Neutral Citation Number [2024] EWHC 1259 (Ch)

No: CR-2022-003848

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST

IN THE MATTER OF UKCLOUD LTD (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
Rolls Building
Fetter Lane
London EC4A 1NL

Date: 24 May 2024

Before:

Deputy ICC Judge Baister

GARETH JOHNATHAN ALLEN (OFFICIAL RECEIVER AND LIQUIDATOR OF UKCLOUD LTD)	**Applicant**

Mr Ian Tucker (instructed by **DLA Piper UK LLP**) for the **Applicant**
Ms Nicola Allsop (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) appeared by agreement between the parties and with the permission of the court for **Harbert Specialty Lending Company II SARL** but without being joined as a respondent to the application

Hearing date: 1 May 2024

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Approved Judgment

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to the National Archives. The date and time for hand-down is deemed to be 10.30 am on 24 May 2024.

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Deputy ICC Judge Baister:

The application

1. Gareth Jonathan Allen, in his capacity as Official Receiver and liquidator of UKCloud Ltd, seeks directions pursuant to s 168(3) Insolvency Act 1986 as to whether the effect of a debenture granted by the Company to Harbert European Speciality Lending Company II SARL on 28 February 2020 is to give Harbert the benefit of a fixed or floating charge over certain internet protocol (IP) addresses. Harbert's position is that it has a fixed charge. The OR is professedly neutral, but, whilst recognising that there is some force in Harbert's arguments and that the position is not clear cut, puts forward a number of reasons in support of the proposition that the charge is a floating charge. I do not use the word "professedly" as a criticism. The fact that the OR has argued for a floating charge means I have had the benefit of adversarial argument of considerable subtlety. I agree with counsel that the issue is not straightforward and preface what follows by confessing that I have not found it easy to resolve.

2. The application is supported by a single witness statement of Mr Allen. Harbert has not adduced written evidence, and cross-examination has been dispensed with. The application proceeds on the basis of a list of agreed facts which appears as an appendix to this judgment.

The background

3. In those circumstances I do not propose to deal with the background in detail. It is, however, helpful to set out in brief, by reference to the agreed facts, but also to other material before me, what the Company did and how it did it, as well as certain other matters, by way of backdrop to what follows.

4. The Company is a wholly owned subsidiary of Virtual Infrastructure Group Ltd. It provided cloud computing services, mainly to central government departments and local authorities. The provision of those services involved the use of IP addresses.

5. IP addresses are dealt with in paragraphs 1-7 of the list of agreed facts, and both Mr Tucker and Ms Allsop helpfully explain them in their skeleton arguments. Ms Allsop likens an IP address to the postal address of a property. It allows data to travel through a network and arrive at its intended destination. Each internet connected device has an IP address which is allocated either on a dynamic basis (the IP address changes each time the device is connected to the internet) or a static basis (the IP address is allocated for a fixed period and remains the same each time the device is connected to the internet). Mr Tucker cites passages from an article by Hilco Streambank, specialists in the disposal of such rights:

> "Internet Protocol (IP) is a set of rules for addressing and routing data so it can travel thro[ugh] networks and arrive at its intended destination. Internet-connected devices each have a unique IP address."
>
> […]
>
> "Individual IP addresses are unique identifiers most often, but not always, associated with [a] specific device. Though used one

> at a time, they are transferred in 'blocks' that may inclu[de] many IP addresses. Possession of a block includes unique registrations of addresses in registries worldwide. These registries maintain uniqueness in the sense that they make [sure] it's clear who is the authorized user of a block of IP addresses. Registration includes the ability to transfer IP address use to someone else, subject to the policy of the registries, [in] return for payment."

6. Internet Protocol Version 4 (IP v.4) addresses were the first major version of IP addresses and remain the dominant version. They are finite in number: there are not enough to cater for all internet connected devices; and although a successor version, IP v.6, has been developed, it is regarded as inferior to version 4. This means that IP v.4 addresses are much in demand. Millions are bought and sold every year.

7. In Europe, IP addresses are allocated by the Réseaux IP Européens Network Coordination Centre, one of five Regional Internet Registries which provide internet resource allocations, registration services and co-ordination in support of the operation of the internet globally.

8. RIPE NCC maintains a database listing the registered holders of allocated IP addresses. Only RIPE NCC members can hold IP addresses. The registered holder is known as a "responsible organisation." The Company was, at all relevant times, a RIPE NCC member and a responsible organisation.

9. The terms on which a responsible organisation holds IP addresses are set out in the RIPE NCC Standard Services Agreement. I was taken to some passages in that agreement, notably the three sentence recital; clause 5, which provides for the member (in this case the Company) to make certain payments for RIPE NCC's services; clause 9, dealing with the term of the agreement and termination; and clause 10. Mr Tucker attached some importance to clause 10.1, which restricts the member/company's ability to assign any rights or obligations without RIPE NCC's written consent; clause 10.2, confirming that registration "does not confer upon the Member or the third party any rights of ownership," and the ability of RIPE NCC in certain circumstances to de- and re-register "Internet Number Resources," which term includes IP addresses.

10. The importance of all this, as I understand it, is that the Company had the use of the IP addresses on very limited terms: the right to use and the right (in certain circumstances) to seek a transfer. I was referred in that respect to clause 2.0 of a document called RIPE Resource Transfer Policies which deals with transfers within the relevant service region and which again restricts the ability to transfer complete or partial blocks of addresses. (There are two iterations in evidence covering different periods, but I am told they contain the same terms as far as they are relevant for present purposes).

11. I should mention another document, the Company's internal Guidance – IP Address Usage and Allocation (it is in the previous name of the Company, Skyscape Cloud Services Ltd) which deals with what is sometimes referred to as the sub-allocation of IP addresses, the Company's right to "reclaim a customer assignment where there are a large number of IP

addresses that are not being used," and the right, where that is the case, to request a smaller allocation. Harbert, as I understand it, would not have seen this.

12. The Company held a number of IP addresses, the most valuable being 23,552 IP v.4 addresses. It also held a number of IP v.6 addresses, although they are not material for present purposes. It purchased IP addresses in range 83.151.208.0/20 on or around 12 May 2014 from Mailbox Internet Ltd and IP address range 51.179.192.0/18 on or around 20 May 2015 from the Department for Work and Pensions. These are the two largest ranges and represent around 87% of the total pool of IP addresses.

