

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE)
)
JUSTICE *MYERS*)

MONDAY, THE 30TH
DAY OF OCTOBER, 2017

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. c-36, AS AMENDED**

AND IN THE MATTER OF URBANCORP INC.

**APPLICATION OF GUY GISSIN, THE FOREIGN REPRESENTATIVE OF
URBANCORP INC., UNDER SECTION 46 OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

ORDER

THIS MOTION, made by Guy Gissin, the Israeli Court-appointed functionary officer and foreign representative of Urbancorp Inc. (the "**Foreign Representative**"), for an Order recognizing an Order granted by the District Court in Tel Aviv-Jaffa, Israel (the "**Israeli Court**") in the insolvency proceedings commenced against Urbancorp Inc. ("**UCI**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Foreign Representative, filed, and the Seventh Report of the Information Officer, filed, and upon hearing the submissions of counsel for the Foreign Representative and counsel for the Information Officer, no one else appearing although duly served as appears from the affidavit of service of Vanja Ginic sworn October 25, 2017.

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Motion Record herein be and is hereby abridged so that this Motion is properly returnable today and any further service of the Motion Record on any interested party is hereby dispensed with.

RECOGNITION ORDER

2. **THIS COURT ORDERS AND DECLARES** that the Order granted by the Israeli Court on September 26, 2017, a copy of which is attached to the affidavit of Nadine Amiel, affirmed October 18, 2017, which is attached as Schedule “A” hereto, is hereby recognized pursuant to Section 49 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“CCAA”).

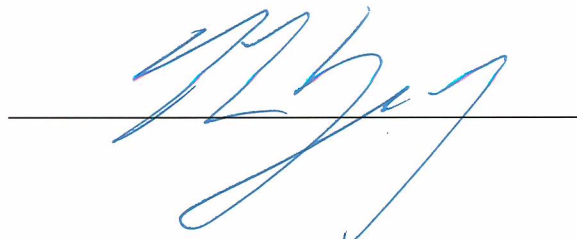
MISCELLANEOUS

3. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada and outside Canada.

4. **THIS COURT REQUESTS** the aid, recognition and assistance of other courts in Canada in accordance with Section 17 of the CCAA, and requests that the Federal Court of Canada and the courts and judicial, regulatory and administrative bodies of or by the provinces and territories of Canada, the Parliament of Canada, the United States of America, the states and other subdivisions of the United States of America including, without limitation, the U.S. Bankruptcy Court, and other nations and states act in aid, recognition and assistance of, and be complementary to, this Court in carrying out the terms of this Order and any other Order in this proceeding. The Applicant shall be at liberty, and is hereby authorized and empowered, to make such further applications, motions or proceedings to or before such other court and judicial, regulatory and administrative bodies, and take such other steps, in Canada or the United States of America, as may be necessary or advisable to give effect to this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 30 2017



Schedule "A"

Serial 42/2017
Form No. 1

מספר סידורי 42/2017
טופס מס' 1

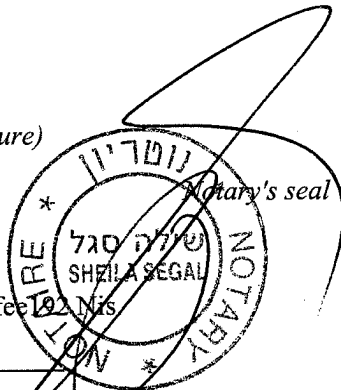
אימות חתימה

AUTHENTICATION OF SIGNATURE

I the undersigned,..... **I Segal Sheila**. Notary at Nahariya., hereby certify that on 19th of September 2017. there appeared before me at my office Mrs., Nadine Amiel., who is known to me personally (whose identity was proved to me by Identity Booklet No 306058058. issued by Ministry of Internal affairs ..at Nazeret*, and signed of her own free will the above document (the attached document marked A' B.) (the document overleaf).

In witness whereof I hereby authenticate the signature(s) of Mrs. Nadine Amiel, by my own signature and seal this 18th of October 2017.

(Signature)



Notary fee 192 Nis

* Where more than one person appeared, each should be named separately, specifying the manner in which his or her identity was proved.

Note: Delete whatever is inapplicable.

אני הח"מ שילה סגל, נוטריון בנהריה ישראל מאשרת בזאת כי ביום 19.09.2016 ניצב(ה) לפני במשרדי מר(ת) נאדין עמיאל הידוע(ה) לי ידיעה אישית, (שזהותו(ה) הוכחה לי על פי תעודת זהותו(ה)), מספר 306058058 שהוצא(ה) על ידי משרד הפנים בנצרת ביום 01.10.1990. וחתם(מה)(ו) מרצונו(נה)(נס) החופשי על המסמך שלעיל (המצורף והמסומן באות/מספר A+B) (שמעבר לדף).

ולראיה הנני מאמת את חתימתו(ה)(ם) של מר(ת) גבי נאדין עמיאל בחתימת ידי ובחותמי, היום 18 באוקטובר 2017

חתימה

חותם הנוטריון

שכר נוטריון. 192 ₪

כאדם אחד, יש לפרש בשמו של כל אחד לחוד בציון



**ONTARIO
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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

Affidavit of Nadine Amiel

(affirmed October _18th, 2017)

I, **Nadine Amiel**, of the of Moshav Shavei Tzion in the State of Israel, SOLEMNLY AFFIRM AND SAY:

1. I am a licensed Israeli advocate, bearing license no. 16088
2. I hereby declare that I am well acquainted with the Hebrew and the English languages and that the documents as listed below, are to the best of my knowledge and professional ability a correct translation into English of the original Hebrew versions as submitted and/or received to/from the Tel Aviv District Court ("Hebrew Versions"), Company Liquidation File 44348-04-16. For clarification, in a few places some words have been added in square brackets to the English language version to make the meaning more clear.
- 3.
4. According to legal advice I received from Adv. Guy Gissin, the Court appointed Functionary and foreign representative of Urbancorp Inc. Canadian company no. 2471774, the Hebrew Versions are the only documents binding on the parties for proceedings conducted in Israel. Accordingly, the Hebrew Versions are the only documents that have been used to conduct legal proceedings in Israel and are therefore the only ones known to date to the courts in Israel. Should there be any inconsistency between the Hebrew and the English versions, the Hebrew versions shall prevail.
5. I do note as an additional comment that, due to transliteration from Hebrew into English (and vice versa), spellings, especially of names, may vary.
6. The list of translated documents are as follows:

(1) Honorable President Judge Eitan Orenstein Judgment and Rulings dated September 26, 2017 a copy of which is attached as Exhibit "A";

(hereinafter: the "Exhibits")

AFFIRMED before me at the City of
Nahariya, in the State of Israel this
18th day of October, 2017.

A Notary Public of a Person Authorized to
Take Oaths in the State of Israel



Nadine Amiel
NADINE AMIEL

(1) Honorable President Judge Eitan Orenstein Judgment and Rulings dated September 26, 2017 a copy of which is attached as Exhibit "A";

(hereinafter: the "Exhibits")

AFFIRMED before me at the City of Nahariya, in the State of Israel this 18th day of October, 2017.

A Notary Public of a Person Authorized to Take Oaths in the State of Israel



Nadine Amiel

NADINE AMIEL

Exhibit "A" to the Affidavit of Nadine Amiel

N.A.

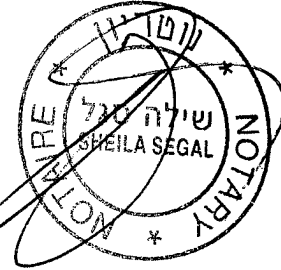
September 26, 2017



The District Court in Tel Aviv – Jaffa

Company Liquidation File 44348-04-16 Reznik Paz Nevo Trusts Ltd. v. Urbancorp Inc.,
Canadian Company 2471774, et al.
Motions 42, 47, 48, 50

Before Honorable President Eitan Orenstein



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Liquidation case 44348-04-16 , Reznik Paz Nevo Trusts Ltd. v. Urbancorp Inc. a company in Canada
2471774 et al
Motions 42,47,48, 50

Before the Honourable President Eitan Orenstein

<u>In the matter of:</u>	The Companies Law, 5759-1999 The Companies Ordinance [New Version] 5743- 1983	<u>The Law and the Ordinance</u>
<u>And in the matter:</u>	Urbancorp, Inc.	<u>the Company</u>
<u>And in the matter:</u>	Adv. Guy Gissin – the Company's Functionary By attorneys' Adv. Yael Hershkovitz and/or Gilad Bergstein	<u>The Functionary</u>
<u>And in the matter:</u>	1. Alan Saskin 2. Philip Giles 3. Mendel David 4. John Biran 5. James Cameroon By attorneys' Adv. Gad Ticho and/or Ishai Shidlowky-Or	<u>The Canadian Directors</u>

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6. Tuvia Facthold
By the lawyers Weksler, Bregman & Co., Law Offices
7. The Fuller Landau Group Inc.
(as proposal trustee of Alan Saskin)
8. The Webster Trust
9. TCC/Urbancorp Bay Stadium L.P
10. Urbancorp Management Inc.
By Attorney Adv. Ofer Zur et al

The Shareholders

And in the Reznik Paz Nevo Trusts Ltd.
matter:

By attorneys Amir Flamer and Evyatar Kramer et al.

