



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD: of 2023

BETWEEN

**(1) MASHREQBANK PSC
(2) KEIRAN HUTCHISON IN HIS CAPACITY AS RECEIVER
(3) HANI BISHARA IN HIS CAPACITY AS RECEIVER**

PLAINTIFFS

AND

**(1) KES POWER LTD.
(2) SAGE VENTURE GROUP LIMITED**

DEFENDANTS

WRIT OF SUMMONS

TO: KES Power Ltd. c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands; and

Sage Venture Group Limited c/o Aegis Chambers, 1st Floor, Ellen Skelton Building, 3076 Sir Francis Drake's Highway, Road Town, Tortola, VG1110, British Virgin Islands.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the following pages.

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Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 14th day of December 2023

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

Parties

The Plaintiffs

1. The First Plaintiff is, and was at all material times, a bank. It provided a AED345,000,000 loan (the "**Loan**") to Abraaj Holdings ("**AH**"), pursuant to a secured loan facility agreement originally dated 10 November 2016 and as amended and restated on 30 November 2016, 23 July 2017, 6 September 2017 and 31 December 2017 (the "**Original Facility Agreement**", the "**First Amendment**", the "**Second Amendment**", the "**Third Amendment**" and the "**Fourth Amendment**" respectively), as described further below. References to the "Facility Agreement" are to the Original Facility Agreement as amended from time to time (the "**Facility Agreement**"). The Plaintiffs will rely on the Facility Agreement, the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment and all other documents referred to in this Statement of Claim for their full terms and legal effect.
2. The Second and Third Plaintiffs are Keiran Hutchison and Hani Bishari. They are, and at all material times since 10 November 2019 have been, joint and several receivers (the "**Joint Receivers**") appointed over various assets provided as security to the Bank for the Loan, including the asset (the "**KESP Receivable**") which is the subject of this claim. The Bank appointed the Joint Receivers over the said various assets pursuant to a Deed of Appointment dated 10 November 2019.

The First Defendant - KESP

3. The First Defendant, KES Power Ltd., is and was at all material times a Cayman Islands company with registered number 152644, incorporated on 27 July 2005, and whose registered office is at Campbells Corporate Services Limited, Floor 4,

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Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands ("**KESP**").

4. KESP held at all material times and continues to hold a 66.4% interest in K-Electric Limited ("**K-Electric**").
5. At all material times K-Electric has been and is an energy supply company in Karachi, Pakistan, which owns and operates the largest electricity transmission and distribution provider to customers in and around Karachi. K-Electric is registered on the Pakistan Stock Exchange, with approximately 9% of its shares listed on that exchange, 66.4% of its shares being held by KESP, and the balance of the shares in K-Electric (some 24.4%) being held by the Government of Pakistan.
6. At all material times IGCF SPV 21 Limited ("**SPV 21**") is and has been a Cayman Islands company with registered number 205619. It was established by the Abraaj Group (defined in paragraph 9 below) in 26 February 2008 as a special purpose vehicle for the Abraaj Group to hold 53.8% of the issued share capital in KESP, and thus indirectly to hold a stake in K-Electric.
7. The other shareholders in KESP are Al Jomaih Power Limited and Denham Investment Ltd.

The Second Defendant - Sage

8. The Second Defendant, Sage Venture Group Limited, is, and at all material times was, a company incorporated under the laws of the British Virgin Islands and whose registered office is at Aegis Chambers, 1st Floor, Ellen Skelton Building, 3076 Sir Francis Drake's Highway, Road Town, Tortola, VG1110, British Virgin Islands ("**Sage**"). At all material times Sage has been a wholly owned subsidiary of AsiaPak Investments Limited ("**AsiaPak**"), a private equity firm with significant investments in Pakistan.

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Other relevant entities***AH***

9. At all material times AH (now in liquidation) has been a Cayman Islands exempted company with registered number 173354 and was incorporated on 1 September 2006. AH was placed in provisional liquidation by the Grand Court on 18 June 2018 and in official liquidation on 11 September 2019. As at such dates, AH was the ultimate holding company of a number of subsidiaries, associates and investments of the Abraaj group (the "**Abraaj Group**").

