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Nos: BR-2025-000341 and BR-2025-000469

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
INSOLVENCY AND COMPANIES LIST

**IN THE MATTER OF MOHAMMED REZA ASLAM MERCHANT
AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

Royal Courts of Justice
Rolls Building
Fetter Lane
London EC4A 1NL

Date: 16 April 2026

Before:

Deputy ICC Judge Baister

Between:

**(1) SCIO-FUND SICAV-FIS (ACTING AS
SECURITY AGENT IN RESPECT OF ITS SUB-
FUND SCIO OPPORTUNITY FUND)**
(2) BHAVESH AMRATLAL RADIA

Applicants

- and -

(1) MOHAMMED REZA ASLAM MERCHANT
(2) MICHAEL HOWORTH

Respondents

Ms Mairi Innes (instructed by **Fieldfisher LLP**) for the **Applicants**
Mr Louis Grandjouan (instructed by **Payne Hicks Beach LLP**) for the **First Respondent**
Mr Benjamin Fitzmaurice (instructed by **Clarion Solicitors Ltd**) for the **Second Respondent**

Hearing date: 23 March 2026

Approved Judgment

This judgment was handed down remotely at 10:30 am on 16 April 2026 by prior circulation to the parties by e-mail and by release to the National Archives

Deputy ICC Judge Baister:

The application, the petition and the evidence

1. This judgment follows the hearing of (a) the applicants' application of 22 April 2025 under s 262 Insolvency Act 1986 for an order revoking the creditors' approval of an individual voluntary arrangement in respect of the first respondent given at a meeting held on 24 March 2025; and (b) a bankruptcy petition presented by the same applicants on 5 June 2025 seeking a bankruptcy order under ss 264(1)(c) and 276(1)(b) Insolvency Act 1986. The application and the petition are supported by three witness statements of Keir Merrick, the applicants' solicitor. Mr Howorth, the second respondent, made a witness statement on 6 June 2025, and late in the day, on 15 December 2025, Mr Merchant, the first respondent, made one too. I had the benefit of oral evidence from Mr Merchant given in cross-examination.
2. I shall say three things about the evidence. The first is that the respondents' written evidence is thin: it does not engage adequately in the detail of the applicants' complaints. The second is that Mr Howorth's evidence is said to be given on his own behalf and on behalf of Mr Merchant. This is unusual: in a case such as this the office-holder is usually careful to maintain a position of neutrality as between the debtor and his creditors. Mr Howorth has chosen not to be neutral, which reinforces a view, on which I expand later, that he has been less than objective throughout the IVA process with which we are concerned here. The third point is that I found Mr Merchant to be a satisfactory witness. He answered the questions put to him by Ms Innes in a straightforward fashion. I accept that his evidence was truthful, although it does not follow that I accept all that is said on his behalf to flow from that.

The parties and the background

3. Reza Merchant, the first respondent was, and still is, in the business of developing and managing residential property and hotels. In his witness statement he describes himself as a real estate entrepreneur. He is the (or a) founder of Soul Development Services Limited and Soul Development Holdings Limited (sometimes referred to together as "the &Soul companies") which specialise in something called co-living, the nature of which I need not explore.
4. The first applicant is an investment fund to which the first respondent is indebted in the sum of £3 million together with interest arising out of a personal guarantee he entered into on 16 May 2019 in support of a facility provided to a company called TC Fumbally Holdco 2 Ltd. The second applicant is an individual creditor in the sum of £500,000 in respect of a loan made on 31 March 2021 which was repayable on 17 May 2021. No repayment was made.
5. The second respondent was the nominee and is the supervisor of Mr Merchant's IVA.
6. For 15 years Mr Merchant carried on business through a group of companies described in his proposal for an IVA as "the Collective Group companies" which pioneered co-living. The companies went into administration in September 2021. Mr Merchant attributes the failure of the Collective Group to Covid. Ms Innes, on the basis of press reports, contends that other factors played a role, but I cannot and do not need to resolve that. Suffice it to note that Mr Merchant became insolvent as a result of being called on under guarantees. In December 2024 the first applicant presented a petition against him seeking a bankruptcy order. That led to Mr Merchant's proposing an IVA, something

he seemed to have been contemplating for some time, to deal with creditor claims amounting to £52,685,816. Mr Merchant's proposal was finalised in March 2025 and approved by 92.10% of creditors voting at a meeting held on 24 March 2025. The first applicant's petition was, I presume, subsequently dismissed.

The proposal

7. The basis of Mr Merchant's proposal is set out in paragraph 9:

9 MY PROPOSAL

9.1 Third party assets and funds

9.1.1 I intend to introduce assets into the Arrangement which do not belong to me and which are to be contributed by a third party namely, FF Investment Holdco Limited (registration number: 143003) ("FF").

9.1.2 I am involved in a new property development and operations business venture which involves a group of companies. A structure chart in relation to the group of companies is at Appendix 5 (the "Structure Chart"). The group structure is as follows:

9.1.2.1 The operating company is Soul Development Services Limited ("SDSL"). I am employed by SDSL.

9.1.2.2 Soul Development Holdings Limited ("SDHL") is the 100% shareholder of SDSL. Various other SPVs have already and will continue to be set up as the group acquires interests in more assets and SDHL either wholly or substantially own shares in these other underlying SPVs.

9.1.2.3 The shareholders of SDHL are (i) Soul Capital Holdings Limited ("SCHL"), which holds 60% of shares comprising 600 B ordinary shares and 18111918 B preference shares; and (ii) FF, which holds 40% of shares comprising 400 A ordinary shares.

9.1.2.4 The shareholders of SCHL comprise various investors who have together, committed to inject up to £30,000,000 of fresh capital (the "Investment") into SDHL.

