

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF GREENBANK TECHNOLOGY LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 16/06/2026

Before :

ICC JUDGE AGNELLO KC

ON THE APPLICATION OF :

(1) EMMA CRAY AND JEN WHATCOTT

(As the joint liquidators of Greenbank Technology Limited (in liquidation))

(2) GREENBANK TECHNOLOGY LIMITED (IN LIQUIDATION)

(3) CPM PACKAGING LTD

Mr Matthew Abraham and Mr Angus Groom (instructed by **Faegre Drinker Biddle & Reath LLP**) for the Applicants

Hearing date: 5 June 2026

JUDGMENT

ICC JUDGE AGNELLO KC :

Introduction

1. By application dated 14 May 2026, the First Applicants, being the current liquidators of Greenbank Technology (the company), the Second Applicants , being the company and the Third Applicant, being the sole shareholder (together the Applicants) seek directions and/or relief as follows:-

- (1) To waive any defect to allow the company to continue in a members' voluntary liquidation (MVL) , or alternatively
 - (2) To rescind the creditors voluntary liquidation (CVL) in so far as the company is in CVL rather than MVL, or alternatively
 - (3) To stay indefinitely the CVL in the event that the company is in a CVL and not an MVL .
2. The Applicants accept that there has not been compliance with the provisions of section 89 of the Insolvency Act 1986 in that one of the directors, Mr Williams did not make a statutory declaration before a person specified under section 18 of the Statutory Declarations Act 1835. The Applicants submit that the non compliance with that requirement is not fatal to the validity of the liquidation as a MVL rather than a CVL. In the alternatives, as set out above, a rescission or a stay is sought of the creditors' voluntary liquidation.

The statutory regime for MVLs and CVLs

3. A company enters voluntary liquidation at the time of the passing of a special resolution that the company be wound up voluntarily. Chapter II of Part IV of the Insolvency Act 1986 governs the resolutions and requirements for placing a company into a MVL or CVL. References in this judgment to statutory provisions relate to the Insolvency Act 1986 unless otherwise specified. The following are the relevant statutory provisions:-

‘Section 84 Circumstances in which company may be wound up voluntarily

- (1) A company may be wound up voluntarily—

- (a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it be wound up voluntarily;
- (b) if the company resolves by special resolution that it be wound up voluntarily;
- (c).....

(2) In this Act the expression “a resolution for voluntary winding up” means a resolution passed under [F2either of the paragraphs] of subsection (1)...’

‘Section 86 - A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.’

- 4. Of particular relevance are sections 89 and 90 which set out the requirements for a company to enter a MVL and the distinction between a MVL and CVL.

‘Section 89 statutory declaration of solvency

(1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than two directors, the majority of them) may at a directors’ meeting make a statutory declaration to the effect that they have made a full inquiry into the company’s affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate (as defined in section 251), within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

(2) Such a declaration by the directors has no effect for purposes of this Act unless—

- (a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and

- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.
- (3) [A copy of the declaration] shall be delivered to the registrar of companies before the expiration of 15 days immediately following the date on which the resolution for winding up is passed.
- (4) A director making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified is liable to imprisonment or a fine, or both.
- (5) If the company is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration, and its debts (together with interest at the official rate) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.
- (6) If [a copy of] a declaration required by subsection (3) to be delivered to the registrar is not so delivered within the time prescribed by that subsection, the company and every officer in default is liable to a fine and, for continued contravention, to a daily default fine.'

'Section 90 Distinction between "members" and "creditors" voluntary winding up

A winding up in the case of which a directors' statutory declaration under section 89 has been made is a "members' voluntary winding up"; and a winding up in the case of which such a declaration has not been made is a "creditors' voluntary winding up".'

5. Section 18 of the Statutory Declarations Act 1835 sets out the requirements of the statutory declaration required under section 89, being a declaration made before any justice of the peace, notary public, or other officer authorised to administer an oath.

‘Section 18 Voluntary declaration in the form in the schedule may be taken . . . It shall and may be lawful for any justice of the peace, notary public, or other officer now by law authorized to administer an oath, to take and receive the declaration of any person voluntarily making the same before him in the form in the schedule to this Act annexed; . . .’

