Convenience translation
In any case of inconsistency, the immediate report in Hebrew shall prevail

Discount Investment Corporation Ltd,

Immediate report dated October 23, 2020 - reference number: 2020-01-115518

Subject: **Court Decision Regarding the Receivers' Motion to Approve Mega Or's Proposal**

Further to the immediate reports of Discount Investment Corporation Ltd. (the "**Company**"), the last of which was dated October 22, 2020, regarding various legal proceedings pertaining to the receivership of the Company's shares, including in connection with a motion which was filed by the receivers who were appointed for the Company's shares (the "**Receivers**"), which constitute approximately 70% of its issued capital (with the consent of the trustee for IDB Development Corporation Ltd. ("**IDB Development**") (who was also appointed as the temporary receiver for the Company's shares, which constitute approximately 12% - the "**Trustee**"), for the approval of the conditions of a binding and irrevocable proposal which was submitted by Mega Or Holdings Ltd. ("**Mega Or**"), for the acquisition of the Company's shares (the "**Motion**"), the Company hereby reports that on October 22, 2020, following a hearing which was held in the Court of Tel Aviv-Yafo, the Court gave its decision which approved, in principle, the arrangement between the receivers and Mega Or, with the said approval entering into effect on October 27, 2020. If and insofar as a proposal equivalent in value to Mega Or's proposal is submitted by October 27, 2020, including the attachment of collateral, as was provided by Mega Or, and to the satisfaction of the receivers, the foregoing approval will be canceled.

The Court's decision is attached to this immediate report.

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The Tel-Aviv & Jaffa District Court

Liquidation Case 50129-09-20 *Resnick Paz Nevo Trusts Ltd. v. Irsa IL Ltd. et al.*

External file:
Motion no. 20

Before the honorable Justice Hagai Brenner, Vice-President

Applicants **Advocates Raanan Kalir and Alon Binyamini, in their capacity as receivers of the controlling shares in Discount Investment Corporation Ltd.**

In person

v.

Respondents

1. **Dolphin IL Investments Ltd.**

   By its attorneys, Adv. Joseph Benkel, Amir Frankl and Lidar Kupershmidt-Tal

2. **Adv. Ophir Naor, in his capacity as trustee of IDB Development Corporation Ltd. (in liquidation) and temporary receiver of some of the shares of Discount Investment Corporation Ltd.**

   In person

3. **The Commissioner of Insolvency Proceedings**

   By his attorney, Adv. Hadar Naot

DECISION

Introduction

1. I have before me a motion from the receivers, Advocates Raanan Kalir and Alon Binyamini (**hereinafter: 'the receivers'**), for the approval of conditions relating to the offer of Mega Or Holdings Ltd. (**hereinafter: 'Mega Or'**).

2. The basis for the motion is my decision of September 25, 2020, to appoint receivers for 99,258,708 shares of the company Discount Investment Corporation (**hereinafter: 'DIC'**) that are owned by Dolphin IL Investments Ltd. (**hereinafter: 'Dolphin Israel'**), which constitute approximately 70.2% of the paid-up share capital of DIC (**hereinafter: 'the controlling shares'**), at the request of the holders of the Series 14 bonds of IDB Development Corporation Ltd. (in liquidation) (**hereinafter: 'IDB'**), for a debt in a sum of approximately NIS 889 million of IDB to them. The controlling shares are charged with a first-degree charge in favor of the holders of the Series 14 bonds and a second-degree charge in favor of IDB as collateral for a debt of Dolphin Israel to it in a total sum of approximately NIS 2.049 billion, and a third-degree charge in favor of the holders of the Series 9 bonds of IDB as collateral for a debt of IDB to them in a sum of approximately NIS 910 million.

3. To complete the picture, I should state that on October 12, 2020, the trustee of IDB (**hereinafter: 'the trustee'**) was appointed as temporary receiver of 17,158,241 shares of DIC that are owned by Dolphin Israel, which constitute approximately 12.1% of the paid-up share capital of DIC (**hereinafter: 'the additional shares'**), for a debt of a sum of approximately NIS 2.049 billion of Dolphin Israel to IDB.

