OUTER HOUSE, COURT OF SESSION

[2025] CSOH 2

P1121/24

OPINION OF LORD BRAID

In the Petition of

METHODIST HOMES

Petitioner

for

an administration order in terms of schedule B1 to the Insolvency Act 1986 in respect of MHA AUCHLOCHAN

Petitioner: Roxburgh; DLA Piper Scotland LLP

9 January 2025

Introduction

[1] The company at the heart of this petition is MHA Auchlochan, a private company limited by guarantee not having a share capital. Having run into financial difficulties, it entered administration on 2 May 2023, when Blair Milne, James Fennessy and Robert Young, all insolvency practitioners, were appointed under the Insolvency Act 1986 as joint administrators with effect from that date. That administration not having been concluded, on 1 February 2024 the joint administrators purported to give notice of the extension of their appointment as joint administrators of the company by consent of the company's creditors. However, as they now accept, the purported extension was invalid for reasons set out

below. Meanwhile, they carried on dealing with the affairs of the company in blissful ignorance of the invalidity until recently. The petitioner now seeks an order under the 1986 Act placing the company into administration of new with effect from 2 May 2024 (following the expiry of the previous administration), along with certain ancillary orders. It also wishes to dispense with service, advertisement and intimation of the petition, all interested parties having intimated that they are content with what is proposed.

[2] The principal issue raised by the petition is whether, in these circumstances, it is competent, and if so, appropriate, to make an administration order under the 1986 Act having retrospective effect. Issues also arise as to (i) whether the court should dispense with service and intimation of the petition on interested parties (including those who would have been given notice of an application to extend the previous administration), and if service is to be dispensed with, on what basis; and (ii) what ancillary orders, if any, ought to be made to reflect the fact that the company has previously been in administration. On 5 December 2024 I granted the orders sought, but in light of the dearth of Scottish authority on the principal issue, and the fact that the nature of the company's activities is arguably a matter of some public interest, I indicated that I would issue a written opinion with full reasons.

Statutory provisions

[3] Paragraph 11 of schedule B1 to the 1986 Act provides:

> "11. The court may make an administration order in relation to a company only if satisfied –
> (a) that the company is or is likely to become unable to pay its debts; and
> (b) that the administration order is reasonably likely to achieve the purpose of administration."

[4] Paragraph 3 of schedule B1 provides, *inter alia*:

> "(1) The administrator of a company must perform his functions with the objective of –
> (a) rescuing the company as a going concern, or
> (b) achieving a better result for creditors as a whole than would be likely if the company were wound up (without first being in administration), or
> (c) realising property in order to make a distribution to one or more secured or preferential creditors."

[5] Paragraph 12 of schedule B1 provides, insofar as material*:*

> "(1) An application to the court for an administration order in respect of a company (an 'administration application') may be made only by –
> (a) the company,
> (b) the directors of the company,
> (c) one or more creditors of the company...
> (2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify-
> (a) any person who has appointed an administrative receiver of the company,
> (b) any person who is or may be entitled to appoint an administrative receiver of the company,
> (c) any person who is entitled to appoint an administrator of the company under paragraph 14, and
> (d) such other persons as may be prescribed."

[6] Rule 3.6 of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 (as amended) provides, insofar as material:

> "The applicant must give notice of the administration application to the following (in addition to notifying the persons referred to in paragraph 12(2)(a) to (c) of Schedule B1) -
> (a) any administrative receiver;
> (b) if there is a petition pending for the winding up of the company—
> (i) the petitioner, and
> (ii) any provisional liquidator;
> (c) ...
> (d) the Keeper of the Register of Inhibitions and Adjudications;
> (e) the company, if the application is made by anyone other than the company or its directors;
> (f) any supervisor of a CVA in relation to the company;
> (g) the proposed administrator; and
> (h) any other person on whom the court orders that the application be served."

[7] Paragraph 13 of schedule B1 to the 1986 Act provides, *inter alia*:

> "(1) On hearing an administration application the court may –
> (a) make the administration order sought;
> (b) dismiss the application;
> (c) adjourn the hearing conditionally or unconditionally;
> (d) make an interim order;
> (e) treat the application as a winding-up petition and make any order which the court could make under section 125;
> (f) make any other order which the court thinks appropriate.
> (2) An appointment of an administrator by administration order takes effect –
> (a) at a time appointed by the order, or
> (b) Where no time is appointed by the order, when the order is made.
> (3) An interim order under sub-paragraph (1)(d) may, in particular –
> (a) restrict the exercise of a power of the directors of the company;
> (b) make provision conferring a discretion on the court or on a person qualified to act as an insolvency practitioner in relation to the company."