AIML

10. One of AH's subsidiaries was and is Abraaj Investment Management Limited ("**AIML**") (formerly known as Abraaj Capital (Cayman) Limited, which was formerly known as Abraaj Capital Limited). AIML is a Cayman Islands exempted company with registered number 84033 and was incorporated on 19 August 1998. AIML was placed in provisional liquidation on 18 June 2018 and in official liquidation on 11 September 2019. Prior to that date, and during 2017, those managing the Abraaj Group (including AH and AIML) included Arif Naqvi, Muhammad Rafique Lakhani, Waqar Hassan Siddique, Ashish Bhругu Dave and Junaid Zikar.
11. AIML became a wholly owned subsidiary of AH in or around 2006, when there was a restructuring of the Abraaj Group, pursuant to which:
- (a) the shareholders in AIML and new investors all became shareholders in AH; and
 - (b) AH became the owner of 100% of the shares in AIML.
12. At all material times AIML was the company within the Abraaj Group which performed the treasury function for the entities in the Abraaj Group and it provided additional centralised back-office services.

13. Following this restructure in 2006 and at all material times until the provisional liquidation of AH and AIML, the Abraaj Group was managed as a single operating unit. The Abraaj Group prepared consolidated accounts for the group as a whole ("**Group Accounts**").

The Facility Agreement

14. On 10 November 2016, the Bank made available a loan facility of AED275 million to AH on the terms of the Original Facility Agreement. AIML was a party to the Original Facility Agreement and all the subsequent amendments and restatements thereof (*i.e.* the Facility Agreement as defined in paragraph 1 above), and entered into a written guarantee (the "**Guarantee**") on 10 November 2016 (and amended and restated thereafter) pursuant to which (inter alia) it guaranteed the punctual performance of (inter alios) AH of its obligations under the Facility Agreement and all other Finance Documents, and irrevocably and unconditionally guaranteed to the Bank the punctual performance by (inter alios) AH under the Finance Documents (as therein defined).
15. On 30 November 2016, the First Amendment (designated as a Finance Document) was executed and delivered by each of AH, AIML and the Bank, under which (inter alia) the Bank agreed to provide an increased loan facility to AH of AED 345 million (some AED 275 million having already been drawn down on 10 November 2016 pursuant to the Original Facility Agreement).
16. By clause 6(a) of the First Amendment, the Loan fell due for repayment on 10 May 2017 (the "**Maturity Date**").
17. In or around the spring of 2017 the Abraaj Group (through, inter alios Mr Lakhani) approached the Bank to seek an extension to the Maturity Date. The Bank was only willing to contemplate an extension if further security was given for the Loan.

PARTICULARS

- (a) In an email from Fayaz Alaudin Tajdin Fadoo of the Bank to Mr Lakhani dated 25 May 2017, Mr Fadoo responded to Mr Lakhani's request for an extension of the Maturity Date to 10 July 2017, and said that the request for such extension was conditionally approved but facility extension terms included *"Assignment of receivables **in the books of Abraaj Holdings** from KES Power Ltd (1st level shareholder of KE Electric) aggregating US\$ 37.03 mm in favour of Mashreq Bank."* (emphasis added) (the "**25 May 2017 Email**"). Mr Lakhani replied to this email on 28 May 2017 (the "**28 May 2017 Email**"). In that reply, Mr Lakhani copied in Mr Siddique and Mr Dave. Mr Lakhani said in the 28 May 2017 Email that he had discussed the terms (i.e. the terms in Mr Fadoo's 25 May 2017 Email) proposed by Mr Fadoo with "*Waqar and Ashish*", being a reference to Mr Siddique and Mr Dave. In relation to the assignment of receivables Mr Lakhani said this was "*Agreed*".
- (b) The Bank will rely on the following internal documents:
- (i) an internal "Discussion Memo (KE STL Extension)" dated 7 June 2017 which records that the Bank had negotiated the following "additional collateral" for: "**US\$37.03MM** – *Receivables from KES Power Ltd*" (emphasis in original).
 - (ii) A Module 1 – Exec Summary dated 12 June 2017 addressed to Mr Rajeev Goel which records that the Bank had negotiated the following "additional collateral" for: "**US\$37.03MM** – *Receivables from KES Power Ltd*" (emphasis in original).
- (c) An email sent internally within the Abraaj Group from Mr Lakhani to Mr Naqvi, copied to Mr Siddique, Mr Dave, and Mr Zikar dated 20 July 2017 (the "**20 July 2017 Email**"), records that agreement had been reached with

the Bank and that as regards additional security it was agreed that there would be:

"Assignment of receivable in AH books of accounts from KESP (US\$37m) and IGCF SPV 21 (US\$41.1m) at extension effective 10 May 2017."

