

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

GAMIDA CELL INC.

Debtor.

Chapter 11

Case No. 24-11003 (JKS)

**DECLARATION OF ABIGAIL JENKINS,
PRESIDENT AND CHIEF EXECUTIVE OFFICER OF GAMIDA CELL INC. IN
SUPPORT OF CHAPTER 11 PETITION AND FIRST DAY MOTIONS**

I, Abigail Jenkins, declare and state as follows:

1. I am a citizen of the United States, over the age of 18 and, if called upon, could testify to all matters set forth in this declaration (this “Declaration”). I am President and Chief Executive Officer of Gamida Cell Inc. (the “Debtor” or “Gamida (US)”) that has filed a voluntary petition (the “Chapter 11 Petition”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing this chapter 11 case (the “Chapter 11 Case”), as well as the Debtor’s parent company Gamida Cell Ltd. (“Parent” or “Gamida”, together with Debtor, the “Company”) that has filed a chapter 15 case in the United States Bankruptcy Court for the District of Delaware, Case No. 24-10847 (the “Chapter 15 Case”) in respect of its debt arrangement proceeding commenced under Bankruptcy and Economic Rehabilitation Law, 5778-2018 (as amended and modified, the “Israeli Insolvency Law”) and Bankruptcy and Economic Rehabilitation Regulations, 5779-2019 (the “Israeli Regulations”) pending before the District Court in Be’er-Sheva (the “Israeli Court”), Case No. 63461-03-24 (the “Israeli Proceeding”).

2. Consistent with my roles as President and Chief Executive Officer of the Debtor, I have gained knowledge of the Debtor’s history, day-to-day operations, assets, financial condition, business affairs, and books and records. All facts set forth in this Declaration are based upon (a) my personal

knowledge of the Debtor and its assets and financial condition; (b) my review of relevant documents and any and all documents prepared in connection with the Chapter 11 Case and Chapter 15 Case; or (c) information supplied to me by the other officers, directors, employees or professionals retained by the Debtor.

3. To minimize the adverse effects of filing chapter 11 while at the same time preserving value for the benefit of stakeholders, the Debtor has filed pleadings requesting certain “first day” relief (collectively, the “First Day Motions” and each a “First Day Motion”).¹ The facts set forth in the First Day Motions are incorporated herein by reference. I submit this Declaration in support of the Chapter 11 Petition and the First Day Motions. I am familiar with the contents of each First Day Motion (including the exhibits and other attachments thereto) and, to the best of my knowledge, after reasonable inquiry, believe the relief sought in each First Day Motion: (a) is necessary to enable the Debtor to operate in chapter 11 with minimal disruption; (b) is critical to the Debtor’s efforts to preserve value and maximize the likelihood of the successful restructuring of its business; and (c) best serves the Debtor’s estate and creditor’s interests. Further, it is my belief that the relief sought in the First Day Motions is narrowly tailored and necessary to achieve the goals of the Chapter 11 Case.

4. If I were called upon to testify, I could and would testify competently to the statements set forth herein.

INTRODUCTION

5. Gamida (US), along with its Parent, is a biotech company developing cutting edge technology that uses human cells to treat different blood related disorders including leukemia, lymphoma, and other severe blood conditions.

¹ Capitalized terms used but not otherwise defined in this Declaration, shall have the meanings ascribed to such terms in the relevant First Day Motion or the Restructuring Support Agreement (as defined below), as applicable.

6. The Company commenced proceedings in Israel and the United States to implement a comprehensive, value-maximizing financial restructuring that significantly deleverages the Company while providing it with a financial runway and support for the commercialization of Omisirge, the Company's groundbreaking therapeutic. Confirmation of the prepackaged plan in this Chapter 11 Case is the last of a series of transactions to implement the Company's restructuring. Prior to the commencement of this Chapter 11 Case, the *Prepackaged Chapter 11 Plan of Reorganization of Gamida Cell Inc.* (the "Plan") was solicited and unanimously accepted by all creditors entitled to vote on the Plan. The Plan is also supported by the Debtor's largest creditor, Highbridge (as defined below).

7. For years, the Debtor's Parent explored and pursued various fundraising and strategic efforts to provide sufficient capital for the Company's ongoing business operations, including for commercialization of Omisirge. As these efforts yielded limited success, Parent explored a range of strategic alternatives, including an asset sale, merger, additional financing, licensing, distribution, and capital restructuring options. Ultimately, however, these additional efforts did not result in any viable third-party transaction alternatives.

8. In March 2024, Highbridge sent a letter to Parent in which Highbridge offered, in relevant part, to convert its existing unsecured debt into 100% shares of Parent (or affiliate of Parent) as part of a comprehensive restructuring. Parent and its board elected to move forward with Highbridge's proposal after concluding it was the only option available to the Company to prevent a liquidation proceeding under the Israeli Insolvency Law and the wind-down of Parent and the Debtor.

9. To that end, on March 26, 2024, the Debtor, Parent, and Highbridge entered into a restructuring support agreement (the "RSA") and accompanying term sheet (the "Restructuring Term Sheet") that form the basis of the Plan which the Debtor seeks to implement.

10. Pursuant to the terms of the RSA and Restructuring Term Sheet, the parties thereto agreed that the reorganization of the Parent's financial affairs would be effectuated through a debt arrangement under Part 10 of the Israeli Insolvency law, and through the commencement of a Chapter 15 proceeding under the Bankruptcy Code to recognize the Debt Arrangement in the United States. Additionally, the RSA contemplates that parallel proceedings, including this Chapter 11 Case for the Debtor, would be commenced in order to implement the Restructuring Transactions (as defined in the RSA).

11. Additionally, the RSA contemplates that:

- a. Highbridge will provide up to \$45 million in new funds to the Company pursuant to a new senior secured credit facility (the "Exit Facility"), comprised of (i) \$30 million of new funding to be funded by way of a senior secured loan following satisfaction of certain conditions precedent as reflected in the RSA; (ii) 100% of the outstanding secured debt obligations owing to Highbridge by the Company, equal to approximately \$4.4 million (plus accrued and unpaid interest, fees and expenses); and (iii) up to \$15 million of additional commitments, to be funded by way of delayed draw term loans on terms and conditions set forth in an agreed exit financing facility;
- b. General unsecured creditors of the Company, other than Highbridge, will be paid in the ordinary course pursuant to applicable law and will remain unimpaired;
- c. Existing stockholders of the Parent will have the right to future cash payments in the form of Conditional Value Rights contingent on the achievement of certain milestones in the coming years;
- d. The Company and Highbridge will provide broad mutual releases for and on behalf of themselves, their related parties and affiliates; and
- e. Consistent with its fiduciary duties, the Company's respective boards may terminate the RSA to pursue an alternative proposal.

12. The parties to the RSA further agreed that all of the Restructuring Transactions would need to be achieved on or before May 24, 2024, absent which, I believe the Company will default on its debts, have insufficient funds to satisfy general unsecured creditors in full, and be forced to liquidate.

I thus believe that confirmation of the Plan, which is the last part of the contemplated Restructuring Transactions, must be consummated on the contemplated timeline to best position the Company for future success and growth and avoid potential liquidation of the Company.

13. To familiarize the Court with the Company, the circumstances leading to this Chapter 11 Case and the related Chapter 15 Case, and the relief the Debtor is seeking in the First Day Motions, I have organized this declaration as follows:

- **Part I** provides a general overview of the Company, its corporate history, indebtedness, and operations;
- **Part II** discusses the events leading to the Israeli Proceeding, the Chapter 15 Case, and this Chapter 11 Case;
- **Part III** discusses the Israeli Proceedings;
- **Part IV** discusses the Chapter 15 Case;
- **Part V** discusses the terms of the Plan and summary of the solicitation process; and
- **Part VI** discusses the First Day Motions and relief sought therein.

OVERVIEW OF THE COMPANY

I. THE DEBTOR'S BUSINESS OPERATIONS AND PREEXISTING CAPITAL STRUCTURE

A. The Debtor's Corporate Structure and Assets

14. The Debtor's Parent was founded in 1998 and incorporated in Israel pursuant to the Israeli Companies Law. Since 2018, Parent has been listed on the NASDAQ stock exchange with its shares traded under the ticker symbol "GMDA."² Parent's registered address and domicile is in Kiryat Gat, Israel.

² Parent expects that its shares will be delisted from NASDAQ in the coming weeks.

15. The Debtor is a wholly owned U.S. subsidiary of Parent, which was incorporated in 2000 under the laws of the State of Delaware. The Debtor was created to assist with the commercialization of Parent's products in the United States. The Company's affairs and operations are conducted on a consolidated basis, primarily in Israel.

16. As of May 1, 2024, the Debtor had 36 full-time employees located in the United States.

17. The Debtor leases space in Boston, Massachusetts, for its U.S. corporate office. Parent serves as guarantor of the Debtor's obligations under the lease.

B. The Company's Business

18. The Company is a biotech company working to turn cells into powerful therapeutics. Companies that operate in this field convert cells from human donors (or patients themselves) into therapeutic tools. The technology developed by Parent (known as "NAM") makes it possible to take stem cells from a foreign donor (*i.e.*, cells that are not from the patient), enhance their therapeutic capabilities, and increase their number. After the enhancement process, the enhanced stem cells are infused into the patient and find their way to the patient's bone marrow, where they create white blood cells that are a critical component of the immune system. This treatment is especially essential for blood cancer patients whose treatment includes destroying the ability of the body's immune system to create white blood cells. The recovery of these patients depends on the rehabilitation of the immune system through the transplantation of stem cells. The advantage of the Company's technology is that it makes it possible to transplant cells from a foreign donor with an improved neutrophil (white blood cell) recovery and lower risk of infection when compared to a stem cell transplant using cord blood cells not modified with NAM.

19. Parent created a proprietary expansion platform to leverage the properties of certain cell sources including umbilical cord blood-derived cells and natural killer cells to create cell therapy

candidates. Its primary product, Omisirge® (omidubicel-only), is a NAM-modified cell therapy for allogeneic hematopoietic stem cell transplant that has the potential to expand access and improve outcomes for patients with blood cancers. Omisirge has the potential to be a stem cell donor source in two patient groups: (i) patients with high-risk leukemias and lymphomas who require hematopoietic stem cell transplantation; and (ii) patients with severe hematologic disorders such as severe aplastic anemia. Based on results from Parent's clinical studies and/or market research conducted, Omisirge has the potential to improve outcomes as compared to other donor sources and to increase access for patients who cannot otherwise find an appropriate donor.

20. After years of clinical trials, Parent received regulatory approval from the FDA on April 17, 2023, to market Omisirge for adult patients and children of 12 years of age and above with hematologic malignancies in need of an allogeneic stem cell transplant. Parent recorded revenue for the first time in the year 2023, which amounted to \$1.78 million.

21. Currently, the target market for Omisirge is relatively small. The Company estimates that less than 10,000 people undergo stem cell transplants per year. If a transplanter chooses to use Omisirge for the stem cell transplant, it can be delivered within 30 days. The cord blood unit starting material is shipped from the U.S. to the Company's manufacturing facility in Kiryat Gat, Israel. The manufacturing process take 21 days, and then Omisirge is shipped to the transplant center in the U.S. for administration to the patient.

22. The relatively small number of potential patients means that the Company must sell the treatment at a price necessary to recoup its investment in development and the high manufacturing costs. Today, the treatment is sold for \$300,000 (net selling price) per patient. There must be market access in place, including agreements between the transplant center and the insurance provider, and the patient must have coverage from an insurance company to receive the product.

23. The sale process itself is also complex and is conducted via transplant centers. At the first stage, Parent must enter into a commercial arrangement with transplant centers, then the physicians at these clinics are required to submit a prescription through Parent's patient support services hub, Gamida Cell Assist, under which Parent also provides support to assist the physician in selecting an appropriate cord blood unit as a starting material for the manufacturing of Omisirge. It should be emphasized that the product is not an off-the-shelf product but is customized for each patient, and the treatment process is complex and requires skill on the part of those involved in delivering the treatment. The transplant physician begins the process of ordering Omisirge by selecting a cord blood unit matched to the patient to serve as the starting material and then scheduling a date for delivery. The product is then delivered within 30 days of manufacturing initiation.

C. Credit Facilities & Capital Structure

24. In February 2021, the Debtor issued \$75 million of 5.875% convertible senior notes due in 2026 (the "2026 Senior Notes") pursuant to an Indenture (the "Indenture"), dated as of February 16, 2021, by and among the Debtor, as issuer, Parent, as guarantor, and Wilmington Savings Fund Society, as trustee. The holders (the "Consenting Senior Noteholders") of the 2026 Senior Notes are Highbridge Tactical Credit Master Fund, L.P., Highbridge Tactical Credit Institutional Fund, Ltd., and Highbridge Convertible Dislocation Fund, L.P.

25. In December 2022, the Debtor entered into that certain Loan and Security Agreement, dated as of December 12, 2022 (the "LSA"), by and among the Debtor as borrower, Parent as guarantor, Wilmington Savings Fund Society as administrative agent and collateral agent, and Highbridge Tactical Credit Master Fund, L.P. and Highbridge Tactical Credit Institution Fund, Ltd. as the lenders (the "Consenting Secured Lenders" and together with the Consenting Senior Noteholders, the "Consenting Creditors" or "Highbridge"). The LSA authorized the Company to borrow up to an

aggregate principal amount of \$25 million through the issuance and sale of 7.50% exchangeable first lien secured notes due in 2024 (the “2024 Secured Notes”). The 2024 Secured Notes are secured by substantially all of the assets of the Company. As of the date hereof, the balance due to the Consenting Secured Lenders is approximately \$4.4 million.

II. EVENTS LEADING TO THE FILING OF PARENT’S ISRAELI PROCEEDING

A. Prepetition Fundraising and Other Strategic Efforts Taken by Parent

26. For years, Parent explored and pursued various fundraising and strategic efforts, including different types of equity fundraising, debt financing and royalty financing, the goal of which has been, *inter alia*, to provide sufficient capital for ongoing Company operations. In furtherance of those efforts, in July 2020, Parent engaged a world-leading investment banker, Moelis & Company LLC (“Moelis”), to pursue a royalty financing or licensing transaction for assets related to the development of the Company’s products. Within the last two years, more than 75 strategic investors and 11 royalty investors have been approached and actively engaged in these efforts. In parallel to these financing efforts, Parent engaged with myriad potential equity investors regarding potential equity investments.

27. Parent’s initial efforts resulted in limited success in identifying potential equity funding or royalty financing, which left Parent with insufficient capital to fund ongoing operations. Ultimately, Parent identified and obtained additional debt financing to fund its business operations with the 2026 Senior Notes and 2024 Secured Notes while continuing to identify potential equity funding and/or royalty financing.

28. As described below, Parent conducted a strategic review process during which it explored a range of strategic alternatives, including an asset sale, merger, additional financing,

licensing, distribution, and capital restructuring options. Ultimately, this strategic review did not produce any viable third-party transaction alternatives.

29. The following illustrates some of the strategic efforts undertaken by Parent:

a. **January to August 2022:** In January 2022, after the FDA requested additional data for processing Parent's Biologics License Application (BLA) request, pushing out its potential approval date for Omisirge, Parent announced a 10% reduction in force and an effort to pursue strategic alternatives for Omisirge. Moelis, on behalf of Parent, conducted a proactive outreach to potential partners on an international scale, including in Japan and Europe. No transaction resulted. In the summer of 2022, as Parent approached the PDUFA date³ for Omisirge's approval, it sought additional capital through a three-pronged approach of royalty financing, equity fundraising and debt financing. Parent tasked Moelis with pursuing royalty financing and retained another leading investment bank, Piper Sandler, to pursue a confidentially-marketed public offering (the "CMPO").

b. **September to December 2022:** As a result of the foregoing efforts, Parent raised \$20 million in a CMPO transaction underwritten by two investment banks in late September 2022 and agreed to terms with Highbridge Tactical Credit Master Fund, L.P., Highbridge Tactical Credit Institutional Fund, Ltd., and Highbridge Convertible Dislocation Fund, L.P. on a \$25 million senior secured convertible note (the "Senior Notes") (in addition to the \$75 million in Convertible Senior Notes currently outstanding). The total amount raised from the foregoing efforts was approximately \$30 million less than Parent's original fundraising goal. In addition, Parent was unable to secure any royalty financing. In November 2022, the FDA informed Parent that its PDUFA approval decision date for Omisirge would be delayed from January 30, 2023, to May 1, 2023. This delay negatively impacted Parent's ability to raise additional funding, and consequently, forced the Company to continue to deplete its existing cash reserves, putting it in a further diminished cash position leading up to the potential May 2023 FDA approval without funds to support the launch of Omisirge.

c. **January 2023 to March 2023:** At the JP Morgan Healthcare Conference in January 2023, the Company's management met with approximately 30 investors or potential partners with the objective of securing significant additional investment. By late February 2023, with the overall healthcare equity investment market limited due to global and U.S. market factors, none of the investors contacted expressed a willingness to anchor a significant fundraising round. On March 27, 2023, Parent announced plans for a strategic restructuring and said it would "explore strategic options," sending a clear signal to any investors and shareholders of the need for additional investment. Following the announcement, Parent executed a strategic internal restructuring to extend its cash runway, reducing its workforce by 17% and paring its development of early stage "natural killer cell" (or NK cell) candidates, which are cytotoxic lymphocytes of the innate immune system capable of killing

³ The PDUFA date is the common name for the date by which the FDA must respond to a New Drug Application or a Biologics License Application

virally infected and/or cancerous cells, from four candidates to one. Parent's share price dropped from approximately \$1.35 per share to approximately \$0.74 per share.

d. **On April 7, 2023**, knowing that the significant drop (approximately 45%) in its share price meant that it lacked enough authorized unissued shares to raise the necessary equity, Parent scheduled a Special Shareholder Meeting for May 9, 2023 (later postponed to May 19, 2023 to overcome shareholders' objections), to seek approval for an increase of its share capital by additional 150,000,000 (for a total of \$300,000,000) ordinary shares authorized. On April 17, 2023, Omisirge was approved by the FDA. Although this was a positive event for the Company, Parent only managed to raise less than \$23 million in additional equity funding in a CMPO round underwritten by Piper Sandler. The offering was oversubscribed, meaning Parent could have raised more funds, but lacked enough shares to do so. As a result, the Company fell short of securing the financing it needed to launch Omisirge fully. In addition, Parent had to include 100% warrant coverage at an exercise price of \$1.35 per share,⁴ which doubled the utilization of authorized shares for the same net fundraise. Parent also used its at-the-market facility (ATM)⁵ throughout 2023 to secure additional funds – ultimately netting to Parent an additional \$42 million and extending its cash runway only through Q4 2023.

e. **April to May 2023:** Parent solicited shareholder approval to increase its authorized share capital. Pushback from shareholders caused Parent to reduce the proposed increase in its authorized share capital and delay the approval process. Shareholders ultimately approved the increase in authorized share capital, albeit significantly reduced from Parent's original objectives. Because Parent's share price decreased in the interim, both the reduction in additional authorized shares and the delay served to reduce the potential equity capital Parent could raise.

f. **May to October 2023:** As part of the strategic alternatives review process, Parent and Moelis made contact with approximately 49 parties during this period. While 27 parties entered into non-disclosure agreements with Parent, no transaction was consummated.

g. **In October 2023**, the lack of sufficient authorized shares had limited Parent's equity fundraising efforts and, therefore, it solicited and obtained shareholder approval for an increase of its share capital by an additional 100 million authorized ordinary shares. Leading shareholders, including Access Industries, CBI, Levin Capital and Community Fund, as well as some smaller shareholders, opposed the measure. Parent's executives spent extensive time speaking with shareholders about Parent's needs for additional investment. Subsequently, Parent engaged multiple banks to explore raising capital, but Parent's declining share price resulted in no meaningful interest in

⁴ Meaning that for each share of Parent it issued a warrant to buy another share at the same price and had to reserve enough authorized shares to allow the exercise of the warrants at any time.

⁵ An "at-the-market" ("ATM") offering is an offering of securities into an existing trading market for the securities at a price or prices related to the then-market price of the securities. ATM offerings are continuous offerings and provide issuers (in this case, Parent) with a flexible way to raise modest amounts of capital with minimal market impact, at a low cost and with limited management involvement. ATM offerings are often utilized by issuers that have a frequent need to raise capital, whether to repay debt, fund the purchase price for a small acquisition or otherwise fund operations.

additional equity funding on acceptable terms. The convergence of multiple factors drove the share price decline: (1) the lack of a successful strategic transaction that would support expanded access to Omisirge for patients and maximize value to stakeholders, (2) the combination of a limited cash runway and debt overhang, (3) the slowly progressing ramp to revenue, and (4) the cost structure of Parent, with significant expense to operate the manufacturing facility regardless of volume. Parent consulted with at ten investment banks, only two of which were willing to consider working with Parent on an equity-raising process. Both said that debt restructuring was required and that an equity raise process would be highly challenging and likely to yield, at best, \$10 million to \$15 million based on available shares and share price in the near term. This amount would not be sufficient to extend Parent's cash runway meaningfully and would lead to further substantial shareholder dilution.

h. **In November 2023**, the Company engaged in discussions with Highbridge in connection with Parent's restructuring and recapitalization process. During these discussions, Highbridge indicated that, as part of a comprehensive restructuring, it could potentially exchange a portion of its currently outstanding debt outstanding for equity or otherwise impair its debt in order to provide Parent with additional runway to execute on its business plan or enter into a strategic transaction. In December 2023 and continuing into January 2024, Moelis again reached out to 28 potential strategic partners, including 19 previously engaged parties and 9 new ones, to assess their interest in a transaction.

i. **In January 2024**, Parent issued a press release restating its efforts with respect to pursuing strategic alternatives, including specific mention of a merger or sale. Interested parties were given a deadline of February 9, 2024, to submit proposals. After substantial engagement with 10 interested parties, 9 of the 10 parties ultimately withdrew from the process. The last remaining party presented a written proposal and engaged in significant negotiations. Ultimately, Parent determined that the remaining party's final proposal lacked a viable go-forward structure for Parent's business and would result in an Event of Default under the LSA and Indenture.

j. **In February 2024**, Parent engaged in discussions with multiple potential investors; however, none were willing to provide sufficient funding to satisfy the Parent's cash needs for the near term. Parent also lacked sufficient authorized shares for a larger recapitalization transaction and continued to have a negative cash flow of approximately \$7 million per month, with liquidity fast approaching the possibility of triggering the minimum liquidity covenant threshold under the Company's Indenture with Highbridge. In light of this, the Company initiated plans to reduce the cost structure of the Company and explore options to avoid liquidation.

B. The Restructuring Support Agreement

30. In March 2024, in light of the Company's rapidly dwindling liquidity, the Consenting Creditors sent Parent a letter in which they offered, in relevant part, to take Parent private through conversion of the Consenting Senior Noteholders' existing debt claims into 100% shares of Parent (or

affiliate of Parent). Parent and its board elected to move forward with the Consenting Creditors' proposal after concluding it was the only option available to prevent liquidation proceedings and the wind-down of the Company. Particularly, in light of the Company's significant cash burn of approximately \$7 million per month, it was rapidly approaching the minimum liquidity threshold under the Company's Indenture with Highbridge. Accordingly, Parent, the Debtor, and their respective boards determined that it was in the best interest of all stakeholders to proceed with negotiating the Consenting Creditors' proposal, which would, among other things, satisfy all obligations of the Company in full (other than those owed to Highbridge) while also allowing the Company to continue operating as a going concern.

31. On March 26, 2024, the Consenting Creditors and the Company entered into the RSA and the Restructuring Term Sheet under which, as described above, the Consenting Creditors agreed, *inter alia*, to convert \$75 million of their unsecured debt into 100% of shares of Parent, following which all existing equity rights will be cancelled.

32. True and correct copies of the fully executed RSA and Restructuring Term Sheet are attached hereto as **Exhibit A**.

33. The parties also agreed that the terms of the RSA and Restructuring Term Sheet and the reorganization of the Company's financial affairs would be effectuated through (a) a debt arrangement (the "Debt Arrangement") under Part 10 of the Israeli Insolvency Law by Parent; (b) a proceeding under Chapter 15 of the U.S. Bankruptcy Code in this Court to recognize and enforce the Debt Arrangement in the United States initiated by a foreign representative of Parent; and (c) any additional parallel proceedings, including this Chapter 11 Case, by the Debtor in order to effectuate the global restructuring, which has to be achieved by May 24, 2024, given the liquidity position of the Company and milestones set forth in the RSA.

III. THE ISRAELI PROCEEDING

34. On March 27, 2024, Parent commenced the Israeli Proceeding by filing, among other things, the (a) motion to approve the Debt Arrangement together with various appendices, including a detailed statement of Parent's assets and liabilities; (b) Affidavit of Ms. Abigail Jenkins, President and CEO of Parent, in support of the motion to approve; (c) a financial expert opinion from Prometheus Financial Advisory (the "Prometheus Opinion"); as well as (d) the Debt Arrangement and its appendices, including the RSA and Restructuring Term Sheet.

35. In the Prometheus Opinion, the Company's financial expert made clear that "[t]he [Parent] (together with the Subsidiary) have a negative cash flow of approximately \$7 million per month, and their expected cash balances (cash and cash equivalent) as of April 1, 2024, considering a number of significant payments to be made in the coming days, would come to only approximately \$22.9 million." Prometheus Opinion, Ex. B, at ¶ 16.⁶ It was therefore imperative to move the Israeli Proceeding on an expedited timeline.

36. In connection with the Israeli Proceeding, the Israeli Court additionally appointed its own independent valuation expert, Mr. Ram Levy, CPA, of Variance Economic Consulting Ltd. The Israeli Court asked Mr. Levy to conduct a valuation of the Company and submit his report to the Israeli Court on or before May 1, 2024. In the order appointing Mr. Levy as a valuation expert, the Israeli Court additionally set the deadline for the Parent's shareholders, who objected to approval of the Parent's Debt Arrangement, to submit a valuation report from their own valuation expert by April 17, 2024 for the Israeli Court's consideration.

⁶ On April 5, 2024, the Parent filed a copy of the English translation of the Prometheus Opinion as part of an amendment No. 2 to Form 8-K. See https://www.sec.gov/ix?doc=/Archives/edgar/data/0001600847/000121390024030875/ea0203370-8ka2_gamida.htm.

37. On April 30, 2024, Mr. Levy filed his report. No reports were submitted on behalf of any of the shareholders.

38. The Israeli Court held an evidentiary hearing on May 5, 2024, and, thereafter, entered a judgment approving the Debt Arrangement on May 8, 2024 (the “Judgment”), a translated copy of which is attached hereto as **Exhibit C**. Among other things, in the Judgment, the Israeli Court, relying on the report from Mr. Levy, found that:

- “At the end of the hearing, and in light of the great urgency in deciding the case, oral summary arguments were heard, and it was established that a judgement shall be rendered as soon as possible. This, in light of the great urgency of the Company’s situation, and especially the high cash burn rate and the need to reduce the duration of the uncertainty, as well as the fact that the process has yet to end, in light of the need for additional proceedings which are expected to be held in the State of Delaware, USA.” Judgment at p. 4.
- “In summary, I was . . . convinced that the Company is insolvent, at least in the sense that its liabilities exceed the value of its assets.” *Id.* at p.8.
- “I am persuaded, based on the expert’s opinion, that the scenario in which there would be an alternative to the continued operation of the company were it not for the debt settlement arrangement according to the improved Highbridge proposal is a scenario whose existence is small to impossible. The expert emphasizes that without approval of the debt settlement arrangement, the company’s situation would be facing winding up, which would mean zero consideration for the shareholders, and I am persuaded by the expert’s reasoning that the contingent value rights (CVR) arrangement is clearly greater than what the shareholders would receive without approval of the debt settlement arrangements—in other words, most likely in winding up, where the value of the shares would be zero.” *Id.* at p.14.

IV. THE CHAPTER 15 CASE

39. On April 22, 2024, Parent commenced the Chapter 15 Case by filing, among other things, its Chapter 15 Petition for Recognition of Foreign Proceeding and its Verified Petition Under Chapter 15 for Recognition of the Israeli Proceeding as a Foreign Main Proceeding or, Alternatively, a Foreign Nonmain Proceeding, pursuant to Chapter 15 of the Bankruptcy Code.

40. On April 23, 2024, the Court entered an Order scheduling a hearing on May 15, 2024, at 11:00 AM (ET) on the recognition of the Israeli Proceeding as a foreign main proceeding, or alternatively, a foreign nonmain proceeding.

V. THE CHAPTER 11 CASE

41. This Chapter 11 Case is the last of the series of the Restructuring Transactions needed to implement the terms of the RSA. It is my belief, in consultation with my business team and advisors, that consummation of the Restructuring Transactions by May 24, 2024, is necessary and essential because without the Exit Facility contemplated under the RSA, the Debtor will have insufficient capital to meet its obligations in the short-term, as further reflected in the expert valuation reports from the Company's and the Israeli Court's experts.

A. The Prepetition Solicitation Process

42. To timely effectuate the Restructuring Transactions, the Debtor launched the Plan solicitation process on April 17, 2024 (the "Solicitation Commencement Date"), which occurred 26 days before the Petition Date.

43. The Debtor established April 12, 2024, as the record date for determining which creditors were entitled to vote on the Plan (the "Voting Record Date"). Pursuant to the Plan, only the Highbridge entities, which are Holders of Senior Secured Loans Claims (Class 3) and Unsecured Notes Claims (Class 4) (together, the "Voting Classes"), were entitled to vote to accept or reject the Plan. No other classes under the Plan were entitled to vote, as the Plan contemplates that all other creditors of the Debtor will remain unimpaired under the Plan. Further, pursuant to the Disclosure Statement, the Debtor established May 15, 2024, at 10:00 a.m. (prevailing Eastern Time) as the deadline by which all Ballots were to have been received in order to be counted as a valid vote to accept or reject the Plan (unless otherwise extended or waived by the Debtor, the "Voting Deadline").

44. The Debtor distributed a solicitation notice, the Disclosure Statement, the Plan, and ballots by first-class mail and email to all Holders of Claims entitled to vote on the Plan. In addition, on the Solicitation Commencement Date, the Debtor distributed the Combined Hearing Notice and Notice of Non-Voting Status to Holders of Other Secured Claims (Class 1), Holders of Other Priority Claims (Class 2), Holders of General Unsecured Claims (Class 5), Holders of Intercompany Claims (Class 6), and Holders of Existing Interests (Class 7) as of the Voting Record Date by first-class mail.

45. The Plan was unanimously accepted by all creditors entitled to vote on the Plan, as reflected in the below summary of voting results,⁷ and the Debtor filed this Chapter 11 Case to implement the RSA through the Plan.

<u>Plan Class</u>	<u>Amount Accepting Plan</u> (% of Amount Voted)	<u>Amount Rejecting Plan</u> (% of Amount Voted)	<u>Number Accepting Plan</u> (% of Number Voted)	<u>Number Rejecting Plan</u> (% of Number Voted)
CLASS 3 (SENIOR SECURED LOANS CLAIMS)	100%	0%	100%	0%
CLASS 4 (UNSECURED NOTES CLAIMS)	100%	0%	100%	0%

B. Proposed Timeline for This Chapter 11 Case

46. As set forth above, the parties to the RSA agreed to certain milestones to ensure the Restructuring Transactions are implemented on a timeline that will permit the Company sufficient liquidity to meet its short-term cash liabilities, including that all Restructuring Transactions be consummated by May 24, 2024. The Debtor has requested, through the Solicitation Procedures Motion (as defined below), that the combined hearing to consider the adequacy of the Disclosure Statement

⁷ See also Declaration of Alex Orchowski of Kroll Restructuring Administration, LLC Regarding Solicitation of Votes and Tabulation of Ballots Cast on the Pre-Packaged Plan of Reorganization of Gamida Cell Inc. filed contemporaneously herewith.

and confirmation of the Plan be held on May 22, 2024 (or as soon thereafter as the Court's schedule allows), and the Debtor intends to emerge from chapter 11 shortly thereafter.

47. In my opinion, preserving value for the benefit of the Debtor's estate depends, in large part, on the Debtor's ability to proceed promptly to confirmation of the Plan and emergence from chapter 11.

48. *First*, emerging swiftly from chapter 11, by May 24, 2024, will permit the Debtor to consummate its proposed comprehensive restructuring, which will provide the Debtor with, among other things, liquidity in the form of the Exit Facility. Absent the funds provided pursuant to the Exit Facility, the Debtor will need to liquidate, and general unsecured creditors in this case would receive substantially less than 100% of their claim, as contemplated under the Plan. Similarly, under a liquidation scenario, patients would likely lose access to the Company's ground-breaking cell therapies.

49. *Second*, a protracted bankruptcy case and the incremental and unnecessary professional fees and other administrative costs, which I am advised are paid ahead of general unsecured creditors, would diminish the likelihood of being able to pay general unsecured creditors, such as vendors and contract counterparties. Indeed, a protracted bankruptcy case and the liquidity issues could result in the Debtor being unable to pay these administrative costs. Similarly, while I believe that the Debtor is current on all of its obligations to trade vendors, contract counterparties and lease counterparties as of the Petition Date, absent the Exit Facility, which is contingent on the Debtor confirming the Plan on May 22, 2024, the Debtor will lack access to liquidity needed to support the Debtor's ability to fund its short-term obligations.

50. *Third*, it is my belief that the timeline of this Chapter 11 Case does not unfairly prejudice any party that has an economic interest in the Debtor. For example, the Plan has been

unanimously accepted by all creditors entitled to vote on the Plan and is supported by Parent, the sole equity interest holder of the Debtor. Additionally, the Debtor has taken extensive prepetition and ongoing noticing efforts to ensure that all interested parties will have had ample notice of and an opportunity to participate in this Chapter 11 Case, including through publication of the commencement of the solicitation process in the USA Today National Edition and New York Times National Edition.

51. Accordingly, the expeditious confirmation of the Plan and the consummation of the RSA are in the best interests of the Debtor, its estate, and all interested parties.

C. First Day Motions.

52. On the Petition Date, it is my belief based on consultations with my business team and advisors, that the Consenting Creditors are the only impaired creditors and, therefore, only limited first day relief, as set forth below, is needed. This is particularly true given that the Debtor, as of the Petition Date, is current on its obligations with its vendors and has prefunded certain obligations through May 22, 2024, to prevent any distribution to the Debtor's business during the pendency of this Chapter 11 Case. If this Chapter 11 Case continues beyond May 22, 2024, additional operational relief would be necessary.

53. On the Petition Date, the Debtor filed the following First Day Motions:

- **Kroll 156(c) Retention Application.** *Debtor's Application for Appointment of Kroll Restructuring Administration LLC as Claims and Noticing Agent.*
- **Solicitation Procedures Motion.** *Debtor's Motion for Entry of an Order (I) Scheduling Combined Hearing on Adequacy of Disclosure Statement and Confirmation of Pre-Packaged Plan; (II) Approving Procedures for Objecting to Disclosure Statement and Pre-Packaged Plan; (III) Approving Prepetition Solicitation Procedures and Form and Manner of Notice of Commencement, Combined Hearing, and Objection Deadline; (IV) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases; (V) Conditionally (A) Directing the United States Trustee Not to Convene Section 341(a) Meeting of Creditors and (B) Waiving Requirement of Filing Schedules and Statements and Rule 2015.3 Reports; and (VI) Granting Related Relief.*

- **Cash Management Motion.** *Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to (A) Continued its Existing Cash Management System Including Continued Use of Existing Bank Accounts and Business Forms, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Continued Certain Intercompany Transactions, and (II) Granting Related Relief.*
- **Employee Benefits Motion.** *Debtor's Motion for Entry of Interim and Final Orders Authorizing the Debtor to Continue Employee Benefits Program.*

54. I have reviewed and am familiar with the content of each of the First Day Motions and have consulted with the Debtor's advisors to ensure that I understand each First Day Motion and the relief requested therein. To the best of my knowledge and belief, the factual statements contained in each of the First Day Motions are true and accurate and each such factual statement is incorporated herein by reference. Below is a brief discussion of the Debtor's First Day Motions and an explanation of why, in my belief, such motions are critical to the successful prosecution of this case.