[8] Rule 1.56 of the 2018 Rules provides:

> "(1) The court may, on the application of any person having an interest—
> (a) if there has been a failure to comply with any requirement of the Act or the Rules, make an order waiving any such failure and, so far as practicable, restoring any person prejudiced by the failure to the position that person would have been in but for the failure;
> (b) if for any reason anything required or authorised to be done in, or in connection with, the insolvency proceedings cannot be done, make such order as may be necessary to enable that thing to be done.
> (2) The court, in an order under paragraph (1), may impose such conditions, including conditions as to expenses, as the court thinks fit and may in particular—
> (a) authorise or dispense with the performance of any act in the insolvency proceedings…"

Background to the previous administration

[9] The company was incorporated on 4 December 2008 and is registered as a charity in Scotland. Its objects are the relief of elderly people and other adults in need, particularly those with mental illness or physical and/or learning disabilities, by providing care and support services, accommodation and other provision which may facilitate an improved quality of life. It was formed for the purpose of assuming the ownership and operation of a

retirement village and two care homes owned by a charity called the Auchlochan Trust, the transfer to the company being by way of gift on 6 January 2009. The company's operations are subject to the regulation and oversight of the Care Inspectorate, and the company is also subject to the regulation and oversight of the Office of the Charity Regulator (OSCR).

[10] The company operates from two sites. The first is a retirement village known as Auchlochan Garden Village in Auchlochan, South Lanarkshire. It contains 235 individual residential properties, of which 117 are owned by the company and the remaining 118 are owned by third parties. The company also owns Lower Johnshill Care Home, which is situated within the grounds of the village. It has capacity for 78 residents. The second site is Bankhouse Care Home, owned by the company, which is in Lesmahagow, South Lanarkshire. It has capacity for 49 residents.

[11] The sole member of the company is the petitioner, which is a charity providing care, accommodation and support services for older people throughout England, Scotland and Wales, as it has done since it was set up in 1943. Prior to its administration in May 2023, the company operated as one of a number of companies in the petitioner's group, utilising the finance, decision-making and governance structures of the petitioner.

[12] The last annual accounts lodged by the company at Companies House are the report and financial statements for the financial year ending 31 March 2022. They disclose that, as at 31 March 2022, the company had fixed assets of £29,645,000, current assets of £3,559,000, current liabilities of £25,519,000 and liabilities falling due after more than one year of £10,926,000, all giving rise to net liabilities of £3,241,000. The accounts also disclose a loss on financial activities for that financial year of £148,000.

[13] The petitioner made payment of all of the company's operating and capital invoices through its purchase ledger. The company was unable to repay the sums due and so the

debt due to the petitioner increased. The petitioner also advanced a number of cash loans to the company. As at the date of the first administration, the petitioner was the largest unsecured creditor of the company, being owed £28,548,910 in relation to an inter-company loan, which had arisen because the company was not generating sufficient cash to meet its day-to-day outgoings. The sums due to the petitioner represented 90% of the company's unsecured debts.

[14] At the date of the first administration, the main title for Auchlochan Garden Village, was subject to nine standard securities. Four are still held by residents of the Auchlochan Garden Village. Prior to the incorporation of the company, the Auchlochan Trust entered into occupancy agreements with residents of the Auchlochan Garden Village. Each occupancy agreement related to one of the residential properties at the village and each was for an initial period of 30 years. Each resident who was party to an occupancy agreement paid a licence fee. The agreements provided that, in specified circumstances, the resident would be entitled to repayment of a part of the licence fee by the Auchlochan Trust, that obligation being secured by a standard security over the heritable property subject to the occupancy agreement. When the heritable property owned by the Auchlochan Trust was transferred to the company it was transferred subject to the obligations of the Auchlochan Trust under the occupancy agreements and the standard securities. However, the standard securities were not registered on the company's file at Companies House. Nonetheless, at the date of the first administration, four standard securities remained enforceable against the company. As regards the remaining five, the joint administrators have carried out investigations and are of the view that they did not remain outstanding at the date of administration and are no longer enforceable. An explanation as to why they have come to that view is given by Blair Milne in an affidavit dated 4 December 2024. It is unnecessary to

repeat that here: suffice to say that I am satisfied that for the reasons he gives, those five securities are no longer extant.

