Neutral Citation Number: [2019] EWHC 445 (Ch)

Case No: CR-2019-001014

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

7 Rolls Building
Fetter Lane
London EC4A 1NL

Thursday, 14 February 2019

BEFORE:

MR JUSTICE FANCOURT

IN THE MATTER OF AGROKOR D.D.

MR T SMITH QC & MR W WILSON (instructed by Kirkland & Ellis International LLP) appeared on behalf of the Applicant

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JUDGMENT
(As Approved)

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8th Floor, 165 Fleet Street, London, EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

1. MR JUSTICE FANCOURT: This is an application on behalf of a Croatian company, Agrokor d.d., which proposes to make a scheme of arrangement under Part 26 of the Companies Act 2006. The scheme is to be a creditors scheme and the application before me today is for authority to convene a meeting of the scheme creditors, as they are described and identified in the scheme itself.

2. The company, Agrokor d.d., is part of a very substantial privately-owned group of companies registered in Croatia and in the Netherlands. The company itself is registered in Croatia and the group operates in the business of agriculture, food production and wholesale and retail activities relating to supermarkets and food.

3. Under Croatian law, there is a procedure for an extraordinary administration for companies that have systemic importance in Croatia. The company and the group encountered financial difficulties and, on 7 April 2017, they filed for commencement of an extraordinary administration and an administrator was appointed by the Croatian Court on 10 April 2017. Following that, in June 2017, the company obtained new finance under what was called a super priority facilities agreement ("SPFA"), under which €1.06 billion were lent by the scheme lenders. Under the Extraordinary Administration Act in Croatia, the scheme lenders have priority status and the debt is priority debt. One-half of the debt was in fact used to refinance existing debt.

4. In July 2018, a settlement plan with all the company's creditors was approved by order of the Croatian Court. This involves a corporate restructuring and the creation of a new group of Dutch and Croatian companies. The settlement plan became effective in principle on 18 October last year but it is subject to various conditions precedent, one of which is the restructuring of the SPFA. What is proposed is a novation of these priority debts and the creation of new facilities on substantially the same terms but with some differences. The SPFA itself requires the unanimous consent of the scheme creditors to any such novation. In the absence of such unanimity, the company now proposes a scheme of arrangement as a means of binding all the scheme creditors. Only the SPFA priority creditors are affected by the proposed scheme.

5. The company has notified all the scheme creditors in accordance with the 2002 Practice Statement. None of them have responded notifying any objection on grounds of jurisdiction or in relation to the proposed class of creditors or on any other ground, and none of the scheme creditors have appeared in front of me today to raise any objections. I am satisfied that the court appears to have jurisdiction in relation to the proposed scheme. The company, though a Croatian company, is technically liable to be wound up under the Insolvency Act 1986 even if, under the Cross-Border Insolvency Regulation, England and Wales would not be the primary jurisdiction for any insolvency proceedings. In principle, the company could be wound up as an unregistered company under the 1986 Act.

6. The second aspect of jurisdiction will be whether the recast Judgments Regulation of 2012 applies, such that these proceedings should be brought in the jurisdictions of the individual scheme creditors. There is an argument that the Regulation does not apply to an application for a scheme of arrangement under the Companies Act, which on the face of it seems to me to be quite a strong argument. But it is not an argument that the court has previously found necessary to decide because it would be sufficient to say

that, if the Regulation does apply, some of the creditors (in this case four of them) are domiciled in England and Wales. In those circumstances, article 8 of the Regulation would apply to confer jurisdiction to sue the scheme creditors who are domiciled in other member states on the basis that the claims against them are so closely connected to the claims against the English-domiciled creditors that it is expedient to hear and determine them together in a single set of proceedings.

7. Even if jurisdiction is established, the court will not proceed unless the proposed scheme has sufficient connection with this jurisdiction. A long series of first-instance decisions establish that there is sufficient connection where the respective rights of the company and the scheme creditors are governed by English law. That is the case here. There is also a non-exclusive jurisdiction agreement in favour of the courts of England and Wales, though that is not essential. It may be an issue more for the sanction hearing than today, but I note that the company has already adduced evidence from a retired judge of the Croatian Supreme Court with expertise in insolvency and restructuring law to the effect that an order made by this court sanctioning the scheme would be likely to be recognised and enforced in Croatia, either under the Judgment Regulation or under the Rome I Regulation or even under Croatian private international law. The scheme, if made in due course, therefore appears likely to have substantial effect in Croatia as well as in this country.

8. Notice of the proposed claim on this application was given to the scheme lenders on 1 February, save for a small group of the lenders who did not receive information (at their choice) until 6 February. Given the sophisticated and substantial character of the scheme lenders in this case (who I understand are all international lenders, not small retail lenders in Croatia), I am satisfied that notice of this hearing was sufficient notice.

9. The remaining issue is whether the company is right to contend that there need only be a single meeting convened because there is only one class of creditors. I am satisfied on the evidence before me that that is correct. I am told by the evidence that there is no distinction between the rights of the scheme creditors under the SPFA and there will be no distinction between their rights under the new proposed senior secured facilities agreement that will result if the scheme is approved.

10. The company has offered the scheme creditors a small fee, 0.35 per cent of their outstanding principal, in return for entry into a lock-up agreement. Over 86 per cent of the lenders by value have signed up. The fee will be capitalised and added to the outstanding debt under the new funding agreement. The amount of the fee is relatively small and the option to take the fee was open, and indeed will remain open, to all the scheme creditors. In those circumstances, I am satisfied that there is no inability of all the scheme creditors to meet and discuss their issues at a single meeting, notwithstanding that it may be that some of them elect not to take the fee that is offered.

11. I am satisfied that I can properly make an order convening the scheme meeting on 28 February 2019, which I propose to do on the terms of the draft order that has been placed before me, subject only to a small amendment to require, under paragraph 2, that the information relating to the scheme and the proposed meeting be posted on the

identified website today and that the information contained on the website be emailed to each of the scheme creditors no later than 4.00 pm tomorrow (15 February).

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400
Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge