THE HIGH COURT

[2015 No. 404 COS]

IN THE MATTER OF

BOOKFINDERS LIMITED (IN INTERIM EXAMINATION)

AND

IN THE MATTER OF THE COMPANIES ACT 2014

JUDGMENT of Ms. Justice Costello delivered on 26th day of November, 2015.

1. On Friday, 13th November, 2015, the Directors of Bookfinders Limited ("the Company") having its registered office at 81 Ocean Wave, Salthill, Galway, H91 E2YK, presented a petition seeking an order pursuant to s. 509(1) of the Companies Act 2014 ("the 2014 Act") admitting the Company to the protection of the High Court together with an order appointing the proposed Examiner to act as Examiner to the Company. The Petitioners also sought an order pursuant to s. 512(7) of the 2014 Act and O.74A, r.6(2) of the Rules of the Superior Courts appointing the proposed Examiner as Examiner to the Company on an interim basis until the hearing of the Petition or such other date as the High Court should deem necessary.

2. On 11th November, 2015, at 12.40 p.m. KBC Bank Ireland plc ("the Bank") appointed Mr. Shane McCarthy to be the Receiver and Manager of all of the assets comprised in and charged and assigned in its favour pursuant to a mortgage dated 10th April, 2015, containing mortgages, fixed and floating charges and assignments granted by the Company to the Bank's predecessor, IIC Bank plc.

3. This Court originally fixed Friday, 20th November, 2015, at 11.00 a.m. as the date and time for the hearing of the Petition but by reason of the delays on the part of the Petitioners in serving documents upon, *inter alia*, the Bank with the consequential delay in the Bank furnishing a replying affidavit to the Petitioners, the matter was adjourned for hearing to 24th November, 2015, at 10.00 a.m.

4. The Petition was opposed by the Bank on the basis that there had been a failure to disclose information available to the Petitioners which was material to the exercise by the Court of its powers under Part 10 of the 2014 Act in both the Petition and in the verifying affidavit of Mr. Alan Bundschu. It was also said that there was a similar failure to disclose information which was material to the exercise by the Court of its powers in the Independent Expert's Report ("IER") which was exhibited by Mr. Bundschu. It was said that this amounted to a breach of the terms of s. 518 of the 2014 Act and on this basis the Petition should be dismissed.

5. In the alternative it was argued that the Court cannot be satisfied that the Company has a reasonable prospect of survival on the basis of the evidence that was presented to the Court and therefore the Petition ought to be dismissed.

6. Counsel for the Petitioners, Mr. Mulloy S.C., disputed the fact of, or the degree of, the failure to disclose certain information and stated that there was evidence before the Court to establish that there was a reasonable prospect of the survival of the Company and the whole or any part of its undertaking as a going concern.

Alleged material non-disclosure.

7. Mr. Eoin McGrath, a corporate banking manager of the Bank, identified the following issues which he said were not disclosed to the Court by the Petitioners and which ought to have been disclosed:

- The Petition omitted the material fact that the floating charge over the entire Company and its assets had been converted into a fixed charge on 9th November, 2015, before the presentation of the Petition, though he accepted that the letter was exhibited but no where referred to in either the Petition or the affidavit of Mr. Bundschu.

- The Petition omitted the material fact that the Directors of the Company had personally guaranteed the debts of the Company to the Bank and that those guarantees had been called in. The sum claimed as of 2nd November, 2015, was €3,693,578.52.

- The Petition and the IER suggested that the Directors' remuneration and the wage bill generally had declined in recent years. The Petitioner glossed over the fact that in 2015 both had increased in absolute terms and that they had both increased in terms of percentage of turnover.

- The IER referred to the secured assets as being solely the Company's premises in Letterkenny, Co. Donegal. The Company had three other shops which it rented. He pointed out that it was unclear if the Independent Expert was even aware that the floating charge had crystallised.

- The Petition relied upon projections in a report prepared by KPMG made in January, 2015 (based on information provided by the Company) but failed to point out that they were made on the basis of reforms that were never introduced and on the basis of the Petitioner's own information and that the projections for 2015 had already proven to be in the words of one of the Petitioners "*wildly over optimistic*".

- The Petitioners disclosed a valuation of 1st October, 2015, prepared by Sherry Fitzgerald Rainey in respect of the Company's premises at the Courtyard Shopping Centre, Main Street, Letterkenny, Co. Donegal valuing the premises at €288,450.00. The Petition did not disclose the Report of Charlie Robinson Limited dated 22nd May, 2015, which valued the property as of 22nd May, 2015, at €600,000.00.

8. The IER exhibited by Mr. Bundschu stated that the author relied on information/documentation provided by the Company's Directors. It noted that turnover declined from a high of €8.8 million in 2007/08 to just under €4.8 million in 2014/15. It stated that the Statement of Affairs of the Company shows excess of liabilities over assets of €2,280,206.00. The majority of the deficit consisted of debts due to the Bank, the Revenue Commissioners and trade creditors generally. The IER stated that the names and addresses of the creditors of the Company were contained in Appendix 3 but when one turns to Appendix 3 not a single creditor is listed. The details of the secured creditors set out in Appendix 4 referred to the Bank and suggested that the Independent Expert believed that the security was confined to the freehold property in Letterkenny, Co. Donegal.

9. At para. 6.1, his Report stated as follows:-

> *"I have reviewed the shareholders and management projections of the Company and discussed with them the assumptions upon which those projections were prepared. In my opinion the Company would have a reasonable prospect of survival as a going concern subject to the following conditions:*
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> > *- The acceptance of an appropriate scheme of arrangement by the creditors and the members of the Company and its approval by the High Court.*
> >
> > *-The successful completion of negotiations to secure new investment which would guarantee the Company's future cash requirements.*
> >
> > *- A full in-depth review of each site to determine the profitability and/or contribution being made to the fixed costs of the company and the review to highlight any further possible cost savings."*

10. In reply to Mr. McGrath's affidavit, the second Petitioner, Mr. Mark Bundschu swore an affidavit on 22nd November, 2015, in relation to the complaints that there had been non-disclosure of material information. Mr. Bundschu pointed to the fact that as the Receiver had been appointed at 12.40 p.m. on Wednesday, 11th November, 2015, the Directors had less than two working days in which to present a petition to the High Court on Friday, 13th November, 2015. He said that:-

> *"this abbreviated timetable, barely two-thirds of the intended duration allotted by the legislation, meant that the Company's Directors were not as thorough as would have been optimal in ensuring that full and complete details of all information relevant to the Company's business were set out in the Petition and the Verifying Affidavit".*

11. In relation to the non-disclosure of the notice of conversion of the floating charge to a fixed charge, he conceded that the text of the Petition and the verifying affidavit did not make the scope of the Bank's security explicitly clear. He said this was not a deliberate omission. He said it arose from the Company's Directors' interpretation of the Deed of Appointment. He said the letter of 9th November, 2015, was exhibited in the verifying affidavit.

12. In relation to the non-disclosure of the personal guarantees of the two Petitioners, Mr. Bundschu stated:-

> *"Following the appointment of the Receiver on 11 November 2015, it is regrettable that in the short time period available, precise distinctions between liquidation, receivership and examinership could not be brought home to the Company's Directors for Alan Bundschu and myself to fully appreciate, with sufficient force, the nature of our contingent liability as personal guarantors."*

13. He denied that there had been non-disclosure of an increase in wage costs and the Directors' salaries between 2014 and 2015. The Bank had acknowledged that the increase in the Directors' salaries had to be considered in the light of the passing of a Director, Ms. Caroline Bundschu, during that period and he pointed out that the Petition and verifying affidavit clearly stated that the salaries were in the process of being cut by the sum of approximately €56,000.00. He stated that the wage increases were set out clearly in para. 16 of the Petition and the verifying affidavit and the increase was attributable to the fact that the Company's average number of employees increased from 43 to 49 between 2014 and 2015.

14. He said the reason the May, 2015 valuation of the Letterkenny premises was not disclosed was because the Bank itself had objected to a valuation prepared by an expert who was not on the Bank's panel of valuers. The Directors were of the opinion that the later Sherry Fitzgerald Report superseded the earlier valuation. It is to be inferred that for this reason the earlier Report was not presented to the Court.

15. At para. 31 of his affidavit, Mr. Bundschu stated that the Company's Directors "*believed the KPMG Report to be incomplete, inaccurate, misleading and had an unduly negative outlook for the Company*." This, despite the fact that the Petitioners relied upon the projections for the years 2016 and 2017 set out in the KPMG Report in both the Petition and the verifying affidavit and invited the Court to rely upon them.

