,509.74 and to all trade creditors generally. This obligation is guaranteed by MVL who has demonstrated it has sufficient funds.

(2) MVL will waive its claim for £8,673,557.49 under the Loan Notes and the Loan Agreement for dividend purposes only. This has the effect that it will not be entitled to participate in any distribution to creditors in the administration or any liquidation. It allows it to vote or participate in any decision procedure or deemed consent procedure.

28. The Reborne Proposal was not the only proposal. Helios Hotels & Resorts ("Helios") by letter dated 7 January 2025 made the following offer to MVL ("the Helios Proposal"):

> "I am the owner of Helios Hotels & Resorts ("**Helios**") which owns and operates a range of luxury hotels and spas throughout Greece.
>
> I am aware that you have made an application for administrators to be appointed over the Company dated 12 December 2024, and a hearing is listed for this application for 9 January 2025.
>
> I have discussed the current circumstances of the Company with Dr Andreas Androulakakis.
>
> The purpose of this letter is to record the terms of an offer from Helios for the repayment of monies owned by the Company to MVL, the acquisition of MVL's shares in the Company, and Helios's proposed investment in the Company. If these terms are acceptable in principle, the proposal is that they

would form part of a wider settlement between the parties, as part of which the application dated 12 December 2024 would be withdrawn.

The terms are as follows:

i. Helios will assume responsibility from LAC for the repayment of amounts allegedly due and payable under the Facility Agreement dated 12 June 2023 as amended. I understand the amount due on MVL's case is £8,085,317.38 (made up of principal and interest). Helios will agree to repayment on the following terms:

   a. An initial payment of £1,085,317.38; and

   b. A balancing payment of £7,000,000, payable in four equal annual instalments, with the first payment six months after the date on which the settlement agreement is executed.

ii. The personal guarantee in the name of Dr Androulakakis provided in relation to MVL's loan to LAC referred to above, shall be discharged and Dr Androulakakis released from his obligations under it.

iii. Helios will pay all amounts alleged to be outstanding to MVL under the relevant convertible loan notes, which I understand on MVL's case to be £505,477.26.

iv. A third-party investor, introduced by Helios, will, subject to due diligence, acquire the shares of MVL in the Company for a price of £6.5 million.

v. Of the sums outstanding to third party creditors, Helios will agree to pay 40% should MVL agree to pay 60% with the amounts paid by MVL under this term to be added to the loan balance to be repaid over four annual instalments pursuant to i. above.

vi. Helios will agree to provide sufficient working capital for the Company to trade at least for the first quarter of 2025, and any other additional amounts necessary for trading in that period.

vii. Following the completion of the agreements envisaged by these terms, the Company will manage from April 2025 a medical spa located at Elounda Beach and Elounda Bay Palace, and from summer 2026, a medical spa at Grand Resort Lagonissi. The Company will receive a management fee of 15% of gross sales generated by these spas, providing a significant increase in income for the Company.

> As the heading of this letter makes clear, the terms in this letter are put forward on a strictly subject to contract and non-binding basis.
>
> Please therefore confirm whether these terms are agreed in principle by midday (UK) tomorrow, 8 January 2025 and then a heads of terms for the above and the wider terms of settlement should be drawn up and signed by all parties on an urgent basis. Arrangements would also need to be made to have the hearing on 9 January adjourned. The parties can then move forward with any necessary due diligence and documenting the terms in binding agreements as soon as possible.
>
> Dr Androulakakis countersigns the letter below, to confirm he is aware of and endorses the approach made by Helios in this matter."

29. Helios was already known to LMA in particular as on 21 November 2024 a memorandum of understanding had been entered into between them ("the Helios Memorandum of Understanding"). The Helios Proposal was rejected by MVL by letter dated 8 January 2025 from Farrer & Co. which stated that MVL did not wish to accept it. It reported that MVL did not feel that the terms of the offer moved matters any further since the Helios Memorandum of Understanding. Mr Simmonds in his third statement considers that the Helios Proposal is in effect unsatisfactory and will not be sufficient. Instead he continues to support the Reborne Proposal as furthering the purpose of the proposed administration.

30. On 9 January 2025 the Court adjourned the Application and it was fixed for 22 January 2025 which is when it was part heard substantively. At the hearing on 9 January 2025 and 22 January 2025 LMA and Dr Androulakakis opposed the making of an administration order on a number of grounds. The Application was then adjourned to 14 February 2025 for further evidence to be submitted, particularly in relation to the Reborne Proposal so that its final form is in writing and for a further marketing exercise to be carried out in respect of the Company and its business. I had considered that the marketing efforts were conducted in too much of a rush and the

Court had not been provided with the documentation to know what had been sent out to the market and the timeframe for responses. On the basis of the inadequate evidence before me at the hearing on 22 January 2025, I was not prepared to grant an administration order. The further marketing exercise in particular and the revised Reborne Proposal which was has now been put in writing, allayed the concerns that I had expressed at that hearing. In particular:

(1) All the terms of the Reborne Proposal are now reduced to writing and more money is offered for the Company's business.

