Case No. CR-2023-005266

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMPANIES LIST (ChD)
Neutral Citation Number: [2023] EWHC 2497 (Ch)

28 September 2023

MR JUSTICE MILES:

IN THE MATTER OF
CB&I UK LIMITED

and

IN THE MATTER OF THE COMPANIES ACT 2006

DAVID ALLISON KC, RYAN PERKINS, AND STEFANIE WILKINS (instructed by **Kirkland & Ellis International LLP**) appeared on behalf of the **Plan Company**

DANIEL BAYFIELD KC AND JON COLCLOUGH (instructed by **Weil, Gotshal and Manges (London) LLP**) appeared on behalf of **an ad hoc group of supportive creditors**

CHARLOTTE COOKE (instructed by **Linklaters LLP**) appeared on behalf of **the agent under the Exit Credit Agreement**

FELICITY TOUBE KC, MATT ABRAHAM, AND JAMIL MUSTAFA (instructed by **King & Spalding International LLP**) appeared on behalf of **Reficar**

WILLIAM WILLSON (instructed by **DLA Piper UK LLP**) appeared on behalf of **the Wood Parties**

ANDREW THORNTON KC AND ADAM AL-ATTAR (instructed by **Akin Gump LLP**) appeared on behalf of **an ad hoc group of sub-participants**

APPROVED JUDGMENT

MR JUSTICE MILES:

1. This is an application brought by CB&I UK Limited (the Plan Company) to convene certain meetings of its creditors (the Plan Creditors) to consider and, if thought fit, approve a restructuring plan (the Plan) under Part 26A of the Companies Act 2006.

2. The Plan Company is part of a group of companies ("the Group") which provides engineering, procurement and construction services to customers operating in the oil, gas and energy sector. The evidence of the Plan Company is that it and the wider group are in financial distress. The main point relied upon is that the Plan Company has a contractual obligation to provide more than $2 billion of cash collateral to its creditors in the first quarter of 2024. The Plan Company and the Group do not have cash or liquid assets approaching that amount.

3. The evidence of the Plan Company is that the secured liabilities of the Group exceed the value of its assets, even on a going concern basis. In broad terms, the purpose of the plan is twofold: first, an extension of the maturity dates of certain secured credit facilities; second, what is described as a compromise of certain unsecured liabilities. The compromise essentially involves the release of those liabilities in return for comparatively small amounts of cash with, in respect of certain liabilities, the amounts being contingent on the performance of the Group.

4. The plan also makes various other changes to the terms of the group's secured financing arrangements. It is part of a wider restructuring of the Group balance sheet, which includes a recent injection of new money of about $250 million.

5. The main points which fall to be considered at this hearing are whether the court should convene plan meetings, whether the classes suggested by the Plan Company are appropriate, and directions for the sanction hearing, if such meetings are convened. The evidence in support consists primarily of the first witness statement of Mr Travis Brantley on behalf of the Plan Company. He exhibits and refers to reports undertaken by Grant Thornton, who have expressed themselves to be giving independent expert evidence concerning the relevant alternative, and the valuation of the assets of the Group in the relevant alternative scenarios.

6. The Plan Company is part of a group ultimately owned by a Bermudan company called McDermott International Limited (MIL). The Plan Company is an indirect subsidiary of MIL and a direct subsidiary of a Dutch company. The Plan Company is registered in England and has its centre of main interests in the UK. The Plan Company sits in the group below a Dutch company called Lealand Finance Company BV (LCF), which is the principal obligor in respect of the secured facilities, which are a main target of the plan. The Plan Company, along with many other companies in the Group, is a guarantor of the relevant secured facilities.

7. The Group's business is organised into a number of business segments. In January 2020, various entities in the Group filed voluntary petitions for reorganisation under Chapter 11 of the US Bankruptcy Code in the US Bankruptcy Court for the Southern District of Texas. Among other things, the Chapter 11 Process resulted in

a transfer of the equity in the group to the Group's financial creditors, and restructured the group's financial indebtedness. Pursuant to that process the Group entered into new restated finance documents. The key finance document is known as the Exit Credit Agreement, the borrower under that agreement is LFC.