The previous administration

[15] The statutory purpose of the previous administration, in terms of paragraph 3(1) of schedule B1 to the 1986 Act, was to achieve a better result for the creditors as a whole than would be likely if the company were wound up (without first being in administration), which failing to make a distribution to one or more secured or preferential creditors. Following their appointment, the administrators appointed Healthcare Management Solutions Ltd (HMSL), an experienced managing agent, to oversee the regulated operations of the company whilst they sought a purchaser for the company's business and assets. This approach was seen to have two main benefits. First, it was expected to result in greater realisations for creditors than would be obtained from selling the assets on a break-up basis. Second, it was considered that a sale of the business, or parts of it, as a going concern would be beneficial to the employees and residents at the care homes and the residential village. The administrators also held meetings with the residents at the Auchlochan Garden Village. HMSL visited the care home residents. The administrators appointed BNP Paribas to present a range of options to them in relation to the options for realising value from the assets of the company. Following discussions with BNP Paribas, Bankhouse Care Home and Lower Johnshill Care Home were marketed for sale and the administrators negotiated with interested parties regarding the offers received. The administrators also commenced restructuring the property arrangements at Auchlochan Garden Village. Town hall meetings were held with owner-residents and their relatives to explain the proposed measures and their effects. The administrators engaged solicitors to draft the necessary

documents. Independent legal advisors were also offered to owner-residents to ensure that they had access to independent legal advice regarding the process and documentation.

The failure to extend the administration

[16] When the administrators came to extend the administration of the company, they failed to seek consent from the four remaining secured creditors. This was due to an oversight, as confirmed by Blair Milne in his affidavit, in part due to the relatively unusual combination of circumstances including that the securities were held by a small number of individuals for relatively small sums in comparison to the overall indebtedness, and had not been registered at Companies House. Had the administrators identified that consent was required from the secured creditors to extend the administration by consent, they would likely have made an application to court, in order to avoid the risk that any consent given by the secured creditors might not have been fully informed.

[17] The failure to extend the administration resulted in the administration coming to an end on its anniversary, and there being no administrator acting in respect of the company since 2 May 2024. Nevertheless, in the *bona fide* belief that the administration had been validly extended, the previous administrators acted as though they were still the administrators of the company. In particular, they continued to trade the Auchlochan Garden Village, the Lower Johnshill Care Home and the Bankhouse Care Home. They also engaged with BNP Paribas to seek to finalise a sale strategy for the sites. This involved their seeking to update the property arrangements for the three sites. They concluded missives in relation to the sale of the Bankhouse Care Home on 15 July 2024. Completion is subject to consent from the Care Inspectorate and steps being taken to remedy the issues that have arisen as a result of the failure to extend the administration of the company.

[18] An offer has also been received in relation to the Lower Johnshill Care Home. However (following consultation with BNP Paribas and the petitioner) this was considered to be too low, and the "administrators" have been progressing a marketing and sales process for the combined sale of Auchlochan Garden Village and the Lower Johnshill Care Home.

[19] On becoming aware that there was a defect in the steps they had taken to extend the administration of the company, the "administrators" immediately sought legal advice on the validity of the extension. On being advised that the extension was not valid, they sought advice on the steps needed to regularise the position. They wrote to creditors to advise them of what had occurred and to explain that they intended to take steps to seek a retrospective administration order. They also requested that the petitioner make the present application given its status as a creditor of the Company.

Decision

[20] There are four matters to be addressed: (i) whether service, advertisement and intimation should be dispensed with; (ii) if so whether an administration order should be made at all; (iii) if so, whether it should be granted retrospectively; and (iv) what other orders should be granted.

(i) Should service, advertisement and intimation be dispensed with?