9.1.2.5 SCHL has called £20,580,018 to date from its shareholders which is subject to the following distribution waterfall (which has been agreed between SCHL, FF and SDHL):

(a) SCHL will be entitled to 100% of the distributions until it receives an 8% IRR. Once SCHL receives between an 8% and 25% IRR, FF will receive 40% of the distributions. Once SCHL achieves a 25% IRR, FF will receive 60% of the distributions and once SCHL receives a 3X return, FF will receive 70% of the distributions.

(b) The distributions to FF set out at 9.1.2.5(a) above together comprise the “Distributions”.

9.1.3 The business plan is as follows:

9.1.3.1 SDHL has plans to grow a portfolio of 7-10 property assets in London over the next 5-7 years under the &Soul brand – www.andsoul.com. SDHL has already acquired 5 assets, with a further strong pipeline. In addition to investing from its own balance sheet, SDHL will continue to raise third party debt and equity to fund the underlying projects.

9.1.3.2 Once the portfolio is operational and stabilised, the intention is to sell the assets as a portfolio of assets or as a platform with SDSL included.

9.1.3.3 SDSL is the operating company which operates all of the assets.

9.1.4 The business plan appears at Appendix 7.

9.1.5 FF has agreed to pay 100% of the Distributions to my Arrangement Creditors for a period of 5 years.

9.1.6 A letter confirming FF’s agreement to this arrangement is at Appendix 6.

9.1.7 A distribution will be made at the end of the five-year period in respect of the Distributions received.

9.2 In addition to the above contributions, a group of my creditors that includes Victor Douce, Ivan Choutov, Legendary Holdings Limited and the Bhojwani’s who together represent close to 50% of the creditors, will contribute sufficient funds into this Arrangement on an annual basis to make payment of the Supervisors annual fee of £15,000, the reasonable and fair costs of the Petitioning Creditor and any professional fees or other disbursements incurred by the Supervisor.

9.3 Shares in 14 Bedford Square Limited

9.3.1 For the avoidance of doubt, the Supervisors shall be at liberty to request information from me regarding the value of my shares in 14 Bedford Square Limited and any income received from them at any time during the course of the Arrangement. I will co-operate with all requests for information in a timely manner and if, as a result of this information, the Supervisor considers it appropriate that I make a further contribution to this arrangement then I shall do so in the amount agreed with the Supervisor.

9.4 Comparison with outcome in bankruptcy

9.4.1 On the basis that the above sums are introduced into the Arrangement I estimate that Arrangement Creditors will receive

a total dividend of 100p in the £ after costs and expenses compared to nil in the £ if I was made bankrupt.

Paragraph 10 sets out the reasons why a voluntary arrangement is said to be desirable and explains why creditors should approve the proposal by comparing the result if Mr Merchant's proposal is accepted with that in bankruptcy (nil in the £) (cf Appendix 3). Paragraph 11 states that the proposal is to last for five years and will not be extended. Paragraph 18 gives the estimated amounts of dividends and dates on which they will be paid (at the end of the five year period, April 2030). As we have seen, the dividend to creditors is estimated at 100p in the £, but paragraph 18.3 qualifies this:

“[T]he above is an estimate only. Should the Supervisor be unable to pay dividends in the amounts and on the dates stated this shall not constitute default/breach of the Arrangement on my part unless the Supervisor notify/notifies the Arrangement Creditors in writing that the reason that they are unable to pay the dividends is because of default/breach of the Arrangement on my part.”

Paragraph 32 confirms that “No guarantees are to be provided in relation to the implementation of this proposal/the Arrangement.”

8. Absent from the proposal is any provision enabling the supervisor to take steps against Mr Merchant if the IVA fails, a matter of which Ms Innes makes complaint. Whilst such a provision is usual, it is not a requirement.
9. There are a number of appendices. The only ones to which I need to refer are Appendix 1, a statement of affairs which shows that there are no preferential creditors, Appendix 3, which estimates a return in the IVA of £52,685,816.72 compared to £16,843 in bankruptcy, Appendix 6 (a letter of consent from FF) and Appendix 7 (Business plan), which contains spreadsheets and figures purporting to show how the various developments to be undertaken will generate the cash to provide the proposed dividend to creditors.
10. The nominee's report (three and a half pages of six paragraphs) states that in his opinion and that of supporting creditors Mr Merchant's proposal has a reasonable prospect of being approved because:
 - a. The debtor's financial position is not materially different from that which it is represented to the creditors to be in the proposal;
 - b. There is no manifest unfairness in the proposal;
 - c. The debtor has a proven record for achieving value based outcomes in his specialist sector and a fair balance is struck between the interests of the debtor and their creditors;
 - d. I have not been made aware of any reason which could result in the proposal being rejected.”

Similarly, it concludes:

“6.1 We [*sic*] have considered the debtor's proposal and the comments above and are of the opinion that:

6.1.1 the debtor's financial position is not materially different to that represented to the creditors in the proposal;

6.1.2 the proposal has a real prospect of being implemented as specified within the terms of the proposal; and

6.1.3 there is no unavoidable and manifest unfairness in the proposal.”

The applicants' challenges

11. The applicants challenge the decision to approve the IVA on the basis of material irregularity and ask that it be set aside on the following grounds (set out in summary in paragraph 4 of Ms Innes's skeleton argument and amplified later):

- (1) Prior to the Meeting, the Debtor and a company apparently controlled by him entered into side agreements with certain creditors, which required the creditors to approve the terms of the IVA and put those creditors in a better position than other creditors, in breach of the principle of fairness between creditors.
- (2) The terms of those side agreements were not disclosed at the Meeting, but the creditors were (wrongly) reassured that the terms of the side agreements would not prejudice them. The Supervisor refused to adjourn the Meeting to allow the position to be further considered.
- (3) It appears that the IVA proposal did not accurately set out all the assets and liabilities of the Debtor. In particular, the contents of the side agreements and the statements made by the Debtor in an article post-dating the IVA suggest that the Debtor has an interest in certain companies.
- (4) The IVA proposal itself promised 100p in the £ on the basis of a flimsy business proposal, with no recourse either for the Supervisor or for the (non-preferred) creditors should no return at all be achieved. The Supervisor appears to have failed adequately to scrutinise (i) the asset and liability position of the Debtor; and (ii) the viability of the proposal, in breach of his obligations.