(2) Quantum placed an advertisement on IP-BID.com on 23 January 2025 and this will remain live until the sale of the Company's business has been completed. Thus any offers for the Business will be considered by Quantum after any administration order has been made. This is consistent with the duties of an administrator.

(3) Richard Birch & Co marketed the Company's business and assets on their database of potentially interested parties. The firm explored with Dr Androulakakis and LMA whether they were willing and able to make an offer to purchase the business and assets of the company. The steps taken and the recommendations of the firm are set out in the firm's letter dated 10 February 2025. The letter concludes that Reborne's increased offer of £195,000 and the steps taken only reinforces its opinion that if no better offer is received then the offer from Reborne is the best possible outcome for unsecured creditors and should be accepted.

(4) A draft Statement of Insolvency Practice 16 ("SIP 16") has been prepared, which appears to cover the essential elements required for a pre-pack sale. This is particularly important in the context of a pre-pack sale in the current circumstances, where the beneficial owners of the purchaser and MVL, the applicant for the administration order and shareholder in the Company, overlap.

31. In the light of the further marketing exercise and evidence submitted since the hearing on 22 January 2025, at the final hearing on 14 February 2025 LMA and Dr Androulakakis no longer opposed the making of an administration order. The court nevertheless needs to be satisfied that an administration order is appropriate and in the interests of creditors generally.

Principles on an Administration Application

32. Administration is governed by Schedule B1 to the 1986 Act. By paragraph 12(1)(c) an application to the court for an administration order may be made by a creditor of the company. It is in this capacity that MVL has taken out the Application. There is no definition of "creditor" in paragraph 12(1)(c), but even where a debt is disputed the court may find that a person is a creditor within this provision. As stated by Warren J. in *Hammonds (a firm) v. Pro-fit USA Ltd* [2007] EWHC 1998 (Ch) at [53]:

> 53. "Further, in my judgment, a person is a "creditor" within paragraph 12(1)(c) Schedule B1 so long as he has a good arguable case that debt of sufficient amount is owing to him (to adopt the words of Lord Denning in *Claybridge Shipping*). Thus, even in the case of a disputed debt, such a person may make an application for an administration order. It is then a matter for the discretion of the court whether actually to make an administration order. The court has jurisdiction to deal with the application without having to resolve the dispute about the debt."

33. The purpose of an administration is to be found in paragraph 3 which, so far as material, reads as follows:

> "3(1) The administrator of a company must perform his functions with the objectives of rescuing the company as a going concern, or achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration),or realising property in order to make a distribution to one or more secured or preferential creditors
>
> ……
>
> (3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either -
> that it not reasonably practicable to achieve that objective , or
> that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company as a whole.
>
> ……."

34. There are then two conditions which must be fulfilled before the court may make an administration order. There are found in paragraph 11 which reads as follows:

> "11. The court may make an administration order in relation to a company only if satisfied –
> (a) that the company is or is likely to become unable to pay its debts, and
> (b) that the administration order is reasonably likely to achieve the purpose of administration."

35. As regards the paragraph 11(a) requirement that the Court must be satisfied that the company "is or is likely to become unable to pay its debts", likely means more probable than not: *Re AA Mutual International Insurance* [2004] EWHC 2430 (Ch), [2005] 2 B.C.L.C. 8 at [20]-[21]. "Unable to pay its debts" has the meaning given by Section 123 of the 1986 Act.

36. In a case, such as the present, where there has been no statutory demand or unsatisfied judgment debt, section 123(1)(e) Insolvency Act 1986 deems the company to be unable to pay its debts "if it is proved to the satisfaction of the court that the company

in unable to pay its debts as they fall due". A company is also deemed, by virtue of section 123(2) unable to pay its debts if it proved to the satisfaction of the court "that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities", a test which can loosely be referred to as "balance sheet insolvent". These provisions also apply in determining whether a company is likely to become unable to pay its debts.