4. On October 14, 2020, I granted the receivers' motion and allowed them to publish an invitation to make offers for the purchase of the controlling shares. Following this, the receivers published such an invitation, which stipulated that offers should be submitted by November 4, 2020.

5. On October 15, 2020, I denied the motion of the former controlling shareholder of IDB, Eduardo Elsztain (**hereinafter: 'Elsztain'**), through a company in formation (Dolphin IL 2020) to redeem the charge on the controlling shares in return for the payment of a total sum of NIS 908 million, of which a sum of NIS 770 million on the sale date and a sum of NIS 138 million within a year thereafter.

6. On October 16, 2020, the motion before me was filed.

   The receivers stated in their motion that they received a certain offer from Mega Or in connection with the purchase of the controlling shares, and after discussions, they reached an understanding with it and are now requesting its approval. According to the understanding, Mega Or is offering to buy the controlling shares for a sum of NIS 950 million, i.e., a sum that is approximately NIS 61 million more than the amount of the debt to the holders of the Series 14 bonds. In return for this, the receivers will not submit for the approval of the court any other offer unless the consideration in the other offer will be at least NIS 40 million higher than the consideration offered by Mega Or (i.e., consideration of at least NIS 990 will be offered). Should the other offer be chosen as the winning offer, then out of the consideration in cash that will be paid *de facto* to the receivers according to the other offer, a sum of NIS 15 million will be paid to Mega Or. The aforesaid understanding will expire if it is not approved by the court by October 27, 2020.

<u>The claims of the parties</u>

7. The receivers state that Mega Or's first offer, which was already submitted on October 7, 2020, was to pay a sum of approximately NIS 891 million in return for the controlling shares. This offer was supposed to be valid until October 28, 2020. However, Mega Or has now improved its offer significantly (an improvement of NIS 59 million), and the current offer (if the receivers' motion will be approved) will be valid until November 23, 2020, so that it will be possible to conduct the invitation proceeding without Mega Or's offer expiring (unlike its first offer, which will expire before the time will pass for the submission of other offers).

   According to the receivers, if the court will approve the understanding that they have reached with Mega Or, this fixes a minimum price of NIS 950 million for the controlling shares and may also encourage the submission of higher offers, insofar as they will be for at least NIS 990 million. Admittedly, if the winning bid will not be Mega Or's bid, the receivers will be compelled to pay out a sum of NIS 15 million to Mega Or, but this is reasonable and proper consideration that will still leave an additional amount of NIS 25 million in the possession of the receivers above the amount of NIS 950 million, so that even in such a case, the creditors will benefit. It should be noted that any payment that exceeds NIS 889 million, which is the secured debt of the holders of the Series 14 bonds, is supposed to go to the unsecured creditors of IDB, so that they too will benefit from the sale proceeding.

8. Following the receivers' motion, a strongly-worded objection was filed by Dolphin Israel and the company in formation (Dolphin IL 2020) (**both of which hereinafter: 'the objectors'**).

The objectors claim that the understanding that was reached between the receivers and Mega Or was intended to give an unfair, improper and unlawful advantage to Mega Or and that this is an outrageous and unprecedented understanding that is contrary to the basic principles of our legal system, and therefore it should be summarily rejected. The objectors claim that it is a basic principle that functionaries that act as the long arm of the court have a duty of a greater degree of fairness, good faith, equality and transparency. In this context, they refer to my decision of October 15, 2020, in which I said that the only way in which it is possible of cleansing the controlling shares of all the rights that are attached to them, including those of the holders of the second-degree and third-degree charges, is by offering them for sale to the highest bidder, in a competitive, public, equal and transparent proceeding. I went on to say in that decision that, in the prevailing circumstances, the only way in which Elsztain will be able to try to regain control of DIC is by competing directly, on an equal footing, for the purchase of the controlling shares. Yet we see that the receivers have exempted themselves from the duty to act in the spirit of that decision of mine, and they want to breach their duty to act equitably, fairly and equally, in order to give an advantage to Mega Or's offer and putting almost insurmountable obstacles in the path of other bidders. Moreover, this is an improper and serious attempt to give Mega Or what the objectors graphically call a 'kick-back,' in a sum of NIS 15 million, at the expense of the bondholders and potential offerors that will have the temerity to compete with Mega Or, and for this purpose, they will be required to pay an 'entry fee' in a sum of NIS 40 million, of which NIS 15 million will be pocketed by Mega Or. According to the objectors, the receivers *de facto* held a proceeding of a 'tender within a tender,' something that is fundamentally improper. The objectors also claim that Mega Or itself does not comply with the requirements of the Promotion of Competition and Reduction of Centralization Law, 5774-2013 (**hereinafter: 'the Centralization Law'**), and moreover, it holds approximately 6.6% of the Series 14 bonds, so that *de facto* it will need to pay less consideration for the control shares than the amount offered by it. Moreover, a legal proceeding is currently being litigated between Mega Or and a subsidiary of DIC, and Mega Or's attempt to take control of DIC is intended to bring the aforesaid proceeding to an end.