6. The form of the declaration itself is set out in the schedule to the 1835 Act, being,

‘I A.B. do solemnly and sincerely declare, that and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the year of the reign of his present Majesty, intituled “An Act” (here insert the title of this Act).’

7. Section 183 of the Legal Services Act 2007 provides a definition of commissioners for oaths.

Factual Background

8. The company carried on the business of making can-making machinery and thermal process engineering equipment. It is a wholly owned subsidiary of the Third Applicant formerly known as Jenbest Ltd (the Parent). Both the Parent and the company are subsidiaries within a group of companies (the group) owned by ASP CPM Holdings, LLC. Between 2024 and 2025, the group was involved in an entity rationalisation process aimed at simplifying the Group’s corporate structure and reducing the compliance burden associated with superfluous entities. Various entities within the PWC brand assisted in the rationalisation and continue to act as the group’s auditors and advisors.

9. Detailed steps relating to the rationalisation are exhibited by Mr Sean Callison, director of both the company and the Parent and general counsel of the group, to his witness statement dated 13 May 2026. The company was to transfer its entire assets and business up to the Parent in exchange for cash consideration left outstanding as an intercompany debt. Thereafter, the company was to undertake a capital reduction to reduce its share capital and the nominal value of its shares to an outstanding share capital of £1. The company was to declare a final dividend equal to the amount of its distributable reserves, with payment of the dividend also left outstanding as an intercompany debt. The company's intercompany balances were to be set off against one another to leave just a single intercompany debt owed to the Company in the sum of £1. The final step was to place the company into a members' voluntary liquidation, being a solvent liquidation.
10. As explained by Mr Abraham, appearing on behalf of the Applicants with Mr Groom, the solvency of the liquidation was a fundamental part of the process. The company's liabilities had all been discharged prior to the proposed liquidation. Its trade counterparties had been informed that any new business would be conducted with the Parent going forward. The company's business and assets had all been hived up to the Parent. All its liabilities had been discharged. A reduction of capital, dividend declaration and subsequent set off resulted in the company having no inter company balances. The company was left with a balance sheet which consisted of £1 in assets and no liabilities.
11. Mr Abraham submitted that the intention to place the company into a solvent liquidation (a MVL) was also apparent from the discussion document prepared

by PWC which expressly stated that the solvency of all the entities was being assumed. The list of documents prepared by the company's legal advisors also made clear that the intention was to place the company into a MVL.

12. The First Applicants (as licensed insolvency practitioners directors of PWC) and as partners and directors of Pricewaterhouse Coopers LLP, refer to the ICAEW Code of Ethics which provides that that “*where the statutory audit related work was completed within the previous 3 years ... [a]n insolvency practitioner shall not take the insolvency appointment*”. For the avoidance of doubt, the ICAEW Code confirms that “*This restriction does not apply where the insolvency appointment is in a members' voluntary liquidation*”. This, submits Mr Abraham, reinforces the position that it was intended that the company enter into MVL because the Applicants would not have been permitted to take appointment as liquidators of a CVL. Mr Abraham accepts that the terms of the Code of Ethics do not have an effect upon the operation of statute.

The entry into liquidation

13. On 10 October 2025, the Parent signed a written resolution, ‘that the company be wound up voluntarily’ and an ordinary resolution appointing the First Applicants as the joint liquidators. In support of the intended MVL and in accordance with the requirements of section 89, the directors of the company, Mr Callison and Mr Williams signed a declaration of solvency as required in section 89.
14. The statutory declaration was signed by both directors and exhibits a statement of assets and liabilities showing correctly the £1 intercompany debt as being the only asset and no liabilities. However, as accepted by the Applicants, the

declaration did not comply with the requirements of the Statutory Declarations Act 1835. The declaration by Mr Williams was not made before a suitably qualified person. Instead, a person describing herself as a support worker signed as being the person in front of whom, via video conference, Mr Williams made the requisite declaration. Mr Callison's declaration did comply in that it was declared before a notary, being one of the suitably qualified persons specified in the Statutory Declarations Act 1835. In accordance with section 90, if there is no statutory declaration made under section 89, the winding up is a creditors' voluntary winding up.