8. The Exit Credit Agreement comprises four credit facilities with aggregate lending commitments of about $2.46 billion. These are the super senior LC facility, the make-whole term loan facility, the senior LC facility, and the takeback term loan facility. It will be noted that two of these facilities consist of letter of credit facilities.

9. In very broad terms, under those facilities issuing banks are under an obligation to issue letters of credit to third parties, generally customers of the Group, in relation to EPC and other infrastructure contracts.

10. The super senior LC facility, the make-whole term loan facility and the senior LC facility have a maturity date of 30 June 2024, and the takeback term loan facility has a maturity date of 30 June 2025.

11. In addition, on 31 December 2020, a number of the Group companies entered into another financing arrangement known as the escrow LC facility agreement. LFC is the borrower under that agreement, and a number of companies, including the Plan Company, are guarantors. In the evidence, the Exit Credit Agreement and the escrow LC facility agreement are described as the Secured Credit Agreements, and the lenders under these agreements are described as the secured Plan Creditors.

12. As things stand, the secured Plan Creditors have issued outstanding letters of credit with an aggregate face value of $1.85 billion. The obligors, including the Plan Company, are required to provide 100 per cent cash collateral for all outstanding letters of credit under the Secured Credit Agreements by no later than 27 March 2024, which is in advance of the June 2024 maturity date.

13. The claims of the Secured Plan Creditors are secured over a common security package which has a waterfall as follows: at the top or first, the super senior LC facility and what are called the hedging agreements; second, the make-whole term loan facility; third, the senior LC facility and the escrow LC facility on a *pari passu* basis in the event of any shortfall; and fourth, the takeback term loan facility. The Secured Credit Agreements are governed by New York law.

14. There are other secured liabilities, including hedging liabilities, which will not be compromised by the Plan.

15. Turning to the unsecured claims covered by the Plan, the first consists of the claim of Refineria de Cartagena SA (Reficar). That is a Colombian enterprise which entered into EPC contracts to be delivered by group companies. In June 2023, the Plan Company received notice of an arbitration award against it and others in arbitration proceedings brought by Reficar. The arbitration award was for the payment of net damages to Reficar of about $938 million, plus interest and costs. I was informed that the total amount is about $1.3 billion. The Plan Company has

applied in the courts of the Southern District of New York to set aside the award and those proceedings are pending.

16. In addition, an administrative agency of the Republic of Colombia, Contraloría, commenced an investigation against multiple parties, including the Plan Company, alleging that improper cost overruns occurred in connection with the construction and modernisation of the Reficar refinery, which was the subject of the Reficar claim. As I understand it, that was on the basis that Reficar is ultimately majority owned by the Colombian government, and the amounts, or some of them, paid to the relevant group companies and others represented assets of the Colombian State.

17. On 26 April 2021 Contraloría issued a decision stating that the Plan Company and others were jointly and severally responsible for cost overruns of an amount equivalent to approximately $718 million. The Plan Company has sought to set aside the claim of Contraloría through the Colombian courts but so far unsuccessfully. The Plan Company has pursued a challenge by way of arbitration under a bilateral investment treaty and separate proceedings in the Colombian court, which are pending.

18. Reficar has the benefit of a $95 million letter of credit issued under the senior LC facility. There are also insurance policies in favour of the Plan Company which may provide coverage for the Reficar claim and the Contraloría claim. The remaining cover limit is in the order of $213 million.

19. The Contraloría claim was against a number of parties, as well as the Plan Company and other group companies. These included companies within the John Wood Group, and two companies described as the Wood parties appeared before the court at this hearing, explaining that they were challenging the Contraloría claim in the courts of Colombia and through an arbitration. But, in the event that they were required to make payments under that claim, they would have potential contribution claims against the Plan Company.

20. The plan as proposed involves two classes of unsecured creditors: first, essentially Reficar and Contraloría, together described as the Dispute Proceeding Plan Creditors, who are placed in one class. Then there are both group companies and non-group companies which may have rights of contribution against the Plan Companies, and they are described as the contribution claim Plan Creditors. Hence, there are five proposed classes of secured Plan Creditors and two proposed classes of unsecured Plan Creditors.