13. The Company paid an annual fee to RIPE NCC for the use of the IP addresses. Customers paid the Company for the services it provided.

14. The Company necessarily contracted with its customers for the provision of its services, which included, indeed necessitated, the use of one or more IP addresses. It appears from the Guidance (and has been confirmed to the special managers by a former employee of the Company) that a customer would be informed by the Company of the fact of the allocation of specific IP address(es) which would be exclusively used by the customer for the duration of the service provided. There was no written agreement dealing with the relationship between the Company and its client or customer, and the Company's contractual documentation with its customers did not refer to the IP addresses. Although addresses were sub-allocated to customers in accordance with Company policy, the customers had no formal rights to or in respect of them: they were not, for example, granted a formal lease, licence or assignment; nor did they acquire anything in the nature of a proprietary right (see paragraph 9 above).

15. The Company, through its parent, raised finance governed by a loan agreement dated 28 February 2020 and made between Virtual Infrastructure and Harbert. The debenture that is the subject matter of this application was entered into on the same date.

16. The company was wound up by the court on 25 October 2022, the OR was appointed as liquidator, and special managers were appointed.

17. Thereafter the Company's services were supported by the government whilst the OR pursued a sale and, in the alternative, a controlled migration of its customers, ultimately unsuccessfully, before terminating customer services.

18. The Company's assets, including the IP addresses, have been realised. Harbert agreed to their sale subject to such security rights as it had attaching to the proceeds of sale. Harbert is owed in excess of £6 million. Whatever the outcome of this application, it will not be paid in full. The deficiency as regards unsecured creditors is estimated to be in the region of £34 million, and the value of the remaining assets in issue, the IP addresses, is estimated to be in the region of £700,000. If they are not subject to a fixed charge, their proceeds will be used to defray in part expenses incurred in the liquidation.

The nature of security: the case law

19. The label used in a debenture to describe the nature of the charge created over an asset or class of assets is a guide to the security the parties intended to create but it is not conclusive: however the parties may have chosen to describe a charge, if it is properly speaking a floating charge the court will treat it as such (see *In re Spectrum Plus Ltd*

[2005] UKHL 41, [2005] 2 AC 680). As Edwin Johnson J said in *Re Avanti Communications Ltd* [2023] EWHC 940 (Ch), "The court is fundamentally concerned with the nature of the rights and obligations the parties intended to create."

20. A debenture is a contract. Ms Allsop submits that in construing a contract, the court's task is to ascertain the objective meaning of the contract, read as a whole, in the light of the background knowledge reasonably available to the parties at the time the contract was concluded. The court will consider the meaning of contractual terms by reference to (i) the natural and ordinary meaning of the relevant clause(s), (ii) any other relevant provisions of the contract, (iii) the overall purpose of the relevant clause(s) and the contract, (iv) the facts and circumstances known or assumed by the parties at the time the contract was entered into, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. The less clear the centrally relevant words to be interpreted, or the worse their drafting, the more ready the court will be to depart from their natural meaning.

21. Mr Tucker relies on the summary of principles given by Popplewell J in *Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte) Ltd (The Ocean Neptune)* [2018] EWHC 163 (Comm), [2018] 2 All ER (Comm):

> "[8] There is an abundance of recent high authority on the principles applicable to the construction of commercial documents, including *Investors' Compensation Scheme Ltd v West Bromwich Building Society, Investors' Compensation Scheme Ltd v Hopkin & Sons (a firm), Alford v West Bromwich Building Society, Armitage v West Bromwich Building Society* [1998] 1 All ER 98, [1998] 1 WLR 896; *Chartbrook Ltd v Persimmon Homes Ltd (Chartbrook Ltd and anor, Pt 20 defendants)* [2009] UKHL 38, [2009] 4 All ER 677, [2009] 1 AC 1101; *Re Sigma Finance Corpn* [2009] UKSC 2, [2010] 1 All ER 571; *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, [2012] 1 All ER (Comm) 1, [2011] 1 WLR 2900; *Arnold v Britton* [2015] UKSC 36, [2016] 1 All ER 1, [2015] AC 1619; and *Wood v Capita Insurance Services Ltd* [2017] UKSC 24, [2018] 1 All ER (Comm) 51, [2017] AC 1173. The court's task is to ascertain the objective meaning of the language which the parties have chosen in which to express their agreement. The court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. The court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to the objective meaning of the language used. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other. Interpretation is a unitary exercise; in striking a balance between the indications given by the language

> and the implications of the competing constructions, the court must consider the quality of drafting of the clause and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest; similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated. It does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each."

So far it would appear that Mr Tucker and Ms Allsop are of much the same mind. They part company when it comes to applying the principles above to this case and in particular as regards one of Mr Tucker's submissions, which is that the clause in issue here falls to be construed "as a whole and on an 'all or nothing' basis."

22. When the issue is whether a debenture creates a fixed or floating charge, "The question is not merely one of construction" (*per* Lord Millett in *Agnew v Commissioners of Inland Revenue* [2001] UKPC 28 [2001] 2 AC 710 at paragraph 32). He continued:

> "In deciding whether a charge is a fixed charge or a floating charge, the court is engaged in a two-stage process. At the first stage it must construe the instrument of charge and seek to gather the intentions of the parties from the language they have used. But the object at this stage of the process is not to discover whether the parties intended to create a fixed or a floating charge. It is to ascertain the nature of the rights and obligations which the parties intended to grant each other in respect of the charged assets. Once these have been ascertained, the court can then embark on the second stage of the process, which is one of categorisation. This is a matter of law. It does not depend on the intention of the parties. If their intention, properly gathered from the language of the instrument, is to grant the company rights in respect of the charged assets which are inconsistent with the nature of a fixed charge, then the charge cannot be a fixed charge however they may have chosen to describe it. A similar process is involved in construing a document to see whether it creates a licence or tenancy. The court must construe the grant to ascertain the intention of the parties: but the only intention which is relevant is the intention to grant exclusive possession: see *Street v Mountford* [1985] AC 809, 826 per Lord Templeman. So here: in construing a debenture to see whether it creates a fixed or a floating charge, the only intention which is relevant is the intention that the company should be free to deal with the charged assets and withdraw them from the security without the consent of the holder of the charge; or, to put the question another way, whether the charged assets were intended to be under the control of the company or of the charge holder."