Addendum to the IER

16. Mr. Bundschu exhibited what was described as an addendum to the IER made by the Independent Expert. In the Addendum, the Independent Expert stated that he made the amendments to his Report dated 12th November, 2015, to take into account matters that had come to his attention since 12th November, 2015, to 20th November, 2015. He did not explain any further why very significant alterations to his Report were required or how they arose. It is to be inferred that he was of the view that his original Report was incorrect in respect of those items he changed.

17. He stated that the excess of liabilities over assets had changed from €2,280,206.00 to €3,252,977.00, a difference of €972,771.00. The explanation for the very great change is to be found in the new Appendix 1.

18. Appendix 1 set out the Statement of Affairs at 31st October, 2015. Trade debtors were stated to be €398,603. In the new Appendix they were stated to be €120,347. Trade creditors and accruals had been (€215,469) but they were now stated to be (€780,891). Taxation marginally increased and other creditors and accruals went from (€110,000) to (€192,622). This lead to a change in the net asset deficiency from €2,280,206 to €3,252,977.

19. He also made very considerable changes to the critical para. 6.1. He deleted one of the three conditions he identified as necessary for the survival of the Company as a going concern (his condition that there be the successful completion of negotiations to secure new investment which would guarantee the Company's future cash requirements). He did not explain why this was no longer a condition for the survival of the Company, though the deficit had increased by more than 40%. On the other hand, he added considerably to his list of conditions for the survival of the Company. Section 6 now runs to three pages.

20. He also revised the examinership cash flow forecast. Originally it was for the period November, 2015 to January, 2016. In the Addendum to the IER, the cash flow projections were from 20th November, 2015, to 19th February, 2016. Set out the differences in tabular form:

	13th November 2015	23rd November 2015	Difference

Cash Sales	€837,131	€865,495	€28,364
Total Payments	€954,436	€858,175	(€96,261)
Supplier Payments	€612,090	€577,781	(€34,389)

21. There are further discrepancies in relation to the question of net assets as follows:

Bookfinders Limited Comparison of Net Assets		31 OCT 2015 (12 NOV Version)		31 OCT 2015 (22 NOV Version)		Difference
Current Assets		€'000's		€'000's		-45
Stock		670		625		-279
Debtors		399		120		0
Cast at Bank		354		354		-324
Current Liabilities		1,423		1,099		565
Trade Creditors		215		780		1
Revenue Commissioners		15		16		82
Accruals		110		192		0
Bank Overdraft		0		0		648
		340		988		
Net Position		1,083		111		-972

The Report now disclosed that there were rates due to Donegal County Council of €71,975 and arrears of rent in respect of the premises at Calbro House of €61,667.

22. These significant changes coupled with the failure to adequately explain how the errors arose in the first place and why the Independent Expert is now satisfied that the information is correct and reliable raise the issue as to whether the information now presented to the Court is such that the Court can rely upon the Report of the Independent Expert to satisfy itself independently that the Company has a reasonable prospect of surviving as a going concern and what are the conditions which require to be satisfied to achieve that goal.

23. This issue is particularly acute in light of the evidence and submissions of the Bank. The Bank instructed Mr. Jim Luby of McStay Luby, a firm specialising in corporate recovery and insolvency, to review the papers including the KPMG Report, the IER and the Addendum to the IER. He pointed to the significance of the changes to the figures, the lack of any explanation for the changes to both the figures and the conditions in s. 6 of the IER and concluded that, in his opinion, the Company does not have a reasonable prospect of survival.

24. The Interim Examiner, Mr. Michael McAteer, prepared a report dated 23rd November, 2015. In s. 2 of the Report, he dealt with the initial assessment of the Company's prospects. He noted the amendments to the IER of 12th November, 2015, made on 22nd November, 2015, showing that stock for resale was overstated at €45,097; trade debtors were overstated by €278,256, trade creditors were understated by €565,422 and that other creditors and accruals were understated by €82,622. Furthermore the amended estimated Statement of Affairs indicated that the deficiency on a going concern basis was €3,252,977 and on a liquidation basis was €3,510,235.

