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Re Great Annual Savings Company Ltd

[2023] EWHC 1141 (Ch), [2023] All ER (D) 78 (May)

The Chancery Division dismissed an application by the applicant company for an order sanctioning a restructuring plan (the plan) under Part 26A of the Companies Act 2006. Meetings had been held with 15 classes of creditor, 12 of which achieved 100% support, one of which received no attendance, and in two of which, the majority voted against the plan. There was no power to sanction the plan under section 901F of the Act, as it required the support of all creditor classes by a 75% majority. Accordingly, the plan could only be sanctioned if the requirements of section 901G of the Act were satisfied. It was accepted that condition B of section 901G was satisfied. The principal challenge in condition A was whether the company had discharged the burden of showing that it would not have been any worse off under the plan. The court held that the applicant had not discharged the evidential burden of showing that the Revenue and Customs Commissioners would not have been any worse off under the plan, and even if it had done so, the discretion to sanction the plan would have been declined; HMRC had acted rationally in voting against the plan and given its status as a major in the money creditor, and the strong terms in which it had voiced its objection, not only in light of the facts of the present case but also given its critical public function as the collector of taxes, HMRC's views deserved considerable weight.

Catchwords

COMPANY – RESTRUCTURING PLAN

Background

The applicant company (the company) put forward a restructuring plan (the plan), the proposed terms of which affected the company's sole shareholder (the parent company) and its shareholders, particularly BG and LG. The company applied for an order sanctioning the plan under Pt 26A Companies Act 2006 (CA 2006). Meetings were held of 15 classes of creditor (the plan creditors) pursuant to orders made in February 2023. In 12 of the 15 meetings, the plan achieved 100% support but in the other three, the result was different: one was not attended, and the vote was against the plan at the other two. One meeting was that of the 'Category 3 energy Suppliers' and the majority vote was 66% against the plan and 34% in favour of it. The other meeting was that of a single-creditor class: Revenue and Customs Commissioners (the second preferential creditor). HMRC voted against the plan. There was no power to sanction the plan under CA 2006, s 901F as it required the support of all creditor classes by a 75% majority. Accordingly, the plan could only be sanctioned by the court if the requirements of CA 2006, s 901G were satisfied. The two conditions in s 901G were, first, that the court was satisfied that none of the dissenting creditors would have been any worse off under the proposed plan than they would have been in the 'relevant alternative' (condition A). Second, that at least one class of creditor who would have received a payment or would have had a genuine economic interest in the company in the relevant alternative had approved the plan by a 75% majority (condition B). It was accepted that condition B was satisfied. The principal challenge in condition A was whether the company had discharged the burden of showing that it would not have been any worse off under the plan.

Issues and decisions

(1) Whether the plan should be sanctioned.

The court's jurisdiction to sanction a restructuring plan under CA 2006, s 901F was engaged where a number representing 75% in value of the creditors or class of creditors or members or class of members as the case might be, present and voting either in person or proxy at the meeting summoned under CA 2006, s 901C, agreed a compromise or arrangement. Unlike a Pt 26 scheme, there was no requirement for a majority by number. The company had not discharged the evidential burden of showing that HMRC would not have been any worse off under the plan. While the basic idea of the plan was to provide 'a solid platform for future growth and value creation', and while the mechanism for achieving that objective involved both the eradication of HMRC's existing debt and prioritising payments to various unsecured creditors at HMRC's expense, the benefits from such value growth as might be achieved were allocated disproportionately to the secured creditor and the existing shareholders or connected party creditors. They were the principal beneficiaries under the plan. In the circumstances, that distribution of benefits was unfair. Even if it had done so, the discretion to sanction the plan would have been declined on the basis that HMRC had acted rationally in voting against the plan. Given its status as a major in the money creditor, and the strong terms in which it had voiced its objection, not only in light of the facts of the present case but also given its critical public function as the collector of taxes, HMRC's views deserved considerable weight (see paras [135], [138], [139] of the judgment).

Re Noble Vintners Ltd Secretary of State for Business, Energy and Industrial Strategy v Eagling [2019] EWHC 2806 (Ch), [2019] All ER (D) 21 (Nov) considered

Re Smile Telecoms Holdings Ltd [2022] EWHC 740 (Ch), [2023] 1 BCLC 352, [2022] All ER (D) 116 (Mar) considered

Griffiths v TUI UK Ltd [2021] EWCA Civ 1442, [2022] 2 All ER 1137, [2022] 1 WLR 973, [2021] All ER (D) 47 (Oct) applied

Re Amicus Finance plc (in administration) [2021] EWHC 3036 (Ch), [2022] 2 BCLC 701, [2021] All ER (D) 59 (Nov) followed

Perry v Raleys Solicitors [2019] UKSC 5, [2019] 2 All ER 937, [2020] AC 352, [2019] All ER (D) 59 (Feb) considered

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

Re Virgin Atlantic Airways Ltd [2020] EWHC 2376 (Ch), [2021] 1 BCLC 105, [2020] All ER (D) 08 (Sep) considered

Re Noble Group Ltd [2018] EWHC 3092 (Ch), [2019] 2 BCLC 548, [2018] All ER (D) 100 (Nov) followed

Re Listrac Midco Ltd and other cases [2023] EWHC 460 (Ch), [2023] All ER (D) 25 (May) followed

Telewest Communications plc, Re; Re Telewest Finance (Jersey) Ltd [2004] EWHC 1466 (Ch), [2005] 1 BCLC 772, [2004] All ER (D) 216 (Jun) considered

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

Re Houst Ltd [2022] EWHC 1941 (Ch), [2022] All ER (D) 36 (Aug) followed

Judgment date
16 May 2023

Judge
Judge Adam Johnson (Chancery Division)

Representation
Matthew Weaver KC (instructed by Shoosmiths LLP) for the company.
William Wilson (instructed by His Majesty's Revenue and Customs) for HMRC.
Matthew Gillett (instructed by Judge and Priestley LLP) for TotalEnergies Gas and Power Ltd.

Ted Loveday (instructed by Wedlake Bell LLP) for Orsted Sales (UK) Ltd, Corona Energy Retail 4 Ltd and Corona Energy Retail 2 Ltd.

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