9. In response to the objection, the receivers filed a response, in which they clarified all the considerations that they took into account in connection with the understanding with Mega Or, the clear advantage from the creditors' viewpoint in reaching the aforesaid understanding, the volatile business environment and the dangers inherent in it, etc. The receivers further claimed that Dolphin has no status to file an objection, since it is not a creditor of IDB, but at most a bidder. By contrast, all the creditors support the proposed course of action, which is also capable of preventing conflicts of interest between the holders of the Series 14 bonds (whose debt will in any case be repaid in its entirety by means of the sale of the controlling shares, and therefore they are prepared to content themselves will a smaller amount of consideration for the shares) and the holders of the Series 9 bonds (whose debt will only be repaid in part if the amount that will be paid for the controlling shares will exceed a sum of NIS 889 million). Moreover, Dolphin Israel has not discharged the burden of justifying the intervention of the court in the receivers' discretion, and as is well known, the court does not replace the creditors' discretion with its own. The receivers expressed astonishment at how Dolphin Israel suddenly espouses the importance of equal competition, since until recently it sought to prevent any such competition in advance, by means of an unfounded pretension of redeeming the charge on the controlling shares. Finally, the receivers claim that determining an increment of NIS 40 million reflects an accepted mechanism that is intended to encourage true competition and to prevent ineffective competition by means of small increments to the price. Regarding the payment of a sum of NIS 15 million to Mega Or, which the receivers propose giving the more dignified name of a 'break-up fee,'

this is a widespread condition in foreign countries, where it is customary to pay it in order to encourage competition and also to create a minimum offer that is intended to increase certainty. The receivers state that on October 18, 2020, they received a bank guarantee for a sum of NIS 95 million from Mega Or (10% of the amount of its bid), which proves the seriousness of its offer, unlike Elsztain, who is not backing up his offers with collateral.

10. The trustee and the other creditors of IDB, namely the holders of the Series 9 and 15 bonds, support the motion, even though the holders of the Series 9 bonds claim that the sum of NIS 15 million should not be paid solely out of their share of the consideration for the sale.

11. The Commissioner of Insolvency Proceedings (**hereinafter: 'the Commissioner'**) supports the approval of the understanding between the receivers and Mega Or. The Commissioner says that this is not a retrospective violation of the rules of the game by deviating from the principle of the finality of sale proceedings and undermining public confidence, but a prospective definition and determination of the rules of the game, so that all the participants are aware of them and can plan their actions accordingly. Moreover, the receivers also declared in advance, in the publication of the invitation to submit offers, that they reserve the right to make any change in the proceeding that they published. The Commissioner says that so far, no other offers have been submitted, and therefore there is no real difficulty in approving the aforesaid understanding.

Deliberations and decision

12. The application was scheduled for a hearing and the parties added to their arguments at great length, each in support of its position.