25. Notwithstanding these amendments he stated that at this early juncture he believed that the conditions identified by the IER and summarised in his Report were reasonably and achievable. He stated:-

> *"[w]hile it is early in the process, I believe that the evident support for the Examinership process from customers and certain trade suppliers and along with expression of interests already received in relation to a potential investment suggest that a Scheme of Arrangement can be formulated, put to and agreed by Creditors. Key to this is the formulation of a scheme which will ensure that the secured creditor is not prejudiced in terms of outcome when compared with the anticipated outcome in the receivership. I will arrange for a valuation to be carried [out] in respect of the property in Letterkenny, with the identity of such valuer to be agreed with secured creditor.*
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> *At this stage in the process I am unable to estimate the level of capital investment the Company requires. From my initial discussions with the Company Directors, the Directors have indicated to me that they have received expressions of interest from potential investors.*
>
> *I have received one written expression of interest from a related party company to the directors.*
>
> *I have reviewed the cost cutting measures and changes introduced by Company Directors (and identified in the IER) and if implemented in full have formed the opinion that these measures are reasonable and will have a positive impact on the Company. However, I am of the view that more can be done and will be carrying out an extensive review of what possible further measures can be taken, including the possibility of store closures if appropriate and consideration of the matters raised in KPMG's and McStay Luby's report. I will also review management performance and make such recommendations as to change both as to personnel and remuneration in this respect as I view to be appropriate."*

He concluded his Report by stating that based upon his discussions with customers, trade creditors, staff and the Directors and subject to the implementation of conditions as outlined in the IER which he believed to be achievable he was of the opinion the Company had a reasonable prospect of surviving as a going concern.

Section 518 of the Companies Act 2014

26. Counsel for the Bank, Mr. Dunleavy S.C., submitted that there were seven material matters which were not disclosed when the Petition was presented and an application to appoint an interim examiner was made on an *ex parte* basis. These are:

- That a receiver had been appointed over all of the assets of the Company;
- That the Petitioners had personally guaranteed the liabilities of the Company to the Bank and payment on foot of the guarantees had been demanded in the amount of approximately €3.6 million;
- There had been increase in the salaries paid to the Directors;
- There had been a failure to disclose all of the valuations of the Company's premises at Letterkenny;
- The Company was significantly in arrears of rent in relation to one of its premises;
- The Company owed significant rates to Donegal County Council; and
- The KPMG Report constituted independent evidence upon which the Court could rely in relation to projected cash flows for 2016 and 2017 but in the subsequent affidavit of Mr. Mark Bundschu the Report was described as incomplete, inaccurate and misleading.

27. Mr. Dunleavy submitted that any one of these non-disclosures amounted to a breach of the provisions of s. 518 of the 2014 Act. Section 518 provides:-

> *"[t]he court may decline to hear a petition presented to it or, as the case may be, may decline to continue hearing such a petition if it appears to the court that, in the preparation or presentation of the petition or in the preparation of the report of the independent expert, the petitioner or independent expert—*
>
> > *(a) has failed to disclose any information available to him or her which is material to the exercise by the court of its powers under this Part; or*
> >
> > *(b) has in any other way failed to exercise utmost good faith."*

28. Counsel relied upon the decision of Irvine J. in the case of *O'Flynn v. Carbon Finance Limited* [2014] IEHC 458. Irvine J. noted that the section placed a duty upon all associated with the preparation and presentation of a petition for the appointment of an examiner to disclose all relevant information to the court and to exercise utmost good faith. Failure to do so gives the court power to dismiss a petition entirely. At para. 95 of the judgment she stated:-

> *"[i]t is necessary, when considering the appropriate standard of disclosure required by s 4A of the 1990 Act [the precursor of s. 518] and the consequences of non-disclosure under this section, to have regard to the nature of the application made by the petitioner. The orders obtained, namely of interim protection, the appointment of an interim examiner, and directing cooperation by the directors of the companies, were sought and granted on an ex parte basis, as is the procedure required by Ord 75A of the Rules of the Superior courts. The granting of the orders ex parte is significant when considering the requirements of s 4A of the 1990 Act and the consequences of a finding thereunder."*

29. Irvine J. distinguished the situation where an application is made to set aside the orders made *ex parte* on the grounds of non-disclosure from that pertaining in *Re Traffic Group Limited* [2008] 3 I.R. 253. At para. 111 of her judgment she stated that the nature of orders granted *ex parte* place a high standard of disclosure on the shoulders of a party who seeks such an order to ensure that it will not be set aside when reviewed *inter partes*. Irvine J. continued at para. 113 as follows:-