They also invite the court, on the basis of misleading statements and omissions in the information provided to creditors, to make a bankruptcy order.

The law

12. Section 262 Insolvency Act 1986 provides:

(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—

(a) that a voluntary arrangement approved by a decision of the debtor's creditors pursuant to section 257 unfairly prejudices the interests of a creditor of the debtor;

(b) that there has been some material irregularity in relation to a creditors' decision procedure instigated under that section.

(2) The persons who may apply under this section are—

- (a) the debtor;
- (b) a person who—
 - (i) was entitled, in accordance with the rules, to vote in the creditors' decision procedure, or
 - (ii) would have been so entitled if he had had notice of it;
- (c) the nominee (or his replacement under section 256(3), 256A(4) or 258(3)); and
- (d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.

(3) An application under this section shall not be made

- (a) after the end of the period of 28 days beginning with the day on which the creditors decided whether to approve the proposed voluntary arrangement or, where a report was required to be made to the court under s.259(1)(b), the day on which the report was made, or
- (b) in the case of a person who was not given notice of the creditors' decision procedure, after the end of the period of 28 days beginning with the day on which he became aware that a decision as to whether to approve the proposed voluntary arrangement had been made,

but (subject to that) an application made by a person within subsection (2)(b)(ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely.

(4) Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely—

- (a) revoke or suspend any approval given by a decision of the debtors' creditors;
- (b) direct any person to seek a decision from the debtor's creditors (using a creditors' decision procedure) as to whether they approve—
 - (i) any revised proposal the debtor may make, or
 - (ii) in a case falling within subsection (1)(b), the debtor's original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) in relation to a revised proposal the court is satisfied that the debtor does not intend to submit such a proposal, the court shall revoke the direction and revoke or suspend any approval previously given by the debtor's creditors.

(6) Where the court gives a direction under subsection (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.

(7) In any case where the court, on an application made under this section with respect to a creditors' decision, gives a direction under subsection (4)(b) or revokes or suspends an approval under subsection (4)(a) or (5), the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

(a) things done since the decision under any voluntary arrangement approved by the meeting, and

(b) such things done since the decision as could not have been done if an interim order had been in force in relation to the debtor when they were done.

(8) Except in pursuance of the preceding provisions of this section, the approval of a voluntary arrangement by a decision of the debtor's creditors pursuant to section 257 is not invalidated by any irregularity in relation to the creditors' decision procedure by which the decision was made."

13. Section 276 Insolvency Act 1986 provides:

(1) The court shall not make a bankruptcy order on a petition under section 264(1)(c) ([presented by the] supervisor of, or [a] person bound by, voluntary arrangement proposed and approved) unless it is satisfied—

(a) that the debtor has failed to comply with his obligations under the voluntary arrangement, or

(b) that information which was false or misleading in any material particular or which contained material omissions—

(i) was contained in any statement of affairs or other document supplied by the debtor under Part VIII to any person, or

(ii) was otherwise made available by the debtor to his creditors in connection with a creditors' decision procedure instigated under that Part, or

(c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the supervisor of the arrangement.

(2) Where a bankruptcy order is made on a petition under section 264(1)(c), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

14. In *Fender v Commissioners of Inland Revenue* [2003] BPIR 1304 His Honour Judge Norris QC, sitting as a High Court Judge, provided a statement of the principles as to what constitutes a material irregularity:

“First, a debtor who puts forward a proposed voluntary arrangement must be not only honest, but should take care to put all relevant facts before creditors: per Vinelott J in *Re a Debtor (No 2389 of 1989)* [1991] Ch 326, at 337. The object of the 1986 Act and of the 1986 Rules is to ensure that every proposal for an individual voluntary arrangement is characterised by complete transparency and good faith by the debtor: per Judge LJ in *Cadbury Schweppes plc v Somji* [2001] 1 WLR 615, at 629. Secondly, the nominee when discharging any of his functions, has a duty to exercise a professional independent judgment, informed by his qualifications and skills; per Harman J in *Re a Debtor (No 222 of 1990) ex parte Bank of Ireland (No 2)* [1993] BCLC 233, at 235. Thirdly, in assessing the performance of that obligation, account must be taken of the context in which it is to be performed. A nominee is initially heavily reliant upon the debtor. But where doubts reasonably arise as to the reliability (or, I think, sufficiency) of that information, the nominee must satisfy himself that he has received enough information of adequate quality to arrive at a fair provisional view as to whether a claim should be admitted, (and a fair view as to the minimum value to be attributed to any unascertained debt). However, this will not require him personally to verify every figure: he is involved in a process which is designed to be speedy and robust, and is only required to take reasonable steps having regard to the range of variables set out by Lindsay J in *Greystoke v Hamilton-Smith and Others, Re a Debtor (No 140 IO of 1995)* [1997] BPIR 24, at 28. Fourthly, a material irregularity may occur in relation to the debtor's proposal, or his statement of affairs, or the preparation of the nominee's report to the court, or in relation to the nominee's chairmanship of the creditors' meeting. The court is concerned to look at the whole process. Fifthly, not every mistake or omission will found the jurisdiction to set aside the result of the meeting. The section speaks of ‘material irregularity’, and the adjective is important. An irregularity is ‘material’ if, objectively assessed, it would be likely to have made a material difference to the way in which the creditors would have considered and assessed the terms of the proposed IVA; see *Cadbury Schweppes plc v Somji* [2001] 1 WLR 615, per Robert Walker LJ, at 626 (who also drew attention to the need to consider not only those personally present at a creditors' meeting but also those who had given proxies to the chairman or another). Sixthly, although the chairman of the creditors' meeting would ordinarily be the nominee (and hence someone experienced in insolvency procedure) he cannot be expected to resolve difficult disputes about debts. The scheme of r 5.17 of the 1986 Rules was clearly explained in the judgment of Harman J in *Re a Debtor (No 222 of 1990) ex parte Bank of Ireland* [1992] BCLC 137, at 144E–G. Seventhly, if the chairman's decision is challenged under s 262(1)(b) of the 1986 Act or under r 5.17(5) of the 1986 [Insolvency] Rules, then the court must at

the resultant hearing decide the merits of the dispute on the evidence adduced on the application: see *National Westminster Bank plc v Scher* [1998] BPIR 224, *per* John Martin QC, following *Re a Company (No 004539 of 1993)* [1995] 1 BCLC 459.”