13. At the beginning of the hearing, I suggested to the objectors that they make an equal offer to that of Mega Or, i.e., that they offer a sum of NIS 95 million in return for the controlling shares and that they back up this offer with a bank guarantee for a sum of NIS 95 million, exactly as Mega Or did. It was suggested that if the objectors did this, the receivers' motion would be denied, and then the sale proceeding would be held at an opening price of NIS 950 million, without determining a minimum increment of NIS 40 million and without any payment in favor of Mega Or. This suggestion was intended to ensure that the objectors were prepared 'to put their money where their mouth was,' i.e., to prevent a situation in which they would frustrate the possibility that the creditors would ultimately receive a payment in a sum of NIS 950 million, without them offering the aforesaid amount themselves. Such a situation may occur if the understanding between the receivers and Mega Or will not be approved because of the objectors, and then the proceeding for the sale of the controlling shares will take place without a starting price of NIS 950 million and might unfortunately end with the winning bid being lower than the amount of NIS 950 million.

However, Elsztain claimed that although he accepted the suggestion, he was unable to provide the required bank guarantee before November 2, 2020, whereas the current offer of Mega Or will expire on October 27, 2020, if it is not approved by that date. Despite this, Elsztain was prepared to declare before the court that he intends to produce the required guarantee on November 2, 2020.

14. In view of this, I made another suggestion to the objectors, which was that they produce a bank guarantee for the amount of the difference between Mega Or's first offer and the amount of its current offer, namely a guarantee for a sum of NIS 59 million, as collateral for any damage that might be suffered by the creditors of IDB if a tender will be held without preconditions and would end in the controlling shares being ultimately sold for a price lower than NIS 950 million. For example, if ultimately the controlling shares will be sold for NIS 925 million, then a sum of NIS 25 million will

be forfeited out of the guarantee in favor of the creditors of IDB, because this amount reflects the damage that the objectors caused to the creditors. It was suggested that insofar as such a guarantee will be produced, the receivers' motion will be denied and the sale proceeding will take place without an opening price of NIS 950 million and without a minimum increment of NIS 40 million, because in any case, the creditors will be protected in the event that the proceeding will end with a payment lower than the sum of NIS 950 million that is currently guaranteed by Mega Or.

However, the response of Elsztain to this suggestion was identical to his response to the previous suggestion: consent in principle, but a request that the date for producing the guarantee would only be on November 2, 2020.

15. I should point out that Elsztain also requested and was given the possibility of stating his position and he spoke sincerely and emotionally, which clearly came from the bottom of his heart, about how he had so far invested a sum of approximately NIS 3 billion in IDB, without taking a penny for himself, and in return for this, he had been rewarded with the ingratitude of the bondholders, most of whom (the holders of the Series 9 bonds) lent money to IDB back in the time when it was still controlled by Nochi Dankner, and now all the creditors were hostile to him and wanted to take his holdings in DIC away from him. Elsztain also went on to say bitterly that if it was fated that he should lose money, it is better that this should have happened in Israel, but the conduct of the bondholders towards him would only frighten away foreign investors in the future.

16. By contrast, the receivers forcefully opposed Elsztain's request, out of concern that they would end up losing out since, on the one hand, if their motion would not be approved, Mega Or's offer would expire on October 27, 2020, and it was uncertain whether it would be renewed, and if so, on what conditions, whereas, on the other hand, Elsztain might disappoint them and not produce the promised guarantee, as he had disappointed the creditors in that he did not honor his written undertaking at the beginning of September 2020 to transfer to the empty coffers of IDB a sum of NIS 70 million, which, it will be recalled, set the wheels of the liquidation proceedings and the enforcement of the charges into motion.

17. In the circumstances that had arisen and in the absence of any consent, I was left with no option but to decide the dispute, in the sense of *fiat justitia ruat cælum* ('let justice be done though the heavens fall.'

18. After examining the arguments of the parties and with some hesitation, I have reached the conclusion that the receivers' motion should be granted, with one reservation that I will discuss below.