> *"[i]n terms of considering appropriate consequences for breaches of this duty of utmost good faith and material non-disclosures, there is a need for clarity on the powers being exercised by the court in response to the application of the companies. The purpose of the hearing [of] these applications is not so as to engage in some form of pre-petition hearing; it [is] to consider whether the orders granted ex parte should be set aside. In this regard the behaviour of the petitioner in relation to disclosures is highly relevant. It is not a defence to a failure to exercise the utmost good faith to say that the companies are suitable for the examinership process in any event. Suitability for examinership is a separate issue to the standard of disclosure required both by the nature of an order granted ex parte and the specific statutory requirement under s 4A of the 1990 Act. If the companies are suitable ones for examinership then a petition complying with the good faith obligations of the 1990 Act should be brought so that the court may consider the appointment of an examiner to the companies at the inter partes hearing of that petition."*

It is clear that Irvine J. took the view that the objectives of the legislation were not a relevant consideration in response to the exercise by the court of its discretion in response to breaches of what was then s. 4A of the examinership process.

30. In that case Irvine J. felt that the appropriate consequence for the petitioners' breaches of its obligations under s. 4A of the Act of 1990 was to discharge the interim examiner and to dismiss the petition. It is important to note that unusually the petition in that case had been presented by a creditor of the company and that the main threat to the continued survival of the company came from the petitioner itself.

31. I accept that the Petitioners have failed to comply with their obligations of disclosure to the Court as set out in s. 518 of the 2014 Act. The failure to disclose the fact that there were personal guarantees by the Petitioners which had been called in a few days earlier claiming approximately €3.6 million is a material fact that ought to have been disclosed. Likewise, the Court should have been informed that the floating charge had been crystallised by the Bank the previous week and that the Receiver was therefore appointed to the Company's undertaking, and not just to the freehold premises in Letterkenny. The Court should not have been invited to rely upon the projections for future turnover set out in the KPMG Report if the Petitioners themselves believed that the Report was inaccurate and misleading. Both valuations carried out to the secured property in 2015 should have been before the Court. The arrears of rent and the outstanding rates ought to have been disclosed to the Independent Expert and included in his Report. Clearly there was a very considerable issue with the accuracy and reliability of the figures presented in the IER but, without further information, I cannot conclude that the correct figures were not disclosed in the sense that they were known and withheld from the Court.

32. I hold that there was a breach of the requirements of s. 518 by the Petitioners in respect of these matters. Therefore the Court has power on that basis to decline to hear the Petition. The question then is to determine the appropriate consequences for the breach of the duty of utmost good faith and material non-disclosure. If this were simple *inter partes* litigation I am of the opinion that non-disclosures such as those that occurred in this case would disentitle the offending party from obtaining equitable relief such as an interlocutory injunction and they would justify the discharge of an interim injunction.

33. But the relief sought here has ramifications and implications for many persons other than those concerned directly with the hearing of the Petition. I accept that the question of whether a company is suitable for the examinership process is not relevant to the assessment as to whether or not there has been a failure to comply with the requirements of s. 518 or the duties of utmost good faith in relation to *ex parte* applications as was held by Irvine J. However, that is not to say that it is not a factor to be taken into account in considering the appropriate consequences for the breaches. After all, a primary, if not the primary, focus of the examinership jurisdiction is the preservation, where possible, of jobs that might otherwise be lost by the failure of a company. It is the basis for the justification of impairing the rights of creditors of a company. It seems to me therefore that it is appropriate to have regard to the fact that the purpose of the application should be to preserve employment and the reasonable prospect of a successful outcome to a possible examinership with the resultant saving of jobs is a factor that should be taken into account in deciding the consequences that should flow from the beaches of s. 518 and the duty of full disclosure that I have found occurred in this case.

34. In this case I believe that a refusal by the Court to hear the Petition would be a draconian response to the particular failures in this case. It would be disproportionate to the gravity of the offence. It would have the result of imperilling the employment of 49 people who were in no way responsible for the offending behaviour. I therefore refuse the application to refuse to hear the Petition pursuant to s. 518.