18. In the Abraaj Group Accounts for the period ending 30 June 2017, the only sum outstanding as at that date from KESP was US\$37,785,000. It is the Bank's case that this was or comprised the KESP Receivable.
19. The Bank agreed to extend the Maturity Date on terms that the said further security was given to the Bank, *i.e.* an assignment of the KESP Receivable, and on 23 July 2017 the following documents (amongst others) were executed and delivered as deeds:
 - (a) The Second Amendment (as defined in paragraph 1 hereof) between AH, AIML and the Bank; and
 - (b) An Assignment Agreement between AH and the Bank, to give effect to the agreement to provide the further security identified in paragraph 17(c) above (the "**Assignment Agreement**").
20. The Second Amendment provided (inter alia) that:
 - (a) The Maturity Date was extended to 10 September 2017, with an option (the "**Option**") for AH to further extend that date to either 31 December 2017 or 31 December 2018 on the terms set out in Schedule 2, paragraph (g);
 - (b) It was a condition precedent for the extension to the Maturity Date as aforesaid that the documents set out in Schedule 1 to the Second Amendment be received by the Bank. These documents included (inter alia) so far as material:

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- (i) A copy of a resolution of the Board of AIML "*approving the terms of, and transactions contemplated by*" (inter alia) the Second Amendment and the Assignment Agreement and resolving that AIML execute the same;
 - (ii) A copy of a resolution of the Board of AH also "*approving the terms of, and transactions contemplated by*" (inter alia) the Second Amendment and the Assignment Agreement and resolving that AH execute the same;
 - (iii) A copy of the Second Amendment duly executed by the parties thereto;
 - (iv) A copy of the Assignment Agreement duly executed by the parties thereto, together with all notices and other deliverables required to be delivered thereunder;
- (c) Clause 1.4 designated the Second Amendment as a Finance Document, and thus also the subject of AIML's Guarantee of AH's performance of the obligations under the Second Amendment; and
- (d) Clause 4 provided that the Facility Agreement shall be amended as set out in Schedule 2, but that the provisions of the Original Facility Agreement (as amended and restated by the First Amendment) shall, save as amended by the Second Amendment, continue in full force and effect.
21. The material terms of the Assignment Agreement were:
- (a) The following definitions in clause 1.1:

"IGCF Receivables" - AH's right, title and interest from time to time in and to the receivables relating to the intercompany loans by the Assignor to

SPV 21 aggregating in total to US\$41,100,000 at the date of the Assignment Agreement, and all Related Rights;

"KP Receivables"¹ - AH's *"right, title and interest from time to time in and to the receivables relating to the intercompany loans by the Assignor [AH] to KES Power Ltd [KESP] aggregating in total to US\$37,030,000 at the date of this Deed, and all Related Rights"*;

"Receivables" - each of the ABF Receivables, the IGCF Receivables and the KP Receivables";

"Related Rights" - in relation to any Security Asset these were and are:

- (i) Any proceeds of sale, transfer or other disposal, lease, licence, sub-licence, or agreement for sale, transfer or other disposal, lease, licence or sub-licence, of that Security Asset;
- (ii) Any moneys or proceeds paid or payable deriving from that Security Asset;
- (iii) Any rights, claims, guarantees, indemnities, Security or covenants for title in relation to that Security Asset;
- (iv) Any awards or judgments in favour of the Assignor in relation to that Security Asset; and
- (v) Any other assets deriving from, or relating to, that Security Asset;

"Security Assets" - the assets which from time to time are, or are expressed to be, the subject of the Security Interests or any part of those assets;

¹ I.e. the KESP Receivable.

"Security Interests" - all or any of the Security created or expressed to be created in favour of the Bank by or pursuant to the Assignment Agreement.

- (b) Clause 2, pursuant to which AH, as assignor, with full title guarantee and as security for the payment of all Secured Liabilities:
 - (i) "assigns to the [Bank] by way of security all of the Receivables";
 - (ii) "charges in favour of the [Bank] by way of first fixed charge, all of the Receivables to the extent not validly and effectively assigned under" sub-paragraph (i) above;

"the Assignment";

- (c) Clause 3.1 pursuant to which AH covenanted not to create "or permit to subsist" any Security or Quasi Security over any Security Asset, except as permitted by the Facility Agreement;
- (d) Clause 3.2 pursuant to which AH covenanted not, without the Bank's prior written consent, to enter into a single transaction or a series of transactions to sell, lease, transfer or otherwise dispose of any Security Asset, except as permitted by the Facility Agreement;
- (e) Clause 4(d) pursuant to which AH covenanted to instruct its registered office provider to enter particulars as required by the Companies Law (as amended) of the Security Interests in the register of mortgages and charges of AH;
- (f) Clause 5.2 pursuant to which AH covenanted to give notice of the assignment in Clause 2 substantially in the form set out in Schedule 2 and to ensure that each recipient of any such notice signs and returns the relevant form of acknowledgement on the date of the Assignment Agreement;

