Lexis®Nexis Case Summaries

Re Central Properties Holdings Ltd (in administration)

[2023] EWHC 829 (Ch), [2023] All ER (D) 28 (Apr)

The Chancery Division declined to make an order providing for the discharge from liability of the administrators of a company, conditional upon the termination of the administration on successful completion of the company's Company Voluntary Arrangement (CVA). The relief sought formed part of an application in which the administrators had sought an extension of their term of office and was said to be aimed at avoiding the costs of having to later bring a further application for an order to end the administration. The court was therefore invited to make a prospective conditional order providing for the administration to terminate automatically under the conditions referred to above. While confirming its jurisdiction to make a conditional order for an administrators' discharge from liability, the court noted the possibility of the administrators remaining officers of the company with the CVA in place for a significant period. The court held that it was not appropriate to provide a prospective discharge from liability for such a potentially lengthy period. Secondly, challenges which might be made to the adjudication of debts in the CVA could affect the successful completion of the CVA. Even a remote likelihood of that occurring meant that the present case was not an appropriate case to make an innovative form of conditional order.

Catchwords

COMPANY – ADMINISTRATION ORDER – ADMINISTRATORS DISCHARGE FROM LIABILITY

Background

In December 2022, the joint administrators of Central Properties Holdings Ltd (the company) applied for various relief. The administration of the company was due to end on 5 February 2023. In January 2023, the court made an order extending the administration to August 2024.

The administrators applied for further relief. They sought an order providing for: (i) the termination of the administration pursuant to para 79 of Sch B1 to the Insolvency Act 1986 (IA 1986) conditional upon the successful completion of the company's Company Voluntary Arrangement (CVA); and (ii) the discharge of the administrators from liability conditional upon the termination of the administration in accordance with (i).

Issues and decisions

(1) Whether the application would be allowed.

On the case law, the court had jurisdiction to make a conditional order for an administrators' discharge from liability under para 98 of Sch B1 to IA 1986. However, in the instant case the court would not do so (see [18] of the judgment).

First, although it was anticipated that the administrators would have little further function to perform as administrators by reason of the existence of the CVA, it nonetheless remained the case that the administrators remained officers of the company pursuant to para 69 of Sch B1 to IA 1986 and had all the powers of management of it. Even if it was currently considered unlikely that the administrators would need to do very much as administrators, it was not appropriate to provide a prospective discharge from liability for such a potentially lengthy period during which the administrators would remain in place as the company's officers (see [19] of the judgment).

Second, apart from the potentially extended period of time for which the conditional order for discharge was sought, the enhanced possibility that challenges might be made to the adjudication of debts in the CVA led the court to conclude that it should not make the release of the administrators conditional upon the successful completion of the CVA. Any such dispute over adjudication would potentially bear upon the question of whether or not the CVA could complete successfully. If the court made an order that the administrators' discharge from liability was conditional upon successful completion of the CVA, then whether or not the administrators might have an effective discharge from liability without a further visit to court had the potential to become bound up with any dispute over the adjudication of claims in the CVA. It was possible that a creditor in dispute with the supervisors might attempt to use it as a bargaining chip in negotiations and it was not desirable to have the question of an administrators' discharge available to become tangled up in a dispute in a CVA in that way (see [20] of the judgment).

The court would make a conditional order under para 98 of Sch B1 to IA 1986 providing for the discharge of the administrators from liability (see [21] of the judgment).

Ballast plc, Re, St Paul Travellers Insurance Co Ltd v Dargan [2006] All ER (D) 240 (Dec), [2006] EWHC 3189 (Ch) considered

Re Lehman Brothers International (Europe) (in administration) and other companies [2022] EWHC 2995 (Ch) considered

Judgment date
14 April 2023

Judge
Deputy ICC Judge Curl KC (Chancery Division (Companies Court))

Representation
Morgan Bowen of Mills & Reeve LLP for the applicants.