

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Aralez Pharmaceuticals US Inc., et al.,¹

Debtors.

Chapter 11

Case No. 18-12425 (MG)

(Jointly Administered)

**ORDER (A) AUTHORIZING THE SALE OF CERTAIN OF THE
DEBTORS' ASSETS PURSUANT TO THE STALKING HORSE
AGREEMENT FREE AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES, AND OTHER INTERESTS TO THE FULLEST EXTENT
PERMITTED BY LAW; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS; AND (C) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”) of the debtors and debtors-in-possession in the above-captioned cases (collectively, the “**Debtors**”) for the entry of an order (this “**Order**”), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”):

- (i) approving the sale (the “**Sale**”) of certain assets (as set forth in Section 2.1.1 of the Vimovo Stalking Horse Agreement (as defined below), the “**Purchased Assets**”) of POZEN Inc. and Aralez Pharmaceuticals Trading DAC (the “**Vimovo Seller**”) to Nuvo Pharmaceuticals (Ireland) Designated Activity Company (f/k/a Nuvo Pharmaceuticals (Ireland) Limited) (and any designee thereof, the “**Vimovo Purchaser**”), pursuant to that certain Asset Purchase Agreement dated as of September 18, 2018 (as attached hereto as Exhibit A, and as amended from time to time, including all schedules, exhibits, and ancillary documents, the “**Vimovo**

¹ The Debtors in these cases and the last four digits of each Debtor’s federal taxpayer identification number are as follows: Aralez Pharmaceuticals Holdings Limited (5824); Aralez Pharmaceuticals Management Inc. (7166); POZEN Inc. (7552); Aralez Pharmaceuticals Trading DAC (1627); Aralez Pharmaceuticals US Inc. (6948); Aralez Pharmaceuticals R&D Inc. (9731); and Halton Laboratories LLC (9342). For the purposes of these cases, the Debtors’ mailing address is Aralez Pharmaceuticals, c/o Prime Clerk LLC, P.O. Box 329003, Brooklyn, NY 11232.

Stalking Horse Agreement)² free and clear of all liens, claims, liabilities, rights, interests, setoff rights, and encumbrances to the fullest extent permitted by law, except where the Vimovo Seller has agreed to transfer, and the Vimovo Purchaser has expressly agreed to permit or assume, certain encumbrances and certain liabilities of the Vimovo Seller (as set forth and defined in the Vimovo Stalking Horse Agreement, the **“Permitted Encumbrances”** and the **“Assumed Liabilities”**);

- (ii) authorizing the assumption and assignment to the Vimovo Purchaser of certain executory contracts of the Vimovo Seller as set forth in Schedule 2.1.1(a)(i) of the Vimovo Stalking Horse Agreement (as set forth and defined in the Vimovo Stalking Horse Agreement, the **“Purchased Contracts”**); and
- (iii) granting certain related relief;

and the Court having entered an order approving bidding procedures and granting certain related relief [D.I. 171] (the **“Bid Procedures Order”**) following a hearing on October 10, 2018 (the **“Bid Procedures Hearing”**); and the Debtors having filed a notice in these cases on November 29, 2018 [Dkt. No. 334] cancelling the Auction and determining to seek Court approval of the sale of the Purchased Assets to the Vimovo Purchaser (the **“Notice of Successful Bidder”**); and the Court having held a hearing to approve the Sale on December 19, 2018, at which time all interested parties were offered an opportunity to be heard with respect to the Motion (the **“Sale Hearing”**); and the Court having reviewed and considered the Motion, the declarations filed in support of the Motion, the *Debtors’ Supplemental Motion for Order: (A) Authorizing and Approving Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests; (B) Authorizing and Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Docket No. 391], the *Amended Objection of the Official Committee of Unsecured Creditors and Joinder to the Objection Interposed by AstraZeneca to the Debtors’ Motion for Order Authorizing and Approving Sales of*

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or the Vimovo Stalking Horse Agreement, as applicable. The definitions of words in the singular in this Order shall apply to such words when used in the plural where the context so permits and vice versa.