- (g) Clause 5.4 pursuant to which AH covenanted not to:
 - (i) Exercise any right to rescind, cancel or terminate any of its rights in relation to any of the Receivables;
 - (ii) Release any counterparty from any obligations in connection with any of the Receivables;
 - (iii) Waive any breach by any counterparty to the Receivables or consent to any act or omission which would otherwise constitute such a breach; or
 - (iv) Except as provided in this Deed, novate, transfer or assign any of its rights in relation to any of the Receivables;
- (h) Clause 7.1(a) provides that the Security Interests (apart from the ABF Receivables) shall be immediately enforceable at any time after the delivery of an Enforcement Notice;
- (i) Clause 7.2 provides that at any time after the Security Interests have become enforceable, the Bank may in its absolute discretion enforce all or any part of the Security Interests in any manner it sees fit;
- (j) Clause 9.1 provides that if requested by AH or the Security Interests have become enforceable, the Bank may without any notice or further notice, by deed or otherwise in signed writing appoint one or more persons to be a Receiver of all or any part of the Security Assets;
- (k) Clause 9.2 provides that any Receiver shall be the agent of AH for all purposes; and
- (l) Clause 10.2 provides that at any time after the Security Interests have become enforceable any rights conferred by any Finance Document or by

law upon a Receiver may be exercised by the Bank, whether or not it shall have appointed a Receiver of all or any part of the Security Assets.

22. By a letter from the Bank and AH to KESP dated 23 July 2017 (the "**Notice of Assignment**"), notice of the Assignment Agreement and the Assignment of the debt from KESP to AH (*i.e.* the KESP Receivable) was given to KESP. The Notice of Assignment stated (inter alia):

*"We give notice that by an assignment contained in the Assignment Agreement, the Assignor [AH] assigned to the Lender [the Bank] by way of security all its right, title and interest from time to time in and to the US\$37,030,000 intercompany loan from us to you (the "**Receivables**"), including all rights or claims in relation to the Receivables that the Assignor [AH] confirms are governed by English law."*

23. KESP also signed the Notice of Assignment, acknowledging its receipt and confirming (inter alia) that it owed US\$37,030,000 (the "**Debt Amount**") to AH (the "**Acknowledgement**"), and that it would "*pay amounts up to the Debt Amount into the debt service reserve account held with the Lender [i.e. the Bank], with the account description ABRAAJ HOLDINGS DSRA and the account number 019000007900 within one day of receipt of a dividend from K-Electric Limited into your [i.e. KESP's] account*".
24. The Acknowledgement was delivered to and/or received by the Bank on or about 23 July 2017.
25. The Bank understood and believed at all material times, and in particular at the time of and following its entry into the Second Amendment, that the KESP Receivable was a debt or debts owed to AH.

PARTICULARS

- (a) The 20 July 2017 Email recorded that the security which had been agreed with the Bank included an "*Assignment of receivable in AH books of accounts*". Paragraph 17(c) herein is repeated.
- (b) The Assignment Agreement (executed and delivered by AH acting by Mr Siddique and Mr Dave), contained definitions and terms which were consistent only with AH being the owner of the "KP Receivable"; in particular clause 1 (the KP Receivable was defined as receivables relating to loans from AH), clause 2 (an assignment and creation of security by AH "*with full title guarantee*"), clause 3 (a negative pledge by AH, and a prohibition on disposals of the Security Assets), clause 5 (an obligation on AH to provide a notice of assignment in substantially the form set out in Schedule 2, an obligation on AH to remain liable to perform its obligations under the Receivables, and a prohibition on AH releasing any counterparty from its obligations under the Receivables, and an obligation on AH not to assign its rights to the Receivables), clause 9 (the Bank's right to appoint a receiver over the Security Assets); paragraph 21 herein is repeated.
- (c) In the Notice of Assignment (signed again by Mr Siddique and Mr Dave), AH stated that it had assigned to the Bank all of its right, title and interest from time to time in and to the US\$37,030,000 "intercompany loan" from AH to KESP, including all rights or claims in relation to the same. Paragraph 22 herein is repeated.
- (d) In the Acknowledgement (one of the signatories to which was Mr Siddique), KESP acknowledged receipt of the Notice of Assignment and confirmed and represented (*inter alia*) that it owed the Debt Amount to AH and would pay amounts up to the Debt Amount into the debt service account within one day of receipt of a dividend from K-Electric; paragraph 23 herein is repeated.