15. Companies House refused to accept the declaration as being valid. The reason for the refusal to allow the statutory declaration to be registered was the non compliance with the requirements of a statutory declaration in relation to Mr Williams. Companies House does describe the liquidation of the company as being a MVL in its register, but this description was not relied upon as having any bearing on this application itself. This application was therefore made as a matter of urgency to the Court.

The Applicants' submissions

(a) The ability to waive the defect in the statutory declaration pursuant to Insolvency

Rule 12.64

16. The Applicants submit that the evidence clearly shows (1) that the directors of the company held a board meeting to approve the contents of the statutory declaration and the making of the declaration as a statutory declaration of

solvency; (2). that the declaration contained all the necessary contents which included the statement of assets and liabilities ; (3) that Mr Callison, one of the directors, made the correct declaration before a suitably qualified person.

17. It is accepted that the lack of a declaration complying with section 89 is that the company entered CVL and not a MVL. This is the effect of non compliance with section 89 and section 90. This is confirmed by *Re New Millennium Experience Co Ltd [2004] 1 BCLC 19 at [92]*. In that case, one of the issues facing the court was a challenge to the statement of assets and liabilities. That statement contained certain inaccuracies. The Judge (Mr Justice Lawrence Collins as he then was) confirmed the effect of non compliance was that a company would be in a CVL and not MVL, but that on the facts of the case before him, he was satisfied that the statement of assets and liabilities did not create a non compliance due to the relatively minor inaccuracies contained therein.

18. The learned Judge relied upon an earlier case, being *De Courcy v Clements [1971] Ch 693*, which also confirmed the effect of non compliance in relation to the predecessor to section 89, being section 248 of the Companies Act 1948. At page 697, the Judge (Mr Justice Megarry) stated, ‘It is common ground that if a declaration of solvency fails to satisfy either paragraph (a) or paragraph (b) of section 283 (2), it is a complete nullity: the subsection says “shall have no effect,” and nobody has contended that this means other than what it says’. Section 283(2) of the Companies Act 1948 states, a declaration as aforesaid, ‘shall have no effect for the purposes of the Act unless- (a) it is made within five weeks immediately preceding the date of passing of the resolution for

winding up the company and is delivered to the registrar of companies for registration before that date; and (b) it embodies a statement of the company's assets and liabilities as at the last practical date before the making of the declaration'.

19. In *De Courcy*, at pages 698-699, the Judge considered inaccuracies in the statement of assets and liabilities and in particular whether these have the effect of non compliance. The Judge considered that the words, 'statement of assets and liabilities' was not qualified by the word 'all' or preceded by 'a complete and accurate'. The Judge held that the expression statement of assets and liabilities means that there must be something which can be reasonably and fairly described as "a statement of the company's assets and liabilities" which does not require the statement to be one where there are no errors or omissions. The Judge considered that a strict construction of the words would cause difficulties. By way of an example, a failure to include an asset which would make the company even more solvent, would place the relevant company into a CVL. This could not have been the intention of Parliament. He stated, "*I do not think that I ought to impute to Parliament an intention to require perfection in a provision which contains no words to indicate this super-human standard. Nor can I see anything to require or suggest that the statement is to be something of a concealed trap, taking effect if it proves to be substantially complete and perfect, and retrospectively destroying the operation and effect of the declaration of solvency*".
20. Mr Abraham did not argue that there is any difference as between section 283(2) of the Companies Act 1948 and the current provision being section 89. His

submission was that the approach in both *De Courcy* and in *New Millennium* to inaccuracies in the statement of assets and liabilities demonstrated that the courts approach to compliance and what was required is approached with a degree of practicality as to whether there has been compliance with the requirements. The Court would consider what was the intention in relation to section 89.

