APPROVED **[2024] IEHC 585**

THE HIGH COURT

Record No.: 2024/144 COS

BETWEEN:

IN THE MATTER OF MAINLINE POWER LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 2014

EX TEMPORE JUDGMENT of Mr. Justice Rory Mulcahy delivered on 11 October 2024

Introduction

1. On 17 June 2024, I made an order appointing Mr Nicholas O'Dwyer as interim examiner to Mainline Power Limited ("**the Company**") on foot of a petition ("**the Petition**") presented by the Company. Following a hotly contested hearing on 11 and 12 July, I delivered a judgment dated 16 July 2024 in which I confirmed the appointment of Mr O'Dwyer as examiner. The objection to his appointment was advanced by a creditor VTG Entrepenad AB ("**VTG**"). It argued, inter alia, that the court should exercise its discretion to refuse to appoint an examiner on account of the alleged misconduct of the Company.

2. The misconduct was said to consist of the wrongful transfer of certain sums from the Company to its parent with the alleged intention of defrauding the Company's creditors, in

particular, VTG. In light of that objection, in addition to making the order confirming Mr O'Dwyer's appointment as examiner, I made an order directing Mr O'Dwyer to carry out an investigation into the matters giving rise to the alleged misconduct and to prepare a report for the court.

3. On 11 September 2024, Mr O'Dwyer ("**the Examiner**") delivered the report on his investigation as requested ("**the Investigation Report**"). On 18 September 2024, he prepared a further report pursuant to section 534 of the Companies Act 2014 ("**the section 534 Report**") in which he set out his proposals for a compromise or scheme of arrangement in relation to the Company ("**the Proposals**"). The section 534 report set out details of the meetings which he had convened with creditors and their votes on the Proposals. The report recommended that the court confirm the Proposals.

4. The Examiner made an application on 19 September 2024 to set the report down before the court and sought a hearing of an application for confirmation of the Proposals. I directed the exchange of affidavits and submissions and listed the matter for hearing on 10 October 2024.

5. In the event, VTG was the only party who opposed the confirmation of the Examiner's proposals by this court. In an exchange of correspondence with the Examiner and in an affidavit filed on its behalf on 4 October 2024, VTG set out the grounds upon which it opposed confirmation. However, it elected not to file legal submissions or to make submissions at the hearing before me.

6. The only creditor who made submissions at the hearing was the Revenue Commissioners ("**Revenue**"). Revenue did not oppose the confirmation of the Proposals.

Background

7. As set out in my earlier judgment, the Company provides specialised engineering services in the energy, particularly renewable energy, and aviation sectors, including the design and build of substation and grid connection services. It is also a market leader in cable pulling services. It had, at the time the petition was presented, 83 employees. As pointed out by counsel for the Examiner, these are not positions which are readily

replaceable. The group structure within which the company sits and the reasons for its financial difficulties are set out in that earlier judgment and need not be repeated here.

Section 534 Report

8. The Examiner reported throughout the examinership period. In each report, he expressed the view that, subject to certain conditions being met, the Company had a reasonable prospect of survival. He expressed confidence that he would be in a position to put together a scheme of arrangement which could be put to the Company's creditors. The interim reports prepared by the Examiner were extremely helpful in keeping the court and interested parties updated in relation to the progress of the examinership.

9. As set out in the section 534 report, the Examiner ultimately proposed a scheme of arrangement pursuant to which certain of the Company's debts would be written down and its parent, Mainline Utilities Group Ltd ("**Mainline Utilities**") would invest a further €3.5 million in the Company. In his report, the Examiner stated that these proposals would restore the Company's balance sheet to solvency, would facilitate the survival of the Company as a going concern, and would be in the best interests of creditors. Importantly, the restructured company would retain 51 employees.

10. The Examiner categorised the creditors' claims against the Company into six classes, grouped by a commonality of interests of the creditors in each class. The six were:

(a) Super preferential claim;
(b) Preferential claim;
(c) Floating charge claim;
(d) Retention of title (ROT) claim;
(e) Connected party claims; and
(f) General unsecured claims.

11. The results of the creditors' votes on the Proposals are set out at Appendix D of the section 534 Report.

12. Under the Proposals, the Company's liability to Revenue, the only super preferential or preferential claim creditor, would be discharged in full. The only floating charge claim

creditor, the Bank of Ireland, would be paid €383,816 in discharge of an amount outstanding to Bank of Ireland of €1,130,496 pursuant to a guarantee of Mainline Utilities borrowing under which the Company was the primary obligor. The guarantee was secured by a floating charge over the Company's assets. The proposals would also see Bank of Ireland release its security. Both Revenue and the Bank voted in favour of the Proposals.