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26. The Bank would not have entered into the Second Amendment and accordingly would not have extended the Maturity Date (to the benefit of each of AH and AIML) without the provision of a valid and effective assignment of and/or security over the KESP Receivable.
27. AIML and/or KESP were aware at all material times (a) of the Bank's understanding and belief set out in paragraph 25 herein, and in any event (b) that the Bank would not have entered into the Second Amendment and accordingly would not have extended the Maturity Date (to the benefit of each of AH and AIML) without the provision of a valid and effective assignment of and/or security over the KESP Receivable.

PARTICULARS

- (a) Mr Siddique and Mr Dave were recipients of each of the 28 May 2017 Email and the 20 July 2017 Email. The 28 May 2017 Email records the Bank's 25 May 2017 Email as having been discussed by Mr Lakhani with them. Paragraph 17(a) herein is repeated. The knowledge of Mr Siddique, Mr Dave and Mr Lakhani (and any of them), who were part of the management of the Abraaj Group, falls to be attributed to AIML.
- (b) Mr Naqvi was a recipient of the 20 July 2017 Email. His knowledge of the same falls to be attributed to AIML.
- (c) AIML was a party to the Second Amendment, and executed it acting by Mr Siddique and Mr Dave. The Assignment Agreement was an integral part of the Second Amendment (indeed it was a condition precedent for the same) and AIML knew of the terms of the Assignment Agreement and the representations made therein by AH. A meeting of the Board of Directors of AIML was held on 23 July 2017 at which Mr Naqvi, Mr Siddique and Mustafa Abdel-Wadood were present. The Plaintiffs will rely on the written

minutes (the "**AIML Minutes**") of that meeting, which record (so far as material):

- (i) The Chairman (Mr Siddique) noting that AIML as guarantor had entered into the Original Facility Agreement and the 30 November 2016 Facility Agreement between the Bank and AH, "*the Company's sole shareholder*", and a guarantee dated 10 November 2016, as amended and restated on 30 November 2016;
- (ii) The (then proposed) Second Amendment would extend the Maturity Date to 10 September 2017 and provide AH with the option to further defer the Maturity Date, and include a confirmation by AIML that the Guarantee shall continue in full force and effect;
- (iii) The documentation relating to the Second Amendment was in an appropriate form for consideration by the Board, that the transaction and documentation "*were fully discussed and contemplated*", and that the documentation "*be and are hereby approved*";
- (iv) Messrs Naqvi, Siddique, Wadood, Lakhani, Zikar and Dave be appointed authorised signatories of AIML to sign and execute relevant documents in connection with the Second Amendment;
- (v) The documentation, including the Second Amendment, "*be valid, conclusive, binding on and enforceable against the Company [AIML] when executed and delivered in manner aforesaid*";
- (vi) "*All prior actions taken by any Director, officer and agent for and on behalf of the Company in connection with the Transactions and the foregoing resolutions, including but not limited to, the signing of any agreements, resolutions, deeds, letters, notices, certificates, acknowledgements, receipts, authorisations, instructions, releases,*

waivers, proxies and other documents (whether of a like nature or not) and the payment of all and any related fees and expenses be confirmed, ratified and approved in all respects"; and

- (vii) It is to be inferred that the AIML Board had read, considered and agreed with the (then draft) Second Amendment and the Assignment Agreement together with the draft Notice of Assignment appended thereto and agreed with and joined in the same.
 - (d) Mr Siddique and Mr Dave signed the Assignment Agreement and the Notice of Assignment. Although they did so in their capacity as authorised agents for AH, their knowledge falls also to be attributed to AIML.
 - (e) Mr Siddique signed the Acknowledgement. Although he did so in his capacity as agent for KESP, his knowledge of its terms falls to be attributed to AIML.
 - (f) Under the Guarantee, AIML guaranteed the punctual performance of AH of the Second Amendment (the same having been designated a Finance Document as set out in paragraph 20(c) herein), and the Second Amendment provided for the Assignment Agreement to be a condition precedent for the Maturity Date to be extended (see paragraph 20(b) herein).
28. By an Amendment Request dated 6 September 2017, AH exercised the Option and the Facility was amended so as to delete and replace clause 6.2 thereof, and the Third Amendment was entered into between the Bank and AH. The new clause 6.2 allowed AH to defer the Maturity Date from 10 September 2017 such that half the outstanding amount would be payable on 31 December 2017, with the remaining half payable on 31 December 2018 (plus interest).

29. On 31 December 2017 the Fourth Amendment was entered into between the Bank and AH, and clause 6.2 was further amended. The amended clause 6.2 allowed AH to defer the Maturity Date such that half the outstanding amount would be payable on 31 March 2018, with the remaining half payable on 31 December 2018 (plus interest).
30. The Bank would not have entered into the Third Amendment and/or the Fourth Amendment without the provision of a valid and effective assignment of and/or security over the KESP Receivable.