37. Where a debt is disputed and that debt is relied upon in support of a contention that the company is or is likely to become unable to pay its debts, the court will consider the nature and implications of that dispute as part of the evidence before determining whether it is satisfied that the condition in paragraph 11(a) is met. As stated in *Hammonds (a firm) v. Pro-fit USA Ltd* [2007] EWHC 1998 (Ch) at [54]:

> "54. … The court can only make an administration order if it is satisfied, in accordance with paragraph 11 Schedule B1, that the company is or is likely to become unable to pay its debts for which purpose it is necessary to refer back to section 123. It does not necessarily follow from the fact that an applicant for an administration order whose debt is disputed is a creditor for the purposes of *locus standi* to make an application that he is a creditor for the purposes of section 123(1)(a) or that the amount of his alleged debt is a debt or liability for the purposes of sections 123(1)(e) or (2). The point here is that the mere fact that, on the evidence before it, the court is satisfied that a petitioner has a claim which is sufficient to give him the status of a creditor for the purposes of *locus standi* does not necessarily mean that that same evidence is sufficient to persuade the court that his purported debt should be taken into account in assessing solvency for the purposes of section 123."

38. Where the debt is disputed then that debt should in principle be proved to the balance of probabilities. In *Re Berkshire Homes (Northern) Ltd* [2018] EWHC 938 (Ch), [2018] Bus LR 1744, Judge Hodge QC (sitting as a High Court Judge), reviewed the authorities including *Hammonds* and concluded at [38]:

> "38. In my judgement, the effect of the authorities I have cited is that there is standing to apply for the making of an administration order as a creditor even where a debt is disputed; the court has the jurisdiction to deal with the application without having to resolve the dispute about

> the debt. It is then a matter for the discretion of the court whether actually to make an administration order. In a case such as the present, however, where the alleged debt which is said to give the Applicant the necessary standing to apply for an administration order is also relied upon as evidence of insolvency sufficient to satisfy the condition in paragraph 11(a) of Schedule B1 that the company is, or is likely to become, unable to pay its debts, it seems to me clear that the debt must be proved on the balance of probabilities. That is because in such a case, unless the debt is proved on a balance of probabilities, the Applicant has not shown that the company is, or is likely to become, unable to pay its debts in the sense required by the Insolvency Act."

39. As regards 11(b) requirement that the administration order is reasonably likely to achieve the purpose of the administration, "reasonably likely" means that there is a "real prospect", which is not necessarily a greater than 50% chance: *Re European Directories (DH6) BV* [2010] EWHC 3472 (Ch), [2012] B.C.C. 46 at [51]. The requirement of paragraph 11(b) is not a mere formality capable of being satisfied by assertion unsupported by cogent credible evidence sufficient to enable the court to be satisfied that, if an administration order is made, the purpose of administration is reasonably likely to be achieved: *Data Power Systems Ltd v. Safehosts (London) Ltd* [2013] EWHC 2479 (Ch), [2013] B.C.C. 721 at [10]. How likely the purpose is to be achieved can also be a factor to be taken into account in deciding whether or not to exercise the court's discretion to make an administration order.

40. Even where the pre-conditions for an administration order have been met, that is not the end of the matter as the court has a broad discretion in deciding whether or not to make an administration order. This will not infrequently entail taking into account a range of factors, assessing and balancing them before reaching a final conclusion on the outcome of any application. As stated by Sir Geoffrey Vos C in *Rowntree Ventures Ltd v. Oak Property Partners Ltd* [2017] EWCA Civ 1944, [2018] B.C.C. 135 at [24]:

> "24. It is necessary first in my judgment to understand that the discretion provided to the court in para.13 of Sch.B1 is of a wide and general nature. It is not constrained in any way. Any appellate court considering a particular exercise of such a discretion must ensure that nothing it says operates so as to cut down the width of the statutory discretion that parliament has given to the court. The effect of this proposition is that a multitude of factors may properly be taken into account in deciding in any particular case whether it is appropriate to make an administration order when the two statutory preconditions have been held to be fulfilled. Nothing that I say today should be taken as limiting the factors that can properly be considered. The circumstances are likely to be infinitely variable. The interests of secured creditors, preferential creditors, unsecured creditors and the company itself will change from case to case."

41. This guidance is particularly pertinent in the present case.

The Issues

42. In deciding whether or not to make the administration order sought, the following issues arise for consideration:

(1) Does MVL have standing to apply for an administration order? Within this issue the sub-issues are:

(a) Is MVL a creditor in the Company and if so, in respect of what matters and amounts?

(b) Is MVL precluded from bringing the Application by virtue of the express and implied terms of the SHA?

(2) Is the paragraph 11(a) condition satisfied, namely that the Company is or is likely to become unable to pay its debts?

(3) Is the paragraph 11(b) condition satisfied, namely the administration order is reasonably likely to achieve the purpose of the administration, the purpose relied on here is the second objective in paragraph 3(1)(b) of achieving a

better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in administration)?

