Court File No. CV-16-11392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

MOTION RECORD
(returnable October 30, 2017)

October 25, 2017

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(Updated February 13, 2017)

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TAB 1

Court File No. CV-16-11392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

NOTICE OF MOTION
(returnable October 30, 2017)

THE MOVING PARTY, Guy Gissin, the Israeli Court-appointed functionary officer and foreign representative (the "**Foreign Representative**") of Urbancorp Inc. ("**UCI**"), will make a motion to a judge presiding over the Commercial List on October 30, 2017 at 9:30 a.m., or as soon after that as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order substantially in the form attached at Tab 3 of the Motion Record:

1. Recognizing the Israeli Plan Approval Order (as defined herein) granted on September 26, 2017 by the District Court in Tel Aviv-Jaffa, Israel (the "**Israeli Court**");

2. Authorizing and directing the Monitor (as defined herein) to pay the professional fees of the Foreign Representative from the $8 million professional fee reserve (the "**Fee Reserve**") established in the Urbancorp Cumberland I LP ("**Cumberland I**") estate; and,

3. Such further and other relief that the moving party may request and this Honourable Court may consider just.

THE GROUNDS FOR THE MOTION ARE:

1. On April 21, 2016, certain direct and indirect subsidiaries (the "**NOI Entities**") of UCI commenced bankruptcy proposal proceedings pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the "**BIA**"). KSV Kofman Inc. ("**KSV**") was appointed as the Proposal Trustee;

2. On April 25, 2016, pursuant to an application under Israel's insolvency regime brought by the indenture trustee (the "**Indenture Trustee**") of certain notes issued by UCI on the Israeli Stock Exchange (the "**Bond Issuance**"), the Israeli Court granted an order appointing the Foreign Representative as functionary officer of UCI and giving him certain management powers, authorities and responsibilities over UCI (the "**Israeli Proceeding**");

3. On May 11, 2016, the Israeli Court granted an order authorizing the Foreign Representative to enter into a protocol between the Foreign Representative and KSV (the "**Protocol**"). The Protocol contemplated, among other things, that the NOI Entities and certain other entities (together, the "**Urbancorp CCAA Entities**") would file for protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and the "**CCAA Proceedings**");

4. On May 18, 2016, the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") granted an initial order under the CCAA in respect of the Urbancorp CCAA Entities (the "**Initial Order**") and appointed KSV as monitor (the "**Monitor**"). The Initial Order approved the Protocol;

5. On May 18, 2016, the Ontario Court also granted two orders, the Initial Recognition Order and the Supplemental Order, under Part IV of the CCAA;

6. The Initial Recognition Order recognized the Israeli Proceeding in respect of UCI as a "foreign main proceeding" and recognized the Foreign Representative as foreign representative of UCI;

Israeli Plan Approval Order

7. On January 9, 2017, the Israeli Court granted an order, among other things, authorizing the Foreign Representative to convene a meeting of UCI creditors (the "**Israeli Creditors' Meeting Order**"). The Israeli Creditors' Meeting Order enabled the Foreign Representative to convene a meeting of secured and unsecured UCI creditors in order to vote on a creditors' arrangement plan (the "**Plan**") that would, among other things, provide for an immediate interim distribution to secured creditors of approximately CAD 20 million from proceeds of realizations in the CCAA Proceedings, the reimbursement of the Indenture Trustee for legal fees, the establishment of reserves for disputed claims, administrative costs, and professional fees to pursue third party claims on behalf of unsecured creditors, and the assignment of UCI creditors' claims against third parties in connection with the Bond Issuance to the Foreign Representative to pursue on their behalf. The Ontario Court recognized the Israeli Creditors' Meeting Order on January 27, 2017;

8. In accordance with the Israeli Creditors' Meeting Order, the meeting of secured creditors took place in Israel and the unsecured creditors' meeting was held concurrently in Israel and in Canada. Both meetings took place on May 24, 2017. An overwhelming majority of creditors approved the Plan, with 99.9% of secured creditors and 98.7% of unsecured creditors in value voting in favour. Accordingly, the Israeli Court granted an order approving the Plan on September 26, 2017 (the "**Israeli Plan Approval Order**");

9. A number of stakeholders objected to the Plan. Objections were filed by Tuvia Facthold (a bondholder, "**Facthold**"), Alan Saskin, Philip Giles, David Mandel, John Biran, and James Cameroon Somerweil (collectively, the "**Canadian Directors**"), Fuller Landau Group Inc., in its capacity as Alan Saskin's proposal trustee (the "**Proposal Trustee**"), and The Webster Trust, TCC/Urbancorp Bay Stadium LP, and Urbancorp Management Inc. (collectively, the "**UCI Holdco Shareholders**");

10. The Israeli Court dismissed the objections of the Proposal Trustee. It also awarded costs against the Proposal Trustee and the UCI Holdco Shareholders in connection with their objections;

11. Facthold opposed the interim distribution contemplated by the Plan and sought to establish a NIS 13 million reserve pending the resolution of his class action claim against UCI for, among other things, the loss incurred due to the diminished resale value of his UCI bonds, which remains in the early stages of certification. The Israeli Court held that it would allow for the establishment of such a reserve on the condition that Facthold provide a personal undertaking by October 15, 2017 to compensate creditors for any damage caused as a result of holding back the reserve. Facthold did not provide this undertaking and, accordingly, the Foreign Representative paid the reserve to the Indenture Trustee;

12. The Israeli Plan Approval Order is effective as of its issuance without regard for any subsequent appeal, unless an order staying the execution of the Israeli Plan Approval Order is specifically obtained. No appeals have been filed to date;

13. The Foreign Representative is seeking an Order of the Ontario Court recognizing the Israeli Plan Approval Order;

Foreign Representative's Professional Fees

14. The Monitor has established a Fee Reserve in the Cumberland I estate from proceeds of realizations in the CCAA Proceedings;

15. UCI is the only material and non-contingent creditor of Cumberland I, and had previously consented to an increased distribution to the other accepted creditors in order to obtain this status. UCI also directly and indirectly holds all of the issued ownership units in Cumberland I and, as such, is the sole beneficiary of the Cumberland I estate;

16. In the interest of administrative efficiency, the Foreign Representative is seeking an Order authorizing and directing the Monitor to pay the Foreign Representative's Canadian professional fees from the Fee Reserve. Doing so would avoid duplicative transfers of funds from Canada to Israel that would be remitted back to Canada to pay the Canadian professional fees and which would increase costs to UCI creditors;

17. The Israeli Court has already approved the engagement of the Canadian professional advisors;

General

18. Recognizing the Israeli Plan Approval Order and authorizing the Monitor to pay the Foreign Representative's professional fees from the Fee Reserve will allow for the continued efficient and equitable administration of the proceeding;

19. Part IV of the CCAA;

20. Rules 1.04(1), 1.04(2), 2.03, and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194; and,

21. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Fourth Report of the Foreign Representative dated October 24, 2017;

2. The Seventh Report of the Information Officer, to be filed separately; and,

3. Such further and other evidence as counsel may advise and this Honourable Court may admit.

October 25, 2017

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TO: THE SERVICE LIST

Court File No. CV-16-11392-00CL

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

NOTICE OF MOTION
(returnable October 30, 2017)

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TAB 2

ONTARIO
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(COMMERCIAL LIST)

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

FOURTH REPORT TO THE COURT OF GUY GISSIN, IN HIS CAPACITY AS COURT APPOINTED FUNCTIONARY AND FOREIGN REPRESENTATIVE OF URBANCORP INC.

(October 24, 2017)

A. BACKGROUND

1. On April 21, 2016, certain direct and indirect subsidiaries (the "**NOI Entities**") of Urbancorp Inc. ("**UCI**") commenced bankruptcy proposal proceedings pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the "**BIA**"). KSV Kofman Inc. ("**KSV**") was appointed as the Proposal Trustee.

2. On April 25, 2016, pursuant to an application under Israel's insolvency regime brought by the indenture trustee (the "**Indenture Trustee**") of certain notes issued by UCI on the Israeli Stock Exchange (the "**Bond Issuance**"), the District Court in Tel Aviv-Jaffa, Israel (the "**Israeli Court**") granted an order appointing Guy Gissin (the "**Foreign Representative**") as functionary officer of UCI and giving him certain management powers, authorities and responsibilities over UCI (the "**Israeli Proceeding**").

3. On May 11, 2016, the Israeli Court granted an order authorizing the Foreign Representative to enter into a protocol between the Foreign Representative and KSV (the "**Protocol**"). The Protocol contemplated, among other things, that the NOI Entities and certain other entities (together, the "**Urbancorp CCAA Entities**") would file for

protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and the "**CCAA Proceedings**").

4. On May 18, 2016, the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") granted an initial order under the CCAA in respect of the Urbancorp CCAA Entities (the "**Initial Order**") and appointed KSV as monitor (the "**Monitor**"). The Initial Order also approved the Protocol.

5. On May 18, 2016, the Ontario Court also granted two orders, the Initial Recognition Order and the Supplemental Order, under Part IV of the CCAA.

6. The Initial Recognition Order recognized the Israeli Proceeding in respect of UCI as a "foreign main proceeding" and recognized the Foreign Representative as foreign representative of UCI. A copy of the Initial Recognition Order is attached as Appendix "A" hereto. Pursuant to the Supplemental Order, KSV was appointed as information officer of UCI. A copy of the Supplemental Order is attached as Appendix "B" hereto.

7. The Israeli Court has extended the Foreign Representative's appointment several times and the Ontario Court has granted recognition orders in respect of each extension. As the Plan Approval Order (as defined herein) appoints the Foreign Representative as trustee of the UCI estate, no further extension of his appointment is required under Israeli law.

8. The Foreign Representative has incurred certain Canadian professional fees in connection with these proceedings, and is seeking reimbursement for these expenses from the reserve established by the Monitor for professional fees (the "**Fee Reserve**") in the Urbancorp Cumberland I LP ("**Cumberland I**") estate. For the Foreign Representative, it is more efficient to have these fees paid ahead of amounts that would be sent to Israel than having them remitted them back to Canada.

9. The Foreign Representative has scheduled a motion before the Ontario Court, returnable on October 30, 2017 at 9:30 a.m., for an Order recognizing the Plan Approval Order and authorizing and directing the Monitor to pay the ongoing Canadian professional fees of the Foreign Representative from the Fee Reserve.

B. PURPOSE OF THE REPORT

10. The purpose of this Fourth Report is to:

    a. Report to the Ontario Court on the Plan (as defined herein) and the Plan Approval Order; and,

    b. Request an Order of the Ontario Court:

        i. recognizing the Plan Approval Order; and,

        ii. authorizing and directing the Monitor to pay the Foreign Representative's Canadian professional fees from the Fee Reserve established in the Cumberland I estate.

C. ISRAELI PLAN APPROVAL ORDER

11. On January 9, 2017, the Israeli Court granted an order (the "**Israeli Creditors' Meeting Order**"), among other things, authorizing the Foreign Representative to convene a meeting of secured and unsecured UCI creditors in order to vote on a creditors' arrangement plan (the "**Plan**"). The Ontario Court recognized the Israeli Creditors' Meeting Order on January 27, 2017.

12. In accordance with the Israeli Creditors' Meeting Order, the meeting of secured creditors took place in Israel and the unsecured creditors' meeting was held concurrently in Israel and in Canada. Both meetings took place on May 24, 2017. A meeting of UCI bondholders was also held, in advance of the creditors' meetings, at which the bondholders voted to instruct the Indenture Trustee to vote in favour of the Plan.