Default under the Facility Agreement

31. Following the Fourth Amendment, the Loan Amount under the Facility Agreement was due to be repaid by AH to the Bank in equal instalments on 31 March 2018 and 31 December 2018 (plus interest), as set out in paragraph 29 above. AH failed to pay the first half of the Loan Amount by the said date and this gave rise to an Event of Default (as defined in the Facility Agreement) under clause 21.1 of the Facility Agreement.
32. On 12 July 2018 the Bank served an acceleration notice on AH pursuant to clause 21.19 of the Facility Agreement, and the security granted under the Facility Agreement became immediately enforceable.

Liquidation of AH and AIML

33. On 18 June 2018, the Grand Court of the Cayman Islands appointed:
 - (a) Simon Conway, Michael Jarvis, and Mohammed Farzi, of PwC Cayman Islands, London, and Dubai respectively, as joint provisional liquidators of AH (together, the "**AH JPLs**") following the presentation by AH of a winding up petition before the Grand Court of the Cayman Islands on the basis that AH was or was likely to become unable to pay its debts and intended to present a compromise or arrangement to its creditors; and

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- (b) Stuart Sybersma and David Soden, of Deloitte Cayman Islands and London respectively, as joint provisional liquidators of AIML (together, the "**AIML JPLs**") following the presentation by AIML of a winding up petition before the Grand Court of the Cayman Islands on the basis that AIML was or was likely to become unable to pay its debts and intended to present a compromise or arrangement to its creditors.
34. The AH JPLs and AIML JPLs both recommended to the Court that their respective companies should be wound up, including on the basis that they were insolvent. On 11 September 2019, the Court ordered that both AH and AIML be wound up and that the AH JPLs and AIML JPLs be appointed as joint official liquidators of their respective companies (the "**AH JOLs**" and "**AIML JOLs**").

Grand Court's declaration confirming the validity of the Assignment Agreement

35. The validity of the Assignment Agreement has, as between the Bank and AH, already been determined by the Grand Court of the Cayman Islands (the "**Grand Court**") by way of a declaratory order dated 17 September 2019 (the "**Declaration Order**") in Cause No. FSD 95 of 2018 (the "**Declaration Application**").
36. Pursuant to the Declaration Order, the Grand Court declared that, subject to the qualifications and assumptions contained in legal opinions issued by Walkers (with respect to Cayman Islands law) and Linklaters (with respect to English law), the Assignment Agreement and other security interests granted in favour of the Bank pursuant to the Facility Agreement were legal, valid and binding security interests.

Dispute over the KESP Receivable

37. By a letter from the AIML JOLs to the AH JOLs dated 12 February 2019, the AIML JOLs (wrongly) asserted that the KESP Receivable was not validly assigned to the Bank. The AIML JOLs contended that:

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- (a) the KESP Receivable is defined in the Assignment Agreement as "*[AH's] right, title and interest from time to time in and to the receivables relating to the intercompany loans by [AH] to [KESP] aggregating a total of US\$37,030,000 at the date of this Deed, and all Related Rights*". The AIML JOLs asserted that the KESP Receivable is not within the scope of the definition as the receivable is not a loan but represents outstanding fees and expenses purportedly due to AIML. Accordingly, the AIML JOLs asserted that the KESP Receivable as defined in the Assignment Agreement refers to a different receivable;
 - (b) even if the KESP Receivable was caught by the definition in the Assignment Agreement, the AIML JOLs asserted that:
 - (i) AH was incapable of granting security over the KESP Receivable as it was an asset of AIML; and
 - (ii) AIML has never sold, assigned, or encumbered the KESP Receivable in favour of AH and therefore AH did not have the ability to assign the KESP Receivable to the Bank.
38. Those contentions by AIML, acting by its JOLs', were and are incorrect, further or alternatively AIML (and Sage as its successor in title) is estopped from advancing those contentions for the following reasons (and as set out in more detail below in paragraphs 46 to 51 herein):
- (a) There was no other receivable from KESP to an entity or entities in the Abraaj Group that could meet the description of the KP Receivable in the Assignment Agreement. As a matter of its true construction, against the admissible background set out in this Statement of Claim, the KP Receivable was and is a reference to the KESP Receivable;