The Trustee to the
Bondholders

And in the The Official Receiver
matter:

The Official Receiver

1

2 Judgment and Rulings

3 1. General

4 Placed before me is the motion of Adv. Guy Gissin, who has been appointed as the Functionary
5 of the company "Urbancorp Inc.", in the matter of the approval of the Creditors' Arrangement
6 (hereinafter respectively: "**the Functionary**"; "**the Company**"; "**the Creditors' Arrangement**")
7 (Motion 42). Also placed before me are the Functionary's motions: to disburse an intermediate
8 dividend in the amount of NIS 70 million to secured creditor (Motion 47); to approve an
9 intermediate legal fees (Motion 48); to continue to present the Company in the Class Action
10 and to approve the legal fees for dealing with the [Class] Action (Motion 50).

11 For the sake of efficiency, I have chosen to give a combined ruling.

12 2. Background



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1 The Company was incorporated in Canada and dealt mainly with the leasing and development of
2 real estate for commercial and residence in Canada. In the month of December 2015 the
3 Company raised capital in the amount of NIS 180 million by means of issuing debentures in the
4 Security Exchange in Tel Aviv. The subscriber in the issuance was the Company Apex Issuances
5 Ltd. ("Apex").

6 A few months after the issuance there was a deterioration in the Company's financial state,
7 which *inter alia*, resulted in the resignation of the Company's directors, and the trading halt in
8 the Company's debentures. The subsidiaries, whose income was destined to serve the debt of
9 holders of the debentures, have taken insolvency proceedings in Canada and a trustee was
10 appointed on behalf of the Canadian court. In light of the above mentioned, the trustee of the
11 bondholders, "Reznick, Paz Nevo Trusts Ltd." (hereinafter: "**the Trustee**") submitted a motion to
12 appoint a functionary. In the decision dated April 25, 2016 Adv. Guy Gissin was appointed as
13 the Functionary in the Company.

14 At the same time, the controlling shareholder of the Company, Mr. Alan Saskin found himself in
15 insolvency proceedings and the Canadian monitor, the Company, The Fuller Landau Group Inc.
16 (as proposal trustee of Alan Saskin), was proposed as trustee of his assets (hereinafter
17 respectively: "**the Debtor**"; "**the Canadian Trustee**").

18 To complete the picture to point out that against the Company a class action was also filed and a
19 motion to approve it as such, at the Economic Department of the District Court in Tel Aviv Yafo,
20 by Mr. Tuvia Facthold (hereinafter: "**Facthold**") (Class Action file 1746-04-16). In this proceeding
21 claims of breaches and omissions that were carried out by the Company, the Debtor and other
22 Functionaries contrary to the provisions of the Securities Law, 5728 - 1968, (hereinafter: "**the**
23 **Securities Law**") were alleged. The amount of the claim stands in the amount of NIS 42 million
24 and is found in the first stages of clarifying the motion to approve the action as a class [action].
25 An additional class action was filed against Apex by Mrs. Noami Monrov ("**Monrov**") (Class
26 Action file 16652-04-16), and in this matter the lack of disclosure that was tantamount to a
27 misleading detail in the Prospectus contrary to the Securities Law (both of the above mentioned
28 class actions are collectively referred to as "**the Class Actions**"). Apex filed a motion in the
29 Insolvency court to permit it to file a third-party notice against the Company (Motion 24), and to
30 appeal the Functionary's decision which rejected the debt claim that was submitted to him, as
31 will be detailed in due course.

32



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1 3. **The Company's Creditors**

2 The main creditors of the Company are the bondholders that operate through the Trustee and
3 in accordance with the Trustee's documents between the Trustee and the bondholders that are
4 not part of the composition (entanglement) of the file before us. The Trustee filed a debt claim
5 to the Functionary in the amount of NIS 180 million and this was approved in full by the
6 Functionary and recognized as a secured debt up to the limit of the amount that will actually be
7 received.

8 Additional creditors of the Company are suppliers and service providers, officers and
9 subsidiaries of the Company whose cumulative crediting stands at about NIS 8.5 million. Out of
10 the amount, as stated, the Functionary approved an amount of about NIS 1.6 million. The
11 Functionary, *inter alia*, recognized the debt claims for the Directors fees and expenses and the
12 debt claim of various service providers. The Functionary rejected part of the debt claims: debt
13 claims from law offices, contingent indemnification claims that were filed by officers and
14 directors of the company and Apex, payments for mediation services and etc.

15 On the Functionary's ruling of the debt six appeals were filed: four appeals were filed with the
16 attorneys of the functionary in Canada. Two appeals were filed in this court: one, by the
17 Company's Israeli Directors, Messrs, Eyal Geva, Ronen Nekar, Daphna Aviram (hereinafter: "**the
18 Israeli Directors**") (Different civil appeal 33007-01-17) for which they requested to be
19 compensated from the Company for the claims submitted against them was rejected by the
20 Functionary. From decisions dated March 1, 2017 and March 2, 2017 the consent of the parties
21 was approved according to which the rights of the Israeli directors by virtue of the letter of
22 indemnification have the status of a deferred debt as determined therein. The second was filed
23 by Apex, (Different civil appeal 5249-06-17) and it will focus on the Functionaries rejection of
24 Apex's debt claim for compensation from the Company contrary to the subscription agreement,
25 as far as it may be adjudicated to its liability expenses in the class action proceedings that has
26 been filed against it.

27 On the abovementioned background, the Motions placed on my doorstep will be examined.

28 4. **The Motion to Confirm the Creditors' Arrangement**

29 4.1 **The Principles of the Creditors' Arrangement**

30 The Creditors' Arrangement is condensed and includes a number of provisions in the matter:



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The Disbursement of a Dividend; the approval of the disbursement of dividends to creditors from proceeds of existing realization and the approval of the disbursement of future monies, as far as these will be received from different sources amongst them the realization of assets and different legal proceedings. According to the Creditors' Arrangement, an intermediate dividend will be disbursed to secured creditor, in other words, the Trustee in the amount of Canadian dollars 20 million, whose value is approximately NIS 70 million. The motion for this disbursement was requested by the Functionary as an independent Motion also (Motion 47) as detailed later.

The Reimbursement Expenses in the Proceeding and Secured Creditors; the approval of the reimbursement of the financing of legal proceedings that have been transferred to the Functionary by the Trustee at the commencement of the proceedings in the amount of NIS 500,000. With respect to secured creditors, it is to be clarified that that any amount that may be received from the realization of "back up projects" as defined in the Prospectus, will be used to repay the secured debt until full repayment. It should be noted further that that proceeds in the amount of Canadian dollars 64.7 million has been received by the monitor, managing the Group's assets.

Maintaining Reserves; an amount will be preserved to finance claims under dispute and reserves to finance class actions out of monies that are destined for disbursement to unsecured creditors. It is furthermore requested to preserve reserves to finance the expenses of the Creditors' Arrangement.

Realization of the Remaining Assets of the Group; The Functionary shall continue to operate to examine the possibility of realizing the Group's remaining assets in Canada, including the rights in the Downview project and the geothermal assets of the Company and the Company's subsidiaries.

Assignment of claims right and taking legal proceedings; The Company's creditors assign to the Functionary with an absolute and irrevocable assignment their entire claim rights towards third parties including: the State authorities, Company's officers and others, whether in Israel or in Canada, with respect to the reasons leading up to the collapse of the Company. The Functionary will, subject to the confirmation of the court, be authorized to take legal steps (proceedings)

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1 against said third parties and all as detailed in the Letter of Assignment attached to the Motion
2 to confirm the Creditors' Arrangement.

3 **4.2 The Essence of the Creditors' Arrangement**

4 The Creditors' Arrangement before me is not a classical arrangement, because the majority of
5 Creditors' Arrangements include provisions according to which the creditors waive a part of
6 their debt; arrange the continuation of the Company's activities, whether by the controlling
7 shareholder who contributes from his sources to the arrangement fund, or otherwise; the
8 possibility of recovery, etc.