I shall deal with further case law to which I was referred when dealing with the applicants’ case, to which I now turn.

15. I shall take (1) and (2) together under one heading.

The differential treatment of creditors

16. The essence of this complaint is that the effect of agreements entered between and among some of the IVA creditors, Mr Merchant and FF was, on approval of the IVA, to put or leave some creditors (referred to as “standstill creditors”) in a better position than others, including the applicants, in significant respects.

17. Ms Innes summarises the material terms of the standstill agreements by reference to a draft provided to the first respondent (I shall explain below why she refers to a draft):

- (1) Clause 2.1.1 provides that FF assumes liability for the debts owed to the creditor;

- (2) Clause 2.2.2 provides that the Debtor guarantees that primary liability;

- (3) Clause 3.1 provides that no enforcement action may be taken by the creditor against the Debtor or FF for a period of 7 years;

- (4) Clause 4.1.3 provides that FF and the Debtor will make payment on a pro rata basis to all creditors with “Assumed Primary Liabilities” (i.e., the Standstill Creditors) within 7 days of receipt of “Available Cash” (“an amount equal to any after-tax cash return on investment received by the New Primary Debtor and the Guarantor ...”);

- (5) Clause 4.1.5 provides that FF and the Debtor would pay any remaining unpaid amount due to the Standstill Creditors on the “Final Date”, i.e. after a period of 7 years unless there is a breach or a bankruptcy order made against the Debtor;

- (6) Clause 6.2 requires a creditor agreeing to the Standstill Agreement to vote in favour of an IVA put forward “on materially the same terms as this deed.”

18. She identifies the following features of the agreements:

- (1) The standstill creditors retained a direct right of payment from FF in clause 4.1.3 of the agreements which creditors who had not did not. Clause 4.1.3 of the standstill agreements required any “Available Cash” (a defined term) to be paid directly to the standstill creditors on a *pro rata* basis, which was inconsistent with the terms of the IVA, which provided that FF would pay funds to the supervisor for distribution

among all the creditors. Given that FF was under no obligation to make payment to the supervisor, and was legally obliged to make payment directly to the standstill creditors, the creditors who were not standstill creditors were at a material disadvantage.

- (2) Under clause 4.1.5, the standstill creditors could sue FF after 7 years if they had not received payment in full under the IVA:

“[T]he New Primary Debtor [FF] and the Guarantor [Mr Merchant] each agree to pay any remaining unpaid amount of the Assumed Primary Liabilities [defined in recital D] to the Creditor [who or which entered into the standstill agreement] (and therefore release the obligations of the Guarantor) on the Final Date [the earlier of 7 years from the date of the standstill agreement or 5 business days after other defined events].”

19. The standstill agreements to which she refers have not been disclosed and are not in evidence. All that is in evidence is a draft, which is exhibited to Mr Merrick’s first witness statement. It is headed “Override and standstill deed.” Clause 6.3 binds any creditor to the deed to vote for any IVA proposed by Mr Merchant.
20. I should explain the context that gave rise to the standstill agreements.
21. In cross-examination Mr Merchant gave evidence that in about 2022-2024 he entered into negotiations with his creditors in the hope of compromising his indebtedness to them. A draft standstill agreement was sent to many or all of his creditors. Some entered into it; others, such as the applicants, did not.
22. Mr Merrick gives evidence about how they became a matter of contention in Mr Merchant’s IVA in paragraphs 35-36 of his first witness statement. Someone at the first applicant recalled that Mr Merchant had approached them in November 2024 asking them to enter into a standstill agreement, the draft of which is the exhibit mentioned above. The first applicant declined to enter into it.
23. The first respondent’s late recollection prompted Fieldfisher on 19 March 2025 to seek information about what were described as joint debts in paragraph 8.2 of Mr Merchant’s proposal (headed “Provisions relating to joint debts”). Stephen Brook of the nominee’s firm responded on 23 March 2025:

“These debts are those included within the standstill agreements. These and other creditors are not implicated or preferred when comparing other listed creditors.”

I do not know what Mr Brook meant by “preferred.” If he was using the term to mean a preference within the meaning of s 340 Insolvency Act 1986, he was right; if he meant “treated better,” he was wrong. (I am not sure what he meant by “implicated” either: if he meant “affected,” again he was wrong.) I have headed this part of my judgment “The differential treatment of creditors” to avoid confusion and make clear what I understand the applicants are complaining about.

24. On 24 March 2025 Fieldfisher sought more information about the standstill agreements and asked for them to be disclosed. About 25 minutes before the creditors’ meeting the

nominee's firm (I think it was Mr Brook again, but the emails are not entirely clear) responded:

“Any standstill agreements are simply PG arrangements with a stay of pursuit until a formal arrangement is in place. Any one with or without this agreement will suffer no prejudice. Mr Merchants [sic] obligations fall away upon inception of the IVA where FF will assume responsibility to payback [sic] all creditors with [sic] on a pari passu basis”

The standstill agreements themselves were not forthcoming and still have not been disclosed.