13. There was also only one ROT claim creditor. Under the proposal, it would receive 90% of its claim. The ROT claim creditor voted in favour of the Proposals.

14. It is proposed that the general unsecured claims creditors will each get 4% of their claims. The Examiner contends that they will thus do better than in a liquidation in which they would get no return. 80 unsecured creditors voted on the proposal, 69 in favour, 11 against. However, as VTG was by far the largest of the unsecured creditors and voted against the Proposals, only 13% in value of this class voted in favour of the Proposals.

15. The connected creditors will get no return under the Proposals. The three connected creditors all voted in favour of the Proposals.

16. Subsequent to the presentation of the section 534 report, there has been engagement between interested parties, as a consequence of which the Examiner now asks the court to confirm the Proposals with minor modifications.

The Investigation Report

17. As set out in the first judgment, VTG alleges misconduct on the part of the Company. Mainline Sweden, a subsidiary of the Company, entered a contract with Nordex Sverige AB ("**Nordex**") in November 2019 to carry out works on a wind farm in Sweden. Mainline Sweden engaged VTG as a sub-contractor on that project. The Company provided a guarantee to VTG for Mainline Sweden's liability under that contract.

18. Mainline Sweden was involved in contractual disputes about payments with both the main contractor, Nordex, and the sub-contractor, VTG. The dispute with Nordex was ultimately resolved by agreement in December 2023, with a payment of €5 million by Nordex to Mainline Sweden in full and final settlement of their dispute. The dispute with

VTG, however, was referred to arbitration which was heard over eight days in September/October 2022.

19. On 27 May 2024, the arbitral tribunal issued an award in which it determined that the Company and Mainline Sweden were jointly and severally liable to VTG in the sum of €6.8 million.

20. Mainline Sweden has been placed in the Swedish equivalent of liquidation, known as bankruptcy and a liquidator (bankruptcy trustee) has been appointed.

21. On 12 June 2024, VTG issued proceedings in the High Court seeking to enforce the award made in Sweden against the Company and its subsidiary. On 11 July 2024, the High Court (Barniville P) made an order recognising and enforcing the arbitral award pursuant to section 23 of the Arbitration Act 2010, and entered judgment against the Company in the amount of approximately €6 million.

22. Central to VTG's opposition to the appointment of the Examiner and to the confirmation of the Examiner's proposals is a complaint about what was done with the settlement monies received from Nordex. Following receipt of those monies, Mainline Sweden transferred €4.7 million to Mainline Utilities. This was treated as a discharge of Mainline Sweden's debt to the Company, and as a reduction of the Company's debt to Mainline Utilities. VTG claims that these transactions were improper because they occurred at a time when the Company was clearly insolvent, a fact which should have been known to the directors of the Company, in light of the pending decision in the arbitration.

23. The Investigation Report examined these allegations and also considered whether the transfer of any part of the settlement monies would be capable of being deemed void or voidable in the event that the Company was placed in liquidation, or whether there were any other remedies available to the Examiner. The Report considered the possibility of remedies under sections 604, 608 and 557 of the Companies Act 2014 ("**the 2014 Act**"). In brief, the Examiner concluded that, on the balance of probabilities, the directors believed that the Company was solvent at the time of the relevant transactions and that, in any event, the evidence suggested that the transactions were not entered into with the intention of putting funds beyond the reach of the Company's creditors. In this regard, the Examiner placed

some emphasis on the fact that in the period following the completion of the transactions, Mainline Utilities, to whom funds had been transferred, provided €2.8 million in funding to the Company. In other words, a significant portion of the money alleged to have been wrongfully transferred from the Company came back into the Company.

24. The Examiner concluded that in a hypothetical liquidation, in his opinion, a liquidator would not succeed in reversing the transactions pursuant to sections 604 or 608 of the 2014 Act, and that there was no merit in the Examiner seeking to do so pursuant to section 557 of the Act.

Opposition to confirmation

25. In his helpful written legal submissions, the Examiner summarised the five grounds of opposition identified by VTG in its correspondence with him and in its affidavit sworn on 4 October 2024.