Mr Tucker and Ms Allsop agree that that is the approach the court must take.

23. A fixed charge is often easy to identify, for example when it applies to real property. In some cases it is harder to ascertain. It is useful, then, to begin by looking to some of the guidance that has been given by the courts as to what makes a charge fixed or floating.

24. What constitutes a fixed charge and the key distinctions between the two kinds of charge were identified by Lord Walker in *Re Spectrum*:

> "138. This passage brings us close to the issue of legal principle, that is the essential difference between a fixed charge and a floating charge. Under a fixed charge the assets charged as security are permanently appropriated to the payment of the sum charged, in such a way as to give the chargee a proprietary interest in the assets. So long as the charge remains unredeemed, the assets can be released from the charge only with the active concurrence of the chargee. The chargee may have good commercial reasons for agreeing to a partial release. If for instance a bank has a fixed charge over a large area of land which is being developed in phases as a housing estate (another example of a fixed charge on what might be regarded as trading stock) it might be short-sighted of the bank not to agree to take only a fraction of the proceeds of sale of houses in the first phase, so enabling the remainder of the development to be funded. But under a fixed charge that will be a matter for the chargee to decide for itself.
>
> 139. Under a floating charge, by contrast, the chargee does not have the same power to control the security for its own benefit. The chargee has a proprietary interest, but its interest is in a fund of circulating capital, and unless and until the chargee intervenes (on crystallisation of the charge) it is for the trader, and not the bank, to decide how to run its business. There is a detailed and helpful analysis of the matter, with full citation of authority, in Worthington's Proprietary Interests in Commercial Transactions (1996) pp 74-77; see also her incisive comment on this case ('An Unsatisfactory Area of the Law-Fixed and Floating Charges Yet Again') in (2004) 1 International Corporate Rescue 175. So long as the company trades in the ordinary way (a requirement emphasised by Romer LJ in the *Yorkshire Woolcombers* case [1903] 2 Ch 284, 295, and by the Earl of Halsbury on appeal in the same case [1904] AC 355, 357-358) the constituents of the charged fund are in a state of flux (or circulation). Trading stock is sold and becomes represented by book debts; these are collected and paid into the bank; the trader's overdraft facility enables it to draw cheques in favour of its suppliers to pay for new stock; and so the trading cycle continues."

25. In *In re Yorkshire Woolcombers Association Ltd* [1903] 2 Ch 284 at page 295 Romer LJ identified a floating charge by reference to three characteristics:

> "I certainly think that if a charge has the three characteristics that I am about to mention it is a floating charge. (1) If it is a charge on a class of assets of a company present and future; (2) if that class is one which, in

> the ordinary course of the business of the company, would be changing from time to time; and (3) if you find that by the charge it is contemplated that, until some future step is taken by or on behalf of those interested in the charge, the company may carry on its business in the ordinary way as far as concerns the particular class of assets I am dealing with."

26. In *Agnew v HMRC*, paragraph 13, Lord Millett said, "This was offered as a description and not a definition." He went on:

> "The first two characteristics are typical of a floating charge but they are not distinctive of it, since they are not necessarily inconsistent with a fixed charge. It is the third characteristic which is the hallmark of a floating charge and which serves to distinguish it from a fixed charge. Since the existence of a fixed charge would make it impossible for the company to carry on business in the ordinary way without the consent of the charge holder, it follows that its ability to do so without such consent is inconsistent with the fixed nature of the charge."

27. Lord Scott in *Re Spectrum* summarised what he described as "the essential characteristic of a floating charge [which] distinguishes it from a fixed charge" as being:

> "111…that the asset subject to the charge is not finally appropriated as a security for the payment of the debt until the occurrence of some future event. In the meantime the chargor is left free to use the charged asset and to remove it from the security. On this point I am in respectful agreement with Lord Millett. Moreover, recognition that this is the essential characteristic of a floating charge reflects the mischief that the statutory intervention to which I have referred was intended to meet and should ensure that preferential creditors continue to enjoy the priority that s 175 of the 1986 Act and its statutory predecessors intended them to have."

28. In *Re ASRS Establishment Ltd* [2002] BCC 64 Park J noted that "If a company grants a fixed charge over an asset it cannot deal with it without the agreement of the chargee." That, he said, worked well where the charged asset was part of the enduring capital structure of the company. "However, the concept does not fit so comfortably in the case of assets which come and go in the normal routine of business operations. It was for assets of that sort that the idea of a floating charge has evolved."

29. There is more case law to which I will come later, but I think the foregoing authorities are sufficient as a starting point.

The terms of the debenture

30. Clause 3.2(d) of the debenture provides:

> "3.2 As a continuing security for the payment and discharge of the Secured Liabilities, the Company with full title guarantee charges to the Lender by way of first fixed charge:
>
> […]

> (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Company's business or the use of any Secured Asset, and all rights in connection with them."

Clause 1.2(o) provides:

> "a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution."

Clause 3.4 provides:

> "As a continuing security for the payment and discharge of the Secured Liabilities, the Company with full title guarantee charges to the Lender, by way of first floating charge, all the undertaking, property, assets and rights of the Company at any time not effectively mortgaged, charged or assigned pursuant to Clause 3.1 to Clause 3.3 inclusive."

Clause 6 contains a number of covenants including:

> "6.1 The Company shall not at any time, except with the prior written consent of the Lender:
>
> (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than Permitted Security Interests;
>
> (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets except for Permitted Disposals; or
>
> (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party."
>
> "6.6 The Company shall, as so required by the Lender, deposit with the Lender and the Lender shall, for the duration of this Deed be entitled to hold:
>
> (a) all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Company (and if these are not within the possession or control of the Company, the Company undertakes to obtain possession of all these deeds and documents of title);
>
> (b) all Insurance Policies; and
>
> (c) all deeds and documents of title (if any) relating to the Book Debts as the Lender may specify from time to time."

Clauses 6.7 and 6.8 impose obligations to insure.