13. An overwhelming majority of creditors approved the plan, with 99.9% of secured creditors and 98.7% of unsecured creditors in value voting in favour. Accordingly, the Foreign Representative brought a motion before the Israeli Court to approve the Plan, which was supported by the Israeli Official Receiver.

14. At the approval motion, the Israeli Court considered the terms of the Plan, the votes tendered at the creditors' meetings, and the objections raised by certain stakeholders,

including the current shareholders and former Canadian directors of UCI. As an immaterial number of creditors abstained from voting, the Israeli Court held the requisite majority vote of participants at the creditors' meetings had been obtained. On September 26, 2017, the Israeli Court released its decision (the "**Plan Approval Order**") approving the Plan and dismissing the objections, with costs awarded against the Proposal Trustee and the UCI Holdco Shareholders (as each term is defined herein) in favour of the Foreign Representative, the Indenture Trustee, and the Israeli Official Receiver. An official translation of the Plan Approval Order is attached to the affidavit of Nadine Amiel, affirmed October 18, 2017, which is attached as Appendix "C" hereto.

15. The key terms of the Plan provide for an immediate interim distribution to UCI's secured creditors in the amount of approximately CAD 20 million from proceeds of realizations in the CCAA Proceedings, the reimbursement of the Indenture Trustee for financing legal proceedings, the establishment of reserves for disputed claims, administrative costs, and professional fees, costs, and expenses related to the filing of third party claims on behalf of UCI's creditors. The Plan also provides for continuing the realization of UCI's group assets and the assignment of UCI creditor claims against third parties in connection with the Bond Issuance to the Foreign Representative to pursue on their behalf.

16. A number of stakeholders objected to the Plan. Objections were filed by Tuvia Facthold (a bondholder, "**Facthold**"), Alan Saskin, Philip Giles, David Mandel, John Biran, and James Cameroon Somerweil (collectively, the "**Canadian Directors**"), Fuller Landau Group Inc., in its capacity as Alan Saskin's proposal trustee (the "**Proposal Trustee**"), and The Webster Trust, TCC/Urbancorp Bay Stadium LP, and Urbancorp Management Inc. (collectively, the "**UCI Holdco Shareholders**").

17. Facthold opposed the interim distribution contemplated by the Plan and sought to establish a NIS 13 million reserve pending the resolution of his class action claim against UCI for, among other things, losses incurred due to the diminished resale value of his UCI bonds, which remains in the early stages of certification. In its analysis of Facthold's objection, the Israeli Court considered, among other things, that his share in the UCI debt is marginal (as he had a nominal amount of bonds), that his class action claim is

conditional, and that UCI creditors will suffer serious damage if no distribution is made pending the resolution of the class action given the significant interest that will continue to accrue on the distribution amount. The Israeli Court ultimately held that it would allow the Foreign Representative to establish the reserve on the condition that Facthold provide a personal undertaking by October 15, 2017, to compensate creditors for any damage caused as a result of holding back the reserve. Facthold did not provide this undertaking and, accordingly, the Foreign Representative paid the reserve to the Indenture Trustee.

18. The Canadian Directors opposed the Plan because it did not indemnify them against claims advanced against them as officers and directors of UCI. Two of the Canadian Directors, Alan Saskin and David Mandell, had filed proofs of claim in respect of such indemnification, which were disallowed by the Foreign Representative. The remaining Canadian Directors did not file claims. Alan Saskin appealed the disallowance of his claim. For this reason, the Foreign Representative and the Israeli Official Receiver respectively argued that the Canadian Directors could not oppose the Plan as they are not UCI creditors and do not have standing to object to the Plan. The Israeli Court held that the Canadian Directors' objection could not prevent approval of the Plan because it was approved by a significant majority of UCI creditors. However, to address the Canadian Directors' concerns, the Israeli Court ordered that distributions would not be made to UCI's Israeli directors, who had negotiated a settlement with the Foreign Representative that subordinated their indemnity claims, until the disputed claims of the Canadian Directors were resolved.

19. The Proposal Trustee and the UCI Holdco Shareholders did not oppose the interim distribution contemplated by the Plan but objected to the approval of the Plan generally on the basis that, among other things, the motion to approve the Plan was not supported by the Foreign Representative's affidavit, the Plan does not specifically outline a process for its termination, the Foreign Representative does not have authority to liquidate UCI's assets, and that the assignment of creditors' rights to the Foreign Representative is too general. The Proposal Trustee and the UCI Holdco Shareholders also sought clarification regarding the Plan and opposed the approval of the Foreign Representative's fees. The

Foreign Representative has maintained that the Proposal Trustee and the UCI Holdco Shareholders do not have standing to object to the Plan.

20. The Israeli Court considered, as a preliminary threshold matter, whether the Proposal Trustee and the UCI Holdco Shareholders' objections should be taken into account, given that shareholders' interests defer to the interests of creditors under Israeli insolvency law and are only considered where there is a reasonable possibility that shareholders will receive distributions. The Israeli Court rejected the assertion, advanced by the Proposal Trustee and the UCI Holdco Shareholders, that shareholders will likely receive distributions on the basis that it was only generally stated and was not supported by any evidence. Instead, the Israeli Court relied on the Foreign Representative's reports which showed that even creditors were unlikely to recover the full amount of their claims. Despite concluding that Proposal Trustee and the UCI Holdco Shareholders failed to satisfy the preliminary threshold test, the Israeli Court proceeded to consider, and dismiss, all of their objections to the Plan.

21. The Israeli Court also considered, and dismissed, the Proposal Trustee and the UCI Holdco Shareholders' objection to the approval of the Foreign Representative's fees. Notably, the Israeli Court held that the Proposal Trustee and the UCI Holdco Shareholders could not dispute the fees incurred by the Foreign Representative in connection with his investigation of them and the lawsuit filed against the UCI Holdco Shareholders and Alan Saskin, given the conflict of interest that arises in doing so. Rather, the Israeli Court held that deference should be given to the UCI creditors and the Israeli Official Receiver's approval of the Foreign Representative's fees and noted that the Israeli Court and the Israeli Official Receiver had itself previously approved these fees.

22. The Israeli Court awarded costs against the Proposal Trustee and the UCI Holdco Shareholders in connection with their objections in favour of the Foreign Representative, the Indenture Trustee, and the Israeli Official Receiver.

23. The Foreign Representative is seeking an Order of the Ontario Court recognizing the Plan Approval Order, which is effective as of its issuance without regard for any subsequent

appeal, unless an order staying the execution of the Plan Approval Order is specifically obtained. No appeals have been filed to date.

D. PAYMENT OF PROFESSIONAL FEES

24. The Monitor has established the Fee Reserve in the Cumberland I estate from proceeds of realizations in the CCAA Proceedings.

25. UCI is the only non-contingent creditor of Cumberland I, and had previously consented to an increased distribution to remaining accepted creditors in order to obtain this status.

26. UCI also holds a 99.99% ownership interest in Cumberland I and a 100% interest in Urbancorp Cumberland I GP Inc., which holds the remaining 0.001% ownership interest in Cumberland I. As such, UCI is the sole beneficiary of the Cumberland I estate (aside from the disputed claims which have been fully reserved for).

27. In the interest of administrative efficiency, the Foreign Representative is seeking an Order of the Ontario Court authorizing and directing the Monitor to pay the Foreign Representative's ongoing Canadian professional fees from the Fee Reserve in Cumberland I. Doing so would avoid additional administrative costs and duplicative transfers of funds from Canada to Israel that would be remitted back to Canada to pay the Canadian professional fees. The Israeli Court has already approved the engagement of the Canadian professional advisors.

E. RECOMMENDATIONS

28. The Foreign Representative respectfully requests that this Honourable Court grant an Order:

    a. recognizing the Plan Approval Order; and

    b. authorizing and directing the Monitor to pay the Foreign Representative's Canadian professional fees from the Fee Reserve.

All of which is respectfully submitted this 24 day of October, 2017

Guy Gissin, in his capacity as Court-Appointed Functionary and Foreign Representative of Urbancorp Inc., and not in his personal or corporate capacity

TAB A

Court File No.: CV-16-11392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR	)	WEDNESDAY, THE 18TH DAY
	)	
JUSTICE NEWBOULD	)	OF MAY, 2016

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

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by Guy Gissin, the Functionary Officer and foreign representative of Urbancorp Inc. appointed by the District Court of Tel Aviv-Yafo, Israel (the "**Israeli Court**") by Order dated April 25, 2016 (the "**Israeli Court Order**"), in his capacity as foreign representative (the "**Foreign Representative**") of Urbancorp Inc. pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Guy Gissin sworn May 16, 2016 (the "**Gissin Affidavit**"), the report dated May 13, 2016 (the "**Report**") of KSV Kofman Inc. (the "**Proposed Information Officer**"), in its capacity as proposal trustee of Urbancorp Toronto Management Inc. *et al.* (Filed in Court File No. CV-16-11389-00CL), each filed, and upon being provided with copies of the documents required by section 46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) is being sought,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for KSV in its capacity as the proposed Information Officer, counsel for Urbancorp Inc., counsel for a number of direct or indirect subsidiaries of Urbancorp Inc. who are concurrently commencing proceedings under the CCAA, counsel for Alan Saskin, and those other parties present, no one else appearing, and upon reading the affidavit of service of Rebeca Burrows, sworn May 17, 2016, and on reading the consent of KSV to act as the information officer:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application, the Application Record, the Gissin Affidavit and the Report is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

FOREIGN REPRESENTATIVE

2. THIS COURT ORDERS AND DECLARES that the Foreign Representative is the "foreign representative" as defined in section 45 of the CCAA of Urbancorp Inc. in respect of the proceedings commenced in the Israeli Court (the "**Foreign Proceeding**").

CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

3. THIS COURT DECLARES that the centre of main interests for Urbancorp Inc. is the State of Israel, and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding" as defined in section 45 of the CCAA.

STAY OF PROCEEDINGS

4. THIS COURT ORDERS that, until otherwise ordered by this Court:

(a) all proceedings taken or that might be taken against Urbancorp Inc. under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;

(b) further proceedings in any action, suit or proceeding against Urbancorp Inc. are restrained; and

(c) the commencement of any action, suit or proceeding against Urbancorp Inc. is prohibited.

NO SALE OF PROPERTY

5. THIS COURT ORDERS that, except with leave of this Court, Urbancorp Inc. is prohibited from selling or otherwise disposing of:

(a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and

(b) any of its other property in Canada.

GENERAL

6. THIS COURT ORDERS that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Foreign Representative shall, with the assistance of the Proposed Information Officer, cause to be published a notice substantially in the form attached to this Order as Schedule A, once a week for two consecutive weeks, in the Globe and Mail (National Edition).

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist Urbancorp Inc. and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

8. THIS COURT ORDERS AND DECLARES that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

9. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to Urbancorp Inc. and the Foreign Representative and their respective counsel, and to any other party or parties

likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

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

MAY 18 2016

PER / PAR: RW

SCHEDULE A – NOTICE OF RECOGNITION ORDERS

Court File No.: CV-16-11392-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

PLEASE BE ADVISED that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"), granted on May 18, 2016.

PLEASE TAKE NOTICE that, by Order made April 25, 2016 (the "**Israeli Court Order**"), the District Court for Tel Aviv-Yafo, in the State of Israel (the "**Israeli Court**") appointed Adv. Guy Gissin (the "**Foreign Representative**") as functionary officer and foreign representative of Urbancorp Inc. ("**UCI**") in Israeli Court Liquidation File 44348-04-16 (the "**Israeli Proceeding**").