(4) Should the Court in its discretion make the administration order sought?

Issue (1): MVL's standing

43. MVL's case is that it has standing based on the fact that there is no dispute that the Loan Notes have passed the Maturity Date of 26 September 2024, demand has been made to the Company for payment by letter dated 10 December 2024, and the sums outstanding have not been paid. The debt is £400,000 plus £105,477.26 in interest, a total of £505,477.28. There is a dispute as to whether any sum is yet due under the Loan Agreement (as amended). This depends on whether there has been an Event of Default under clause 10.2.1, thus triggering the acceleration clause making the whole Facility immediately repayable in the sum of £8,085,317.38 (£7.5 million plus interest). MVL has alleged that in breach of clause 3 of the Loan Agreement substantial sums out of the sums lent by MVL were not used towards the payment and installation costs incurred in respect of the Galen Clinic. LMA denies any breach but has yet to respond to the detail of the claim. The bank accounts for the Company in the bundle show a series of payments to LMA itself in 2023 and 2024. LMA has sought more time to respond in detail, but on the evidence before the Court there is at least a good arguable case that clause 3 has been breached. It is not necessary to make a more definitive finding in respect of the claim under the Loan Agreement as I am satisfied that MVL is a creditor with a debt now due in respect of the Loan Notes. This does not mean that the Loan Agreement and the large sums lent under it are irrelevant to other issues arising on the Application.

44. Even though I am satisfied that MVL is a creditor, LMA contended that MVL should not be treated as a creditor for the purposes of standing on the basis of the express and implied terms of the SHA. At the hearing on 22 January 2025 I indicated that I would reject this argument and given that LMA has subsequently withdrawn its opposition to the making of an administration order I shall deal with the point quite briefly and in summary form.

45. The argument was that it was an implied term of the SHA that the shareholders in the Company would not be able to place the Company into administration based on the debt owing or allegedly owing to them by the Company. Relying on the principles set out in *Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Ltd* [2015] UKSC 72, [2016] AC 742 at [15] – [32}, it was submitted that the implied term was the parties obvious but unexpressed intention, or was otherwise necessary to give business efficacy to the SHA. The alleged intention was argued to be derived from the express terms of the SHA to the effect that:

(1) The Shareholders agreed that they would procure that the Company would not pass any resolution to petition for its winding up or administration, unless both MVL and LMA consented (clause 5.1.12);

(2) The Shareholders had undertaken that they would promote the Company's best interests (clause 5.2.1); and

(3) Whilst the Company's insolvency would generally mean the termination of the SHA, it was agreed that the Company's inability to repay loans or other sums outstanding to a shareholder would not terminate the SHA (clause 15.2.1).

46. I do not see any basis for implying such an implied term in a professionally drafted agreement between the parties with an entire agreement clause (clause 20.1). Had the

parties intended that a shareholder was to be restricted in its own ability to apply for an administration order then that would and should have been expressly set out. It is possible to give business efficacy to the SHA without it. It is unlikely that MVL as the prime funder for the Company's business would have limited its ability to take such steps against the Company in circumstances where the Company was itself insolvent and the relationship between the shareholders had broken down.

Issue (2): Is the paragraph 11(a) condition satisfied

47. The paragraph 11(a) condition is satisfied that it is quite evident that the Company is unable or is likely to become unable to pay its debts. The Company has been dependent on continued funding from MVL to carry on business and to pay its creditors. The Company has been operating at a substantial operating loss every monty. It owes MVL approximately £505,000 and Mr Schuster around £700,000 in respect of loan notes and it owes over £494,000 to trade creditors that it cannot pay. As at 31 August 2024 its balance sheet shows that the Company is balance sheet insolvent with a deficit of £2,699,014. The position has deteriorated since then. MVL is no longer prepared to continue to fund the Company with LMA as shareholder and Dr Androulakakis as a director.

Issue (3): Is the paragraph 11(b) condition satisfied

48. The paragraph 11(b) condition is satisfied. The second objective of an administration order is to achieve a better result for the Company's creditors as a whole than would be likely if the Company were to be wound up (without first being in administration).

49. The principal creditors of the Company are:

(1) trade creditors of at least £494,000;

(2) Mr Schuster under his loan notes (approximately £700,000);

(3) MVL under the Loan Notes (approximately £505,000 with interest up to end 2024);

(4) MVL's lending under the Loan Agreement (in excess of £8 million inclusive of interest) albeit the formal demand based on an alleged Event of Default is in dispute.

50. As regards trade creditors, in a liquidation they would probably only recover a small fraction of the sums owing to them. The actual realisable assets of the Company are modest and their claims would be dwarfed by those of MVL. The Company lacks the cash reserves to pay off creditors. Under the Reborne Proposal, if the business is acquired by Reborne, it will assume liability for all the trade creditors. Reborne has placed its solicitors in funds and is ready to complete the sale, which will result in the trade creditors being paid in full within 7 days of completion. Reborne will also ensure that the 22 employees will be paid. Given that Reborne wants to run the business as a going concern, it will naturally want to satisfy both trade creditors and the employees if they are to continue to supply and service the business.

51. As regards Mr Schuster, his position has caused me concern over the liability to him. He is not a trade creditor and funded the business to a lesser extent than MVL. He does not appear to have been part of the falling out between MVL and LMA. On one view he has in effect been singled out. Reborne is ensuring trade creditors are getting paid as no doubt it needs suppliers. It does not need Mr Schuster. If the Company

goes into liquidation now, then he is likely to get nothing or at most a small sum. In the Reborne Proposal it was envisaged that out of the £195,000 to be paid for the business, he would get a 5% dividend on the sum owed to him, giving him £35,000. Even that was uncertain once one takes into account the likely costs in the administration. MVL undertook to the court that it would pay Mr Schuster £50,000 in the event an administration order was made and post-completion of the pre-pack sale. Whilst this does not compensate Mr Schuster for all of his loss, it does at least ensure that he gets more than a modest sum and a figure substantially more than in a liquidation without administration.

52. The main creditor MVL is actually seeking an administration order. The price being offered by Reborne reflects that MVL is giving up its claim to be repaid by the Company of the substantial sums it has lent.

53. An administration order with the Reborne Proposal is a better outcome for creditors as a whole than going straight into liquidation.

Issue (4): Discretion

54. Even where the conditions for an administration order are satisfied, the court has a discretion as to whether or not to grant an administration order. The granting of an administration order is a serious matter where even if it is unopposed it will require close scrutiny by the court. In such circumstances the court expects applicants to provide a full and frank presentation of the facts and where appropriate the law. The present application required particularly careful scrutiny in that it was against the backdrop of a shareholder dispute and what was being sought was an outcome where the business would end up via a pre-pack sale in the hands of a new company set up

by the beneficial owners of MVL, which is both the creditor seeking the administration order and the majority shareholder in the Company.

55. Pre-pack sales have a particular risk of abuse and in disadvantaging creditors as recognised by the authorities: *Re Kayley Vending Ltd* [2009] B.C.C. 578 at [6], [11], [12], [24]-[26]; *Re Moss Groundworks Ltd* [2019] EWHC 2825 (Ch). It was in the light of concerns as to pre-packs that SIP 16 was introduced, which emphasises the importance of proper marketing of a business to ensure the best available consideration is obtained for the business. In particular marketing should have been done for an appropriate length of time to satisfy the administrator that the best outcome for creditors as a whole has been achieved.

56. When the matter came before me on 22 January 2025, I was not satisfied that there had been any proper marketing exercise. It had been done in too much of a rush and little information was provided. That said, since that hearing a proper marketing exercise has been carried out and the options have been properly explored. LMA and Dr Androulakakis were unable to come up with any package or proposal that could provide a better outcome for the business or creditors.

57. The Helios Proposal was one which MVL was entitled to reject. No proposed purchaser for MVL's shares was ever identified and the proposal would only work if it was accepted by MVL, who found its terms unacceptable. The Helios Proposal seems to be an option that is no longer being pursued.

58. It is appreciated that there are persons who are losing out in relation to the Company, whilst Reborne ends up with the business which it and MVL and their shareholders believe is a good business which may well thrive and be one that is ultimately

profitable. Mr Schuster will probably lose most of his investment. LMA and Mr Androulakakis also lose out as LMA's shareholding in the Company becomes valueless.

59. There are distinct benefits of the administration order and the Reborne Proposal. Trade creditors should get paid in full. The 22 employees will remain employed at the Galen Clinic. The Galen Clinic will continue to provide services to its clientele and the public. Mr Schuster will at least get £50,000 of his investment back. This is not at all a likely outcome if the Company were to go straight into liquidation.

60. Balancing the various factors set out above, I have no doubt that an administration order is appropriate in all the circumstances.

Conclusion

61. The application for an administration order is granted in the terms sought. The costs of MVL as applicant are payable as an expense in the administration under rule 3.12(2). There be no order as to costs in respect of LMA and Mr Androulakakis.

62. Finally, the court would like to express its gratitude to both counsel and their solicitors in this case for the professional way in which this case was argued and presented before me. The advocacy on both sides was to a high standard.