Clause 1.2 contains a definition of a "permitted disposal" by reference to the loan agreement of 28 February 2020.

Submissions and conclusions

31. I begin with the meaning of clause 3.2(d) and its extended definition in clause 1.2(o).

32. Mr Tucker makes the obvious but cogent point that the clauses make no express reference to IP addresses. He is right, as he is in pointing out that the parties could easily have made express reference to them if they had intended to create a fixed charge over them. (He referred to this as the narrow interpretation.) The fact that they did not is, I accept, a pointer to the intention of the parties but not conclusive.

33. Ms Allsop advocates a wider interpretation which rests on the natural and ordinary meaning of the words used, contending that the IP addresses are plainly caught. This was her primary point in her oral submissions. In paragraphs 35 of her skeleton argument she also says:

> "It is accepted that in order to hold an IP address, the holder must be registered with RIPE NCC. The Company was registered with RIPE NCC and moreover, registered with RIPE NCC as the holder of the IP Addresses. By reason of such registration, the Company was authorised by RIPE NCC to use the IP Addresses. It is common ground that the IP Addresses were held in connection with the Company's business and, therefore, the IP Addresses fall within the opening part of clause 3.2(d). Further, because internet protocol addresses such as the IP Addresses are contractual rights granted to their registered holders, the IP Addresses also qualify as 'right(s) in connection' with the Company's registration as the holder of the IP Addresses or as 'right(s) in connection' with the authorisation granted by RIPE NCC to use the IP Addresses."

34. It appears to me that some of the nouns used in the charging clause ("licences," "consents," "authorisations") are apt to refer to giving permission, including permission to use IP addresses. Those words are, in my view, indicative of an intention to catch just the kind of assets and rights that are contemplated as arising in connection with the business carried on by the Company. The words are being used in the sense of "permission" of one kind or another; their multiplicity evinces an intention to catch assets that are, by their nature, less usual, less tangible, than those to which a debenture is traditionally directed, although that is changing fast. A licence can be a formal, legal document; but the word can also be used in a wider, less technical sense to mean little or no more than "permission." "Consent" requires no clarification. "Authorisation," which is the word Ms Allsop emphasised and ultimately relied on in her oral submissions, with its overtone of officialdom, also implies permission and the use of which, I agree, is appropriate to a situation where permission is given by allocation on the part of an organisation such as RIPE NCC, following which the benefit is passed on by sub-allocation, in this case by the Company to its customers.

35. Permission to use is also, in my view, arguably caught by the expressions "held or required in connection with the Company's business or the use of any Secured Asset"

and "all rights in connection with them," although I accept that that is something of a stretch.

36. In *Re Avanti*, considered in greater detail below, permissions and licenses were treated as rights capable of being subject to fixed charge security, but I am cautious of giving much weight to that outcome since it was not the main issue between the parties in that case, and, of course, the debenture was not the one in this case. It gives support, however, to the ability to create a fixed charge over assets of the kind in issue here.

37. I have so far said nothing about "registration," a word that is used in clause 1.2(o). It presents particular difficulties. Mr Tucker says that it is not clear how "registration" (being, he says, what is relied on as what he calls "anchor property") could itself be subject to a fixed charge. We have seen that RIPE NCC's Standard Services Agreement conferred no ownership rights on the Company, that the debenture makes no express reference to there being a charge over the IP addresses themselves, nor on the right to allocate them to devices, nor yet on the right to seek an assignment. Mr Tucker says there is no "anchor property" bringing with it "all other rights in connection with it" – including the right to ask for an assignment, the right that has value.

38. I see force in that, so that it is hard to see how registration of the kind with which we are concerned here could be subject to a charge. I agree that the inclusion of "registration" can, on one view, give rise to problems, in particular in the absence of a property right. Indeed the fact that the Company acquired no ownership or property rights gives rise to a more general difficulty affecting all the words in the debenture that might be relied on in support of the contention that they are capable of giving rise to a fixed charge. This has practical as well as drafting consequences.

39. That said, in my judgment, the natural and ordinary meaning of the language used in the debenture (in particular the word "authorisations") does evince an intention to create a fixed charge on the IP addresses. But that is not the end of the matter.

40. Mr Tucker relies on the proposition that a clause of the kind with which we are concerned here falls to be construed as a whole, on what has been called an "all or nothing" basis: that is to say, all assets that fall within the clause must be subject to either a fixed charge or a floating charge. In support of that he relies on four cases.

41. In *Re G E Tunbridge Ltd* [1995] 1 BCLC 34 the applicant sought a declaration that 337 auction lots were subject to a fixed charge. The application failed, Sir Mervyn Davies holding the charge to be a floating charge. The judge rejected the contention that a multiplicity of different assets could be caught by a fixed charge on the basis that they fell within the same clause:

> "[W]hen one looks at the range of chattels itemised in the auction particulars it is, in my view, unrealistic to suppose that a considerable number of the auction chattels would not or might not be changed or removed from time to time. So it is that I regard as present characteristic (2) referred to by Romer LJ. The position might have been otherwise had the debenture contained a schedule in which there were itemised the particular chattels that the parties regarded as being susceptible of a fixed charge (see at 141).

> I do not regard cl 6 of the debenture as operating to convert what I regard as a floating charge over the para 2 assets into a specific charge. For present purposes, the effect of cl 6 is not to allow the company to sell para 2 assets without Mr Tunbridge's consent. That restriction does not seem to me to be conclusive in making what is otherwise a floating charge into a fixed charge."

42. Mr Tucker's submission gains strength if one looks at Park J's decision in *Re ASRS*, which adopts the reasoning of *Re G E Tunbridge*. Park J said:

> "Having stated what I think the question is, I think that I ought to add this: there is a danger of being misled by expressing the question as whether the sub-paragraph creates a fixed charge over ASRS's interest in the escrow account. The debenture does not say 'ASRS charges by way of fixed charge its interest in the escrow account'. If it did the case might be different. However, the charge over the interest in the escrow account is only a fixed charge if the charge over 'other debts and claims' is a fixed charge. I have to address that question by reference to 'other debts and claims' generically, and not by concentrating on the escrow account.
>
> In this connection the critical point is that the sub-paragraph cannot be read so as to create a fixed charge over some of the 'other debts and claims', but a floating charge over others of the 'other debts and claims'. It is all or nothing. Either it creates a fixed charge over all the other debts and claims, or it creates a fixed charge over none of them. I believe that analysis is correct as a matter of construction of the debenture. It is also consistent with the decision of Sir Mervyn Davies in *re GE Tunbridge Ltd* [1994] BCC 563. The learned judge held that a debenture which purported to create a fixed charge over a range of chattels only succeeded in creating a floating charge. The reason was that, consistently with the terms of the debenture, 'a considerable number' of the chattels would or might be changed or removed from time to time. This plainly implies that there were other chattels which were unlikely to be changed or removed from time to time. Nevertheless the debenture created only a floating charge over all the chattels. There was no suggestion that it created a floating charge over those chattels which would or might be removed from time to time, but created a fixed charge over the other chattels."

Park J's finding that the charge under consideration was a floating charge survived an appeal. True, Robert Walker LJ expressed "reservations" about an "all or nothing" approach to clauses of the kind in issue, but he did not overrule Park J, contenting himself with the observation that in a well drafted documents "all or nothing" was "the most likely outcome, even if it is not requisite as a matter of legal analysis."

43. In *Smith (Administrator of Cosslett (Contractors) Ltd) v Bridgend County Borough Council* [2001] UKHL 58, [2002] 1 AC 336 it was argued that a single clause (condition 63) could be construed in two different ways to cover different kinds of asset. That argument was rejected by Lord Hoffmann:

> "40. […] Mr Moss [leading counsel for Bridgend] also challenged the original decision that condition 63 created a floating charge. He said that it was not a charge and that if it was, it was fixed and not floating.
>
> 41. On these points I can be brief because I agree with Millett LJ for the reasons which he gave. I do not see how a right to sell an asset belonging to a debtor and appropriate the proceeds to payment of the debt can be anything other than a charge. And because the property subject to condition 63 (constructional plant, temporary works, goods and materials on the site) was a fluctuating body of assets which could be consumed or (subject to the approval of the engineer) removed from the site in the ordinary course of the contractor's business, it was a floating charge: see *Agnew v Commissioner of Inland Revenue*; *Re Brumark investments Ltd* [2001] B.C.C. 259 at p. 267; [2001] 2 AC 710 at p. 724."

And at paragraph 44:

> "Mr Moss also submitted that while condition 63 might create a floating charge over materials and small items of plant which were more obviously likely to come and go during the course of a four-year contract, it should be construed as a fixed charge over the washing plant, which was unlikely to be removed and received a separate mention in condition 53(1) as amended. As I said at the beginning of this speech, it is not easy to guess why the washing plant was treated separately in condition 53(1). But it receives no separate treatment in condition 63, where it falls within the charge simply as an item of constructional plant. It is in my opinion impossible to construe the latter condition as creating a charge over the washing plant different in nature from that which it created over the other plant and materials brought on site. Although the washing plant was very large, it was not inconceivable that during the contract, just as it was found necessary to acquire a second plant, it might be found advantageous to replace one or both by a more efficient machine. In that case the contractor would have been entitled to withdraw the old machine from the site and the charge."

The result of the appeal to the House of Lords was that the charge in that case was held to be a floating charge.

44. The fourth case on which Mr Tucker relies is *Re Beam Tube Products Ltd* [2006] EWHC 486 (Ch) at paragraph 33 of which Blackburne J summarised the position as follows.

> "In my view it is all or nothing. Either the clause creates a fixed charge over all of the assets to which it refers or it creates a fixed charge over none of them. I do not consider that the clause is to be construed as a fixed charge over some of the assets but only a floating charge over the others. I consider that this construction is consistent with the approach taken by Lord Hoffmann in Smith (Administrator of Cosslett (Contractors) Ltd.) v. Bridgend County Borough Council [2001] 1 AC 336 at 353 paragraph 44."

Mr Tucker refers to *Re Beam Tube* as the latest word on the point and submits that it, like *ASRS*, is binding authority.

45. Ms Allsop did not suggest that the clause in issue here was not susceptible of an "all or nothing" analysis, nor did she seek to say that it was not an established approach to the construction of clauses of this kind. Her submissions came in two parts.

46. First, she relied on a passage in *Lightman and Moss* on fixed and floating charges. In para 3-013 of *The Law of Administrators and Receivers of Companies* (6th edn) the authors say:

> "Although it will be a question of construction and characterisation of the individual clause in each case, *as a general proposition* [my emphasis] the courts have *tended to* [Ms Allsop's emphasis] construe charging clauses on an 'all or nothing' basis."

In support of her first submission she also drew on the reservation expressed by Robert Walker LJ in *Re ASRS*.

47. Secondly, she sought to argue, with some ingenuity, that the "all or nothing" approach in the cases cited by Mr Tucker was not part of the *ratio* of the decision or was otherwise not the basis on which the case was ultimately decided.

48. Re-reading Park J's judgment in *Re ASRS* and paragraph 33 of Blackburne J's judgment in *Re Beam Tubes*, I have to say that I am not convinced: Blackburne J seems firm: "In my view it is all or nothing" reads to me as unequivocal and as being a general proposition. Park J similarly expressed himself in the clearest terms:

> "[T]he critical point is that the sub-paragraph cannot be read so as to create a fixed charge over some of the 'other debts and claims', but a floating charge over others of the 'other debts and claims'. It is all or nothing. Either it creates a fixed charge over all the other debts and claims, or it creates a fixed charge over none of them. I believe that analysis is correct as a matter of construction of the debenture. It is also consistent with the decision of Sir Mervyn Davies in *Re G E Tunbridge Ltd [1994] BCLC 563* ."

I accept Mr Tucker's submission that those *dicta* are binding on me. Even if they were not and could be said to be no more than a general tendency, it is plainly a strong general tendency from which there would appear to be no reason to deviate in this case. There is no evidence of a circumstance put forward by Harbert on the basis of which to deviate from the norm. It is also true that in *Re Avanti* the approach of Edwin Johnson J might indicate that the principle is not absolute in every case (see paragraph 55 ff.), but the judge appears simply to treat the clause under consideration as creating a single charge for the purposes of his judgment. He goes no further; he does not go behind the cases on which Mr Tucker relies, indeed they appear not to have been cited to him.