55. **Section 156(c) Application.** Pursuant to the Section 156(c) Application, the Debtor requests entry of a retention order appointing Kroll Restructuring Administration LLC ("Kroll") as the Claims and Noticing Agent for the Debtor and its chapter 11 case, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtor's Chapter 11 Case. I am informed by my advisors, that the Debtor's selection of Kroll to act as the Claims and Noticing Agent has satisfied the Court's Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c), in that the Debtors have obtained and reviewed engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. My advisors compared the proposals obtained by three court-approved claims and noticing agents, and I am informed that based on their review Kroll's rates are competitive and reasonable given Kroll's quality of services and expertise.

56. **Solicitation Procedures Motion.** Pursuant to the Solicitation Procedures Motion, the Debtors seek entry of an order: (i) scheduling the Combined Hearing for May 22, 2024 (or as soon

thereafter as the Court's schedule permits) to consider approval of the adequacy of the Disclosure Statement and confirmation of the Plan, (ii) establishing a deadline of May 15, 2024, at 10:00 a.m., prevailing Eastern Time, for filing objections to the adequacy of the Disclosure Statement and confirmation of the Plan, and approving related procedures, (iii) approving the solicitation procedures regarding votes to accept or reject the Plan, including the forms of ballots, (iv) approving the form and manner of the Combined Notice, (v) waiving the requirement that the U.S. Trustee convene a meeting of creditors pursuant to section 341(e) of the Bankruptcy Code, provided that the Plan is confirmed no later than seventy-five (75) days after the Petition Date, (vi) waiving the requirement that the Debtor files statements of financial affairs, schedules of assets and liabilities, and initial reports of financial information with respect to entities in which the Debtor holds a controlling or substantial interest as set forth in Federal Rule of Bankruptcy Procedure 2015.3, provided that the Plan is confirmed no later than seventy-five (75) days after the Petition Date, and (vii) granting related relief.

57. I have been informed that a debtor is typically required to provide notice of a hearing to consider the adequacy of the disclosure statement and a hearing to consider confirmation of a plan to all creditors and equity holders. I have also been advised that on April 17, 2024, prior to commencing this Chapter 11 Case, the Debtor caused Kroll to distribute Solicitation Packages to Holders of Senior Secured Loans Claims (Class 3) and Holders of Unsecured Notes Claims (Class 4). I was advised the Combined Notice notified parties that the Debtor anticipated that a hearing will be held on or about May 21, 2024 to consider (a) the adequacy of the information contained in the Disclosure Statement and (b) confirmation of the Plan. I was also advised that the Combined Hearing Notice sets forth the deadline and procedures for filing objections to the adequacy of the Disclosure Statement and confirmation of the Plan, the manner in which the Disclosure Statement and the Plan and other pleadings filed in this Chapter 11 Case can be obtained or viewed electronically, and a brief

summary of the Plan. I believe the relief requested in the Solicitation Procedures Motion is in the best interests of the Debtor and its creditors because it will facilitate the timely consummation of the Restructuring Transactions.

58. **Cash Management Motion.** Overall, the Cash Management System consists primarily of four bank accounts utilized by the Debtor through which the Debtor is able to manage cash receipts and disbursements (collectively, the “Bank Accounts”). The Bank Accounts are maintained at Oppenheimer & Co. Inc. (“Oppenheimer”), and Silicon Valley Bank (“SVB”), respectively. In the ordinary course, the Debtor utilizes its checking account at SVB as its primary operating account used to collect receipts and disburse funds, including to pay employee wages and benefits and the Debtor’s vendors. The Debtor’s two other SVB accounts are collateral money market accounts used to hold deposits that serve as collateral to support (i) the lease of its primary office space in Boston and (ii) its Credit Card Program (as defined herein), respectively. The Debtor maintains a money market account at Oppenheimer that has historically been used to hold the Debtor’s long-term cash reserves and to facilitate larger transactions.

59. As a part of its Cash Management System, the Debtor provides certain employees with access to credit cards issued by SVB (the “Credit Cards”) under a corporate credit card program (the “Credit Card Program”). The Credit Card Program is used to cover certain payments for business travel expenses, such as flights, hotel stays and meals, and other necessary and approved business expenses. The Debtor pays the balances accrued for approved charges on the Credit Cards directly to SVB. The Debtor is required to maintain cash collateral in the amount of \$250,000 in its collateral money market account with SVB as a deposit to secure its obligations under the Credit Card Program. As of the Petition Date, there were three credit cards issued by SVB under the Credit Card Program. The average aggregate spending on the Credit Cards is approximately \$15,000 per month.

60. **Benefits Motion.** As of May 1, 2024, the Debtor had 36 employees. In the ordinary course of business, the Debtor incurs and pays obligations relating to salaries, wages and other compensation owed to Employees. Employees are paid on the 1st and 15th of each month. The Debtor also makes the Employee Benefits available to Employees. While wages owed to Employees on May 15, 2024, have been prefunded, there are certain Employee Benefits that will become due to the Employees during the anticipated pendency of the Chapter 11 Case. The benefits include (a) Health and Welfare Coverage and Benefits, and (b) 401(k) Contributions. The total monthly costs for the Health and Welfare Coverage and Benefits are approximately \$141,500. Similarly, the total monthly cost on account of the 401(k) Contributions, which includes a 5% safe harbor contribution by the Debtor, is \$140,000. I believe that maintaining the Employee Benefits are critical for maintaining Employees during this Chapter 11 Case. Additionally, to the extent that the Plan is not confirmed by May 22, 2024, additional employee wages and benefits will come due which the Debtor will need to fund prior to obtaining access to the additional liquidity under the Exit Facility.

61. Accordingly, based on my knowledge, and after reasonable inquiry, I believe that the approval of the relief requested in the First Day Motions is: (a) necessary to enable the Debtor to transition into, and operate efficiently and successfully in chapter 11 with minimal disruption or loss of productivity and value; (b) critical to the Debtor's achieving a successful restructuring; and (c) in the best interest of the Debtor's estate and its stakeholders. I believe that if the Court does not grant the relief requested by the Debtor in the First Day Motions, the Debtor's business and its estate will suffer immediate and irreparable harm. Accordingly, for the reasons set forth herein and in the First Day Motions, the Court should grant the relief requested in each of the First Day Motions.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: May 13, 2024

By: /s/ Abigail Jenkins

Name: Abigail Jenkins

Title: President and Chief Executive Officer of
Gamida Cell Inc.

EXHIBIT A

THIS RESTRUCTURING SUPPORT AGREEMENT AND THE DOCUMENTS ATTACHED HERETO COLLECTIVELY DESCRIBE A PROPOSED RESTRUCTURING OF THE COMPANY PARTIES THAT WILL BE EFFECTUATED THROUGH PART X TO THE ISRAELI INSOLVENCY AND FINANCIAL REHABILITATION LAW, 2018 IN THE STATE OF ISRAEL, A CHAPTER 15 CASE IN THE BANKRUPTCY COURT AND, AS NECESSARY, ANY ADDITIONAL LIQUIDATION, INSOLVENCY OR RESTRUCTURING PROCEEDINGS ON THE TERMS DESCRIBED HEREIN.

THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT AN OFFER OR ACCEPTANCE WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A PLAN OF ARRANGEMENT UNDER ISRAELI INSOLVENCY LAW. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF ISRAELI INSOLVENCY LAW, AS APPLICABLE. NOTHING CONTAINED IN THIS RESTRUCTURING SUPPORT AGREEMENT SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE AGREEMENT EFFECTIVE DATE ON THE TERMS DESCRIBED HEREIN, DEEMED BINDING ON ANY OF THE PARTIES HERETO.

THIS RESTRUCTURING SUPPORT AGREEMENT IS THE PRODUCT OF SETTLEMENT DISCUSSIONS AMONG THE PARTIES HERETO. ACCORDINGLY, THIS RESTRUCTURING SUPPORT AGREEMENT IS PROTECTED BY RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND ANY OTHER APPLICABLE STATUTES OR DOCTRINES PROTECTING THE USE OR DISCLOSURE OF CONFIDENTIAL SETTLEMENT DISCUSSIONS.

THIS RESTRUCTURING SUPPORT AGREEMENT DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, REPRESENTATIONS, WARRANTIES, AND OTHER PROVISIONS WITH RESPECT TO THE RESTRUCTURING TRANSACTIONS DESCRIBED HEREIN, WHICH TRANSACTIONS WILL BE SUBJECT TO THE COMPLETION OF DEFINITIVE DOCUMENTS INCORPORATING THE TERMS SET FORTH HEREIN. THE CLOSING OF ANY TRANSACTION SHALL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH DEFINITIVE DOCUMENTS AND THE APPROVAL RIGHTS OF THE PARTIES SET FORTH HEREIN AND IN SUCH DEFINITIVE DOCUMENTS.

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (including all exhibits, annexes, and schedules hereto in accordance with Section 15.02, this “**Agreement**”) is made and entered into as of March 26, 2024 (the “**Agreement Effective Date**”), by and among the following parties (each of the following described in sub-clauses (i) through (iii) of this preamble, a “**Party**,” and collectively, the “**Parties**”):

- i. Gamida Cell Ltd., a limited liability company organized under the laws of the State of Israel (“**Gamida Ltd.**” or “**Company**”), and Gamida Cell Inc., a Delaware

corporation and wholly-owned subsidiary of Gamida Ltd. ("**Gamida Inc.**") (collectively, Gamida Ltd. and Gamida Inc. are the "**Company Parties**," and, each, a "**Company Party**");

- ii. each holder of Secured Note Claims set forth in Schedule 1 hereto (collectively, the "**Consenting Secured Noteholders**") and Wilmington Savings Fund Society, FSB, in its capacity as administrative agent and collateral agent under the Loan and Security Agreement (the "**Secured Note Agent**"); and
- iii. each holder of Senior Notes Claims set forth in Schedule 2 hereto (collectively, the "**Consenting Senior Noteholders**" and, together with the Consenting Secured Noteholders, the "**Consenting Creditors**") and Wilmington Savings Fund Society, FSB, in its capacity as trustee under the Senior Notes Indenture (the "**Senior Notes Trustee**").

RECITALS

WHEREAS, the Company Parties and the Consenting Creditors have in good faith and at arms' length negotiated or been apprised of certain restructuring transactions with respect to the Company Parties' capital structure on the terms set forth in this Agreement and the exhibits hereto, including the term sheet attached as **Exhibit A** hereto (as may be amended, supplemented, or otherwise modified from time to time pursuant to this Agreement, the "**Restructuring Term Sheet**") (such transactions as described in this Agreement and the exhibits hereto, the "**Restructuring Transactions**");

WHEREAS, the Company Parties intend to implement the Restructuring Transactions, including through the commencement on or promptly after the Agreement Effective Date of Israeli debt arrangement proceedings by the Company Parties under Part X to the Israeli Insolvency and Financial Rehabilitation Law, 2018, in the District Court of Beer Sheba (such court, the "**Israeli Court**") (the cases commenced, the "**Israeli Debt Arrangement Proceedings**") and, followed by the commencement by Gamida Ltd. of (i) a voluntary case under chapter 15 of the Bankruptcy Code in the Bankruptcy Court (the case commenced, the "**Chapter 15 Case**") and, as necessary, (ii) any additional liquidation, insolvency or restructuring proceedings (any such cases commenced, the "**Parallel Proceedings**");

WHEREAS, the Parties have agreed to take certain actions in support of the Restructuring Transactions on the terms and conditions set forth in this Agreement and the Restructuring Term Sheet.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

AGREEMENT

Section 1. *Definitions and Interpretation.*

1.01. Definitions. The following terms shall have the following definitions:

“Affiliate” means with respect to any Person, any other Person (A) that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of such Person, other than a Person that holds such securities (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or (ii) solely to secure a debt, if such other Person has not in fact exercised such power to vote; (B) 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such Person, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of such Person, other than an entity that holds such securities (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or (ii) solely to secure a debt, if such other Person has not in fact exercised such power to vote; (C) whose business is operated under a lease or operating agreement by such Person, or such other Person substantially all of whose property is operated under an operating agreement with such Person; or (D) that operates the business or substantially all of the property of such Person under a lease or operating agreement.

“Agreement” has the meaning set forth in the preamble to this Agreement and, for the avoidance of doubt, includes all the exhibits, annexes, and schedules hereto in accordance with Section 15.02 (including the Restructuring Term Sheet).

“Agreement Effective Period” means, with respect to a Party, the period from the Agreement Effective Date to the Termination Date applicable to that Party.

“Alternative Restructuring Proposal” means any transaction, including without limitation a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, share exchange, business combination, or similar transaction involving any one or more Company Parties or the debt, equity, or other interests in any one or more Company Parties, other than any of the Restructuring Transactions.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware.

“Business Day” means any day other than a Friday, Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York or in the State of Israel.

“Cause(s) of Action” means any action, Claim, cause of action, controversy, demand, right, action, lien, indemnity, equity interest, guaranty, suit, obligation, liability, damage,

judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, in contract or in tort, in law or in equity, or pursuant to any other theory of law.

“Chapter 15 Case” has the meaning set forth in the recitals to this Agreement.

“Claim” means (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

“Company Claims/Interests” means any Claim against, or Equity Interest in, a Company Party, including the Secured Note Claims and Senior Notes Claims.

“Company Party” and **“Company Parties”** have the meaning set forth in the recitals to this Agreement.

“Company Releasing Party” means each of the Company Parties, and, to the maximum extent permitted by Law, each of the Company Parties, on behalf of their respective Affiliates and Related Parties.

“Confidentiality Agreement” means an executed confidentiality agreement, including with respect to the issuance of a “cleansing letter” or other public disclosure of material non-public information agreement, in connection with any proposed Restructuring Transactions or Alternative Restructuring Proposals.

“Confirmation Order” means an order issued by the Israeli Court approving the Plan under the Israeli Debt Arrangement Proceeding.

“Consenting Creditor Advisors” means, collectively, (a) King & Spalding LLP, and (b) Herzog, Fox & Neeman, in each case, in their capacity as professional advisors to the Consenting Creditors.

“Consenting Creditor Releasing Party” means, each of, and in each case in its capacity as such: (a) the Consenting Secured Noteholders; (b) the Secured Note Agent; (c) the Consenting Senior Noteholders; (d) the Senior Notes Trustee; (e) from and after the Plan Effective Date, the Company Releasing Parties; (f) to the maximum extent permitted by Law, each current and former Affiliate of each Person in clause (a) through the following clause (g); and (g) to the maximum extent permitted by Law, each Related Party of each Person in clause (a) through this clause (g).

“Consenting Creditors” has the meaning set forth in the preamble to this Agreement.

“Consultants” means Rory Nealon, Joseph Wiley and Sheila Frame, and each of their respective officers, associates, employees, agents, representatives and Affiliates designated in by

the foregoing in accordance with the consulting services agreement, retained by the Consenting Creditors to advise the Consenting Creditors on certain restructuring matters, including the Company's cost structure and go-forward business planning.

"Definitive Documents" means the documents listed in Section 3.01.

"Equity Interests" means any ordinary share, common stock, limited liability company interest, equity security (as defined in section 101(16) of the Bankruptcy Code), equity, ownership, profit interests, unit, or share in a Company Party, including all issued, unissued, authorized, or outstanding share capital or shares of capital stock of the Company Parties and any other rights, options, warrants, stock appreciation rights, phantom share/stock rights, restricted share/stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Company Party.

"Governmental Regulatory Authority" means any Israeli, U.S. federal, U.S. state, local, or other governmental regulatory authority having jurisdiction over any of the Company Parties or otherwise required to approve or clear any aspect of the Restructuring Transactions.

"Israeli Court Motion" means the motion filed with the Israeli Court regarding creditors meeting and requesting to approve the Plan.

"IIA" means the Israeli Innovation Authority (formerly known as the Office of the Chief Scientist of the Israeli Ministry of Economy and Industry).

"Israel Insolvency Law" means the Israeli Insolvency and Financial Rehabilitation Law (2018).

"Israeli Court" has the meaning set forth in the recitals of this Agreement.

"Israeli Debt Arrangement Proceedings" has the meaning set forth in the recitals of this Agreement.

"Law" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court and the Israeli Court).

"Loan and Security Agreement" means that certain Loan and Security Agreement, dated as of December 12, 2022, by and among Gamida Cell Inc., as Borrower, Gamida Cell Ltd., as Holdings, the Secured Note Agent, the lenders party thereto from time to time, and the other guarantors party thereto, as it may be further amended, restated, replaced, supplemented or otherwise modified from time to time.

"Milestones" have the meaning set forth in Section 4.01 of this Agreement.

"Parallel Proceedings" has the meaning set forth in the recitals to this Agreement.

“Parties” has the meaning set forth in the preamble to this Agreement.

“Person” means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, estate, unincorporated organization, joint venture or other enterprise or entity or Governmental Regulatory Authority or other governmental unit.

“Petition Date” means the first date any of the Company Parties commences an Israeli Debt Arrangement Proceeding.

“Plan” means a scheme of arrangement under Israel Insolvency Law that is an “Acceptable Plan” as defined in the Restructuring Term Sheet.

“Plan Effective Date” means the date on which the Plan becomes effective according to its terms, which shall be conditioned upon, (i) entry of order by Israeli Court confirming the Plan, (ii) necessary approvals by Company Parties implementing the Restructuring Transactions, (iii) execution of the applicable Definitive documents by the applicable Parties, and (iv) payment of all outstanding fees and expenses of the Secured Note Agent, the Senior Notes Trustee, the Consenting Creditor Advisors, the Secured Note Agent Advisors, and the Senior Notes Trustee Advisors.

“Recognition Order” means one or more orders issued by the Bankruptcy Court (i) recognizing the Israeli Debt Arrangement Proceeding as foreign main or foreign non-main proceeding, (ii) recognizing and giving full force and effect to the Plan, and (iii) granting any related relief.

“Related Party” means each of, and in each case in its capacity as such, current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of a Person), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person’s respective heirs, executors, estates, and nominees.

“Released Claim” means, with respect to any Releasing Party, any Claim, or Cause of Action that is released by such Releasing Party under the Releases.

“Released Company Parties” means each of, and in each case in its capacity as such: (a) the Company Parties; (b) current and former Affiliates of each Person in clause (a) through the following clause (c); and (c) each Related Party of each Person in clause (a) through this clause (c).

“Released Consenting Creditor Parties” means, each of, and in each case in its capacity as such: (a) the Consenting Secured Noteholders; (b) the Secured Note Agent; (c) the Consenting Senior Noteholders; (d) the Senior Notes Trustee; (e) current and former Affiliates of each Person

in clause (a) through the following clause (f); and (f) each Related Party of each Person in clause (a) through this clause (e).

“Released Parties” means each Released Company Party and each Released Consenting Creditor Party.

“Releases” means the releases contained in Annex 1 to the Restructuring Term Sheet.

“Releasing Parties” means, collectively, each Company Releasing Party and each Consenting Creditor Releasing Party.

“Rules” means Rule 501(a)(1), (2), (3), and (7) of the Securities Act.

“Secured Note Agent” has the meaning set forth in the recitals of this Agreement.

“Secured Note Agent Advisors” means, collectively, (a) Seward & Kissel LLP, and (b) Herzog, Fox & Neeman, in each case, in their capacity as professional advisors to the Secured Note Agent.

“Secured Note Claims” means any Claims held by the Consenting Secured Noteholders under the Loan and Security Agreement.

“Securities Act” means the Securities Act of 1933, as amended.

“Senior Notes Claims” any Claims held by the Consenting Senior Noteholders under the Senior Notes Indenture.

“Senior Notes Indenture” means that certain Indenture, dated as of February 16, 2021, by and among Gamida Cell Inc., as Issuer, Gamida Cell Ltd., as Guarantor, the Senior Notes Trustee, and the other guarantors party thereto, as it may be further amended, restated, replaced, supplemented or otherwise modified from time to time.

“Senior Notes Trustee” has the meaning set forth in the recitals of this Agreement.

“Senior Notes Trustee Advisors” means, collectively, (a) Seward & Kissel LLP, and (b) Herzog, Fox & Neeman, in each case, in their capacity as professional advisors to the Secured Note Agent.

“Termination Date” means the date on which termination of this Agreement is effective in accordance with Sections 13.01, 13.02, , 13.03, or 13.04.

“Transfer” means (A) the creation of a lien; (B) the retention of title as a security interest; (C) the foreclosure of a Person’s equity of redemption; or (D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—(i) property; or (ii) an interest in property.

“Transfer Agreement” means an executed form of the transfer agreement providing, among other things, that a transferee assumes the rights and obligations of a transferee under, and

is bound by the terms of, this Agreement and substantially in the form attached hereto as **Exhibit B.**

1.02. Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document (other than a Definitive Document) being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit shall mean such document, schedule, or exhibit, as it may have been or may be amended, restated, supplemented, or otherwise modified from time to time; provided that any capitalized terms herein which are defined with reference to another agreement, are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date hereof;

(e) unless otherwise specified, all references herein to “Sections” are references to Sections of this Agreement;

(f) the words “herein,” “hereof,” and “hereto” refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(g) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(h) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable limited liability company Laws;

(i) the use of “include” or “including” is without limitation, whether stated or not;

(j) the phrase “counsel to the Consenting Creditors” refers in this Agreement to each counsel specified in Section 15.09 other than counsel to the Company Parties.

Section 2. *Effectiveness of this Agreement.* This Agreement shall become effective and binding upon each of the Parties at 12:00 a.m., prevailing Eastern Time, on the Agreement Effective Date, which is the date on which each of the following conditions have been satisfied or waived in accordance with this Agreement:

(a) each of the Company Parties shall have executed and delivered counterpart signature pages of this Agreement to each of the Parties;

(b) each of the Company Parties shall have delivered the Plan and the Israeli Court Motion to each of the Parties, each in form and substance reasonably acceptable to Consenting Creditors;

(c) holders of 100% of the aggregate outstanding principal amount of the Senior Notes Claims and Secured Note Claims shall have executed and delivered counterpart signature pages of this Agreement to each of the Parties; and

(d) the Secured Note Agent, at the direction of the Consenting Secured Noteholders, and the Senior Notes Trustee, at the direction of the Consenting Senior Noteholders, shall have executed and delivered counterpart signature pages of this Agreement to each of the Parties.

Section 3. *Definitive Documents.*

3.01. The Definitive Documents governing the Restructuring Transactions shall include the following:

(a) the Confirmation Order;

(b) the Recognition Order;

(c) the Plan;

(d) a contingent value rights agreement, in form and substance mutually agreeable to the Company Parties and the Consenting Creditors;

(e) all material pleadings filed by the Company Parties in connection with the Israeli Debt Arrangement Proceedings (or related order), including the Israeli Court Motion, and all orders sought pursuant thereto; *provided*, however, that any monthly or quarterly operating reports, retention applications, fee applications, fee statements, and any declarations in support thereof or related thereto shall not constitute material pleadings;

(f) all material pleadings filed by the Company Parties in connection with the Chapter 15 Case (or related order), and all orders sought pursuant thereto;

(g) if applicable, all material pleadings filed by the Company Parties in connection with any Parallel Proceedings (or related order), and all orders sought pursuant thereto; and

(h) any and all other deeds, agreements, filings, notifications, pleadings, orders, certificates, letters, instruments or other documents reasonably necessary or desirable to consummate and document the transactions contemplated by this Agreement or the Restructuring Transactions (including any exhibits, amendments, modifications, or supplements from time to time).

3.02. The Definitive Documents not executed or in a form attached to this Agreement as of the Agreement Effective Date remain subject to negotiation and completion. Upon completion, the Definitive Documents and every other document, deed, agreement, filing, notification, letter, or instrument related to the Restructuring Transactions shall contain terms, conditions, representations, warranties, and covenants, as applicable, consistent with the terms of this Agreement, as they may be modified, amended, or supplemented in accordance with Section 14. Further, the Definitive Documents not executed or in a form attached to this Agreement as of the Agreement Effective Date shall otherwise be in form and substance reasonably acceptable to the Company Parties and the Consenting Creditors.

Section 4. *Milestones.*

4.01. The Company Parties shall implement the Restructuring Transactions in accordance with the milestones set forth in the Term Sheet (the “**Milestones**”), unless extended or waived in writing in advance by the Consenting Creditors provided that if any such Milestone falls on a date which is not a Business Day, such Milestone shall be automatically extended to the first Business Day thereafter.

Section 5. *Commitments of the Consenting Creditors.*

5.01. General Commitments.

(a) Affirmative Commitments. During the Agreement Effective Period, each Consenting Creditor agrees, severally and not jointly, subject to Section 6, in respect of all of its Company Claims/Interests, to:

(i) support the Restructuring Transactions and vote and exercise any powers or rights available to it (including in any board, shareholders’, or creditors’ meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Restructuring Transactions, including cooperation with the IIA and IIA-related filings as necessary;

(ii) consent to, support, and participate in all of the releases and exculpation provisions contained herein or described in the Restructuring Term Sheet; and

(iii) work in good faith with the Company Parties to determine if any additional Parallel Proceedings are reasonable and necessary;

(b) Negative Commitments. During the Agreement Effective Period, each Consenting Creditor agrees, severally and not jointly, in respect of all of its Company Claims/Interests, that it shall not directly or indirectly:

(i) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(ii) file or join in any motion, objection, pleading, or other document with the Bankruptcy Court, Israeli Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is inconsistent with this Agreement;

(iii) exercise any remedies or otherwise take any enforcement action prior to the Termination Date with respect to any Default or Event of Default, whether or not existing as of the date of this Agreement or which may occur or be deemed to occur during the effectiveness of this Agreement (each as defined in the Senior Notes Indenture or the Loan and Security Agreement, as applicable) (including, but not limited to, any Default or Event of Default that is caused solely by the Company's entry into this RSA or the Definitive Documents and the Restructuring Transactions contemplated herein and therein), under the Senior Notes Indenture or the Loan and Security Agreement, as applicable, provided that, for the avoidance of doubt, following the Termination Date (if applicable), the Consenting Creditors shall be entitled to exercise all rights and remedies pursuant to the terms of the Senior Notes Indenture, Loan and Security Agreement, and/or applicable law; and

(iv) initiate, or have initiated on its behalf, any litigation or proceeding of any kind against the Company Parties or the other Parties other than to enforce this Agreement or any Definitive Document or as otherwise permitted under this Agreement; *provided*, that any Consenting Creditor may file motions, pleadings, or other documents with the Bankruptcy Court, Israeli Court or any other court (including any modifications or amendments thereof) with respect to its or their rights under any Definitive Document and relating to or arising from matters and rights not specifically set forth in this Agreement, including the Restructuring Term Sheet.

5.02. Commitments with Respect to Israel Insolvency Proceedings and Chapter 15 Case.

(a) During the Agreement Effective Period, each Consenting Creditor that is entitled to vote to accept or reject the Plan pursuant to its terms agrees, severally and not jointly, that it shall

(i) support, and vote in favor of, the Plan; and

(ii) not change, withdraw, amend, or revoke (or cause to be changed, withdrawn, amended, or revoked) any vote or election referred to in clause (i) above; provided that, nothing in this Agreement shall prevent any Consenting Creditor from changing, withholding, amending, or revoking (or causing the same) its vote, election, or consent with respect to the Plan if this Agreement has been terminated as in accordance with its terms; and

(iii) if it is a legal entity that (a) is neither registered in nor incorporated under the laws of the State of Israel and (b) will hold more than 5% of Gamida Ltd.'s issued and outstanding share capital following the consummation of the Plan, it shall execute and deliver to Gamida Ltd. an undertaking to the IIA in a customary form or in such other form as agreed in writing by the IIA and the Consenting Creditors prior to the consummation of the Plan.

Section 6. *Additional Provisions Regarding the Consenting Creditors' Commitments.*

6.01. Notwithstanding anything contained in this Agreement, nothing in this Agreement shall:

(a) affect the ability of any Consenting Creditor to consult with any other Consenting Creditor, the Company Parties, their related Affiliates or any other party in interest in the Israeli Debt Arrangement Proceedings;

(b) impair or waive the rights of any Consenting Creditor to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions;

(c) constitute a waiver or amendment of any provision of the Senior Notes Indenture or the Loan and Security Agreement or similar agreements executed in connection with the Senior Notes Indenture or Loan and Security Agreement;

(d) be construed to prevent any Consenting Creditor from exercising any consent or consultation rights provided in the Definitive Documents;

(e) prevent any Consenting Creditor from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement;

(f) except as set forth in the Definitive Documents, require any Consenting Creditor to (1) incur any material expenses, liabilities or other obligations, or agree to any commitments, undertakings, concessions, indemnities or other arrangements that could result in material expenses, liabilities, or other obligations to any Consenting Creditor or its Affiliates or (2) provide any information that it reasonably determines to be sensitive or confidential;

(g) subject to Section 5.01(b)(iii), prohibit any Consenting Creditor from taking any action to prepare, commence, or support any action or other legal proceeding that seeks to establish, or defend from challenge, the amount, validity, allowance, character, enforceability, liens or encumbrances securing, or priority of any Company Claim/Interest of any Consenting Creditor, provided that any such action does not delay, impede, or interfere with acceptance, implementation, or consummation of the Restructuring Transactions; or

(h) limit the right of any Party to exercise any right or remedy provided under this Agreement, the Confirmation Order, the Recognition Order, or any other Definitive Document.

Section 7. *Commitments of the Company Parties.*

7.01. Affirmative Commitments. Except as set forth in Section 8, during the Agreement Effective Period, the Company Parties agree to:

(a) support and take all steps reasonably necessary and desirable to consummate the Restructuring Transactions in accordance with this Agreement;

(b) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Restructuring Transactions contemplated herein, take all steps reasonably necessary and desirable to address any such impediment, including cooperation with IIA and IIA-related filings as necessary;

(c) consent to, support, and participate in all of the releases and exculpation provisions contained herein or described in the Restructuring Term Sheet;

(d) use commercially reasonable efforts to obtain any and all required regulatory and/or third-party approvals for the Restructuring Transactions, including, without limitation, any consent

necessary from the IIA, or any applicable United States law with respect to any of the actions under any of the Restructuring Transactions;

(e) cooperate fully, and cause its officers, directors, employees, managers, consultants, and advisors to cooperate fully, with the Consenting Creditors, the Consenting Creditor Advisors and the Consultants, in furnishing information as and when reasonably requested by the Consenting Creditors, the Consenting Creditor Advisors or the Consultants regarding the Company's financial affairs, finances, financial condition, employees, business and operations and directs and authorizes its officers, directors, employees, managers, consultants, and advisors to fully disclose to the Consenting Creditors, the Consenting Creditor Advisors and the Consultants all information reasonably requested by such parties regarding the foregoing. The Company authorizes the Consenting Creditors, the Consenting Creditor Advisors and the Consultants to meet and/or have discussions with any of the Company's officers, directors, employees, managers, consultants, and advisors from time to time as reasonably requested by the Consenting Creditors, the Consenting Creditor Advisors and the Consultants (regardless of whether employees of the Company are present) to discuss any matters regarding the Company's financial affairs, finances, financial condition, business and operations, and shall direct and authorize all such persons and entities to fully disclose to the Consenting Creditors, the Consenting Creditor Advisors and the Consultants all information reasonably requested by such parties regarding the foregoing. Each Company Party waives and releases any such officer, director, employee, manager, consultant, and advisor from the operation and provisions of any confidentiality agreement with the Company Parties, such that such person or entity is not prohibited from providing any of the foregoing information to the Consenting Creditors, the Consenting Creditor Advisors and the Consultants on a confidential basis;

(f) negotiate in good faith and use commercially reasonable efforts to execute and deliver the Definitive Documents and any other required agreements to effectuate and consummate the Restructuring Transactions as contemplated by this Agreement;

(g) [reserved]

(h) use commercially reasonable efforts to implement cost cutting measures as reasonably requested by the Consenting Creditors;

(i) comply with the Approved Budget and the Permitted Variances covenant (each as defined and set forth in the Restructuring Term Sheet);

(j) (1) provide counsel for the Consenting Creditors a reasonable opportunity to review draft copies of all material pleadings, including the Israeli Court Motion, in the Israeli Debt Arrangement Proceeding and the Chapter 15 Case and, (2) to the extent reasonably practicable, provide a reasonable opportunity to counsel to any Consenting Creditors materially affected by such filing to review draft copies of other documents that the Company Parties intend to file with the Bankruptcy Court or Israeli Court, as applicable;

(k) work in good faith with the Consenting Creditors to determine if any Parallel Proceedings are reasonable and necessary; and

(l) as soon as practicable and in any event, unless otherwise agreed to by the Consenting Creditors, within two (2) Business Days after the Company Parties receive notice or obtain knowledge of any of the following, give written notice to the Consenting Creditors of (each of the following, individually, a “**Material Event**”):

(i) the resignation of any officer of any Company Party or of any director or member of the board of directors, board of managers, or such similar governing body of any Company Party;

(ii) any material loss or damage to any assets or property of the Company Parties;

(iii) the filing or commencement by any Governmental Regulatory Authority of any action, suit or other proceeding for the condemnation or other taking (including by eminent domain) of any material portion of the assets of the Company Parties;

(iv) the filing or commencement of any motion, action, suit or other proceeding against any Company Parties by or before any court or arbitrator or Governmental Regulatory Authority (i) involving material claims against any Company Parties, (ii) seeking any material injunctive, declaratory or other equitable relief against any Company Parties, (iii) instituted for the purpose of revoking, terminating, suspending, withdrawing, modifying or withholding any material approval from a Governmental Regulatory Authority, as applicable;

(v) any written notice to any of the Company Parties indicating that any material approval by a Governmental Regulatory Authority will not be granted or renewed, or will not be granted or renewed in time to allow continued operation of any the Company Parties’ business operations in compliance with all applicable Law, or will be granted or renewed on terms more burdensome than proposed, or will be terminated, revoked or suspended, or the filing or commencement of any action, suit or other proceeding seeking any of the foregoing; and

(vi) any default, event of default, termination event, or other breach under any material contract of the Company Parties, or any amendment of, supplement to or other modification of any such material contract, or any event, circumstance or occurrence which could reasonably be expected to materially impair or affect either the Company Parties or the relevant counterparty’s performance of its material obligations or lead the relevant Company Parties or any other party thereto to terminate any such material contract, including any assignment of any such material contract.

7.02. Negative Commitments. Except as set forth in Section 8, during the Agreement Effective Period, each of the Company Parties shall not directly or indirectly:

(a) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(b) take any action that is inconsistent in any material respect with, or is intended to frustrate or impede approval, implementation and consummation of the Restructuring Transactions described in, this Agreement;

(c) file any motion, pleading, or Definitive Documents with the Israeli Court, Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement;

(d) hire or otherwise engage any new or former director, officer, employee, independent contractor, consultant or advisor without first obtaining the written consent of the Consenting Creditors;

(e) commence, continue, settle or otherwise resolve any dispute, action, proceeding, or legal restraint with respect to any Material Event, including, without limitation, (i) to set aside, restrain, enjoin or prevent the full performance of any material contract, (ii) that questions the validity thereof or the rights or remedies of the Company Parties thereunder, and (iii) with respect to any permit, license, or other approval from a Governmental Regulatory Authority, in each case without the prior written consent of the Consenting Creditors; or

(f) enter into any material definitive agreement or transaction without the prior written consent of the Consenting Creditors other than with respect to an Alternative Restructuring Proposal, without limiting the rights of Consenting Creditors hereunder and under applicable law.

Section 8. *Additional Provisions Regarding Company Parties' Commitments.*

8.01. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall prohibit a Company Party or the board of directors, board of managers, or similar governing body of a Company Party, after consulting with counsel, to take any action or to refrain from taking any action with respect to an Alternative Restructuring Proposal to the extent taking or failing to take such action would be inconsistent with applicable Law or its fiduciary obligations under applicable Law, and any such action or inaction pursuant to this Section 8.01 shall not be deemed to constitute a breach of this Agreement (other than a failure to comply with this Section 8) or any other Definitive Document; *provided, however*, that, for avoidance of doubt, nothing herein shall (i) limit the rights of Consenting Creditors with respect to any such Alternative Restructuring Proposal hereunder or pursuant to applicable Law or (ii) obligate Consenting Creditors to support any such Alternative Restructuring Proposal.