PLEASE TAKE FURTHER NOTICE that an Initial Recognition Order (Foreign Main Proceeding) and a Supplemental Order (Foreign Main Proceeding) dated May 18, 2016 (together, the "**Recognition Orders**" and the proceedings commenced thereby, the "**Recognition Proceedings**") have been granted by the Canadian Court under Section 47 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, that, among other things: (i) recognize the Israeli Proceeding as a foreign main proceeding; (ii) recognize Adv. Guy Gissin as the Foreign Representative of UCI; (iii) recognize the Israeli Court Order granted by the Israeli Court in the Israeli Proceeding; (iv) stay all proceedings against UCI and their directors and officers; and (v) appoint KSV Kofman Inc. as the Information Officer with respect to the Recognition Proceedings.

PLEASE TAKE FURTHER NOTICE that persons who wish to receive a copy of the Recognition Orders or obtain any further information in respect of the Recognition Proceedings or the matters set forth in this Notice, should contact the Information Officer at the address below:

KSV KOFMAN INC.
in its capacity as Information Officer of
Urbancorp Inc., and not in its personal capacity
150 King Street West, Suite 2308
Toronto, Ontario M5H 1J9
Attention: Noah Goldstein
Tel: 416.932.6207
Fax: 416.932.6266
E-mail: ngoldstein@ksvadvisory.ca

PLEASE FINALLY NOTE that the Recognition Orders, and any other orders that may be granted by the Canadian Court, can be viewed at: : http://www.ksvadvisory.com/insolvency-cases-2/urbancorp/

ADV. GUY GISSIN (the Foreign Representative)
c/o Gissin & Co., Advocates
38 Habarzel Street
Tel Aviv, Israel 69710
Attention: Yael Hershkovitz
Tel: +972-3-7467777
Fax: +972-3-7467700
E-mail: yael@gissinlaw.co.il

GOODMANS LLP (counsel to the Foreign Representative)
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
Attention: Joseph Latham
Tel: 416.597.4211
Fax: 416.979.1234
E-mail: jlatham@goodmans.ca

DATED AT TORONTO, ONTARIO, this 18th day of May, 2016.

KSV KOFMAN INC.
in its capacity as Information Officer of
Urbancorp Inc. and not in its personal capacity

Court File No.: CV-16-11392-00CL

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 FUNCTIONARY OFFICER 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

Proceeding commenced at Toronto, Ontario, Canada

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

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Lawyers for the Foreign Representative

TAB B

Court File No.: CV-16-11392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	WEDNESDAY, THE 18TH DAY
	)	
JUSTICE NEWBOULD	)	OF MAY, 2016

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

SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by Guy Gissin, the Functionary Officer and foreign representative of Urbancorp Inc. appointed by the District Court of Tel Aviv-Yafo, Israel (the "**Israeli Court**") by Order dated April 25, 2016 (the "**Israeli Court Order**"), in his capacity as foreign representative (the "**Foreign Representative**") of Urbancorp Inc. pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Guy Gissin sworn May 16, 2016 (the "**Gissin Affidavit**"), the report dated May 13, 2016 (the "**Report**") of KSV Kofman Inc. ("**KSV**") (filed in Court File No. CV-16-11389-00CL), the affidavit of Tamryn Jacobson sworn May 18, 2016, each filed, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of

counsel for the Foreign Representative, counsel for KSV in its capacity as the proposed Information Officer, counsel for Urbancorp Inc., counsel for a number of direct or indirect subsidiaries of Urbancorp Inc. who are concurrently commencing proceedings under the CCAA, counsel for Alan Saskin, and those other parties present, no one else appearing, and upon reading the affidavit of service of Rebecca Burrows, sworn May 17, 2016, and on reading the consent of KSV to act as the information officer:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application, the Application Record, the Gissin Affidavit and the Report is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

INITIAL RECOGNITION ORDER

2. THIS COURT ORDERS that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated May 18, 2016 (the "**Recognition Order**") in these proceedings.

3. THIS COURT ORDERS that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

RECOGNITION OF FOREIGN ORDERS

4. THIS COURT ORDERS that the Israeli Court Order, a copy of which is attached as Schedule "A" to this Order, made by the Israeli Court in the Foreign Proceeding is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA, provided, however, that in the event of any conflict between the terms of the Israeli Court Order and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada. For greater certainty, further to the provisions of the Israeli Court Order, Urbancorp Inc. shall not be

entitled to take steps to deal with its Property in Canada (including, without limitation, its shareholdings in any subsidiary or affiliate) or enter into any transactions without the consent of the Foreign Representative and Order of this Court on notice to the Foreign Representative and the Information Officer (as defined below).

APPROVAL OF PROTOCOL FOR CO-OPERATION AMONG COURT OFFICERS

5. THIS COURT ORDERS that the Protocol for Co-operation Among Canadian Court Officer and Israeli Functionary Officer dated as of May 13, 2016 (the "**Co-operation Protocol**") be and the same is hereby approved.

APPOINTMENT OF INFORMATION OFFICER

6. THIS COURT ORDERS that KSV (the "**Information Officer**") is hereby appointed as an officer of this Court, with the powers and duties set out herein.

NO PROCEEDINGS AGAINST URBANCORP INC. OR THE PROPERTY

7. THIS COURT ORDERS that until such date as this Court may order (the "**Stay Period**") no proceeding or enforcement process in any court or tribunal in Canada (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Foreign Representative, Urbancorp Inc. or affecting its business (the "**Business**") or its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of Urbancorp Inc. or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

8. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Foreign Representative, Urbancorp Inc., or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower

Urbancorp Inc. to carry on any business in Canada which it is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

9. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by Urbancorp Inc. and affecting the Business in Canada, except with leave of this Court.

ADDITIONAL PROTECTIONS

10. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with Urbancorp Inc. or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of Urbancorp Inc., are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by Urbancorp Inc., and that Urbancorp Inc. shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names.

11. THIS COURT ORDERS that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

OTHER PROVISIONS RELATING TO INFORMATION OFFICER

12. THIS COURT ORDERS that the Information Officer:

(a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;

(b) shall report to this Court at least once every three months with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;

(c) in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;

(d) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of Urbancorp Inc., to the extent that is necessary to perform its duties arising under this Order; and

(e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. THIS COURT ORDERS that Urbancorp Inc. and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by Urbancorp Inc. or by the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. THIS COURT ORDERS that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. THIS COURT ORDERS that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. THIS COURT ORDERS that the Information Officer may provide any creditor of Urbancorp Inc. with information provided by Urbancorp Inc. or the Foreign Representative, as the case may be, in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by Urbancorp Inc. or the Foreign Representative is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the Urbancorp Inc. may agree.

17. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer shall be paid by Urbancorp Inc. their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. Urbancorp Inc. is hereby authorized and directed, with the consent of the Foreign Representative, not to be unreasonably withheld, and subject to paragraph 18 hereof, to pay the accounts of the Information Officer and counsel for the Information Officer on a monthly basis.

18. THIS COURT ORDERS that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior

Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. THIS COURT ORDERS that the Foreign Representative (solely with respect to the reasonable expense he may incur in connection with these proceedings), the legal and financial advisors to the Foreign Representative, the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property in Canada, which charge shall not exceed an aggregate amount of $400,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 24 and 26 hereof.

INTERIM FINANCING

20. THIS COURT ORDERS that Urbancorp Inc. is hereby authorized and empowered to obtain and borrow up to $1,900,000 under an interim lending facility from Urbancorp Partner (King South) Inc. or any of the Applicants in the CCAA proceeding in Court File No. CV -16-11389-00CL (each, an "**Interim Lender**") in order to finance the reasonable expenses of the Foreign Representative, the reasonable fees and disbursements of the legal and financial advisors to the Foreign Representative, and the reasonable fees and disbursements of the Information Officer and its counsel in these proceedings, all ~~as~~ of the above on the terms and conditions set out in the Term Sheet (as defined below), provided that the borrowings under such interim lending facility shall not exceed $1,000,000 unless permitted by further Order of this Court.

21. THIS COURT ORDERS THAT such interim lending facility shall be on the terms and subject to the conditions set forth in the intercompany interim financing revolving credit facility term sheet between Urbancorp Inc. and the Interim Lender dated as of May 18, 2016 (the "**Term Sheet**"), filed.

22. THIS COURT ORDERS that the Foreign Representative, for and on behalf of Urbancorp Inc., is hereby authorized and empowered to execute and deliver the Term Sheet, and Urbancorp Inc. is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Term Sheet as and

when the same become due and are to be performed, notwithstanding any other provision of this Order.

23. THIS COURT ORDERS that the Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property in Canada, which Interim Lender's Charge (i) shall not secure an obligation that exists before this Order is made, and (ii) with respect to the Property in Canada, shall have the priority set out in paragraphs 24 and 26 hereof, and further provided that the Interim Lender's Charge shall not be enforced except with leave of this Court.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

24. THIS COURT ORDERS that the priorities of the Administration Charge and the Interim Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $400,000); and

Second – Interim Lender's Charge.

25. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge or the Interim Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

26. THIS COURT ORDERS that each of the Administration Charge and the Interim Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

27. THIS COURT ORDERS that, except as may be approved by this Court, Urbancorp Inc. shall not grant any Encumbrances over any Property in Canada without the approval of the Foreign Representative, and no such Encumbrances shall rank in priority to, or *pari passu* with,

the Administration Charge or the Interim Lender's Charge without the prior written consent of the Information Officer and the Interim Lender.

28. THIS COURT ORDERS that the Administration Charge and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and any declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds Urbancorp Inc., and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by Urbancorp Inc. of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by Urbancorp Inc. to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

29. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge of Urbancorp Inc.'s interest in such real property leases.

SERVICE AND NOTICE

30. THIS COURT ORDERS that that the E-Service Protocol of the Commercial List (the "**Service Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Service Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Service Protocol, service of documents in accordance with the Service Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Service Protocol with the following URL ': http://www.ksvadvisory.com/insolvency-cases-2/urbancorp/'.

31. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Service Protocol is not practicable, the Foreign Representative and the Information Officer are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Urbancorp Inc.'s creditors or other interested parties at their respective addresses as last shown on the records of the Urbancorp Inc. and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

32. THIS COURT ORDERS that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

33. THIS COURT ORDERS that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of Urbancorp Inc., the Business or the Property.

34. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the State of Israel, to give effect to this Order and to assist Urbancorp Inc., the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Urbancorp Inc., the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist Urbancorp Inc., the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

35. THIS COURT ORDERS that each of the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

36. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

37. THIS COURT ORDERS that notwithstanding the immediately preceding paragraph, the Interim Lender shall be entitled to rely on the priority granted to the Interim Lender and the Interim Lender's Charge up to and including the date on which this Order may be varied or modified.

38. THIS COURT ORDERS that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

J.

SCHEDULE A – ISRAELI COURT ORDER

No. 3180 מס'

CERTIFICATE OF TRANSLATION

I the undersigned, Miguel Daniel Abadi, Notary at 20 Borochov St. Raanana, Israel, hereby declare that I am well acquainted with the **Hebrew** and **English** languages and that the document attached to this certification marked "**A**" is a correct **English translation** of the **original** document drawn up in the **Hebrew** language which has been produced to me and a photocopy of which is also attached hereto and marked "**B**".

In witness whereof I certify the correctness of the said translation, and that **is a correct copy of the original document**, by my signature and seal. This 1 day of May 2016.

Notary Fee: 3657 NIS + V.A.T.

Signature

Notary's Seal

אישור תרגום

אני הח"מ, מיגל דניאל עבאדי, נוטריון ברעננה, רח' בורוכוב 20, רעננה מצהיר כי אני שולט בשפות אנגלית ועברית, וכי המסמך המצורף ומסומן באות "**A**" הינו תרגום באנגלית מדויק של המסמך הערוך בשפה העברית שהוצג בפניי ומצורף עתק ממנו גם הוא לאישור זה ומסומן באות "**B**".