25. In my judgment the way in which the standstill agreements were dealt with (or not) in Mr Merchant's proposal and the nominee's report amounted to a material irregularity in relation to the creditors' decision procedure by which the proposal was approved, and the differential treatment of creditors following approval of Mr Merchant's IVA unfairly prejudices the applicants. I say that for a number of reasons.
26. Neither the proposal nor the nominee's report make explicit reference to the standstill agreements. Those words do not even appear in either. The omission of the term is itself remarkable, given the number of creditors who had entered into them in one form or another (a caveat I include because the evidence is that the agreements were substantially similar, but that cannot be checked because they have not been disclosed). Even more remarkable is the failure to disclose the fact that, on their face, they afford the creditors who did sign them rights beyond those available to creditors who did not, just as Ms Innes submits.
27. Not only did the proposal and nominee's report fail to deal with them, but, I infer, both Mr Merchant and Mr Howorth appear to have decided to conceal them and/or their nature and effect. I take the following into account in drawing that inference.

(1) As I have noted, the provision purporting to deal with them is headed “Provisions relating to joint debts” and refers to “the following creditors [with] joint liabilities,” drawing attention to the joint nature of the liabilities but thereby distracting from the true nature and importance of the relationship between and among those creditors, Mr Merchant and FF.

(2) The nominee's responses to Fieldfisher of 19 and 24 March again seek to conceal the true position; they seek to deflect and mislead.

(3) The failure to disclose the standstill agreements is consistent with an intention to conceal. Mr Merchant relies on a confidentiality provision in the agreements to justify his decision not to disclose them, but in the course of his cross-examination he admitted that he had disclosed them to Mr Howorth, which is presumably why he felt able to say (in paragraph 22 of his witness statement) “the Standstill Agreements do not allow the Standstill Creditors to be paid in preference to the IVA Creditors.” Clarion, the nominee's solicitors who drafted Mr Merchant's proposal, also appear to have had them, as Mr Brook was able to confirm that Clarion did not see the presence of the agreements as constituting a detriment to any creditor or as

excluding any from voting (see page 3 of the chairman's report on the creditors' meeting).

28. None of the foregoing sits well with HHJ Norris's *dicta* about the need for a proposal for a voluntary arrangement to be honest and "put all relevant facts before creditors;" the respondents' approach offends the proposition that a proposal should be "characterised by complete transparency and good faith." It also demonstrates the nominee's failure, in discharging his functions in this case, to exercise professional, independent judgment, informed by his qualifications and skills.
29. The differential treatment of creditors that results from the co-existence of the standstill agreements and Mr Merchant's IVA also offends the *pari passu* principle that underpins (albeit with statutory modifications) English law insolvency processes, including that regulating individual voluntary arrangements, just as Ms Innes submits. She cites a passage from the judgment of Malins V-C in *McKewan v Sanderson* (1875) LR 20 Eq 65:

"Now I take it to be thoroughly settled, both in Courts of Law and Equity, that where there is a bankruptcy, or an arrangement with creditors by composition or insolvency, when insolvency exists as contradistinguished from bankruptcy, it is the duty of all creditors who have once taken part in the proceedings of bankruptcy or composition to stand to share and share alike. Equality is the only principle that can be applied, and if one creditor, unknown to the other creditors—not unknown to one or two, but to the general body—enters into an arrangement by which he gets for himself from the debtor, or from any one on behalf of the debtor, any collateral advantage whatever, that is a fraud upon the other creditors ..."

That that nineteenth century tenet holds good today is apparent from its citation by Patten LJ in his judgment in *Gertner v CFL Finance Limited* [2018] EWCA Civ 1781 (at [65]) on which Ms Innes also relies:

"It is clear from this formulation of the principle [i.e. the one immediately above] that this is not simply a re-iteration of the rule embodied in all insolvency legislation that the general unsecured creditors should share *pari passu* in the available assets of the insolvent estate. The principle can be breached if a creditor receives a collateral advantage from a third party in return for entering into the arrangement."

30. To be clear, the principle is breached in this case by the fact that some of the IVA creditors obtain or retain, following its approval, additional rights against FF which others do not enjoy. The applicants are put at a disadvantage: their rights are limited to receive whatever might come into the IVA; any rights they have against Mr Merchant are extinguished; they are not replaced by rights against any other person or entity, or the extended rights against FF which the standstill creditors continue to enjoy. Thus, some creditors find themselves (potentially, at least) in a better position than others. That is a derogation from the *pari passu* principle.
31. The same point, in my view, also constitutes a breach of the principle that an IVA must be propounded in good faith. Again I set out a passage from *Gertner* on which Ms Innes relies (see *Gertner v CFL Finance* [2018] EWCA Civ 1781):

“In circumstances where the considerations referred to by Etherton LJ at [67] of his judgment in *Kapoor* [*v National Westminster Bank plc* [2011] EWCA Civ 1083] were very much in issue, the principle of good faith does, I think, require to be strictly applied. The objection to the [Kaupting Settlement Agreement] is that it provided Kaupting with a collateral advantage not available to other creditors which placed it in a position of conflict with the interests of the other creditors. That was in my view a breach of the good faith principle which disqualified Kaupting from voting on the proposal to the potential detriment of CFL and the remaining creditors. I agree with the judge that the good faith principle is not confined to vote buying of the kind exemplified by [*Cadbury Schweppes Plc v Somji*] nor do I accept that the test of whether the IVA should be revoked on grounds of material irregularity depends on whether disclosure of the arrangement could have made a difference to the outcome in the way that Mr Moss [leading counsel for the appellant] puts it. *Somji* was not decided under s.262(1) and concerned only whether there was a material omission in the information provided to creditors in the proposal document. In *Kapoor* where the challenge was brought under s.262(1)(b), it is clear from [64] of the judgment that the vote of the creditor who is party to the collateral arrangement falls to be excluded.”