8.02. Notwithstanding anything to the contrary in this Agreement (but subject to Section 8.01), each Company Party and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the rights to: (a) consider, respond to, and facilitate any Alternative Restructuring Proposals; (b) provide access to non-public information concerning any Company Party to any Entity or enter into Confidentiality Agreements or nondisclosure agreements with any Entity; (c) maintain or continue discussions or negotiations with respect to Alternative Restructuring Proposal; (c) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiation of Alternative Restructuring Proposals to the extent required under applicable Law or its fiduciary obligations under applicable Law or would be required if the applicable corporation were a Delaware corporation; (e) subject to Section 8.01 of this Agreement, enter into Alternative Restructuring proposals; and (f) enter into or continue discussions or negotiations with holders of Claims or Equity Interests, any other party in interest in the Israeli Debt Arrangement Proceedings or Chapter 15 Case, or any other Entity regarding the Restructuring Transactions or Alternative

Restructuring Proposals, provided that each such Company Party will inform the Consenting Creditors of any such actions listed in items (a) through (f) herein in writing, and shall provide the Consenting Creditors with any information requested by them with respect to such Alternative Restructuring Proposal and the Company's determination concerning such Alternative Restructuring Proposal.

8.03. Except as otherwise set forth in any order of the Israeli Court or Bankruptcy Court, at all times prior to the date on which the Company Parties enter into a definitive agreement in respect of an Alternative Restructuring Proposal, the Company Parties shall provide the Consenting Creditors Advisors reasonably detailed updates with respect to the receipt of any offer or indication of interest that might result in an Alternative Restructuring Proposal and on the status of discussions or negotiations regarding any Alternative Restructuring Proposal (including the terms thereof subject to any applicable confidentiality restrictions) within two (2) Business Days of the Company Parties' or their advisors' receipt of any such Alternative Restructuring Proposal or indication by any party of its intention to submit an Alternative Restructuring Proposal. The Company Parties and/or the Company Parties' advisors will make themselves reasonably available for separate weekly status update calls with the Consenting Creditors Advisors.

8.04. Nothing in this Agreement shall: (a) impair or waive the rights of any Company Party to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions; or (b) prevent any Company Party from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement.

Section 9. *Transfer of Equity Interests and Securities.*

9.01. During the Agreement Effective Period, no Consenting Creditor shall Transfer any ownership (including any beneficial ownership as defined in the Rule 13d-3 under the Securities Exchange Act of 1934, as amended) in any Company Claims/Interests to any affiliated or unaffiliated party, including any party in which it may hold a direct or indirect beneficial interest, unless either (i) the transferee executes and delivers to counsel to the Company Parties, at or before the time of the proposed Transfer, a Transfer Agreement or (ii) the transferee is a Consenting Creditor and the transferee provides notice of such Transfer (including the amount and type of Company Claims/Interests Transferred) to counsel to (i) the Company Parties and (ii) the Consenting Creditors at or before the time of the proposed Transfer.

9.02. Upon compliance with the requirements of Section 9.01, the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the extent of the rights and obligations in respect of such transferred Company Claims/Interests.

9.03. This Agreement shall in no way be construed to preclude the Consenting Creditors from acquiring additional Company Claims/Interests; provided, however, that such additional Company Claims/Interests shall automatically and immediately upon acquisition by a Consenting Creditor be deemed subject to the terms of this Agreement (regardless of when or whether notice of such acquisition is given to counsel to the Company Parties or counsel to the Consenting Creditors).

9.04. Notwithstanding anything to the contrary in this Section 9, the restrictions on Transfer set forth in this Section 9 shall not apply to the grant of any liens or encumbrances on any claims and interests in favor of a bank or broker-dealer holding custody of such claims and interests in the ordinary course of business and which lien or encumbrance is released upon the Transfer of such claims and interests.

Section 10. *Representations and Warranties of Consenting Creditors.* Each Consenting Creditor severally, and not jointly, represents and warrants that, as of the date such Consenting Creditor executes and delivers this Agreement:

(a) it is the beneficial or record owner of the face amount of the Company Claims/Interests or is the nominee, investment manager, or advisor for beneficial holders of the Company Claims/Interests reflected in, and, having made reasonable inquiry, is not the beneficial or record owner of any Company Claims/Interests other than those reflected in, such Consenting Creditor's signature page to this Agreement or a Transfer Agreement, as applicable (as may be updated pursuant to Section 9);

(b) it has the full power and authority to act on behalf of, vote and consent to matters concerning, such Company Claims/Interests;

(c) such Company Claims/Interests are free and clear of any pledge, lien, security interest, charge, claim, equity, option, proxy, voting restriction, right of first refusal, or other limitation on disposition, transfer, or encumbrances of any kind, that would adversely affect in any way such Consenting Creditor's ability to perform any of its obligations under this Agreement at the time such obligations are required to be performed;

(d) it has the full power to vote, approve changes to, and transfer all of its Company Claims/Interests referable to it as contemplated by this Agreement subject to applicable Law; and

(e) solely with respect to holders of Company Claims/Interests, (i) it is either (A) a qualified institutional buyer as defined in Rule 144A of the Securities Act, (B) not a U.S. person (as defined in Regulation S of the Securities Act), or (C) an institutional accredited investor (as defined in the Rules), and (ii) any securities acquired by the Consenting Creditor in connection with the Restructuring Transactions will have been acquired for investment and not with a view to distribution or resale in violation of the Securities Act.

Section 11. *Mutual Representations, Warranties, and Covenants.* Each of the Parties represents, warrants, and covenants to each other Party, as of the date such Party executed and delivers this Agreement:

(a) it is validly existing and in good standing under the Laws of the state and/or country of its organization, and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Agreement and Israel Insolvency Law and to the knowledge of the Company Parties, no consent or approval is required by any other person or

entity in order for it to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement;

(c) the entry into and performance by it of, and the transactions contemplated by, this Agreement (i) do not, and will not, conflict in any material respect with any Law or regulation applicable to it or with any of its articles of association, memorandum of association or other constitutional documents, and (ii) have been duly approved by any necessary corporate action;

(d) it has not assigned, conveyed, sold, hypothecated or otherwise transferred all, any part of or any interest in any claim or Cause of Action that would be released pursuant to the releases set forth in the Restructuring Term Sheet or the Plan;

(e) except as expressly provided in this Agreement and subject to the Israel Insolvency Law, it has (or will have, at the relevant time) all requisite corporate or other power and authority to enter into, execute, and deliver this Agreement and to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement; and

(f) except as expressly provided by this Agreement, it is not party to any restructuring or similar agreements or arrangements with the other Parties to this Agreement that have not been disclosed to all Parties to this Agreement.

Section 12. *Releases.*

12.01. Consenting Creditor Party Releases. Effective upon consummation of the Plan, the Consenting Creditor Releasing Parties shall grant the release and exculpation provisions set forth in Annex 1 of the Restructuring Term Sheet, in the form and manner prescribed in the Restructuring Term Sheet, in favor of the Released Company Parties.

12.02. Company Party Releases. Effective upon consummation of the Plan, the Company Releasing Parties shall grant the release and exculpation provisions set forth in Annex 1 of the Restructuring Term Sheet, in the form and manner prescribed in the Restructuring Term Sheet, in favor of the Released Consenting Creditor Parties.

Section 13. *Termination Events.*

13.01. Consenting Creditors Termination Events. This Agreement may be terminated by the Consenting Creditors, by the delivery to the Company Parties of a written notice in accordance with Section 15.09 hereof upon the occurrence of the following events:

(a) the breach in any material respect by a Company Party, of any of the provisions of this Agreement that remains uncured for ten (10) calendar days after such terminating Consenting Creditor transmit a written notice in accordance with Section 15.09 hereof detailing any such breach;

(b) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for thirty (30) calendar days after such terminating Consenting Creditor transmit a written notice in

accordance with Section 15.09 hereof detailing any such issuance; provided, that this termination right shall not apply to or be exercised by any Consenting Creditor Party if any Consenting Creditor Party sought or requested such ruling or order in contravention of any obligation set out in this Agreement;

(c) unless waived by the Consenting Creditors, any Company Party fails to comply with the applicable Approved Budget and the Permitted Variances covenant set forth in the Restructuring Term Sheet;

(d) any Company Party fails to comply with its obligations under any retention agreement with the Consultants, and such failure remains uncured for ten (10) calendar days after such terminating Consenting Creditor transmit a written notice in accordance with Section 15.09 hereof detailing any such failure;

(e) the entry of an order by the Israeli Court, or the filing of a motion or application by any Company Party seeking an order (without the prior written consent of the Consenting Creditors) (i) dismissing the Israeli Debt Arrangement Proceedings, or (ii) rejecting the Plan;

(f) the entry of an order by the Bankruptcy Court or other court of competent jurisdiction, or the filing of a motion or application by any Company Party seeking an order (without the prior written consent of the Consenting Creditors), (i) dismissing the Chapter 15 Case of Gamida Ltd., (ii) denying recognition of the Israeli Debt Arrangement Proceedings as either foreign main or foreign non-main proceedings, or (iii) dismissing any Parallel Proceedings, if applicable;

(g) (1) immediately upon the failure to timely meet the Milestone with respect to the Plan Effective Date, or (2) the failure to timely meet any Milestone (other than the Milestone with respect to the Plan Effective Date) unless cured (to the extent curable) within five (5) calendar days after the date of the applicable Milestone by the Company Parties, and, in the case of either clauses (1) and (2) of this Section 13.01(g), which has not been waived or extended in a manner consistent with this Agreement; *provided* that, if the failure to achieve any such Milestone (other than other than the Milestone with respect to the Plan Effective Date) is caused by, or results from, the breach by any Consenting Creditor, as applicable, of its covenants, agreements, or other obligations under this Agreement, then none of the Consenting Creditor(s) may assert the right to terminate this Agreement pursuant to this Section 13.01(g);

(h) any Company Party (i) files, waives, amends or modifies, or files a pleading seeking approval of any Definitive Document or authority to waive, amend, or modify any Definitive Document (including any waiver of any term or condition therein) in a manner that is materially inconsistent with, or constitutes a material breach of, this Agreement (including with respect to the consent rights afforded the Consenting Creditors under this Agreement), without the prior written consent of the Consenting Creditors, (ii) files or supports any pleading that prevents, prohibits or otherwise restricts consummation of the Restructuring Transactions, or (iii) publicly announces its intention to take any such acts listed in the foregoing clause (i) or (ii), in the case of each of the foregoing clauses (i) through (iii), which remains uncured for three (3) calendar days;

(i) any Company Party files, proposes, or otherwise supports any plan of reorganization or liquidation other than the Plan or a merger or a sale of all or substantially all of a Company Party's assets or shares;

(j) any Company Party (i) voluntarily commences any case or files any petition seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization, or other relief under any federal, state, or foreign bankruptcy, insolvency, administrative receivership, or similar law now or hereafter in effect, except as provided for in this Agreement, (ii) consents to the institution of, or fails to contest in a timely and appropriate manner, any involuntary proceeding or petition in any jurisdiction, including in the United States and Israel, (iii) applies for or consents to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator, or similar official for a Company Party or for a substantial part of any Company Party's assets, (iv) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) makes a general assignment or arrangement for the benefit of creditors or (vi) takes any corporate action for the purpose of authorizing any of the foregoing; it being understood that the entering into this Agreement or any Definitive Document or the consummation of the transactions hereby or thereby shall not be deemed to constitute a termination event hereunder;

(k) any Company Party files or supports another party in filing (i) a motion or pleading challenging the amount, validity, or priority of any Claims held by any Consenting Creditor (or any liens securing such Claims) or (ii) a motion or pleading asserting (or seeking standing to assert) any purported claims or causes of action against any of the Consenting Creditors;

(l) the Company Parties fail to pay any fees and expenses of the Senior Notes Trustee, the Secured Note Agent, the Secured Note Agent Advisors, the Senior Notes Trustee Advisors, or the Consenting Creditors Advisors upon presentment of an invoice or fee statement, which breach remains uncured for ten (10) calendar days after receipt by the Company Parties of notice of such breach (unless payment of any such invoice or fee statement would result in a breach of this Agreement pursuant to Section 13.01(c) herein);

(m) any of the Definitive Documents (i) shall have been materially and adversely amended or modified or (ii) shall have been withdrawn, in each case, without the consent of the Consenting Creditors, in each case, unless cured (to the extent curable) within three (3) calendar days after receipt by the Company Parties of notice of any event described in this clause (l);

(n) any Company Party proposes, or affirmatively approves any Alternative Restructuring Proposal;

(o) a claim is filed in Israeli Debt Arrangement Proceedings with respect to any purported material Company Claims/Interests or any other material Claim against the Company that is not included in the Approved Budget and deviates from the Approved Budget in a manner that would result in a breach of the Permitted Variance covenant set forth in the Restructuring Term Sheet; or

(p) any event, development, state of facts, change, circumstance, occurrence, condition or effect occurring after the Agreement Effective Date and prior to consummation of the

Restructuring Transactions that, either individually or in the aggregate, could reasonably be expected to have a material adverse effect on any of (i) the operations, assets, liabilities or financial condition of the Company Parties taken as a whole, compared to their existing and contemplated condition as of the Agreement Effective Date, (ii) the consummation of the Restructuring Transactions, or (iii) the validity, perfection or priority of a lien in favor of the Secured Note Agent for the benefit of the Consenting Creditors under the Loan and Security Agreement.

13.02. Company Party Termination Events. Any Company Party may terminate this Agreement as to all Parties upon prior written notice to all Parties in accordance with Section 15.09 hereof upon the occurrence of any of the following events:

(a) the breach in any material respect by one or more of the Consenting Creditors of any provision set forth in this Agreement that remains uncured for ten (10) calendar days after such Company Party transmit a written notice in accordance with Section 15.09 hereof detailing any such breach;

(b) the board of directors, board of managers, or such similar governing body of any Company Party determines, after consulting with counsel, (i) that proceeding with any of the Restructuring Transactions would be inconsistent with the exercise of its fiduciary duties or applicable Law or (ii) in the exercise of its fiduciary duties, to pursue an Alternative Restructuring Proposal other than the Restructuring Transactions; or

(c) if, within three (3) Business Days following the Plan Effective Date, the Consenting Creditors fail to execute the Definitive Documents (in form and substance reasonably acceptable to the Company Parties and the Consenting Creditors) to consummate the transactions contemplated by the Plan;

(d) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for thirty (30) calendar days after such terminating Company Party transmits a written notice in accordance with Section 15.09 hereof detailing any such issuance; *provided*, that this termination right shall not apply to or be exercised by any Company Party if a Company Party sought or requested such ruling or order in contravention of any obligation or restriction set out in this Agreement.

13.03. Mutual Termination. This Agreement, and the obligations of all Parties hereunder, may be terminated by mutual written agreement among all of the following: (i) the Consenting Creditors; and (ii) each Company Party.

13.04. Effect of Termination. Upon the occurrence of a Termination Date, this Agreement shall be of no further force and effect and each Party shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all Claims or causes of action. Nothing in this Agreement shall be construed as prohibiting a

Company Party or any of the Consenting Creditors from contesting whether any such termination is in accordance with its terms or to seek enforcement of any rights under this Agreement that arose or existed before a Termination Date. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict (i) any right of any Company Party or the ability of any Company Party to protect and reserve its rights (including rights under this Agreement), remedies, and interests, including its claims against any Consenting Creditor, and (ii) any right of any Consenting Creditor, or the ability of any Consenting Creditor, to protect and preserve its rights (including rights under this Agreement), remedies, and interests, including its claims against any Company Party. No purported termination of this Agreement shall be effective under this Section 13.04 if the Party seeking to terminate this Agreement is in material breach of this Agreement, except a termination pursuant to Section 13.02(b). Nothing in this Section 13.04 shall restrict any Company Party's right to terminate this Agreement in accordance with Section 13.02(b).

Section 14. *Amendments and Waivers.*

(a) This Agreement may not be modified, amended, or supplemented, and no condition or requirement of this Agreement may be waived, in any manner except in accordance with this Section 14.

(b) This Agreement may be modified, amended, or supplemented, or a condition or requirement of this Agreement may be waived, solely in a writing signed by each Party.

(c) Any proposed modification, amendment, waiver or supplement that does not comply with this Section 14 shall be ineffective and void *ab initio*.

(d) The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy or any provision of this Agreement, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy. All remedies under this Agreement are cumulative and are not exclusive of any other remedies provided by Law.

Section 15. *Miscellaneous.*

15.01. Acknowledgement. Notwithstanding any other provision herein, this Agreement is not and shall not be deemed to be an offer with respect to any securities or solicitation of votes for the acceptance of the Plan for purposes of Israel Insolvency Law or otherwise. Any such offer or solicitation will be made only in compliance with all applicable securities Laws, provisions of the Israel Insolvency Law, and/or other applicable Law.

15.02. Exhibits Incorporated by Reference; Conflicts. Each of the exhibits, annexes, signatures pages, and schedules attached hereto is expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include such exhibits, annexes, and schedules. In the event of any inconsistency between this Agreement (without reference to the

exhibits, annexes, and schedules hereto) and the exhibits, annexes, and schedules hereto, this Agreement (without reference to the exhibits, annexes, and schedules thereto) shall govern.

15.03. Further Assurances. Subject to the other terms of this Agreement, the Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, or as may be required by orders of the Israeli Court or the Bankruptcy Court, from time to time, to effectuate the Restructuring Transactions, as applicable.

15.04. Complete Agreement. Except as otherwise explicitly provided herein, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any Confidentiality Agreement.

15.05. GOVERNING LAW; SUBMISSION TO JURISDICTION. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ISRAEL, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAWS PRINCIPLES THAT MAY RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION. EACH OF THE PARTIES IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE COMPETENT COURT LOCATED IN THE DISTRICT OF TEL AVIV, STATE OF ISRAEL, WITH RESPECT TO ANY AND ALL DISPUTES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT.

15.06. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

15.07. Rules of Construction. This Agreement is the product of negotiations among the Company Parties and the Consenting Creditors, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. The Company Parties and the Consenting Creditors were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

15.08. Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable. There are no third-party beneficiaries under this Agreement, and the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other person or entity.

15.09. Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

- (a) if to a Company Party, to:

Gamida Cell Ltd.
673 Boylston Street
Boston, Massachusetts 02116
Attention: Abbey Jenkins
E-mail address: abbeyj@gamida-cell.com

with copies to (which shall not constitute notice):

Cooley LLP
110 N. Wacker Drive, Suite 4200
Chicago, Illinois 60606
Attention: Erin J. Kirchner
E-mail address: ekirchner@cooley.com

Cooley LLP
55 Hudson Yards
New York, NY 10001
Attention: Michael Klein
E-mail address: mklein@cooley.com

and

Meitar | Law Offices
16 Abba Hillel Silver Rd.
Ramat Gan 5250608, Israel
Attention: Haim Gueta and Pinni Yaniv
E-mail address: haimg@meitar.com; pinniyaniv@meitar.com

- (b) if to the Consenting Creditors, to:

Highbridge Capital Management LLC
277 Park Avenue, Floor 23
New York, New York 10172
Attention: Damon P. Meyer
E-mail address: damon.meyer@highbridge.com

with copies to:

King & Spalding LLP
110 N. Wacker Drive, Suite 3800
Chicago, IL 60606
Attention: Matthew Warren
Email address: mwarren@kslaw.com

and

Herzog, Fox & Neeman
Herzog Tower
6 Yitzhak Sade Street
Tel-Aviv 6777506, Israel
Attention: Nir Dash & Ron Ben-Menachem
E-mail address: dashn@herzoglaw.co.il / ron@hfn.co.il

Any notice given by delivery, mail, or courier shall be effective when received.

15.10. Independent Due Diligence and Decision Making. Each Consenting Creditor hereby confirms that its decision to execute this Agreement has been based upon its independent investigation of the operations, businesses, financial and other conditions, and prospects of the Company Parties.

15.11. Enforceability of Agreement. Each of the Parties, to the extent enforceable, waives any right to assert that the exercise of termination rights under this Agreement is subject to the applicable provisions under Israel Insolvency Law and automatic stay provisions of the Bankruptcy Code, and expressly stipulates and consents hereunder to the prospective modification of the automatic stay provisions for purposes of exercising termination rights under this Agreement, to the extent the Bankruptcy Court determines that such relief is required.

15.12. Waiver. If the Restructuring Transactions are not consummated, or if this Agreement is terminated for any reason, the Parties fully reserve any and all of their rights. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence under the laws of Israel or otherwise, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

15.13. Specific Performance. It is understood and agreed by the Parties that money damages may be an insufficient remedy for any breach of this Agreement by any Party, and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach, including an order of the Bankruptcy Court, Israeli Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

15.14. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the Parties under this Agreement are, in all respects, several and not joint.

15.15. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

15.16. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

15.17. Capacities of Consenting Creditors. Each Consenting Creditor has entered into this agreement on account of all Company Claims/Interests that it holds (directly or through discretionary accounts that it manages or advises) and, except where otherwise specified in this Agreement, shall take or refrain from taking all actions that it is obligated to take or refrain from taking under this Agreement with respect to all such Company Claims/Interests.

15.18. Survival. Notwithstanding (i) any Transfer of any Company Claims/Interests in accordance with this Agreement or (ii) the termination of this Agreement in accordance with its terms, the agreements and obligations of the Parties in Section 13.04 and the Confidentiality Agreements shall survive such Transfer and/or termination and shall continue in full force and effect for the benefit of the Parties in accordance with the terms hereof and thereof.

15.19. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, pursuant to Section 3.02, Section 14, or otherwise, including a written approval by the Company Parties or the Consenting Creditors, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel. Notwithstanding the foregoing, this Section 15.19 shall not apply to amendments of this Agreement in accordance with Section 14.

15.20. Consenting Creditor Direction. The Consenting Secured Noteholders hereby authorize and direct the Secured Note Agent to execute and deliver this Agreement. The Consenting Senior Noteholders hereby authorize and direct the Senior Notes Trustee to execute and deliver this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

[signature pages follow]

**Company Parties' Signature Page to
the Restructuring Support Agreement**

GAMIDA CELL LTD.

By: Abigail Jenkins

Name: Abigail Jenkins

Title: President & Chief Executive Officer

GAMIDA CELL INC.

By: Abigail Jenkins

Name: Abigail Jenkins

Title: President & Chief Executive Officer

**Secured Note Agent and Senior Notes Trustee's Signature Page to
the Restructuring Support Agreement**

**WILMINGTON SAVINGS FUND SOCIETY,
FSB, as Senior Notes Trustee**

By:  _____
Name: Raye Goldsborough
Title: Vice President

**WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Secured Note Agent**

By:  _____
Name: Raye Goldsborough
Title: Vice President

**Consenting Creditor Signature Page to
the Restructuring Support Agreement**

CONSENTING CREDITOR

Highbridge Tactical Credit Institutional Fund, Ltd.

By: Highbridge Capital Management, LLC, its trading manager, and
not in its individual capacity

Jonathan Segal

Jonathan Segal | Managing Director
Co-Chief Investment Officer
Highbridge Capital Management, LLC

Address: 277 Park Avenue, Floor 23, New York, New York 10172

Attention: Damon P. Meyer

E-mail address: damon.meyer@highbridge.com

<i>Aggregate Amounts Beneficially Owned or Managed on Account of:</i>	
Secured Note Claims	\$1,011,487.88
Senior Notes Claims	\$ 9,100,000.00
Equity Interests	

**Consenting Creditor Signature Page to
the Restructuring Support Agreement**

CONSENTING CREDITOR

Highbridge Tactical Credit Master Fund, L.P.

By: Highbridge Capital Management, LLC, its trading manager, and
not in its individual capacity

Jonathan Segal

Jonathan Segal | Managing Director
Co-Chief Investment Officer
Highbridge Capital Management, LLC

Address: 277 Park Avenue, Floor 23, New York, New York 10172

Attention: Damon P. Meyer

E-mail address: damon.meyer@highbridge.com

<i>Aggregate Amounts Beneficially Owned or Managed on Account of:</i>	
Secured Note Claims	\$ 3,971,211.05
Senior Notes Claims	\$ 35,700,000.00
Equity Interests	

**Consenting Creditor Signature Page to
the Restructuring Support Agreement**

CONSENTING CREDITOR

Highbridge Convertible Dislocation Fund, L.P.

By: Highbridge Capital Management, LLC, its trading manager, and
not in its individual capacity

Jonathan Segal

Jonathan Segal | Managing Director
Co-Chief Investment Officer
Highbridge Capital Management, LLC

Address: 277 Park Avenue, Floor 23, New York, New York 10172

Attention: Damon P. Meyer

E-mail address: damon.meyer@highbridge.com

<i>Aggregate Amounts Beneficially Owned or Managed on Account of:</i>	
Secured Note Claims	
Senior Notes Claims	\$30,200,000.00
Equity Interests	

SCHEDULE 1

Consenting Secured Noteholders

1. Highbridge Tactical Credit Master Fund, L.P.
2. Highbridge Tactical Credit Institutional Fund, Ltd.

SCHEDULE 2

Consenting Senior Noteholders

1. Highbridge Tactical Credit Master Fund, L.P.
2. Highbridge Tactical Credit Institutional Fund, Ltd.
3. Highbridge Convertible Dislocation Fund, L.P.

EXHIBIT A

Restructuring Term Sheet

GAMIDA CELL LTD., ET AL.
RESTRUCTURING TERM SHEET

This term sheet (the “Restructuring Term Sheet”) sets forth the principal terms of the Restructuring Transactions and certain related transactions concerning the Company Parties agreed to by the Consenting Creditors and the Company Parties. This Restructuring Term Sheet does not contain a complete list of all terms and conditions of the potential transactions described herein.

This Restructuring Term Sheet has been produced for discussion and settlement purposes only. Accordingly, this Restructuring Term Sheet and the information contained herein are entitled to protection from any use or disclosure to any party or person pursuant to Rule 408 of the Federal Rules of Evidence and any other applicable rule, statute, or doctrine of similar import protecting the use or disclosure of confidential settlement discussions. This Restructuring Term Sheet is confidential and subject to applicable confidentiality provisions and agreements.

The Restructuring Transactions contemplated under this Restructuring Term Sheet will be implemented pursuant to the Restructuring Support Agreement and the agreed upon restructuring Plan (תוכנית הסדר), filed concurrently or immediately after execution of the Restructuring Support Agreement, as well as all other ancillary agreements and documents, and of any other completion of definitive documents, incorporating the terms set forth herein and the closing of any restructuring shall be subject to the terms and conditions set forth in such agreed and executed definitive documents. The regulatory, tax, accounting, and other legal and financial matters and effects related to the Restructuring Transactions, or any related restructuring or similar transaction have not been fully evaluated and any such evaluation may affect the terms and structure of any Restructuring Transactions or related transactions. Capitalized terms used but otherwise not defined herein shall have the meaning ascribed to such terms in the Restructuring Support Agreement.

THIS RESTRUCTURING TERM SHEET DOES NOT CONSTITUTE (NOR SHALL IT BE CONSTRUED AS) AN OFFER WITH RESPECT TO ANY SECURITIES, LOANS OR OTHER INSTRUMENTS OR A SOLICITATION OF ACCEPTANCES OR REJECTIONS AS TO ANY PLAN, IT BEING UNDERSTOOD THAT SUCH AN OFFER OR SOLICITATION, IF ANY, WILL BE MADE ONLY IN COMPLIANCE WITH APPLICABLE LAW.

Restructuring Transactions Overview	
Implementation	The restructuring will be implemented through: 1. the concurrent or substantially concurrent (i) execution of the Restructuring Support Agreement and (ii) commencement by the Company of debt arrangement proceedings pursuant to Part 10 to the Israeli Insolvency and Financial Rehabilitation Law, 2018 in the District Court of Beer Sheba (the “<u>Israeli Debt Arrangement Proceedings</u>”); and 2. thereafter, the commencement (i) by Gamida Inc. of a case under chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the “<u>Bankruptcy Code</u>”) in the United States Bankruptcy Court for the District of Delaware (the “<u>Bankruptcy Court</u>” and, such case, the “<u>Chapter 15 Case</u>”) and, as necessary, (ii) any Parallel Proceedings. The Restructuring Transactions will be subject to and carried-out in accordance with the terms and conditions of the Definitive Documents, the Restructuring

	Support Agreement (including the exhibits thereto), and the consent requirements set forth in each of the foregoing. The Restructuring Transactions will be effectuated pursuant to a plan of arrangement to be filed on or immediately after the Agreement Effective Date and to be approved by the competent court under the Israeli Debt Arrangement Proceedings (the “<u>Restructuring Plan</u>”), followed by (i) recognition of the Israeli Debt Arrangement Proceedings and Restructuring Plan in the Chapter 15 Case, and (ii) any additional relief in any other Parallel Proceeding in order to effectuate the Restructuring Transactions. Following entry by the Israeli Court of the Confirmation Order, and after the occurrence of the other events specified in the definition of the Plan Effective Date, the Restructuring Plan shall be effective on or before the Plan Effective Date (as defined below). The Restructuring Plan will be carried out subject to the timeline contemplated by the other milestones set forth in this Restructuring Term Sheet, subject in each case (other than with respect to the Plan Effective Date) to reasonable extensions solely in order to accommodate the respective Israeli Court’s schedule or Bankruptcy Court’s schedule as necessary, and as consented to by the Consenting Creditors (the “<u>Milestones</u>”), <i>provided, that</i>, the Parties shall negotiate in good faith in connection with any additional funding needs of the Company as a result of the extension of any Milestones.
Restructuring Plan	Pursuant to the Restructuring Plan: (a) the Consenting Creditors will exchange 100% of the 5.875% exchangeable senior notes due 2026 (totaling \$75 million in principal amount (and upon the Plan Effective Date waive all accrued and unpaid interest, fees and expenses) as of the Plan Effective Date) for 100% of the equity interests to be issued to them in (i) the reorganized Company (in the form of ordinary shares) and (ii) any affiliate of the reorganized Company as necessary to effectuate the Restructuring Transactions. (b) Other creditors of the Company will remain unimpaired and be paid in the ordinary course in accordance with their contractual or statutory rights, as specified in the Approved Budget (as defined below). (c) Subject to the terms of the CVRs specified below, holders of the ordinary shares of Gamida Ltd. as of immediately prior to the Plan Effective Date will receive CVRs for each ordinary share held as of immediately prior to the Plan Effective Date. All outstanding Equity Interests as of immediately prior to the Plan Effective Date (“<u>Existing Equity Interests</u>”) will be cancelled on or immediately after the Plan Effective Date pursuant to the Restructuring Plan. In addition, unless otherwise consented to by the Consenting Creditors, (i) prior to the Plan Effective Date, the Company shall use all commercially reasonable efforts to delist the Existing Equity Interests from the Nasdaq Stock Market and a Form 25 shall have been filed with the Securities and Exchange Commission by the

	Company or the Nasdaq Stock Market terminating the Company's reporting obligations under Section 12(b) of the Exchange Act, (ii) no later than the Plan Effective Date, post-effective amendments terminating the offering of all securities registered under the Securities Act shall have been filed with the Securities and Exchange Commission and become effective and (ii) on or prior to the Plan Effective Date, a Form 15 shall be filed with the Securities and Exchange Commission by the Company suspending the remaining reporting obligations of the Company under the Exchange Act. As a result, the Company shall become a private company wholly owned by the Creditors. The Restructuring Plan shall be in form and substance acceptable to the Consenting Creditors, including any releases granted therewith (such Restructuring Plan, as may be amended or modified, an “<u>Acceptable Plan</u>”).
Approved Budget	During the period of the Restructuring Plan (i.e., from the effective date of the Restructuring Support Agreement until the Plan Effective Date or the termination of the Restructuring Support Agreement in accordance with its terms, whichever comes first) (such period, the “<u>Restructuring Period</u>”), the Company will be managed as an ongoing concern in the ordinary course of its business pursuant to a 13-week cash flow forecast beginning with the week which includes the Agreement Effective Date through the thirteenth week thereafter showing anticipated receipts and disbursements in form and substance acceptable to the Consenting Creditors (as may be updated from time to time with the approval of the Consenting Creditors, the “<u>Approved Budget</u>”).
Permitted Variances	After the Agreement Effective Date, the Company shall deliver to the Consenting Creditors on each Friday during the Agreement Effective Period (each, a “<u>Liquidity Report Date</u>”), commencing with the Friday of the first full calendar week ending after the Agreement Effective Date, a weekly variance report (i) showing the unrestricted cash balance of the Company as of the Liquidity Report Date such date (such balance, the “<u>Liquidity</u>”) and (ii) comparing forecasted Liquidity under the Approved Budget against actual Liquidity, in each case as of the Liquidity Report Date. During the Agreement Effective Period, the Company shall not permit actual Liquidity as of the applicable Liquidity Report Date to be less than 75% of the forecasted Liquidity under the Approved Budget for such Liquidity Report Date, excluding the cumulative effect of any variances in the line items for the Company Parties’ professional fee categories related to the Restructuring Transactions (collectively, the “<u>Permitted Variances</u>”).
Exit Financing	Upon the Plan Effective Date, the Company Parties and the Consenting Creditors shall enter into a new \$50 million secured debt facility (collectively, the “<u>Exit Financing Facility</u>”), comprised of: • \$30 million of new funding to be funded by way of a senior secured loan on or as soon as practicable following the Plan Effective Date;