9 Different, from the regular Creditors' Arrangement, the essence of the Creditors' Arrangement
10 on the agenda is the disbursement of monies to creditors and the assignment of a claim right of
11 the Company's creditors to the Functionary. The Functionary, details the reasons regarding the
12 need of Creditors' Arrangement for the Company, which is in fact the only alternative, given that
13 the other option is liquidation. After examination of the issues, I did not see any reason in the
14 abovementioned difference for not approving the Creditors' Arrangement and the Functionary's
15 position is acceptable to me. In connection with this, it should be clarified that we are dealing
16 with a Canadian company and in this manner difficulty exists to instruct on the liquidation
17 thereof, all the more so this matter is likely to cause complex, legal complications, with respect
18 to the influence of the liquidation on the insolvency proceedings in Canada. Thus for example,
19 the process of liquidation, is likely to give rise to questions of the Functionary's authority as well
20 as the authority of the court, and this is especially true when in Canada different possibilities
21 were raised concerning the continued operations of the Company and in order to realize the
22 different alternatives, and in this way it appears that the way of Creditors' Arrangement is
23 preferable compared to that of liquidation.

24
25 I emphasize that the Creditors' Arrangement is also possible in the sense of the fact that it is a
26 default option whilst there is no other mechanism that allows for the granting of suitable
27 remedies. In this context, it has occurred to me to express my position in the liquidation of the
28 Company (Tel Aviv District) 35560-80 Sella Capital Real Estate Ltd. v. the shareholders in the
29 Company (published in Nevo, November 7, 2010), paragraph 23 and is apt/appropriate in our
30 matter also:

31 "In general, Section 350 of the Companies Law grants the court the authority to approve a
32 different compromise or arrangement in companies in a general statutory framework, whose
33 aim is to assist the application of implementing various arrangements in companies, whilst

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1 adapting to the changing economic needs in accordance with the spirit of the times. We are
2 dealing with a framework section which is used to implement a wide variety of arrangements
3 and it is impossible to refute that in the appropriate case this provision also constitutes the
4 possible legal framework to purchase shares.

5 My approach is in line with the court ruling with respect to the implementation of Section 350
6 of the Companies Law. In this matter we turn to Miscellaneous Civil Applications (TA) 4139/01
7 Carmel Investments Group Ltd. v. the Phoenix Israeli Insurance Company Ltd. 33 (1)772".

8
9 In light of the abovementioned conclusion, I will detail the continuation of the development of
10 the events in connection with the Creditors' Arrangement.

11
12 5. **The Creditors' and Shareholder's Meetings**

13 On May 24, 2017, secured and unsecured creditors meeting were held in Israel and Canada. The
14 meetings were preceded by a Company's bondholders meeting dated May 16, 2017, where the
15 bond holders instructed the Trustee how to vote at the creditors' meetings.

16 **The secured creditors:** The secured creditors' meeting confirmed the arrangement with a claim
17 majority of 99.9%. The Trustee voted on behalf of all the debenture voters with secured claims
18 in the amount of NIS 135,411,391. The bondholders that requested to exclude themselves are:
19 Facthold, who voted against the Creditors' Arrangement on the basis of a claim in the amount of
20 NIS 2,662 and Mr. Zuckerman, with a claim in the amount of NIS 7,475 who abstained from
21 voting.

22 **The unsecured creditors:** The unsecured creditors meeting confirmed the arrangement with a
23 claim majority of 98.7%. The Trustee voted claims of the bondholders in the amount of NIS
24 51,237,242 of the unsecured bondholders; that is all the bondholders, except for the
25 bondholders that requested to exclude themselves: Mr. David Mandel, a Company director,
26 through a power of attorney Mr. Ted Saskin, who voted against the Creditors' Arrangement, his
27 claim in the amount of NIS 18,545; the company West Side Gallery Lofts Inc. through the Debtor
28 and the Canadian Trustee, who objected to the Creditors' Arrangement and its claim in the
29 amount of NIS 430,096. The Israeli directors abstained from voting on the Creditors'
30 Arrangement, their claims are in the amount of NIS 221,018 which is the amount that was
31 approved as directors' remuneration. Additional bondholders who excused themselves,



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1 objected to the Creditors' Arrangement by virtue of claims in the amount of NIS 1,007 and
2 abstaining by virtue of claims in the amount of NIS 2,828.

3 Given that the Trustee represents the absolute majority of the bondholders, that is, beyond the
4 claims' value majority, there is a majority of voters in two of the creditors votes, as well.

5 **The shareholders:** At the shareholder's meeting the company Urbancorp Holdco Inc.
6 participated through the Debtor and the Canadian Trustee, which according to its declaration
7 holds (possesses) the full voting rights on behalf of the Company. The shareholder voted against
8 the Creditors' Arrangement.

9 6. After the voting the Functionary petitioned to confirm the Arrangement and which made it
10 possible for the creditors to file objections. Three organized objections were submitted: the
11 first, by Facthold, the second by the Canadian creditors: the Debtor and Messrs Philip Giles,
12 David Mandel, John Biran, James Cameroon Somerweil (hereinafter collectively: "**the Canadian**
13 **Directors**"); the third by the Canadian Trustee, and indirectly, the Companies: The Webster Trust;
14 TCC/Urbancorp Bay Stadium LP; Urbancorp Management Inc. (hereinafter collectively: "**the**
15 **Shareholders**").
16

17 7. **A hearing in the presence of the parties**

18 In the light of filing objections whose principles will be detailed in due course (later), a hearing
19 was held on September 17, 2017, [a hearing] in the presence of the parties, during the course of
20 which the lawyers for the parties emphasized their objections and the Functionary, the Trustee
21 and the Official Receiver, related to these. For the sake of efficiency, I shall deal with each
22 objection, in its own right.
23

24 8. **The Will of the Majority of the Creditors**

25 Before discussing the merits of the objections, I should preface by noting that under the provisions
26 of Section 350(l) of the Companies Law, 5759-1999 (the "**Companies Law**"), it is required that the
27 meetings of each series (type) approve the Settlement with a majority of three-fourths of the debt
28 and a majority of participants, meaning:

29 "If, in each series (type) meeting gathered under Subsection (A), most of the participants in
30 the vote (less the abstainers), jointly holding three-fourths of the debt represented in the



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1 vote, agreed to the settlement or arrangement, and the court certified the settlement or
2 arrangement, these shall bind the Company and all of the creditors or shareholders or any
3 series thereof, as applicable, and if it is in the process of winding up – the liquidator and any
4 participant (contributory).”

5 To apply this to our case, none dispute that in our case, each series meeting, apart from the
6 meeting of shareholders, approved the Creditors’ Arrangement by a landslide – well beyond the
7 requirements of Section 350(l) of the Companies Law. Thus, in absence of special circumstances,
8 the Court must certify the Creditors’ Arrangement by accepting the required majority of the series
9 meetings, and subject to ruling on any objections and weighing the decision of the shareholders’
10 meeting. It is a fundamental principle that the will of the creditors must be respected, and the
11 Settlement that merited the support of required majority of creditors participating in the vote and
12 holding 75% of the debt must be certified. The rationale for this is that the creditors are in the best
13 position to evaluate whether or not the Creditors’ Arrangement is to their advantage. On this note,
14 I refer to Civil Appeal 3782/09 Legin Food Packaging Ltd. v. Bank Leumi Israel Ltd. (published on
15 Nevo, February 25, 2014), para. 15:

16 **“As stated, even in cases where the creditor meetings have voted in favor of the settlement,
17 the court must certify the settlement (see Section 350(l) of the Companies Law). The court will
18 generally tend towards certifying a settlement that the creditor meetings have voted in favor
19 of. The reason for this is that the vote of the creditor meetings reflects the preferences of the
20 majority of creditors with respect to the proposed settlement. It can be assumed that the
21 creditors themselves are in the best position to evaluate whether or not the settlement is to
22 their advantage. Thus, as a rule, the court will not substitute the judgment of the creditors
23 with its own. Only in exceptional cases of lack of reasonableness or unfairness will the court
24 decide not to certify the settlement (Alshich and Orbach, pp. 617).”**

25 Notwithstanding the foregoing, the Court has the authority to refuse to certify the Creditors’
26 Arrangement, even if it received the support of the majority of the creditors; however, this will only
27 be done in exceptional circumstances, such as when it is proven that a defect occurred in the voting
28 process of the creditor meetings, or where there were ulterior economic motives that are sufficient
29 to disqualify the Creditors’ Arrangement. I refer to Liquidation (Nazareth District) 21285-02-13 Amir

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1 Shahada Construction and Development Ltd. v. Electises Ltd. (published on Nevo, October 31,
2 2013), pp. 6; Liquidation (Tel Aviv) 49085-11-11 Israel Credit Lines Supplementary Financial
3 Services Ltd. (in liquidation) v. the Official Receiver (published on Nevo, September 23, 2012), pp.
4 18; Alshich and Orbach, Suspension of Proceedings (Second Edition, 2010) (“Alshich and Orbach”),
5 pp. 622; I have established additional considerations in the ruling on Liquidation (Tel Aviv District)
6 11478-06-13 I.D.B. Holdings Ltd. v. the Official Receiver (published on Nevo, December 17, 2013),
7 pp. 17.