[21] Rule 3.6 of the 2018 Rules, set out above, which admittedly draws on the language of paragraph 12 of schedule B1, is nonetheless in somewhat curious terms, inasmuch as it requires the applicant for an administration order to "give notice" to the persons specified, which seems to imply some form of notice which differs from formal service of the petition; but doubt is cast on that interpretation by the requirement in (h) to "give notice" to "any

other person on whom the court orders that the application be served", which suggests that, after all, the requirement is to serve the petition on all the persons to whom notice must be given. That would certainly be consistent with usual practice and procedure, although why the rules did not simply say that, rather than introducing the concept of giving notice, remains a mystery. Apart from anything else, does "giving notice" mean that the persons to whom notice is given must each receive a copy of the petition itself, or are they simply to be told about it, and in either case, is that to be done before or after the petition has been lodged in court? One is not generally permitted to give formal notice of a court document without the prior *imprimatur* of the court, be that by having a summons signetted, or by obtaining an order for intimation and service of a petition. Be all that as it may, counsel informed me that the petitioner had, prior to the petition being lodged, "given notice" to: the directors (who had no objections to the petition and did not require to receive service of it); OSCR (which had expressed the same view); all creditors, who had been written to via the online creditor portal and been asked to submit any objections by a specified date, none being received. As regards the secured creditors, three of the four had given consent to the petition; the administrators had not, in the modern vernacular, "reached out" to the creditors under the fourth standard security, as they were thought, having been spoken to, to lack capacity to give informed consent or to understand what was proposed. The only person who had not received notification was the Keeper, but the purpose of intimation on the Keeper was to make third parties aware that a petition had been lodged but not yet granted; if an administration order were made immediately, there would be no period during which the petition was pending; the chances of the Keeper wishing to enter the process were therefore vanishingly small. In each case, the notice given was mere intimation of the intention to lodge the present petition.

[22] In these circumstances, counsel submitted that there was no requirement for further service on any person, and that service should be dispensed with. She prayed in aid of that submission rule 1.56 of the Rules, also set out above, which, read short, allows the court (a) to waive any failure to comply with any requirement of the Act or the Rules and (b) where something cannot be done, to make such order as may be necessary to enable that thing to be done. It does not seem to me that either branch of that rule is particularly apposite to the present circumstances. The first allows the court to waive a failure which has already occurred, rather than to permit something not to be done in the future which otherwise ought to be done and which is capable of being done. There has in no sense been a failure to serve the petition, let alone a failure which requires to be waived; dispensing with future service is something quite different. Nor, for that matter, has there been a failure to give notice to the relevant persons, if that connotes something other than formal service, as they all have received notice (bar the Keeper, but that is hardly the issue). As regards the second branch of the rule, the petition is perfectly capable of being served. Senior counsel for the petitioner somewhat half-heartedly suggested that the petition could not be served if the petition were to be granted on the day of the motion to dispense with service, which is doubtless true, but that is to put the cart before the horse, the court first requiring to decide whether the petition ought to be served, and if so, on whom, before then going on to consider, after such service as may have been ordered, whether the petition ought to be granted. In any event, the second branch of the rule requires the court to make an order enabling the thing which cannot otherwise be done (here, service of the petition), to be done, which is the opposite of what the petitioner wants.

[23] However, the court need not resort to rule 1.56. Rule 14.5(2) of the Rules of the Court of Session provides that a petitioner may enrol a motion to seek to dispense with intimation,

service or advertisement on any person; and rule 14.5(3) allows the court to make such order as it thinks fit. Dispensation of service (and the rest) is often granted under this rule in a variety of contexts: indeed, in the field of insolvency petitions for incidental orders (such as extension of an administration), one could be forgiven for thinking that it is almost *de rigueur*. A petition for retrospective administration can hardly be regarded as being for an incidental order. Nonetheless, in the particular circumstances of this case, where all affected parties have, until now, on the material before me, been content with the manner in which the "administration" was progressing; the error in obtaining the extension of the first administration was to an extent a technical one, innocently made; the fact that all interested parties (bar the Keeper) have been made aware of the intention to present the petition and have no objection to it; and, not least, the urgency in putting the "administrators'" actings on to a lawful footing as soon as possible, I am persuaded that it is appropriate to dispense with service, intimation and advertisement (beyond intimation on the Walls of Court, for what that might achieve). I had in mind, also, the lack of prejudice to any person in making the order sought.

[24] For completeness, I should mention that senior counsel for the petitioner advised me that some consideration had been given to whether or not to ask the court to appoint special managers on an interim basis, allowing for service of the petition to be made, but that the view had been taken that this might prevent a retrospective order being made at a later date, since the administrators could not, as a matter of principle, be acting in a dual capacity at one and the same time, and the appointment of special managers could not subsequently be terminated with retrospective effect (*cf* the approach taken by Mann J in *Petit* v *Bradford Bulls (Northern) Ltd (In Admin)* [2016] EWHC 3557 (Ch); [2017] BCC 50, paras [19] to [22]). Whether or not that view was correct, or unduly pessimistic, I need not decide, given that I

am in any event satisfied that it is appropriate to dispense with service of the petition which is before me.