21. The Applicants submit that there has been a statutory declaration as a matter of substance and that the Court should give effect to this, waiving the defect from the failure to satisfy all the formalities if required. The Applicants rely on rule 12.64 IR 2016 which provides that: “*No insolvency proceedings will be invalidated by any formal defect or any irregularity unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court.*”

22. Mr Abraham referred to the useful summary set out by Deputy ICC Judge Baister (being the former Chief ICC Judge sitting in retirement) in *Perhar v Freestone, the Sustainable Bathroom Company Ltd [2023] EWHC 2065 (Ch)* in relation to the approach of the courts to failures to comply with the requirements for the appointment of an administrator and the applicability of IR 12.64. At paragraph 42, the Judge stated:-

‘The current approach of the courts to failure to comply with the requirements for the appointment of an administrator and the applicability of rule 12.64 may be taken from the judgments of Stuart Isaacs QC, sitting as a Deputy Judge of

the High Court, in *Re Zoom UK Distribution Limited (In Administration)* [2021] EWHC 800 (Ch), [2021] BCC 735, and Marcus Smith J in *Re Skeggs Beef Ltd* [2019] EWHC 2607 (Ch), [2020] BCC 43, which Mr Ouwehand helpfully summarises as follows:

(a) Whether non-compliance with a requirement results in the invalidity of an appointment depends on whether Parliament intended that outcome.

(b) The question whether it does is to be answered by identifying (i) the purpose of the requirement and (ii) the consequences of non-compliance (*Re Zoom UK Distribution Limited (In Administration)* at paragraph 15).

(c) Defective out of court appointments can be divided into the following categories: (i) fundamental defects, such that the purported appointment is a nullity, (ii) defects that are not fundamental but have caused no injustice such that pursuant to rule 12.64 the appointment will not be invalidated, and (iii) defects that are not fundamental but have caused substantial injustice (*Re Skeggs Beef Ltd* at paragraph 21).

(d) In the latter category, the court will consider whether, in light of the circumstances, it is appropriate to make a remedial order curing the defect. If a remedial order cannot be made, or it is not appropriate to make one, the defect remains uncured (*Re Skeggs Beef Ltd* at paragraph 21 again).’

23. I accept this as a useful summary of the approach save that I am not convinced that the description of ‘a fundamental defect’ is necessarily accurate. In so far as the non compliance with statutory requirements is fundamental, this results in a nullity. It is therefore difficult to classify it as a defect. Mr Abraham relies

upon the 'defect' in this case as not falling under (c)(i) above because he submits it is not fundamental. To this extent he adopts the practical approach taken in *New Millennium* and *De Courcy* in relation to the construction of the words 'statement of assets and liabilities'. A statutory declaration has been made and accordingly the Court should give effect to it. The defect can be waived and clearly falls into a category where it has caused no injustice.

24. Reference was also made to failures to comply with formal requirements of statutory declarations required in the context of administrations pursuant to Schedule B1 of the Insolvency Act 1986. Mr Abraham provided two examples, being :-

(a) A notice of appointment by a qualifying floating charge holder "*must include a statutory declaration*" which (together with all relevant documents being filed) "*must be in the prescribed form*" (Schedule B1 paragraphs 18(2) and (5)); and

(b) A notice of intention to appoint administrators by directors likewise "*must be accompanied by a statutory declaration*" where the statutory declaration "*must ... be in the prescribed form*" (Schedule B1 paragraphs 27(2) and (3)), and the subsequent notice of appointment "*must include a statutory declaration*" also (Schedule B1 paragraph 29(2)).

25. The Temporary Insolvency Practice Direction (No 5): Supporting the Insolvency Practice Direction [2021] BCC 877 states at paragraph 9 that :-

'Where Sch.B1 to the Act requires a person to provide a statutory declaration, a statutory declaration that is made otherwise than in-person before a person

authorised to administer the oath may constitute a formal defect or irregularity. Pursuant to r.12.64 it is open to the court, on objection made, to declare that such a formal defect or irregularity shall not invalidate the relevant insolvency proceedings to which the statutory declaration relates, unless the court considers that substantial injustice has been caused by the defect or irregularity which cannot be remedied by any order of the court.’

26. This therefore creates a waivable defect in relation to a failure to make an in person declaration. Paragraph 10 states :-

‘Where a statutory declaration is made in the manner described in sub-paras 10.1–10.3 below then the defect or irregularity (if any) arising solely from the failure to make the statutory declaration in person before a person authorised to administer the oath shall not by itself be regarded as causing substantial injustice.