	• 100% of the outstanding secured debt obligations owing to Consenting Creditors by the Company Parties, equal to approximately \$5 million (plus accrued and unpaid interest, fees and expenses); and • \$15 million of additional commitments to be funded by way of delayed draw term loans on terms and conditions set forth in the Exit Financing Facility.
CVR	Non-transferable contingent value rights (“<u>CVRs</u>”) to be issued to the holders of Ordinary Shares providing for the payment of cash as described below upon the achievement of the following milestones. • If, within three (3) years following the Plan Effective Date, aggregate Omisirge US annual revenues exceed \$100 million during any 4 (four) consecutive fiscal quarters, holders of the CVRs shall receive, in the aggregate, \$10 million in cash. • If, within three (3) years following the Plan Effective Date, aggregate Omisirge US annual revenues exceed \$150 million during any 4 (four) consecutive fiscal quarters, holders of the CVRs shall receive, in the aggregate, \$15 million in cash. • Upon the occurrence of the first regulatory approval of any product associated with the NK platform within four (4) years following the Plan Effective Date, holders of the CVRs shall receive \$2.5 million in cash. CVRs to be structured in a tax efficient manner and so as not to constitute a security for purposes of the U.S. Securities Act of 1933 and the U.S. Securities Exchange Act of 1934, in each case as agreed between the Company and the Consenting Creditors.
Retention of Consultants	On or prior to the Agreement Effective Date, the Consenting Creditors have engaged advisors to advise the Consenting Creditors on certain restructuring matters, including the Company’s cost structure and go-forward business planning (the “<u>Consultants</u>”). All reasonable fees and expenses of such Consultants (and such Consultants’ employees, associates, representatives and agents) will be paid by the Company Parties in accordance with the terms of the retention agreement for each Consultant. The Company shall agree to provide the Consultants during the Restructuring Period with access to (i) all information reasonably requested by Consultants and (ii) the Company leadership and management team for discussions regarding cost structure and go-forward business planning. On or prior to the Agreement Effective Date, Consultants and counsel for and on behalf of the Consenting Creditors have entered into a consulting agreement, agreed to and acknowledged by, and in form and substance reasonably acceptable to, the Consenting Creditors and the Company Parties (with respect to the quarterly consulting fee, expense reimbursement, and indemnity

	provisions), which includes that such Consultants shall be provided with full access to any information, discussions and documents reasonably requested by them, during the Restructuring Period, and counsel to the Consenting Creditors (at their direction) shall have the right to replace any such Consultant by a notice to the Company.
Additional Company Covenants	Except as permitted under the Restructuring Support Agreement, during the Restructuring Period, the Company will not enter into any material definitive agreement or transaction without the consent of the Consenting Creditors.
Milestones	The Restructuring Transactions shall be subject to the following Milestones, subject to extension with the consent of the Consenting Creditors: 1. March 27, 2024: Initiation of Israeli Debt Arrangement Proceeding, through filing with the Israeli Court of the Restructuring Plan and initial motion regarding creditors meeting and Acceptable Plan. 2. April 1, 2024: Commencement of shareholder and creditor notice period in Israeli Proceeding 3. April 15, 2024: Commencement of Chapter 15 Case 4. May 10, 2024: Hearing on Recognition Order in US proceedings 5. May 13, 2024: Entry of Recognition Order. 6. May 15, 2024: Effectiveness of the Restructuring Plan in Israeli Debt Arrangement Proceeding in accordance with the terms of the Restructuring Plan, which such effectiveness shall be conditioned upon entry of order by Israeli Court confirming the Restructuring Plan, necessary approvals by Company Parties implementing the Restructuring Transaction, execution by each applicable party of relevant Definitive Documents, and payment of all outstanding fees and expenses of the Consenting Creditor Advisors, the Secured Notes Agent, the Senior Notes Trustee, and advisors to the Secured Notes Agent and the Senior Notes Trustee (such date, the “<u>Plan Effective Date</u>”).
Other Terms	
Chapter 15 Recognition Order	In accordance with the Milestones, the Bankruptcy Court shall enter one or more orders (i) recognizing the Israeli Debt Arrangement Proceedings and (ii) recognizing and giving full force and effect to the Restructuring Plan in the Chapter 15 Case.
Employee Matters	Pursuant to the Restructuring Support Agreement and this Restructuring Term Sheet, the Consenting Creditors consent to the continuation of the Company Parties’ wages, compensation, and benefits programs according to existing terms and practices, including executive compensation programs and executive employment agreements (the “ <u>Assumed Plans</u> ”); provided that (i) Assumed Plans shall not include any existing equity or equity-based programs and awards, and (ii) each Assumed Plan shall be amended, to the extent applicable, to exclude any right(s) to receive future equity or equity-based awards provided for under any Assumed Plans, and such awards and rights described in the foregoing

	subsections (i) and (ii) shall be terminated as of the Plan Effective Date for no consideration. Without the prior written consent of the Consenting Creditors, the Company Parties will not be permitted to establish any annual, short-term or long-term compensation programs unless such program(s) are expressly contemplated in the Approved Budget. During the Restructuring Period, the Company will not (i) hire or otherwise engage any new or former director, officer, employee, independent contractor, consultant or advisor, or (ii) terminate any current director, officer, employee, independent contractor, consultant or advisor of the Company, in each case without first obtaining the written consent of the Consenting Creditors. The occurrence of the Agreement Effective Date or the Plan Effective Date shall not be deemed to result in an accelerated payment event or a “good reason” or other constructive termination event for purposes of any Company compensation or benefit plan.
Indemnification Obligations	Any obligations of the Company Parties pursuant to corporate charters, bylaws, limited partnership agreements, limited liability company agreements, written deeds of indemnity or indemnification agreements, or other organizational documents in place as of the Agreement Effective Date to indemnify, advance defense expenses and to provide exculpation to current and former officers, directors, partners, managers, members, agents, or employees with respect to all present and future claims, actions, suits, investigations and proceedings against the Company Parties or such directors, officers, managers, members, partners, agents, or employees, based upon any act or omission for or on behalf of the Company Parties (the “<u>Indemnification Obligations</u>”), shall survive and remain effective through and after the Plan Effective Date and will not be discharged or impaired by the Restructuring Support Agreement, any of the Definitive Documents, or the consummation of the Restructuring Plan or of any of the Restructuring Transactions; <u>provided</u> that the Company Parties shall not indemnify officers, directors, agents, or employees of the Company Parties for any claims or causes of action for which indemnification is barred under applicable law, the Company Parties’ organization documents (provided such documents contain provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of present and former directors, managers and officers than are presently set forth in the Company Parties’ existing organization documents), or applicable agreements with said directors, officers, managers, members, partners, agents, or employees governing the Company Parties’ indemnification, advancement of expenses or exculpation obligations thereto; <u>provided further</u>, that, for the avoidance of doubt, any obligations of the Company Parties to indemnify (i) the Senior Notes Trustee pursuant to the Senior Notes Indenture, and (ii) the Secured Note Agent pursuant to the Loan and Security Agreement shall survive and remain effective through and after the Plan Effective Date and will not be discharged or impaired by the Restructuring Support Agreement, any of the Definitive Documents, or the consummation of the Restructuring Plan or of any of the Restructuring Transactions. In addition, the Approved Budget shall include amounts sufficient (i) for purchase of a customary “tail” policy or policies with respect to the Company Parties’ existing director & officer liability policies and (ii) to reserve

	for the amount of the Company Parties' retentions, if any, under such "tail" policy or policies.
Plan Releases and Exculpation	Any Acceptable Plan shall include release and exculpation provisions (and related definitions) substantially in the form set forth in <u>Annex 1</u> to this Restructuring Term Sheet. The release and exculpation provisions hereunder shall not derogate from, and shall be in addition to, any existing exculpation obligations the D&O already have under applicable law and the respective Company Party's governing documents or otherwise.
Fiduciary Obligations	Section 13.02 of the Restructuring Support Agreement provides that the Company may, upon advice of counsel, terminate the Restructuring Support Agreement if the Company determines (i) that proceeding with any of the Restructuring Transactions would be inconsistent with the exercise of its fiduciary duties or applicable Law, or (ii) in the exercise of its fiduciary duties, to pursue an Alternative Restructuring Proposal other than the Restructuring Transactions
Tax Structure	The terms of the Restructuring Transactions will be structured to maximize tax efficiencies for the Company Parties and the Consenting Creditors, as agreed to by the Consenting Creditors.
Definitive Documents	This Restructuring Term Sheet does not include a description of all of the terms, conditions, and other provisions that will be contained in the Definitive Documents, which shall be in form and substance subject to the consent rights set forth herein and in the Restructuring Support Agreement.

Annex 1**Plan Release and Exculpation Provisions****Section 1. Releases by the Company Releasing Parties.**

Notwithstanding anything to the contrary contained in the Plan or any other Definitive Document, for good and valuable consideration, the adequacy of which is hereby confirmed, upon entry of the Confirmation Order and effective as of the Plan Effective Date, to the fullest extent permitted by applicable law, each Released Consenting Creditor Party is, and is deemed hereby to be, fully, conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Company Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives (including any manager or foreign representative appointed in the Israeli Proceeding), from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, including any derivative claims, asserted or assertable on behalf of any of the Company Releasing Parties, that any such Person would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf of the holder of any Claim against or any legal interests, equitable interests, contractual interests, equity interests or ownership interests (“Interests”) in a Company Party or other Person, or that any holder of any Company Claims/Interests against or in a Company or other Person could have asserted on behalf of the Company Releasing Parties, based on or relating to, or in any manner arising from, in whole or in part, any of the Company Releasing Parties (including the Company Releasing Parties’ capital structure, management, ownership, or operation thereof or otherwise), the subject matter of, or the transactions or events giving rise to, any Company Claims/Interests that is treated in the Plan, the business or contractual arrangements between any Company and any Released Consenting Creditor Party, the Company Releasing Parties’ in- or out-of-court restructuring efforts, the purchase, sale, or rescission of any security of the Company Releasing Parties, intercompany transactions between or among the Company Releasing Parties or an affiliate of the Company Releasing Parties and another Company or affiliate of a Company, the Israeli Debt Arrangement Proceedings or the commencement, filing or execution thereof, the Chapter 15 Case or the commencement, filing or execution thereof, the formulation, preparation, dissemination, solicitation, negotiation, entry into, filing or consummation of the Restructuring Support Agreement, the Plan, any other Definitive Document or any Restructuring Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring Support Agreement, the Plan, any other Definitive Document, any of the Restructuring Transactions, the Israeli Debt Arrangement Proceedings or the commencement, filing or execution thereof, the Chapter 15 Case or the commencement, filing or execution thereof, the pursuit of Confirmation Order, the pursuit of Recognition Order, the pursuit of any additional orders from the Bankruptcy Court or Israeli Court in furtherance of the Restructuring Transactions, the pursuit of consummation of the Plan or any Restructuring Transaction, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Plan Effective Date.

Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release: (1) any obligations arising on or after the Plan Effective Date of any party or Person under the Plan, the Confirmation Order, or any post-Plan Effective Date transaction contemplated by the Plan or the Restructuring Transactions, or any document, instrument, or agreement (including those set forth in any supplement to the Plan, if any) executed to implement the Plan or the Restructuring Transactions; or (2) the rights of any holder of allowed Claims to receive distributions under the Plan.

Section 2. Releases by the Consenting Creditor Releasing Parties

Notwithstanding anything to the contrary contained in the Plan or any other Definitive Document, for good and valuable consideration, the adequacy of which is hereby confirmed, upon entry of the Confirmation Order and effective as of the Plan Effective Date, to the fullest extent permitted by applicable law, each Released Company Party is, and is deemed hereby to be, fully, conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Consenting Creditor Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives, (including any manager or foreign representative appointed in the Israeli Proceeding) from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, including any derivative claims, asserted or assertable on behalf of any of the Consenting Creditor Releasing Parties, that any such Person would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf of the holder of any Claim against or Interest in a Company Party or a Consenting Creditor or other Person, or that any holder of any Company Claims/Interests against or in a Company Party or a Consenting Creditor or other Person could have asserted on behalf of a Consenting Creditor Releasing Party, based on or relating to, or in any manner arising from, in whole or in part, any of the Released Company Parties (including the Released Company Parties' capital structure, management, ownership, or operation thereof or otherwise), the subject matter of, or the transactions or events giving rise to, any Company Claims/Interests that is treated in the Plan, the business or contractual arrangements between any Consenting Creditor Releasing Party and any Released Company Party, the Released Company Parties' in- or out-of-court restructuring efforts, the purchase, sale, or rescission of any security of any Released Company Party, any intercompany transactions between or among the Released Company Parties or an affiliate of the Released Company Parties and another Company or affiliate of a Company, the Israeli Debt Arrangement Proceedings or the commencement, filing or execution thereof, the Chapter 15 Case or the commencement, filing or execution thereof, the formulation, preparation, dissemination, solicitation, negotiation, entry into, filing or consummation of the Restructuring Support Agreement, the Plan, any other Definitive Document or any Restructuring Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring Support Agreement, the Plan, any other Definitive Document, any of the Restructuring Transactions, the Israeli Debt Arrangement Proceedings or the commencement, filing or execution thereof, the Chapter 15 Case or the commencement, filing or execution thereof, the pursuit of Confirmation Order, the pursuit of Recognition Order, the pursuit of any additional orders from the Bankruptcy Court or Israeli Court in furtherance of the Restructuring Transactions, the pursuit of consummation of the Plan or any Restructuring Transaction, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Plan Effective Date.

Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any obligations arising on or after the Plan Effective Date of any party or Person under the Plan, the Confirmation Order, or any post-Plan Effective Date transaction contemplated by the Plan or the Restructuring Transactions, or any document, instrument, or agreement (including those set forth in any supplement to the Plan, if any) executed to implement the Plan or the Restructuring Transactions; or (2) the rights of any holder of allowed Claims to receive distributions under the Plan.

Section 3. Exculpation.

Except as otherwise specifically provided in the Plan, and to the fullest extent permissible under applicable law, no Released Company Party shall have or incur any liability for, and each Released Company Party shall be released and exculpated from any Cause of Action for any claim related to any act or omission in connection with, relating to or arising out of the Israeli Debt Arrangement Proceedings or

the Chapter 15 Case prior to the Plan Effective Date, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement and related prepetition transactions, the Plan, any other Definitive Document, or any Restructuring Transaction, or any contract, instrument, release or other agreement or document created or entered into in connection with the Restructuring Support Agreement, the Plan, any other Definitive Document, any of the Restructuring Transactions, the commencement of the Israeli Debt Arrangement Proceedings or the Chapter 15 Case, the pursuit of Confirmation Order, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Confirmation Order to have constituted gross negligence, willful misconduct, or actual fraud. Notwithstanding anything to the contrary in the foregoing, the exculpation set forth above does not exculpate any obligations arising on or after the Plan Effective Date of any Person under the Plan, any post-Plan Effective Date transaction contemplated by the Restructuring Transactions, or any document, instrument, or agreement (including those set forth in the any supplement to the Plan, if any) executed to implement the Plan.

Section 4. Injunction.

Effective as of the Plan Effective Date, all Persons that have held, hold, or may hold Claims, Interests, or Causes of Actions that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Plan Effective Date, from taking any of the following actions against the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Actions; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Persons on account of or in connection with or with respect to any such Claims, Interests, or Causes of Actions; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Persons or the property or the estates of such Persons on account of or in connection with or with respect to any such Claims, Interests, or Causes of Actions; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Persons or against the property of such Persons on account of or in connection with or with respect to any such Claims, Interests, or Causes of Actions unless such holder has filed a motion requesting the right to perform such setoff on or before the Plan Effective Date, and notwithstanding an indication of a claim or interest or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Actions released, settled or subject to exculpation pursuant to the Plan. Notwithstanding anything to the contrary in the foregoing, the injunction set forth above does not enjoin the enforcement of any obligations arising on or after the Plan Effective Date of any Person under the Plan, any post-Plan Effective Date transaction contemplated by the Restructuring Transactions, or any document, instrument, or agreement (including those set forth in the any supplement to the Plan, if any) executed to implement the Plan.

Upon entry of the Confirmation Order, all holders of Claims and Interests and their respective current and former employees, agents, officers, directors, managers, principals, and direct and indirect Affiliates, in their capacities as such, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan. Each holder of an allowed Claim or allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or reinstatement of such Claim or Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in this Annex 1.

EXHIBIT B

Form of Transfer Agreement

EXHIBIT B**Form of Transfer Agreement**

The undersigned (“**Transferee**”) hereby acknowledges that it has read and understands the Restructuring Support Agreement, dated as of March 26, 2024 (the “**Agreement**”),¹ by and among Gamida Cell Ltd., a limited liability company organized under the laws of the State of Israel, and Gamida Cell Inc., a Delaware corporation and wholly-owned subsidiary of Gamida Ltd., collectively as the Company Parties, the Consenting Creditors, the Secured Note Agent, and the Senior Notes Trustee, including the transferor to the Transferee of any Company Claims/Interests (each such transferor, a “**Transferor**”), and agrees to be bound by the terms and conditions thereof to the extent the Transferor was thereby bound, and shall be deemed a “[Consenting Secured Noteholder/Consenting Senior Noteholder]” and a “Consenting Creditor” under the terms of the Agreement.

The Transferee specifically agrees to be bound by the terms and conditions of the Agreement and makes all representations and warranties contained therein as of the date of the Transfer, including the agreement to be bound by the vote of the Transferor if such vote was cast before the effectiveness of the Transfer discussed herein.

Date Executed:

Name:

Title:

Address:

E-mail address(es):

<i>Aggregate Amounts Beneficially Owned or Managed on Account of:</i>	
First Lien Claims	
Second Lien Claims	
Equity Interests	

¹ Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to such terms in the Agreement.

EXHIBIT B

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Gamida Cell Ltd.

Company No. 512601204

Economic Expert Opinion and Valuation

Filed with the Court

Dated March 25, 2024

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Definitions and sources of information

Definitions

In this Expert Opinion, the following terms will have the meaning appearing next to them:

“Highbridge”	means collectively, Highbridge Tactical Credit Master Fund, L.P., Highbridge Tactical Credit Institutional Fund, Ltd., and Highbridge Convertible Dislocation Fund, L.P. Highbridge is the main creditor of the Company
“Company” or “Gamida”	Gamida Cell Ltd.
“Subsidiary or “Gamida Inc.”	Gamida Cell Inc., a (100%) U.S. subsidiary of the Company.
“Expert Opinion”	This expert opinion, which concerns the solvency of the Company.
“Law”	The Bankruptcy and Economic Rehabilitation Law, 5778-2018
“Expert Opinion Date”	March 25, 2024
“Prometheus” or the “Firm”	Prometheus Economic Advisory Ltd.
“2021 Note”	A \$25 million promissory note that the Company received from Highbridge in December 2021 (of which approximately 20 million dollars have already been repaid).
“2022 Note”	A \$75 million promissory note that the Company received from Highbridge in February 2021 (repayable in 2026).
“EBITDA”	EBITDA means Earnings Before Interest Tax Depreciation and Amortization.

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Sources of information

The sources of information that were used in preparing the Expert Opinion are as follows:

- Source A* Audited consolidated financial statements of the Company as at December 31, 2021, December 31, 2022 as published to the market.
- Source B* Audited consolidated financial statements of the Company as at December 31, 2023, as will be published to the market on March 27, 2024.
- Source C* Immediate reports of the Company and its website.
- Source D* Additional financial information as of the date of the preparation of the valuation received from representatives of the Company.
- Source E* Terms of the debt arrangement that is under formulation.
- Source F* Documents detailing the initial offer to purchase the operations of the Company by a third party.
- Source G* Forecasts received from the management of the Company.
- Source H* Interviews with the management of the Company.
- Source I* Material from publicly available sources on the Internet.

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Details of the education and experience of the author of the Expert Opinion

Eyal Szewach – Founding partner and head of the technology department at the advisory firm, Prometheus Financial Advisory Ltd., an expert in valuations, business analysis and performing a variety of highly complex economic studies of different sorts for government ministries, companies, organizations, public institutions and businesses in a wide variety of industries.

Education

MBA from Tel Aviv University, specializing in finance and accounting. Graduate of the Faculty of Electronic Engineering (B.Sc.) at The Technion Israel Institute of Technology.

Relevant professional experience

- In the course of my work over the years, I have prepared hundreds of valuations, expert opinions for the court and various economic analyses in fields that are relevant to this Expert Opinion.
- Member of the advisory board of the Valuation Research Group of the International Association of Certified Valuation Specialists, which operates in dozens of countries around the world.
- Provided economic advisory services to the office of the Chief Scientist at the Ministry of the Economy.
- Provided advisory services to the Israel Tax Authority on valuations and business restructurings.
- Member of the tax committee of the Israeli Society of Appraisers.
- Publish professional articles in the economic press.
- Before founding Prometheus, I was a partner and head of the technology department at the advisory firm, Giza Singer Even Ltd.
- Before that, I was an economic adviser to technology companies at the accountancy firm, Ernst and Young (Israel), one of the four largest accountancy firms in the world (the “Big 4”) and, prior to that, I held a research and development position at Elbit Systems.
- Additionally, I have substantial experience in the life sciences field, which is at issue in this Expert Opinion, by virtue of various economic studies that I have undertaken for public and private companies that operate in that field.

Declaration

I give this Expert Opinion in lieu of testimony in court, and I hereby declare that I am fully aware that, for the purposes of the perjury provisions of the Penal Code, this expert opinion as signed by me has the status of testimony under oath that I have given in court.

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This Expert Opinion concerns economic topics only. If it contains any statements regarding legal interpretation, these have been conveyed to me by counsel for the Company.

I hereby confirm that neither I nor Prometheus is dependent on this work or any of the parties, apart from the fact that Prometheus will receive a fee for the work. Additionally, I hereby confirm that this fee is not contingent on the results of the work and is immaterial in relation to the annual revenues of the Firm. I also confirm that no letter of indemnification has been given in connection with the performance of this work.

Eyal Schewach, MBA, B.Sc.

Partner
Prometheus Economic Advisory Ltd.
March 25, 2024

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Introduction and limitation of liability

Introduction

1. In light of a debt arrangement being formulated between the company and its creditors, and in accordance with the provisions of section 322 of the Bankruptcy and Economic Rehabilitation Law, 5778-2018 (the "Law"), I was tasked by the Company to assess whether the total assets of the company exceed its total liabilities and to evaluate whether the emerging debt settlement provides the creditors with a compensation that fully covers the debts owed to them.
2. The Expert Opinion was prepared for the purpose of filing with the Court and is based on the consolidated financial statements of the Company as at December 31, 2023 (that will be published to the market on March 27, 2024) and more up-to-date financial information about its financial liabilities and cash balances.

Limitation of liability

3. This Expert Opinion was prepared for the Company and is meant for its use only. No other use may be made of this Expert Opinion without Prometheus's prior written approval. Prometheus agrees that this Expert Opinion may be included and/or mentioned as part of the documents that will be filed with the Court and other relevant entities in the framework of the proceeding for the debt arrangement that is under formulation.
4. This work is based on information, explanations, forecasts and representations that I received from the Company and/or parties on its behalf. I assumed that this information is reliable and did not undertake an independent examination of the information. The data was not independently audited by me, and this Expert Opinion therefore does not serve to verify the truth, completeness and accuracy of these data.
5. The Expert Opinion does not include an accounting audit of compliance with the accounting principles. I am not responsible for the accounting presentation of the financial statements of the Company and the companies related to it with respect to the accuracy and completeness of the data and any implications that accounting presentation may have.
6. The Expert Opinion includes a description of the main elements of the methodology and analysis. The description relates to the main material procedures that were employed and is not a complete and detailed description of all the procedures and examinations that were implemented.

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7. An economic valuation is supposed to reasonably and fairly reflect a given state at a particular time on the basis of data that are known by reference to assumptions and forecasts that are estimated. If the information and data on which this Expert Opinion is based are incomplete, inaccurate or unreliable, the results are likely to change. I reserve the right to update the Expert Opinion in light of new data that has not been presented to me. Therefore, this Expert Opinion is only valid as at the date of its signature.
8. This Expert Opinion includes forward-looking information, as defined in the Securities Law, 5728-1968. The information is partly based on know-how that exists as of the date of its signature and on various assumptions and expectations relating both to the Company and various external factors. There is absolutely no certainty that these suppositions and expectations will materialize fully or partially.
9. Neither I nor Prometheus has any dependency on or personal interest in the Company, its shareholders and the Expert Opinion, apart from the fact that Prometheus is receiving a fee for this work. This fee is not contingent on the conclusions of the Expert Opinion and is negligible in relation to Prometheus's annual revenue.
10. No indemnification undertaking was received from the Company in relation to this Expert Opinion.
11. For the avoidance of doubt, it is clarified that this Expert Opinion does not constitute an offer or recommendation or an expert opinion on the feasibility of performing or not performing a transaction of any sort.
12. The Company will not be entitled to receive any amount from me or Prometheus, whether under contract or tort, by statute or otherwise, in respect of lost profits, data or reputation or in respect of any other damage or as punitive or special damages that arise from this Expert Opinion or are otherwise connected with the services provided in the framework of this Expert Opinion, provided that I do not act with malfeasance.
13. The conclusions of the Expert Opinion stem from an independent analysis of all of the materials and data received from the Company, as set forth below, and are based on the assumption that such materials and data do not include any misleading details and that no material information was omitted from them. The conclusions of the Expert Opinion are not exclusively based on a specific element of any of the foregoing.
14. The calculations that appear in this Expert Opinion are rounded, and there may therefore be an immaterial deviation when adding/multiplying the figures that appear in this Expert Opinion and comparing them to the results of the calculations that are presented in it.

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Previous contracts

15. Neither I nor the Firm had any previous contracts with the Company before this Expert Opinion.

Chapter A Summary of the findings arising from the Expert Opinion

16. Gamida Cell is a company that is listed on NASDAQ that develops and markets a drug treatment for blood cancer patients. The Company (together with the Subsidiary) have a negative cash flow of approximately \$7 million per month, and their expected cash balances (cash and cash equivalent) as of April 1, 2024, considering a number of significant payments to be made in the coming days, would come to only approximately \$22.9 million.¹
17. At the same time, as of April 1, 2024, the Company's liabilities significantly exceed the total cash on hand, particularly considering the debt owed to Highbridge, the company's largest creditor, which amounts to approximately \$80 million. Highbridge has a right to claim a default and accelerate the debts of the Company when the cash balances of the Company fall below \$20 million, as projected to occur within a few weeks.
18. The Company is therefore operates in an environment that can be at least defined as an insolvency environment and is anticipated to be unable to meet its obligations and reach insolvency in the coming weeks, unless an arrangement is reached. Against this background, a debt arrangement is currently being formulated with the Company's creditors.
19. This Expert Opinion is provided against the background of the debt arrangement. According to the provisions of section 322 of the Law, the approval of the debt arrangement by the shareholders is required if the following two cumulative conditions are satisfied:
- 19.1 First condition: The total assets of the Company exceed its total liabilities.
- 19.2 Second condition: The debt arrangement offers each creditor consideration that is equal to the full amount of the debt it is owed.

The objective of this Expert Opinion is to examine whether these conditions are satisfied.

20. **The conclusion of the Expert Opinion is that neither of the conditions is satisfied.**

¹ This assessment does not account for approximately \$3.5 million in restricted deposits held by the company.

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21. The first condition is not met. This condition is examined by means of a valuation that I performed using the DCF method, which indicates that the value of the assets of the Company is approximately \$45.6 million lower than its liabilities. As will be elaborated in this opinion, this valuation conclusion is based on the Company's engagement with a leading investment banker over a period exceeding two years, aimed at securing a strategic partner, who would be in charge of the Company's further development and marketing endeavors, either by way of an exclusive license to continue marketing and development of the Company's product, or by way of the purchase of the Company and/or its assets. As will be expounded upon in this opinion, no offers have been received capable of sufficiently covering the liabilities to the creditors.
22. The second condition is also not satisfied, and it has been examined using the same valuation method referenced above. The proposed debt arrangement includes a ca. \$75 million equity swap out of the total debt to Highbridge in exchange for 100% of the Company share capital, equal to approximately \$33.7 million, according to my evaluation, which is significantly lower than the amount of the debt owed to Highbridge.

Chapter B Methodology

Background

23. This Expert Opinion is provided against the background of a debt arrangement of the Company that is under formulation and in accordance with the provisions of section 22 of the Law. The wording of the section is as follows (emphasis added):

Submission of debt arrangement for the approval of interested parties

322 (a) If a motion pursuant to section 321 is filed with the court, it will order that the debt arrangement be submitted for the approval of the creditors.

(b) If the total assets of a debtor that is a corporation exceeds its total liabilities, and the debt arrangement offers each creditor consideration that is equal to the full amount of the debt that it is owed, the offer will also be submitted for the approval of the members of the corporation.

(c) Notwithstanding the provisions of subsections (a) and (b), if the court finds that the submission of the debt arrangement for the approval of the creditors

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impairs a process pursuant to this chapter, it will not order its submission for the approval of the interested parties.

Section (b) above presents two conditions: First, whether the total assets of the company exceeds its total liabilities; second, whether each creditor receives consideration equal to the full amount of the debt that it is owed.

Methodology for examining the first condition in the Law: Valuation

24. If the **fair value** of the assets of the Company (balance sheet and off-balance sheet) exceeds the **par value** of its liabilities,² it can be assumed that the first condition above is satisfied since the asset cash flow (whether from the operation or sale of the assets) will exceed the amount of the debt and will enable the debt to be repaid. To calculate whether the value of the assets exceeds the liabilities, I conducted a valuation of the Company, as follows:

24.1 I calculated the fair enterprise value of the Company using the DCF method. “Enterprise value” refers to value before the addition of cash and deduction of debt.

24.2 To examine whether the value of the assets exceeds the liabilities, the enterprise value calculated earlier must be added to the financial assets of the Company (primarily cash and cash equivalents) and the par value of the debt must be deducted. If the difference is positive, the assets are worth more than the liabilities and *vice versa*.

25. **Discussion regarding the market value of the Company:** In addition to the DCF valuation, it must also be examined whether the market value of the Company on NASDAQ can be used to indicate whether the first condition under the Law is satisfied. I will note that, the market value of Gamida was only ca. \$51.3 million.³ In this regard, I will note that, on the efficient market hypothesis (a hypothesis that the market value is equal to the true value of the Company), a positive market value indicates, *prima facie*, that the **fair value** of the assets of the Company is higher than the **fair value** of its liabilities. However, for the purposes of this Expert Opinion, the market value is an irrelevant factor, from which it cannot be concluded whether the value of the assets exceeds the value of the liabilities, for the following reasons:

25.1 First, market value can never be lower than zero, which ostensibly indicates that the value of the assets is always higher than the liabilities. During my years of experience, I have encountered insolvent companies whose assets have been worth less than their liabilities,

² For more detailed information on this matter, see the Fair Value Forum discussion from 2013: <https://www.runi.ac.il/media/scppb1eh/accec.pdf>, Sections 4 and 5.

³ Data sourced from the Capital IQ system as of March 24, 2024 (the day preceding the date of this Expert Opinion).

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but whose market values have been positive. It is therefore impossible to universally state that a positive market value is an indicator of the value of the assets exceeding the liabilities.

25.2 Second, it is impossible to know with certainty whether the efficient market hypothesis holds true. There may be information asymmetries in the market, and there may be other reasons relating, for example, to the general state of the economy or the life sciences sector that influences market value and causes momentary distortions.

25.3 Third, even if the efficient market hypothesis holds true, it is irrelevant. This is because, as stated above, market value deducts the **fair** value of the liabilities from the value of the assets while, according to the Law, the **par** value must be deducted. Thus, for example, in the case of companies such as Gamida that operate in an environment that can be at least defined as an insolvency environment (as detailed in this opinion), the capital market might estimate that the debt will not be fully repaid and accordingly might attribute a lower **fair value** to it than its par value (in light of the "haircut" that creditors are expected to experience).

26. **Discussion regarding the value offered to the Company by a strategic purchaser:** A tender offer by a strategic purchaser may also indicate the value of the Company. Nevertheless, I have been informed that, for more than two years, the Company, has been engaged in an exhaustive search for a strategic partner aimed, who would be in charge of further development and marketing operations. The objective was to either exclusively license commercial rights to the Company's product, or acquire all of the Company's assets or shares. However, no proposals have been received that would cover the liabilities to the creditors. According to what I was told, approximately 28 leading entities were approached during this process, yet only one offer was received, requiring the "erasure" of most of the Company's liabilities to its creditors, which is impossible to learn from on the Company's value or assets. For details, see Appendix A.

Methodology for examining the second condition of the Law

27. The examination of the second condition of the Law is in accordance with the terms of the debt arrangement itself. If the creditors waive their debt for a consideration that is lower than its par value, the second condition is satisfied. For details of the debt arrangement, see to chapter F.

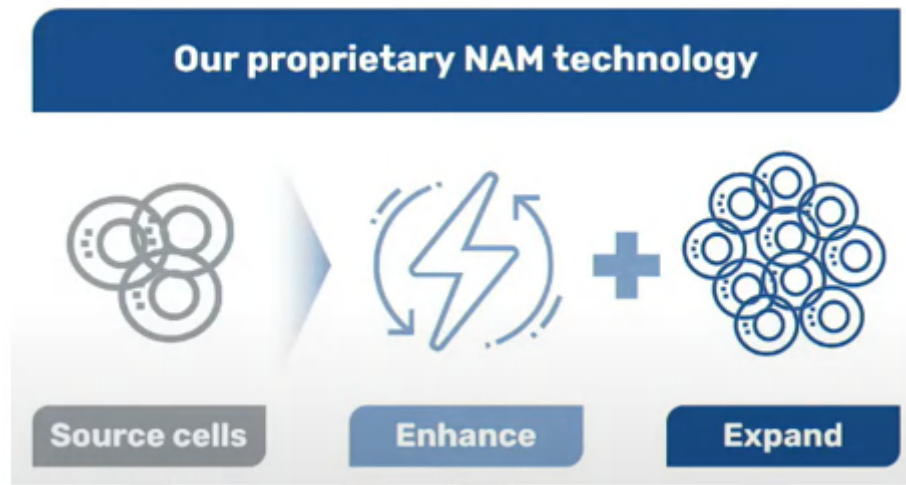
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Chapter C Description of the Company

28. The product and the need

- 28.1 Gamida is a listed company (NASDAQ) that was founded in 1998 and that develops original drugs (patented drugs). The Company's area of activity is cell therapy. Companies that operate in this field convert stem cells from human donors (or the patient himself) into therapeutic tools.



- 28.2 The technology developed by the Company (the technology is known as “NAM”) makes it possible to take stem cells from a foreign donor (i.e., cells that are not from the patient himself), enhance their therapeutic capabilities and increase their number. After the enhancement process, the enhanced stem cells are injected into the patient and find their way to his bone marrow where they create white blood cells for him, which are a critical component of the immune system. This treatment is especially essential for blood cancer patients, whose treatment includes destroying the ability of the body's immune system to create white blood cells. The recovery of these patients depends on the rehabilitation of the immune system through the transplantation of stem cells. The advantage of the Company's technology is that it makes it possible to transplant the cells from a foreign donor who is not necessarily a relative, with a lower risk of rejection of the transplant in relation to other treatments that exist in the market.
- 28.3 After years of clinical trials, the Company received regulatory approval from the FDA on April 17, 2023 to market the Omisirge product to adult patients and children of 12 and

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above. The Company recorded revenue for the first time, which came to \$1.78 million in 2023.

- 28.4 It should be noted that the market is relatively small. The Company estimates that, today, less than 10,000 people undergo stem cell transplants per year (in the framework of cancer treatment, although the technology of the Company might enable this market to be expanded to new audiences for whom the current solutions are unsuitable).⁴

It should also be noted that the Omisirge treatment is unique in that it is classified as an "orphan preparation" in both the US and Europe,⁵ indicating its focus on treating a rare disease. Consequently, it is eligible for financial benefits⁶ and market exclusivity for 7 years in the US and 10 years in Europe, except in extreme cases.⁷

- 28.5 The medical process for the transplantation is complex and expensive and gives rise to high costs. Thus, for example, it takes 30 days to prepare the stem cells for transplantation (this process is conducted at the Company's manufacturing plant in Kiryat Gat), after which the transplant itself must take place at a medical center. At the same time, the relatively small number of potential patients means that the Company must sell the treatment at a high price to recoup its investment in development and the high manufacturing costs. Today, the treatment is sold for approximately \$300,000 (net selling price) per patient, and the price is expected to increase in the future.
- 28.6 The expensive sale price means that it is very difficult to sell the product without cover from the insurance companies. The Company worked successfully on this and, today, insurers pay the cost of the treatment.
- 28.7 The sale process itself is also complex and is conducted via transplant centers. This means that, at the first stage, the Company must enter into a commercial arrangement with transplant centers, and then the doctors operating at these centers must submit a prescription through the Company's patient support services hub, named Gamida Cell Assist, under which the Company also provides support to assist the doctor in selecting an appropriate cord blood unit as starting material to manufacture Omisirge, individually tailored to the patient. It should be emphasized that the product is not an off-the-shelf product but a product that is customized for the patient, and the treatment process is complex and requires skill

⁴ https://www.youtube.com/watch?v=sRGTnea9_Jw&ab_channel=AllianceforRegenerativeMedicine

⁵ The Company's 2022 statements, page 173.

⁶ <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/orphan-drug>

⁷ The Company's 2022 statements, pages 37-38.

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on the part of those involved in delivering the treatment. Only after this, can the process of identifying appropriate patients and delivering the treatment begin.

29. The status of the Company today

- 29.1 Notwithstanding its success in developing the drug and obtaining approval to market it, the commercial launch is in its early stages, while the financing is limited (given the \$7 million per month burn rate). These days, Gamida is forced to undergo a significant round of cuts, that will come into force in late March 2024, and will include closing its plants in Jerusalem and suspending the development of additional products.⁸
- 29.2 Today, the Company has offices in the United States and Israel and a manufacturing plant in Kiryat Gat with a high manufacturing capacity that can serve the manufacture of Omisirge for many years.
- 29.3 Today, the market value of the Company is at a low. The Company was listed on NASDAQ in October 2018 with a market value of approximately \$165 million (pre-money).⁹ It raised an additional approximately \$50 million so that, immediately after the IPO, its value was approximately \$215 million. Since then, the Company has raised many substantial amounts in funding rounds, the most prominent of which was the raising of convertible debt of \$75 million pursuant to a convertible loan from Highbridge in February 2021,¹⁰ following which it reached a record value of approximately \$718 million.¹¹ The value has since decreased, and it is only approximately \$51.3 million.¹²
- 29.4 It should be noted that, since its establishment, the Company has raised more than half a billion dollars, an amount that is typical in the field of developing original drugs.
- 29.5 **It should be noted further that, in recent years, the Company has been searching for a strategic partner (for example, a large pharmaceutical company) to take on the continued financing of the activity until a profit is reached. The fact that Gamida, a company that has a drug being sold, FDA approval and insurance cover, has not succeeded in finding such a partner might indicate that the product is not attractive to larger pharmaceutical companies due to its slow revenue growth and limited**

⁸ See also Note 14 to the Company's 2022 statements.

