Lexis®Nexis Case Summaries

Re Amicus Finance plc (in administration)

[2021] EWHC 2255 (Ch), [2021] All ER (D) 27 (Aug)

Company – Administration. The applicant companies succeeded in their application for an order convening meetings of creditors to consider and, if thought fit, approve a restructuring plan in respect of a related finance company that was in administration. The Chancery Division held that, among other things, the threshold conditions under s 901A of the Companies Act 2006 for proposing a compromise or arrangement were satisfied.

Catchwords

Company – Administration – Restructuring

Background

The proceedings concerned a company (Amicus), whose core business was the provision of short-term property finance.

The majority of loans made by Amicus were funded through a trust structure (AMT), which operated by enabling a variety of funding vehicles (the funders) to fund loans on terms whereby the funders retained the beneficial interest in the loan and Amicus held legal title to the loan. Amicus would earn fees for originating the loans and servicing them (e.g. by collecting repayments). Amicus also generated income by funding loans on its balance sheet as an acceding funder in the AMT in its own right.

In 2018, Amicus began to experience financial difficulties. In December 2018, Amicus entered administration. They considered that it was no longer financially viable, or in the interests of creditors, for Amicus to remain in administration, principally because the loan portfolio had proven to be considerably more challenging and more expensive to service and realise than had been anticipated by the administrators.

Amicus was, or would imminently be, cashflow insolvent, and it was only able to operate at all due to a combination of the forbearance of its professional advisers in not demanding payment of fees that have accrued due and the early draw down of funds provided by an asset management company (24AM). The administrators concluded that a restructuring plan under s 26A of the Companies Act 2006 (CA 2006) was the only alternative to placing Amicus into liquidation, which was said to be the relevant alternative to the sanction of the restructuring plan.

The applicants applied an order pursuant to CA 2006 s 901C convening meetings (the plan meetings) of creditors (the plan creditors) for the purpose of considering and, if thought fit, approving a restructuring plan in respect of Amicus (the restructuring plan).

Issues and decisions

(1) Whether the threshold conditions under CA 2006 s 901A for proposing a compromise or arrangement were satisfied.

The cashflow forecast prepared by the administrators showed that the company was expected to operate at a loss for the foreseeable future due to the relatively low amount of income generated by its loan portfolio as against a comparatively high level of outgoings. Absent significant new funding, which was unlikely to materialise, it would not be viable to continue to operate the business of the company (see [72] of the judgment).

The restructuring plan was plainly a compromise or arrangement with the company's creditors or a class of them. Those concepts were to be given a similarly broad meaning as in the context of CPR Pt 26. Fundamentally, the entire premise of the restructuring plan involved payments made to creditors by the company in exchange for the compromise of those creditors' claims against the company (see [73] of the judgment).

Further, the purpose of the restructuring plan was to enable Amicus to exit administration and return to solvency where it could be operated as a going concern. On its face, therefore, the purpose of the plan was to eliminate the company's financial difficulties (see [74] of the judgment).

The conditions were, therefore, satisfied (see [75] of the judgment).

Virgin Atlantic Airways Ltd [2020] BCC 997 (Ch) considered

(2) Whether the explanatory statement that accompanied the restructuring plan was appropriate, and whether defects in the terms of the restructuring plan had been rectified.

Given the limited role that the court played at the convening stage, nothing that it said regarding the issue was to be taken as a definitive ruling on any point or as precluding a creditor from relying on such points when objecting to the restructuring plan being sanctioned on the basis either that the restructuring plan contained a fatal flaw, or of fairness, or because of a contention that the explanatory statement had been inadequate (see [95] of the judgment).

Subject to that caveat, and on the basis of the amendments made to the draft documents, the draft restructuring plan and explanatory statement prima facie appeared to provide sufficient information to enable creditors to form a view as to their interests and the way in which they should vote, and that there was no longer any obvious flaw or deficiency in the drafting of the restructuring plan which would prevent the court from convening plan meetings at the present stage (see [128] of the judgment).

Altitude Scaffolding Ltd, Re; Re T&N Ltd [2006] All ER (D) 181 (Jun), [2006] EWHC 1401 (Ch) considered

Re Noble Group Ltd [2019] BCC 349 considered

Re Virgin Atlantic Airways [2020] BCC 997 considered

Re Castle Trust Direct Plc and others [2020] EWHC 969 (Ch) considered

Re Sunbird Business Services Ltd [2020] All ER (D) 39 (Sep), [2020] EWHC 2493 (Ch) considered

Re Gategroup Guarantee Ltd [2021] EWHC 304 (Ch) considered

Re Virgin Active Holdings Ltd and other companies [2021] All ER (D) 44 (Apr), [2021] EWHC 814 (Ch) considered

Judgment Date

9 August 2021

Judge

Snowden J

Representation

Marcus Haywood (instructed by Pinsent Masons LLP) for Amicus Finance plc.
Andrew Mace (instructed by Shakespeare Martineau LLP) for Crowdstacker Corporate Services Ltd.
William Willson (instructed by Brown Rudnick LLP) for HGTL Securitisation Company Limited and the Hartford Entities.

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