19. Admittedly, no one disputes that a functionary who is appointed by the court and is like the long arm of the court is required to act in good faith, fairly and in an acceptable manner. At the same time, he is required to act to maximize the value for the creditors, since he represents their best interests. However, there is frequently an inherent tension between these basic principles, which are not always consistent with one another. That is to say that the duty to act fairly and in good faith may undermine the principle of maximizing the value of the consideration for the creditors, and *vice versa*. In such cases, a strict and precise balance needs to be struck between these two values, but when they cannot be reconciled with one another, preference will always be given to the values of fairness, equity and good faith. This is also the reason why it has been held on more than one occasion that maximizing the value for the creditors is not the be-all and end-all, and there may be cases in which the court will not approve an offer that is better for the creditors if it was obtained in ways that are inconsistent with the duty of fairness and good faith imposed on the functionary. This is also the reason why courts are not in the habit of permitting the submission of better offers after a winner has already been declared in a bidding proceeding. As the court held in CA 509/00 *Ilan Levy v. Reuven M. Bracha, Adv., the trustee in bankruptcy for the assets of Yitzhak Bilu* [2001] IsrSC 55(4) 410, 422:

> **'The realization of an asset for the purpose of selling it in a bankruptcy proceeding is intended to achieve one purpose that has two sides to it: obtaining the highest possible consideration in order to repay the debtor's debt to the creditors. Thus, the sale serves as an operation that benefits both the creditors and the debtor, which is its main purpose. However, the need to realize this purpose does not justify every means that may be carried out to achieve it, and the trustee is liable to comply with the duties of fairness and good faith – whether from the field of tender law or from the field of private law – in managing the bankruptcy proceedings and realizing the assets as a part thereof.'**

Moreover:

> **'The duty of the trustee to carry out the purpose of his position of receiving the debtor's assets and obtaining the maximum consideration for them for the purpose of an equitable distribution thereof to the creditors, on the one hand, and his duty to carry out his duties fairly and in good faith, on the other hand, often necessitate the striking of a proper balance between different interests that merit protection, which may conflict with one another. Thus, there may be conflicting interests between the creditors *inter se*, or a conflict between them and the debtor, or a conflicting interest between the purpose of enriching the bankruptcy coffers and a legitimate expectation of a third party that a legal commitment that was made between him and the trustee will be honored. Thus, it may happen that the goal of enriching the debtor's coffers will conflict with the duty of good faith to a third party with whom negotiations were held and a transaction was made, and there may be a need to consider the striking of a proper balance between the interests of the debtor and the creditors, on the one hand, and the interest of the third party in the performance of good faith obligations to him, on the other. In the absence of a detailed arrangement on this matter in legislation, this matter is subject to the discretion of the functionary acting on behalf of the court, according to the criteria of reasonableness, fairness and commonsense'** (*ibid*., at 424).

See also BC (TA-DC) 11007-08-15 *Uri Schwartz v. Adv. Alon Baumgarten, trustee of the arrangement of the debtor's creditors* (reported by Nevo, February 7, 2019):

> **'However, despite the clear economic advantage of the most recent offer raised by the debtor, literally at the end of the hearing in the courtroom, it should be recalled that maximizing the consideration for the creditors is admittedly an important value, but it is not the be-all and end-all, and alongside this important value there are other equally or maybe even more important values, including the value of a fair, equitable and transparent sale proceeding and the value of public confidence in the finality of the sale proceeding and the protection of the reliance interest of the successful bidder. It has already been held on more than one occasion that the desire to maximize the consideration of the sale at all costs and regardless of any other concern is not the be-all and end-all when we are considering a sale through a functionary that was appointed by the court, and when we need to consider the protection of the principles of fairness and good faith'** (in paragraph 21).

See also LC (TA-DC) 42680-11-12 *Advocates Dror Vigdor and Gil Oren, receivers v. the Official Receiver, Tel-Aviv* (reported by Nevo, February 25, 2014), at paragraph 15.

20. As a matter of policy, there is no basis for considering solely the factors of the creditors' benefit in the specific case before the court, since sometimes they have no reason or desire to comply with the rules of fairness and good faith, if it is only possible to obtain better consideration for the asset out of which they want to be repaid. Therefore, even this is not to the creditors' liking, the court is called upon to consider also criteria of determining proper norms of conduct in the realization of assets through functionaries acting on its behalf and preventing manipulations, while maintaining public confidence in proceedings relating to the realization of assets (LC (TA-DC) 30790-02-18 *Honigman & Sons Ltd. v. Official Receiver* (reported by Nevo, April 10, 2018), at paragraph 35). Moreover, in this context of the duty of fairness relating to the management of sale proceedings, as in the present case, special weight should be given to the reliance interest of the actual bidders or the potential bidders. In other words, no change should be made to the 'rules of the game' of the sale proceedings after they have already ended.