⁹ <https://www.globes.co.il/news/article.aspx?did=1001258128>

¹⁰ 2022 Statement, p. 111.

¹¹ Source: Capital IQ Information Systems.

¹² Data sourced from the Capital IQ system as of March 24, 2024 (the day preceding the date of this Expert Opinion).

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market size. If the product had greater potential, large pharmaceutical companies would be expected to take on its marketing, but this has not happened.

30. Structure of the companies in the group

Gamida Cell Ltd. has one active subsidiary – Gamida Cell Inc., which is 100% owned by it. Gamida Ltd. is an Israeli company that is listed on NASDAQ, while Gamida Cell Inc. is a private company registered in Delaware, USA.

31. Ownership structure of the Company

As stated above, the Company is listed on NASDAQ. As of March 17, 2024, the holdings in the Company are diffuse (there is no shareholder that holds 10% of the Company),¹³ and the largest shareholders of the Company are investment entities, including American funds and a number of Israeli investment entities (including Clal Biotechnology and Meitav). The international pharmaceutical company, Novartis, has a small and historic holding in the Company.

32. Main Risks involved in the activity of the Company¹⁴

32.1 Insolvency risk – The high negative cash flow of the Company together with the fact that the commercial success of the Company is slow in coming and given the current state of the markets, which makes it difficult to raise capital, and considering that the Company's cash balance will be depleted within the next few weeks. This indicates that the Company is operating within what can be at least defined as an insolvency environment, and insolvency appears inevitable unless an immediate solution is found. . It should be noted that the Company has received a going concern qualification from its auditors. This is the background to the debt arrangement that is under formulation with the creditors of the Company.

32.2 Risk of commercial failure – Notwithstanding the receipt of the FDA approval to market the product and notwithstanding that (a few) sales of the product were recorded in 2023, there is no certainty that the product will be commercially successful. If the product is priced too high and/or the Company's sales team is too small and/or competing products deliver a better solution, and/or it turns out that the product is not effective enough, sales will not increase, and the position of the Company will worsen.

¹³ Source: Capital IQ Information Systems.

¹⁴ For more details, see the Company's annual statements.

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- 32.3 **Risk of clinical failure** – The approval process for the drug included a final clinical trial (Phase III) with only 100 participants. Notwithstanding its success, the trial supplied limited clinical information. There is a definite possibility that, with commercial use of the product and monitoring of patients over time, negative phenomena will be discovered that will cause the product to be abandoned by the market.
- 32.4 **Regulatory risks** – Notwithstanding the approval of the product for marketing by the American regulator (FDA), the regulatory environment may change in the future, *inter alia* on the basis of the results of actual treatment in the commercial environment. These changes may negatively affect the ability of the Company to create sales.
- 32.5 **Geopolitical risk** – As an Israeli company, it is exposed to geopolitical risks, especially recently against the background of the Swords of Iron war. The Company has a plant in Kiryat Gat, and, if it is shut down, this may cause its activity to stop.
- 32.6 **Intellectual property risk** – The commercial success of the Company depends on protecting the patent for its intellectual property and safeguarding its trade secrets. If this protection is undermined, competing manufacturers may utilize this to increase competition against the Company.

Chapter D Analysis of the statements of the Company

General

33. As will be presented below, the Company suffers from an extremely large negative cash flow and, in parallel, an ever-dwindling amount of cash. In light of this, the statements for 2022 and 2023 include a going concern qualification by the auditor.

Analysis of profit and loss

34. An analysis of the profit and loss statements of the company as of December 31, 2023 and the equivalent periods (audited) follow below:

\$ million	2020 Audited	2021 Audited	2022 Audited	2023 Audited (to be published on March 27)
Revenue	-	-	-	1.8

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Change compared to equivalent period

Cost of sale	-	-	-	1.5
Percentage of revenue				81.5%
Gross profit	-	-	-	0.3
Percentage of revenue				18.5%
Sales, marketing, management and general expenses	22.1	37.0	32.3	48.7
Percentage of revenue				2,727.9%
R&D	38.9	50.2	42.7	24.3
Percentage of revenue				1,362.6%
Other expenses (revenue)	-	-	-	0.4
Operating profit (loss)	(60.9)	(87.2)	(74.99)	(73.0)
Percentage of revenue				(4,094.1%)
Net finance expenses (revenue)	0.6	2.6	4.4	(10.0)
Profit (loss) before tax and other expenses	(61.6)	(89.8)	(79.4)	(63.0)
Other expenses (revenue)	-	-	-	-
Profit (loss) before tax	(61.6)	(89.8)	(79.4)	(63.0)
Tax (tax benefits) on revenue	-	-	-	-
Net profit (loss)	(61.6)	(89.8)	(79.4)	(63.0)

35. Details regarding the main items in the statement are as follows:

- 35.1 The Company has recorded losses of approximately \$73 million per year on average in the last few years. The reason for these losses is R&D and marketing expenses. The Company only began recording sales in 2023, and according to what I was told by the management of the Company, the rate of sales is lower than expected.
- 35.2 The Company does not pay tax in light of the losses that it is allowed to carry over (see the analysis of the balance sheet). In this context, it should be noted that, as of December 31, 2023, the Company had losses for carrying over of more than \$400 million in total (most of them from the Company itself and a minority from the subsidiary, Gamida Inc.).
- 35.3 The losses stem from cash flow expenses, so that the Company does not "only" record accounting loss but also a cash flow deficit from operating activities amounting to

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approximately \$7 million per month (it covers the deficit by way of capital and debt raisings):

\$ million	2020	2021	2022	2023 ¹⁵
Negative cash flow from ordinary activity	(50.2)	(81.8)	(70.4)	(79.1)

35.4 Over the years, to finance its negative cash flow, the Company has raised capital by way of issuing shares, and it has also raised debt that is convertible into shares (see details in the balance-sheet items)

Analysis of balance sheet

36. An analysis of the balance sheet of the Company as of December 31, 2023, and a pro forma balance sheet as of April 1, 2024 (around the filing date of this Expert Opinion, taking into account the significant negative flows expected in the coming days). In the right hand column, I have classified the assets into different categories, which will be used later.

¹⁵ To be published on March 27, 2024.

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	Balance-sheet	Last balance sheet (to be published on March 27)	Adjustment of debt to par value and update of cash levels as of the date of the Expert Opinion	Projected balance sheet around the filing date of this Expert Opinion
Classification of item	\$ million	December 31, 2023	December 31, 2023	April 1, 2024
Financial asset	Cash and cash equivalents	46.6	(23.7)	22.9
Financial asset	Short-term restricted deposits	3.1	-	3.1
Operating asset	Inventory	1.9	-	1.9
Operating asset	Accounts receivable	1.6	-	1.6
Operating asset	Prepaid expenses and other current assets	1.4	-	1.4
	Total current assets	54.5	(23.7)	30.9
Financial asset	Long-term restricted deposits	0.4	-	0.4
Operating asset	Property and equipment, net	41.3	-	41.3
Operating asset	Operating lease assets	3.2	-	3.2
Operating asset	Other long-term assets	2.8	-	2.8
	Total non-current assets	47.6	=	47.6
	Total assets	102.2	(23.7)	78.5
Operating liability	Trade payables	1.9	-	1.9
Operating liability	Salaried employees	5.6	(3.2)	2.4
Operating liability	Lease liabilities	1.3	-	1.3
Operating liability	Interest on convertible debt	1.8	(0.8)	1.0
Operating liability	Convertible loan	6.5	(1.5)	5.0
Operating liability	Expenses payable and current liabilities	8.1	(2.2)	6.0
	Total current liabilities	25.2	(7.7)	17.5
Financial liability	Interest-bearing convertible note	73.0	2.0	75.0
Financial liability	Option liabilities	3.3	-	3.3 ¹⁶
Operating liability	Long-term lease liabilities	2.1	-	2.1
Operating liability	Other long-term liabilities	1.5	-	1.5
	Total non-current liabilities	79.9	2.0	81.9
	Total liabilities	105.1	(5.7)	99.4

¹⁶ According to information provided by the Company, considering the current share price, the options are "out of the money". Nevertheless, this right holds genuine economic value.

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Equity	Equity	(2.9)	(17.9)	(20.9)
	Total liabilities + equity	102.2	(23.7)	78.5

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37. Details of the classification of the different items in the balance sheet:
- 37.1 **Operating asset/liability:** An item that is used for the business activity of the Company and that is part of the enterprise value (value net of debt and cash).
- 37.2 **Financial asset/liability:** An item that needs to be added (or deducted) from the enterprise value for calculating the Company's value.
38. Details about the main items in the statement are as follows:
- 38.1 **Equity:** The Company's equity is negative as a result of losses from its activity. As of December 31, 2023, the negative equity of the company was approximately \$3 million, and as of April 1, 2024, the negative equity of the Company is expected to drop even lower, to minus \$21 million in light of the losses of the Company.
- 38.2 **Cash and cash equivalents:** The Company's anticipated cash and cash equivalents as of April 1, 2024, are only approximately \$22.9 million.¹⁷
- 38.3 **Property and equipment:** Property and equipment is the main asset in the balance sheet of the Company. This refers to the reduced cost of the Company's plant (manufacturing facility) in Kiryat Gat, where it manufactures its products. The reduced cost encompasses the plant itself, leasehold improvements, machinery, equipment, and office furniture. Given the low fair value of the Company's assets determined according to the valuation I conducted (refer to Section 49), I conclude that it is reasonable to assume that the fair value of the plant is lower than its book value.
- 38.4 **Convertible loan (2022 Note)**
- This is a loan convertible into shares of the Company that was raised in December 2022 from Highbridge (the amount raised was \$25 million).
 - The debt bears interest at 7.5% that is payable quarterly.
 - The borrower is Gamida Inc. (the subsidiary of the Company), and Gamida is a guarantor of the debt.
 - As of the Expert Opinion Date, the majority (\$20 million) of the debt has been repaid, mostly by way of conversion into shares (payment of principal through

¹⁷ This amount excludes restricted cash totaling \$3.5 million, which is reflected in the balance sheet.

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shares of Gamida instead of cash), and some has been repaid through cash payments in accordance with a repayment schedule.

- According to Note 9 of the statements of the Company, as of December 31, 2023, the fair value of the debt balance was \$6,505,000. This is after the Company adjusted the net debt to its fair value using a capitalization rate of 31%.¹⁸ This interest rate represents the high risk of the debt of the Company. For additional details, see Appendix B. The outstanding debt balance as of April 1, 2024 is anticipated to be approximately \$5 million.
- The loan contains various stipulations that apply to the Company, one of which is a liquidity clause that allows Highbridge to make the debt immediately repayable if the (consolidated) cash balance of the Company falls below \$20 million, as long as the outstanding debt balance exceeds \$5 million.
- Another clause contains certain restrictions on raising additional debt.

38.5 Long-term convertible note (2021 Note):¹⁹

- This is a promissory note convertible into shares that was issued on February 16, 2021 and that is repayable in 2026. The outstanding amount on this note is \$75 million.
- Highbridge is the only creditor under this note, as well.
- The borrower is Gamida Inc. (the subsidiary of the Company), and Gamida is a guarantor of the debt.
- The note bears interest at the rate of 5.875%, payable every half year.
- Additionally, the note can be converted into shares at a conversion price of \$17.76 per share.²⁰ Given that the stock is being traded at \$0.39²¹ it is improbable that the conversion will occur (if the note is converted, the note holder will receive \$75 million divided into \$17.76 per share, which comes to 4.2 million shares; the market price of the shares today is approximately only \$1.65 million instead of the \$75

¹⁸ Also according to Note 9 of the 2003 statements, the capitalization rate that was used for the same calculation as of December 31, 2022 was similar and was 32.8%.

¹⁹ Additional details in Note 5 of the 2023 statements of the Company.

²⁰ See Note 5 to the 2023 statements.

²¹ Data sourced from the Capital IQ system as of March 24, 2024 (the day preceding the date of this Expert Opinion).

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million of the note). Nevertheless, the note contains various covenants that apply to the Company, one of them is a liquidity covenant that enables Highbridge to accelerate the debt if the cash balance of the Company falls below \$20 million, and provided that the outstanding debt balance exceeds \$15 million (and as mentioned, the current outstanding balance is \$75 million, thus the covenant is in effect). In this situation of debt acceleration, Highbridge is likely to receive significantly higher consideration than if the note is converted.

- I will note that an additional covenant that applies to the Company in relation to the note revolves around particular prohibitions against raising additional debt.

- **The management of the Company does not expect a significant raising of sources in the near future since its raising efforts have not borne fruit. As of April 1, 2024, the company will have a cash balance of only \$22.9 million, while its cash burn rate is approximately \$7 million per month. Accordingly, the Company is likely to find itself in breach of the above-mentioned liquidity covenant and, assuming Highbridge claim a default and accelerate the debts, to enter into insolvency in the next few weeks.**

38.6 **Expenses payable and current liabilities (approximately \$8.1 million):** as of December 31, 2023, approximately half the amount is due to a settlement agreement with Lonza for termination of the service agreement with it in the past.

39. **Additional details about changes in the statements between December 31, 2023 and April 1, 2024 are as follows:**

39.1 **Changes in cash balances and equity:** As stated above, the cash balances and equity of the Company have declined in light of its losses.

39.2 **Changes in the short-term convertible debt (2022 Note):** The Company repaid part of the debt during the first quarter. Additionally, in order to make the calculations in accordance with the Law (see the methodology chapter), I have presented the debt at its par value rather than its fair value.

39.3 **Changes in the long-term convertible debt (2021 Note):** The par value of the long-term convertible debt is \$75 million.²² In the statements, the debt appears with a value of only approximately \$73 million since the Company recorded the expenses of raising the debt (an

²² Additional details in Note 5 of the 2023 statements of the Company.

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amount of approximately \$4.2 million) as an asset that offsets some of the debt, and, the asset is reduced each year, so that the offset is small. In order to make the calculations in accordance with the Law (see the methodology chapter), I have presented the debt at its par value rather than its fair value.

- 39.4 Partial repayment (approximately \$2 million) of outstanding expenses, a \$0.8 million payment of accrued interest, and a decrease of approximately \$3.2 million in liabilities to employees due to payments made by the cutoff date of April 1, 2024.

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40. Summary balance sheet

A summary balance sheet as of the date of the valuation for usage in the following chapters is as follows:

	Notation	Last balance sheet ²³	Adjustment of debt to par value and update of cash levels as of the date of the Expert Opinion	Pro forma balance sheet around the filing date of this Expert Opinion
\$ million		December 31, 2023	December 31, 2023	April 1, 2024
Financial assets [mainly cash and cash equivalents]	a1	50.0	(23.7)	26.3
Financial liabilities	a2	84.6	(0.3)	84.3
Total financial assets (debts), net	A=a1-a2	(34.6)	(23.3)	(57.9)
Operating assets	b1	52	-	52
Operating liabilities	b2	21	(5)	15
Total operating assets, net	B=b1-b2	31.7	5.4	37.1
Equity	C	(2.9)	(17.9)	(20.9)

The table above indicates that the Company has financial liabilities at a par value of \$57.9 million as of the Expert Opinion Date. Additionally, it can be seen that the financial assets (comprising cash and cash equivalents of \$22.9 million and restricted cash of \$ 3.5 million) stand at approximately \$26.3 million.

Details of off-balance sheet liabilities

41. **Contingent liabilities owed to the Israel Innovation Authority:** According to what I was informed by the management of the Company, the theoretical debt to the Israel Innovation Authority in respect of grants received in the past amounts to approximately \$44 million. The debt will be repaid by way of royalties at a rate of between 3% and 5% of the Company's income (provided that it maintains sufficient sales) as a result from the information developed with the assistance of grants from the Innovation Authority.

²³ To be published on March 27, 2024.

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42. **Rental agreements:** According to Note 4 of the 2023 statements of the Company, the Company has rental liabilities of approximately \$3.4 million in 2024-2027.

Liens and guarantees

43. According to the report of the Registrar of Companies:
- 43.1 There is a first fixed lien in favor of Highbridge over the intellectual property of the Company (patents, know-how, trademarks, licenses and so forth) and over the shares of the subsidiary, Gamida Inc. and any other asset of the Company.
- 43.2 There is a lien in favor of Bank Leumi over bank accounts with secured amounts of approximately NIS 10 million.

Summary of the financial ratios and data that demonstrate that the total liabilities of the Company exceed its total assets

44. The financial data and ratios that arise from the statements of the Company demonstrate that the total liabilities of the Company exceed its total assets. A number of examples are as follows:
- 44.1 The equity of the Company is negative.
- 44.2 The Company has a going concern qualification.
- 44.3 The ratio between the cash burn rate (approximately \$7 million per month) and the balance of cash and cash equivalents (approximately \$22.9 million) is very low. Consequently, the Company will not be able to continue financing its activity in a few months.
- 44.4 The Company has a liquidity covenant under the 2021 Note and the 2022 Loan, according to which, when the balance of cash and cash equivalents reaches \$20 million, the debt can be accelerated immediately, which given the rate of cash burn may happen in a few weeks.
- 44.5 The valuation presented in the following chapter further supports the aforementioned conclusion.

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Chapter E Valuation of the Company

Assumptions for the valuation

45. As stated in the methodology chapter, the examination in this Expert Opinion includes a valuation of the Company using the DCF method.
46. The valuation that I prepared is as of March 25, 2024²⁴ and is based on the most current forecasts prepared by the management of the Company. According to what I was informed by the management of the Company, these forecasts were used by the Company for capital raising purposes.²⁵
47. **Assumptions for the forecast:** The forecasts are based on the following assumptions:
 - 47.1 The Company will continue marketing and manufacturing its product itself at the plants of the Company in Kiryat Gat. According to what I was informed, the Company has also been examining in parallel the alternative of bringing in a strategic investor or strategic partner from the pharmaceutical industry and also hired the services of an investment banker for this purpose who has been working for more than two years to either exclusively license commercial rights to the Company's product, or sell the Company its assets. However, according to what I was informed, these attempts have not matured into a transaction due to the lack of interest on the part of investors.²⁶
 - 47.2 I have assumed that the Company will succeed in raising the finance required for the negative cash flow in the next few years. This assumption is by no means certain given the foregoing.
48. **Particular assumptions for the forecast:**
 - 48.1 **Length of the period of the forecast:**

The forecast that I received from the management of the Company is for 15 years. During these years, the Company will have patent protection and the sale prices of the product are expected to be high. For the purpose of the valuation, I prepared a forecast for two additional

²⁴ The cash balance and cash equivalents were considered based on the forecast for April 1, 2024.

²⁵ I will note that the forecast of the Company begins on January 1, 2024, and includes a forecast for all of the calendar years from 2024 to 2038, while the forecast for my valuation begins on March 1, 2024. For the sake of simplicity, "Year 1" in my forecast relates to the 2024 of the Company and *vice versa*, "Year 2" relates to 2025 and *vice versa* and so forth.

²⁶ See also Appendix A.

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years (the 16th and 17th years). The final year will serve as a year that represents the continued operation of the Company to infinity, as standard for DCF valuations.

In the two years that I added to the forecast, I assumed a decrease in the prices of the product to reflect the entry of competition into the market after the patent protection for the product expires. I decreased the price per unit so that it will cause the operating profit of the Company to be approximately 16%, which is the profit margin of companies that sell drugs without patent protection.²⁷

- 48.2 **Number of units of the product that will be sold:** The number of units increases gradually from 32 units in the first year until it reaches 840 units in the 15th year, after which it remains fixed. I will note that the plants of the Company are constructed for this capacity so that, in the next few years, it will have excess manufacturing capacity. I will note that, in the 12 months that preceded the preparation of this Expert Opinion, the Company sold approximately 10 units of the product.
- 48.3 **Revenue per unit:** In accordance with the forecast of the Company, the price increases gradually by 5% per year from \$ 300,000 (net sale price) per unit in the first year to approximately \$600,000 per unit in the 15th year. From the 16th year, I assumed that prices will decrease again to approximately \$350,000 per unit in accordance with what I noted about the entry of competitors into the market when the patent protection expires. From the 16th year and onwards, the annual growth in prices will be 2% per year.
- 48.4 **Revenue:** In accordance with the assumptions of the Company above, revenue increases gradually from approximately \$9.5 million in the first year to \$493 million at the peak in the 15th year. I will note that this is an optimistic forecast. After this, revenue falls to approximately \$300 million with the entry of competition.
- 48.5 **Cost of sale:**
- 48.5.1 Gamida's product is complex and difficult to manufacture, and its costs of sale are high in relation to ordinary drugs. The Company estimates that the cost of sale per unit will decrease from approximately \$180,000 in the first year to approximately \$150,000 in the future.

²⁷ See Appendix C.

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48.5.2 Additionally, the cost of sale includes payments to the Israel Innovation Authority of 3% - 5% of gross sales (see above) until repayment of the total grant in 2029 (approximately \$44 million in total).

48.5.3 Accordingly, the total cost of sale is expected to decrease from approximately 64% in the first year of the forecast to approximately 25% in the final year.

48.5.4 In the 16th year and onwards, I assumed that the cost of sale will remain fixed in dollar terms notwithstanding the decrease in the volume of sales, which, as stated above, is in accordance with the assumption of an increase in competition.

48.6 **Operating expenses disregarding depreciation and amortization**

48.6.1 The main operating expenses are sales, marketing, management and general expenses. The Company assumed low R&D expenses (approximately 1% of turnover), which is consistent with the assumption that all of the efforts will be directed to improving the Company's existing product without attempting to develop additional products (the cost of developing a product in the Company's area of activity is likely to reach hundreds of millions of dollars and more).

48.6.2 An additional element of the operating expenses are the expenses of the plant in Kiryat Gat. These expenses are high in relation to the scale of the activity and stem from the excess capacity of the plant. In 2024, this cost is approximately \$11 million, although the cost drops sharply thereafter.

48.6.3 The operating costs amount to a total of approximately \$60 million in the first year and gradually increase to approximately \$120 million by the 15th year (the year in which the patent protection expires). In the following years, I assumed that the operating expenses will remain fixed in dollar terms similar to the assumption above about the cost of sale.

48.6.4 As stated above, the operating expenses disregard depreciation and amortization.

48.7 **EBITDA profit received:**²⁸ As a result of the assumptions above, the Company expects to record an EBITDA loss of approximately \$64 million in the first year, a loss of \$46 million in the second year and a loss of \$8 million in the third year. Thereafter, the Company is expected to switch to a positive EBITDA profit that will increase until it reaches

²⁸ EBITDA means Earnings Before Interest Tax Depreciation and Amortization.

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approximately \$235 million in the 15th year. Thereafter, I assumed a decrease in revenue, which leads to a decrease in EBITDA to approximately \$50 million per year.

- 48.8 **Depreciation and amortization expenses (for the calculation of profit before tax):** Depreciation and amortization expenses of approximately \$4-5 million per year until the property and equipment finishes being amortized were assumed. Thereafter, depreciation in the amount of equity investments was assumed. The Company assumed equity investments of \$0.5 million per year. I will note that this is an optimistic assumption.

Note: Like depreciation and amortization, equity-based compensation (employee options) is not a cash-flow expense. Nevertheless, in contrast to depreciation and amortization, which must be factored out of the expenses for the purpose of calculating value, it is incorrect to factor out share-based compensation from the expenses. This is because the purpose of the valuation is to estimate the value of the assets of the Company in connection with the Law on the understanding that the shares are an asset that might go to the creditors. While share-based compensation may not be part of the cash flow and therefore does not, on the face of it, reduce the value of the assets of the Company, it entails the issuance of new shares to employees, which will dilute the holding of the investors and reduce the value of their shares that will be transferred to the creditors. In light of this, I treated the share-based compensation as an expense for all intents and purposes that reduces value.

- 48.9 **Tax expenses:** According to the statements as of December 31, 2023, the Company has losses that can be carried over of approximately \$405 million (including within the subsidiary). I assumed that an additional loss of approximately \$20 million was recorded in the first quarter of 2024. I assumed that the Company will utilize these losses and will only begin paying tax in the 10th year of the forecast.
- 48.10 **Capital investments:** According to the assumptions of the Company, its capital investments will amount to approximately half a million dollars per year (apart from the second and third years in which \$5 million will be invested per year). As stated above, this is an optimistic assumption in light of the fact that the Company is a manufacturing company.
- 48.11 **Negative cash flow from investment in working capital:** According to the assumptions of the Company, the investment in working capital will amount to approximately \$10 million in the first years, which are characterized by sharp growth, and, thereafter, the investment will gradually decrease to approximately \$5 million per year. In the 16th year, in which a decrease in prices is expected, the investment in working capital is expected to

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be greatly utilized and, from the representative year, the investment will be approximately \$2 million.

- 48.12 **Capitalization rate:** In light of the high risk nature of the Company's area of activity and the materialization of the forecast of the Company and in light of the optimistic assumptions, the capitalization rate should be high. Accordingly, I used a capitalization rate of 31%. This rate is identical to the capitalization rate used by the external valuer of the Company to revalue Highbridge's short-term convertible loan (a loan of \$25 million, as stated in the chapter analyzing the statements).²⁹ This is a conservative assumption since the share risk of the Company is higher than the debt risk.

I will note in this context that, as conveyed to me by the Company, it only revalues the convertible loan to Highbridge in its statements but not the convertible note (the convertible note appears at par value rather than fair value).

Results of the valuation

49. The enterprise value before deducting net financial liabilities is \$12.3 million.³⁰ Deducting the \$57.9 million³¹ of net financial liabilities from this enterprise value **brings the company value to negative of minus \$45.6 million.**³² Hence, the value of the assets of the Company is \$45.6 million lower than its liabilities. **This means that the fair value of the assets of the Company is insufficient to repay its liabilities (liabilities exceed assets), even based on the assumption (which is uncertain), that the Company will be able to raise cash to finance its operations.**

Sensitivity analysis of the value of the Company

50. The model is very sensitive to various parameters. Two parameters to which the model is especially sensitive are the capitalization rate and the annual increase in the price per unit. Nevertheless, in light of the substantial debt that the Company has, far-reaching assumptions must be made to obtain a positive value:

²⁹ See also Note 9 of the 2023 statements of the Company.

³⁰ For additional details see the cash flow forecast in Appendix D.

³¹ See section 40 above.

³² It is customary to state that, if a company receives a negative value, then the value is zero.

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		Capitalization Rate								
Annual increase in price per unit		23%	25%	27%	29%	31%	33%	35%	37%	39%
	3%	4	(17.8)	(36.2)	(51.4)	(64.2)	(74.9)	(83.9)	(91.4)	(97.9)
	4%	21	(3.8)	(24.2)	(41.1)	(55.3)	(67.1)	(77.1)	(85.5)	(92.7)
	5%	39	11.4	(11.2)	(29.9)	(45.6)	(58.7)	(69.8)	(79.1)	(87.0)
	6%	59	28.1	3.0	(17.8)	(35.1)	(49.7)	(61.9)	(72.2)	(81.0)
	7%	80	46.2	18.4	(4.6)	(23.8)	(39.8)	(53.4)	(64.8)	(74.5)

The forecast of the Company is very optimistic. Yet, it still yields a negative value for the Company. The sensitivity analysis indicates that a positive Company value can be obtained only if the capitalization rate is assumed to be lower than its appropriate level (the capitalization rate is a measure of risk) or assuming unreasonable rates of annual product price growth.

51. I will note that another assumption to which the model is sensitive is the number of units sold. The Company only achieves a cash flow balance if it sells approximately 400 units of the product per year, and to recoup its past investments, it must sell much more.

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Chapter F Analysis of the debt arrangement under formulation

52. Background

In the previous chapter, I examined whether the total assets of the Company exceeds its total liabilities as per the first condition under the Law (see the methodology chapter). In this chapter, I will examine the second condition under the Law, namely whether each creditor will receive consideration equal to the total amount of the debt it is owed. For this purpose, I will analyze the main terms of the debt arrangement under formulation.

53. Description of the main sections of the draft debt arrangement under formulation

53.1 Conversion of the 2021 Note into shares: Highbridge will convert the entire 2021 Note (with a par value of \$75 million) into shares, so that, after the conversion, it will hold 100% of the shares of the Company, and the Company will be delisted. The value of the shares is approximately only \$33.7 million, in accordance with the following calculation:

\$ million	Amount	Source
Enterprise value	12.3	My valuation under Section 49 above
Less: Balance of 2022 Note	(5.0)	See balance sheet of the Company – section 36 above
Plus: Gross financial assets	26.3	See summary balance sheet in section 46 above
Total	33.7	

It emerges from the table that, in consideration of waiving a promissory note of \$75 million, Highbridge will receive assets equal, according to my evaluation, to only \$33.7 million, so it means a \$41.3 million debt "haircut". This "haircut" is on top of Highbridge's undertaking to infuse additional cash into the Company as part of the evolving debt arrangement (see below).

53.2 Additional injection of capital: subject to the approval of the debt arrangement, Highbridge will not only wave the debt, but also inject \$30 million into the Company as a new loan. In addition, Highbridge might inject up to another \$15 million in the future, subject to the terms of the agreements between the Company and Highbridge.

53.3 I will note that according to the information provided to me, the past debts (as defined in the debt arrangement) owed to the other creditors will not be written off, and they will not be affected by the debt arrangement.

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54. Hence, it emerges that not only is Highbridge waiving all of the debt due to it under the 2021 Note for consideration tens of million of dollars lower than its par value, but it is also required to inject additional capital.

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Chapter G Conclusions of the Expert Opinion

55. Further to that stated in the methodological chapter, it is necessary to submit the arrangement of the Company for the approval of the shareholders if the following two conditions are satisfied cumulatively:
- 55.1 First condition: The total assets of the Company exceed its total liabilities.
- 55.2 Second condition: The debt arrangement offers each creditor consideration that is equal to the full amount of the debt it is owed.
56. In light of the fact that the net financial liabilities of the Company are greater than its enterprise value (see the valuation chapter), the first condition is not satisfied.
57. As for the second condition, it is also not satisfied. This is because the debt arrangement under formulation requires the main creditor, Highbridge, to convert its promissory note with a par value of \$75 million into shares of the Company, which are worth only \$33.7 million, according to my valuation.³³ That is, even if Highbridge receives 100% of the shares of the Company, this is insufficient to cover the debt.
- 58. Conclusions of the Expert Opinion: Neither of the conditions enumerated in the Law for submitting the Company's emerging debt arrangement for the approval of the shareholders is satisfied: (a) the Company's liabilities exceed its assets and (b) the Company's creditors do not receive full payment as part of the emerging debt settlement.**

³³ See Section 53 above.

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Appendices

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Appendix A The attempts to sell the Company or find a partner

59. As conveyed to me, for more than two years, the Company has been conducting an exhaustive process of searching for an investor/strategic partner with the support of one of the world's leading investment bank that approached 28 leading entities in an attempt to find a partner, who would assume further development and marketing operations, either by exclusively licensing further marketing and development of the Company's product, or acquiring the Company or all or substantially all of its assets. Nevertheless, during this process, only one offer has been received that is probably irrelevant, and it is impossible to learn anything from it about the value of the Company.
60. The offer that has been received is from a third party public company that operates in the area similar to that of Gamida, currently in the clinical stages of product development. Below are some data about said third party from the Capital IQ information system as of March 19, 2024, indicating that the offer is unattractive (due to confidentiality reasons, details revealing the identity of the third party will not be disclosed):
 - 60.1 Minor annual revenues (a few million dollars) with little or no growth.
 - 60.2 Annual losses amounting to tens of millions of dollars.
 - 60.3 High debt balances exceeding \$100 million.
 - 60.4 Low cash balances of approximately \$70 million.
 - 60.5 Market value significantly lower than the capital raised by the Company since its inception.
 - 60.6 **Based on the above, it appears that a merger between the Company and the potential buyer would result in an entity with annual losses exceeding \$150 million and probably, a slim chance of survival.**
61. Furthermore, the terms of the offer itself are not fully finalized, making it impossible to deduce the value of the Company's operations from the offer.
62. The offer does not include any cash element, and it is entirely uncertain that the purchaser will have the financing to cover Gamida's losses in the next few years. Additionally, as conveyed to me, the transaction requires many approvals (including the approval of the secured creditors of the potential buyer), while there is no certainty that such approval will be provided, which in any case, will take a long time to obtain, during which the Company is likely to go into insolvency.

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63. **It is important to emphasize that the very fact that Gamida, a company that has a drug being sold, FDA approval and insurance cover, has not succeeded in finding an investor among the larger pharmaceutical companies to assist with the drug marketing, might indicate that the product is unattractive to larger pharmaceutical companies due to its slow revenue growth and limited market size. It might have been anticipated that if the product held greater potential, major pharmaceutical companies would have taken over its marketing. However, this scenario did not materialize.**

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Appendix B Capitalization rate

64. To capitalize the cash flow in the forecast presented above, we used a capitalization rate of 31%, which the Company uses to establish the fair value of the secured convertible debt that has been advanced to it (the “**Convertible Debt**”) (see also Note 9 of the 2023 statements of the Company). The capitalization rate was established by an external valuer in valuing the Convertible Debt.
65. The Convertible Debt is convertible debt that is subject to first-ranking security for which a first lien exists over all of the assets of the Company. The amount of the debt originally issued was \$25 million, and it is expected to be repaid within 24 months of the date of its issue (December 2022). The final repayment date is December 2024.
66. The interest on the debt is 7.5% and is paid quarterly, and the borrower has the option of paying it in cash or by way of issuing shares to the lender at a discount of 5% in relation to the weighted average price over the 10 days prior to the payment date.
67. Under the terms of the loan, the lender has the option of converting the unpaid principal balance into shares of the Company at a conversion ratio of \$1.91 per share, while additional terms are defined under the loan under which the borrower has the option of forcing the conversion of the debt into shares.
68. **According to financial theory, the cash flow capitalization rate of a company is higher than its loan capitalization rate, *inter alia*, because of the priority given to the creditors on the bankruptcy of the company and the interest that they receive. Hence, my use of the debt capitalization rate when capitalizing the cash flow of the Company is conservative and gives rise to a maximalist calculation of value. Use of a higher capitalization rate would reduce the value that I calculated for the Company.**

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Chapter C Profit margins of companies that sell generic drugs

69. This appendix calculates the operating profit of companies that sell drugs in a competitive market without patent protection (“generic drugs”). A generic drug is a drug whose patent has expired and that any drug manufacturer may manufacture. Companies that sell generic drugs operate in a competitive market as compared to companies that sell patented drugs, and their profit margins are therefore relatively lower. A sample follows below (source of the data: the paid database of Capital IQ).
70. A list of the companies used in the sample is as follows:

Teva Pharmaceutical Industries Limited	NYSE:TEVA
Hikma Pharmaceuticals PLC	LSE:HIK
Sawai Group Holdings Co., Ltd.	TSE:4887
TOWA Corporation	TSE:6315
Amneal Pharmaceuticals, Inc.	NasdaqGS:AMRX
Glenmark Pharmaceuticals Limited	NSEI:GLENMARK
Krka, d. d.	LJSE:KRKG
Zydus Lifesciences Limited	NSEI:ZYDUSLIFE
Lupin Limited	BSE:500257
Dr. Reddy's Laboratories Limited	BSE:500124
Cipla Limited	NSEI:CIPLA
Aurobindo Pharma Limited	NSEI:AUROPHARMA
Biocon Limited	NSEI:BIOCON
Viartis Inc.	NasdaqGS:VTRS
Sandoz Group AG	SWX:SDZ
Sun Pharmaceutical Industries Limited	NSEI:SUNPHARMA

71. The results of the sample are as follows:

	2018	2019	2020	2021	2022	2023
Median	14%	14%	15%	16%	16%	14%
Average	15%	14%	14%	16%	16%	16%

The average operating profit of the companies is 16%.