Reasonable prospect of the survival of the Company as a going concern

35. Mr. Dunleavy, on behalf of the Bank, submitted that the report of the independent expert is absolutely critical in the context of examinership. The court relies upon an independent expert to make his or her own assessment of the company's prospect and to present his or her own independent analysis to the court. The court then tests the report and asks whether or not it is based upon objective evidence. He referred to the decision of *In Re Vantive Holdings* [2009] IESC 68 at p. 20 where Murray C.J. stated:-

> *"[t]he opinion of the independent accountant as set out in the report which a petitioner is required to provide to the Court under the provisions of the Act, must be given due weight. Again, the weight to be attached to the accountant's opinion will depend on the degree and extent to which he supports that opinion by his or her own objective reasoning and the appraisal of material or factors relied upon for reaching his or her conclusions.*
>
> *Since, the court may not make an order appointing an examiner unless it is satisfied that there is a reasonable prospect of the survival of the company as a going concern, it follows that there is an onus on the appellant to satisfy the court that such a reasonable prospect exists. The applicant must provide objective evidence to satisfy the court of this fact. Examinership is a process designed to facilitate the rescue or survival of companies in financial difficulties. Whether the appointment of an examiner is supported by creditors of the company and the extent and reasons for that support is a relevant consideration but not determinative in considering whether there is a reasonable prospect of survival."*

36. Mr. Dunleavy states that the Court cannot place any reliance upon the evidence from the IER in the circumstances of this case. The fact that the Addendum was filed making such radical changes to the terms of the Report amounts to an acceptance that the first Report was incorrect. In substance the Report is now a new report. The difficulty is no explanation has been forthcoming from either the Independent Expert or the Petitioners explaining why the erroneous or inaccurate information was originally presented to the Court, how the errors were discovered and why the Court can now rely on the evidence presented 10 days later to the Court. It is submitted that where the Report was changed there was no explanation as to why it was changed; where new figures were inserted there was no explanation as to why they had not been included in the original Report. It was also submitted that there was no objective analysis apparent from the Report. On the contrary, there were two versions of the Addendum sent to the Bank's solicitors. In the first Addendum certain matters were said to be in the opinion or belief of the Directors. In the second version, forwarded within 24 hours, these opinions of the Directors morphed into the opinion of the Independent Expert without any explanation. In the circumstances, it is submitted that it is difficult for the Court to accept that the new version is right or that the Independent Expert exercised his own independent judgment in reaching his conclusions including his conclusion that the Company has a reasonable prospect of surviving as a going concern.

37. There is much force in these submissions and if the only evidence before the Court were the affidavits of the Petitioners and the two IERs I would have concluded that I was not satisfied on the evidence that the Company had a reasonable prospect of survival. However the Report of Mr. McAteer is not subject to the same criticisms or frailties. He has been the Interim Examiner since 13th November, 2015. While I acknowledge that his Report is couched in cautious terms, nonetheless he clearly concludes that:-

> *"[b]ased upon my discussions with customers, trade creditors, staff and the Company Directors, and subject to the implementation of conditions as outlined by the Independent Expert which I believe are achievable, I am of the opinion that the Company has a reasonable prospect of survival as a going concern."*

He reaches this conclusion while taking note of the concerns of the Bank. I have already cited his initial assessment of the Company's prospects and why he believes that there is a reasonable prospect of the Company surviving. I particularly note the fact that customers, staff, creditors and suppliers are supportive of the examinership. He has already received one written expression of interest from a potential investor, albeit one related to the Directors. He is confident that the Christmas trading period will have a significant positive impact on the turnover and trading performance of the Company.

38. I find the Report of the Interim Examiner to be persuasive and I am satisfied that his reasons are arrived at independently and his opinions are based on his assessment of the Company as he has found it and his considerable experience in previous examinerships. Upon express instructions, counsel for Mr. McAteer informed the Court that the Interim Examiner had been involved in preparing the projections for the period of the examinership, if confirmed by the Court, and he was satisfied that they were realistic. They show a small positive over the period. In the circumstances, I am satisfied that there is evidence that the Company has a reasonable prospect of surviving as a going concern. It is appropriate that an effort should be made to save some or all of the jobs of the 49 employees and the examinership process offers the best prospect of achieving that end. I therefore place the Company under the protection of the High Court and I appoint Mr. McAteer as Examiner to the Company.