21. Turning from general principles to the specific case

There is no doubt that the understanding that the receivers reached with Mega Or very much improves the situation of the creditors in relation to their current situation, because it promises the creditors a payment of a sum of at least NIS 950 million (insofar as no additional bids will be submitted apart from Mega Or's bid), with the possibility of even higher consideration if additional bids are submitted (i.e., bids in an amount of at least NIS 990 million). We should mention in this context that apart from Mega Or, whose initial bid is supposed to expire soon, the only bid that has been on the cards until today was the bid of Elsztain himself, in his request to redeem the charge on the controlling shares, but that was significantly lower than Mega Or's current bid and is only capable of repaying the debt to the holders of the Series 14 bonds, with a 'tiny amount remaining' for the other creditors, and even that will only occur a year from now (Elsztain offered a payment of a total amount of NIS 908 million, of which a sum of NIS 770 million on the sale date, and a sum of NIS 138 million only a year later). It is no coincidence that all the creditors currently support the receivers' motion that very much improves the situation of the ordinary creditors, namely the creditors that hold Series 9 bonds, who, according to Mega Or's offer, will be paid a sum of NIS 61 million. This bid also neutralizes the inherent conflict of interests between the different classes of creditors, since the holders of the Series 14 bonds have no incentive to increase the consideration for the controlling shares above the sum of NIS 889 million that is required for the full repayment of the debt to them, whereas the holders of the series I bonds have a clear interest in increasing the consideration above this amount, because only in that way will they receive any payment, even if only for a part of the debt to them. This is therefore a kind of 'insurance' that the receivers succeeding in acquiring from Mega Or, which hedges the risk in the sale proceedings.

22. Even the payment that is promised to Mega Or if another bid will be preferred to its bid, whether we call it a 'kick-back' or we call it by the more respectable name of a 'break-up fee,' does not involve any real impropriety, since the creditors have a right to reward with their own money someone who has contributed so significantly to improving the value that will be obtained when selling the controlling shares. After all, this payment will only be made if the offer of a bidder who is not Mega Or, in an amount of at least NIS 990 million, will be successful, and in such a case, after deducting the payment to Mega Or, the creditors will be left with a sum of NIS 975 million, i.e., an additional amount of NIS 25 million in relation to the minimum price currently offered by Mega Or. The question of

whether the holders of the Series 9 bonds alone should make that payment out of their share of the consideration or not will be decided, if necessary, at a later date, as the creditors themselves agreed.

23. Even the degree of the harm to the reliance interest of the potential bidders in a case where the receivers' motion is granted is very small, if it exists at all. We should mention that the receivers' motion to determine the terms of the sale proceeding according to what was agreed between them and Mega Or was filed only two days after the publication of the invitation to submit bids, and what is more, before anyone made any real reliance on the original terms of the invitation. It follows that this is not an improper change of the rules of the game after it has ended, but a reformulation of the rules, immediately after the 'starting whistle' of the sale proceeding.

24. Regarding the preferential status that the receivers wish to give to Mega Or's offer, even though this does raise a considerable feeling of discomfort, ultimately this does not prevent other bidders in general or Elsztain in particular from participating in the sale proceeding being managed by the receivers, although it cannot be denied that a significant hurdle has been placed in their path, in the form of the demand that any other bid will not be less than the sum of NIS 990 million. Determining a minimum bid is certainly a desirable and legitimate thing, but in this case, the new minimum bid that is determined is a bid in a sum of NIS 990 million, whereas Mega Or's bid stands at only a sum of NIS 950 million. There is no doubt that this hurdle is intended to make it harder for other bids to be submitted and it thereby gives a clear advantage to Mega Or's bid.

25. On the other hand, it should be remembered that the creditors, who are the main victims of the cooling effect of the fixing of a minimum increment of NIS 40 million, all agree to this outcome. In this context, we should mention that according to what they said during the hearing, the receivers held negotiations with Mega Or in order to reduce the amount of the minimum increment, in order to make it easier for additional bidders to participate, but ultimately, after discussions and in view of Mega Or's opposition, they were compelled to reconcile themselves to this demand, as the least of all evils.