Certain of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests (the "**Committee's Objection**") [Dkt. No. 340], any other objections to the Motion, and all replies in further support of the Motion; and upon the record of the Sale Hearing; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue of these cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor; it is hereby

FOUND AND DETERMINED THAT:

A. Statutory Predicates. The statutory predicates for the relief sought in the Motion are sections 105, 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rules 6004-1 and 6006-1. The consummation of the transactions contemplated by the Motion, this Order, and the Vimovo Stalking Horse Agreement is legal, valid, and properly authorized under all such provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

B. Notice. As evidenced by the affidavits of service filed with the Court, proper, timely, adequate, and sufficient notice of the Motion, the Sale, the Vimovo Stalking Horse Agreement, the Notice of Successful Bidder, the Sale Hearing, the potential assumption and assignment of the Purchased Contracts, the cure payments proposed in respect of each Purchased Contract (each, a "**Cure Amount**"), all transactions contemplated therein or in connection therewith, and all deadlines related thereto, has been provided to all interested persons and entities

and in accordance with the Bid Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The aforementioned notices are good, sufficient, and appropriate under the circumstances, and no other or further notice of any of the foregoing is required for entry of this Order. Parties interested in bidding on the Purchased Assets were provided, upon request, sufficient information to make an informed judgment on whether to bid on the Purchased Assets. All interested persons and entities have been provided a reasonable opportunity to object or be heard regarding the relief requested in the Motion.

C. Business Justification. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale. In light of the circumstances of these cases, time is of the essence in (i) consummating the Sale and all related transactions and (ii) maximizing the value of the Purchased Assets.

D. Adequate Marketing; Highest or Best Offer. As demonstrated by the testimony and other evidence proffered or adduced at the Sale Hearing and the representations of counsel made on the record at the Sale Hearing: (i) the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Bid Procedures Order; (ii) a full, fair, and reasonable opportunity has been given to any interested party to make the highest and best offer for the Purchased Assets; (iii) the consideration provided by the Vimovo Purchaser in the Vimovo Stalking Horse Agreement constitutes the best offer for the Purchased Assets; (iv) the Sale will provide a greater recovery for the Debtors' creditors than would be provided by any other practically available alternative, including liquidation under chapter 7 of the Bankruptcy Code; and (v) the Debtors' determination that the Vimovo Stalking Horse Agreement constitutes the best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment. The Vimovo Stalking Horse Agreement and the transactions contemplated thereunder

were proposed, negotiated, and entered into by and between the Vimovo Seller, on the one hand, and Vimovo Purchaser, on the other hand, without collusion, in good faith and at arms' length.

E. Sale in Best Interests. Approval of the Vimovo Stalking Horse Agreement, the Sale, and all related transactions at this time, and the actions to be taken by the Debtors and the Vimovo Purchaser, are appropriate under the circumstances of these cases and are in the best interests of the Debtors, their estates and creditors, and all other parties in interest. The Debtors have demonstrated good, sufficient and sound business reasons and justifications for the Vimovo Seller's entry into the Sale and the performance of its obligations under the Vimovo Stalking Horse Agreement.

F. No *Sub Rosa* Plan. The consummation of the Sale outside of a plan of reorganization pursuant to the Vimovo Stalking Horse Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a plan of reorganization or liquidation for the Debtors. The Sale and all related transactions do not constitute a *sub rosa* plan of reorganization.

G. Good Faith Purchaser. The Sale and the transactions contemplated by the Vimovo Stalking Horse Agreement are undertaken by the Vimovo Purchaser without collusion and in good faith, within the meaning of section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization and consummation of the Sale are duly and properly stayed pending such appeal. The Vimovo Purchaser will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Vimovo Stalking Horse Agreement and is a good faith purchaser for value within the meaning of section 363(m) of the Bankruptcy Code. As such, the Vimovo Purchaser is

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.