- (b) AH was capable of granting security over the KESP Receivable in the terms of the Assignment Agreement and did so;
 - (c) It is not admitted that any sums were owed by KESP to AIML. But if, contrary to the Bank's case, the KESP Receivable was at the material time owed by KESP to AIML (and not to AH) the Bank repeats and relies on paragraph 17(a) herein, which evidences that an agreement (express or implied) was reached between AH and AIML that AH could and would offer the KESP Receivable as security to the Bank, and authorised AH to do so;
 - (d) It will accordingly be denied (if averred by Sage) that AH did not have the ability to assign the KESP Receivable to the Bank; and
 - (e) Sage and AIML were and are estopped from denying the Bank's interest in the KESP Receivable.
39. On 30 April 2019, the AH JOLs, being independent Court appointed office holders (whom it is to be inferred had carried out an investigation before writing the same), wrote to the AIML JOLs and rejected the assertions made by AIML. The AH JOLs explained:
- (a) It was a consistent requirement from the Bank throughout the negotiations with the Abraaj Group representatives that further security be provided. This was recognised by representatives of AIML in internal emails and in the various iterations of the term sheet with the Bank;
 - (b) Although various provisions of the term sheet were the subject of negotiation, the requirement to grant security over the KESP Receivable was accepted as a term of the extension;
 - (c) There was no other receivable owing by KESP that could meet the applicable description, in particular by reference to the specific amounts due;

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- (d) The purpose of the description of the "KP Receivable" in the Assignment Agreement was simply to identify the particular debt; and
 - (e) At the time of the Assignment Agreement all relevant parties, including AIML, AH and KESP acknowledged and agreed that the KESP Receivable was an asset of AH and capable of assignment to the Bank by way of security.
40. On 15 May 2019, the AIML JOLs sent a letter to the AH JOLs. They (wrongly) did not accept that there was any evidence of an assignment by AIML to AH of the KESP Receivable.

The Sage Agreement

41. In August 2022, the AIML JOLs entered into an agreement to sell (inter alia) whatever right, title or interest AIML may have in the KESP Receivable to Sage (the "**Sage Agreement**"). The Sage Agreement was subject to sanction of the Grand Court.
42. On 10 October 2022, the Grand Court (Segal J) sanctioned AIML's sale of whatever right, title or interest it may have in the KESP Receivable to Sage. The Grand Court made no finding that AIML had any right, title or interest in the KESP Receivable or to the Related Rights. At trial, the Plaintiffs will rely on the letter from Campbells to Walkers (for the Bank) dated 10 August 2022 (the "**Campbells Letter**") which acknowledged that Sage was on notice of the Bank's claim to the KESP Receivable.
43. The specific details of the Sage Transaction and the documents filed with the Court as part of the Sanction Application and the Court file has been sealed. Accordingly, the Plaintiffs cannot presently plead those details or the submissions made to the Grand Court. However, for the avoidance of doubt, if and insofar as it is necessary

to plead it: it is the Plaintiffs' case that Sage was not a bona fide purchaser for value without notice of the KESP Receivable (or any Related Rights).

The English Claim

44. In English proceedings commenced by Claim Form dated 21 March 2023 (the "**English Claim**"), Sage and AIML made a claim against KESP to recover an alleged debt due from KESP to AIML of US\$41,446,114 (defined therein as the "**Debt**"). In the Particulars of Claim (supported by a Statement of Truth on behalf of Sage and AIML), Sage and AIML have (wrongly) alleged that the Grand Court: *"authorised the [AIML] JOLs to enter into various arrangements by which AIML, on 3 August 2022: 4.1 **Sold absolute title in the Debt... to ... Sage;**"* (emphasis added). That statement was and is incorrect.
45. In fact:
- (a) The Debt claimed in the English Claim comprises or includes the KESP Receivable, and the AIML JOLs did not have "absolute title" to sell the KESP Receivable (or any rights in relation to it) to Sage, as the English Claim alleges or at all;
 - (b) The Grand Court did not authorise the AIML JOLs to sell "absolute title" in the Debt to Sage. Paragraph 42 herein is repeated.

The Bank's claim to the KESP Receivable

46. By reason of the matters pleaded in this Statement of Claim:
- (a) Upon the true construction of the Second Amendment, the Assignment Agreement, the Notice of Assignment and/or the Acknowledgement, the subject matter of the Assignment as pleaded in paragraph 21(b) herein comprised or included the KESP Receivable;