10.1 The person making the statutory declaration does so by way of video conference with the person authorised to administer the oath;

10.2 The person authorised to administer the oath attests that the statutory declaration was made in the manner referred to in para.10.1 above; and

10.3 The statutory declaration states that it was made in the manner referred to in para.10.1 above.’

27. The Applicants rely upon the provisions of the Temporary Insolvency Practice Direction as demonstrating that a failure to make the declaration physically before the suitably qualified person is a waivable defect and by parity of approach, this is equally applicable to section 89 and compliance with the

Statutory Declarations Act 1835. In *Galer v Mond [2021] EWHC 1952 (Ch)*, the Judge (HH Judge Stephen Davies) considered an application made by the director and sole shareholder of the relevant company seeking a declaration that the appointment of David Mond as administrator of the company was invalid. The grounds of the invalidity argument was that Mr Rubin, an English qualified solicitor, was not qualified in Israel to witness an oath made in Israel. The Judge considered the impact of the Commissioners for Oaths Act 1889 and whether a statutory declaration taken or made in any place out of England can only be made before any person having authority to administer an oath in that place. Where that happened in Israel, then it can only be done before someone who has authority in Israel to administer an oath. The Judge stated as follows in answer to this argument :-

‘17.Mr Waiting submits that this argument is wrong, because of the provisions of section 1(2), which provides that a commissioner for oaths may, in England or elsewhere, administer any oath or take any affidavit for the purposes of any court or matter in England. His submission is that this section expressly permits to happen that which has happened in this case, namely, that Mr Rubin, as an English qualified solicitor, was perfectly entitled to administer an oath in Israel because that was permitted by section 1(2) of the relevant act.

18. It seems to me that this is a submission to which there is really no answer. It is a clear provision which has clear effect, and section 3, upon which Mr McGarry relies, could only properly be construed as being subject to that provision. In my judgment, that is fortified by subsection 2 of section 3 which provides that, in the case of a person having such authority otherwise than by the law of a foreign country, judicial and official notice shall be taken of his seal or signature, affixed, impressed or subscribed to or on any such oath or affidavit, so that in this case it can be seen that Mr Rubin witnessed the

declaration in his capacity as an English qualified solicitor. I am, therefore, satisfied that this objection has no merit.’

28. Mr Abraham relies on what the Judge then observed by way of obiter. At paragraphs 19 and 20, the Judge stated :-

19. A further point would have arisen had I concluded otherwise, which is whether or not, under the discretion given to the Court by the Insolvency Rules, the Court would have had the jurisdiction to waive the defect. I have been referred to the temporary insolvency practice direction, which makes provision for the consequences of the pandemic upon insolvency matters, and which permits a statutory declaration to be made by remote means. It records in paragraph 6.1 that:

“A statutory declaration that is made otherwise than in person before a person authorised to administer the oath may constitute a formal defect or irregularity. Pursuant to rule 12.64 it is open to the Court, on objection made, to declare that such a formal defect or irregularity shall not invalidate the relevant insolvency proceedings to which the statutory declaration relates, unless the Court considers that substantial injustice has been caused by the defect or irregularity which cannot be remedied by any order of the Court.”

20. Mr Waiting submits that, if I had needed to, I ought to be satisfied that, by a parity of approach, I should make such an order in this case on the basis that if the only defect was that Mr Rubin did what he did in Israel when he could have done it either by arranging for Mr Greenberger to come to this country to do it, or possibly remotely whilst he was in Manchester, then there could be no objection. Mr McGarry has submitted that this was a fundamental non-compliance to which rule 12.64 was not intended to and should not apply. It seems to me that, if the objection is purely that although the oath was in the right form and although it was administered in the presence of someone who would, if in this country, have been entitled to do it, the fact that it was done in a foreign country would be a defect which is not fundamental to the Act, and,

therefore, I would have exercised my discretion. However, I do not need to given the first conclusion I have reached.’

29. The Applicants therefore submit that this approach applies equally to a case where the declaration was not made before a suitably qualified person. Mr Rubin was not a suitably qualified person in Israel where the declaration was made but was a suitably qualified person had the oath been made in England and Wales. In the current case, the person in front of whom the declaration was made was not qualified.