49. Having dealt with the language of the debenture, I move to the submissions on the nature of IP addresses.
50. The first is whether they are of a nature that makes them susceptible of being subject to a fixed charge or only a floating charge.

51. If an asset is part of the company's circulating capital or is a fluctuating asset or body of assets it is more likely that any charge to which it is subject will be floating rather than fixed. That was the second characteristic identified in *Yorkshire Woolcombers*. In *Re Spectrum* Lord Walker said:

> "So long as the company trades in the ordinary way (a requirement emphasised by Romer LJ in the *Yorkshire Woolcombers* case [1903] 2 Ch 284, 285, and by the Earl of Halsbury on appeal in the same case [1904] AC 355, 357-358) the constituents of the charged fund are in a state of flux (or circulation). Trading stock is sold and becomes represented by book debts; these are collected and paid into the bank; the trader's overdraft facility enables it to draw cheques in favour of its suppliers to pay for new stock; and so the trading cycle continues."

52. Mr Tucker contends that the IP addresses formed part of the Company's circulating capital. Ms Allsop argues the contrary.

53. I go some of the way with Ms Allsop on this point. Whilst there is no hard and fast definition, a feature of circulating capital is that it is disposed of and replaced. That is clear from the passage from *Re Spectrum* above and from other authority. The IP addresses with which we are concerned do not readily fall under the "circulating" or "fluctuating" description. But I am unable to go the whole way with Ms Allsop. In *Re Spectrum* Lord Walker said, "The chargee has a proprietary interest, but its interest is in a fund of circulating capital…" The Company here has and had no proprietary interest in the addresses, and its capacity to deal with them was limited: it could sub-allocate them, withdraw them in certain circumstances, reassign them and transfer them; but not simply sell or dispose of them and then replenish the gap created as would be the case with stock or some other asset dealt with as part of the "churn" of business conducted by a shop or similar concern. The IP addresses do not seem to me to be amendable of easy categorisation They seem in some respects to be like the shares in *Arthur D Little Ltd v Ableco Finance LLC* [2002] EWHC 701 (Ch) which were held not to be part of the chargor's circulating capital as the chargor did not need to sell them, deal with them, or substitute them as part of its ordinary business. But that is just one aspect of the case. Although the debenture in that case was held to have created a fixed charge, I do not think it follows that the IP addresses in this case fall to be treated in the same way. It cannot be said that the Company was able to trade in the IP addresses in the ordinary way (cf Lord Walker above), and the analogy with the shares breaks down in light of the fact that in *Arthur D Little* the charge provided for the chargee to hold the certificates and other documents of title as well as signed, undated stock transfer forms. There was something over which they could exercise real control. There is no analogous control in this case; indeed it is hard to see how the control mechanisms relied on by Harbert could apply at all in practice to the assets in issue here. I shall come to actual control below.

54. I have concentrated above on the "circulating capital" description used in the case law. "Fluctuating body of assets," another phrase used in the case law, is arguably wider, but there was negligible fluctuation in this case, again by reason of the limits to what the Company could do, so I do not think this takes things any further on the facts of this case.

55. The fact that the IP addresses cannot have been part of the Company's circulating capital and did not fluctuate in the sense used in the authorities means that one characteristic commonly associated with the creation of a floating charge is absent in this case; but it does not follow from that that the charge applicable to them was fixed. I regard the point as inconclusive in this case.

56. The same cannot be said of control. This is a convenient point at which to look at the issue of control and the decision in *Re Avanti* in more detail.

57. Four classes of assets were considered by Edwin Johnson J in *Re Avanti*, but the one which invites particular attention for present purposes took the form of satellite network filings registered with the International Telecommunications Union. The filings were explained by the judge in paragraph 9 of his judgment. In summary, in accordance with international treaties, the ITU maintains a database of all registered satellite sand terrestrial frequency assignments (the Master International Frequency Register). Ofcom, on behalf of the UK, decides on applications for a satellite network filing. If an application is approved and registered on the MFIR, the registrant acquires the right to use the registered filing. A filing recorded as held by a UK satellite operator may, subject to conditions, be transferred with the consent of Ofcom to another UK operator. The Avanti group of companies, of which Avanti Communications Ltd was one, operated satellites within that framework. The company (and its holding company) went into administration. It sold substantially all its business, including the relevant assets, on the basis that they were subject to a fixed charge.

58. Clause 3 of the debenture was the clause by which the company charged various categories of assets which the debenture went on to describe. Clause 3.1(b)(ix) provided a charge over "the benefit of all licences, consents and agreements held by it in connection with the use of any of its assets." "This definition," the judge said, "seems to me to have been wide enough to include the Satellite Network Filings […]. I did not understand it to be in dispute that the Satellite Network Filings and the PES Licenses, as permissions and licenses, were rights capable of being subject to fixed charge security."

59. The judge disposed of the first stage of the test to be applied by reference to two questions:

    (1) whether the relevant assets were within the scope of the charging clause;

    (2) the nature of the contractual restrictions and permissions on their disposal.

    He answered the first by concluding that that the relevant assets appeared to fall within the scope of the fixed charge but noted that the fact that the charge was expressed to be fixed was not decisive as to its nature. In order to answer the second he considered the overall position, including the restrictions applied to any disposal of the assets and the terms to which any was subject.

60. As we have seen, in the instant case the debenture imposed restrictions but also permitted disposals.

61. Edwin Johnson J cited *Lightman and* Moss (paragraph 3-021):

> "Any unfettered or significant commercial freedom in the chargor to deal with a fluctuating class of assets without the consent of the chargee will be inconsistent with the existence of a fixed charge over those assets. The critical issue is the nature and extent of the chargee's control of the assets in question. Resolution of this issue will therefore require an examination of the nature and extent of the restrictions placed by the charge documents and any ancillary agreements upon the dealings by the company with the charged assets."