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Appendix D Cash flow forecast

72. A cash flow forecast stemming from the assumptions in the valuation chapter is below:

\$ million	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	TY
Units of the product to be sold	32	138	329	535	670	723	744	760	776	788	804	816	828	832	840	840	857
Net revenue per unit	0.30	0.31	0.33	0.34	0.36	0.38	0.40	0.42	0.44	0.46	0.48	0.51	0.53	0.56	0.59	0.36	0.36
Revenue	9.5	43	108	184	242	274	296	317	340	363	388	414	441	465	493	315	321
Percentage change in relation to equivalent period	432%	353%	150%	71%	31%	13%	8%	7%	7%	7%	7%	7%	7%	6%	6%	(36%)	2%
Cost of sale (excluding depreciation and amortization)	(6.1)	(25)	(51)	(82)	(106)	(113)	(105)	(108)	(113)	(116)	(118)	(121)	(123)	(124)	(126)	(129)	(131)
Percentage of revenue	64%	58%	47%	45%	44%	41%	36%	34%	33%	32%	30%	29%	28.0%	27%	26%	41%	41%
Gross profit (excluding depreciation and amortization)	3.4	18	57	102	136	160	190	209	227	246	271	293	318	342	367	186	190
Percentage of revenue	36%	42%	53%	55%	56%	59%	64%	66%	67%	68%	70%	71%	72%	73%	74%	59%	59%
Total operating expenses (excluding depreciation and amortization)	(67.9)	(64)	(65)	(67)	(71)	(74)	(78)	(84)	(88)	(94)	(103)	(109)	(116)	(125)	(132)	(135)	(138)
Percentage of revenue	715%	149%	60%	37%	29%	27%	26%	26%	26%	26%	27%	26%	26.3%	27%	27%	43%	43%
EBITDA profit	(64.5)	(46)	(8)	34	65	86	112	125	139	152	167	184	202	217	235	51	52
Percentage of revenue	(680%)	(108%)	(7%)	19%	27%	31%	38%	39%	41%	42%	43%	44%	46%	47%	48%	16%	16%
Depreciation and amortization	(4.2)	(4.1)	(4.2)	(5.8)	(5.8)	(5.8)	(5.8)	(5.7)	(5.7)	(4.2)	(2.0)	(2.1)	(2.1)	(0.5)	(0.6)	(0.6)	(0.6)
Operating profit	(68.7)	(50)	(12)	28	59	80	107	119	133	148	165	182	200	216	234	50	51
Percentage of revenue	(724.3%)	(117.2%)	(11.3%)	15%	24%	29%	36%	38%	39%	41%	43%	44%	45.3%	47%	47%	16%	16%
Tax revenue (expenses)	-	-	-	-	-	-	-	-	-	(15)	(20)	(22)	(24)	(26)	(28)	(14)	(14)
Tax rate	-	-	-	-	-	-	-	-	-	10%	12%	12%	12%	12%	12%	27%	27%
Capital investments	(1.0)	(4.5)	(5.9)	(0.4)	(0.5)	(0.5)	(0.5)	(0.5)	(0.5)	(0.5)	(0.5)	(0.5)	(0.5)	(0.5)	(0.5)	(0.6)	(0.6)
Percentage of revenue	11%	10%	5%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Positive (negative) cash flow from change in working capital	(9)	(12)	(10)	(14)	(12)	(8)	(5)	(5)	(5)	(5)	(6)	(6)	(6)	(5)	(8)	52	(2)
Cash flow	(74.9)	(63)	(24)	19	52	78	107	120	133	132	141	156	171	185	198	88	36
Divided by capitalization	1.15	1.50	1.97	2.57	3.37	4.42	5.79	7.58	9.93	13.01	17.05	22.33	29.26	38.33	50.21	65.77	19.07
Capitalized cash flow	(65)	(42)	(12)	8	15	18	19	16	13	10	8	7	6	5	4	1	2

EXHIBIT C

Insolvency Proceeding 63461-03-24 Gamida Cell Ltd. v. The Commissioner of Insolvency et al.

Before: The Honorable Judge Ya'akov Persky

In the Matter of: The Insolvency and Financial Rehabilitation Law, 5778-2018
(Hereinafter: the "Law")

And in the Matter of: Gamida Cell, Ltd.
Via its counsel, Pinni Yaniv, Adv., and Merav Ben-Artzi Halpern, Adv., and Dorin Erdis, Adv.
(Hereinafter: the "Company")

And in the Matter of: The Highbridge Group
Via its counsel, Gilad Wekselman, Adv., Yaniv Dinovitch, Adv., Neri Lavie, Adv., and Ron Ben Menachem
(Hereinafter: "Highbridge")

And in the Matter of:
1. Bio Medical Investment (1997)
2. Levin Capital Strategies
3. Elbit Medical
4. Clal Biotechnology
5. Yitzchak Aharonov
And 44 additional shareholders
Via their counsel Guy Gissin, Adv. and Yoel Freilich, Adv., and Koby Meshi, Adv.
(Hereinafter: the "Shareholders")

And in the Matter of: The Commissioner of Insolvency and Financial Rehabilitation—Corporations Department
Via Gali Atron, Adv.
(Hereinafter: the "Commissioner")

Judgment

The subject of this Judgment is the Company's application for a Certification of Debt Arrangement pursuant to the provisions of Part J of the Law, an arrangement according to which the creditors shall be repaid in full while the rights of the Shareholders shall be voided, despite contingent value rights that they shall receive.

The Applicant Company

1. The Applicant, Gamida Cell, Ltd., (hereinafter: the "**Company**"), was founded in 1998, and in October 2018, went public and became a public company listed on Nasdaq. The Company's registered address is in Kiryat Gat, where the production plant is located. Until recently, the Company employed approximately 100 employees; at the time of submitting the Application and due to downsizing, approximately 75 employees are employed. The Company has offices in the US. The Application was submitted, as the Company argues, in order to avoid reaching insolvency and dissolution, by way of an Application for a Certification of Debt Arrangement pursuant to Part J of the Law.

Insolvency Proceeding 63461-03-24 Gamida Cell Ltd. v. The Commissioner of Insolvency et al.

The Company's Business

2. The Company develops original drugs in the field of cell therapy and a technology that enables to collect human donor stem cells from external donors (meaning, not from the patient). Following an enhancement procedure, the enhanced cell stems are injected into the patient, and they find their way to his bone marrow where they produce white blood cells, a critical element of the immune system. The drug's current indication is for the treatment of leukemia patients. The Company developed the NAM technology, which enables the manufacturing of products for the treatment of allogenic cells with curative potential for patients in the field of personalized medicine. In 2023, the FDA approved Omisirge, a drug developed by the Company. In 2023, this drug led the Company to earn a revenue of USD 1.78 million for the first time. The Company implemented the NAM cell enhancement technology on NK killer cells, and is in the development stages of a GDA-201 product, a natural killer cells immunotherapy collected from healthy donors which undergoes an enhancement and improvement process using the Company's technology.

The Lender – Highbridge

3. The Highbridge Fund (which incorporates three different entities, hereinafter: "**Highbridge**") lent, with the Company's guarantee, significant sums in the amount of USD 100 million to the Company's subsidiary company, Gamida Cell, Inc. (hereinafter: the "**Subsidiary Company**" or the "**American Company**"). According to a deed from 2021, it is a convertible shareholder loan of USD 75 million payable in February 2026, and according to a deed from 2022, an additional loan of USD 25 million was granted, whose balance as of 03/31/24 is of USD 4.9 million, and whose final repayment date is in December 2024. The above amounts were contingent upon a number of conditions, including a solvency covenant according to which if the cash amounts and cash value in the Company's books is less than USD 20 million, Highbridge will be entitled to declare the loan immediately due and payable. The Application detailed that by 04/01/2024, the cash balance is expected to be of around USD 22.9 million, with a monthly cash rate of approximately USD 7 million a month. By 04/30/24, the Company assessed that the cash balance will be of USD 14.4 million, meaning Highbridge is entitled to declare the loan immediately due and payable. The Company asserted that in any event, within a few weeks it is expected to be left cashless, and undoubtedly, insolvent. The Company's application was supported by an expert's opinion on its behalf, a valuation by Mr. Eyal Szewach, a financial expert from Prometheus Financial Advisory, Ltd.

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Fundraising Efforts and Strategic Moves the Company has Made in the Last Year and a Half

4. In September 2022, the Company raised approximately USD 20 million on the stock exchange. In April 2023, the Company raised an additional amount of USD 21 million on the stock exchange. During 2023, in an ATM offering (raising of capital via a share pool of that allows the Company's banker to issue shares subject to certain conditions in exchange for investors' demand to invest in the Company at current market price) it raised an additional amount of USD 45 million, and another of approximately USD 3 million was raised during the first quarter of 2024. At the same time as it raised capital on the stock exchange, the Company undertook to find a strategic partner through an investment bank, and despite the Company's low price as of the past few years, it failed to obtain purchase offers, and no takeover attempt was made towards it as a target company. I shall precede what shall be detailed in relation to the opinion of the Court's expert, who explained why the possibility of raising capital from new investors in the market is very limited (Section 95 of the opinion). Similarly, the expert mentioned, regarding the possibility of enlisting a strategic partner, that the Company negotiated with the Moelis investment bank, and in Sections 96-110, he detailed the many efforts that were made in this regard and concluded that the probability of finding a deal in the short time frame in which the Company can still be kept as a going concern is not high.

The Debt Arrangement

5. Therefore, and to solve the predicament the Company found itself, and after lengthy efforts to locate an investor or strategic partner or any other source of funding, the Company entered with Highbridge into a support agreement and a memorandum of understanding which are attached to the Debt Arrangement whose certification is requested (hereinafter, respectively: the "**Memorandum of Understanding**," the "**Support Agreement**," documents which were translated into Hebrew and were attached as per the Company's counsel's notification to the file on 05/01/24). In principle, the Debt Arrangement includes an undertaking according to which Highbridge shall convert the majority of its creditor rights, USD 75 million out of the USD 80 million, into 100% of the company's shares, shall provide new financing in the total amount of approximately USD 50 million in the following tranches: USD 30 million by way of a senior secured loan. An additional amount of up to USD 15 million as a senior secured debt at later dates which shall be agreed upon. Waiver of the remainder of the balance of the debt according to the deed from 2022, which stood at the time of signing the Support Agreement at approximately USD 5 million. Additional principles of the Debt Arrangement include the determination that the existing stock capital shall be voided, and Highbridge shall be issued new shares so that 100% of the issued share capital of the Company be held by Highbridge, and the Company shall cease to be a public company and be fully owned by Highbridge. A fundamental principle of the Support Agreement and the Debt Arrangement is that all of the debts to all of the creditors except Highbridge (who, as above, has creditor rights in the amount of USD 80 million) shall continue to be repaid as usual without affecting the rights of the creditors and employees, while establishing contingent value rights for the Shareholders subject to the Company's revenue targets in the coming years. The agreement with Highbridge was conditioned, among others, on the Court's certification of the Debt Arrangement, as well as it being certified in foreign proceedings in the State of Delaware, USA, by 05/15/24.

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The Parties

6. The application was submitted by **the Company**. A material party is **Highbridge**, and in light of its agreements with the Company, it is on the same front as the Company. Regarding **creditors and Shareholders**, shortly after submitting the application, a notification mechanism was established to notify of the application to all of the material parties, including the Shareholders and creditors. In relation to the creditors, no objection was filed by them, and creditor consents were filed (the position of Lonza, which is owed approximately two million Euros payable by 09/30/24 was filed). Regarding the Shareholders, a significant group of about 20% of the Shareholders was formed, represented by the Gissin & Co. Law Firm. Unrepresented Shareholders attended too, such as Mr. Shay Bleiberg, the owner of one third of a percentage of the shares. Shareholders also filed debt claims for damages incurred as Shareholders. An additional significant and material party is the Commissioner of Insolvency (hereinafter: the “**Commissioner**”).

Appointment of the Expert on Behalf of the Court

7. As arose from the first hearing of the case held on 04/04/24, it was established that an expert on behalf of the Court shall be appointed, and I requested for such purposes that the Commissioner recommend three candidates, out of whom I chose and appointed Accountant Ram Levy from Variance Economics Consulting, Ltd., as an expert on behalf of the Court (hereinafter: the “**Expert**”). Subsequently, and as per the Expert’s request, the appointment of Mr. Sharon Malka as an advisor to the Expert was approved. The appointment of the Expert was first and foremost for the purposes of valuating the Company, and as derived from it, of reviewing what is offered to the Shareholders as part of the contingent value rights in the Debt Arrangement. Later, and in light of the request and recommendation of the Commissioner to advance the proceedings, accompany the proceedings, provide recommendations for the establishment of the Arrangement while taking into account a proper valuation of the Company, including via meetings and discussions with the parties, the powers of the Expert were expanded accordingly. Towards the hearing, the Expert submitted his opinion. Its main points are his conclusion and recommendation to certify an improved Debt Arrangement which includes contingent value rights for the Shareholders, an improved remuneration, as a proper and correct balance of the Shareholders’ rights, and this shall be detailed below in the Judgment.

The Material Hearing from 05/05/24

8. At the hearing, the Company’s CEO, Ms. Abigail Jenkins, was heard and examined, as was the Expert on behalf of the Court. At the end of the hearing, and in light of the great urgency in deciding the case, oral summary arguments were heard, and it was established that a judgement shall be rendered as soon as possible. This, in light of the great urgency of the Company’s situation, and especially the high cash burn rate and the need to reduce the duration of the uncertainty, as well as the fact that the process has yet to end, in light of the need for additional proceedings which are expected to be held in the State of Delaware, USA. Therefore, and in order to focus the questions in need of determination in this Judgment, the material subjects in need of determination shall be brought below, and the arguments of the parties shall be combined in the discussion of each subject as detailed below.

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9. **The material questions that require determination in these proceedings:**

- a. The Court's jurisdiction and the question of the Company's insolvency, as a pre-condition to a hearing pursuant to Part J
- b. The need to convene creditors' meetings and convene Shareholders' meetings
- c. The need to appoint an Arrangement Administrator
- d. The arrangement of CVRs (contingent value rights)
- e. An improved alternative offer on behalf of the Shareholders
- f. The Court's considerations pursuant to Clauses 87 + 324 of the Law
- g. The exemption conditions for officers due to actions subject of the Arrangement
- h. The debt claims filed by the Shareholders
- i. A mechanism for supervising the implementation of the Debt Arrangement

A. The Court's jurisdiction and the question of the Company's insolvency, as a pre-condition to a hearing pursuant to Part J

10. The Shareholders claim that the Court has no jurisdiction to hear the Company's Application, due to the Company's insolvency being the required "entry card" to the proceedings, pursuant to Part J of the Law. The Shareholders argue that the onus is on the Company to prove that its total assets do not exceed its liabilities. The Shareholders added that in Section 73 of its Application, the Company stressed that it never breached any obligation, and that there are no debts that are not being paid, and even the CEO did not claim insolvency of the Company in her affidavit. The Shareholders argue that in effect, pharma startup companies rely on raising capital during the development period, before generating any cashflow from independent activity, so one can always argue, regardless of the specific situation, that they are close to insolvency or even insolvent. The Shareholders assert that one can equally argue that the company misled the Shareholders in previous capital calls, since nothing had changed materially from the last capital calls from the Shareholders and until the time of the Application, and in any event, they claim that the presumptions of insolvency pursuant to the Law are not fulfilled.

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11. The question of the “entry card” to the proceedings touches upon the question of the Company’s insolvency. Although at the time of the hearing the cash balance is such that enables Highbridge to enforce the covenant and declare the loan immediately due and payable, in effect the Company is paying its debts regularly, and is not expected to fail to continue paying its debts in the coming weeks despite its cash burn rate. Therefore, the starting point for the discussion shall be the balance sheet and the question whether the Company’s total liabilities exceed its total assets. The Company attached to its Application the opinion of the expert on its behalf according to which it is in balance sheet insolvency, in the sense that its total assets are lower than its liabilities. In the opinion that was submitted, (Prometheus), a valuation was carried out based on the Discounted Cash Flow (DCF) model, meaning an estimation of the Company’s ability to generate cash. For these purposes, the Company’s opinion relied on projections that the company used to raise capital, with the basic assumptions being that the company would continue as a going concern, as well as the addition of an investor who shall bring the required financing to take care of the negative cashflow expected in the coming years. All despite the fact that as per the Company’s expert’s approach, these basic assumptions are in no way certain, and that the valuation is based on the Discounted Cash Flow model, leading, according to him, to the conclusion that the value of the Company’s activity stands at USD 12.3 million, and one should deduct from this amount the financial liabilities of the Company totaling USD 57.9 million, leading to the fact that according to the Company’s expert, the valuation of the Company is negative, that is, the Company has a negative value of USD 45.6 million. This means that the liabilities exceed the Company’s assets by USD 45.6 million, raising the Company’s argument of its balance sheet insolvency.

12. The Court’s Expert conducted an examination of the Company’s expert’s calculation, mainly of the discount factor of 31% that the Company’s expert established. The Court’s Expert established that this basic assumption is exaggerated, and one should establish a discount factor of 20%, as the Shareholders claim. In the Company’s expert’s adjustments, it was established that the value of the Company’s activity stands at USD 163 – 180 million. Deductions and additions were carried out so that as per the Court’s Expert, the value of the Company, as derived from the DCF model and the adjustments to the Company’s expert, is in a range of between USD 134 – 159 million (Section 7, pages 47-49, and the last part of Section 8.1, page 49). In order to coincide with the Company’s opinion, apart from changing the discount factor as above, additional adjustments were taken into account, and thus, the Expert established that in the adjustments to the model that was presented in the Prometheus opinion, his conclusion differs from that of the Company’s expert. However, along with this conclusion, as well as when summarizing the different valuation methods as in the summarizing table in Section 7.5, page 57, the Expert stressed and detailed that regarding that valuation range he mentioned, and as he writes: **“the valuation range... demonstrates that the Company has a value potential that exceeds its total liabilities, as long as it operates under the assumption of a “going concern.” These valuations (especially according to the Discounted Cash Flow method and the Profit Multiplier method) assume that the Company will find external capital-raising sources to finance its projected cashflow deficit until it reaches a balanced cashflow (in 2027). This valuation does not weigh in effect the Company’s financing risks, which are of high importance due to the liquidity difficulties the Company finds itself in at the time of certifying the Debt Arrangement.”** Therefore, the Expert explained and clarified why the DCF method is not suitable, and that is why he turned to other methods, first and foremost according to the stock exchange market value shortly before making public the agreement with Highbridge, according to which the Company’s valuation is of USD 45 million and this valuation should be reduced in light of the fact that it does not weigh the company’s financing risk, which is important due to the high liquidity difficulties.

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13. The Shareholders claim that the valuation method must be the cash flow (DCF) method, that this is the case law since it is intrinsic to this method that the business is a going concern, and that there is no justification to assume otherwise, because if the Expert's opinion is adopted, it would amount to a pre-marking of the target, as opposed to the customary calculation method; therefore, this is a situation in which the Company is not entitled to an "entry card" to the proceedings in the absence of insolvency, meaning the absence of a situation in which the value of the assets is lower than the total liabilities. The Shareholders added that even though capital-raising methods such as an additional allocation of shares or the enlisting of a strategic partner did not succeed, the Shareholders' suggestion stands, and also, an officer may be appointed to exercise the Company's rights, and that the actions taken were not according to the Company's value, but rather according to high and unrealistic values.

14. On the other hand, the Court's Expert, as well as the Company and Highbridge, referred to the fact that according to the capital market's "wisdom of the crowd," shortly before turning to the Court and before making public the Arrangement with Highbridge, the Company was being traded in values of USD 45 million, which is a strong starting point, that is, the Company's stock market value. At this point, the difficulty regarding the Company's expert's opinion arose, as well as the adjustments to the Company's expert's opinion, which led the Court's Expert to a Company valuation of ILS [*sic*] 134 million to 159 million, amounts that do not coincide with the market value shortly before making the agreement with Highbridge public. This indicates the difficulty of using the going concern assumption in this case, and effectively, of using the Discounted Cash Flow method. It should be added that even though investment banks were contacted, and even though the Company's shares were traded in one of the most sophisticated stock markets in the world (Nasdaq), there was no one acting to take over the Company or purchase it at the abovementioned market value of USD 45 million. It is true that according to case law on purchase offers and the need for a fair valuation, for example, pursuant to Clause 338 of the Companies Law, 5759-1999, the Discounted Cash Flow (DCF) method has been preferred, see for example: Civil Leave to Appeal 779/06 **Kital v. Shaul Maman** (02/28/2012). However, it was also established there, as one of the core principles, that this is contingent on the company being a going concern, which is not the case here.

15. The Expert opined in Section 21: **"Based on the data presented to me as of the time of the opinion, I believe that in light of the limited resources and the high cash burn rate, there is a real concern regarding the Company's ability to finance its running operations and pay its existing debts for more than a few months ahead (as per the Company's assessment, until June 2024), this also while taking into account the efficiency plan the Company reported on. This means that the Company's cash balance at the time of the valuation is lower than its running liabilities, and it is not able to finance its operations and repay its loans."** The Expert further emphasized that shortly before the cancellation of the shares in the stock market, the Company was being traded according to a valuation of USD 2 million, and the road to raise capital in the capital market as was done until the Arrangement was made public was finally closed, and there is no practical way to do so until the end of June 2024, which is the time in which the Company's cash will run out. The Expert added and opined that the possibility of finding a buyer, for the Company, or a strategic partner, or a new capital investment until then is not practical due to the short timeline.

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16. The Expert added that for the purposes of the two possible theoretical tracks to calculate the Company's valuation, one must take into account two scenarios: **First**, that the Company operates under the assumption of a going concern, and that it will succeed in raising the required financial resources to finance the expected deficit until reaching operational balance. **Second**, that the assumption of a going concern does not materialize, so that if the Company comes to liquidation, the value becomes negligible. The Expert opined that in light of the considerable resources that were invested by the Company in locating possible capital raising, the probability of finding a deal in the short time in which the Company can still be kept as a going concern is not high. Added is the huge debt to Highbridge in the scope of USD 80 million, which is not an easy obstacle to any potential capital raising. According to the Expert, the potential financial value to the shareholders in light of probability calculations stands at approximately USD 15 million; therefore, the solution for the Shareholders should be establishing improved shareholder value rights. The Expert detailed that in terms of the balance sheet, Section 81, page 19 of his opinion, the excess of liabilities over assets results in a negative value of USD 66.57 million. Therefore, and to the relevant question in this paragraph: I adopt and accept the Court Expert's determination that the Company's liabilities, as of the time of the Court hearing, exceed its assets.

17. Therefore, in this dispute between the Shareholders, the Company, Highbridge, and the Expert, as well as in light of the Commissioner's position, who joined their stance, I prefer and adopt the Court Expert's conclusions. One must emphasize that the Company exhausted all possibilities to raise capital and reached a crossroads in which it is not realistically possible to raise capital as is customary. The possibility suggested by the Shareholders of appointing an officer to try and exercise rights is not realistic. Thus, as will be detailed below in this Judgment, I favored the Expert's conclusions that the improved Shareholder's suggestion is not better than the suggested Arrangement. In any event, and even though one cannot say that the Shareholder's claims are baseless, in this case one cannot assume that the Company is a going concern for the purposes of valuation; therefore, one cannot rely on the Discounted Cash Flow method according to the valuations of the company at the time of raising capital. I was not convinced by the scenario that will lead to keep the Company as a going concern without the suggested Debt Arrangement, which is the Company's only option, and I did not find that there is any other realistic option.

In summary, I was not convinced by the Shareholder's argument that the Court has no jurisdiction to hear the suggested Debt Arrangement pursuant to Part J of the Law, and was convinced that the Company is insolvent, at least in the sense that its liabilities exceed the value of its assets.

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B. The need to convene meetings of creditors and a shareholders' meeting

18. Section 322 of this Law states:

- (a) If an application is filed in Court pursuant to section 321, the court will order that the debt settlement arrangement be presented for the approval of the creditors.
- (b) If the total assets of a debtor that is a corporation exceeded its total debts, and the debt settlement arrangement offers to each creditor consideration that is equal to the entire amount of the debt subject matter of creditorship, the proposal will also be presented for the approval of the members of the corporation.
- (c) Notwithstanding the provisions of subsections (a) and (b), if the court finds that the mere presentation of the debt settlement arrangement for the approval of the creditors affects proceedings under this chapter, it will not order it be presented for the approval of the interested parties.

19. The company contends that the debt settlement arrangement leads to full repayment of all of the company's creditors (except for Highbridge) and that, therefore, there is no need to convene meetings of creditors, nor were the creditors given the opportunity to submit a response to the arrangement proposal, and, aside from a significant creditor who submitted a notice of support for the debt settlement arrangement, no notices were filed on behalf of the creditors with an emphasis on the absence of objections. I accept the company's position that there is no justification for the loss of time and resources in convening meetings of creditors in the circumstances of the debt settlement arrangement proposed in this case. I would note that, as is further detailed below, I do not find it appropriate to regard shareholders who filed debt claims against creditors relying on damages they suffered as shareholders as a separate and different group of creditors from the group of shareholders.

20. Regarding the group of shareholders, the company contends that, as section 322(b) of the Law states, since the total assets are less than the amount of the debts, inter alia in light of the debt to Highbridge, there is no benefit in convening a shareholders' meeting. The company emphasizes that convening the meetings would be a loss of precious time and run the risk of Highbridge's withdrawing from the proposal. Contrarily, the shareholders contend that the value of the assets exceeds the liabilities. They thus argue that convening a shareholders' meeting does not amount to a mere formality, but rather that such a meeting would be a forum in which new proposals are raised, which would enable additional large groups of shareholders to express their positions or allow the submission of alternative proposals to the debt settlement arrangement proposal. The Insolvency Commissioner supports the company's position.

21. Under the circumstances, and as stated, I have adopted the expert's opinion that the value of the liabilities exceeds the assets, i.e., there is no justification to lose time in convening a shareholders' meeting, nor is there any such duty; furthermore, in this case, the debt settlement arrangement proposal was brought to the attention of the company's shareholders, whose position was also expressed in the central argument via the law firm of Gissin & Co., which, in fact have represented the interest of the shareholders. I found no fault in not convening shareholders' meetings whose day was given to them in argument and in the court hearing. This was also the case in Insolvency Proceedings (Tel Aviv) 28349-01-23 Unet Credit Services

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v. Commissioner, (04/05/23, H. Brenner, J.), see s. 31 where a similar lack of duty in a similar case is held for the convening of a shareholders' meeting. The current case is not a situation in which the creditors receive all their debts and residual assets remain since Highbridge does not receive any dividends as a result of the debt settlement arrangement, so according to s. 322 there is no obligation to convene a shareholders' meeting. With regard to the claims for the shareholders' debts, I further elaborate on this matter below when I rule that their rights are embodied in the same contingent consideration outline, and, therefore, I do not find it necessary under the circumstances to hold shareholders' meetings or meetings of creditors as a condition for approving the debt settlement arrangement.

C. The need to appoint an arrangement administrator

22. Under s. 326 of the Law, the court may appoint an arrangement administrator in a debt settlement arrangement pursuant to part X, when limited powers are concerned. Inter alia, to examine the voting power of the various groups, to determine the rights of the interested parties and supervision for the distribution of the expected consideration under the debt settlement arrangement, and for any other issue that the court deems necessary to expand the powers of the arrangement administrator. In this case, in the absence of harm to the company's creditors, I find no justification to exercise the power to appoint an arrangement administrator, when one matter that remains for discussion is the question of supervision of that contingent consideration for the shareholders, an issue that is discussed later on in the judgment.

D. Contingent value rights (CVR) arrangement

23. On the basis of probabilistic necessity and models as detailed in his opinion, the expert assessed that there is economic value to shareholders' holding the company's stock, even in the current situation. This value in a winding-up alternative will be negligible, but in a debt settlement arrangement alternative it is significant, and the court's expert estimated about ILS 15 million, see s. 32, p. 8 of the opinion. The arrangement offer as proposed, see s. 5.3 of the arrangement proposal, includes a contingent value of \$27.5 million, pursuant to milestones: if the company's revenue from sales of the product (omisirge) in the U.S. during 4 consecutive quarters exceeds \$100 million over 3 years from the start of the arrangement, the shareholders will receive approximately \$10 million. If revenues exceed \$150 million, shareholders will receive an additional \$15 million. If regulatory approval is obtained for the product in development GMD201 within a period of 4 years from the start of the arrangement, shareholders will receive approximately \$2.5 million. The company undertook to work to plan the contingent rights in the most efficient way from the point of view of taxation.

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24. The expert examined the economic value of the contingent consideration in the proposed settlement arrangement and found that it reflects an estimated sum of \$2.7–6.2 million, an amount that does not reflect appropriate compensation to the shareholders and that leaves the shareholders with a relatively low rate of the potential future value if realized. Therefore, the expert acted in such a way that the nominal value and economic value of the contingent consideration to the shareholders would match the value of their holding prior to the settlement arrangement based on the market value of the company on the stock exchange prior to the settlement arrangement and suggested that the maximum contingent value be higher in accordance with the milestones as detailed in s. 37 p. 10 of his opinion: increasing the amount to be paid in accordance with sales forecasts of the product (omisirge) from \$25 million to \$35 million. Introducing another prepayment milestone in the event that revenue is forecasted to reach at least \$75 million instead of \$100 million (sales turnover reflecting an operating breakeven point). Increasing the exam period in sales targets from three years to six years. And a one-time payment for each transaction made on the GDA-201 product in the amount of \$5 million if a commercialization or sales deal for the technology is signed in which a consideration greater than \$15 million is obtained. According to the expert, improving the components as stated will increase the nominal value for the shareholders to a total amount of up to \$40 million in case of success, the economic value of which the expert estimates to be in the range of \$13–19.2 million.

25. These amounts based on the improved contingent value are according to the expert's balances between the interests of the shareholders and the interests of the company and the creditors and debtors. The expert further emphasized that winding up can only be avoided under an arrangement in which significant capital is injected into the company and its debt is converted into shares to provide a lifeline and restarting the flow of oxygen to it—possible fundraising channels until an operational balance is reached. The expert emphasized that this would reflect fair payment to shareholders in relation to their holdings prior to the arrangement, as well as that this is an advantage over other solutions that are not practical.

26. The shareholders claim that, unfortunately, the expert made a mistake. The expert's essential and main task is to carry out a valuation. However, the expert tried to bridge and balance between the shareholders, made a certain proposal, which the shareholders hold is unfair to them, and since the expert's proposal was accepted, the expert set himself on his proposal, even though here, too, it is a low offer from the shareholders' point of view and is not guaranteed. Highbridge responded by claiming that they were willing to go a long way, in light of the expert's recommendation, but the condition is that there would be no additional requirements, and even the original outline included an proposal to the shareholders beyond the letter of the Law, since the value of the shares is negligible, and that this is the risk for shareholders, especially investors in biopharma start-ups, to lose the value of their shares. The company supported Highbridge's arguments. and the Commissioner relied on the court's expert recommendation.

27. After having weighed the parties' arguments and hearing the expert and his further explanations in direct and cross examination, I am persuaded that, as the expert recommends, this is a mechanism that, under the circumstances, fairly balances between interests and rights of the shareholders and approval of the debt settlement arrangement in such a way that Highbridge agreed to and warranted and the improved mechanism proposed by the expert, is fair and proper, balances the various interests as required, and is just.

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28. **Therefore, and as detailed in the conclusion of the judgment, the debt settlement arrangement is approved subject to the amendment of s. 5.3, which will be amended in accordance with the court expert's recommendation.**

E. Alternative improved proposal from the shareholders

29. The shareholders proposed an alternative for the debt settlement arrangement proposal. The company contends that the mechanism set out in part X is the provision of a debt settlement arrangement for the court's approval, while empowering the court to approve or not approve, and there is no procedure for the group of shareholders to make a counter proposal. In any event, the shareholders' proposal, in practice the improved proposal of the shareholders is examined below. The proposal was submitted via the group Levin Capital Strategies L.P. The original proposal was received on 04/18/24, and, according to it, the group would purchase the balance of secured bonds in the amount of \$4.982 million of Highbridge at full value, the group would inject at least \$10 million, following the activation of the interim period for the implementation of the reorganizational plan, including replacing management, in exchange for the allocated shares. This would be an initiative to sell the product in development of the company GDA-201. The shareholder group's plan would enable repayment of all current debts without the need to accelerate repayment of the debt to Highbridge, which is due in 2026. The proposal is subject to obtaining full information from the company. Subsequently, on 04/25/24, said group improved the proposal thus that an additional \$20 million would be provided and defined as secured senior debt with precedence over the debt to Highbridge in the amount of \$75 million.

30. The expert analyzed the proposal in s. 136 p. 29 of his opinion. The difficulty arising from the proposal is in that it includes various stipulations, mainly with an emphasis on the need to obtain access to an information room and to check the company's assets. The expert also raised the difficulty in the imposition of a \$20-million debt, in addition to the already-existing debt, i.e., in addition to the \$75-million debt to Highbridge, and another approximately \$5 million to acquire the current debt to Highbridge, i.e., total debts amounting to \$100 million, that would make it even more difficult to raise new money for the company. The expert believes that this is an inferior proposal compared to the debt settlement arrangement in that a lower injection of capital would simply postpone the liquidity crisis while requiring raising supplementary capital in the immediate term, and there is a greater financial risk in increasing the company's debts and reducing the ability to raise capital as a result. The expert also indicated that it is unclear what the share-dilution means thus that the company's shares will be issued for the \$10 million.

31. The shareholders have requested to append the affidavit of Mr. Robert Blum, who served as the chairman of the company's board of directors until March 2023, and with there being no objection to the same, subject to the argument that Mr. Blum does not have the relevant information, more than one year after having left his position. Highbridge objected on the grounds that the proposal was vague, that it posed a great risk to the large debt the company owes it, and that the proposal did not take into consideration the question of Highbridge's consent, for example, to the fact that the injection of \$20 million would be made in a position superior to that

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of Highbridge's and contrary to the promissory note. Reference was made on behalf of the company to the fact that the proposal was made without an affidavit, that it does not contain a clear commitment, and that it is impractical. The company argues that this proposal is not feasible since a proposal must materially extend the "breathing room" of the company's cash balance. The proposal is impractical in that despite the company's long record of selling its substantial product, the NK cell program (GDA-201), this has not succeeded, and there is no buyer in sight, and this is a material component since the proposal is fundamental and builds on this product in the amount of \$40 million in value, but it is an unrealistic component. The company refers to the need to obtain Highbridge's consent, but no dialogue has been conducted. The company argues that it is unclear how shares would be issued immediately for the proposed \$10 million, as well as that the proposal does not detail how it will be possible to prevent Highbridge from immediately requiring repayment of the company's \$75-million debt. The Commissioner supports the company's position and the expert's recommendation.

32. I have considered the parties' arguments, and in this matter, too, I accept the reasoning and recommendation of the court expert regarding inferiority of the shareholders' improved offer. The expert actually adopts the position of the company and Highbridge, and the Commissioner supports the expert's position and conclusion and recommends that they be adopted. The shareholders' proposal is impractical and almost certainly would not succeed in preventing Highbridge from enforcing its contractual rights to demand repayment of the \$75-million debt. I am persuaded that following the suggested path, which has many stipulations and uncertainty, would lead to economic turmoil and a higher likelihood that the company would not be able to weather the crisis it finds itself in. Therefore, neither the proposal made by the shareholders nor the improved proposal can tip the scales from approving the debt settlement arrangement at issue in the lawsuit under the circumstances in which the company finds itself.

F. The court's considerations pursuant to ss. 87 and 324 of the Law

33. According to s. 324 of the Law, sections 85–88 apply, mutatis mutandis, to approval of a debt settlement arrangement. In this case, s. 87 is relevant, especially subsection (1), which states:

Notwithstanding the provisions of sections 85 and 86(a), the court may approve a proposal for a financial rehabilitation plan even if not approved in each of the class meetings by the requisite majority pursuant to section 85, if it is convinced, to the extent possible based on the valuation of the corporation that an expert submits on its behalf or on behalf of the relevant parties, that this proposal is fair and just with respect to each of the creditors or the members of the corporation in a class meeting that did not approve it (in this section, "objecting meeting"), and in this regard was convinced that the following holds true:

(1) If no financial rehabilitation plan is approved, there is no alternative but to wind up the corporation and the consideration that was offered to each of the creditors or the members of the corporation in an objecting meeting is not lower than the consideration that they would have received at the time of winding up of the corporation.

