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Re Houst Ltd

[2022] EWHC 1941 (Ch), [2022] All ER (D) 36 (Aug)

The Chancery Division sanctioned a restructuring plan under Pt 26A of the Companies Act 2006 in respect of a company. The company's business was the provision of property management services for short term/holiday lets. It was severely affected by the Covid-19 pandemic. It was both cash flow and balance sheet insolvent. Three creditors had threatened winding-up petitions, and the company was not in a position to pay the debts claimed by them. If the restructuring plan did not proceed, then there would most likely be an accelerated marketing process leading to a sale in administration (i.e. a pre-pack administration). The court held, among other things, that if it refused to sanction the plan, then the evidence indicated that all creditors, including HMRC, would be worse off. Therefore, the judge exercised his discretion to sanction the plan.

Catchwords

COMPANY – RESTRUCTURING PLAN – SANCTIONING OF PLAN

Background

The proceedings concerned a company that provided property management services for short term/holiday lets.

The company's business had been severely affected by the Covid-19 pandemic. It was both cash flow and balance sheet insolvent. The company's assets, subject to a fixed charge, favoured Clydesdale Bank Plc (the bank) consisted of intangibles and goodwill and investments. Three creditors had threatened winding-up petitions, and the company was not in a position to pay the debts claimed by them. The evidence as to the company's financial position consisted principally of a report prepared by Begbies Traynor (BT), who were the proposed plan administrators, dated April 2022. Their conclusion was that if the proposed restructuring plan (the plan) did not proceed, then there would most likely be an accelerated marketing process leading to a sale in administration (see [8] of the judgment for a summary of the plan).

No creditor had sought to challenge the evidence or conclusions in BT's report. In the absence of such challenge, and on the evidence, the court was satisfied that BT's report fairly summarised the likely outcome for all creditors in the relevant alternative.

Issues and decisions

Whether the plan would be approved. It was established that, for the plan to be approved, three conditions had to be met. First, if the plan was sanctioned, whether any members of the dissenting class would be any worse off than they would be in the event of the relevant alternative (the 'no worse off' test). Second, whether the restructuring plan had been approved by 75% of those voting in any class that would receive a payment, or have a genuine economic interest in the company, in the event of the relevant alternative. Third, whether, in all the circumstances, the court should exercise its discretion to sanction the plan.

Regarding the 'no worse off' test, the dissenting class consisted solely of the Revenue and Customs Commissioners (HMRC). While it might recover more, or less, in the relevant alternative, it was likely to be no worse off under the plan. Further, if a creditor or member wished to oppose a plan based upon a contention that the company's valuation evidence as to the outcome for creditors in the relevant alternative was wrong, it was for them to produce their own evidence. Not only had HMRC not sought to do so, but it appeared that it had accepted that it would be better off under the plan than in the relevant alternative (see [15], [17] of the judgment).

Regarding the second test, the only creditor that would receive a payment, or have a genuine economic interest in the company in the event of the relevant alternative, was the bank. Its vote in favour of the plan satisfied that condition (see [18] of the judgment).

Regarding discretion, the issue facing the court was a binary one; to sanction the plan, or not. While it would, in theory, be possible to require the company to start again and seek to negotiate with HMRC, that was highly undesirable, where the costs and delay in requiring it do so would impose a disproportionate burden on the company, a small to medium enterprise. In any event, without knowing what HMRC's position would be, it could be that nothing at all would be gained by requiring the company to start again (see [44] of the judgment).

If the court refused to sanction the plan, then the evidence indicated that all creditors, including HMRC, would be worse off. As HMRC had not opposed the sanction of the plan, the court could not tell that it would wish – of the two options – to choose that one. The company's financial difficulties appeared to be a consequence of the pandemic, rather than anything which might justify such investigations. HMRC had certainly not suggested that it was a case where it would prefer a formal insolvency process for that reason. Aside from that, HMRC's interest would surely be in recovering more, rather than less, tax and, as such, in relation to the binary choice, its interests lay in sanctioning the plan (see [45] of the judgment).

Consequently, the court would use its discretion to sanction the plan (see [46] of the judgment).

Telewest Communications plc, Re; Re Telewest Finance (Jersey) Ltd [2004] All ER (D) 216 (Jun), [2004] EWHC 1466 (Ch) considered

Re Noble Group Ltd [2018] All ER (D) 100 (Nov), [2018] EWHC 3092 (Ch) considered

Re Virgin Atlantic Airways Ltd [2020] All ER (D) 08 (Sep), [2020] EWHC 2376 (Ch) considered

Re DeepOcean 1 UK Ltd and other companies [2021] All ER (D) 08 (Feb), [2021] EWHC 138 (Ch) considered

Virgin Active Holdings Ltd and other companies, Re [2021] All ER (D) 100 (May), [2022] 1 All ER (Comm) 1023, [2021] EWHC 1246 (Ch) considered

Re Smile Telecoms Holdings Ltd [2022] All ER (D) 116 (Mar), [2022] EWHC 740 (Ch) considered

Re E D & F Man Holdings Limited [2022] EWHC 687 considered

Judgment date
22 July 2022

Judge
Zacaroli J

Representation
Marcus Haywood (instructed by Irwin Mitchell LLP) for the applicant.
Information about respondent representation unavailable at time of publication.

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