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Re Houst Ltd

[2022] EWHC 1765 (Ch), [2022] All ER (D) 62 (Jul)

The Chancery Division allowed the claimant company's application for an order to convene meetings in order to consider and potentially approve a restructuring plan. The company, which had been severely impacted by the coronavirus pandemic and was cashflow insolvent, had been threatened by winding-up petitions. The court held that the various requirements for the order to be made had been met, and an order would be made convening the proposed meetings.

Catchwords

COMPANY – FINANCIAL RESTRUCTURING – RESTRUCTURING PLAN

Background

Houst Ltd (the company) provided property management services in respect of short-term holiday lets.

The company's business was severely impacted by the coronavirus pandemic and it was presently cashflow insolvent. The company applied for an order pursuant to s 901C of the Companies Act 2006 (CA 2006), convening five meetings of creditors and one meeting of members for the purposes of considering (and, if thought fit, approving) a proposed restructuring plan in respect of the company (the restructuring plan).

Three creditors had threatened winding-up petitions against the company and/or served statutory demands. They were: (i) HMRC in respect of the sums owed to it; (ii) Almaviva Services SRL (Almaviva), a call centre provider, which was owed around £385,000; and (iii) Citiclient (CPF) Nominees No 2 Limited (CPF), the company's former landlord, which was owed a sum in the region of £112,000.

Broadly, the restructuring plan was that the present members would authorise the company as their agent to execute or enter into various documents, including new articles of association. The broad effect would be: (i) the conversion of the existing 'Series A' preference shares into ordinary shares; and (ii) the dilution of the interests of the existing Series A preference.

Issues and decisions

Whether the plan would be approved.

First, the jurisdictional requirements were satisfied. The company was incorporated in England and Wales. It was, therefore, liable to be wound up under the Insolvency Act 1986 (IA 1986) and the provisions of CA 2006 part 26A applied (see [33] of the judgment).

Second, conditions A and B, as specified in IA 1986 s 901A, were fulfilled. As to condition A, the company was cashflow insolvent. If the restructuring plan was not approved, the directors considered that they would have no alternative but to place the company into administration. As to the first stage of condition B, the company was proposing a compromise or arrangement in the relevant sense. Regarding the second stage, the purpose of the restructuring plan was to allow the company to be returned to solvency and for all creditors and members to receive more than they would if the company were placed into administration (see [34]-[36] of the judgment).

Third, the requirements as to class composition required a certain amount of degree of pragmatism. Applying such an approach, the differences such as they were between the ordinary shareholders and preference shareholders were not such as to make it impossible for them to consult together. The court was not persuaded there should be any further division and it was therefore content to adopt the company's proposal in relation to the treatment of the members (see [43] of the judgment).

Fourth, there were other issues, not going to merits or fairness, which might in due course cause the court to refuse to sanction the restructuring plan (see [44] of the judgment).

Fifth, the relevant practicalities had been satisfactorily dealt with. Adequate notice had been given to those affected by the restructuring plan. The explanatory statement had communicated all relevant material matters in a way that would be readily comprehensible to its intended addressees. Sufficient notice had been given. The company's proposal for a virtual meeting was unobjectionable in light of the practice which had developed following the COVID-19 pandemic (see [45]-[47] of the judgment).

An order would be made convening the proposed meetings (see [48] of the judgment).

Judgment date
14 June 2022

Judge
Adam Johnson J

Representation
Marcus Haywood for the company.
Information about respondent representation not available at time of publication.