8 9. As stated, the creditor meetings approved the Creditors’ Arrangement with an absolute majority of
9 99.9% of the debt from the secured creditors and an absolute majority of 98.7% of the debt from
10 the unsecured creditors, i.e., well beyond the majority required by law. A majority of participants
11 was also achieved in each of the meetings. Thus, I will consider the reasons for the objections, the
12 significance of the opposition of the shareholder meeting and whether these pose a reason not to
13 certify the Creditors’ Arrangement.

14 10. Fachtold’s Opposition

15 Fachtold, who holds NIS 2,662 in the Company’s bonds, opposes the full disbursement of the
16 interim dividend to the secured creditor – i.e., the Trustee – unless the Functionary retains NIS 13
17 million in his treasury until the ruling on the class action.

18 The Functionary and the Trustee oppose the position of Fachtold, and believe that there is no
19 reason to suspend payments, considering that the ruling on the class action will not be for a long
20 time, during which period serious damages will be incurred by the creditors who do not receive
21 their payments, and given the enormous sum of interest that will accrue on the sum of the balance
22 that is suspended and not disbursed at Fachtold’s request. It was further argued that Fachtold did
23 not explain how he arrived at the sum of NIS 13 million.

24 The Official Receiver indicated that we are dealing with a conditional debt, starting with the
25 recognition of the class action and continuing with the acceptance of the claim itself, as well as the
26 damages that will be incurred as a result of the delay.

27 10.1 I don’t believe that Fachtold’s opposition is sufficient to prevent the certification of the
28 Creditors’ Arrangement; to be clear.

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1 Fachtold represents a marginal share of the debt, since, as noted, he holds a negligible sum
2 of bonds that is not sufficient to negate the adoption of the Settlement, as far as the scope of
3 the debt is concerned. It is also clear that Fachtold's objection alone is not sufficient to
4 negate the required majority for the approval of the Settlement, as far as the number of
5 voters supporting the Creditors' Arrangement is concerned.

6 *Ex gratia*, even if the entire debt alleged by Fachtold in the name of the class of plaintiffs he
7 purports to represent is recognized, and even if he is recognized as a secured creditor of the
8 Company, this would still be clearly insufficient to negate the required majority for approving
9 the Settlement. As stated, Fachtold has filed claim in the name of all of the plaintiffs in the
10 class action, for a sum of NIS 42 million – a sum comprising some 23.5% of the scope of the
11 secured debt. Since the rest of the secured creditors have supported the Settlement, there is,
12 in any event, a required majority of the debt for approval of the Creditors' Arrangement –
13 even if the class action in its entirety is accepted. Therefore, the conclusion is that Fachtold's
14 opposition is not sufficient to prevent the result of the meeting of secured creditors
15 approving the Creditors' Arrangement with the required majority, whether with respect to
16 the value or the quorum.

17 I should note that Fachtold's motion to consolidate NIS 13 million for the class members he
18 purports to represent in the framework of the class action proceeding was adjudicated
19 before me in Motion 34. I reasoned that the motion to consolidate funds to secure Fachtold's
20 claim essentially amounted to a temporary injunction; therefore, it was appropriate that the
21 motion be adjudicated in the framework of the class action, given that the class action court
22 has the tools to evaluate the chances of the claim, and, in this framework, the motion to
23 consolidate funds to secure it. Thus, in my ruling of July 3, 2017, I instructed Fachtold to refer
24 his motion to the court adjudicating the class action. A leave of appeal to the Supreme Court
25 was filed on that ruling (Leave of Civil Appeal 5846/17), and the Supreme Court's ruling of
26 September 13, 2017 determined that, given the lack of clarity with respect to the type of
27 debt represented by Fachtold – i.e., secured or unsecured – the insolvency court should
28 establish whether we are dealing with a secured or unsecured debt, for the purpose of
29 Fachtold's motion to consolidate funds. It was further determined that the insolvency court
30 will determine the manner of adjudication with which to investigate the type of debt



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1 represented by Fachtold. The difficulty is that, even if I were to determine the type of debt
2 represented, this would not be sufficient to quantify the scope of Fachtold's debt, nor
3 whether or not it is a certain debt.

4 Fachtold is a conditional creditor, since he must first convince the court adjudicating the class
5 action to accept his motion to certify the class action. If and to the extent that he succeeds in
6 this task, he will need to convince the court to accept the class action itself. There is no doubt
7 that this is a process that will take a long time, not least considering the possibility of an
8 appeal, should one be filed. One must consider that, during this entire period, a sum of NIS
9 13 million – out of the total sum of NIS 70 million, i.e. nearly 20% of the sum intended to be
10 disbursed – should be retained at Fachtold's request, without this Court so much as having
11 the tools to investigate whether there is any justification for retaining said sum.

12 10.2 Reflection on the significance of the class action hovering over the Creditors' Arrangement:

13 When the certification of a Creditors' Arrangement is sought for a company that is also the
14 subject of a class action, the prospect of the claim clouds the Creditors' Arrangement, since
15 there is no way to truly know how the class action will affect the Creditors' Arrangement,
16 considering it is a conditional claim. Class actions, which are subject to recognition or
17 certification as class action, are usually complex and complicated, involve large sums, and
18 don't require the movant to pay a fee, which increases the uncertainty and significantly
19 reduces the rate of the dividend that can be disbursed to the creditors – even if these
20 deserve higher dividends. This difficult issue was expressed by the scholars Alshich and
21 Orbach, pp. 702-707:

22 **"It's not difficult to see that the class action contains all of the elements that could**
23 **prove destructive to the Creditors' Arrangement: Legal-factual complexity making it**
24 **unsuited to determination by the trustee, and often causing it to continue for several**
25 **long years; a tendency to reach enormous sums, especially when filed in the name of a**
26 **large class of alleged injured parties; and the fear of abuse by "professional"**
27 **blackmailers and plaintiffs."**



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1 I concur with the opinion of these scholars as to the difficulty generated by pending claims
2 that frustrate the progression of the Creditors' Arrangement proceedings and raise the
3 specter of undermining the Creditors' Arrangement, all the while being unable to negate the
4 possibility of same being entirely unjustified – such as in the event that the motion to certify
5 the class action, or the class action itself, are dismissed. This difficulty also exists with respect
6 to regular claims that are filed, such as tort claims; however, its potency is less than when
7 dealing with class actions, for the reasons I have listed above.

8 I should note that the secondary legislator was aware of the problems stated above, and, for
9 this reason, created a legislative mechanism in the form of Regulation 24(B) of the
10 Companies Regulations (Motion for Settlement or Arrangement), 5762-2002 (the
11 "Settlement Regulations"), which determines that:

12 **"If a debt claim is filed for a conditional or unfixed debt, the functionary shall**
13 **determine the chances, by its estimation, of the condition's fulfillment, or the value of**
14 **the debt, as applicable; should the functionary determine that an unfixed debt cannot**
15 **be fairly estimated, said debt claim shall not be allowed to vote; should the**
16 **functionary believe that the chances of the realization of a conditional debt cannot be**
17 **determined, it shall refer the matter to the court, and the court shall determine the**
18 **entitlement of the conditional debt's creditor to vote in the meetings."**

19 It would appear to be fitting that I order the activation of the mechanism set out in
20 Regulation 24 of the Settlement Regulations, such that the Functionary would examine
21 Fachtold's debt claim in accordance with the mechanism stated in the regulation, and only
22 following and subject to such examination, advance the Creditors' Arrangement and consider
23 how the meetings should vote. This being said, I don't believe Regulation 24 of the
24 Settlement Regulations applies in our case. On this note, I should clarify that Fachtold claims
25 to be a secured creditor, along with the class he claims to represent. This being the case, he
26 is not required to file a debt claim. Therefore, the mechanism set out in Regulation 24 of the
27 Settlement Regulations is inapplicable in our case. Moreover, Fachtold did not appeal to
28 prevent the convening of the creditor meetings until after the decision regarding his debt, its



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1 scope and its type. For this reason, as will, there is no reason to reopen the convening of the
2 meetings, nor the manner of their voting.