62. He went on, at paragraph 118, to accept that it was not the case that only a total prohibition on dealing with an asset made it possible for it to be subject to a fixed charge, rejecting the views of textbook writers to that effect. He said:

> "I can see that it is helpful, in considering the question of whether a charge is fixed or floating, to look at the range of possibilities as a spectrum, with total freedom of management at one end of the spectrum, and a total prohibition on dealings of any kind at the other end of the spectrum; see Goode & Gullifer at 4-23. What I cannot see is that a charge will only be fixed if it is located at the total prohibition end of the spectrum. The case law seems to me to support a more nuanced approach, which depends upon a combination of factors. This, it seems to me, was the essential point being made by Millett LJ (as he then was) in the extract from his judgment in the Court of Appeal in *Re Cosslett* which I have quoted above, and again in the extracts, which I have also quoted above, from the judgment of the Privy Council which Lord Millett delivered in *Agnew*."

63. Millett LJ (with whom Lord Hoffman on appeal agreed) in *Re Cosslett* put it like this:

> "The question is not whether the charger has complete freedom to carry on his business as he chooses, but whether the charge is in control of the charged assets."

64. That leads to the question of control in this case.

65. Mr Tucker says that his client struggles with the notion that Harbert had sufficient control. He relies on the following (paragraph 73 of his skeleton argument):

> "(a) Harbert have not demonstrated any control over the IP Addresses in practice.
>
> (b) What provisions are found in the Debenture that would give Harbert control were not, and were [not?] intended to be, enforced according to their terms.
>
> (c) There is nothing to suggest that Harbert took steps to check compliance with the same, never mind enforce control.

> (d) The IP addresses are not [separately?] listed in the Debenture it would not have been clear to any third party that the IP Addresses were charged, such that a third party would have taken free of Harbert's interest (and the Company would have been able to deal with the proceeds of sale subject to a damages claim on Harbert's position).
>
> (e) The use that the Company then actually made of the IP Addresses is then repeated. This is not a case of a fixed charge on an income generating asset, with the chargor able to use the income. Here, the asset is a contractual right. When the exclusive use of the contractual right is allocated to another party, what is being allocated is the asset itself."

66. Ms Allsop submits that post-contractual conduct is generally irrelevant and inadmissible in this context (*per* Edwin Johnson J in *Re Avanti* paragraph 38), although the nature of the assets in question may also be taken into account (*ibid* paragraph 35), and regard may be had to the nature of the business of the charger (*ibid* paragraph 37).

67. I respectfully follow the "nuanced" approach advocated by Edwin Johnson J, holding the exercise of control to be one of the factors I am entitled to take into account. He said:

> "38. Post-contractual conduct is generally irrelevant and inadmissible. However, in this context, it has been noted that if a stipulation in the charging documents is not adhered to in practice, the agreement may be held to be a sham and characterised as a floating charge: see Goode & Gullifer on Legal Problems of Credit and Security (Seventh Edition), at paragraph 4-22. In the present case, and subject to one limited exception to which I shall come, there is no evidence of what I would regard as relevant post-contractual conduct."

68. As to the exercise of control in this case, I note again that the terms of the debenture provide for control to be exercised. I find some difficulty, however, in concluding, as a matter of fact, that it was exercised. Mr Allen asserts (or implies) in his witness statement that it was not, laying down the gauntlet and inviting a challenge.

69. Contractual control obligations cannot be ignored. The Company was bound by its obligations to Harbert until or unless they were relinquished or waived. There is no evidence of either having occurred, nor was that submitted against Harbert, so the covenants to which the Company was subject obtained throughout its relationship with Harbert. If the Company failed to comply with its obligations, on one view that is to be laid at its door; it is not a default on the part of the chargee, which in any event is not obliged to enforce its strict legal rights at any particular time as a condition of preserving them. Failure to do so may, however, be indicative of how the parties viewed the charge, as Mr Tucker contends.

70. He also submits that the effect of the charging clause relied on would have been, potentially, to bite on a number of assets that cannot realistically have been in the parties' contemplation. As he puts it, the Company would necessarily have approved, authorised, consented to or resolved to enter into all kinds of contracts, licences and so on, its rights to which would, on the wide interpretation contended for by Harbert, be subject to a fixed charge. For example, the Company must have used software in the

course of its business which must have been updated and replaced from time to time, often alongside the hardware on which it has been installed. Software is usually supplied under the terms of a user licence. Mr Allen produces a list of nine such items. Mr Tucker submits that it cannot sensibly be said that each version of Windows, and any and all other commercial software licenced to the Company, or even the frequently changed laptops on which it was installed, was susceptible of control and the subject of a fixed charge.

71. The point is a nice one, if only to the extent that it indicates a failure of the parties to consider the true effect of what they were supposedly agreeing; but it is not as powerful as the absence of evidence of control over the assets in issue and others of the kind canvassed in the previous paragraph.

72. In my view, in the absence of any challenge to Mr Allen's evidence I am bound to conclude that Harbert did not exercise control or seek to do so. Sometimes the absence of evidence is as powerful as the presence of evidence. This is such a case. It is also a case where some regard should be had to post-contractual conduct. The control provisions in the debenture were, then, a "sham," not in any fraudulent sense, but in the sense used in *Re Avanti*. In reaching that view I also take into account the apparent ability of the Company to carry on its business without the consent of Harbert (see the passages from *Agnew v HMRC*, *Re ASRS* and *Re Spectrum* cited in paragraphs 25, 27 and 28 above).

Result

73. On that basis and for the other reasons given above, in particular those on the "all or nothing" principle, I conclude, albeit not without misgivings, that the charge in this case is a floating charge. I reach that conclusion by reference to both stages of the process identified in *Agnew v HMRC*.

74. I am grateful to Mr Tucker and Ms Allsop for skeleton arguments and oral argument of the highest quality and for their patience in the course of the latter with my frequent interruptions and questions as I tried to come to grips with law and submissions that I have found to be far from easy. I am also grateful to Mr Allen and his advisers for his helpful and carefully considered written evidence and to the applicant's solicitors for an immaculately prepared hearing bundle.

75. I will hear counsel on the form of order I should make when this judgment is handed down.

Appendix

List of Agreed Facts

These facts are agreed between the Applicant, in his capacity as Official Receiver and Liquidator of UKCloud Ltd (in Liquidation) (the "**Company**"), and Harbert European Specialty Lending Company II S.A.R.L ("**Harbert**") pursuant to paragraphs 6 and 7 of the Consent Order dated 15 August 2023 and sealed on 17 August 2023 (the "**Consent Order**") and for the purpose of the Applicant's application dated 3 July 2023 only.