(ii) Should an administration order be made: are the statutory criteria met?

[25] Notwithstanding that the company has already been in administration, the petitioner must satisfy the court that the criteria for making an administration order are met as at the date of making the order (*Re Care Matters Partnership Ltd (in admin)* [2011] EWHC 2543 (Ch), Norris J at [10] - [11]). The petitioner, as a creditor, has standing to present the petition, by virtue of paragraph 12 of schedule B1 to the 1986 Act. I am also satisfied that the company is unable to pay its debts, having regard to the level of the debt owed to the petitioner, which the company is unable to pay, and to the progress report by the administrators in the first administration for the period from 2 May 2023 to 1 November 2023 which states that unsecured creditors will not be paid in full. As regards whether it is reasonably likely that the purpose of the administration will be achieved - achieving a better result for the creditors as a whole than would be likely if the company were wound up - the administrators' view continues to be that that purpose can be achieved; and that the administration of the company should continue so that the sale of Bankhouse can be completed, new property arrangements can be entered into with the homeowners at Auchlochan Garden Village (AGV) and a date can be set for final offers in respect of Lower Johnshill and AGV, with a view to agreeing and completing the sale of those properties as going concerns. Having regard to the complex nature of the company's business, and the steps which require to be undertaken, that view appears eminently sound. In this regard there has been no change of circumstances since the company first entered administration and the factors which applied then continue to apply with equal force. Further, although

not strictly a criterion, it is appropriate in the exercise of my overall discretion to have regard to the interests of the residents, which are best served by the continuing administration of the company as opposed to the alternative of liquidation and the sale of the company's assets on a break-up basis, with who-knows-what consequences for them.

[26] Accordingly, I am satisfied both that the criteria for making an administration order are met and that it is appropriate to make a second administration order. That leads on to the third, and most important, question, being the date from which the order should take effect.

(iii) Can the order be made retrospective?

[27] The argument for retrospectivity is founded upon paragraph 13(2) of schedule B1, which allows the court to order that an administration shall take effect at a time appointed by the order. This has consistently (but mostly reluctantly) been interpreted by the courts as being wide enough to allow an order having retrospective effect to be made, at least so as to provide a remedy where the statutory procedures have come off the rails in some way, either in relation to an out-of-court appointment, or, as here, where an administration had been allowed to lapse. The matter was considered by Mann J in *Petit* v *Bradford Bulls (Northern) Ltd (In Admin)* [2016] EWHC 3557; [2017] BCC 50, at [17] as follows:

> "17. The question of whether court-appointed administrators can be appointed retrospectively has arisen in a significant number of cases. I was taken to reports of those cases in which the point is reported as having been considered, starting with the decision of Hart J in *Re G-Tech Construction Ltd* [2007] B.P.I.R. 1275. In that case Hart J considered that he did have jurisdiction to appoint administrators retrospectively in order to fix a problem which contaminated their earlier ineffective appointment. That decision has been followed, though in each case with judges expressing misgivings about it, in *Re Derfshaw Ltd* [2011] EWHC 1565 (Ch); [2011] B.C.C. 631 by Morgan J; in *Re Care Matters Partnership Ltd* [2011] EWHC 2543 (Ch); [2011] B.C.C. 957 by Norris J; in *Re Synergi Partners Ltd* [2015] EWHC 964 (Ch); [2015] B.C.C. 333 by HH Judge Hodge QC; by Henderson J in *Re Frontsouth (Witham)*

> *Ltd* [2011] EWHC 1668 (Ch); [2011] B.C.C. 635; and lastly in *Re Elgin Legal Ltd* [2016] EWHC 2523 (Ch); [2017] B.C.C. 43 by Snowden J. In all those cases after *G-Tech* the judges expressed misgivings about the existence of the jurisdiction but felt it right to follow the precedent set by Hart J. I know that for my part on more than one occasion in the past, in cases which are not reported, I myself have followed the lead of Hart J and the other judges who had gone before me at the time, albeit sharing their misgivings. I consider that in the circumstances and subject to a decision of the Court of Appeal to the contrary, it would be right for me to follow my brethren and to consider that the jurisdiction exists."