3 Above and beyond – As stated, in our matter, even if the class action is granted in full, and
4 Fachtold's debt claim, as well as the class he purports to represent as a secured creditor are
5 recognized, this alone shall not be sufficient to deny the Creditors' Arrangement at this point.
6 This is the case given that the full amount of the debt according to the class action falls
7 below the scope of debt that may have prevented the confirmation of the Creditors'
8 Arrangement with regard to the majority of the debt stipulated in Section 350(l) of the
9 Companies Law, since, in any event, over three quarters of the scope of the required credit
10 to confirm the Creditors' Arrangement was attained.

11 The problematic nature of Fachtold's motion to consolidate the funds in the case before me
12 is intensified given that Fachtold is motioning to withhold the payment to the secured
13 creditors, and in light of the considerable amount that he is motioning to withhold NIS 13
14 million. This is further intensified given that he is still a conditional creditor since the action
15 has yet to be recognized as a class action, and in any event, the action has yet to be ruled on
16 its merits. As stated, the insolvency court does not have the tools to assess the odds of the
17 class action's certification, nor the odds of the action itself. These are determined by the
18 court hearing the class action. However, the Supreme Court's decision instructing the stay for
19 disbursing dividends until September 27, 2017 must be implemented in order to enable
20 Fachtold to file an appropriate motion. Although, as detailed above, the ruling shall not
21 determine the scope of the debt, nor the certainty of the creditor, but rather only the type of
22 creditor. I deliberated/considered whether there is room to delay the clarification of the
23 decision regarding the type of creditor until after the clarification of whether the
24 prerequisites were fulfilled. However, in light of the Supreme Court's ruling, I found that the
25 deliberation of the dispute regarding the creditor's classification should advance.

26 10.3 For the sake of caution and in light of the Supreme Court's order, according to which the
27 disbursement of funds shall be delayed in the rate petitioned by Fachtold, the order shall
28 remain in place until another decision is reached. However, I believe that if it later becomes
29 apparent that there was no basis for the stay that harmed the creditors, they must be



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1 allowed to file an action against Fachtold for the damage it caused, if any. In this regard, one
2 must draw an analogy from the temporary injunctions chapter in the Civil Procedure
3 Regulations, 5744-1984 (the “Civil Procedure Regulations”), and from the case-law that laid
4 the legal foundation required to charge a plaintiff at whose request a temporary injunction
5 was filed, for damages caused as a result of granting the injunction, after his action was
6 rejected. Similarly, one may draw the analogy from Regulations 364-365 of the Civil
7 Procedure Regulations. Therefore, as a condition for the stay, Fachtold must sign on a
8 personal undertaking to pay for any damages caused, if any, as a result of granting the
9 temporary stay for disbursing dividends to the creditors.

10 10.4 Therefore, I instruct that the sum of NIS 13 million from the total funds that the Functionary
11 motions to disburse shall be retained at Fachtold’s request until another ruling is reached,
12 subject to Fachtold signing a personal undertaking by October 15, 2017, as required
13 according to Article 365(B) of the Civil Procedure Regulations, *mutatis mutandis*.

14 Fachtold shall file a motion to be recognized as a secured creditor by November 1, 2017. The
15 Functionary shall respond to the motion by December 1, 2017. The motion shall be brought
16 for my review on that date. For the avoidance of doubt, the parties shall file a copy of the
17 pleadings to the clerk by the stipulated date, in addition to filing a copy on Net HaMishpat.

18 10.5 As an aside, reference to the other reasons of Fachtold’s opposition, including the
19 assignment of the plaintiff’s rights, will be discussed in the continuation of the judgment,
20 since these reasons were also raised by additional opponents.

21 **11. Opposition of the Canadian Directors**

22 The Canadian Directors oppose the Creditors’ Arrangement, primarily since it does not include the
23 indemnification to which they are entitled to the extent that they will be charged with actions filed
24 against them due to them being officers in this Company. This is as opposed to the Israeli Directors
25 who received the status of the Company’s deferred creditors.

26 The Functionary disputes the Canadian Directors’ objections, and claims that their objections are
27 intended to prevent their investigation and the filing of legal proceedings against them. The
28 Functionary further claims that the Canadian Directors’ objections should be rejected once the debt



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1 claim that they filed was dismissed and they did not file an appeal, thereby implying that we are
2 dealing with a final dismissal, and they shall not be considered creditors of the Company. The
3 Official Receiver believes that Canadian Directors do not have standing since they did not appeal the
4 ruling regarding the Functionary's debt.

5 In the hearing, the Canadian Directors' representative claimed that his client still has the right to file
6 an appeal regarding the Functionary's ruling rejecting the Director's debt action. The representative
7 even petitioned to present a document in this regard. In contrast, the Functionary claimed that the
8 date had already passed, as stated in his response. I did not see fit to receive the document given
9 that we are dealing with a factual matter that must be supported by an affidavit, that the Canadian
10 Director's representative did not have, as well as the fact that they did not appear at the hearing. I
11 believe that there is no place for this Court to make determinations regarding the factual dispute
12 between the Canadian Directors and the Functionary with regard to the former's [sic] rights to
13 appeal the Functionary's ruling. This dispute shall be heard before the competent authority in the
14 context of the appropriate proceeding, if filed, and there is no place to require it in the framework
15 of the motion to confirm the Creditors' Arrangement.

16 To the crux of the matter – since the regular/unsecured creditors' meeting confirmed the Creditors'
17 Arrangement by a majority above and beyond the required, as detailed above, the Canadian
18 Directors' opposition cannot prevent the confirmation. Not to mention that their only opposition
19 was based on differences in the settlement between them and the Israeli Directors that will be
20 compromised if it becomes apparent that the Canadian Directors' have the right to appeal the
21 rejection of the debt claim, and insofar as they file an appeal and it is accepted. In order to assure
22 the Canadian Directors, it was clarified that dividends would not be disbursed to the deferred
23 creditors until the fate of the Canadian Directors' creditors is clarified.

24 **12. Opposition of the Shareholders**

25 The Canadian Trustee and the Shareholders believe that there is a good chance that the Company's
26 whole debt shall be paid, and therefore, in their opinion, weight should be given to their position in
27 confirming the Creditors' Arrangement. The Canadian Trustee and the Shareholders do not oppose
28 to the interim disbursement/ of dividends, but believe that the Creditors' Arrangement should not
29 be confirmed for a number of reasons: the motion to confirm the Creditors' Arrangement is not



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1 supported by the Functionary's affidavit; the Creditors' Arrangement is worded in a general manner
2 and does not stipulate an outline that will end the procedure; the Functionary does not have the
3 authority to liquidate the assets since it is delegated to the Canadian Functionaries; the assignment
4 of the creditors' rights to an action is general; clarifications were requested from them on specific
5 topics; the Canadian Trustee and the Shareholders oppose the fees petitioned by the Functionary.

6 In the framework of the motion to disburse an interim dividend (Motion 47), I will refer to the
7 opposition of the Canadian Trustee and Shareholders to keep the sum of NIS 7 million in the
8 Functionary's fund for financing his expenses, since, in their opinion, this amount must also be
9 disbursed to the creditors.

10 12.1 This is the place to note that Fachtold joined some of the Canadian Trustee's and
11 Shareholders' objections that were mentioned above. Among these: Fachtold opposes the
12 Functionary's assignment of rights in light of his petitioned general assignment, and it is
13 likely to overlap the grounds for the class action that he filed, as well as due to the conflict
14 of interests between the Functionary and the Company's creditors. Fachtold further claims
15 that the Creditors' Arrangement should not be confirmed since it is not supported by an
16 affidavit. The Functionary did not specify, in his opinion, the financial scope requested by
17 him to execute the Settlement, and he did not specify the amount of the financial reserves
18 that he wishes to maintain.

19 12.2 The Functionary disagrees with the stance of both the Canadian Trustee and the
20 Shareholders, as well as with Fachtold's stance.

21 As for the essence of the Canadian Trustee's and the Shareholders' opposition, the
22 Functionary claims that these parties do not have standing with regard to the Creditors'
23 Arrangement confirmation.