21. The Plan Company has certain other unsecured liabilities, such as trade creditors, with claims of approximately $30 million that would not be compromised by the Plan; nor are the intercompany debts of the Plan Company covered by the plan.

22. The evidence advanced by the Plan Company explains that there have been various trading events since the company emerged from the Chapter 11 Process in 2020 which have had a material adverse impact on the company's liquidity position.

23. I shall not go into these in detail, but they include: the consequences of the lockdowns following the Covid-19 pandemic; the volatility of prices for oil and gas; the Russian invasion of Ukraine which caused disruptions to the global supply chain and energy markets; inflationary pressures, including rising costs in the steel and labour markets, which have led to increases in the Group's variable operating costs; a material cyber-security incident in April 2023, which led to significant disruption of the Group's ability to contract process, make new contract bids, and make supplier payments and ensure collection of customer receipts; the fact that the Group had inherited certain legacy projects as a result of a merger in 2018 which had led to greater than expected gross losses during 2023, and the fact that the Group had had to, as it put it, stretch its vendor base to unsustainable levels. What that means is that it was seeking as far as possible to delay in settling obligations to suppliers.

24. The evidence shows that as a result of these financial difficulties some key customers appear to have lost confidence in the Group and during the most recent financial quarter (Q2 2023) significant contracts that had been awarded to the Group, including by Saudi Aramco, involving the expansion of a $1.8 billion project, were cancelled, based on the Group's ability to procure letters of credit in the required amount.

25. In a further witness statement, Mr Brantley has explained that the financial difficulties, including the uncertainty over the continued and continuing availability of letters of credit, is having an impact on the willingness of customers to enter EPC contracts with the Group, and that this is having an effect more generally on the confidence of potential customers and suppliers.

26. In the light of these various trading and liquidity problems, the Group commenced negotiations with certain of its secured creditors. As I understand it, these negotiations commenced in December 2022. They culminated in an agreement called "the Transaction Support Agreement" signed on 8 September 2023. In essence, it is a form of lockup agreement which sets out the agreed terms of the restructuring transaction to be implemented in part through the plan. So far, the various classes of secured creditors have signed up to a Transaction Support Agreement (the TSA) in varying proportions, ranging from 99 per cent in value of lenders under the escrow LC agreement, down to 60 per cent in value of lenders under the make-whole term loan facilities.

27. As a result of the trading and liquidity problems the Group was facing, a new facility was negotiated and entered into on 8 September 2023 in the amount of some $250 million. This new money was supplied, as I understand it, by existing creditors. It was documented in an agreement called the Tanks Term Loan Facility, which is secured against certain assets within the Group's storage Tanks business. I was shown evidence that, without this new money, the Group would already have had a negative cash position.

28. As it is, the Group expects to reach a point where it has only a relatively small margin over its minimum liquidity requirement for operating purposes of $100 million by about the middle of November.

29. I have already outlined the main purposes of the Plan. The first key purpose for the secured debt is for the maturity dates of the super senior LC facility, make-whole term loan facility, senior LC facility and the escrow LC facility to be extended to 30 June 2027; and the maturity date of the takeback term loan facility to be extended to 31 December 2027. There will be other less significant changes to be made, including changes to minimum liquidity covenants and other covenants in the agreements.

30. There will be a specific change to be made to deal with a potential draw on the letter of credit in favour of Reficar. To the extent that that is drawn on, the obligors under the senior LC facility will be required to reimburse the relevant senior LC facility lenders. Pursuant to the plan, to the extent that the reimbursement obligation is not satisfied by a specified deadline, it will be restated as a term loan with a maturity date of 30 June 2027.

31. The Plan will also facilitate the migration of a proportion of the lending commitments under the super senior LC facility into a new letter of credit facility borrowed by the Tanks business, described as the Tanks Senior LC facility. The proportion of lending under that agreement which can be transferred is approximately $254 million. Essentially, that would involve the super senior LC facilities lenders deciding that they prefer the security under the Tanks senior LC facility.