(b) Rescission of the CVL

30. Mr Abraham referred me to IR 12.59 which states

‘12.59.—(1) Every court having jurisdiction for the purposes of [Part A1] to 7 of the Act and the corresponding Parts of these Rules, may review, rescind or vary any order made by it in the exercise of that jurisdiction.’

31. Mr Abraham also referred to section 112 which states :-

‘(1)The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as

may be prescribed, to the registrar of companies, who shall enter it in his records relating to the company.’

32. Mr Abraham accepts that there is no statutory provision on its face which permits the rescission of a voluntary liquidation but he submits that section 112 enables a liquidator of a voluntary liquidation to apply to the court to determine any question arising in the winding up, or to exercise all or any powers which the court might exercise if the company were being wound up by the court. He submits that this is wide enough to enable the Court to rescind the CVL in this case.
33. Section 112 has been used for seeking a stay of voluntary winding up proceedings. A recent case is *Thomas v Parkwood Holdings Ltd [2023] EWHC 1571 (Ch)* in which the court followed the approach in *Re Calgary and Edmonton Land Co Ltd [1975] 1 WLR 355* and exercised the power provided in section 147 to stay a voluntary liquidation. Section 112 was relied upon as providing the court with the jurisdiction to stay, in circumstances where the court considered it appropriate to do so. Mr Abraham relies on the background to this case and the clear intention to place the company into voluntary liquidation.

(c) Stay of the CVL

34. This follows from what is set out above in relation to rescission. Mr Abraham referred me to section 112 and also the express power of the court to stay compulsory winding up proceedings which is set out in section 147. The cases referred to above are relevant. Mr Abraham also sought to deal with a concern I raised relating to the effect of a stay on the ability of the company thereafter

to be able to enter into a MVL if it were the subject of a stay. He submits that there is an argument that a company which is the subject of a permanent stay pursuant to sections 112 and 147 is capable of entering into a MVL. In the event that the position is taken that such MVL is not possible, then Mr Abraham submits that there still remains utility in the stay being granted because the Applicants would all prefer a stay rather than the continuation of a CVL of a solvent company.

Discussion

35. The starting point is to consider Parliament's intention in relation to compliance with the requirements of a statutory declaration as set out in section 89 and section 18 of the Statutory Declarations Act 1835. In my judgment, Parliament expressly required those who seek to place a company into a MVL to make the requisite declaration before a suitably qualified person. Parliament did not stipulate a different requirement, such as a statement of truth or that the signature is witnessed. What Parliament required was a declaration and that the declaration be made in front of a suitably qualified person.
36. In my judgment, the requirement for a declaration before a suitably qualified person is part of the overall regime created by section 89. Section 89(4) and (5) emphasize the serious nature of the declaration provided and the consequences if such a declaration is made without reasonable grounds. Section 89(4) creates a criminal offence if a declaration is made without the director having reasonable grounds for the opinion that the company will be able to pay the debts in full together with interest within the period specified. Section 89(5) sets out that a director is held not to have reasonable grounds for his opinion in

a case where the company is wound up in the period of five weeks following the making of the declaration. Section 89 creates not only the requirement for a statutory declaration but also a criminal offence in the event that the directors did not hold reasonable grounds for making the declaration. The provisions relating to entering into administration and the requirement for a statutory declaration do not contain the same regime. There is, in my judgment, a distinction between (1) a provision seeking to place a company into a solvent liquidation where the requirement is not only that the company is solvent but actually that it is able to discharge its debts within a period of 12 months, and (2) a provision relating to placing a company into administration by the appointment of an administrator.

37. There is in, my judgment, a distinction between the determinations in *De Courcy* and *New Millennium* and the current case. In those two cases, the Judges held that as a question of construction, the words, 'statement of assets and liabilities' properly construed, did not mean that a statement which contained errors was incapable of constituting compliance with section 89. The errors in those cases were not such on the facts that the court considered the document was incapable of being a statement of assets and liabilities. This was not a case of waiving a defect, but an issue as to the construction of the wording used and whether it required strict compliance by being construed as meaning 'all' assets and liabilities.