26. Moreover, apart from Elsztain, through the two objectors, none of the potential bidders, insofar as there are any, has filed an objection to the determination of the aforesaid increment, and the trustee also reported to the court during the hearing that an approach was made to him by a potential bidder who clarified that the determination of this increment will not deter him from submitting a bid within the period determined for doing so.

27. Moreover – and this is the main point – a genuine claim of inequality can be heard only from someone who will be prepared in all good faith to file, already at this time, a bid that competes with Mega Or's offer, i.e., an undertaking to pay a sum of NIS 950 million for the controlling shares, which is backed up by collateral, like the bid of Mega Ord, since otherwise, the inequality is merely theoretical and not real. In other words, only someone who is currently prepared to pay a similar amount to Mega Or, but is not prepared to pay the amount that is required by the new minimum bid of a sum of NIS 990 million, is the only person who is genuinely injured by the determination of the new minimum bid.

28. In such circumstances, the way of neutralizing the aforesaid inequality between the bidders and identifying who is a genuine bidder, as opposed to a theoretical one, who may be injured by the determination of the new minimum bid is by holding that any bid that is similar to Mega Or's offer, i.e., a bid in a sum of NIS 950 million that is backed up by collateral will automatically result in the cancellation of the understanding between the receivers and Mega Or, provided that such a bid will be submitted before the date on which Mega Or's bid will expire. If we do not order this, the creditors may lose out, since, on the one hand, Mega Or's bid will expire because it was not approved by the

court, while on the other, there is no identical alternative bid on the table, and if there is an intention to submit such a bid, it is not yet backed up by any collateral.

29. I have not overlooked Elsztain's request to allow him time until November 2, 2020, to provide a bank guarantee in a sum of NIS 95 million, in order to back up his stated intention of offering a payment in a sum of NIS 950 million for the controlling shares. Elsztain said that the need for this additional time lies in the fact that the money needs to be transferred from abroad, something that takes a relatively long time. However, it should not be ignored that the creditors have lost faith in Elsztain, after he did not honor his undertaking to inject a sum of NIS 70 million into IDB at the beginning of September 2020, and they are therefore skeptical of his current undertaking that was given orally. If this request of Elsztain is accepted, the creditors may find themselves from October 27, 2020, onward without any financial collateral, after Mega Or's offer will expire (and it cannot be known if it will be extended), and they may find themselves without any recourse if ultimately Elsztain is unable to provide the promised guarantee. I regret this outcome, since I think that, despite everything, Elsztain still deserves more respect than he has received so far from the creditors, for the huge amounts that he has invested in IDB and for his refusal (which, it should be said, is exceptional) to withdraw dividends in all the years in which he was the controlling owner of the IDB Group. However, there is no basis for exposing the creditors to such a serious risk in which they will lose out and there is no basis for allowing the objectors to frustrate the creditors' possibility of receiving a sum of NIS 950 million for the controlling shares, based on a vague undertaking that is not backed up by any collateral.

30. In conclusion, I should point out that the objectors have not produced any evidence that makes it possible to disqualify Mega Or's bid because of the provisions of the Centralization Law. I have also not found that the dispute between Mega Or and the subsidiary of DIC is a ground to disqualify its bid. The same is true of the fact that Mega Or is one of the holders of Series 14 bonds.

31. In such circumstances, and despite the feeling of discomfort resulting from the receivers' motion, and in order to prevent serious damage that may be caused to the creditors, I have seen fit to approve in principle the understanding between the receivers and Mega Or, but the approval will come into effect on October 27, 2020. If and insofar as a bid of an equal amount to Mega Or's bid is submitted by October 27, 2020, together with a guarantee like the one produced by Mega Or, all of which to the receivers' satisfaction, the aforesaid approval will be canceled.

32. The court office will send the decision to the parties.

Given today, 4 Cheshvan 5781, October 22, 2020, in the absence of the parties.

(-)
Hagai Brenner, Justice, Vice-President