26. First, it argued that the creditor holding the ROT Claim is not a creditor, or an impaired creditor of the Company at all as a result of an alleged variation to its contract with the Company. Accordingly, VTG claimed that no reliance could be placed on the ROT claim creditor's vote for the purpose of the approval of the Proposals. Moreover, VTG argued that the ROT claim should have been included within the general class of unsecured claims, *i.e.* that the class was wrongly identified as a separate class of claim.

27. Second, it was argued that the floating charge claim was also not a class of impaired creditor.

28. Third, VTG contended that because the meetings of certain classes of creditors were inquorate, the formal requirements for these meetings had not been met and it was now too late to rectify that position.

29. Fourth, VTG argued that the Proposals are unfairly prejudicial to the position of VTG because, in their view, VTG would receive a greater dividend in a liquidation of the Company, compared with that provided for under the Proposals. This was because "*a liquidator would be able to thoroughly investigate all matters around the treatment of the Nordex Settlement and seek to recover those payments thereby increasing the assets of the*

Company and increasing the dividend to the unsecured creditors". VTG stated that it "*fundamentally disagrees with the findings of the Examiner*" in the Investigation Report.

30. Finally, it was said that the Proposals do not satisfy the overall "best interests of creditors test".

Statutory criteria

31. The court has an undoubted discretion whether to confirm proposals; the legislation sets out the circumstances in which a court must *not* confirm proposals, not where it must. This discretion has been addressed in numerous cases (see, for instance, *Re Traffic Group* [2007] IEHC 445).

32. Section 541(4) of the 2014 Act, as amended by European Union (Preventive Restructuring) Regulations 2022 ("**the 2022 Regulations**") sets out certain matters which must be satisfied before a proposed scheme of arrangement can be confirmed. These include, in light of the amendments introduced by the 2022 Regulations, specific requirements in relation to approval by classes of company creditors contained at section 541(3A) and (3B) of the Act.

33. In addition to the requirements of section 541(4), section 541(4A) provides that a court shall not confirm proposals where they would not have a reasonable prospect of facilitating the survival of the company as a going concern. Section 543 of the Act sets out specific grounds on which a creditor whose interests may be impaired by proposals may object to their confirmation. To some extent, the grounds for objection in section 543 are a mirror of the requirements for confirmation set out in section 541, in particular the requirement that proposals are not unfairly prejudicial to impaired creditors.

Assessment

i. Voting Requirements

34. Section 541(4)(a) of the 2014 Act requires that at least one class of creditors whose interests would be impaired by the proposal has voted to accept them. In addition, s. 541(4)(b)(i) requires compliance with provisions of section 541(3A) or (3B), as inserted by

the 2022 Regulations. These sub-sections set out the minimum voting requirements which must be met before the court may confirm proposals. For a detailed discussion of the voting requirements, see *Re Mac Interiors* [2023] IEHC 549.

35. It is clear that a number of the classes of creditors whose interests or claims will be impaired by the proposal have voted in favour of them. The ROT claim, the floating charge claim and the connected claims are all, subject to VTG's objections dealt with below, impaired classes of creditors who have voted in favour of the proposal. The requirements of s. 541(4)(a) have thus been met. It is necessary to then consider whether sub-sections 3A or 3B have also been satisfied.

36. Section 541(3A) requires that a majority both in number and value of *all* impaired creditors vote in favour of the proposals, a so-called 'overall majority'. The concept of impairment is defined in s. 539(5) of the Act and involves a creditor getting less than the full amount due on a claim at the date of presentation of the petition. The case law makes clear that even a minimally impaired claim, e.g. where an entitlement to interest is lost, will be regarded as an impaired claim for the purpose of the Act (see *Re Antigen Holdings* [2001] 4 IR 600).

37. The evidence contained in the section 534 report establishes that 87% by number and 54% by value of the impaired creditors have voted in favour of the Proposals. No party has disputed this calculation, although VTG has suggested that some of the creditors treated as impaired creditors are not, in fact, impaired creditors. Subject to that caveat, it is clear that the proposals satisfy the requirement of section 541(3A) and are capable, therefore, of being confirmed by the court.

38. It is not necessary, where section 541(3A) is satisfied, to illustrate that section 541(3B) is also satisfied; reliance on section 541(3B) only arises where the condition in sub-section 3A is not met. Indeed, it may well be a rare proposal in respect of which, where the conditions in sub-section 3A *are* met, that the conditions in sub-section 3B would not also be met. Be that as it may, for completeness, the Examiner has set out his view that the conditions in section 541(3B) are also met.