24 The Functionary's claim to the objections' merits:

25 It is claimed that the motive at the basis of the opposition of the Canadian Trustee and the
26 shareholders is to prevent their investigation and the filing of legal proceedings against them.
27 As for the petition for details of the rights assigned to the Functionary by the Trustee, the
28 Functionary claims that this, along with the findings of his investigation, were intended to



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1 expose the legal grounds for which he would make a future claim against the Canadian Trustee
2 and the Shareholders. As for Fachtold's claim with regard to the assignment of the actionable
3 rights, the Functionary proposed that insofar that there is overlap between the grounds for the
4 future action that he would take and the grounds for the class action, then he would file a
5 preliminary motion with the court prior to filing the action.

6 With regard to the claims regarding the lack of a supporting affidavit in the motion to confirm
7 the Creditors' Arrangement, the Functionary responded that the motion is based on
8 information that was obtained in the framework of his position, and therefore, he is not
9 required to support it with an affidavit on his behalf.

10 As for the matter of the objection to the proceeding's expenses; the Functionary clarified that
11 the proceeding's expenses up until now in Israel stand at a sum of NIS 192,000. The future
12 expenses are unknown at this stage, and money should be kept in the insolvency fund
13 according to the general estimate in a sum of NIS 7 million, which appears reasonable.

14 As for the Canadian Trustee's and the Shareholders' objection to the fees, the Functionary
15 believes that there is no room to allow them to object to the fees because they are being
16 investigated by him.

17 12.3 The Official Receiver believes that the Creditors' Arrangement should be confirmed. As for
18 the assignment of rights, at first the Official Receiver thought it was appropriate for the
19 Functionary to detail which grounds for the action he wishes to assign. Subsequently, and in
20 light of the sweeping consent of the creditors to the proposed Creditors' Arrangement, the
21 Official Receiver did not insist with the detail requirement, and he even reasoned that it
22 provided a clear and coherent refuge/lodging for the management of the creditors' action.
23 As for the proceedings' expenses, at first the Official Receiver reasoned that there was room
24 for the Functionary to elaborate on the expenses that he spent until now, and the future
25 expenses would be examined in the framework of the reports and in the Functionary's
26 motions. However, after the explanations that were given in the framework of the
27 Functionary's responses, as well as during the hearing, the Official Receiver reasoned that
28 there is no need to continue to elaborate.



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1 12.4 The shareholders' stance on certifying the Creditors' Arrangement – the normative
2 framework

3 The case-law states that in the laws of insolvency, the shareholders' interest is deferred to the
4 creditors' interest, such that an action performed on behalf of the creditors has priority even if
5 it may harm the shareholders. The Creditors' Arrangement was made on behalf of the
6 creditors with the aim of increasing their rate of repayment. In light of the aforesaid, the
7 shareholders' stance with regard to the confirmation of the Creditors' Arrangement is minor,
8 and it is doubtful whether there is room to consider their own preferences in the confirmation
9 of the Creditors' Arrangement. In this context, the remarks of the Supreme Court (his Hon.
10 President Grunis) in Leave of Civil Appeal 8417/11 Nemi Trustees Ltd. v. Adv. Shaul Bergerson,
11 Receiver for N.I.L.I Real Estate Ltd. (In Receivership) (published on Nevo, May 7, 2013), p. 11,
12 are appropriate:

13 “However, in the case that that there is no concrete possibility of adopting a
14 settlement that will leave the company's current controlling shareholders ‘in the
15 picture’ even after the attempt to rehabilitate it, the creditors are those who remain
16 at center stage, while the primary goal of the settlement is to benefit them, i.e. to
17 increase the debt repayment rate towards them.”

18 (Emphasis added – E.O.)

19 I shall also reference Liquidation (Tel Aviv District Court) 3706/09 Shtang Construction and
20 Engineering Ltd. (published on Nevo, November 11, 2009), p. 3:

21 “The very concept of the shareholders' deference to the creditors in a state of
22 insolvency shows that when the interest of the former collides with the interest of the
23 latter, the creditor's interest shall prevail. In a situation in which the desire of
24 shareholders to stay in their place conflicts with the creditors' interest in reaching a
25 settlement, preference is given to the shareholders' interest (inter alia, by
26 disqualifying a dilution attempt). In practice, this means their preference over the
27 creditors, and therefore is tantamount to contradicting the insolvency laws.”

28 (Emphases added – E.O.)



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1 I had occasion in the past to express my views on the matter as stated in Liquidation 38222-
2 01-10 Development Company Founded by the Israel Contractors and Builders Center v.
3 Official Receiver (published on Nevo, April 7, 2011), on p. 7:

4 "I agree with the case-law since, also in my opinion, the court should prefer the
5 interest of the creditors over those of the shareholders in a situation of insolvency and
6 on the principle of rejection of the latter; all the more so in the circumstances of the
7 case before us. The creditors who participated in the creditors' meeting unanimously
8 supported this creditors' arrangement from an informed perspective that it would
9 only improve their debtor's solvency if a settlement is not reached. This stance must
10 be preferred to that of those shareholders who objected in the shareholders' meeting.
11 In practice, this is sufficient in order to reject Sasson's opposition."

12 Only in the case where there is a reasonable possibility that a balance will remain for the
13 shareholders after the creditors' debts have been repaid will it is also be appropriate to take
14 into consideration the interests of the shareholders. However, insofar as there is no such
15 possibility, then the creditors "remain at center stage" and the primary goal of the Creditors'
16 Arrangement is to benefit them (also see Liquidation (Tel Aviv District Court) 32984-07-10
17 Peleg – N.I.A. Ltd. v. Trustee Bonds Holder (Series A) (published on Nevo, November 30,
18 2010), on p. 9; and Liquidation (Tel Aviv District Court) 35221-07-16 Africa Israel
19 Investments Ltd. v. Official Receiver of the Tel Aviv and Central District (published on
20 Nevo, July 28, 2016), paragraph 12)).

21 12.5 Implementation in our case:

22 I should first clarify that, as far as I am concerned, the Canadian Trustee's position should be
23 seen as the position of the shareholders. This is the person holding the ownership of the
24 Company's shares, whether directly or indirectly, not least considering that the Canadian
25 Trustee is an officer in the bankruptcy of the Debtor, who is the indirect controlling
26 shareholder of the Company. Thus, these will hereinafter be jointly referred to as "the
27 Shareholders."



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1 I see no reason to accept the Shareholders claim that their position should be considered
2 because they believe there is a good chance that all of the Company's debts will be repaid,
3 and a balance will remain. The claim is made vaguely and without explanation, without
4 references or, at least, an affidavit to support the claim that a balance will remain following
5 the full repayment of the debt to the creditors. The current picture says otherwise, and I will
6 refer to the well-grounded reports of the Functionary, which unequivocally show that the
7 creditors will not be repaid their full debt. It is unclear on what basis the Shareholders stake
8 their general claim that a monetary balance will remain in the Functionary's fund following
9 the full repayment of the debt to the creditors. It is also worth noting that the Shareholders
10 presented no repayment plan, cash injection, or financial opinion, nor so much as any other
11 reliable reference to support this unsubstantiated narrative. Certainly, as things appear on
12 the surface, based on the Creditors' Arrangement, the list of assets and their liquidation,
13 it can be expected that the creditors will not receive full repayment of their debt. We must
14 conclude that the Shareholders' position should be seen as weak and deferred, as detailed
15 in the rulings granted above.

16 *Ex gratia*, I have also given thought to the Shareholders' other arguments, and did not find
17 that these were sufficient to bring me to a different conclusion.

18 **12.6 The Settlement is general and not sufficiently detailed;** I found no substance in this
19 argument, and did not understand what provoked the Shareholders' ire. The Functionary
20 spelled out the principles of the Settlement in a clear and orderly manner, including with
21 respect to the monetary disbursements until now, and the forecast of future disbursements
22 given the anticipated receivables and their chances of being realized, as well as their
23 estimated sums. The Functionary further clarified the expenses associated with the
24 proceeding and the essence of the rights assignment, as detailed later on. I didn't find that
25 more details should have been provided than were provided. As stated, we are dealing with
26 orderly and sufficiently explained principles. To the extent that clarifications are required
27 the time of their implementation, there is nothing preventing these from being sought in
28 order to avoid any doubt; however, presently, I do not see anything lacking.