ולראיה הנני מאשר את דיוק התרגום הנ"ל בחתימת ידי ובחותמתי, היום 1 לחודש מאי 2016.

שכר נוטריון 3657 ₪ + מע"מ.

נוטריון * NOTAIRE * NOTARY * מיגל דניאל עבאדי MIGUEL DANIEL ABADI

חתימה

תותם הנוטריון

סיגלית שורץ
SIGALIT SCHWARTZ
- 1 -05- 2016
KFAR-SABA כפר סבא

APOSTILLE

(Convention de la Haye du 5 Octobre 1961)

1. STATE OF ISRAEL — 1. מדינת ישראל

This public document — מסמך ציבורי זה

2. Has been signed by — מיגל דניאל עבאדי, עו"ד MIGUEL DANIEL ASABI, ADV. — 2. נחתם בידי

Advocate _____ — עו"ד _____

3. Acting in capacity of Notary — 3. המכהן בתור נוטריון,

4. Bears the seal/stamp of the above Notary — 4. נושא את החותם/החותמת של הנוטריון הנ"ל

Certified — אושר

5. At the Magistrates Court of Kfar Sava — 5. בבית משפט השלום בכפר סבא

6. Date _____ 1 -05- 2016 — 6. ביום _____

7. By an official appointed by Minister of Justice under the Notaries Law, 1976. — 7. על ידי מי שמונה בידי שר המשפטים לפי חוק הנוטריונים, התשל"ו - 1976

8. Serial number 2682 — 8. מס' סידורי 2682

9. Seal/Stamp _____ — 9. החותם / החותמת _____

10. Signature _____ — 10. חתימה _____

בית משפט השלום בכפר סבא * Magistrates Court of Kfar Sava * ישראל

סיגלית שורץ
SIGALIT SCHWARTZ
- 1 -05- 2016
KFAR-SABA כפר סבא

סיגלית שורץ
SIGALIT SCHWARTZ
- 1 -05- 2016
KFAR-SABA כפר סבא

סיגלית שורץ
SIGALIT SCHWARTZ
- 1 -05- 2016
KFAR-SABA כפר סבא

25/04/2016

The District Court in Tel-Aviv – Yafo

Liquidation File 44348-04-16 Reznik Paz Nevo Trusts Ltd. Vs. Urbancorp Inc.

Before the Honorable Justice Eitan Orenstein, Vice President

On the matter of:	**the Companies Act, 5759-1999**
And on the matter of:	**the Companies Regulations (Request for Compromise or Arrangement), 5762-2002**
And on the matter of:	**Article 350 of the Companies Act, 5759-1999**
And on the matter of:	**Reznik Paz Nevo Trusts Ltd.** **Trustee of holders of bonds (class A) of the company** **By its representatives: Yoel Freilich, Adv., Yael Herschkowitz, Adv., Inbar Hakmian-Nahari, Adv., and Evgeniya Gluchman, Adv.** **The Applicant**
And on the matter of:	**Urbancorp Inc.** **By its representative: Gad Ticho, Adv.** **The Company**
And on the matter of:	**the Official Receiver** **By its representative: Roni Hirschenzon, Adv.**

Decision

General

1. Before me is an urgent request for the provision of temporary reliefs and for the appointment of a functionary in Urbancorp Inc. (hereinafter: "**the Company**"), pursuant to Regulation 14(a) of the Companies Regulations ((Request for Compromise or Arrangement), 5762-2002 (hereinafter: "**the Arrangement Regulations**") and Article 350 of the Companies Act, 5759-1999 (hereinafter: "**the Companies Act**").

Summary of the Facts

2. The Company incorporated in Canada and it is registered in the county of Ontario. Its main occupation is leasing and initiating real-estate for residential and commercial

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purposes at the location of its incorporation. The Company operates geothermal systems in several of its projects, which are used for providing heating and cooling for the properties, while using green energy. It is in the control of Mr. Alan Saskin, a citizen of Canada and a resident thereof (hereinafter: "**the Controlling Party**").

In December 2015 the Company raised bonds from the Israeli public, amounting to approximately 180 million ILS, with an interest of 8.15%. The bonds were raised pursuant to a prospectus dated 30/11/2015 and later completions thereof, and were registered for trade at the Tel-Aviv Stock Exchange. It shall be stated that Midroog Ltd. has granted the bonds a rating of A3, a medium-high rank. The underwriter of the issuance was Apex Issuances Ltd., the prospectus was drafted by Shimonov & Co. Law Firm, and the Deloitte firm Brightman, Almagor, Zohar & Co., Accountants. The trustee for the bond holders is Reznik Paz Nevo Trusts Ltd., which has submitted the application (hereinafter: "**the Trustee**").

The consideration of the issuance was intended to serve for shareholders' loan for the Company's subsidiaries which are also incorporated in Canada (hereinafter: "**the Subsidiaries**") and for providing equity for paying off loans in their various projects, as specified in the bill of trust, as well as for the payment of taxes.

The application states that during the months following the issuance, there has been a severe deterioration in the Company's financial state and in its capability to sustain itself, which is the result of a number of events, when according to the Applicant it is impossible to rule out that the share of those had already been known prior to the issuance, but they were not reported. The outcome was that all Company directors, apart from the Controlling Party, have resigned; the Company's trade in securities has ceased; the ranking has ceased, and more. In light of the foregoing, there has been very intensive contact with the Controlling Party, who was supposed to sign a Stand-Still document, and has asked to delay the taking of actions against the Company. Nevertheless, the Trustee was surprised to find out that the Subsidiaries, which excess cash flows were supposed to serve the debt for the holders of bonds, have recently begun an insolvency proceeding in Canada, and a trustee on behalf of the court there has been appointed to them.

The Request

3. The Trustee points in his request, to a series of severe failures in the Company's conduct, which also constitute a breach of the bill of trust, and give rise to a cause for providing

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the debt for immediate repayment and taking proceedings against the Company. For this matter, it has been claimed that it is necessary to immediately intervene in the Company's businesses by appointing a functionary, who shall be granted the authorities of the Company's directorate; who shall exercise the Company's power of control in its Subsidiaries; who shall examine the insolvency proceedings taken by the Subsidiaries; who shall negotiate with the trustee appointed to them; who shall act to obtain all required information pertaining to raising the capital; who shall formulate a recovery plan for the Company, inasmuch as it shall be possible; and who shall enter the Company's premises and its offices and shall seize its assets, including accounts and financial deposits.

4. The request was submitted on 24/04/2016, during the Passover recess, and I have instructed holding an urgent discussion today in the presence of the Company, its former functionaries who provide services to it, the Israeli Securities Authority, the Official Receiver and more. In my decision from yesterday, an order for the prohibition of disposition was also granted, according to which the Company and anyone on its behalf is prevented from making any transaction, of any sort and type whatsoever, with its property.

The Court Discussion

5. The following were present at the discussion: the Trustee and its representatives; the representative of the recently resigned Company directors; the Company's former legal consultants; the representative of the Tel-Aviv Stock Exchange and members of its legal department; the representative of the Official Receiver, as well as Gad Ticho, Adv., on behalf of the Company, who has notified that he had taken on representing the Company the previous evening.

   The Trustee's representative, Yoel Freilich, Adv., has repeated the request during the discussion, and has emphasized the need for granting the urgent reliefs. He clarified that the Trustee has engaged with a law firm in Canada, which shall assist the functionary, should he be appointed, in fulfilling his position; that there is no conflict of interests for the intended functionary; and more.

   According to the Company's representative, its client does not object to leaving the order of prohibition of disposition effective, however she does not see the need for appointing a functionary and for granting the requested authorities, and she objects to the identity of

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the suggested functionary due to conflict of interests. In addition, the Company's representative has claimed that there is no need for the drastic requested reliefs, that the Company should be given leave to submit a proper response, that in any case a meeting of the holders of bonds is scheduled for May 1, 2016 – in which the meeting shall decide with regards to continuing the proceeding – and that no irreversible damage shall occur should the order not be granted.

The representative of the Official Receiver holds the opinion that the state of the Company justifies granting a relief against it, similar to other cases in which the court has instructed appointing a functionary, even if it is for a limited period of time, until the situation is clarified.

Discussion and Ruling

6. We are dealing with a request which was submitted urgently during the Passover recess, and which requires an urgent decision, therefore I shall suffice with a brief reasoning.

The Rule

The request, by nature, is a request for temporary relief, and prior to submitting the primary proceeding. Therefore, it should be examined by the rules used for temporary reliefs, namely, does the Applicant meet the test of *prima facie* reliable evidence in the cause of the action as well as the balance of convenience test, and as set in the Civil Procedure Regulations, 5744-1984 and in rulings, when between the two there is a "parallelogram of forces" (see Civil Leave of Appeal 2174/13 **D.K. Shops for Rent in Herzlia HaTze'ira Ltd. Vs. Avraham Cohen & Co. Contracting Company Ltd.** (published on the website of the Judicial Authority, 19/04/2016).

I shall emphasize, that under the circumstances of the request before me, when the primary relief has not yet been requested, the court is required to take extra precautions when ruling on a request for temporary relief, especially given the drastic temporary reliefs requested therein.

The request is accompanying to a primary proceeding which the Trustee is intending to submit pursuant to the provisions of Article 350 of the Companies Act, which deals with an arrangement between a company and its creditors, a proceeding which, according to the word of the law, can also be taken by a creditor of the company, in addition to the company itself, or a participant or a liquidator. As is known, it is possible to appeal for

temporary reliefs even before beginning the primary proceeding, provided that the applicant has met the required conditions stated above.

Another basis for the request, as mentioned, is Regulation 14(a) of the Arrangement Regulations, which authorizes the court to appoint a functionary when discussing a request for arrangement in accordance with Article 350 of the Companies Act, saying:

> **"To appoint a functionary, who shall have all authorities and duties which shall be determined by the court, including managing the company or supervising its management, keeping its assets, as well as examining claims of debt and claims for amending the registry of shareholders in the method specified in Chapter C; the court shall appoint a functionary once it was convinced that the candidate is suitable for the position due to his skills or his experience in formulating compromise arrangements or an arrangement[...]"**

From the General to the Specific

7. Viewing the statements of claim and their appendixes paints a grim picture, to say the least, of the state of the Company.

On the surface it appears that it is failing to meet the conditions of the bill of trust, in a way which gives rise to a cause for providing the debt for immediate repayment. For this matter, I shall list the breaches, each of which is sufficient to give rise to the stated cause, let alone when put together: the trade in the Company's bonds has been stopped; the Company's rating by Midroog Ltd. has also been stopped; all of the Company's Israeli directors have resigned, as well as its legal consultants and its internal auditor;

And severe failures in the Company's activity have been found, as specified in the report it submitted pertaining to its financial data, dated April 20, 2016. Amongst those: a loss of 15 million Canadian Dollars compared with the current activity in the last quarter of 2015; a decrease in the value of the right of the Controlling Party assigned to the Company to receive loans from corporations in his control, thus from an estimated value of approximately eight million Dollars, the value is expected to drop to an insignificant amount; concern that the Company shall decrease the value of the geothermal assets at a total ranging between four and six million Canadian Dollars. The end of the report even

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states that it is possible that the Company's state is far worse and that its losses shall be high.

Another event teaching of failures in the Company which should be stated, is the decision of the Canadian Home Organization Trion dated April 4, 2016, to not extend the Company's license, namely, the Company is not entitled to continue its activity of initiating and selling planned projects.