39. The first alternative to satisfying the requirements for confirmation contained in sub-section 3B is set out in s. 541(3B)(a)(i), that there be a so-called "senior class majority", that is that a majority of at least one class of impaired creditors consisting of secured creditors has voted in favour of the proposals. The only secured class of claim which is impaired by the Proposals is the floating charge claim. This class, consisting of Bank of Ireland, voted in favour of the Proposals. Subject, again, to VTG's objection that this was not an impaired class, the requirements of s. 541(3B)(a)(i) are also satisfied. That is sufficient to establish compliance with s. 541(3B).

40. In addition, the final alternative set out in s. 541(3B)(a)(ii), is that there be a class of impaired creditor who would be "in the money" if the normal class of priorities in a liquidation applied which has voted in favour of the proposals. The evidence establishes that the floating charge claims would be "in the money" in a liquidation, *i.e.* it would receive some return in a liquidation, and, as noted above, that this class voted in favour of the Proposals. The requirements of s. 541(3B)(a)(ii) are therefore also satisfied.

ii. Section 541(3A)(b) to (f)

41. In addition to being satisfied that proposals meet the requirements of sections 541(3A)(a) or 541(3B), the court must be satisfied that the proposals comply with section 541(3A)(b) to (f).

42. Sub-section (b) requires that the voting by creditors be carried out in accordance with section 540 of the Act. There is no suggestion that there has been any non-compliance with the requirements of section 540. Having examined the evidence contained in the section 534 report, I am satisfied that this condition is met.

43. Sub-section (c) requires that creditors with sufficient commonality of interest in the same class have been treated equally and in a manner proportionate to their claim. It is clear that, under the Proposals, creditors within each class will be treated in precisely the same way. This condition is therefore satisfied. For completeness, I should say that I am satisfied that the formation of classes has also been carried out appropriately and that, in particular, the ROT claim creditor was properly classified in a separate class to the general unsecured claims (see, for comparison, *Re Mac Interiors Ltd*).

44. Sub-section (d) requires that all creditors and members whose interests will be impaired be given notice of the Proposals. I am satisfied that this has occurred; there was no suggestion to the contrary.

45. Sub-section (e) requires that, where there are dissenting creditors, the proposals meet the best interests of creditors test. I will address this requirement when considering VTG's objection below.

46. And finally, sub-section (f) requires that any additional financing required by the proposals not prejudice the interests of creditors. Again, there is no suggestion that this requirement is not met. I am satisfied that the additional financing to be provided will not prejudice the interests of any creditor.

47. Section 541(4)(b) imposes requirements in addition to the requirement that the provisions of sub-section 3A or 3B be satisfied. These are that:

> *(ii) the proposals are fair and equitable in relation to any class of members or creditors that has not accepted the proposals and whose interests or claims would be impaired by implementation, and*
> *(iii) the proposals are not unfairly prejudicial to the interests of any interested party,*
>
> *and in any case shall not confirm any proposals if the sole or primary purpose of them is the avoidance of payment of tax due*

48. There is no basis for suggesting that the Proposals are for the purpose of avoiding payment of tax due. Revenue is a creditor. Its claims will not be impaired by the Proposals and it does not oppose confirmation. VTG does object to confirmation on the grounds that the proposals are unfairly prejudicial. I will address that question and the question of whether the Proposals are fair and equitable below. For a discussion of the concept of "unfair prejudice", see *Re Cara Pharmacy Unlimited Company* [2021] IEHC 123.

49. The court must also be satisfied, per s. 541(4A), that the proposals will facilitate the reasonable prospect of survival of the company or the whole of its undertaking as a going concern. Although there was some debate between the Examiner and Revenue as to whether

the reference to "facilitating" survival imposes a lower standard than a requirement that there actually *be* a reasonable prospect of survival, it is not necessary to resolve that question for present purposes. The only evidence is that implementation of the Proposals will provide the Company with a reasonable prospect of survival. In this regard, the Examiner, in his interim reports, has repeatedly expressed his view that he would be in a position to prepare proposals which would give the Company a reasonable prospect of survival. The Company has performed ahead of expectations throughout the examinership period and has not had to rely on additional funding which was made available to it during that period (save for a very brief period caused by a technical issue, quickly resolved). The Proposals will, on his evidence, return the Company to solvency and inject fresh capital into the Company. VTG does not dispute the Examiner's conclusion that the Company now has a reasonable prospect of success. The Examiner's view on this issue must necessarily carry significant weight with the court, all the more so when unopposed. I am, accordingly, satisfied that the requirements of sub-section 4A are satisfied.