32. The second main purpose of the Plan concerns the position of the unsecured Plan Creditors. The Plan will release the claims of the unsecured Plan Creditors against the Plan Company and against other co-obligors in the Group; and in consideration of that release, the Dispute Proceeding Plan Creditors will be entitled to receive a variable contingent cash payment for the 2023 and 2024 financial years, depending on the performance of the Group.

33. The maximum amount in each financial year to be paid by the Plan Company to the Dispute Proceeding Plan Creditors in aggregate is $2 million.

34. The contribution claim plan creditors will have their claims released in consideration of a one-off cash payment of £100,000 in aggregate.

35. The plan does not affect the insurance policies and the ability of Reficar and Contraloría to claim under the Third Parties (Rights Against Insurers) Act 2010 in that respect, nor will the claim affect Reficar's rights under the Reficar letter of credit.

36. There is a parallel restructuring plan being promulgated in the Netherlands (the WHOA plan) by two Dutch companies within the Group, ie MIH and LFC. The purpose of the WHOA plan is to ensure that the compromise set out in the Plan is binding on the creditors of MIH and LFC as a matter of Dutch law. The effectiveness of the Plan is conditional on the success of the WHOA plan.

37. The Plan Company has said in evidence that the relevant alternative for the purpose of section 901G of the 2006 Act is worldwide insolvency process in respect of the Plan Company and other group companies within a short period of time. The relevant

alternative under the section is defined as whatever the court considers would be most likely to occur in relation to the Group if the compromise or arrangement were not sanctioned.

38. In relation to this part of its evidence, the Plan Company has relied upon reports produced by Grant Thornton. Those reports also explain the estimated recoveries of the various classes of creditors in the relevant alternative and the creditors' likely returns if the Plan is successful.

39. In the case of insolvency proceedings, the estimated recovery set out by Grant Thornton shows that in what is called "the high case" recoveries would be made of 100 per cent by the super senior LC facility and the make-whole term loan, that the senior LC facility and escrow LC facility would have recoveries in the order of 13 per cent and that the takeback term loan would have nil recovery. In what is called "low case" the super senior LC facility would make recoveries of 88 per cent and the other four tranches of secured debt would have nil recoveries. On either basis, on the Plan Company's evidence, the value therefore breaks within the secured debt.

40. As regards the position of unsecured creditors, on that evidence they would receive nothing on either basis, and there would be a shortfall of approximately $2 billion of debt.

41. The Grant Thornton report also states that if the Plan is sanctioned and the Plan Company and the Group continue as going concerns, then the recoveries for secured creditors would be in the range $2.8 billion in the high case, to $2.54 billion in the low case, which would still involve the value breaking in the secured debt. The suggested enterprise value of the Group would produce a nil recovery on the takeback term loan facility in the low case, and some 47 per cent on the high case. On either basis, the unsecured creditors would, according to this evidence, still be well out of the money.

42. The matters to be determined at the convening hearing are first, whether the relevant creditors have been given sufficient notice of the convening hearing; and,second, whether the jurisdictional conditions laid down by section 901A of the Companies Act 2006 are satisfied, and whether there is any jurisdictional roadblocks that would unquestionably prevent the court from sanctioning the plan, and whether the plan meetings proposed by the Plan Company are properly constituted.

43. The function of the court at the convening hearing is emphatically not to consider the merits or fairness of the Plan which will arise for consideration at the future sanction hearing if the Plan is approved by at least one of the Plan meetings.

44. Before turning to consideration of those issues, I should mention the position of parties other than the Plan Company who appeared before me by counsel today. First, there is what is called "the Ad Hoc Group" of secured creditors who support the Plan and urge the court to determine the matter of a sanction hearing as soon as reasonably possible.

45. Second, the same position is taken by a particular creditor, Credit Agricole, which is an agent, and as I understand it also issuing bank of various letters of credit. Again, that creditor supports the Plan.

46. There are also various opposing groups. Reficar explains that its position is contrary to the Plan.

47. There was also representation for what I have called "the Wood parties" who (as I have explained) are contingent creditors under possible contribution claims.