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34. The use of s. 87 of the Law is intended for exceptional cases when the debt settlement arrangement proposal (pursuant to part X of the Law) or the rehabilitation plan (pursuant to part II of the Law) were not approved by the meetings of creditors, for example, by a majority of the quorum and value required at a particular class meeting or, as the Law states, in an objecting meeting. Nevertheless, there is special authority, pursuant to s. 87 of the Law, which grants the court the power to approve a debt settlement arrangement even if the path of the debt settlement arrangement did not succeed in the states outlined in the Law. In the current case, the relevant question is whether the debt settlement arrangement proposal is fair and just with respect to the shareholders. It is already established above, based on the opinion submitted by the court expert, that the settlement arrangement proposal, with an emphasis on the future consideration outline, balances the interests of the shareholders with the interests of the other parties justly and fairly. In addition, s. 87(1) prescribes the condition: **“If no financial rehabilitation plan is approved, there is no alternative but to wind up the corporation and the consideration that was offered to each of the creditors or the members of the corporation in an objecting meeting is not lower than the consideration that they would have received at the time of winding up of the corporation,”** and I am persuaded that this condition holds true.

35. The situations in which debt settlement arrangements are approved in which the shareholders do not remain in the picture, and their shares are “threatened” are not non-existent, since in a situation of insolvency, the focus is not on the shareholders but on examining alternatives, when frequently there is no practical possibility of leaving the shareholders retaining a residual share in the company’s assets; see: Civil Leave to Appeal 8417/11 Nami Trusts v. Shaul Bergerson, Receiver (05/17/13). See also 27222-09-21 (Tel Aviv District) Petrochemical Enterprises v. Reznik Paz (09/05/22, H. Brenner, J.), while holding that the starting point is that a company is in insolvency and the value of its shares is reset.

36. As explained above, I am persuaded, based on the expert’s opinion, that the scenario in which there would be an alternative to the continued operation of the company were it not for the debt settlement arrangement according to the improved Highbridge proposal is a scenario whose existence is small to impossible. The expert emphasizes that without approval of the debt settlement arrangement, the company’s situation would be facing winding up, which would mean zero consideration for the shareholders, and I am persuaded by the expert’s reasoning that the contingent value rights (CVR) arrangement is clearly greater than what the shareholders would receive without approval of the debt settlement arrangements—in other words, most likely in winding up, where the value of the shares would be zero.

G. Exemption clause for officers due to activity that is the subject of the arrangement

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37. A specific point that arose was that the proposed settlement arrangement does not deal with the rights and obligations of company officers, except for exemption conditions detailed in schedule A to the memorandum of understanding accompanying the support agreement, where the causes of action for which the exemption was granted are detailed, mainly the exemption, inter alia, for the company's officers, regarding the work and handling in connection with the support agreement, the memorandum of understanding, the debt settlement arrangement, the submission of the application for approval of the debt settlement arrangement to the court and everything related thereto.

38. After I considered the arguments of the parties, and after the Commissioner's counsel also agreed that there was no justification for not approving the exemption clause, I rejected that the shareholders' arguments in this matter. In many debt settlement arrangements, there are provisions that exempt the officers from liability for their actions in relation to the company and, in this case, in relation to reaching the debt settlement arrangement approved under this judgment. See Insolvency Proceedings 25064-10-19 (Tel Aviv District) **Africa Israel v. Commissioner** (A. Orenstein, J., 11/27/2019). Counsel for the company referred to Civil Leave to Appeal 5938/16 **IDB Development Corporation v. Ohad Aloni** (11/16/17), where the issue of an exemption clause arose in the framework of an amended debt settlement, and it was held (see s. 20 of the judgment) that it is logical to require shareholders who received additional or alternative consideration under the debt settlement arrangement to waive any action or claim they would have as a result of the debt settlement arrangement. Section 21 further emphasized that an exemption clause, however broad, cannot include acts of fraud and deception that were not known at the time the debt settlement arrangement was approved. I raise this issue, which was mentioned in the case law. for the purpose of completing the picture, even though no claims were made in this case against the officers, beyond claims of negligence. See also Insolvency Proceedings (Tel Aviv) 28349-01-03 **Unet Credit Services v. Commissioner**, (04/05/23, H. Brenner, J.), where an exemption from claims was approved as part of a debt settlement arrangement, so this is not an exceptional or rare matter, especially when we are dealing with exemption from claims as declared by the company's counsel for the record with regard to the debt settlement arrangement and its schedules.

Therefore, I find no justification for intervening in the debt settlement arrangement and excluding, as the shareholders argue for, the exemption clause for actions performed by the company's officers in connection with the filing of the application for approval of the debt settlement arrangement.

H. Debt claims filed by shareholders

39. On 05/01/2024, the shareholders filed a notice of filing debt claims on behalf of the shareholders, claiming that the company caused them harm due to the fact that the company applied for approval of the debt settlement arrangement with Highbridge, the subject of this case. The debt claim argues that the company is not in insolvency and that the company was negligent (at the very least) in initiating the debt settlement with Highbridge. Contentions arose that the company and some of the directors acted out of concern about conflicts of interest in relations with Highbridge. The shareholders argue that the company misrepresented the concern of a breach of the covenant that has not existed for several months. Conflicting information is contended, and the company's

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announcement of the initiation of this proceeding led to the Nasdaq announcement that the shares would be delisted from trading. Therefore, the shareholders claim that it was the appeal to court in these proceedings that caused the harm to the value of their shares. The shareholders detail how the harm to the shares were created in a timeline prior to the Highbridge deal. Therefore, the shareholders claim that they had suffered harm and that their notice of a debt claim does not exhaust their arguments.

40. The Company, for its part, contends that the shareholders cannot upgrade themselves to the status of creditors by filing debt claims due to harm to the value of their shares. The company argues that the debt claim was filed on behalf of one creditor (Mr. Yitzhak Aharonov) and that Israeli law does not recognize a class or group debt claim. The company argues that the filed debt claim filed was not supported by an affidavit. The company argues that under the law, the status of debt claims of shareholders due to claims of harm to the value of its holdings is an equity claim and therefore has a deferred status. The company refers to the levels of creditors in ss. 231–237 of the Law, and in particular to section 237, which defines deferred debts. The company argues that claiming a debt as a shareholder undermines the basic principles of the Law, including embarking on a new path when it is free from past debts. The Company refers, inter alia, to Insolvency Proceedings 25064-10-19 (Tel Aviv District) **Africa Israel v. Commissioner** (A. Orenstein, J., 11/27/2019), where it was similarly held, in s. 3 of the judgment, that the shareholder cannot demand the absence of a company's exemption from claims as a shareholder. Therefore, the company argues that the shareholders' arguments as creditors with debt claims should be rejected.

41. Highbridge also submitted its response, arguing that the shareholders have no standing to file debt claims as creditors, with an emphasis on the lack of residual value when, in this case, they received residual value beyond the letter of the Law. Highbridge argues that the alleged cause of action is the company's cause of action against the officers and not the shareholders' cause of action. Highbridge argues that this is a claim intrinsically related to the ownership of shares, and the shareholders' being in a deferred action, and that policy considerations and broad implications necessitate the rejection of such a debt claim by the shareholders. Highbridge further argues that granting shareholders status as creditors would put an end to the possibility of approving the debt settlement arrangement and that shareholders have no status as creditors. Highbridge also argues that this exercise by the shareholders should not be given effect and in any case, it is left to the discretion of the court under s. 87 of the Law.

42. Counsel for the Commissioner agreed with the company and Highbridge, arguing that the balances outlined by the debt settlement arrangement, in the same future contingent consideration, take into account and weigh the injury also claimed by the shareholders to the decrease in value as a result of petitioning the court for approval of the debt settlement arrangement.

43. I have considered the parties' arguments and conclude that the shareholders' position that they are also creditors for the purpose of filing a debt claim as shareholders who suffered harm by way of a decrease in the value of the shares should be rejected. The shareholders are in the status of deferred debts, that is, they are not in a class with the other creditors. Section 237 of the Law states that debts to members of the corporation arising from their membership of the corporation are deferred debts. Pursuant to s. 87

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of the Act, and in view of my being persuaded that the debt settlement arrangement proposal is fair and just on the basis of the valuation of the court expert, as well as my being persuaded that, in winding up, the shareholders would not receive greater consideration, the shareholders' argument is rejected. The rejection of the shareholders' argument considers that, in accordance with the debt settlement arrangement, they receive future contingent consideration, which embodies and weighs within it the full rights of claim that the shareholders have against the company. As the company claims, a justified argument does not allow shareholders to upgrade their status as creditors. As Highbridge argues, accepting this position would undermine the possibility of bringing about approval of debt settlement arrangements, and, therefore, in this state of affairs, there is no significance to a debt claim for deferred debt from the shareholders, and, therefore, I hold that the shareholders do not have the right to submit debt claims for harm caused due to approval of the debt settlement arrangement that is the subject of this case. Therefore, I have not found it proper to enter into the question of the absence of a cause of action as claimed by Highbridge or the questions of validity of the debt claims filed by one shareholder and without an affidavit.

I. Mechanism for supervising the performance of the debt settlement arrangement for the shareholders

44. The shareholders argue that there is no mechanism supervising the implementation of the debt settlement arrangement chapter relating to their rights with regard to that future contingent value—CVR, while the company and Highbridge argue that there is no need for a special mechanism and the obligation that is the subject of the debt settlement arrangement is sufficient. The Commissioner argues that this matter needs review. The question of the need to supervise the implementation of the debt settlement arrangement for the benefit of shareholders arose in the margins of the discussion. I do not grant validity to this. The company is requested to address this issue and submit its position by 06/18/2024. Subsequently, the responses of the additional parties will be requested, and a separate ruling will be made on this question, which does not require a ruling as part of the substantive question that is the subject of this judgment whether to approve the proposed debt settlement arrangement.

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Conclusion

45. In summary, and as set forth in this judgment, the court hereby approves the debt settlement arrangement approved under part X of the Law, the arrangement attached as exhibit 1 to the application subject to the amendment of the part of the debt settlement arrangement relating to the improved future contingent value, as detailed above, as proposed by the court expert and accepted and approved by Highbridge. The company will act so that there will be no doubt about the approved wording to submit a document incorporating said change within 14 days.

As detailed above, the issue of the question of supervision or the need for supervision will be heard separately, in accordance with instructions given after receiving the company's position, which is requested to submit its position by 06/18/2024.

No order for costs. Leave to appeal in accordance with the law.

Handed down today, Nissan 30, 5784, May 8, 2024, in the absence of the parties.

[signature]

Yaakov Persky, J.



CERTIFICATION

TransPerfect is globally certified under the standards ISO 9001:2015, ISO 17100:2015, and ISO 18587:2017. This Translation Certificate confirms the included documents have been completed in conformance with the Quality Management System documented in its ISO process maps and are, to the best knowledge and belief of all TransPerfect employees engaged on the project, full and accurate translations of the source material.

File Name(s): Israeli Confirmation Order

Source Language(s): Hebrew

Target Language(s): English

Authorized Signature:

A handwritten signature in black ink, appearing to read 'DS' with a stylized flourish.

Dominique Strafe (May 9, 2024 13:00 ADT)

Name: Dominique Strafe

Title: Project Coordinator

Date: 09 MAY 2024

Reason for signature: I approve the accuracy of this document content as written



בית המשפט המחוזי בבאר שבע

חדל"ת 24-03-63461 גאמידה סל בע"מ נ' הממונה על חדלות הפירעון ואח'

לפני: כבוד השופט יעקב פרסקי

בעניין: חוק חדלות פירעון ושיקום כלכלי תשע"ח – 2018
(להלן: "החוק")

ובעניין: חברת גאמידה סל בע"מ
ע"י ב"כ עו"ד פיני יניב ועו"ד מרב בן-ארצי הלפרן ועו"ד דורין ארדיס
(להלן: "החברה")

ובעניין: קבוצת הייברידג'
ע"י ב"כ עו"ד גלעד וקסלמן, עו"ד יניב דינוביץ', עו"ד נרי לביא ועו"ד רון בן
מנחם
(להלן: "הייברידג'")

ובעניין: 1. ביו מדיקל אינבסמנט (1997)
2. לוי קפיטל סטראטגיס
3. אלביט מדיקל
4. כלל ביוטכנולוגיה
5. יצחק אהרונוב
ו-44 בעלי מניות נוספים
ע"י ב"כ עו"ד גיא גיסין ועו"ד יואל פרייליך ועו"ד קובי משי
(להלן: "בעלי המניות")

ובעניין: הממונה על חדלות הפרעון ושיקום כלכלי – מחלקת תאגידים
ע"י עו"ד גלי עטרון
(להלן: "הממונה")

פסק דין

פסק דין זה עניינו בבקשת החברה לאישור הסדר חוב בהתאם להוראות חלק י' לחוק, הסדר ולפיו
הנושים יפרעו באופן מלא תוך שזכויות בעלי המניות יאוּנו, הגם תמורה מותנית שיקבלו

החברה המבקשת

1. המבקשת, חברת גאמידה סל בע"מ, (להלן: "החברה"), נוסדה בשנת 1998, כאשר
באוקטובר 2018 הונפקה והפכה להיות חברה ציבורית, חברה הנסחרת בבורסת הנאסד"ק. כתובתה
הרשומה של החברה הינה בקרית גת, שם מצוי מפעל הייצור. החברה העסיקה עד לאחרונה כ-100
עובדים, ולעת הגשת הבקשה לאור צמצומים, מועסקים כ-75 עובדים. לחברה משרדים בארה"ב.
הבקשה הוגשה כהנמקת החברה, על מנת למנוע הגעה לחדלות פירעון ופירוקה וזאת בדרך של
בקשה לאישור הסדר חוב, בהתאם לחלק י' לחוק.



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עיסוקה של החברה

2. החברה עוסקת בפיתוח תרופות מקור, כאשר תחום פעילותה הינו ב"טיפול תאי" (cell therapy), ופיתוח טכנולוגיה המאפשרת לקחת תאי גזע של תורמים אנושיים מתורם זר, (כלומר שאינו של המטופל), ולאחר הליך שיפור, תאי הגזע המשופרים מוזרקים למטופל ומוצאים דרכם למח העצם שלו, שם הם מייצרים עבורו תאי דם לבנים שמהווים מרכיב קריטי במערכת החיסון. האינדיקציה הנוכחית של התרופה הינה לטיפול בחולי סרטן הדם. החברה פיתחה את טכנולוגיית ה-NAM, המאפשרת יצור מוצרים לטיפול בתאים אלוגניים בעלי פוטנציאל לריפוי עבור חולים בתחום הרפואה המותאמת אישית. בשנת 2023 ניתן אישור FDA לתרופת ה- omisirge שפיתחה החברה, מדובר בתרופה שהביאה בשנת 2023 לראשונה לקבלת הכנסות לחברה בסך 1.78 מיליון דולר. החברה יישמה את טכנולוגיית הרחבת תאי NAM על תאי הרג NK ונמצאת בשלבי פיתוח עבור מוצר GDA-201, שעניינו, טיפול חיסוני בתאי הרג טבעיים המופק מתורמים בריאים, שעובר תהליך הרחבה ושיפור באמצעות הטכנולוגיה של החברה.

המלווה – הייברידג' (Highbridge)

3. קרן הייברידג', (המאגדת שלושה גופים שונים, להלן: "הייברידג'"), הלוותה בערבות החברה, לחברת הבת של החברה, gamida cell Inc. (להלן: "חברת הבת" או "החברה האמריקאית"), סכומים משמעותיים, בהיקף 100 מיליון דולר. בהתאם לשטר משנת 2021, מדובר בהלוואה המירה למניות בסך 75 מיליון דולר, שמועד פירעונם פברואר 2026 ובהתאם לשטר משנת 2022, ניתנה הלוואה נוספת בסך 25 מיליון דולר שיתרתה נכון ליום 31.3.24 הינה בסך של 4.9 מיליון דולר, כאשר מועד הפירעון הסופי הינו דצמבר 2024. הסכומים האמורים הותנו במספר תנאים בהם תנית נזילות ("קובננט") ולפיה אם סכום המזומנים ושווי המזומנים בקופת החברה ירד מסך של 20 מיליון דולר, אז תהיה זכאית הייברידג' להעמיד את מלוא הסכום לפירעון מיד. בבקשה פורט כי ליום 1.4.24 צפויה יתרת המזומנים לעמוד על כ- 22.9 מיליון דולר כאשר קצב שריפת המזומנים בחברה עומד על כ- 7 מיליון דולר בחודש. ליום 30.4.24 העריכה החברה כי יתרת המזומנים תעמוד על 14.4 מיליון דולר, היינו הייברידג' זכאית לפעול להעמדת הסכום לפירעון מיידי. החברה פירטה כי כך או כך, בתוך שבועות ספורים, צפויה היא להיות חסרת מזומנים ובוודאות, בחדלות פירעון תזרימית. בקשת החברה נתמכה בחוות דעת מומחה מטעמה, הערכת שווי של מר אייל שבת, מומחה כלכלי מחברת פרומתאוס ייעוץ כלכלי בע"מ.



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מאמצי גיוס ומהלכים אסטרטגיים בהם נקטה החברה בשנה וחצי האחרונות

4. החברה גייסה בבורסה בחודש ספטמבר 2022 כ – 20 מיליון דולר. באפריל 2023 החברה גייסה בבורסה סך נוסף של 21 מיליון דולר. במהלך שנת 2023 גייסה במהלך של תוכנית ATM (גיוס באמצעות פול מניות המאפשר לבנקאי של החברה להנפיק מניות בכפוף לתנאים מוגדרים בתמורה לדרישת משקיעים להשקעה בחברה במחיר השוק), סך נוסף של 45 מיליון דולר וסך נוסף של כ – 3 מיליון דולר גויסו במהלך הרבעון הראשון של שנת 2024. במקביל לגיוס ההון בבורסה, החברה פעלה לאיתור שותף אסטרטגי באמצעות בנק השקעות ולמרות המחיר הנמוך לחברה, בשנים האחרונות, לא קיבלה הצעות רכישה ולא בוצע לגביה כחברת יעד, כל ניסיון השתלטות. אקדים את שעוד יפורט לגבי חו"ד מומחה ביהמ"ש, שנימק מדוע האפשרות לגיוס כספים בשוק ההון, ממשקיעים חדשים, מוגבלת מאוד, (סעי' 95 לחוות הדעת). באופן דומה חיווה המומחה דעתו בנוגע לאפשרות גיוס שותף אסטרטגי, כי החברה התקשרה עם בנק ההשקעות מואליס (moelis), כאשר המומחה בסעי' 96-110 פירט את המאמצים הרבים שנעשו לצורך כך, כאשר מסקנתו הינה שהסבירות לאיתור עסקה בטווח הזמן הקצר בו ניתן עדין לשמר את החברה כעסק חי אינה גבוהה.

הסדר החוב

5. לפיכך ועל מנת לפתור את המצוקה אליה נקלעה החברה, ולאחר שניסיונות ארוכים לאיתור משקיע או שותף אסטרטגי או כל מקור מימון אחר כשלו, התקשרה החברה עם הייברידג' בהסכם תמיכה ומזכר הבנות, שהינם נספחים להסדר החוב שאישורו מבוקש, (להלן בהתאמה: "מזכר ההבנות" "הסכם התמיכה"), מסמכים שתורגמו לעברית וצורפו בהודעת ב"כ החברה לתיק ביום 1.5.24. הסדר החוב בעיקרו כולל התחייבות ולפיה הייברידג' תמיר את החלק הארי של נשייתה, 75 מתוך 80 מיליון הדולר ל – 100% ממניות החברה, תעמיד מימון חדש בסכום כולל של כ – 50 מיליון דולר, בפעילות הבאות: 30 מיליון דולר, בדרך של הלוואה מובטחת בכירה. העמדת סכום נוסף של עד 15 מיליון דולר כחוב בכיר מובטח במועדים מאוחרים שיקבעו בהסכמה. ויתור על יתרת סכום החוב לפי שטר החוב משנת 2022, יתרה אשר עמדה במועד חתימת הסכם התמיכה על כ – 5 מיליון דולר. עוד ומעיקרי הסדר החוב, נקבע כי כל הון המניות הקיים יאויץ, ויוקצו מניות חדשות להיברידג' כך ש – 100% מהון המניות המונפק בחברה יוחזק בידי הייברידג' והחברה תחדל להיות חברה ציבורית, אלא בבעלותה המלאה של הייברידג'. עיקר יסודי בהסכם התמיכה כמו גם בהסדר החוב הינו בכך שכלל החובות לכלל הנושים למעט הייברידג' (שלה כאמור נשייה בחברה בהיקף 80 מיליון דולר), ימשיכו להיות משולמים כסדרם, ללא כל פגיעה בזכויות הנושים והעובדים, תוך קביעת תמורה מותנית לבעלי המניות, תמורה הכפופה ליעדי ההכנסות של החברה בשנים הבאות. ההסכם מול הייברידג' הותנה בין היתר בכך שיינתן אישור בית המשפט להסדר החוב, כמו גם שיאושר בהליך זר במדינת דלאוור בארה"ב עד ליום 15.5.24.



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הצדדים

6. את הבקשה הגישה החברה. צד מהותי הינה קבוצת ה**ייברידג'** ולאור ההסכמות מול החברה מצויה באותה חזית ביחד עם החברה. לגבי **נושים ובעלי המניות**, סמוך לאחר הגשת הבקשה נקבע מנגנון להודעה על הבקשה לכל הגורמים המהותיים ובכלל זה בעלי המניות והנושים. לגבי הנושים, לא הוגשה על ידם, כל התנגדות ואף הוגשו הסכמות נושים, (הוגשה עמדת חברת לונזה, הנושה בחברה סך של כשני מיליון אירו, לפירעון עד 30.9.24). לגבי בעלי המניות, התגבשה קבוצה משמעותית של קרוב ל- 20% מבעלי המניות, שיוצגו באמצעות משרד עו"ד גיסין ושות'. התייצבו גם בעלי מניות ללא ייצוג, דוגמת מר שי בלייברג, בעלים של שליש אחוז מהמניות. בעלי מניות הגישו גם תביעות חוב בשל נזקים שנגרמו להם בהיותם בעלי מניות. גורם משמעותי ומהותי נוסף הינו הממונה על חדלות הפירעון (להלן: "**הממונה**").

מינוי המומחה מטעם בית המשפט

7. כפי שעלה בדיון הראשון שהתקיים בתיק, מיום 4.4.24, נקבע שימונה מומחה מטעם בית המשפט, כאשר ביקשתי לצורך כך כי הממונה ימליץ על שלושה מועמדים מהם בחרתי ומינתי כמומחה מטעם בית המשפט, את רוי"ח רם לוי, מחברת ואריאנס יעוץ כלכלי בע"מ, (להלן: "**המומחה**"). בהמשך ולבקשת המומחה, אושר מינוי יועץ למומחה, מר שרון מלכה. מינוי המומחה היה בראש ובראשונה לצורך הערכת שווי לחברה וכנגזרת לכך, בחינת המוצע לבעלי המניות במסגרת התמורה המותנית שבהסדר החוב. מאוחר יותר ולאור בקשה והמלצת הממונה לקידום ההליך, לאפשרות ליווי ההליך, למתן המלצות לגיבוש ההסדר תוך הבאה בחשבון של שווי ראוי לחברה, לרבות באמצעות פגישות והידברות עם הצדדים, הורחבו סמכויות המומחה בהתאם. לקראת הדיון הגיש המומחה את חוות דעתו כאשר עיקריה הינם מסקנתו והמלצתו לאישור הסדר חוב משופר, הסדר הכולל תמורה מותנית לבעלי המניות, תמורה משופרת, כאיזון ראוי ונכון לזכויות בעלי המניות, והדברים יפורט בהמשך פסק הדין.

הדיון המהותי מיום 5.5.24

8. במועד הדיון נשמעו ונחקרו מנכ"לית החברה, גב' אביגיל ג'נקינס כמו גם שנשמע ונחקר מומחה בית המשפט. בתום הדיון ולאור הדחיפות הרבה במתן החלטה בתיק, נשמעו סיכומים בעל פה, כאשר נקבע כי פסק הדין יינתן בכול ההקדם. זאת, לאור הדחיפות הרבה, לאור מצבה של החברה ובמיוחד קצב שריפת המזומנים הגבוה והצורך בהקטנת משך אי הוודאות כמו גם שהדרך טרם הסתיימה ולאור הצורך בהליך הנוסף הצפוי להתקיים במדינת דלאוור בארה"ב. לפיכך ועל מנת למקד את השאלות הנדרשות להכרעה בפסק דין זה, להלן יובאו הנושאים המהותיים הדורשים הכרעה, כאשר טענות הצדדים ישולבו במסגרת הדיון בכול נושא כפי שיפורט להלן.



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9. השאלות המהותיות הדורשות הכרעה בתובענה זו:

- א. סמכות בית המשפט ושאלת חדלות פירעונה של החברה, כתנאי מוקדם לדיון לפי חלק י'
- ב. הצורך בכינוס אספות נושים וכינוס אספות בעלי מניות
- ג. הצורך במינוי מנהל הסדר
- ד. הסדר זכויות ערך התמורה המותנה - CVR (contingent value rights)
- ה. הצעה חלופית משופרת מטעם בעלי מניות
- ו. שיקולי בית המשפט לפי סעי' 87 + 324 לחוק
- ז. תנית הפטור לנושאי המשרה בשל הפעולות נשוא ההסדר
- ח. תביעות החוב שהגישו בעלי המניות
- ט. מנגנון פיקוח על מימוש הסדר החוב

א. סמכות בית המשפט ושאלת חדלות פירעונה של החברה, כתנאי מוקדם לדיון לפי חלק י'

10. טוענים בעלי המניות, כי בית המשפט נעדר סמכות לדיון בבקשת החברה. זאת, בשל כך ש"כרטיס הכניסה" ההכרחי, להליך לפי חלק י' לחוק, הינו חדלות פירעונה של החברה. טוענים בעלי המניות שעל החברה הנטל להוכיח שסך נכסיה אינם עולים על חובותיה. לדברים הוסיפו בעלי המניות כי החברה בסעי' 73 לבקשה הדגישה כי מעולם לא הפרה התחייבות כלשהי ושאינן חובות שאינם משולמים ואף המנכ"לית, בתצהירה לא טענה לחדלות פרעון של החברה. טוענים בעלי המניות כי למעשה, כל חברת הזנק בתחום הפארמה, בתקופת הפיתוח ולפני תזרים מפעילות עצמאית, נסמכת על גיוסי הון, כך שניתן לטעון תמיד ובלי קשר למצב המדויק, שהינה בסביבת חדלות הפירעון ואף בחדלות פירעון. טוענים בעלי המניות כי באותה מידה, אפשר לטעון כי החברה הטעתה את בעלי המניות בגיוסי כספים קודמים שכן לא השתנה באופן עקרוני דבר מאז גיוס ההון מבעלי המניות למצב בעת הגשת הבקשה ומכל מקום טענו שלא מתקיימים חזקות חדלות הפירעון לפי החוק.



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11. שאלת "כרטיס הכניסה" להליך, נוגעת לשאלת חדלות פירעונה של החברה. הגם שבמועד הדיון, יתרת המזומנים הינה כזו, שמאפשרת להיבירדג' להפעיל תנית קובנטט ולהעמיד את חוב החברה כלפיה לפירעון מדי. בפועל, החברה פורעת כסדרם את כל חובותיה, אינה צפויה בשבועות הקרובים שלא להמשיך לפרוע את חובותיה, הגם קצב שריפת המזומנים בחברה ולכן נקודת המוצא לדיון תהא הבחינה המאזנית והשאלה האם סך התחייבויותיה של החברה עולה על סך נכסיה. החברה צירפה לבקשתה את חוות דעת המומחה מטעמה, ולפיה מצויה היא בחדלות פירעון מאזנית, מבחינה זו שסך נכסיה קטן מהתחייבויותיה. בחוות הדעת שהוגשה, (חברת פרומטאוס), נערכה הערכת שווי בהתבסס על מודל תזרימי מזומנים מהוונים, (DCF), היינו הערכת יכולתה של החברה להפיק מזומנים, כאשר לצורך כך הסתמכה חוות דעת החברה, על תחזיות ששימשו את החברה לצורך גיוס הון, כאשר הנחות היסוד היו המשך כעסק חי כמו גם כניסת משקיע שיביא למימון הנדרש לטיפול בתזרים השלילי הצפוי לשנים הבאות. זאת, הגם שכשיטת מומחה החברה, הנחות יסוד אלו כלל אינן ודאיות, כאשר הערכת השווי על בסיס היוון תזרים המזומנים הביא כשיטתו למסקנה כי שווי פעילות החברה עומדת על 12.3 מיליון דולר כאשר מסכום זה יש להפחית את ההתחייבויות הפיננסיות של החברה בסך 57.9 מיליון דולר דבר שמביא לכך שכשיטת מומחה החברה, הערכת שווי החברה הינה שלילית, היינו החברה מצויה בשווי שלילי של 45.6 מיליון דולר, כלומר ההתחייבויות עולות על נכסי החברה בסך של 45.6 מיליון דולר ומכאן עלתה טענת החברה לחדלות פרעונה המאזנית.

12. מומחה בית המשפט, ערך בחינה לתחשיב מומחה החברה, כאשר בעיקר ודגש הדברים היה על מקדם ההיוון שקבע מומחה החברה, של 31% כאשר מומחה ביהמ"ש קבע כי הנחת יסוד זו מרחיקת לכת, ויש לקבוע מקדם היוון של 20%, כטענת בעלי המניות. בהתאמות למומחה החברה נקבע ששווי פעילות החברה, עומד על 163-180 מיליון דולר. בוצעו הפחתות ותוספות כך שכשיטת מומחה בית המשפט, שווי החברה הנגזר ממודל ה-DCF והתאמות למומחה החברה, מביא את שווי החברה לטווח שווי שבין 134-159 מיליון דולר, (סע' 7 עמ' 49-47, והסיפא בסע' 7.1.8 עמ' 49). לצורך התאמה לחוות דעת החברה, מלבד השינוי בשיעור ההיוון כאמור, הובאו בחשבון התאמות נוספות ומכאן המומחה קבע כי בהתאמות למודל שהוצג בחוות דעת פרומטאוס, מסקנתו הינה שונה מזו של מומחה החברה. אלא שבד בבד עם מסקנה זו, כמו גם בסיכום השיטות השונות להערכה, כאמור בטבלה המסכמת בסע' 7.5 עמ' 57, הדגיש ופירט המומחה כי לגבי אותו טווח שווי שהוא עמד עליו, וכלשונו: "טווח השווים... מעיד כי קיים לחברה פוטנציאל שווי העולה על סך התחייבויותיה כל עוד היא פועלת תחת הנחת "העסק החי". שווים אלו (בפרט שיטת היוון תזרים המזומנים ושיטת המכפילים) מניחים כי החברה תצליח למצוא מקורות גידס חיצוניים למימון הגירעון התזרימי הצפוי שלה עד הגעה לאיזון התזרימי (שנת 2027). שווי זה אינו משקלל למעשה את הסיכון המימוני של החברה אשר מקבל משמעות גבוהה בשל קשיי הנזילות הגבוהים בהן מצויה החברה נכון למועד אישור הסדר החוב". לכן המומחה הסביר והבהיר מדוע שיטת ה-DCF אינה מתאימה ולכן פנה לבדוק בדרכים אחרות, בראש ובראשונה, לפי שווי השוק בבורסה ערב פרסום ההסכם עם הייבירדג', לפיו שווי החברה 45 מיליון דולר כאשר שווי זה צריך להיות מופחת לאור כך שאינו משקלל את הסיכון המימוני של החברה המקבל משמעות גבוהה בשל קשיי הנזילות הגבוהים.



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13. טוענים בעלי המניות, כי שיטת הערכת השווי חייבת להיות לפי שיטת תזרים המזומנים, (DCF) ושזו ההלכה הפסוקה, כי מובנה בשיטה זו כי מדובר בעסק חי, ושאינן הצדקה להניח אחרת כי אם תתקבל עמדת המומחה, הרי שמשול הדבר לסימון מראש של המטרה, בניגוד לשיטה המקובלת לחישוב ולפיכך עניינו במצב שבו החברה אינה עומדת ב"כרטיס הכניסה" להליך בהעדר חדלות פירעון, היינו בהעדר מצב שבו שווי הנכסים נמוך מכלל ההתחייבויות. לדברים הוסיפו בעלי המניות כי הגם ששיטות גיוס הון כמו בהקצאה נוספת של מניות או גיוס משקיע אסטרטגי לא הצליחו, עדיין עומדת הצעת בעלי המניות כמו גם שניתן למנות בעל תפקיד, שיפעל למימוש זכויות החברה, ושהפעולות שבוצעו לא היו לפי ערך החברה, אלא בערכים גבוהים ולא ריאליים.

14. מומחה ביהמ"ש כמו גם החברה והיירידג', הפנו מנגד לכך, שבהתאם ל"חוכמת ההמונים" של שוק ההון, החברה ערב פנייתה לבית המשפט, וטרם פרסום ההסדר עם היירידג', נסחרה בערכים של 45 מיליון דולר שזוהי נקודת מוצא חזקה, היינו שווי החברה בבורסה. בנקודה זו עלה הקושי בחוות הדעת של מומחה החברה כמו גם שההתאמות לחוות דעת מומחה החברה, שהביאו את מומחה בית המשפט לשווי החברה בסך של 134 מיליון עד 159 מיליון ₪, סכומים שאינם מתיישבים עם שווי השוק ערב פרסום ההסכם עם היירידג'. הדבר מצביעה על הקושי בשימוש בענייננו בהנחת העסק החי ולמעשה בשיטת היוון תזרים המזומנים. לדברים יש להוסיף כי הגם פניות לבנקי השקעות כמו גם הגם שמניות החברה נסחרו באחת הבורסות המשוכללות בעולם, (נאסד"ק), לא היה כל גורם שפעל להשתלט על החברה או לרכוש אותה לפי שווי השוק האמור של 45 מיליון דולר. נכון הוא כי בהתאם להלכה הפסוקה, הנוגעת להצעות רכש ולצורך שבבחינת שווי הוגן, לדוגמא לפי סעי' 338 לחוק החברות תשנ"ט – 1999, הועדפה שיטת תזרים המזומנים המהוון (DCF), ראו לדוגמא: רע"א 779/06 קיטאל נ' שאול ממן (28.8.2012). אלא שאף שם נקבע כי הדבר מותנה בכך שמדובר בעסק חי, כאחד העקרונות המהותיים, מה שאינו בענייננו.

15. המומחה חיווה דעתו, בסעי' 21, וכלשונו: "בהתבסס על הנתונים שהוצגו בפני נכון למועד חוות הדעת, אני סבור שלאור המשאבים המוגבלים וקצב שריפת המזומנים הגבוה, קיים חשש ממשי לגבי יכולתה של החברה לממן את פעילותה השוטפת ולפרוע את חובותיה הקיימים מעבר למספר חודשים מוגבל קדימה (להערכת החברה עד יוני 2024) וזאת גם בשים לב לתוכנית ההתייעלות עליה דיווחה החברה. המשמעות הינה שיתרת המזומנים של החברה למועד הערכה נמוכה מהתחייבויותיה השוטפות ואין ביכולתה לממן את פעילותה ולפרוע את הלוואותיה". בהמשך חידד המומחה את הדברים בכך שערב מחיקת המניות בבורסה, נסחרה החברה לפי שווי של 2 מיליון דולר ונסגרה הדרך באופן סופי, לגיוס כספים בשוק ההון כפי שנעשה עד להודעה על ההסדר ואין יכולת מעשית לעשות כן עד לסוף חודש יוני 2024 שזוהו המועד שיגמרו המזומנים בקופת החברה. המומחה הוסיף וחיווה דעתו כי לא מעשית האפשרות למצוא רוכש לחברה כמו גם שותף אסטרטגי או השקעה הונית חדשה עד אז ובשל לוח הזמנים הקצר.