50. Before addressing VTG's objections, it is worth noting that where reliance is placed on s. 541(3B), it must also be shown that no creditor will receive more than the full value of its claims under the proposals. Although it is not necessary for the Examiner to rely on sub-section 3B in circumstances where the requirements of sub-section 3A are satisfied, I note that under the Proposals no creditor will receive more than the full value of their claim.

VTG objections

i. ROT claim creditor is not a creditor

51. VTG suggests that the (single) ROT claim is not a creditor, or at least not an impaired creditor on the basis of an allegation that there is an agreement between the ROT claim creditor and the Company to vary their contract and therefore no reliance can be placed on its vote. First, it can be observed that even if reliance couldn't be placed on the vote of the ROT claim creditor, there would be no barrier to the Proposals being confirmed given the overall majority vote in favour of the scheme and the small value of that claim.

52. More fundamentally, however, the only evidence for VTG's allegation regarding an alleged variation of their contractual relationship between the Company and the ROT claims

creditor is that the ROT claim creditor voted in favour of the Proposals. It cannot be the case that agreement to accept proposals which involve impairment of a claim should be treated as a variation of contractual entitlements meaning that there has been no impairment at all. This would make a nonsense of the statutory scheme. That being so, the Examiner was entitled to treat the ROT claim creditor as an impaired creditor and reliance can thus be placed on its vote.

ii. The floating charge claim creditor is not an impaired creditor

53. Under the terms of Bank of Ireland's security, the Company was primary obligor in respect of a debt exceeding €1.1 million as guarantor of a loan to its parent, Mainline Utilities. The Bank held security, by way of floating charge, over the entirety of the Company's assets and undertaking. True it is that the Bank could seek recovery of the sum due from the parent company, as borrower, but it was not obliged so to do; there seems no dispute but that it was entitled to recover the entire amount from the Company and, absent recovery, enforce its security. Under the proposals, it will recover €383,816 and release its security, in full settlement of the debt. I note in passing that this is marginally better than it is estimated to recover in the event of a liquidation.

54. This is, beyond doubt, an impairment of the Bank's interests, and, in particular, an impairment of its rights as creditor of the Company. In the circumstances, the Bank is an impaired secured creditor and its vote in favour of the proposals can be taken into account, both as part of the overall majority of impaired creditors voting in favour of the proposals, and as a member of a senior class of creditors, *i.e.* impaired secured creditors. This ground of objection must be rejected.

iii. Meetings not quorate

55. Although the Act is silent on a requirement for quorums in respect of meetings of each class of creditors, Order 74A, rule 18 of the Rules of the Superior Courts ("**the Rules**") requires that there must be at least three creditors present at any meeting of a class of creditors for that meeting to be quorate. The meetings of a number of impaired classes – the

ROT claim and floating charge claim classes – were, therefore, not quorate for the purpose of the Rules.

56. This non-compliance has always been acknowledged by the Examiner and in his application dated 19 September 2024, he sought an order dispensing with the minimum quorum requirements for those classes. In circumstances where I am satisfied that those classes were properly identified as separate classes by the Examiner having regard to the different interests which they have from the general class of unsecured creditor claims, insisting on a requirement for a quorum for those meetings would, in my view, frustrate the statutory scheme. The meetings of the ROT claim and floating charge claim classes were incapable of being quorate as required by the Rules. All creditors in each class attended the meetings called by the Examiner and voted in favour of the Proposals. It is appropriate, therefore, to make an order pursuant to Order 124, rule 1 of the Rules dispensing with the quorum requirement in Order 74A, rule 18 in respect of the ROT claim and floating charge claim meetings.

iv. Unfairly prejudicial / Best interests of creditors

57. The claims that the Proposals are unfairly prejudicial or not in the best interests of creditors can, in the circumstances of this case, be dealt with together. Both objections arise from the same complaint by VTG. Having regard to the history of this examinership, VTG's objection that the Proposals are unfairly prejudicial to its interests, or are not in the best interests of creditors, might fairly be regarded as its fundamental objection to the Proposals. VTG considers that there was misconduct by the Company which has deprived the Company of assets which would otherwise be available to meet VTG's claim, and that if the Company was placed in liquidation, that money could be recovered. In such a scenario, VTG posits that it would do better than it will if the Proposals are confirmed.