32. A theme of the above authorities is the impropriety of making available to a creditor or group of creditors of a collateral advantage that is not accorded to another creditor or group of creditors.
33. I do not think that the mischief of the differential treatment of creditors whereby some enjoy a collateral advantage over others is vitiated or mitigated by the arguments relied on by Mr Grandjouan and Mr Fitzmaurice (who adopted those of Mr Grandjouan). They are summarised in Mr Grandjouan’s skeleton argument as follows (with minor editorial changes and some additions; it refers to the standstill agreements as “SAs”):

(1) As R1 explains, all or substantially all of R1’s creditors were offered the chance to enter into a SA, including the Applicants. Mr Merrick’s third witness statement appears to treat R1’s statement that he cannot locate emails to each and every creditor as an admission that the SA “was not sent to all of his creditors,” but the only admission is that he did not send emails regarding the SAs to his two connected creditors. A list of the creditors in respect of whom R1 has found records that the SA was sent is in evidence. (That was indeed Mr Merchant’s evidence, which I accept: a schedule of creditors who received emails is in evidence; Mr Merchant says he contacted others orally.)

(2) The Applicants’ own evidence is that the First Applicant had been provided with a draft SA as early as 25 November 2024, and “did not agree to enter into the terms of the Draft Standstill as the terms of the same and the proposal which sat behind it seemed fanciful.”

(3) Mr Merrick’s third witness statement claims that because of the amount of time which had elapsed between the disclosure of

the SAs and the circulation of the Proposals, the creditors cannot be considered to have been “adequately informed” about the SAs. But this is speculative: it may well be that the First Applicant had forgotten about the proposal to enter in SA by the time of the creditors’ meeting, but it does not follow that other creditors must have forgotten, or had to be reminded, of the proposal to enter into an SA.

(4) The Applicants’ solicitors therefore had access to the draft SA and the Applicants were on notice of its contents. It was, moreover, obvious from the terms of the draft SAs that other creditors were offered the opportunity to enter into it.

(5) The fact that only the signed SAs have not been disclosed simply reflects the confidentiality provisions in the executed documents. Mr Merrick’s speculation that the terms of the SAs differ as between different creditors relies on a comparison between the drafts sent to the First and Second Applicants which does not disclose any material commercial difference. It is unsurprising that a contract such as the SA may be tweaked or modified in its various iterations, without affecting the core commercial terms. It does not mean that the various creditors were offered different deals.

(6) The communications with R2 (as nominee) in advance of the creditors’ meeting, and the lack of a reference to the SAs in the Proposal and Nominee’s Report, must be seen in that light. It was not the case that the existence of the SA came as a bolt from the blue on 23 March.

(7) Finally, the existence and effect of the SAs were discussed in detail at the meeting on 24 March.

34. There is some force in some of the points Mr Grandjouan makes; but not enough, in my view, to get Mr Merchant out of the hole he has dug for himself with the assistance of his nominee. My overarching reason for saying so is that, whilst the context and events of the past (2023-2024) are plainly not to be discounted as irrelevant, what primarily matters, it seems to me, is what is set out in the four corners of the debtor’s proposal and the nominee’s report. This is, in the end, a case about a specific IVA, not about prior negotiations. Nothing of what creditors may or may not know or recollect about past events can detract from the obligations of transparency and full and frank disclosure in the IVA itself. Those obligations necessitated disclosure in Mr Merchant’s proposal of the existence and the terms of the standstill agreements and an objective analysis in the nominee’s report of their contents and effect. It is not enough, in my view, to say that the creditors must rely on their recollection, nor simply to assert, as Mr Merchant did in his oral evidence, that all the agreements that were signed were materially the same without spelling out the differences. As I have already noted, Mr Merchant’s reliance on their confidentiality has been treated selectively. A belated offer of disclosure made by Mr Merchant from the witness box came too late.
35. I reject Mr Grandjouan’s submission that the fact that every creditor of Mr Merchant was offered the opportunity of entering into the (or a) standstill agreement constitutes some sort of foil to the applicants’ case. The offer could and should have been made to all creditors at the same time after full disclosure of all the relevant facts within the IVA

and with the benefit of considered comment from the nominee. I make no criticism of Mr Merchant for seeking to come to terms with his creditors without going to the expense and trouble of an IVA; but once he did so, he was bound by the process and the considerations addressed in the case law. Full disclosure and clarity as to what was being proposed would have ensured the equality of treatment and adherence to the *pari passu* principle that a formal insolvency process requires.

36. I also reject Mr Grandjouan's contention that even if all the creditors had been told what they should have been told it would have made no difference to the outcome, which would still have been to approve Mr Merchant's IVA by a comfortable majority. (He relies on *Cadbury Schweppes Plc v Somji* in support of that proposition). Leaving aside the question of the extent to which all creditors might have been bound by the standstill agreements to vote in favour of an IVA (for who knows what was tweaked or modified), none of us can be sure how any creditor might have voted if he/she/it had been fully apprised of all the relevant facts.
37. The fact that the standstill agreements were discussed at the meeting of creditors is something to which I attach only limited weight. The meeting lasted just over 30 minutes. It covered a number of topics. The chairman's report does not bear out that the discussion was detailed, as Mr Grandjouan contends. In any event, any discussion there was took place against the backdrop of no or inadequate disclosure, which itself limits its value.
38. A further problem arises from the fact that Mr Howorth now contends that "[t]he IVA supersedes the Standstill Agreements in relation to the First Respondent's personal liabilities. As such, there is no preference created in the Standstill Agreements" (paragraph 22 of Mr Fitzmaurice's skeleton argument). I am not sure I understand the point or where it takes us. In my view it simply adds to the confusion: Mr Merchant's proposal says nothing about any standstill agreements being superseded, and it is hard to see, as regards the first applicant, that something can be superseded when it was never entered into in the first place.
39. Mr Grandjouan made the point that in *Gertner Patten LJ* said that "the mere fact that some (but not all) creditors will receive preferential treatment in the form of payment by a third party does not *ipso facto* constitute a material irregularity in relation to the approval of the IVA." The irregularities I have described above are, however, in my view, material in the circumstances of this case.
40. For all the foregoing reasons, the applicants succeed on this issue.
41. I shall deal next with the fourth basis of the applicants' challenge.