Unless otherwise defined herein, capitalised terms used in these facts have the meaning given to them in the Consent Order. References to paragraph numbers of "**Allen 1**" are to paragraph numbers in the first witness statement of the Applicant dated 3 July 2023.

Internet Protocol Addresses

1. An Internet Protocol address is a unique identifier (akin to a postal address of real property) which allows for the routing of data, enabling it to travel through networks and arrive at its intended destination.

2. Internet connected devices each have a unique Internet Protocol address. Those Internet Protocol addresses can be allocated on a dynamic or static basis: if on a dynamic basis, the Internet Protocol address which is allocated to a device changes each time that device is connected to the internet; if on a static basis, the Internet Protocol address is allocated to a device for a fixed period and will remain the same each time that device is connected to the internet.

3. Internet Protocol Version 4 addresses was the first major version of Internet Protocol addresses ("**IPv4 Addresses**") and remains the dominant version. There are a finite number of IPv4 Addresses (a maximum of 4,294,967,296 unique addresses). Due to the growth of the internet there are insufficient IPv4 Addresses available for all internet connected devices. Although a successor, the Internet Protocol Version 6 address, has been developed, IPv4 Addresses are regarded as the superior product.

4. In Europe, Internet Protocol addresses are allocated by the Réseaux IP Européens Network Coordination Centre ("**RIPE NCC**"). RIPE NCC maintains a database, the Regional Internet Registry which records the authorised holders, each known as a "**responsible organisation**" of allocated Internet Protocol addresses. The relationship between the holders/responsible organisations of Internet Protocol addresses and RIPE NCC is governed by the RIPE NCC Standard Service Agreement.

5. To request and receive an allocation of IPv4 Addresses, or to take a transfer of IPv4 Addresses, the relevant party must be a RIPE NCC member. A legal entity or natural person can apply to become an approved member of RIPE NCC by following RIPE NCC's application process, which in summary is as follows:

a. an application form must be completed and submitted to RIPE NCC by the party seeking to become a member of RIPE NCC (a "**Member**");

b. RIPE NCC performs due diligence on the prospective Member to ensure compliance with the appropriate policies of RIPE NCC, in respect of which certain minimum information and documentation is required by RIPE NCC to

(among other things) verify that registration data is valid and up-to-date;
c. if RIPE NCC approves the prospective Member, RIPE NCC sends to the prospective Member the RIPE NCC Standard Service Agreement (the "**SSA**") for the provision of services and the registration of internet number resources by RIPE NCC;
d. once RIPE NCC receives a signed SSA and payment of a one-time sign-up fee from the prospective Member, the prospective Member shall become a member of RIPE NCC; and
e. the Member will receive an email containing all the information they need to know as a new member of RIPE NCC. They will then be able to log in to the secure web area for RIPE NCC members to manage everything related to their membership and the internet number resources they hold. They can start requesting internet number resources to be registered to them by RIPE NCC.

6. Millions of IPv4 Addresses are bought and sold every year.

7. The demand for IPv4 Addresses has increased dramatically since 2020.

The Company

8. At all material times1, the Company was:
a. in the business of providing cloud computing services to customers in the United Kingdom;
b. the holder of various IPv4 Addresses (23,552 in total), as set out in the table at Allen 1 paragraph 24 (each an "**IP Address**" and together the "**IP Addresses**"); and
c. registered as the responsible organisation in respect of the IP Addresses with RIPE NCC.

The parties have agreed on terms recorded in the Consent Order that the Applicant is permitted to sell the IP Addresses. The sale does not have a bearing on whether the IP Addresses are caught by a fixed or floating charge in favour of Harbert. The Court should determine that question on the basis that the IP Addresses are held by the Company.

9. The Company purchased IP Address range 83.151.208.0/20 on or around 12 May 2014 from Mailbox Internet Ltd.

10. The Company purchased IP Address range 51.179.192.0/18 on or around 20 May 2015 from the Department for Work and Pensions.

11. The Company was required to pay annual fees to RIPE NCC to maintain the Company's rights to hold and use the IP Addresses. For the calendar year 2023, these fees amounted to EUR 1,541.82.

12. The IP Addresses were not traded by the Company.

13. The Company used the IP Addresses in its business in order to allow customers to access its cloud-based service.

14. The Company's policy document, "*Skyscape Guidance – IP Address Usage and*

Allocation" (the "**Guidance**") provides guidance as to the Company's allocation of IP Addresses to customers. The Guidance provides a single circumstance in which the IP Address(es) exclusively allocated to a customer could be withdrawn from the customer by the Company. The Guidance provides that that if an IP Address was to change, then this would require a change to the customer environment/application and most likely cause a disruption to service.

15. It appears from the Guidance (and also confirmed to the Special Managers by a former employee of the Company) that a customer would be informed by the Company of the fact of the allocation of the specific IP Address(es) which would be exclusively used by the customer for the duration of the relevant service. The customer had the sole right to use such IP Address(es) during the term of the contractual service with the Company. The Applicant has been unable to locate, from reasonable searches conducted, written terms to this effect.

16. It is understood by the Applicant, that the Company freely allocated IP Addresses to customers in the course of conducting the Company's business. The customer had the right to use the IP Address(es) which it was allocated, but is not understood to have had greater rights to the IP Address(es) which it was allocated.

17. The Company's contractual documentation with its customers did not refer to the IP Addresses.

18. The Company retained in its systems/databases records and information of the IP Addresses allocated exclusively and for the sole use of the customers.

19. Upon cessation of the Company's business and consistent with the rights of the Company in the IP Addresses the allocation of the IP Addresses to all the customers (and customers' access to use such IP Addresses) was withdrawn by the Company as services were terminated.

20. By deed dated 28 February 2020, the Company granted security by way of fixed and floating charges to Harbert over various property, assets and rights.

21. The Company was placed into compulsory liquidation by order made on 25 October 2022. Special Managers were appointed by court order the same day.

22. The IP Addresses have a material value (the Applicant has been advised by the Agent, an online auction platform provider, that they are worth in the region of £600,000 to £800,000) which is capable of being realised on behalf of the Company.