48. Finally, there were two distressed debt funds represented by counsel. Their position is that they are creditors themselves under the escrow LC agreement and are also sub-participants in relation to certain letter of credit facilities agreed between the lenders and the Plan Company They accepted in that latter regard that they are not creditors but that they have an economic interest which enables them to have standing and to be heard in relation to the Plan.

49. Turning to the issues to be decided at this hearing, as just explained the first is whether adequate notice has been given of the convening hearing. The practice statement letter was circulated to Plan Creditors on 8 September 2023, 20 days before this hearing. The question whether sufficient notice has been given is fact-sensitive. It depends on the complexity of the plan, the urgency of the companies' financial position, the sophistication of the creditors and whether they are legally represented, and other relevant circumstances.

50. In the present case, a large body of evidence, including the Grant Thornton reports, was served on the various potentially interested parties on Monday this week, so three days before this hearing. That material is extensive and complex. As counsel for the Plan Company observes, the Grant Thornton reports are long and detailed.

51. It seems to me that the relevant parties have not had a great deal of time to digest that information. They have certainly not had an opportunity to respond to it with evidence of their own. There was a suggestion in the skeleton arguments of some of the opposing parties that the court should in those circumstances adjourn this hearing and should not order plan meetings to be convened. I am not attracted by that course. It seems to me that that would simply lead to further delay, and that there is no reason why meetings should not be ordered now which can run in parallel with any proceedings leading up to a sanction hearing.

52. On the other hand, the fact that the objecting parties have had little time to digest and consider the evidence does appear to me to lead to the conclusion that it must be open to them to raise any issues that they wish to, going both to the threshold and jurisdictional issues, as well as the broader fairness issues that generally arise at a sanction hearing. In fairness to counsel for the Plan Company, that was a course which he himself proposed and did not suggest should be subject to any qualifications or exclusions.

53. In the circumstances, I am satisfied that sufficient notice has been given of this hearing to allow it to be an effective hearing, and one at which the court should, if otherwise satisfied, convene meetings and organise a sanction hearing, but on terms that it will be open to objecting parties to take such points as are available to them at the sanction hearing. That is subject to those points being properly identified in advance of the hearing and obviously there being no question of there being any possibility of an ambush at the sanction hearing.

54. The next question concerns whether conditions A and B of section 901A of the Companies Act 2006 have been satisfied. There is a procedural point here which arises from the relatively short time that the opposing parties have had to consider the voluminous evidence served by the Plan Company.

55. In a case of this kind, it seems to me that the court should take the following approach: it has the benefit of the evidence of the Plan Company and is therefore in a position at least to assess the prima facie position – but on the basis of that evidence which it will of course consider with the usual careful and critical eye. On the other hand, where the opposing parties have not had the opportunity to respond to that evidence, the court can only express a provisional view on the satisfaction of conditions A and B. And these, like other matters going to the jurisdiction of the court, are capable of being revisited in an appropriate case at the sanction hearing. On the evidence before me and having heard all arguments, I am satisfied for present purposes, and for the purposes of deciding whether to convene meetings, that conditions A and B have been satisfied.

56. I turn to the question of whether there are any other jurisdictional roadblocks that might stand in the way of a convening order. The question here is whether it is obvious that the court has no jurisdiction to sanction the plan, or whether there are other factors which would unquestionably lead the court to refuse to exercise its discretion to sanction the plan. It appears to me that if there are points which appear to be at least respectably arguable by the Plan Company, the court will not regard those at this stage as amounting to a relevant roadblock.

57. The main point that was raised as a potential jurisdictional issue at this stage was the question of whether the court had power to extend the letter of credit facilities at least in regard to those parts of the available facilities that had not yet been utilised. This is sometimes described as the "new obligations" point. The question is whether the court has power to impose new obligations on creditors, and whether what is being suggested by the Plan indeed amounts to the imposition of a new obligation.

58. There has been a certain amount of authority on that question, but in the event, the parties were agreed that it could not be sensibly decided in the time available today and that it should await the sanction hearing.