38. In my judgment, the requirement that the statutory declaration is to be made before a suitably qualified person is fundamental. The statutory declaration is clearly a serious matter with potentially penal sanctions and it is to be made

before a suitably qualified person. If this was a waivable defect, then it raises a real issue as to whether the waiving of such a defect also in some way affects the criminal sanctions. The requirements for a company to enter into a MVL need to be complied with or the Insolvency Act 1986 sets out that the consequences of non compliance is a CVL.

39. Equally, there is, in my judgment, a real difference in substance between (1) a declaration made via video link rather than in person, and (2) a declaration which was not made before a suitably qualified person. In the former case, a declaration is still made by the director before a suitably qualified person albeit via video link. That is a waivable defect. In the latter case, in my judgment, no declaration has actually been made. It is not a declaration if it is not made before a suitably qualified person. It becomes, in my judgment, simply a signature which has been witnessed. That is clearly not what Parliament intended.
40. Mr Abraham accepts that the passage in *Galer v Mond* is obiter in that the Judge had construed the provisions of the Commissioners for Oaths Act 1889 in reaching his decision. Therefore it does not bind me, but there are in any event some distinct differences. The issue in that case was whether a suitably qualified person in accordance with English law was capable of being the person in front of whom the declaration could be made outside of the jurisdiction. The declaration which was to be made was to be used in England. In my judgment, the fact that such a declaration could have been made before Mr Rubin in England influenced the obiter remarks of the Judge. Additionally the declaration in that case was in relation to the appointment of an administrator and not section 89. Having considered the obiter remarks, I do not consider that they

alter what I have set out above relating to the characterisation of the declaration for the purposes of section 89 or it being fundamental and not being capable of being a waivable defect.

41. The position before me is, in my judgment, much more fundamental. Put simply, the declaration was not made before a qualified person. This is different from the person being qualified in one jurisdiction being the jurisdiction which required the declaration being made. Accordingly, as the failure in compliance is fundamental in nature, the defect is not capable of being waived. No relief is given in relation to the primary case put forward for the defect to be waived.

42. In relation to the alternative of rescinding the CVL, in my judgment, there is no jurisdiction to rescind a voluntary liquidation. IR 12.59 expressly states that the court has jurisdiction to rescind vary or set aside any order made by it. In my judgment, the rule relates to orders made by the court. That can include an order for the compulsory winding up of a company but also includes any order made in insolvency proceedings. It is not a power which the court might exercise in relation to cases where the company was being wound up by the court. The jurisdiction relates expressly to cases where a court order has been made. In my judgment, the court only has jurisdiction pursuant to IR 12.59 to rescind orders of the court. Section 112 does not assist because the jurisdiction to rescind is not a power relating to compulsory liquidations. By way of contrast, a stay of winding up proceedings is a power the court might exercise in relation to a compulsory winding up by the court. The power is set out in section 147. In my judgment, the jurisdiction to rescind set aside or vary a court order is not

capable of falling within section 112. Accordingly, the first alternative, being a rescission of the CVL is not possible for jurisdictional reasons.

43. In relation to the last alternative, being a stay of the CVL, in my judgment, the court does have the jurisdiction to stay voluntary liquidations. This is clear from both *Thomas v Parkwood Holdings Ltd [2023] EWHC 1571* and *Re Calgary and Edmonton Land Co Ltd [1971] 1 WLR 355*. It is a discretionary power. I have considered the facts and circumstances of this case and whether it is appropriate to grant a stay of the CVL. I accept on the facts of this case that the Applicants fully intended to place the company into a MVL. I do have concerns relating to the utility of such a stay in so far as it was stated that if the stay was granted, the company intended to place itself thereafter into a MVL. I am not persuaded that a company which is the subject of liquidation proceedings which are stayed is capable of then placing itself into a MVL. Mr Abrahams submitted that even if there was no ability for a company which is the subject of a stay of its insolvency proceedings to place itself into a MVL, the Applicants would prefer a stay to the position they currently find themselves in, being an active CVL. On that basis, I will grant a stay without a time limit. I am not persuaded the correct wording is a permanent or indefinite stay. It is simply a stay.