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- 1 12.7 **Lack of clarity with regards to the costs of the proceeding;** The Functionary noted that the
2 total expenses from the proceeding in Israel amounted to NIS 192,000, and even attached a
3 table detailing the expenses until now. As for future expenses, obviously, they cannot be
4 quantified at this stage of the proceeding. The Functionary sought to leave a sum of NIS 7
5 million in the Company's treasury as an estimate of future anticipated expenses. The line of
6 logic, common sense, and life experience teach us that it is better to leave a sum that will be
7 a sufficient source to cover whatever is needed, than to empty the funds and leave no
8 source to serve the monetary needs of the proceeding. I don't believe the Functionary's
9 estimate was unreasonable, given his discretion, his past experience, and the needs of the
10 proceeding, which are often associated with significant costs. It should also be stressed that,
11 in any event, there are control and supervision with regards to the payment of expenses,
12 including through motions filed with the Court, which are also examined by the Official
13 Receiver. Therefore, there is also no concern that the creditors or the Shareholders will be
14 harmd in this respect.
- 15 12.8 **The Functionary's lack of authority to liquidate the assets;** the *prima facie* authority to
16 liquidate the assets of the subsidiaries rests with the Canadian Functionaries. However, the
17 Functionary is vested the Company's authorities to act in the subsidiaries, and, in this
18 framework, to receive information about the subsidiaries' operations, properties, and rights
19 (see ruling of April 25, 2016). Moreover, the Functionary, by virtue of his station, represents
20 the interests of the Company and the Company's creditors; therefore, even if he himself
21 does not liquidate the assets of the subsidiaries, he acts in coordination with the Canadian
22 Functionaries, without deviating from his vested authorities. The foregoing does not negate
23 or derogate from the authorities of the Canadian Functionaries.
- 24 12.9 **Lack of an affidavit supporting the confirmation of the Creditors' Arrangement;** I was
25 bewildered by this argument raised by the Shareholders and Fachtold. That these, who have
26 sown their opposition in a series of factual claims – such as the Shareholders' claim that a
27 balance will remain for the Shareholders in the Company's treasury; Fachtold's claim that
28 the Functionary said that he is considering filing claims under the Securities Law; and more –
29 would also attack the Functionary for lacking an affidavit to support the motion to confirm



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1 the Creditors' Arrangement! This brings to mind the saying: "It is good to practice what one
2 preaches."

3 As for the merits of the claim – case-law teaches us that the Functionary is not generally
4 required to support his motions with an affidavit, given that the information is not known to
5 him first-hand (see: Civil Appeal 5709/99 Levin v. Schiller, P.D. 55(4) 925, 937 (2001); Leave
6 of Civil Appeal 3032/08 Efriam Reich v. Adv. Avner Cohen, in his position as Provisional
7 Liquidator, (published on Nevo, September 2, 2009). While some of the information the
8 motion concerns is known to the Functionary, it came into his hands by virtue of his
9 position; therefore, I see no reason to deviate from the precedent case-law by requiring him
10 to file an affidavit. I will add to this that there was no allegation, in the objection in this
11 regard, of a material defect in the motion that would have required the support of an
12 affidavit on the part of the Functionary.

13 **12.10 The Functionary's attorneys' fees in the actions he files**; I believe that the Shareholders
14 have no standing to ground their allegations concerning the attorneys' fees to be paid to the
15 Functionary for conducting a claim against them, considering they are tainted by a conflict
16 of interest. Moreover, preference must be given to the weight of the creditors and the
17 Official Receiver, who confirmed the framework of fees to be paid to the Functionary.

18 As for its merits; the eligibility for these attorneys' fees are on the basis of success, which
19 may alleviate from the financing burden that would have existed if the fees were paid on a
20 hourly basis. This also incentivizes the Functionary to avoid accruing unnecessary expenses.

21 **12.11 Assignment of the claims rights by the Functionary**; As stated, I believe that the
22 Shareholders have no standing with respect to the filing of claims against them, and this
23 includes the assignment of the creditors' claims rights against them. The Supreme Court
24 (Her Hon. Justice Baron) was recently required to address this matter in Civil Appeal
25 7102/12 JKV BETELIGUNEGES GmbH v. Moonlight Wireless Ltd. (in liquidation) (published
26 on Nevo, September 11, 2017) (the "Moonlight Case"), and her words there are equally
27 relevant to our case:



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1 “The motion to issue instructions, as well as the Liquidator’s response to the minority
2 group’s offer, concern an authority that is distinct from the investigative authority
3 granted to the Liquidator in the framework of the liquidation proceeding. This is the
4 authority to file claims in the name of the Company, under Section 307(a)(1) of the
5 Companies Ordinance (see *Cohen, Vol. A*, p. 287-291). In this regard, as well, the law is
6 that the appellates are given no right to respond. This has already been determined in
7 the primary circuits, and in rulings by single justices in this Court...”

8 See, as well, Civil Appeal 8481/14 Afridar Housing and Development in Israel Ltd. v. Fritsky
9 (published on Nevo, June 26, 2017), p. 2.

10 So as not to miss anything, I will add that the objection, on its merits, is also insubstantial. As
11 stated in the **Moonlight** case, the Functionary has the authority to file claims in the name of
12 the Company, by virtue of his position, against those who, he reasons, were responsible for
13 its collapse. See: Section 307(a)(1) of the Companies Law, 5743-1983; the **Moonlight** case, p.
14 22; Civil Appeal 1938/11 The Zohar Construction Tower Ltd. v. Gov Guy Ltd. (published on
15 Nevo, December 1, 2011), p. 10-11. Therefore, it is doubtful whether the Functionary even
16 needs an order in this regard, in the framework of the Creditors’ Arrangement.

17 For these reasons, I cannot accept the motion for an explanation of the assignment of rights
18 sought by the Shareholders. The Canadian Trustee is the Trustee of the Debtor in
19 bankruptcy proceedings he is currently undergoing. Therefore, to the extent that the Debtor
20 is a potential defendant, the Canadian Trustee is the one to substitute him, and the latter
21 should also be treated as a potential defendant – whereby, naturally, the Trustee would
22 have a conflict of interest with the assignment of actionable rights. The Shareholders and
23 the Canadian Directors are also potential defendants, in light of the conclusions of the
24 Functionary’s investigations; therefore, they also should not be allowed to object to the
25 assignment of rights. Moreover, the requested explanation would likely frustrate the filing
26 of a claim against these, or, at least, would serve as an attempt to “fish” for information
27 about the Functionary’s investigations, conclusions and causes of action he intends to use in
28 his claim. This must not be allowed. It is further noted that an assignment of rights is a
29 matter between the assignor of the rights – i.e., the Company’s creditors – and the recipient



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1 of the rights, i.e., the Functionary; therefore, it is unclear what standing the shareholders
2 have to intervene in this assignment of rights.

3 As for Fachtold's opposition to the assignment of rights:

4 I cannot accept the argument that the Functionary has a conflict of interest, since the
5 Functionary is acting to increase the Company's creditors' fund, and there is no conflict
6 between his being the Functionary appointed to the Company and his filing of a claim
7 against those responsible for its collapse – in addition to the precedent rulings I have cited
8 above.

9 As for the claim concerning an overlap between the causes of action in the class action and
10 the Functionary's causes of action, this concerns an internal disagreement between the
11 creditors, i.e., between the bondholders represented by the Trustee and between Fachtold,
12 who purports to represent a group of bondholders. The relations between these are
13 regulated in a series of documents, such as deeds of trust, and are not currently an issue for
14 the insolvency court. All that is required of the insolvency court is to approve the
15 assignment of actionable rights held by the secured creditors. To the extent that there is a
16 dispute amongst the creditors, they are welcome to deliberate it before the appropriate
17 forum.

18 13. I will now discuss the additional motions filed.

19 **14. Motion to disburse an interim dividend (Motion 47)**

20 As stated, the Functionary filed a separate motion to disburse an interim dividend to the secured
21 creditor amounting to NIS 70 million, and to reimburse the Trustee for NIS 500,000 that he made
22 available to finance the expenses of the proceeding at its inception. The Court was further
23 petitioned to approve leaving the Functionary with a sum of NIS 7 million, to serve as a resource to
24 finance the payment of fees and expenses associated with the claims that will be filed.

25 The confirmation of the Creditors' Arrangement, one of whose matters pertained to the interim
26 disbursement to the secured creditors, has obviated the need to rule on Motion 47.

27 **15. Motion to order interim attorneys' fees for the Functionary (Motion 48)**



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1 The Functionary petitions to approve interim attorneys' fees for him, amounting to NIS 2.5 million
2 with the addition of VAT, and office expenses amounting to NIS 16,395, plus VAT. The Official
3 Receiver believes interim attorneys' fees ought to be ordered for the Functionary in a sum of NIS 2
4 million, with added VAT, and that a proper reckoning can be conducted when ordering the final fees.
5 In the ruling of July 18, 2017, the attorneys' fees were approved in accordance with the Official
6 Receiver's position, as detailed therein.