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- (b) If (which is not admitted) the KESP Receivable had at any material time been a debt or debts owed by KESP to AIML (as opposed to AH), it is to be inferred that management of AH, AIML and KESP agreed and/or proceeded on the common assumption in or around May to July 2017 that the KESP Receivable was owed to AH and/or that AH had AIML's authority to assign and offer it as security to the Bank in order to obtain the extension to the Maturity Date, further or alternatively there was an implied agreement between AH, AIML and KESP (in any event between AH and AIML) to that effect;
 - (c) The Assignment Agreement effected a valid equitable assignment of the KESP Receivable and all Related Rights to the Bank, alternatively, the same gave rise to valid security in favour of the Bank over the KESP Receivable and Related Rights by way of first fixed charge; and
 - (d) The Notice of Assignment to KESP and the Acknowledgment effected the legal assignment of the KESP Receivable to the Bank.
47. Further or alternatively, at all material times in May – July 2017 and thereafter (at least until the AIML JOLs wrongly denied the Bank's interest in the KESP Receivable), AH, AIML, KESP and the Bank shared a common assumption or assumptions that:
- (a) The KESP Receivable (and all related rights) was a debt or debts owed by KESP to Abraaj, and for this purpose that meant AH;
 - (b) AH had title and authority to make the Assignment of the KESP Receivable to the Bank and to give security over it;
 - (c) The words "KP Receivable" in the Assignment Agreement meant the KESP Receivable; and

(d) The Assignment Agreement and Notice of Assignment would validly effect and did validly effect a legal and equitable Assignment of and/or security over the KESP Receivable and all Related Rights to the Bank,

(the "**Common Assumptions**").

48. Further or alternatively, if AIML did not share the Common Assumptions, the Bank certainly did proceed on the basis of the Common Assumptions, and AIML acquiesced in the Bank's assumptions.
49. The Common Assumptions were communicated and shared between AH, AIML, KESP and the Bank as set out above in paragraphs 17 and 25 herein (which are repeated).
50. The Bank relied on the Common Assumptions and did so in a manner that would give rise to substantial detriment in the event that AIML (and Sage as its successor in title) was permitted to resile from the same.

PARTICULARS

- (a) As particulars of the Bank's reliance:
- (i) The Bank entered into the Second Amendment and agreed to extend the Maturity Date, including the giving of the Option to AH further to extend the Maturity Date;
 - (ii) The Bank entered into the Third Amendment and the Fourth Amendment.
- (b) As particulars of detriment:
- (i) The Bank will, if AIML and Sage are correct, not have the benefit of any security or interest in the KESP Receivable.

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51. In the premises, it would be unconscionable to permit Sage (as the successor in title to AIML) now to resile from or alter the convention previously established as set out in paragraphs 47 or 48 herein, and AIML and Sage were and are estopped by convention from denying:
- (a) The Bank's case in paragraph 46 herein, and/or
 - (b) The Bank's proprietary interest in the KESP Receivable.

AND THE PLAINTIFFS CLAIM:

1. Declarations that:
- (a) There was a valid equitable and legal assignment of the KESP Receivable and all Related Rights (as that expression is defined in paragraph 21(a) herein) from AH to the Bank on 23 July 2017;
 - (b) AH validly charged in favour of the Bank by way of first fixed charge, all of the KESP Receivable and the said Related Rights to the extent not validly and effectively assigned;
 - (c) AIML had no rights, interests, claims and/or entitlement to the KESP Receivable and the said Related Rights at the date of the Sage Agreement;
 - (d) Sage acquired no rights, interests, claims and/or entitlement to the KESP Receivable and any of the said Related Rights by reason of the Sage Agreement or otherwise;
 - (e) The Bank is the legal owner, alternatively the legal and/or equitable owner, of the KESP Receivable and all Related Rights.
2. An order that KESP shall pay the KESP Receivable to the Bank upon the same falling due.

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3. Such further or other relief (including injunctive relief) as to the Court may appear appropriate.
4. Costs.

Dated 14 December 2023

Walkers (Cayman) LLP

WALKERS (CAYMAN) LLP

Attorneys At Law for the Plaintiffs

THIS STATEMENT OF CLAIM was filed by Walkers (Cayman) LLP, Attorneys at Law of 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, Cayman Islands for the Plaintiffs whose address for service is care of its Attorneys-at-Law.

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IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD: of 2023

BETWEEN

(1) MASHREQBANK PSC
(2) KEIRAN HUTCHISON IN HIS CAPACITY AS RECEIVER
(3) HANI BISHARA IN HIS CAPACITY AS RECEIVER

PLAINTIFFS

AND

(1) KES POWER LTD.
(2) SAGE VENTURE GROUP LIMITED

DEFENDANTS

**ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form **IMMEDIATELY**.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED. Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

-
1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.
-

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

yes

no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)

yes

no

Service of the Writ is acknowledged accordingly

(Signed) _____

[Attorney] for

[Defendant in person]

Address for service:

Please complete overleaf

Notes on address for Service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Walkers (Cayman) LLP
Attorneys at Law
KY1-9001
190 Elgin Avenue
George Town, Grand Cayman

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.