The likelihood of implementation

42. It used to be the case that a proposal for an IVA had to be "serious and viable" before it could be put to creditors. The requirement goes back to the time when an interim order was a prerequisite to convening a meeting of creditors to consider a proposal and the court acted as a filter to ensure that time and money were not expended in vain by holding a meeting to consider a proposal that was doomed to fail (see, for example, *Hook v Jewson* [1997] BPIR 100 and *Cooper v Fearnley (No 3 of 1994)* [1997] BPIR 20). Now that an IVA can be proposed without first obtaining an interim order it falls to the nominee to act as a filter. In a case where an IVA is proposed without an interim order being made s 256A(3) Insolvency Act 1986 provides for the nominee to submit a report to the debtor's creditors stating:

(a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented, and

(b) whether, in his opinion, the debtor's creditors should consider the debtor's proposal...

We are beyond the filter stage here, of course, and the nominee is not required to say that the proposal in relation to which he acts is "serious and viable," simply whether it has a reasonable prospect of being approved and implemented and should be put to creditors for consideration.

43. The applicants submit that the prospect of a return of 100p in the £ in five years under the terms of Mr Merchant's proposal is fanciful. I have some sympathy with that view. Mr Merchant's proposal presupposes the generation in five years out of a development or developments of funds sufficient to allow, after making certain prior payments, the &Soul companies to pay dividends of almost £53 million which FF will then give to the supervisor for distribution to the IVA creditors. At the time Mr Merchant's proposal was put to creditors FF had simply provided a letter to say it would make that contribution; its commitment has now been fortified by its agreeing to do so in the form of a deed (dated 6 June 2025, some time after approval of the IVA). There remains a missing link, however: nothing obliges &Soul to declare a dividend. Mr Merchant said in his oral evidence that he is relying on investor pressure as assurance of a dividend being declared. He may be justified in that reliance, but it is not hard to imagine the &Soul directors deciding to postpone taking dividends until the IVA has expired, and, as Ms Innes points out, dividends may be diluted if further shares are created. (I leave to one side for the moment Ms Innes's concerns about the implications for the directors of the companies concerned of their duties to their respective companies: that is a matter for them.)
44. Apart from those powerful points, Ms Innes offers a persuasive critique of the business plan that is said to underpin Mr Merchant's proposal.
45. She draws attention to the disclaimer which precedes it:

"The contents set forth herein (the "Information") are based on the estimates, projections and assumptions of FF Investment Holdco Limited and are subject to change. FF Investment Holdco Limited has prepared the Information based on expectations and assumptions believed to be reasonable under the circumstances, but no representation or warranty, express or implied, is provided in relation to the accuracy, completeness or reliability of the Information. The Information, including the projections, assumptions and calculations in the spreadsheets included in the Information, has not been, nor will it be, independently reviewed, verified or examined, and no person will provide any form of assurance with respect to the Information.

The Information is subject to risks and uncertainties that could cause actual results to differ materially from those estimates, projections and assumptions expressed therein, and the Information should be read with caution. The Information is subjective in many respects and thus susceptible to interpretations and periodic revisions based on actual experience

and recent developments. Whilst presented with numerical specificity, the Information is based upon a variety of estimates and hypothetical assumptions with respect to, among other things, asset performance, general economic, market, interest rate and financial conditions, operating and other revenues and expenses, capital expenditures and working capital and other matters. None of the assumptions may be realised, and they are inherently subject to significant business, economic and competitive uncertainties and contingencies, all of which are difficult to predict and many of which are beyond our control. Accordingly, there can be no assurance that the assumptions made in preparing the projections will prove accurate, and actual results may materially differ.

The Information is for the use only of the party to whom it is addressed and is confidential, by accepting the Information you agree to hold it in complete confidence.”

When Ms Innes took Mr Merchant to task about the disclaimer, he simply said that it was “standard” in a document of this kind, which may be correct but does not detract from its obvious force in undermining any weight that might be given to the information in the plan that follows.

46. Ms Innes points out, again with justification, that the business plan itself consists of bare spreadsheets containing figures which, without any narrative, context or analysis, are of little assistance and cannot be said seriously to support the projected net return on which the success of Mr Merchant’s proposal depends. She points out that, on Mr Merchant’s own case, he has no interest in either the &Soul Companies or FF and asks, rhetorically, why FF would be willing to contribute £52 million odd to his IVA, or how such payments would be in FF’s interests. She submits that, in the event of FF’s insolvency, it is likely that a liquidator would seek to claw back any payments it had made.
47. Mr Grandjouan drew my attention to Mr Merchant’s track record: he had raised considerable sums to fund the Collection Group. It is tempting to dismiss that submission, given that group’s ultimate collapse, but I do not think it is as simple as that; there is some force in Mr Grandjouan’s point.
48. I share the applicants’ concerns that Mr Merchant’s proposal may well be fanciful, and the business plan supporting it is indeed very thin material on which to base a decision, but, as Mr Grandjouan rightly pointed out in the course of his submissions, I am not a creditor and should not substitute my view for that of the majority. I will be very surprised if Mr Merchant’s IVA results in a payment of 100p in the £ or any payment at all. I agree with the applicants that in that sense his proposal is fanciful. But in spite of that I think it is viable in the sense that it is a viable (possibly the only viable) alternative to bankruptcy, offering the creditors some hope of some return where bankruptcy almost certainly offers none. Put another way, I cannot say that it has no reasonable prospect of being implemented. In that limited sense it seems to me that it does not give rise to an irregularity, alternatively not to one that can be said to be material to the creditors as a whole; nor does it unfairly prejudice the applicants, as any prejudice they suffer is shared equally by all creditors.