7 The Shareholders objected to the sum of the attorneys' fees approved for the Functionary, *inter*
8 *alia*, for the following reasons: The Functionary stipulated the interim attorneys' fees on a
9 disbursement to the secured creditors that has yet to occur; the Functionary took credit for actions
10 he has not executed; he does not supervise the Canadian Functionaries, and requested attorneys'
11 fees for matters regarding which he has requested attorneys' fees separately, such as Fachtold's
12 class action; most of the Functionary's actions are immaterial, and consist of tracking and reporting
13 to the Court; the Functionary's actions did not exceed regular functionary activity; the Functionary
14 did not detail the estimated final attorneys' fees, in contravention of Regulation 14 of the
15 Companies Regulations (Rules concerning Appointment of Receivers and Liquidators and their Fees),
16 5741-1981 (the "Fees Regulations"); the Functionary did not perform disbursements to all of the
17 types of creditors, as required in Regulation 8A of the Fees Regulations; the fees should be limited
18 owing to the fact that the Functionary performed unnecessary actions and repeated actions taken
19 by other functionaries, in accordance with Regulation 13 of the Fees Regulations; the Functionary is
20 not entitled to payment for asset liquidations, since he is not authorized to liquidate the Company's
21 assets, as stated in Regulation 8(A) of the Fees Regulations, and he is not entitled to payment for
22 managing them, since he did not perform any management actions, as stated in Regulation 7(A) of
23 the Fees Regulations; the Functionary did not attach an affidavit; financial statement or references
24 for hours of work, in contravention of Regulation 6 of the Fees Regulations.

25 The Functionary disputes the position of the Shareholders. He argues that the interim attorneys'
26 fees have already been approved by the Court. The Shareholders have not displayed a change in
27 circumstances that justifies reopening the Court's decision. As for the merits of the arguments, the
28 Functionary claims his request for attorneys' fees meets the requirements of the Fees Regulations,
29 since it was approved by the Official Receiver. The Functionary further emphasizes that the interim



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1 attorneys' fees he requested are not calculated according to Regulation 8A of the Fees Regulations,
2 but rather, on account of the final fees that will be ordered.

3 The Shareholders argue that the Functionary, in his motion to approve interim attorneys' fees,
4 sought interim attorneys' fees in the wake of a disbursement to the secured creditor under
5 Regulation 8A of the Fees Regulations, while in his response to the Shareholders, he claims that the
6 attorneys' fees are on account of the final fees that will be ordered.

7 15.1 The attorneys' fees ordered for the Functionary are only attorneys' fees on account of the
8 final fees, and do not represent the final fees. In cases involving the vast scope of work
9 required of the Functionary as in the framework of this proceeding, it is customary to pay an
10 advance on account of the final fees, and not to wait for the conclusion of the proceeding to
11 order the fees in their entirety. The rationale for this approach is so that the Functionary is
12 not required to finance the expenses of the proceeding from his own pocket. In
13 consideration of the foregoing, I saw no need to consider the arguments on their merits, and
14 these will be examined, if necessary, at the conclusion of the proceeding, when determining
15 the final fees of the Functionary.

16 Moreover, the facts that have accumulated until now, and the scope of the present
17 disbursement amounting to NIS 70 million, on top of which further disbursements will be
18 added, indicate that the final fees that will be paid to the Functionary in accordance with the
19 Fees Regulations exceed the sum of the interim fees; therefore, I see no reason to grant the
20 motion.

21 15.2 Another reason to dismiss the arguments of the Shareholders is that the secured creditors
22 did not oppose the Functionary's motion for interim attorneys' fees. To be clear, the secured
23 creditors are the ones directly impacted by the granting of interim attorneys' fees to the
24 Functionary, since this derogates from the sum of their debt that they will receive; whereas
25 the Shareholders are deferred creditors in any event.

26 **16. Motion to certify continued representation of the Company in the class action by the Functionary,**
27 **and his attorneys' fees (Motion 50)**



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1 The Functionary requests to be granted, with the consent of the Official Receiver, 150 additional
2 hours to conduct the Company's defense in the class action filed by Fachtold.

3 The Shareholders opposed the Functionary's motion, with their main arguments being as follows: no
4 affidavit was filed with the motion; the scope of hours requested is expected to exceed the term of
5 the Functionary's appointment, which is set to expire on October 11, 2017 – therefore, it is
6 requested to limit the attorneys' fees up until the date the appointment expires, and stipulate them
7 on the extension of the appointment, along with setting a ceiling for the attorneys' fees; actions
8 taken in this proceeding by the Functionary may become mixed with actions taken by the
9 Functionary in the framework of the class action – therefore, a detailed affidavit is sought regarding
10 all of the actions taken by the Functionary; the hours detailed in the motion do not include the work
11 hours of Adv. Gissin – therefore, an accounting of these hours is requested, as well as whether or
12 not attorneys' fees will be sought for them.

13 The Functionary disputes the position of the Shareholders. The Functionary noted that the Court has
14 approved his representation of the Company in the class action irrespective of the extension of the
15 appointment, and that each hour of work is examined by the Official Receiver; the Functionary
16 further stressed that the motion was approved by the Official Receiver after the latter approved the
17 table of hours attached to the motion. The Functionary argues that, to the extent that the Creditors'
18 Arrangement is approved, his appointment will be extended regardless.

19 16.1 I did not see fit to accept the arguments of the Shareholders;

20 Since the Creditors' Arrangement was confirmed, the appointment of the Functionary is
21 extended, and he will continue to represent the Company in the class action proceeding filed
22 by Fachtold as well.

23 I found no substance in the allegations made by the Shareholders concerning the actions of
24 the Functionary, since the Functionary's actions are regulated, examined, and approved by
25 the Official Receiver, and, as stated, the motion was filed with the consent of the Official
26 Receiver. The Shareholders did not indicate any reason to doubt the findings of such
27 examinations.



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1 It seems like the Shareholders' main rationale is an unfounded concern that the
2 Functionary's actions in the insolvency proceeding will become mixed with his actions in the
3 class action proceeding. However, as stated, this concern is unfounded, and I have found no
4 reason to doubt the Official Receiver's examinations. Certainly, considering we are dealing
5 with two entirely distinct legal fields, beyond involving the same Company, it is unclear what
6 sort of overlap could occur between the actions undertaken in the two proceedings.

7 **17. In conclusion**

8 A verdict is hereby granted dismissing the oppositions to the motion to confirm the Creditors'
9 Arrangement, and I certify it, as detailed above. I hereby appoint Adv. Guy Gissin as Trustee in the
10 execution of the Creditors' Arrangement, who will act to implement the provisions of the Creditors'
11 Arrangement, as detailed therein, including through the disbursement of the dividend to the
12 creditors, and as stated in the ruling.

13 The Trustee for the execution of the Creditors' Arrangement shall postpone, at this stage, the
14 disbursement of a dividend amounting to NIS 13 million, at the request of the creditor Fachtold,
15 subject to Fachtold signing a personal undertaking to secure the damage that may be caused as a
16 result of such postponement, should any such be caused, and as detailed in the ruling. This should
17 be done no later than October 15, 2017.

18 The Canadian Directors reserve the right to undertake appeals proceedings with respect to the
19 dismissal of their debt claim, to the extent that the deadline for its filing has not passed, and subject
20 to any other law.

21 The Canadian Trustee and the Shareholders, jointly and severally, shall bear the expenses of the
22 proceeding, amounting to NIS 23,400 to the Functionary, NIS 8,190 to the Bondholders' Trustee and
23 NIS 7,000 to the Official Receiver.

24 **The clerk shall scan the verdict and the rulings in Motions 42, 47, 48 and 50.**

25 **The clerk shall send the verdict and rulings to the parties.**

26 Granted today, Tishrei 6, 5778, September 26, 2017, *in absentia* of the parties.

27 [Signature]

September 26, 2017



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1 Eitan Orenstein, President

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. c-36, AS AMENDED, AND IN THE MATTER OF URBANCORP INC., APPLICATION OF GUY GISSIN, THE FOREIGN REPRESENTATIVE OF URBANCORP INC., UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ORDER
(October 30, 2017)**

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1
Fax: 416-863-4592

Kenneth Kraft (LSUC No. 31919P)
Tel: 416-863-4374
Email: kenneth.kraft@dentons.com

Neil Rabinovitch (LSUC No. 33442F)
Tel: 416-863-4656
Email: neil.rabinovitch@dentons.com

*Lawyers for the Moving Party, Guy Gissin, the Israeli
Court-appointed functional officer and foreign
representative of Urbancorp Inc.*