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16. לדברים הוסיף המומחה כי לצורך שני המסלולים התיאורטיים האפשריים להערכת שווי החברה, צריך להביא בחשבון שני תרחישים: **הראשון** כי החברה פועלת על בסיס הנחת העסק החי, ושהיא תצליח לגייס את המשאבים הכספיים הנדרשים למימון הגרעון הצפוי עד איזון תפעולי. **השני**, שהנחת העסק החי לא מתממשת שאז אם מגיעה החברה לפירוק השווי הופך להיות אפסי. המומחה חיווה דעתו כי לאור המשאבים הניכרים שהושקעו על ידי החברה באיתור גיוס הון אפשרי, ההסתברות לאיתור עסקה בטוח הזמן הקצר בו ניתן לשמר החברה כעסק חי אינה גבוהה. לדברים הוסף אותו חוב אדיר להיברידיג' בהיקף 80 מיליון דולר, שהינו אבן נגף לא פשוטה בכל גיוס הון פוטנציאלי. כשיטת המומחה, השווי הכלכלי הפוטנציאלי לבעלי המניות לאור חישובים הסתברותיים עומד על כ- 15 מיליון דולר ולכן המענה לבעלי המניות צריך להיות בקביעת תמורה מותנית משופרת לבעלי המניות. המומחה פירט כי מבחינת יתרות מאזנויות, סעי' 81 עמ' 19 לחוות דעתו, עודף ההתחייבויות על הנכסים, מביא לשווי שלילי בסך 66.57 מיליון דולר. לפיכך ולשאלה הרלוונטית לפסקה זו: אני מקבל ומאמץ את קביעת מומחה בית המשפט, כי התחייבויות החברה בנקודת זמן נכון למועד הדיון בבית המשפט, עולים על נכסיה.

17. לפיכך, במחלוקת זו שבין בעלי המניות, לחברה, להיברידיג' ולמומחה, כמו גם לאור עמדת הממונה שהצטרף לעמדתם, הנני מעדיף ומאמץ את מסקנות מומחה בית המשפט. דגש יש לתת לכך שהחברה מיצתה את כל האפשרויות לגיוס הון והגיעה לפרשת דרכים שבה לא ניתן באופן ריאלי לגייס הון בדרכים המקובלות. גם האפשרות שהציעו בעלי המניות, מינוי בעל תפקיד שהוא ינסה לערוך מימוש אינה ריאלית, וכך גם העדפתי כפי שעוד יפורט בהמשך פסק הדין את מסקנות המומחה כי הצעת בעלי המניות המשופרת אינה עדיפה על ההסדר המוצע. מכל מקום והגם שלא ניתן לומר שאין כל ממש בטענת בעלי המניות, בענייננו לא ניתן להניח כי מדובר בעסק חי לצורך ביצוע הערכת השווי ולכן לא ניתן להסתמך על שיטת תזרים המזומנים המהוון לפי הערכות החברה בעת גיוסי ההון. לא שוכנעתי בתרחיש שיביא לכך שהחברה תוכל להישמר כעסק חי ללא הסדר החוב המוצע שהינה האפשרות היחידה של החברה, ולא מצאתי שקיימת אפשרות ריאלית אחרת.

סיכומם של דברים, לא שוכנעתי בטענת בעלי המניות, בהעדר סמכות בית המשפט לדון בהסדר החוב המוצע, לפי חלק י' לחוק ולאחר ששוכנעתי כי החברה מצויה במצב של חדלות פרעון, לכל הפחות מבחינה זו, שהתחייבויותיה עולות על שווי נכסיה.



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ב. הצורך בכינוס אספות נושים וכינוס אספות בעלי מניות

18. קובעת הוראת סעי' 322, לחוק זו לשונה:

"(א) הוגשה לבית המשפט בקשה לפי סעיף 321, יורה על הבאת הסדר החוב לאישור הנושים.

(ב) עלה סך נכסיו של חייב שהוא תאגיד על סך חובותיו והסדר החוב מציע לכל נושה תמורה השווה למלוא סכום החוב שבו הוא נושה – תורב ההצעה גם לאישור חברי התאגיד.

(ג) על אף האמור בסעיפים קטנים (א) ו-(ב), מצא בית המשפט כי יש בעצם הבאת הסדר החוב לאישור הנושים משום פגיעה בהליך לפי פרק זה, לא יורה על הבאתו לאישור בעלי העניין.

19. טוענת החברה כי הסדר החוב מביא לפירעון מלא לכל הנושים של החברה, (למעט הייברידג') ולכן אין צורך בכינוס אספות נושים, כמו גם שניתנה לנושים ההזדמנות להגיש התייחסות להצעת ההסדר ומלבד נושה משמעותי שהגיש הודעת תמיכה בהסדר החוב, לא הוגשו הודעות מטעם הנושים בדגש על העדר התנגדויות. מצאתי לקבל את עמדת החברה ולפיה אין הצדקה לאיבוד זמן ומשאבים שבכינוס אספות נושים בנסיבות הסדר החוב המוצע בתיק זה. אעיר כי כפי שעוד יפורט להלן, לא מצאתי מקום לראות בבעלי המניות שהגישו תביעות חוב כנושים הנסמכים על נזקים שנגרמו להם כבעלי מניות, כקבוצת נושים נפרדת ושונה מקבוצת בעלי המניות.

20. בנוגע לקבוצת בעלי המניות, טוענת החברה כי כאמור בסעי' 322(ב) לחוק, כיוון שסך הנכסים נמוך מסך החובות, בין היתר לאור החוב להייברידג', אין טעם בכינוס אספת בעלי המניות. דגש ניתן בידי החברה על כך שמשמעות כינוס האספות תהא איבוד זמן יקר, וסיכון שבחזרת הייברידג' מהצעתה. מנגד, טענו בעלי המניות כי שווי הנכסים עולה על ההתחייבויות. כן טענו כי משמעות כינוס אסיפת בעלי המניות אינה ענין פורמלי בלבד, אלא יתכן כי באסיפה שכזו, יועלו הצעות חדשות, הדבר יאפשר לקבוצות גדולות נוספות של בעלי מניות להביע עמדתם או לאפשר הגשת הצעות חלופיות להצעת הסדר החובה. הממונה על חדלות הפירעון תמך בעמדת החברה.

21. בנסיבות בהן וכאמור, מצאתי לאמץ את חוות דעת המומחה ולפיה שווי ההתחייבויות עולה על הנכסים, הרי שאין הצדקה לאיבוד זמן שבכינוס אספת בעלי המניות ואין גם חובה כזו, מה גם שבענייננו, הצעת הסדר החוב הובאה לידיעת בעלי המניות בחברה, אשר אף עמדתם נשמעה בדרך שבה הטיעון המרכזי באמצעות משרד עו"ד גיסין ושות' אשר למעשה ייצג את האינטרס של בעלי המניות. לא מצאתי כל פגם בכך שלא כונסו אספות בעלי מניות אשר יומם ניתן להם בטיעון ובדיון שהתקיים בבית המשפט. כך היה גם בהלכת חדל"ת (תל אביב) 28349-01-23 יונט קרדיט שירותים



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נ' הממונה, (5.4.23 השופט ח' ברנר), ראו סעי' 23, שם נקבע העדר חובה במקרה דומה, לכינוס אספת בעלי המניות. בענייננו, אין מדובר במצב שבו הנושים מקבלים את כל נשייתם ונשארים נכסים שיריים שכן הייברידג', אינה מקבלת כל דיבידנד כתוצאה מהסדר החוב כך שלפי לשון סעי' 322 אין חובת כינוס אספת בעלי מניות. בכול הנוגע לתביעות החוב של בעלי המניות, עוד אפרט להלן בענין זה כאשר אקבע כי זכויותיהם מגולמות באותו מתווה תמורה מותנה ולכן לא מצאתי שהיה הכרח בנסיבות, בקיום אספות בעלי מניות או אספות נושים כתנאי לאישור הסדר החוב.

ג. הצורך במינוי מנהל הסדר

22. בהתאם לסעי' 326 לחוק, רשאי בית המשפט למנות מנהל הסדר, בהסדר חוב לפי חלק י', כאשר מדובר בסמכויות מצומצמות. בין היתר, לבחינת כוח ההצבעה של הקבוצות השונות, קביעת זכויות בעלי הענין ופיקוח לחלוקת התמורה הצפויה לפי הסדר החוב ולכל נושא אחר שימצא בית המשפט צורך בהרחבת סמכויות מנהל ההסדר. בענייננו, בהעדר פגיעה בנושי החברה, לא מצאתי הצדקה להפעלת הסמכות למינוי מנהל ההסדר, כאשר ענין אחד יוותר לדיון הינה שאלת הפקוח על אותה תמורה מותנת לבעלי המניות, נושא שידון בהמשך פסק הדין.

ד. הסדר זכויות ערך התמורה המותנה - CVR (contingent value rights)

23. המומחה העריך בצורך הסתברותית ועל בסיס מודלים כפי שפורטו בחוות דעתו, כי ישנו ערך כלכלי להחזקת בעלי המניות במניות החברה, גם במצב הנוכחי. ערך זה בחלופת פירוק יהיה אפסי אולם בחלופת הסדר חוב יש לו משמעות ומומחה ביהמ"ש העריכה בסך של כ-15 מיליון ₪, ראו סעיף 32 עמ' 8 לחוות הדעת. הצעת ההסדר כפי שהוצעה, ראו סעי' 5.3 להצעת ההסדר, כללה ערך מותנה בשווי של 27.5 מיליון דולר, בהתאם לאבני דרך שהינן: במידה והכנסות החברה ממכירות המוצר (omisirge) בארה"ב במהלך 4 רבעונים עוקבים יעלו על 100 מיליון דולר, במהלך 3 שנים מתחילת ההסדר, בעלי המניות יקבלו כ-10 מיליון דולר. במידה וההכנסות יעלו על 150 מיליון דולר, בעלי המניות יקבלו כ-15 מיליון דולר נוספים. במידה ויתקבל אישור רגולטורי למוצר בפיתוח GMD201 במהלך תקופה של 4 שנים מתחילת ההסדר, בעלי המניות יקבלו כ-2.5 מיליון דולר. החברה התחייבה לפעול לתכנון הזכויות המותנות באופן היעיל ביותר מבחינת מיסוי.



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24. המומחה בחן את השווי הכלכלי של התמורה המותנית בהסדר המוצע, ומצא כי זה משקף סכום המוערך בסך של 2.7 – 6.2 מיליון דולר, סכום שאינו משקף את הפיצוי ההולם לבעלי המניות והמותיר לבעלי המניות שיעור נמוך יחסית מפוטנציאל הערך העתידי במידה ויתרחש. לפיכך המומחה פעל באופן שהערך הנומינלי והערך הכלכלי של התמורה המותנית לבעלי המניות תהווה את ערך אחזקתם ערב ההסדר בהתבסס על שווי השוק של החברה בבורסה ערב ההסדר והציע כי ערך התמורה המותנית המקסימלית תהא גבוהה יותר בהתאם לאבני הדרך כפי שפירט בסעי' 37 עמ' 10 לחוות דעתו: הגדלת הסכום שישולם בהתאם לתחזיות מכירות של המוצר (omisirge) מסך של 25 מיליון דולר לסך של 35 מיליון דולר. הכנסת אבן דרך נוספת לתשלום מוקדם במקרה בו תחזית ההכנסות תגיע ללפחות 75 מיליון דולר במקום 100 מיליון דולר (מחזור מכירות המשקף נקודת איזון תפעולית). הגדלת תקופת הבחינה ביעדי מכירות מ – 3 שנים ל – 6 שנים. ותשלום חד פעמי בגין כל עסקה שתבוצע במוצר GDA-201 בסך של 5 מיליון דולר, במידה ותחתם עסקת מסחור או מכירה של הטכנולוגיה במסגרתה תתקבל תמורה הגבוהה מסך של 15 מיליון דולר. כשיטת המומחה, שיפור המרכיבים כאמור יגדיל התמורה הנומינלית לבעלי המניות לסכום כולל של עד 40 מיליון דולר במקרה של הצלחה, אשר ערכם הכלכלי נאמד על ידי המומחה בטווח שבין 13-19.2 מיליון דולר.

25. סכומים אלו לפי התמורה המותנית המשופרת, הינם כשיטת המומחה מאזנים בין האינטרסים של בעלי המניות לאינטרסים של החברה והנושים ובעלי החוב. הוסיף והדגיש המומחה כי ההינצלות מפירוט יכולה להיות רק תחת ההסדר במסגרתו יוזרם הון משמעותי לחברה ויומר החוב שלה למניות על מנת לתת חבל הצלה ופתיחה מחדש לצינור החמצן החיוני לה – אפיקי גיוס אפשריים עד הגעה לאיזון תפעולי. המומחה הדגיש כי בדבר יבוא תשלום הוגן לבעלי המניות ביחס לאחזקותיהם ערב ההסדר כמו גם שמדובר ביתרון על פני מסלולים אחרים שאינם מעשיים.

26. טוענים בעלי המניות כי לצערם, המומחה נקלע לטעות. המומחה נדרש במשימה המהותית והעיקרית לבצע הערכת שווי. אלא שהמומחה פעל לנסות לגשר ולאזן בין בעלי המניות, הציע הצעה מסויימת, שכשיטת בעלי המניות אינה הוגנת כלפיהם, וכיוון שהצעת המומחה התקבלה, התקבע המומחה בהצעתו, הגם שאף כאן, מדובר בהצעה נמוכה מבחינת בעלי המניות ושאינה מובטחת. לדברים הגיבה הייברידג' בטענה כי היו נכונים ללכת כברת דרך, לאור המלצת המומחה, אולם התנאי הינו שלא יהיו דרישות נוספות, ואף המתווה המקורי כלל הצעה לבעלי המניות שהינה לפנים משורת הדין שכן ערך המניות הינו אפסי, ושזהו הסיכון לבעל מניות במיוחד המשקיעים בחברות הזנק בתחום הביו פארמה, לאיבוד ערך מניותיהם. החברה תמכה בטענות הייברידג' והממונה סמך ידיו על המלצת מומחה בית המשפט.



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27. לאחר ששקלתי את טענות הצדדים, כמו גם לאחר ששמעתי את המומחה וכן את ההסברים הנוספים שניתנו על ידו, הן במסגרת החקירה הראשית והן במסגרת החקירה הנגדית, שוכנעתי כי כהמלצת המומחה, מדובר במנגנון אשר מאזן בנסיבות בצורה הוגנת בין אינטרס בעלי המניות וזכויותיהם ואישור הסדר החוב באופן ולפיו הסכימה והתחייבה הייברידג' למנגנון המשופר שהציע המומחה, הינו ראוי הוגן, מאזן כנדרש בין האינטרסים השונים וצודק.

28. **לפיכך וכפי שיפורט במסקנת פסק הדין, הסדר החוב יאושר בכפוף לתיקון סעי' 5.3 שיתוקן בהתאם להמלצות מומחה בית המשפט.**

ה. הצעה חלופית משופרת מטעם בעלי מניות

29. בעלי המניות הציעו הצעה חלופית להצעת ההסדר. טענה החברה כי המנגנון הקבוע בחלק י' הינו העמדת הסדר חוב לאישור בית המשפט, תוך הסמכת בית המשפט לאשר או לא לאשר, ואין פרוצדורה לכך שקבוצת בעלי המניות יציעו הצעה נגדית. מכל מקום, הצעת בעלי המניות, למעשה ההצעה המשופרת של בעלי המניות תיבחן להלן. ההצעה הוגשה באמצעות קבוצת Levin capital strategies l.p. ההצעה המקורית התקבלה ביום 18.4.24 ולפיה, הקבוצה תרכוש את יתרת האג"ח המובטחת בסך 4.982 מיליון דולר של חברת הייברידג' על מלוא ערכה, הקבוצה תזרים לפחות 10 מיליון דולר, להמשך הפעלה לתקופת ביניים לצורך יישום תוכנית רה-ארגון כולל החלפת הנהלה וזאת בתמורה למניות שיוקצו. תהא יוזמה למכירת המוצר בפיתוח של החברה GDA-201. התוכנית של קבוצת בעלי המניות תאפשר פרעון כל החובות השוטפים, תוך שלא יהיה צורך בהאצת פירעון החוב להייברידג' שמועדו בשנת 2026. ההצעה כפופה לקבל מידע מלא מהחברה. בהמשך, ביום 25.4.24, הקבוצה האמורה שיפרה את ההצעה בכך שיועמדו 20 מיליון דולר נוספים, שיוגדרו כחוב בכיר מובטח בדרגת קדימות לחוב כלפי הייברידג' בסך 75 מיליון דולר.

30. את ההצעה ניתח המומחה בסעי' 136 עמ' 29 לחוות דעתו. הקושי העולה מההצעה הינו בכך, שהיא כוללת התניות שונות בעיקר ובדגש על הצורך בקבלת גישה לחדר מידע ובדיקה של נכסי החברה. בנוסף העלה המומחה קושי בכך שהטלת חוב נוסף של 20 מיליון דולר, מעבר לקיים, היינו מעבר לאותם 75 מיליון דולר חוב להייברידג', ועוד כ – 5 מיליון דולר לרכישת החוב השוטף להייברידג', היינו סך חובות בהיקף 100 מיליון דולר, תקשה עוד יותר על הסיכוי לגיוס כסף חדש לחברה. המומחה סבור כי מדובר בהצעה נחותה ביחס להסדר החוב בכך שהזרמת הון נמוכה יותר, פשוט תדחה במעט את משבר הנזילות תוך צורך בגיוס הון משלים בטווח המיידי ובנוסף עולה סיכון פיננסי גדול יותר בהגדלת חובות החברה והקטנת היכולת לגיוס הון בשל כך. כן הפנה המומחה כי לא ברור מה משמעות דילול המניות בכך שתמורת ה – 10 מיליון דולר יונפקו מניות החברה.



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31. בעלי המניות ביקשו לצרף את תצהירו של מר רוברט בלום, שכיהן כיו"ר הדירקטוריון בחברה עד מרץ 2023, כאשר לא היתה התנגדות לכך, בכפוף לטענה שאין למר בלום את המידע הרלוונטי, שנה ויותר לאחר שסיים את תפקידו. הייברידג' התנגדה בכך שמדובר בהצעה מעורפלת, שיש בה סיכון גדול לחוב הגדול שהחברה חייבת לה, ושההצעה אינה מתחשבת בשאלת הסכמתה של הייברידג', כך לדוגמא, לזה שהזרמת 20 מיליון דולר תיעשה במעמד עדיף על זה של הייברידג' ובניגוד לשטר החוב. מטעם החברה ניתנה התייחסות לכך שמדובר בהצעה שהוצעה ללא תצהיר, שאין בה התחייבות ברורה ושהיא אינה מעשית. טוענת החברה כי מדובר בהצעה שאינה ישימה, שכן הצעה חייבת להאריך באופן משמעותי את "האוויר לנשימה" את יתרת המזומנים של החברה. ההצעה אינה מעשית בכך שלמרות הרקורד הארוך של החברה למכור את המוצר המהותי שלה, את תוכנית תאי ה- NK (GDA-201), הדבר לא צלח ואין כל קונה באופק, ומדובר במרכיב מהותי, שכן ההצעה נוקבת ובונה על מוצר זה בסכום של 40 מיליון דולר שווי אולם מדובר במרכיב שאינו מציאותי. החברה מפנה לכך שצריך לקבל את הסכמת הייברידג' אך כלל לא נוהלה הידברות. טוענת החברה כי לא ברור כיצד ניתן יהיה להנפיק מניות לאותם 10 מיליון דולר מוצעים באופן מיידי כמו גם שההצעה אינה מפרטת כיצד ניתן יהיה למנוע מהייברידג' להעמיד באופן מיידי לפירעון את חוב החברה בסך 75 מיליון דולר. הממונה תמך בעמדת החברה ובהמלצת המומחה.

32. שקלתי את טענות הצדדים וגם בענין זה, הנני מקבל את נימוקי והמלצת מומחה בית המשפט, בדבר נחיתותה של ההצעה המשופרת של בעלי המניות. המומחה מאמץ למעשה את עמדת החברה והייברידג', כאשר הממונה תומך וממליץ על קבלת עמדת המומחה ומסקנתו. הצעת בעלי המניות אינה מעשית וקרוב לוודאי שלא תצליח למנוע מהייברידג' לפעול בהתאם לזכויותיה החוזיות, להעמדה לפירעון של החוב בסך של 75 מיליון דולר. שוכנעתי כי הליכה בתלם שהוצע, שיש בו התניות רבות, ואי וודאות, יביא לסחרור כלכלי, וסיכוי גבוה יותר כי החברה לא תוכל לצלוח את המשבר בו היא נמצאת. לכן, ההצעה שהוצעה בידי בעלי המניות, גם לא ההצעה המשופרת, לא תוכל להביא להטיית הכף מאישור הסדר החוב הנדון בתובענה, בנסיבות בהן מצויה החברה.



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ו. שיקולי בית המשפט לפי סעי' 87 + 324 לחוק

33. בהתאם להוראת סעי' 324 לחוק, על אישור הסדר חוב יחולו בשינויים המחויבים, הוראות סעיפים 85-88 לחוק. לעניינו רלוונטית הוראת סעי' 87, ובמיוחד ס"ק (1) הקובע כך:

"על אף האמור בסעיפים 85 ו-86(א), בית המשפט רשאי לאשר הצעה לתכנית לשיקום כלכלי גם אם לא אושרה בכל אחת מאסיפות הסוג ברוב הרדוש לפי סעיף 85, אם שוכנע, במידת הצורך על יסוד הערכת שווי של התאגיד שהגיש מומחה מטעמו או מטעם הצדדים הנוגעים לעניין, כי ההצעה הוגנת וצודקת ביחס לכל נושה או חבר התאגיד באסיפת סוג שלא אישרה אותה (בסעיף זה – אסיפה מתנגדת), ובכלל זה שוכנע כי מתקיים המפורט להלן:

(1) אם לא תאושר תכנית לשיקום כלכלי לא יחיה מגוס מפירוק התאגיד והתמורה שהוצעה לכל נושה או חבר תאגיד באסיפה מתנגדת אינה נמוכה מהתמורה שהיה מקבל בפירוק התאגיד".

34. השימוש בסעי' 87 לחוק, נועד למקרים חריגים, בהם הצעת הסדר החוב, (לפי חלק י' לחוק) או תוכנית השיקום, (לפי חלק ב' לחוק), לא עברו באספות הנושים, לדוגמא, ברוב מנין והערך הנדרשים באסיפת סוג מסוים או כלשון החוק באסיפה מתנגדת. למרות זאת, ישנה סמכות מיוחדת, בהתאם לקבוע בסעי' 87 לחוק, המעניקה לבית המשפט את הסמכות לאישור הסדר חוב, גם אם דרכו של הסדר החוב לא צלחה את הדרך בשלבים שמתווה החוק. בענייננו, השאלה הרלוונטית הינה האם הצעת הסדר החוב, הוגנת וצודקת ביחס לבעלי המניות. כבר נקבע לעיל, בהתבסס על חוות הדעת שהגיש מומחה בית המשפט, כי הצעת ההסדר בדגש על מתווה התמורה העתידית, מאזנת בין האינטרסים של בעלי המניות לאינטרסים של הצדדים האחרים, באופן צודק והוגן. בנוסף, בהתאם לסעי' 87(1) נקבע תנאי ולפיו: **"אם לא תאושר תכנית לשיקום כלכלי לא יהיה מנוס מפירוק התאגיד והתמורה שהוצעה לכל נושה או חבר תאגיד באסיפה מתנגדת אינה נמוכה מהתמורה שהיה מקבל בפירוק התאגיד"**, ושוכנעתי שתנאי זה מתקיים.

35. המצבים בהם מאושרים הסדרי חוב בהם בעלי המניות אינם נותרים בתמונה ומניותיהם "מאוינות" אינם בלתי מצויים, שכן במצב של חדלות פרעון, המיקוד אינו בעלי המניות אלא בחינת אלטרנטיבות, כאשר לא פעם, אין אפשרות מעשית להותרת בעלי המניות כמי שיוותר להם חלק שיורי בנכסי החברה, ראו: רע"א 8417/11 נמי נאמנויות נ' עו"ד שאול ברגרזון כונס נכסים (7.5.13). ראו גם 27222-09-21 (מחוזי תל אביב) מפעלים פטרוכימיים נ' רזניק פז (5.9.22), השופט ח' ברנר) תוך שנקבע כי נקודת המוצא היא שחברה בחדלות פירעון שווי המניות בה מתאפס.



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36. כפי שנומק לעיל, שוכנעתי, על בסיס חוות דעת המומחה, שהתרחיש ולפיו תהא אלטרנטיבה להמשך פעולתה של החברה אילולא הסדר החוב לפי הצעת הייברידג' ששופרה, הינו תרחיש שהתקיימותו קטנה עד בלתי אפשרית. המומחה הדגיש כי ללא אישור הסדר החוב, מצב החברה יהיה בפני פירוק שמשמעותו תמורה אפסית לבעלי המניות ושוכנעתי בנימוקי המומחה כי הסדר זכויות ערך התמורה המותנה – CVR, הינו באופן ברור עולה על מה שיקבלו בעלי המניות ללא אישור הסדר החוב ובמילים אחרות, קרוב לוודאי בפירוק, שם שווי המניות יהיה אפסי.

ז. תניית הפטור לנושאי המשרה בשל הפעולות נשוא ההסדר

37. נקודה ספציפית שעלתה הינה בכך, שההסדר המוצע אינו עוסק בזכויות וחובות של נושאי משרה בחברה, למעט תנאי פטור שפורט בנספח A למזכר ההבנות הנלווה להסכם התמיכה, כאשר עילות התביעה שלגביהן ניתן הפטור פורטו שם ועיקרן בפטור בין היתר לנושאי המשרה בחברה, לגבי העבודה והטיפול בקשר עם הסכם התמיכה, מזכר ההבנות, הסדר החוב, הגשת הבקשה לאישור הסדר החוב לבית המשפט וכל הקשור בהם.

38. לאחר ששקלתי את טענות הצדדים, ולאחר שב"כ הממונה אף היא הסכימה כי אין הצדקה שלא לאשר את סעיף הפטור, מצאתי לדחות את טענות בעלי המניות בענין זה. בהסדרי חוב רבים, מצויות הוראות הפוטרות את נושאי המשרה מאחריות בשל מעשיהם ביחס לחברה ובענייננו, ביחס להגעה להסדר החוב המאושר לפי פסק דין זה. ראו: חדל"ת 19-10-25064 (מחוזי תל אביב), אפריקה ישראל נ' הממונה, (השופט א' אורנשטיין, 27.11.19). ב"כ החברה הפנה להלכת רע"א 5938/16 אי. די. בי. חברה לפתוח נ' אוהד אלוני (16.11.17) אף שם עלה נושא של תניית פטור במסגרת הסדר חוב מתוקן, כאשר נקבע שם ראו סעי' 20 לפסק הדין, כי הגיוני לדרוש מבעלי המניות שקיבלו תמורה נוספת או חליפית בהתאם להסדר החוב, לוותר על כל טענה ותביעה שיש להם בעקבות נשוא הסדר החוב. בסעי' 21 הוסף והודגש כי תניית פטור רחבה ככל שתהיה, אינה יכולה לכלול מעשי תרמית והטעייה שלא היו ידועים בעת אישור הסדר החוב. העליתי נושא זה שהוזכר בהלכה הפסוקה לצורך השלמת התמונה, הגם שלא נטענו בענייננו טענות כלפי נושאי המשרה, מעבר לטענות של רשלנות. ראו גם במקרה נשוא הלכת חדל"ת (תל אביב) 23-01-28349 יונט קרדיט שירותים נ' הממונה, (5.4.23 השופט ח' ברנר), אף שם אושר פטור מתביעות במסגרת הסדר חוב, כך שאין מדובר בענין חריג או נדיר ובמיוחד כאשר ענייננו בפטור מתביעות כפי שהוצהר בידי ב"כ החברה לפרוטוקול, בכול הנוגע להסדר החוב על נספחו.

לפיכך, לא מצאתי הצדקה להתערב בהסדר החוב ולהחריג כטענת בעלי המניות, את תניית הפטור לפעולות שביצעו נושאי המשרה בחברה בקשר להגשת הבקשה לאישור הסדר החוב.



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ח. תביעות החוב שהגישו בעלי מניות

39. בעלי המניות הגישו ביום 1.5.24 הודעה על הגשת תביעות חוב בשם בעלי המניות כאשר טענתם הינה שהחברה גרמה להם נזקים, בשל כך שהחברה פנתה לאישור הסדר החוב עם הייברידג' נשוא תיק זה. בתביעת החוב נטען כי החברה אינה בחדלות פרעון וכי החברה התרשלה (לכל הפחות) בייזום הסדר החוב עם הייברידג'. עלו טענות כי החברה וחלק מהדירקטורים פעלו תחת חשש לניגוד עניינים בקשרים עם הייברידג'. טוענים בעלי המניות כי החברה הציגה באופן מטעה את החשש להפרת הקובנטט שאינו מתקיים משך מספר חודשים. נטען למידע סותר וכי הודעת החברה על פתיחת הליך זה הובילה להודעת הנאסד"ק על מחיקת המניות מהמסחר. לפיכך טוענים בעלי המניות כי הפנייה לבית משפט בהליך זה היא שגרמה לנזקים לערך מניותיהם. בעלי המניות פירטו את אופן יצירת הנזקים למניות, בציר זמן לפני עסקת הייברידג'. לפיכך טענו בעלי המניות כי נגרמו להם נזקים ושאלו באמור בהודעתם על תביעת חוב בכדי למצות את טענותיהם.

40. החברה טוענת מנגד כי בעלי המניות אינם יכולים לשדרג עצמם למעמד של נושים בדרך של הגשת תביעות חוב בשל נזק שנגרם לשווי מניותיהם. טוענת החברה כי תביעת החוב הוגשה בשם נושה אחד, (מר יצחק אהרונוב) ושהדין בישראל אינו מכיר בתביעת חוב ייצוגית או קבוצתית. טוענת החברה כי תביעת החוב שהוגשה לא נתמכה בתצהיר. טוענת החברה כי בהתאם לדין, מעמד תביעות חוב של בעלי מניות בשל טענות בגין פגיעה בשווי אחזקותיו הינה תביעת equity ולכן הינה במעמד נדחה. החברה הפנתה לדרגות הנשיה שבסעי' 231-237 לחוק ובמיוחד לסעי' 237 המגדיר מהם חובות דחויים. טוענת החברה כי תביעת חוב כבעל מניות, חותרת תחת עקרונות היסוד שבחוק, בין היתר יציאת החברה לדרך חדשה כשהיא משוחררת מחובות העבר. החברה הפנתה בין היתר להלכת חדל"ת 19-10-25064 (מחוזי תל אביב), אפריקה ישראל להשקעות נ' הממונה (27.11.19), השופט א' אורנשטיין) שם נקבע באופן דומה, בסעי' 3 לפסק הדין כי בעל המניות אינו יכול לדרוש העדר פטור החברה מטענות בהיותו בעל מניות. לפיכך טענה החברה כי יש לדחות את טענות בעלי המניות כנושים בעלי תביעות חוב.

41. הייברידג' אף היא הגישה התייחסותה, תוך שטענה כי לבעלי המניות אין כל מעמד להגיש תביעות חוב כנושים, בדגש על העדר ערך שיורי כאשר בענייננו, קיבלו ערך שיורי לפני משורת הדין. טוענת הייברידג' כי עילת התביעה הנטענת, הינה עילה של החברה נגד נושאי המשרה ולא עילת תביעה של בעלי המניות. טוענת הייברידג' כי מדובר בתביעה הקשורה בטבורה להחזקת המניות והיותם של בעלי המניות בדין נדחה וכי שיקולי מדיניות והשלכות רוחב מחייבים דחיית תביעת חוב כזו של בעלי המניות. מוסיפה הייברידג' וטוענת כי מתן מעמד לבעלי המניות כנושים, יביא לסתימת הגולל על האפשרות לאשר את הסדר החוב, וכי לבעלי המניות אין מעמד כנושים. עוד טענה הייברידג' כי אין לתת תוקף לתרגיל זה של בעלי המניות ובכל מקרה, הדבר מסור לשיקול דעת בית המשפט לפי סעי' 87 לחוק.



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42. ב"כ הממונה הסכימה עם החברה והייברידג', תוך שטענה כי האיזונים שמתווה הסדר החוב, באותה תמורה מותנית עתידית, מביאים בחשבון ומשקללים, גם את הנזקים להם טוענים בעלי המניות, לירידת הערך כתוצאה מהפניה לבית המשפט לאישור הסדר החוב.

43. שקלתי את טענות הצדדים ומסקנתי הינה שיש לדחות את עמדת בעלי המניות, כי הינם גם נושים לצורך הגשת תביעת חוב כבעלי מניות שנגרם להם נזק בדרך של ירידת ערך המניות. בעלי המניות הינם במעמד של חובות דחויים, כלומר אינם בסדר הנשייה ביחד עם שאר הנושים. קובעת הוראת סעי' 237 לחוק כי חובות לחברי התאגיד הנובעים מהיותם חברי התאגיד הינם בגדר חובות דחויים. בהתאם לסעי' 87 לחוק, ולאור כך ששוכנעתי כי הצעת הסדר החוב הינה הוגנת וצודקת על בסיס הערכת השווי של מומחה בית המשפט כמו גם ששוכנעתי כי בפירוק לא יקבלו בעלי המניות תמורה גדולה יותר, נדחתה טענת בעלי המניות. דחיית טענות בעלי המניות הביאה בחשבון כי בהתאם להסדר החוב מקבלים הם תמורה מותנית עתידית, המגלמת ומשקללת בתוכה את מלוא זכויות התביעה שיש לבעלי המניות כנגד החברה. כפי שטענה החברה, טענה מוצדקת, אין בדרך של הגשת תביעת חוב, בכדי לאפשר לבעלי מניות לשדרג את מעמדם כנושים. כפי שטענה הייברידג', משמעות קבלת עמדה זו תחתור תחת האפשרות להביא לאישור הסדרי חוב ולפיכך במצב דברים זה אין משמעות לתביעת חוב של חוב דחוי מאת בעלי המניות ולכן הנני קובע כי לא עומדת לבעלי המניות הזכות להגיש תביעות חוב לנזקים שנגרמו בשל אישור הסדר החוב נשוא תיק זה. לפיכך לא מצאתי להיכנס לשאלת העדר עילת התביעה כטענת הייברידג' או לשאלות של תוקף תביעות החוב שהוגשו על ידי בעל מניות אחד וללא תצהיר.

ט. מנגנון פיקוח על מימוש הסדר החוב לטובת בעלי המניות

44. טוענים בעלי המניות כי אין מנגנון המפקח על יישום פרק הסדר החוב המתייחס לזכויותיהם בכול הנוגע לאותה תמורה עתידית מותנית – CVR, כאשר מנגד טענו החברה והייברידג' כי אין צורך במנגנון מיוחד ודי בהתחייבות נשוא הסדר החוב. הממונה טען כי עניין זה צריך עיון. שאלת הצורך בפיקוח על מימוש הסדר החוב לטובת בעלי המניות עלתה בשולי הדיון. איני קובע מסמרות בדבר. החברה מתבקשת להתייחס לנושא זה, ולהגיש עמדתה, עד ליום 18.6.24. לאחר מכן יתבקשו תגובות הצדדים הנוספים ותינתן החלטה נפרדת בשאלה זו שאינה מחויבת הכרעה כחלק מהשאלה המהותית נשוא פסק דין זה האם לאשר את הסדר החוב שהוצע.



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סיכום

45. סיכומם של דברים, וכפי שנקבע בפסק דין זה, ניתן בזאת אישור בית המשפט, להסדר החוב שאושר לפי חלק י' לחוק, ההסדר שצורף כנספח 1 לבקשה בכפוף לתיקון החלק בהסדר החוב, המתייחס לתמורה המותנית העתידית המשופרת, כפי שפורט לעיל, לפי הצעת מומחה בית המשפט שהתקבלה ואושרה בידי הייברידג'. החברה תפעל על מנת שלא יהיה ספק מהו הנוסח שאושר, להגיש מסמך שבו ישולב השינוי האמור, וזאת בתוך 14 יום.

כפי שפורט לעיל נושא שאלת הפיקוח או הצורך בפיקוח, ידון בנפרד, בהתאם להוראות שינתנו לאחר קבלת עמדת החברה אשר התבקשה להגיש עמדתה עד ליום 18.6.24.

אין צו להוצאות. זכות ערעור כדין.

ניתן היום, ל' ניסן תשפ"ד, 08 מאי 2024, בהעדר הצדדים.

יעקב פרסקי, שופט