Mr Merchant's failure to make full disclosure of his assets and liabilities

49. In my view the applicants have failed to make out this complaint. They rely on the fact that &Soul and FF are providing the money for Mr Merchant's proposal and family connections with those companies as evidence of his having an interest in one or more of those companies. They also rely on website material and press articles.
50. Mr Merchant's proposal discloses no direct or indirect interest in or directorship of any company, and in his evidence he denied having any. All the shares in FF are held by Shireen Merchant, Mr Merchant's mother. FF holds 40% of the shares in Soul Development Holdings Limited, which in turn holds 100% of the shares in Soul Development Services Ltd. Mr Merchant says that he works as an employee, and, whilst the project that &Soul is engaged in is his brainchild, he reports to and is answerable to the board which makes all the important decisions that have to be made.
51. Ms Innes spent some time cross-examining Mr Merchant on this issue but she did not succeed in eliciting from him any admission that assisted her case. Mr Merchant is described on the &Soul website as founder of the business. He accepted that he was a founder but referred to himself as a co-founder rather than "the" founder. That is what his LinkedIn entry says. He accepted that references to &Soul as being "my" company were wrong.
52. I accept his evidence. I should not make too much of what appears on a website, and use of the first person in an informal context seems to me to be too casual to have much force. I attach no weight to the press articles on which the applicants rely: what appears in the press is rarely of real probative value, and this case is no exception. A conclusion that Mr Merchant has failed to disclose any interest he has in companies or indeed any other assets he might have would require me to draw an inference I do not believe I can properly make on the basis of the evidence I have seen or heard.
53. Mr Merchant's having no interest in FF or &Soul also seems to me to be explicable in the light of Mr Merchant's financial predicament. He has lived under the shadow of possible bankruptcy for some time. Family members and investors would, I think, balk at the idea of giving him a stake in companies which would be at risk if he were to be made bankrupt, and he would in all likelihood have had to divest himself of any he had acquired for the benefit of his creditors to secure creditor approval for his IVA. He and those with whom he has dealings have, I suspect, simply organised matters to avoid those possibilities, as they were entitled to.
54. This aspect of the applicants' case also fails.

The nominee's conduct

55. As I have already indicated, the nominee's conduct in relation to Mr Merchant's proposal gives rise to a number of concerns. As HHJ Norris QC said in *Fender*, "[T]he nominee when discharging any of his functions, has a duty to exercise a professional independent judgment, informed by his qualifications and skills." The context in which he said that is not the same as the context in this case, but the proposition, I think, applies more generally. In my view the second respondent's conduct has fallen short of the required standard in a number of respects.
56. I have already referred to the fact that Mr Howorth's evidence in this application is given on his own behalf as well as on behalf of Mr Merchant. That itself demonstrates a degree of partiality that is inconsistent with the independence with which a nominee

should act. The same partiality has tainted his prior conduct in a number of other respects.

57. First, in my view, the nominee has been complicit in concealing the nature and effect of the standstill agreements. It is unnecessary to repeat what I have already said about this to make that proposition good.
58. Secondly, he appears to have done little or nothing to interrogate what was by any standard the flimsy business plan relied on by Mr Merchant. (I say this in spite of the conclusion I reach above: I am now dealing with a different point.) There is nothing in his report to indicate that Mr Howorth took any steps to check the information in the plan: he does not appear to have questioned the values attributed to property or the extent to which any might be subject to any charge or charges; he offers no comment on the cash flow or other figures; he appears not to have asked who would be doing the development work; indeed he seems to have acted as a rubber stamp. Even at this stage he insists in his evidence that Mr Merchant provided a “detailed business plan,” which is plainly not the case, and makes no attempt to explain how he formed a view that it was suitable to put before creditors. Mr Merchant confirmed that the business plan was his own work; he had not sought any outside advice or assistance. I do not go so far as to say that Mr Howorth should have done so. I do say, however, that he should have made clear in his report that he had not taken those or similar steps and given reasons for that approach, at the same time indicating whether he had, at least, interrogated Mr Merchant about the assumptions that he, Mr Merchant, had made.
59. Thirdly, the nominee appears to have been content initially to rely on nothing more than a letter of intent from FF in support of its commitment to pay into Mr Merchant’s IVA. The letter had no contractual force. It was only after the meeting of creditors that a commitment (such as it is) in the form of a deed was forthcoming. That is another indication of the casual way in which the nominee has approached his duties in this case.
60. In my judgment the nominee’s failure to discharge his duties in the respects I have identified amounts to a material irregularity within the meaning of s 262 Insolvency Act.

Policy considerations

61. In reaching the conclusions I have I also bear in mind two policy considerations. The first is one on which Ms Innes relies: in *Kapoor v National Westminster Bank* the Court of Appeal said:

“An IVA is a means by which an insolvent debtor can escape the full and rigorous consequence of a bankruptcy order, including the right of the creditors to select the trustee in bankruptcy, the supervision of the trustee by the creditors and the court, the ascertainment, collection and distribution of bankruptcy estate by the trustee, and the possibility of holding a public or private examination of the bankrupt on oath. In cases, such as the present, where independent creditors have doubts as to whether the debtor has been full and frank in the information he has provided, and, in particular, as to the full extent of his assets, an IVA has potentially severe disadvantages for those creditors.”

That point was made by Ms Innes in relation to full and frank disclosure but plainly has wider implications. It is apposite in this case precisely because Mr Merchant’s IVA was

his escape route from bankruptcy and all that that would mean. The second is, in my view, the need to uphold the integrity of the voluntary arrangement regime by reference to the principles enunciated by HHJ Norris QC in *Fender* and the other case law touched on above. The voluntary arrangement regime relies on the individual proposing one to play fair by his creditors by making full and frank disclosure and dealing with his or her creditors honestly and in good faith. It also relies on the independence, integrity and professional conduct of the nominee. Misdoing on the part of either can only damage confidence the IVA regime.

Conclusion

62. I do not pretend to have covered above all the detail of the evidence to which I was taken or to have dealt with all the submissions I heard, but the foregoing is, in my view, sufficient to enable me to conclude that the applicants' application succeeds. I shall hear counsel for the parties when this judgment is handed down on the relief that should follow from that conclusion.

Approved Judgment

Re Merchant