Lexis®Nexis Case Summaries

Re CargoLogicAir Ltd; Vekshin (in his capacity as the sole director of CargoLogicAir Ltd)

[2022] EWHC 3316 (Ch), [2023] All ER (D) 23 (Jan)

The Chancery Division allowed the applicant's application for an administration order regarding the company for which he was the sole director. The business of the company had been negatively affected by sanctions imposed on the ultimate majority shareholder imposed under the Russia (Sanctions) (EU Exit) Regulations 2019. The court held that the administrators were reasonably likely to achieve one or more of the statutory purposes. It was important that the administrators take immediate control of the company. The order would be made as sought.

Catchwords

COMPANY – ADMINISTRATION – SANCTIONS

Background

The applicant (KV) was the sole director of CargoLogicAir (the company). The business of the company had been negatively affected by sanctions imposed on the ultimate majority shareholder, Alexey Isaykin (AI). AI owned the majority of the shares in Cargo Logic Holding Ltd, an English registered company. It owned all the shares in the company, which was also registered in England. Those sanctions had been imposed under the Russia (Sanctions) (EU Exit) Regulations 2019, which was part of the UK government's response to Russia's war in Ukraine. Both the company and its parent were subject to the full asset freezing sanctions imposed by the UK government. The company claimed that the sanctions had made it necessary to apply to be put into administration.

KV applied to put the company into administration.

Issues and decisions

Because the company was sanctioned, it was highly unlikely that any commercial bank would be willing to do business with the company, at least whilst it was not in administration. That meant that the company would immediately be unable to pay its debts as they fell due, including to its employees, of which there were some one hundred and all were being made subject to some sort of redundancy programme, and also its suppliers and other creditors who were owed substantial amounts of money (see [6] of the judgment).

For an administration order to be made, it had to be established, first, that the company was or was likely to become unable to pay its debts and, second, that it was reasonably likely to achieve one of the three prescribed objectives of the administration. Three statutory purposes were prescribed in the Act: (i) rescuing the company as a going concern; (ii) achieving a better result for the company's creditors as a whole than would be likely if the company was wound up (without first being in administration); or (iii) realising property in order to make a distribution to one or more secured or preferential creditors. The court had to be satisfied that the administrators were reasonably likely to achieve one of the three purposes before it could make the order (see [17], [18] of the judgment).

It was reasonably likely that the Office of Financial Sanctions Implementations (OFSI) would grant the new licence within a reasonable time, as OFSI had granted similar licences to administrators of sanctioned companies in the past. The administrators would then be able to run the company with a view to rescuing it. The administrators were reasonably likely to be able to achieve one of their statutory objectives by selling the company's business or parts of it to potential purchasers. Even if the proposed administrators were unable to pursue a sale, they were reasonably likely to be able to achieve objective (ii) after recovering and distributing assets of the company (see [22], [23], [27] of the judgment).

Further, the administrators were also likely to be able to achieve the statutory purposes of the administration, even if the parent company was struck off in November 2022 due to its overdue accounts. It was probable that only the administrators would be able to avoid that happening by making an application to suspend any such revocation but, in any event, even if the parent was struck off, it did not affect the company's assets, which would still be under the control of the administrators (see [28] of the judgment).

The administrators were reasonably likely to achieve one or more of the statutory purposes. It was important that the administrators take immediate control of the company. The order would be made as sought (see [29] of the judgment).

AA Mutual International Insurance Co Ltd, Re [2004] EWHC 2430 (Ch), [2004] All ER (D) 34 (Dec) considered

European Directories DH6 BV, Re [2010] EWHC 3472 (Ch), [2012] BCC 46 considered

Re Sberbank CIB (UK) Ltd [2022] All ER (D) 108 (Apr), [2022] EWHC 1059 (Ch) considered

Judgment date
16 November 2022

Judge
Judge Michael Green (Chancery Division)

Representation
Adam Al-Attar (instructed by DLA Piper UK LLP) for KV.
Toby Frost - Barrister.