58. The difficulty for VTG with these propositions is that the available evidence is against them.

59. In the disputed application for the appointment of an Examiner, VTG set out the basis upon which it contended that the Company was guilty of misconduct. Although the issues raised were not sufficient, in my view, to justify a refusal to appoint an examiner, VTG did

identify concerns which warranted a direction that the Examiner carry out an investigation into the allegations and to consider what remedies might be available to him, or in a hypothetical liquidation. This the Examiner has done.

60. Although necessarily abbreviated, I am satisfied, having considered the Investigation Report and the steps which the Examiner has taken, that he has carried out as thorough an investigation as circumstances allow. His conclusions have been set out above. As fairly acknowledged by counsel for the Company, his conclusions do not exclude the possibility that, in a hypothetical liquidation, it would be established that there was misconduct by the Company and/or that the transactions at issue might be capable of being reversed. But counsel also submitted, correctly in my view, that the evidence supported the Examiner's assessment that the creditors, including VTG, would fare better on foot of the Proposals than in a hypothetical liquidation, that it was more probable that the Proposals would better serve their interests than that a liquidation would. In this regard, the fact that VTG has not pointed to any flaw in the Examiner's analysis of the evidence obtained during his investigation, or of the legal principles which apply, robs its "fundamental disagreement" with the Examiner's conclusions of any force or substance. In light of the evidence before the court, it would not be appropriate to assess the Proposals on the basis of an assumption that misconduct could be established.

61. Moreover, VTG's assertion that the impaired creditors would do better in a liquidation rests on a further assumption for which there is no evidence, that if misconduct could be established, this would, eventually, leave more money in a hypothetical liquidation for creditors than will be available under the Proposals. This may be so, but there is no basis to assume that it is. To sustain its objection, VTG would have needed to add some substance to its opposition. In circumstances where the evidence does not support allegations of misconduct or suggest that the creditors would be likely to do better in a liquidation, I am unable to conclude that the Proposals are unfairly prejudicial or not in the best interests of creditors.

62. It is hard not to have some sympathy for VTG's position. It fought hard in an arbitration and obtained an award which vindicated its position. However, owing to the bankruptcy of the Company's Swedish subsidiary and the examinership proposals, it will receive only a small portion of the benefit of that award. However, VTG's disappointment at that outcome

is not a basis to conclude that the Proposals are unfairly prejudicial to it, or not in their best interests, where the likely alternative is a liquidation in which it receives nothing at all.

63. In those circumstances, and in circumstances where, critically, 51 jobs, for which there would be no ready replacement, will be saved by confirmation of the Proposals, I do not see any basis upon which the court should exercise its discretion to refuse to confirm the compromise proposed by the Examiner. I will, accordingly, make an order confirming the Proposals.

Conclusion

64. As noted above, there have been minor modifications to the Proposals. These have no bearing on the issues discussed above, and I propose therefore to confirm the Proposals as modified.

65. The Proposals include proposals to amend the company's constitution to provide for the appointment of an independent non-executive director to address shortcomings in the Company management identified in the investigation detailed above. These amendments seems prudent, and for the avoidance of doubt, I confirm the proposal to amend the Company's constitution.

66. The order will reflect that each of the conditions specified in s. 541(3A) has been satisfied:

(a) a majority in number and value of impaired creditors have accepted the Proposals in accordance with section 540;

(b) the exercise of voting rights has been carried out in accordance with section 540;

(c) creditors with sufficient commonality of interest in the same class have been treated equally, and in a manner proportionate to their claim;

(d) notice of the proposals has been given to all members and creditors whose interests or claims will be impaired by the Proposals in accordance with subsection 540(11);

(e) the Proposals satisfy the best interest of creditors test;

(f) the new financing is necessary to implement the Proposals and does not unfairly prejudice the interests of creditors.

67. The order will also record that the requirements of Order 74, rule 18 have been dispensed with in respect of the ROT claim and floating charge claim creditor classes.

68. Counsel for the Company sought liberty to apply lest it be necessary to seek orders in relation to creditors domiciled in the United Kingdom. That liberty to apply will also be reflected in the order.

69. The Proposals and the amendments to the constitution will become effective on Monday, 14 October 2024 at 11 am.

70. The costs of the Examiner will be costs in the examinership.

Rory Mulcahy

11 October 2024