59. There is also the possibility of there being a dispute about the international recognition of the Plan. That will require expert evidence. The Plan Company relies on a report by Judge Christopher Sontchi, a retired US bankruptcy judge from the District of Delaware. Counsel for Reficar said her client would certainly wish to put forward

opposing evidence about recognition under Chapter 15 of the US bankruptcy code. On the authorities, that is a matter to be dealt with at the sanction hearing.

60. Counsel for the Plan Company also referred me to the fact that a deed of contribution has been entered into in this case, where the Plan Company executed such a deed in favour of LFC as the borrower under the secured creditor agreements. No specific point was taken by the objecting parties in that regard; such Deeds of Contribution have been referred to in numerous other cases and it is well-established that they generally do not amount to a jurisdictional roadblock.

61. I turn to the question of class composition. The basic principles are well-known, I will not repeat them. As I have said, it is proposed that Plan Meetings should be convened of some seven classes of Plan Creditors. In essence, the separate classification of the secured creditors is based upon their different ranking in the collateral agreements entered into by the Group companies.

62. The one exception is that under the existing collateral agreements, the lenders of the senior LC facility and the lenders under the escrow LC facility have the same ranking in the event of a shortfall. They are being (so it is proposed) placed into different classes. That is because they have different rights under the plan in relation to the Reficar LC, as I have already mentioned. It seems to me, as presently advised, that that is a sensible division.

63. It is right to note that none of the opposing creditors advanced any arguments that the classification proposed by the Plan Company was in any way inappropriate. However, it has also been agreed that if there are any issues about class composition, those too should await the sanction hearing. Again, that is subject to the point I made earlier that if any points are to be made, they should be articulated at the earliest possible time.

64. The Plan Company raised three points which might be considered to be relevant to the class composition. These were, first, the fact that certain members of the Ad Hoc Group had agreed to participate in the Tanks term loan. The second was that certain consent fees are payable under the Plan, and the third is that the Plan would facilitate migration of a proportion of the lending commitments under the super senior LC facility into the Tank senior LC facility. I do not think any of these are reasons for further fracturing the proposed classes. However, again, as I have already mentioned, it was accepted by counsel for the Plan Company that if there were any issues concerning classes, they should be dealt with at the sanction hearing.

65. That then leads to questions of timetabling for the Plan Meetings and directions for the sanction hearing. The proposed directions as to the summoning and conduct of the Plan Meetings were set out in a draft order. Essentially, they lead to Plan Meetings on 7 November 2023. None of the opposing parties took issue with that aspect of the timetable, and I shall order the proposed Plan Meetings to take place on that date.

66. The most contentious issue concerned the directions for the sanction hearing, in particular when it should take place. Counsel for the Plan Company, supported by

counsel for the Ad Hoc Group of secured creditors, and counsel for Credit Agricole, urged the court to regard the case as one of considerable urgency. They emphasised a number of points: first, that under the TSA if the Plan is not sanctioned by 27 November 2023, and if the Plan is not fully implemented by 31 December 2023, the creditors under that agreement by a majority have the right to terminate it. The result of that would be that the various forbearances which they have agreed to would come to an end. The evidence shows that the Group companies are already in contravention of various covenants under the secured facilities. The Plan Company says in those circumstances, there is a real prospect of a complete collapse of the Group.

67. Counsel for the Plan Company also relies on the operational or business impact of the uncertainty arising from the unresolved problems concerning the Group's capital structure. Counsel emphasised the loss of the Saudi Aramco deal and said, based on evidence, there were other deals which were not coming the way of the Group because of the uncertainties about the continuing availability of letters of credit in the near future. In other words, the problems concerning the secured lending and its restructuring were having an impact on customer confidence and the ability of the Group to enter into profitable or potentially profitable new contracts.

68. The Plan Company also relies on evidence concerning the impact of the continuing uncertainty on the willingness of suppliers to continue to forebear in relation to the various substantial outstanding indebtedness of certain group companies to them.

69. Counsel for the Plan Company contended that the matter should come back before the court as soon as possible after 7 November and, at least in his skeleton argument, pressed for a hearing on 10 November 2023. Counsel for the Plan Company contended that a hearing of some three days, plus one day judicial pre-reading, would suffice. He accepted that the hearing length would be atypical, but pointed out that there were other cases with similar complexities under part 26A where that kind of hearing length had been sufficient, including cases involving hotly contested evidence about valuation and the relevant alternative.