This is joined by the fact stated above, that the Subsidiaries have recently begun a stay of proceedings in Canada, as part of which a trustee was appointed to them. The Company and the Controlling Party have not brought this important fact to the knowledge of the Trustee, let alone given details pertaining to the proceeding taken, its significance, its implication on the Company and such.

The conclusion drawn from the stated above is that there is total uncertainty with regards to the Company's financial state, its equity, its capability of sustaining itself, and concern for the fate of the investments made by the holders of bonds. Another conclusion is that there is a substantial lack of information pertaining to the occurrences in the Company, and the Trustee is forced to seek in the dark, all when there is concern for the fate of the Company and its assets, including with regards to the occurrences in the Subsidiaries and their assets, which have enjoyed the monies of capital raised by the holders of bonds.

In my opinion, the stated above is sufficient basis for appointing a functionary to the Company, who shall be authorized to receive all information pertaining to the Company, its activity, its property and its rights, including the Subsidiaries and the proceedings conducted in Canada. Simultaneously, the functionary shall be able to track the Company's property, to locate it, to seize it and to prevent making irreversible actions. I shall add that obtaining the information shall also enable making an educated decision regarding taking appropriate proceedings with regards to the Company, to minimize damages and to redirect, as much as possible, the monies which would be could be paid to the holders of bonds.

Needless to say, the Company is in the twilight zone of insolvency, when there is concern for its fate and for the fate of the monies of investors, unless urgent actions are taken. As stated by the representative of the Official Receiver, the court discussing insolvency has a wide range of reliefs at its disposal, which also apply to a situation where the Company is in the twilight zone of insolvency. In this regard I shall refer to a recent ruling by the

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25/04/2016

The District Court in Tel-Aviv – Yafo

Liquidation File 44348-04-16 Reznik Paz Nevo Trusts Ltd. Vs. Urbancorp Inc.

Before the Honorable Justice Eitan Orenstein, Vice President

Supreme Court, as said by the Honorable Justice E. Hayut in Civil Appeal 3791/15 **Synergy Cables vs. Hever**, paragraph 8 (published on the website of the Judicial Authority on 19/04/2016):

> **The District Court has not ruled pursuant to which legal authority it appoints the respondent, but as rightfully stated by the respondent, reality shows that there are cases [...] where the court appoints functionaries in proceedings in which the corporation is in the "zone of insolvency", even prior to issuing an order for stay of proceedings or for the liquidation of the company (compare, for example: Liquidation File (Tel-Aviv) 36681-04-13 Hermetic Trusts (1975) Ltd. vs. IDB Development Ltd. (30/04/2013), in which the District Court in Tel-Aviv (Justice E. Orenstein) has decided to appoint a functionary who was defined as an "observer" for the company, while relying for this purpose of the wide authority granted to him in accordance with Regulation 14(a)(1) of the Companies Regulations [...]**
>
> (Emphasis not in the original – E.O.)

This rule also applies to the matter before us.

In my opinion, the circumstances of the case meet the tests required for granting a temporary relief. For this matter, the Company has allegedly breached its undertakings towards the holders of bonds in a way which grants the holders of bonds the right to provide the debt for immediate repayment, and to claim the reliefs due as a result thereof. I shall add that the balance of convenience also leans towards granting the temporary relief. In this context, I shall state that according to the Company's representative, these days a substantial transaction is to be executed, of selling the Company's property, which should provide it with a substantial amount of money; it is not improbable that the consideration shall not be given to the holders of bonds, despite the order of prohibition of disposition, in the absence of practical capability for enforcement, thus causing irreversible damage. Therefore, only a functionary who could also track the stated transaction, could possibly prevent irreversible damage to the holders of bonds.

This conclusion is emphasized noticing the recent problematic conduct of the Controlling Party. As is evident in the request, he has failed to disclose to the Trustee during contacts

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conducted these days that the Subsidiaries intend on taking the proceeding of insolvency as they have done.

In fact, the Company has no management core, whereas all directors, apart from the Controlling Party, have resigned, it has no internal auditor, and even the legal consultants have terminated their engagement with it. In this state of affairs, the Company is given to the good will of the Controlling Party, and in light of the problems I have pointed pertaining to him, and in the absence of supervision on his conduct, it would be best to appoint an authority who shall take the Company's reigns and shall supervise the occurrences in the Company at least until the picture is clarified.

I have not ignored the claim made by the Company's representative regarding the damage which could be caused to the Company due to appointing the functionary, but I have not seen that it leads to a different conclusion. I believe that the weight of the reasons I have specified above, exceeds by far the concern raised by Advocate Ticho in this regard. In any case, it is possible to find the required balance between guaranteeing the Company's conduct and the argued damage, by limiting the authorities which shall be granted to the Trustee and the period of time in which he shall be appointed. I shall emphasize that the concern raised by Advocate Ticho, which, according to him, may be a result of appointing a temporary liquidator to the Company, can be abated by not appointing a temporary liquidator, which has not even been requested.

I have also answered the argument made by Advocate Ticho regarding the conflict of interest in which the offered functionary is allegedly in, due to him representing the Trustee. I have not found this argument sufficient reason for not appointing Advocate Gissin, and I shall clarify: Gissin & Co. Law Firm has accepted the representation of the Trustee only recently, as Advocate Freilich has said in the discussion. The firm has not represented the Trustee in the process of preparing the prospectus, its publication and the issuance of the bonds, nor in the following period, but only following the Company's getting into trouble. Therefore, it is impossible to say that he is involved in proceedings preceding this request. In addition, should it be found out in the future, that there is a conflict of interest, the argument shall be made before the court and shall be examined by itself, and the argument shall not prevent the appointment at the preliminary stage we are in.

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25/04/2016

The District Court in Tel-Aviv – Yafo

Liquidation File 44348-04-16 Reznik Paz Nevo Trusts Ltd. Vs. Urbancorp Inc.

Before the Honorable Justice Eitan Orenstein, Vice President

8. To complete the picture I shall state that there is no dispute regarding the authority of the court in Israel to grant the requested relief. In this context, I shall refer to the various documents attached by the Trustee to the request, including the prospectus and the bill of trust, which state that the Company acknowledges the authority of the court in Israel to grant the reliefs (see clause 34 of the bill). In addition, I shall state that Article 39a of the Securities Law, 5728-1968, which applies to the prospectus, rules that the provisions of the Companies Act shall apply to any foreign company which has issued securities. Needless to say, the authority of the court to discuss the request is also pursuant to the court ruling given in a case with similar circumstances, and I shall refer to Civil Appeal 2706/11 **Sybil Germany Public Co. Limited vs. Hermetic Trusts (1975) Ltd.** (published on the website of the Judicial Authority on 04/09/2015).

9. **<u>In light of the foregoing I hereby instruct as follows:</u>**

I appoint Advocate Gissin as functionary in Urbancorp Inc. and grant him the authority to exercise the Company's authorities, for all following actions:

- To locate, to track and to seize all Company assets, of any sort and type whatsoever, including its monies and rights in the Subsidiaries;
- To exercise the Company's power of control in the Subsidiaries;
- To obtain all information, of any sort and type whatsoever, pertaining to the Company's activity, its property and its rights; the same applies to the Subsidiaries;
- To negotiate with the Subsidiaries' trustee, and for this purpose, to also approach the Canadian court as an authorized representative of the Company;
- To track the Company's activities prior to the prospectus and thereafter.

For the purpose of exercising these authorities, the functionary is hereby authorized to appear in the Company's name before any body, authority or person in Israel and abroad; to obtain any information whatsoever from any of the Company's factors, from the Controlling Parties, from the authorities and from any person who has provided or is providing services for the Company; and to obtain from them all documents he believes shall be required for fulfilling his position.

NOTAIRE * נוטריון * מיגל דניאל עבאדי MIGUEL DANIEL ABADI

25/04/2016

The District Court in Tel-Aviv – Yafo

Liquidation File 44348-04-16 Reznik Paz Nevo Trusts Ltd. Vs. Urbancorp Inc.

Before the Honorable Justice Eitan Orenstein, Vice President

The functionary shall be authorized to formulate an initial outline of a creditors' arrangement.

The functionary shall approach the court if necessary, and shall request its permission to exercise Company authorities not expressly specified in the decision.

For the avoidance of doubt: the functionary is not authorized to realize the Company's property.

A condition for the appointment is the functionary depositing a personal bond at a total of 250,000 ILS.

The functionary shall do all that he can for obtaining the required information in the coming days, so that it can be presented, as much as possible, before the meeting of holders of bonds set for next Sunday, May 1, 2016.

At this point I set the appointment until May 22, 2016 or as shall be otherwise decided.

A first report of the functionary's actions shall be submitted by May 8, 2016.

The case has been set for discussion **for May 22, 2016 at 11:30**.

The secretariat shall notify of the decision by telephone and shall also send it by fax.

Given today, 17 Nisan 5776 (25th of April 2016), ***ex parte*****.**

Eitan Orenstein, Justice

Vice President

NOTAIRE * נוטריון * מיגל דניאל עבאדי MIGUEL DANIEL ABADI

"B"

26.4.2016

בית המשפט המחוזי בתל-אביב-יפו

פר"ק 44348-04-16 רזניק פז נבו נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אורנשטיין, סגן נשיאה

בעניין: חוק החברות, התשנ"ט-1999

ובעניין: תקנות החברות (בקשה לפשרה או להסדר), התשס"ב-2002

ובעניין: סעיף 350 לחוק החברות, תשנ"ט-1999

ובעניין: רזניק פז נבו נאמנויות בע"מ
הנאמנת למחזיקי איגרות החוב (סדרה א) של החברה
ע"י ב"כ עו"ד יואל פריליך, עו"ד יעל הרשקוביץ,
עו"ד ענבל חכימיאן-נהרי ועו"ד יבגניה גלוחמן — המבקשת

ובעניין: Urbancorp Inc.
ע"י ב"כ עו"ד גד טיכו — מהחברה

ובעניין: כונס הנכסים הרשמי
ע"י ב"כ עו"ד רוני הירשנזון

מחלטה

כללי

1. מונחת לפניי בקשה דחופה למתן סעדים זמניים ולמינוי בעל תפקיד ב-Urbancorp Inc. (להלן: "**החברה**"), על יסוד תקנה 14(א) לתקנות החברות (בקשה לפשרה או להסדר), התשס"ב-2002 (להלן: "**תקנות ההסדר**") וסעיף 350 לחוק החברות, התשנ"ט-1999 (להלן: **חוק החברות**").

תמצית העובדות

2. החברה התאגדה בקנדה והיא רשומה במחוז אונטריו. עיסוקה העיקרי הוא בהשכרה וביזום של נדל"ן למגורים ולמסחר במקום התאגדותה. החברה מפעילה בכמה מיזמים מערכות גאותרמיות המשמשות לחספקת חימום וקירור לנכסים, אגב שימוש באנרגיה ירוקה. היא נמצאת בשליטתו של מר Alan Saskin, אזרח קנדה ותושב בה (להלן: "**בעל השליטה**").

נוטריון * מיגל דניאל עבאדי MIGUEL DANIEL ABADI * NOTAIRE NOTARY

25.4.2016

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פר"ק 44348-04-16 רזניק פז נבו נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אורנשטיין, סגן נשיאה

בחודש דצמבר 2015 גייסה חברה איגרות חוב מהציבור בישראל שסכומן כ־180 מיליון ש"ח, בריבית של 8.15%. איגרות החוב גויסו על־פי תשקיף מיום 30.11.15 והשלמות מאוחרות לו, ונרשמו למסחר בבורסה לניירות ערך בתל־אביב. יצוין כי מִדרוג בע"מ העניקה לאג"חים דירוג A3, דירוג בינוני־גבוה. חתֻמת החנפקה הייתה חברת איפקס הנפקות בע"מ, את התשקיף ערך משרד שמעונוב ושות', עורכי־דין, ורואה־החשבון שימש משרד Deloitte בריטמן אלמגור זהר ושות', רואי־חשבון. חנאמן למחזיקי האג"ח הוא "רזניק פז נבו נאמנויות בע"מ", שחגישה את הבקשה (להלן: "**הנאמן**").

תמורת החנפקה נועדה לשמש להלוואות בעלים לחברות הבנות של החברה שאף הן מאוגדות בקנדה (להלן: "**חברות הבנות**") ולהעמדת חון עצמי לפירעון הלוואות במיזמים שונים שלהן, כמפורט בשטר חנאמנות, וכן לתשלום מסים.

בבקשה נטען כי במהלך החודשים שמאז החנפקה חלה החמרה ניכרת במצבה הפיננסי של החברה ויכולתה לשרוד שנובעת ממספר אירועים, כאשר לשיטת חמבקשת לא ניתן לשלול שחלקם של אלה כבר היו ידועים עוד קודם לחנפקה אך לא דווחו. הדברים הגיעו לידי כך שכל חדיריקטורים של החברה, פרט לבעל השליטה חופטרו; חופסק המסחר בניי"ע של החברה; חדירוג פסק ועוד. נוכח האמור נוחלו מגעים אינטנסיביים עם בעל חשליטה שהיה אמור לחתום על מסמך Stand Still וביקש לחשחות נקיטת פעולות נגד חחברה. חרף זאת הופתע הנאמן עת שנודע לו שחחברות הבנות שעדפי התזרימים שלהן היו אמורים לשרת את חחוב למחזיקי האג"ח, נקטו בימים אלה בחליך חדלות פירעון בקנדה ומונה להן נאמן מטעם בית המשפט שם.

חבקשה

3. חנאמן מצביע בבקשה על שורת כשלים חמורים בחתנהלות החברה, חמחווים גם חפרת של שטר חנאמנות ומקימים עילה לחעמדת החוב לפירעון מידי ונקיטת חליכים נגד החברה. לעניין זה נטען שיש חכרח בחתערבות מִדִּית בענייני החברה וזאת באמצעות מינוי בעל תפקיד אשר תוקנינה לו סמכויות חדיריקטוריון של החברה; אשר יפעיל את כוח חשליטה של החברה בחברות חבנות שלה; אשר יבחן את חליכי חדלות חפירעון שנקטו החברות חבנות; אשר יבוא בדברים עם הנאמן שמונה להן; אשר יפעל להשגת כל המידע חדרוש בכל הנוגע לגיוס החון; אשר יגבש תכנית הבראה לחברה, ככל שיתאפשר; ואשר ייכנס לחצרי החברה ולמשרדיה ויתפוס את נכסיה, לרבות חשבונות ופיקדונות כספיים.

4. חבקשה חוגשה ביום 24.04.16, במהלך פגרת חפסח, וחוריתי על קיום דיון דחוף חיום במעמד החברה, בעלי תפקידים לשעבר בה, חנותנים לה שירותים, רשות ניירות ערך, כונס הנכסים חרשמי

נוטריון * מיגל דניאל עבאדי MIGUEL DANIEL ABADI * NOTAIRE

25.4.2016

בית המשפט המחוזי בתל־אביב–יפו

פר"ק 44348-04-16 רזניק מז נבו נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אורנשטיין, סגן נשיאה

ועד. בהחלטתי מאתמול ניתן גם צו איסור דיספוזיציה שלפיו נמנע מהחברה ומכל מי מטעמה לעשות כל עסקה מכל מין וסוג שהוא ברכושה.

חדיון בבית המשפט

5. לדיון התייצבו הנאמן (באי־כוחו; באת־כוח הדירקטורים של החברה, שחתפטרו באחרונה; היועצים המשפטיים של החברה לשעבר; באי־כוח הבורסה לניירות ערך וחברות במחלקה המשפטית שלה; באי־כוח כונס הנכסים הרשמי וכן עו"ד גד טיכו בשם החברה. הלה הודיע כי קיבל אמש את ייצוג החברה.

בדיון חזר בא־כוח הנאמן, עו"ד יואל פרייליך, על הבקשה וחידד את הצורך במתן הסעדים הזמניים. הוא הבהיר כי הנאמן התקשר עם משרד עורכי־דין בקנדה וכי זה יסייע לבעל התפקיד, אם ימונה, במילוי תפקידו; כי אין ניגוד עניינים לבעל התפקיד המיועד, ועוד.

לדברי בא כוח החברה, מרשתו אינה מתנגדת להוותרת צו איסור הדיספוזיציה על כנו, אך אינה רואה מקום למינוי בעל תפקיד ולחקניית הסמכויות המבוקשות, והיא משיגה על זהותו של בעל התפקיד המוצע מחמת ניגוד עניינים. עוד הוסיף בא־כוח החברה וטען שאין צורך בסעדים הזמניים המבוקשים, שיש לאפשר לחברה שהות להגיש תגובה סדורה, שממילא אמורה להתכנס אספת מחזיקי איגרות החוב ביום 01.05.16 – שבה תקבל האספה החלטה באשר להמשך החלק – ושלא ייגרם נזק בלתי הפיך אם לא יינתן הצו.

בא־כוח הכנ"ר ברעח שמצב החברה מצדיק נקיטת סעד נגדה, בדומה למקרים אחרים שבהם הורה בית המשפט על מינוי בעל תפקיד, אם גם לתקופה קצובה, עד להתבררות המצב לאשורו.

דיון והכרעה

6. עסקינן בבקשה שהוגשה בדחיפות בפגרת הפסח ושנדרשת בה החלטה דחופה ומשכך אסתפק בחנמקה תמציתית.

<u>החלטה</u>

הבקשת במהותה היא בקשה לסעד זמני ובטרם הוגש הליך עיקרי. משכך יש לבחון אותה כללים חנוהגים בסעדים זמנים, קרי, האם המבקש עומד במבחן ראיות מהימנות לכאורה בעילת התביעה ובמבחן מאזן הנוחות, וכקבוע בתקנות סדר הדין האזרחי, התשמ"ד–1984 (בהלכה הפסוקה, כאשר

נוטריון NOTAIRE NOTARY מיגל דניאל עבאדי MIGUEL DANIEL ABAD

25.4.2016

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פר"ק 44348-04-16 רזניק פז נבו נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אורנשטיין, סגן נשיאה

בין שני אלה "מקבילית כוחות" (ראה רע"א 2174/13 ד.ב. תנויות להשכרה בהרצליה הצעירה בע"מ נ' חברת אברהם כהן ושות' חברה קבלנית בע"מ (פורסם באר"ש, 19.04.2016).

אדגיש שבנסיבות תבקשה שלפני כשטרם התבקש הסעד העיקרי, שומה על בית המשפט לנקוט משנה זהירות בבואו להכריע בבקשה לסעד זמני, לא כל שכן בהינתן הסעדים הזמניים הדרסטיים חמבוקשים בה.

הבקשה נלווית לחליך עיקרי שבכוונת הנאמן להגיש על יסוד הוראת סעיף 350 לחוק החברות שעניינו הסדר בין החברה לבין נושיה, הליך שבהתאם ללשון חוק רשאי גם לנקוט נושה של החברה, בנוסף לחברה עצמה או משתתף או מפרק. כידוע ניתן לעתור לסעדים זמניים עוד לפני שנפתח ההליך העיקרי, ובלבד שהמבקש עמד בתנאים הנדרשים שצוינו לעיל.

אדן נוסף שעליו תבקשה מושתתת כזכור הוא תקנה 14(א) לתקנות ההסדר, המסמיכה את בית המשפט למנות בעל תפקיד בדונו בבקשה להסדר לפי סעיף 350 לחוק החברות, לאמור:

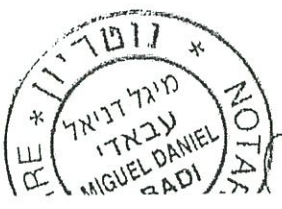
> **"למנות בעל תפקיד, ויחיו לו כל הסמכויות והחובות שיקבע בית המשפט, לרבות ניהול החברה או פיקוח על ניהולה, שמירה על נכסיה, וכן בדיקת תביעות חוב ותביעות לתיקון מרשם בעלי המניות בדרך המפורטת בפרק ג'; בית המשפט ימנה בעל תפקיד לאחר ששוכנע כי המועמד מתאים לתפקיד בשל כישוריו או ניסיונו בגיבוש הסדרי פשרה או הסדר[...]"**

מן הכלל אל הפרט

7. נעיון בכתבי הטענות ובנספחיהם מצטיירת תמונה עגומה, בלשון המעטה, של מצב החברה.

על פני הדברים עולה שחיא אינה עומדת בתנאי שטר הנאמנות, באופן שמקים עילה להעמדת החוב לפירעון מידי. לעניין זה אמנה את ההפרות שבכל אחד מהם יש כדי להקים את העילה האמורה, לא כל שכן משקלם המצטבר: המסחר באיגרות החוב של החברה הופסק; דירוג של חברה על ידי מידרג בע"מ הופסק אף הוא; כל הדירקטורים הישראלים של החברה התפטרו, וכך גם יועציה המשפטיים ומבקר הפנים שלה;

והתגלו כשלים חמורים בפעילותה של החברה וכמפורט בדיווח שהגישה על אודות הנתונים הכספיים מיום 20.04.16. בין אלה: הפסד בסך של 15 מיליון דולר קנדי לעומת הפעילות השוטפת ברבעון



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פר"ק 44348-04-16 רזניק פז נבו נאמנויות בע"מ נ' Urbancorp Inc.

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האחרון של שנת 2015; הפחתת שווי זכותו של בעל השליטה שהומחתה לחברה, לקבל הלוואות מתאגידים המוחזקים בידיו, כך שמשווי מוערך בסך כשמונה מיליון דולר הערך צפוי לצנוח לסכום זניח; חשש שהחברה תפחית את שוויים של חנכסים חגאותרמיים בסך הנע בין ארבעה לשישה מיליון דולר קנדי. בסוף הדיווח אף נכתב כי ייתכן שמצבה של החברה גרוע בחרבה וכי הפסדיה יהיו גבוהים.

אירוע נוסף חמלמד על כשלים בחברה ושיש לציינו הוא החלטת ארגון הבתים הקנדי Tsx מיום 04.04.16 שלא להאריך את תוקפו של רישיון החברה, משמע החברה אינה רשאית לחמשיך בפעילות חייזום והמכירה במיזמים בתכנון.

לכך מצטרפת חעובדה שצוינה לעיל, חחברות חבנות נקטו בימים חאחרונים בחליך של חקפאת החליכים בקנדה שבמסגרתו מונה לחן נאמן. חחברה ובעל חשליטה לא חביאו עובדה חשובה זו לידיעת הנאמן, ומקל וחומר לא ניתנו פרטים באשר להליך שנפתח, למשמעותו, להשלכותו על חחברה וכיוצא באלה.

המסקנה המתבקשת מהמקובץ דלעיל היא שקיים חוסר ודאות מוחלט באשר למצבה חכספי של חחברה, להונה העצמי, ליכולתה לחוסיף ולהתקיים, וחשש לגורל חשקעתם של מחזיקי האג"ח. מסקנה נוספת היא שקיים חוסר מידע מהותי באשר למתרחש בחברה והנאמן נאלץ לפעול באפלה ותכל כאשר קיים חשש לגורל חחברה ולנכסיה, לרבות באשר למתרחש בחברות חבנות ונכסיהם, שהן אשר נתנו מכספי גיוס חחוב מן חמחזיקים באיגרות החוב.