[28] The misgivings which have been expressed, and the practical reason for over-riding those misgivings, are encapsulated by what Morgan J said in *Re Derfshaw Ltd*, at [15]:

> "One can see scope for argument as to the correctness of *G-Tech Construction Ltd.* It is, in my judgment, quite a significant thing to make an administration order with retrospective effect and one would have liked ideally to have had clearer statutory language than the statutory language in paragraph 13, schedule B1. On the other hand, in the case before me, the desirability of making retrospective orders is considerable. The authority for making such orders exists. The authority has been applied in a number of cases. That authority has not been called into question in a later case, nor indeed, so far as I am aware, in any textbook commenting on the point."

[29] Mann J was not strictly accurate when he said that the decision in *Re G-Tech Construction Ltd* had been followed in all the cases cited by him. In *Re Elgin Legal Ltd* Snowden J (as he then was) declined to make a retrospective order, and so found it unnecessary to express a concluded view on whether the power to make a retrospective order existed (para [27]. He did, however, draw attention, at para [18], to the argument against retrospectivity that strong and explicit words are required before a statute can be interpreted so as to empower a person to alter vested rights with retrospective effect (*F. Hoffmann-La Roche* v *Intercontinental Pharmaceuticals Limited* [1965] 1 Ch 795 (CA), Harman LJ at 809C); that a retrospective appointment will almost invariably alter or affect the rights of creditors or third parties; but there are no strong or explicit words in paragraph 13(7). Snowden J also pointed out that the counter-argument is that if there are any third party rights that might be adversely affected, that is a reason why the court might

decline in its discretion to exercise the power to make a retrospective order, but is not a reason to deny the existence of the power itself. And at para [27] he acknowledged, as other judges had, that the power to make an order retrospectively might well provide a convenient and pragmatic solution to the difficulties caused by the accidental lapse of administration orders.

[30] Counsel for the petitioner advised me that a similar pragmatic approach had been taken in Scotland but was unable to refer me to any written opinion. She submitted that the approach adopted was a pragmatic interpretation of paragraph 13(7) which allowed a means of rectifying a defect where none otherwise existed; and while a lapsed administration was not a defect in that sense, it was an analogous situation in that an error had arisen in the use of an out-of-court process.

[31] While I share the misgivings expressed by others, not least because a natural reading of paragraph 13(2) is that it has prospective effect only, I also recognise that the practice of making a retrospective administration order to rectify a defect in the widest sense is long-established, and that for good pragmatic reasons. Indeed, it is impossible to envisage a situation where a retrospective order would be made other than where administrators were already ostensibly in office. I am therefore persuaded, albeit only just, as to the competency of the order sought. As regards whether it is appropriate to make the order, I do not see that making it will adversely or materially affect vested rights (other than, perhaps, a right to interest at the date of the making of the order; but the party most affected in that regard is the petitioner itself). Given the extent of the administrators' actings since 2 May 2024, and the problems which would potentially arise if nothing they have done since then had any legal basis, it does seem to me to be appropriate in the circumstances that the appointment be made retrospective, and I have so ordered.

(iv) What ancillary orders ought to be made?

[32] This can be dealt with briefly. I agree with senior counsel for the petitioner that in the circumstances, it is otiose to have the administrators issue a statement of proposals to creditors as they would otherwise require to do in accordance with paragraph 49 of schedule B1 to the 1986 Act, and I have waived that requirement, also ordering that the statement of proposals previously issued on 15 June 2023 and approved on 30 June 2023 be treated as the approved proposals for the purposes of the new administration. In a similar vein, I have waived the requirement that the administrators seek a statement of affairs of the company in accordance with paragraph 47 of schedule B1. Finally, since the company is approaching the second anniversary of its first going into administration, and adopting the same approach as underlies the foregoing waivers (which is that the practical effect of the retrospective order is the same as if the previous administration had been validly extended) I ordered that any extension of the administrators' term of office must be sought by application to the court.

Disposal/expenses

[33] In summary, I have dispensed with service and advertisement of the petition, thereafter making an administration order in respect of the company appointing the previous administrators as administrators of new, taking effect from 2 May 2024. I have also made the ancillary orders described in the previous paragraph.

[34] Finally, as accepted by senior counsel for the petitioner, it is not appropriate that the creditors suffer the expenses of this petition. I have therefore ordered that the expenses incurred by the petitioner shall not be expenses in the administration of the company.