70. Counsel for the objecting parties, with counsel for Reficar in the vanguard, contended that the alleged urgency of the Plan was overstated. She said there was no real evidence that if the milestones under the TSA were not met, the secured creditors would terminate that agreement. The circumstances in which the matter would arise for consideration would be ones where the court had convened meetings. At least one of the classes of creditors had voted in favour to the necessary 75 per cent threshold, where the court will have ordered some date for the sanction hearing, and where on those creditors' own position, they accept the conclusions of the Grant Thornton reports. She contended that in those circumstances, it was improbable that the creditors would simply terminate the agreement.

71. She accepted that there was some evidence that the financial predicament of the Group was having an impact on its business and operations, but said that the evidence did not suggest that there was any key date by which the Plan had to be approved in that regard. She also observed that the Plan did not introduce any new money into

the Group so that any liquidity squeeze it was suffering would not be mitigated by the approval of the Plan.

72. Counsel for the objecting parties submitted that the hearing would take four to five days with two days pre-reading. On the basis of information from the listing office, it became apparent that it would be possible to have a three-day hearing with one day's pre-reading in the week of 4 December 2023, but a hearing of four to five days with two days pre-reading would commence in the week commencing 15 January 2024. (Please also see the postscript below).

73. On this question, I have listened very carefully to the submissions and weighed them. I have come to the conclusion that the sanction hearing should be fixed for the week of 4 December. It seems to me that the evidence shows there is real urgency, based on the business and operational problems being faced by the Group, and that the uncertainty surrounding the restructuring is having an impact on its business and ability to secure new contracts. I accept that the three-day plus one day reading estimate is potentially a tight one but in other cases of similar scale and complexity, and indeed cases involving I think more complexity than this one, the court has managed to hear the matter in that time.

74. The court must always weigh the interests of the Plan Company against the interests of the various creditor groups and must ensure there is adequate time for a fair hearing to take place, as well as a proper length of time for the hearing itself. It seems to me that in the circumstances where there will be more than two months between the date of this hearing and the sanction hearing, there is perfectly sufficient time for the parties to finalise their evidence and present it in an ordered and helpful way to the court. All parties in this matter are represented by very experienced solicitors and counsel, and I take that into account too.

75. So I shall make an order for the sanction hearing to take place in that week. There was discussion of the various directions leading up to that but I will leave it to the parties to discuss those and come up with an appropriate timetable.

76. There was also some discussion before me about the possibility of a disclosure application. Some of the opposing parties raised concerns about missing documents which they said they needed. Those included information about possible cross-holdings between secured creditors in the various classes and between secured creditors and holders of equity in the Group, and information about letters of credit and underlying information relied upon by Grant Thornton in their reports.

77. Ultimately, the position was left in this way: counsel for Reficar, who again took the lead on this point, outlined a number of categories of documents which her client seeks and made it clear for the purposes of the record that those would be needed in good time for the preparation of evidence. However, it was accepted that there was no formal application for disclosure before the court.

78. It appears to me that the right way for this to be dealt with is for any requests for disclosure of further information to be distilled and communicated to the

Plan Company as soon as possible, and for the Plan Company to respond. There may also be requests made of some of the supporting creditors. It will then be for any party that seeks disclosure if necessary to make an application.

79. The court has made clear in earlier cases that it expects a co-operative approach, but also that this is not an area like ordinary Part 7 court proceedings where there are well-known parameters for disclosure. It is necessarily a compressed process, but equally it will be for the Plan Company to persuade the court at the sanction hearing that the court should give sanction, and it will no doubt be very well aware of that when considering any disclosure or information requests which are directed to it. But as things stand, I need say no more about disclosure.

80. **Postscript:** after the hearing it became apparent that the court could in fact accommodate a hearing of four days plus one reading day in the week commencing 27 November 2023. Directions have been given for an effective hearing to take place in that slot. As I said three days would have been tight and it is better to allow four days rather than three for the hearing.