לטעמי חאמור מקים מסד מספק למינוי בעל חפקיד לחברה שיוסמך לקבל את מלוא המידע בנוגע לחברה, פעילותה, לרכושה ולזכויותיה לרבות בחברות חבנות וחחליכים חמתנהלים בקנדה. במקביל יוכל בעל חתפקיד לחתחקות אחר רכוש החברה, לאתרו, לתופסו ולמנוע ביצוע פעולות בלתי חפיכות. אוסיף שקבלת חמידע תאפשר גם קבלת חחלטה מושכלת על נקיטה בהליכים מתאימים לגבי החברה, למוער נזקים ולהשיא במידת חאפשר את חכספים שיהיה ניתן לשלם למחזיקי איגרות חחוב.

לא למותר לציין שחחברה נמצאת באיזור תדמדומים של חדלות פירעון, כאשר קיים חשש לגורלה ולגורל כספי המשקיעים אם לא יינקטו פעולות דחופות. כפי שציין בא־כוח חכנ"ר, באמתחתו של בית המשפט הזן בחדלות פירעון מנעד רחב של סעדים, ואלה חלים גם במצב שבו חברה נמצאת באיזור חדמדומים של חדלות חפירעון. בחקשר זה אפנה לפסיקת בית המשפט חעליון מהעת האחרונה, לדברי כבוד חשופטת א' חיות בע"א 3791/15 **סינרג'י כבלים נ' חבר**, פסקה 8 (פורסם בארי"ש, 19.04.2016):

בית המשפט המחוזי לא קבע מתוקף איזו סמכות שבדין הוא ממנה את המשיב, אך כפי שציין המשיב בצדק, <u>המציאות מלמדת כי ייתכנו מקרים [...] בהם ממנה</u>

נוטריון * NOTAIRE * NOTARY
מיגל דניאל עבאדי
MIGUEL DANIEL ABADI

14.2016

בית המשפט המחוזי בתל-אביב-יפו

פר"ק 44348-04-16 רזניק פז נבו נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אורנשטיין, סגן נשיאה

בית המשפט בעלי תפקיד בהליכים בהם נתון התאגיד ב„אזור חדלות הפירעון" (zone of insolvency), ועד בטרם ניתן צו להקפאת הליכים או לפירוק החברה (תשו, למשל: פר"ק (ת"א) 36681-04-13 הרמטיק נאמנות (1975) בע"מ נ' אי די בי חברה לפתוח בע"מ (30.4.2013) בו החליט בית המשפט המחוזי בתל אביב (השופט א' אורנשטיין) למנות בעל תפקיד שהוגדר כ„משקיף" לחברה, תוך שהוא נשמך לצורך כך על הסמכות הרחבה הנתונה לו לפי תקנה 14(א)(1) לתקנות החברות(...)

(ההדגשה אינה במקור-א.א.)

יפה החלטה דלעיל גם על עניננו.

לטעמי נסיבות המקרה עונות על המבחנים הדרושים למתן סעד זמני. לעניין זה החברה הפרה לכאורה את התחייבויותיה כלפי מחזיקי האג"ח ובאופן שמקנה למחזיקי האג"ח את הזכות להעמיד את החוב לפירעון מידי ולתבוע את הסעדים המגיעים כתוצאה מכך. אוסיף שגם מאזן הנוחות נוטה למתן הסעד הזמני. בהקשר זה אציין שלדברי בא-כוח החברה, בימים אלה אמורה לצאת לפועל עסקה מהותית של מכירת רכוש החברה ושעתיד להניב לה סכום כסף ניכר; לא מן הנמנע כי התמורה לא תגיע לכיסם של מחזיקי האג"ח, חרף צו איסור הדיספוזיציה בהעדר יכולת אכיפה מעשית, ובכך יגרם נזק בלתי הפיך. משכך רק בעל תפקיד שיוכל להתחקות גם אחר העסקה האמורה יוכל למנוע במידת האפשר פגיעה בלתי הפיכה במחזיקי האג"ח.

מסקנתי זו מתעצמת בשים לב להתנהלות הבעייתית של בעל השליטה בעת האחרונה. זה, כעולה מהבקשה, לא גילה לנאמן במחלך המגעים המתנהלים בימים אלו כי בכוונת החברות חבנות לנקוט את חחליך של חדלות הפירעון כמות שנעשה על ידם.

הלכה למעשה אין לחברה שדרת ניהול, שכן כל הדירקטורים פרט לבעל השליטה התפטרו, אין לה מבקר פנימי ואף היועצים המשפטיים הפסיקו את ההתקשרות עמה. במצב דברים זה נתונה החברה לרצונו חטוב של בעל השליטה ונוכח הבעייתיות עליה הצבעתי בנוגע אליו, העדר פיקוח על התנהלותו נכון יהיה למנות גורם שיטול את המושכות של חחברה ולמצער ועד שתתברר התמונח ישגיח על חנעשח בחברה.

לא חתעלמתי מטענת בא-כוח החברה בדבר הנזק שעלול להיגרם לחברה ממינוי בעל תתפקיד, אך לא ראיתי בכך כדי להגיע למסקנה שונה. סבורני שמשקלם של הטעמים שפירטתי לעיל, עולה במידה ניכרת על החשש שעליו הצביע עו"ד טיכו בהקשר זה. מכל מקום ניתן למצוא את האיזון הנדרש בין הבטחת התנהלות החברה לבין הנזק הנטען באמצעות הגבלת הסמכויות שתוקנינה לנאמן ופרק חזמן שבו ימונה. אטעים שאת החשש שעליו הצביע עו"ד טיכו, שעלול לנבוע לדבריו ממינוי מפרק זמני לחברה, ניתן להפיג בכך שלא ימונח מפרק זמני שאף לא חתבקש.

NOTAIRE * NOTARY * מיגל דניאל עבאדי MIGUEL DANIEL ABADI

25.4.2016

בית המשפט המחוזי בתל-אביב-יפו

פר"ק 44348-04-16 רזניק פז נבו נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אורנשטיין, סגן נשיאה

נתתי דעתי גם לטענת עו"ד טיכו בדבר ניגוד העניינים שבו שרוי כביכול בעל התפקיד המוצע, בהיותו מייצג את הנאמן. לא מצאתי בטענה זו סיבה מספקת שלא למנות את עו"ד גיסין, ואבחיר: משרד גיסין ושותי קיבל את ייצוג הנאמן רק באחרונה, כדברי עו"ד פרידליך בדיון. המשרד לא ייצג את הנאמן בחליך הכנת התשקיף, פרסומו והנפקת אגרות החוב ואף לא בתקופה שלאחר מכן אלא רק בעקבות ההסתבכות של החברה. משכך לא ניתן לומר כי הוא מעורב בהליכים שקדמו לבקשה זו. נוסף על כך, אם יתברר בעתיד שקיים ניגוד עניינים תיטען הטענה לפני בית המשפט ותישקל לגופה ואין בכוחה של הטענה למנע את מינוי בשלב המוקדמי שבו אנו מצויים.

לחשלמת הדברים אציין שאין עוררין על סמכותו של בית המשפט בישראל ליתן את הסעד המבוקש. אפנה בהקשר זה למסמכים השונים שצירף הנאמן לבקשה, ובהם התשקיף ושטר הנאמנות, שבהם נקבע שהחברה מכירה בסמכותו של בית המשפט בישראל להעניק את הסעדים (ראו סעיף 34 לשטר). כמו-כן אציין שבתשקיף הוחל סעיף 39א לחוק ניירות ערך, התשכ"ח-1968, אשר קובע כי הוראות חוק החברות תחולנה על כל חברה זרה שהנפיקה ניירות ערך. לא למותר להוסיף כי סמכותו של בית המשפט לדון בבקשה נובעת גם מהלכה של בית המשפט שניתנה במקרה שנסיבותיו דומות ואפנה לע"א 2706/11 SYBIL GERMANY PUBLIC CO. LIMITED נ' הרמטיק נאמנות (1975) בע"מ (פורסם באר"ש, 04.09.2015).

9. לאור כל האמור לעיל אני מורה בזאת כדלקמן:

אני ממנה את עו"ד גיא גיסין לבעל תפקיד ב-Urbancorp Inc. ומקנה לו הסמכות להפעיל את סמכויות החברה, וזאת לכל הפעולות האמורות להלן:

- לאתר, לחתחקות ולתפוס את כל נכסי החברה, מכל מין וסוג שהוא, ובכללם כספיה וזכויותיה בחברות הבנות.
- להפעיל את כוח השליטה של החברה בחברות הבנות.
- לקבל את כל המידע, מכל מין וסוג שהוא, על פעילות החברה, על רכושה ועל זכויותיה. הוא תדין בחברות הבנות;
- לבוא בדברים עם הנאמן לחברות הבנות, ולשם כך גם לפנות לבית המשפט הקנדי כנציג מוסמך של החברה;
- להתחקות אחר פעולות החברה עובר לתשקיף ולאחריו.

לצורך מימוש סמכויות אלו בעל התפקיד מוסמך בזאת להופיע בשם החברה לפני כל גוף, רשות או אדם בישראל ומחוצה לה; לקבל כל מידע מכל גורם של החברה מבעלי השליטה, מהרשויות וממי

7 מתוך 8

נוטריון * מיגל דניאל עבאדי MIGUEL DANIEL ABADI * NOTAIRE NOTARY

נוטריון * מיגל דניאל עבאדי MIGUEL DANIEL ABADI * NOTAIRE NOTARY

25.4.2016

בית המשפט המחוזי בתל-אביב-יפו

פר"ק 44348-04-16 רזניק פז נבו נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אורנשטיין, סגן נשיאת

שנתן או נותן שירותים לחברה; ולקבל מהם את כל המסמכים שיהיה סבור כי הם דרושים למילוי תפקידיו.

בעל התפקיד יוסמך לגבש מתווה ראשוני של הסדר נושים.

בעל התפקיד יפנה לבית המשפט במידת הצורך ויבקש אישורו להפעלת סמכויות החברה שלא פורטו במפורש בהחלטה.

להסרת ספק: בעל התפקיד אינו מוסמך לממש רכוש של החברה.

תנאי למינוי הוא הפקדת התחייבות עצמית של בעל התפקיד בסך של 250,000 ₪.

בעל התפקיד יעשה כל שניתן בשביל לקבל את המידע הדרוש כבר בימים הקרובים, כך שניתן יהיה להציגו במידת האפשר לפני מחזיקי איגרות החוב באסיפה שקבועה ליום א הקרוב, 01.05.16.

בשלב זה אני קובע את המינוי עד ליום 22.05.16 או עד החלטה אחרת.

דוח ראשון על פעולותיו של בעל התפקיד ינגש עד ליום 08.05.16.

חתיק נקבע לדיון **ביום 22.5.16 בשעה 11:30.**

המזכירות תודיע על ההחלטה טלפונית וכן תשגר אותה בפקס

ניתנה היום, י"ז ניסן תשע"ו (25 באפריל 2016), בהעדר הצדדים.

איתן אורנשטיין, שופט
סגן נשיאת

נוטריון NOTAIRE NOTARY
מיגל דניאל עבאדי
MIGUEL DANIEL ABADI

Court File No.: CV-16-11392-00CL

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

6570380

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto, Ontario, Canada

SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)

GOODMANS LLP
Barristers and Solicitors
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M5H 2S7

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Lawyers for the Foreign Representative

TAB C

מספר סידורי 42/2017
טופס מס' 1

אימות חתימה

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)(נם) החופשי על המסמך שלעיל (המצורף והמסומן באות/מספר A+B)(שמעבר לדף).

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

חתימה

חותם הנוטריון

שכר נוטריון.192 ₪

[redacted] מאדם אחד, יש לפרש בשמו של כל אחד לחוד בציון [redacted]

Serial 42/2017
Form No. 1

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's seal

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.

Court File No. CV-16-11392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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:

N.A.

(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 or a Person Authorized to Take Oaths in the State of Israel

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 or a Person Authorized to Take Oaths in the State of Israel

NADINE AMIEL

Exhibit "A" to the Affidavit of Nadine Amiel

N.A.

September 26, 2017

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Motions 42, 47, 48, 50

Before Honorable President Eitan Orenstein

NOTARY שילה סגל SHEILA SEGAL

1

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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

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

September 26, 2017

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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 matter: Reznik Paz Nevo Trusts Ltd.

By attorneys Amir Flamer and Evyatar Kramer et al.

The Trustee to the Bondholders

And in the matter: The Official Receiver

The Official Receiver

Judgment and Rulings

1. General

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

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

2. Background

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

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

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

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

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3. **The Company's Creditors**

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

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

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

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

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

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

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 Downsview 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)

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

4.2 <u>The Essence of the Creditors' Arrangement</u>

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

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

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

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

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adapting to the changing economic needs in accordance with the spirit of the times. We are dealing with a framework section which is used to implement a wide variety of arrangements and it is impossible to refute that in the appropriate case this provision also constitutes the possible legal framework to purchase shares.
My approach is in line with the court ruling with respect to the implementation of Section 350 of the Companies Law. In this matter we turn to Miscellaneous Civil Applications (TA) 4139/01 Carmel Investments Group Ltd. v. the Phoenix Israeli Insurance Company Ltd. 33 (1)772".

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

5. <u>The Creditors' and Shareholder's Meetings</u>

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

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

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

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

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

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

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

7. A hearing in the presence of the parties

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

8. The Will of the Majority of the Creditors

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

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

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

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

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

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

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

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

10. Fachtold's Opposition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. **<u>Opposition of the Canadian Directors</u>**

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

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

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

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

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

12. **<u>Opposition of the Shareholders</u>**

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

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

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

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

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

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

The Functionary's claim to the objections' merits:

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

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

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

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

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

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

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

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

> **"However, in the case that that there is no concrete possibility of adopting a settlement that will leave the company's current controlling shareholders 'in the picture' even after the attempt to rehabilitate it, the creditors are those who remain at center stage, while the primary goal of the settlement is to benefit them, i.e. to increase the debt repayment rate towards them."**
>
> (Emphasis added – E.O.)

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

> **"The very concept of the shareholders' deference to the creditors in a state of insolvency shows that when the interest of the former collides with the interest of the latter, the creditor's interest shall prevail. In a situation in which the desire of shareholders to stay in their place conflicts with the creditors' interest in reaching a settlement, preference is given to the shareholders' interest (*inter alia*, by disqualifying a dilution attempt). In practice, this means their preference over the creditors, and therefore is tantamount to contradicting the insolvency laws."**
>
> (Emphases added – E.O.)

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

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

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

12.5 Implementation in our case:

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

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

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

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

12.7 Lack of clarity with regards to the costs of the proceeding; The Functionary noted that the total expenses from the proceeding in Israel amounted to NIS 192,000, and even attached a table detailing the expenses until now. As for future expenses, obviously, they cannot be quantified at this stage of the proceeding. The Functionary sought to leave a sum of NIS 7 million in the Company's treasury as an estimate of future anticipated expenses. The line of logic, common sense, and life experience teach us that it is better to leave a sum that will be a sufficient source to cover whatever is needed, than to empty the funds and leave no source to serve the monetary needs of the proceeding. I don't believe the Functionary's estimate was unreasonable, given his discretion, his past experience, and the needs of the proceeding, which are often associated with significant costs. It should also be stressed that, in any event, there are control and supervision with regards to the payment of expenses, including through motions filed with the Court, which are also examined by the Official Receiver. Therefore, there is also no concern that the creditors or the Shareholders will be harmed in this respect.

12.8 The Functionary's lack of authority to liquidate the assets; the *prima facie* authority to liquidate the assets of the subsidiaries rests with the Canadian Functionaries. However, the Functionary is vested the Company's authorities to act in the subsidiaries, and, in this framework, to receive information about the subsidiaries' operations, properties, and rights (see ruling of April 25, 2016). Moreover, the Functionary, by virtue of his station, represents the interests of the Company and the Company's creditors; therefore, even if he himself does not liquidate the assets of the subsidiaries, he acts in coordination with the Canadian Functionaries, without deviating from his vested authorities. The foregoing does not negate or derogate from the authorities of the Canadian Functionaries.

12.9 Lack of an affidavit supporting the confirmation of the Creditors' Arrangement; I was bewildered by this argument raised by the Shareholders and Fachtold. That these, who have sown their opposition in a series of factual claims – such as the Shareholders' claim that a balance will remain for the Shareholders in the Company's treasury; Fachtold's claim that the Functionary said that he is considering filing claims under the Securities Law; and more – would also attack the Functionary for lacking an affidavit to support the motion to confirm

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

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

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

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

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

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

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

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

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

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

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

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

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

13. I will now discuss the additional motions filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. **In conclusion**

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

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

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

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

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

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

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

[Signature]

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

1 Eitan Orenstein, President

TAB 3

Court File No. CV-16-11392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	MONDAY, THE 30TH
	)	
JUSTICE	)	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 ___, 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**").

PROFESSIONAL FEES

3. **THIS COURT AUTHORIZES AND DIRECTS** KSV Advisory Inc., in its capacity as the CCAA Monitor ("**Monitor**") of Urbancorp Cumberland I LP ("**Cumberland I**"), to pay the Canadian professional fees of the Foreign Representative from the professional fee reserve established by the Monitor in the Cumberland I estate.

MISCELLANEOUS

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

5. **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.

Schedule "A"

Serial 42/2017
Form No. 1

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's seal

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.

מספר סידורי 42/2017
טופס מס' 1

אימות חתימה

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)(נם) החופשי על המסמך שלעיל (המצורף והמסומן באות/מספר A+B)(שמעבר לדף).

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

חתימה

חותם הנוטריון

שכר נוטריון.192 ₪

[redacted] מאדם אחד, יש לפרש בשמו של כל אחד לחוד בציון [redacted]

Court File No. CV-16-11392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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:

N.A.

(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 or a Person Authorized to Take Oaths in the State of ISRAEL

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 or a Person Authorized to Take Oaths in the State of Israel

NADINE AMIEL

Exhibit "A" to the Affidavit of Nadine Amiel

N.A.

September 26, 2017

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

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NOTARY שילה סגל SHEILA SEGAL

1

2

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

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

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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 matter:	Reznik Paz Nevo Trusts Ltd. By attorneys Amir Flamer and Evyatar Kramer et al.	The Trustee to the Bondholders
And in the matter:	The Official Receiver	The Official Receiver

Judgment and Rulings

1. General

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

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

2. Background

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

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

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

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

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3. The Company's Creditors

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

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

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

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

4. The Motion to Confirm the Creditors' Arrangement

4.1 The Principles of the Creditors' Arrangement

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

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 Downsview 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)

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

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

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

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

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

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

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adapting to the changing economic needs in accordance with the spirit of the times. We are dealing with a framework section which is used to implement a wide variety of arrangements and it is impossible to refute that in the appropriate case this provision also constitutes the possible legal framework to purchase shares.
My approach is in line with the court ruling with respect to the implementation of Section 350 of the Companies Law. In this matter we turn to Miscellaneous Civil Applications (TA) 4139/01 Carmel Investments Group Ltd. v. the Phoenix Israeli Insurance Company Ltd. 33 (1)772".

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

5. <u>The Creditors' and Shareholder's Meetings</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Fachtold's Opposition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. <u>Opposition of the Canadian Directors</u>

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

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

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

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

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

12. **<u>Opposition of the Shareholders</u>**

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

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

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

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

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

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

The Functionary's claim to the objections' merits:

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

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

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

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

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

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

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

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

> **"However, in the case that that there is no concrete possibility of adopting a settlement that will leave the company's current controlling shareholders 'in the picture' even after the attempt to rehabilitate it, the creditors are those who remain at center stage, while the primary goal of the settlement is to benefit them, i.e. to increase the debt repayment rate towards them."**
>
> (Emphasis added – E.O.)

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

> **"The very concept of the shareholders' deference to the creditors in a state of insolvency shows that when the interest of the former collides with the interest of the latter, the creditor's interest shall prevail. In a situation in which the desire of shareholders to stay in their place conflicts with the creditors' interest in reaching a settlement, preference is given to the shareholders' interest (*inter alia*, by disqualifying a dilution attempt). In practice, this means their preference over the creditors, and therefore is tantamount to contradicting the insolvency laws."**
>
> (Emphases added – E.O.)

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

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

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

12.5 Implementation in our case:

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

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

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

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

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12.7 Lack of clarity with regards to the costs of the proceeding; The Functionary noted that the total expenses from the proceeding in Israel amounted to NIS 192,000, and even attached a table detailing the expenses until now. As for future expenses, obviously, they cannot be quantified at this stage of the proceeding. The Functionary sought to leave a sum of NIS 7 million in the Company's treasury as an estimate of future anticipated expenses. The line of logic, common sense, and life experience teach us that it is better to leave a sum that will be a sufficient source to cover whatever is needed, than to empty the funds and leave no source to serve the monetary needs of the proceeding. I don't believe the Functionary's estimate was unreasonable, given his discretion, his past experience, and the needs of the proceeding, which are often associated with significant costs. It should also be stressed that, in any event, there are control and supervision with regards to the payment of expenses, including through motions filed with the Court, which are also examined by the Official Receiver. Therefore, there is also no concern that the creditors or the Shareholders will be harmed in this respect.

12.8 The Functionary's lack of authority to liquidate the assets; the *prima facie* authority to liquidate the assets of the subsidiaries rests with the Canadian Functionaries. However, the Functionary is vested the Company's authorities to act in the subsidiaries, and, in this framework, to receive information about the subsidiaries' operations, properties, and rights (see ruling of April 25, 2016). Moreover, the Functionary, by virtue of his station, represents the interests of the Company and the Company's creditors; therefore, even if he himself does not liquidate the assets of the subsidiaries, he acts in coordination with the Canadian Functionaries, without deviating from his vested authorities. The foregoing does not negate or derogate from the authorities of the Canadian Functionaries.

12.9 Lack of an affidavit supporting the confirmation of the Creditors' Arrangement; I was bewildered by this argument raised by the Shareholders and Fachtold. That these, who have sown their opposition in a series of factual claims – such as the Shareholders' claim that a balance will remain for the Shareholders in the Company's treasury; Fachtold's claim that the Functionary said that he is considering filing claims under the Securities Law; and more – would also attack the Functionary for lacking an affidavit to support the motion to confirm

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

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

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

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

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

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

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

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

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

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

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

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

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

13. I will now discuss the additional motions filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. <u>In conclusion</u>

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

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

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

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

<u>The clerk shall scan the verdict and the rulings in Motions 42, 47, 48 and 50.</u>

<u>The clerk shall send the verdict and rulings to the parties.</u>

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

[Signature]

September 26, 2017

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Before Honorable President Eitan Orenstein

1 Eitan Orenstein, President

Court File No. CV-16-11392-00CL

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)

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Court File No. CV-16-11392-00CL

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MOTION RECORD
(returnable October 30, 2017)

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