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



No. CR-2023-006019

[2023] EWHC 2908 (Ch)

7, Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday, 2 November 2023

IN THE MATTER OF LECTA PAPER UK LIMITED
A N D
IN THE MATTER OF THE COMPANIES ACT 2006

Before:

MR JUSTICE MICHAEL GREEN

MR T SMITH KC and MR E LUPI (instructed by Linklaters LLP) appeared on behalf of the Company.

J U D G M E N T

MR JUSTICE MICHAEL GREEN:

- 1 This is an application on behalf of Lecta Paper UK Limited (“the Company”) for an order convening a single meeting of creditors to consider, and if thought fit, approve a Scheme of Arrangement that has been proposed by the Company under Part 26 of the Companies Act 2006.
- 2 The Company is incorporated in England and it is a wholly owned subsidiary of a corporate group in which the ultimate parent is Lecta Limited. The Group is a leading European manufacturer and distributor of speciality and coated and uncoated papers for packaging, publishing and commercial printing. The Group’s financial position has deteriorated significantly since an earlier restructuring that took place in 2020 and was sanctioned by this Court. The root causes of the deterioration include a structural decline in the demand for graphic paper, the increased costs of materials, labour and distribution and the industry-wide destocking of high levels of paper inventory following the Pandemic.
- 3 The Scheme relates to two series of Senior Secured Notes (“Senior Notes”) which fall due on 1 March 2025, have an aggregate principal value of €255,225,550. The ultimate beneficial owners of the Senior Notes are the Scheme Creditors. The Senior Notes were originally issued by a company incorporated in Luxembourg called Paper Industries Intermediate Financing Sàrl. The Company recently acceded to the finance documents in respect of the Senior Notes for the purpose of promulgating the Scheme. Having formerly been governed by New York law, the governing law of the Senior Notes was recently changed to English law, strengthening the connection with this jurisdiction.
- 4 The principal purpose of the Scheme is to release the Senior Notes, in the place of which Scheme Creditors will receive newly issued notes equal to the balance of the Senior Notes. These have been called the “New SSNs”. The New SSNs will mature in September 2028 and bear cash interest according to a complicated formula that has been described in the evidence and the Explanatory Statement.
- 5 If the Scheme is not sanctioned, the Group’s directors consider that entities in the Group are likely to enter insolvency proceedings in the European jurisdictions where they are incorporated which, in the Company’s case, would mean entering into a formal insolvency process in England. In those proceedings, Scheme Creditors would receive between 71p and 44p in the pound, according to an analysis undertaken by PwC. By contrast, if the Scheme is implemented, the Group’s directors consider that the Group will be restored to financial health, and be put into a position to implement the business plan that they have developed, which will allow it to continue as a going concern and to pay the New SSNs when they mature.
- 6 There has been a tendency in recent years for quite long judgments to be delivered in these cases, even on an unopposed convening order hearing, and I have been guilty of that in the past. I do not think this is necessary unless there is a particularly difficult issue that required my decision. So I am going to try and deal with this as briefly as I can, having carefully read the supporting evidence of Mr Ferrari, a director of the Company, and Mr Slyfield, a director of Kroll which is the Information Agent for the Scheme, and having had the benefit of the written and oral submissions of Mr Tom Smith KC on behalf of the Company leading Mr Edoardo Lupi.
- 7 The principles are now well established and there are really only two issues for me to consider at this hearing: whether the Court has jurisdiction in relation to the Scheme; and whether the Scheme Creditors should vote in a single class as the Company proposes.

- 8 I said that there were two series of Senior Notes. One is to a total of some €200 million with interest of EURIBOR plus 6%; and the other is of a sum of €55.555 million with interest of EURIBOR plus 7%. Save for the interest rate, both Notes have materially the same terms, are secured by a common security package and rank *pari passu* between themselves in all scenarios.
- 9 The Group has other borrowings including a €115 million Super Senior Facility Agreement (“SSFA”) which is outside the Scheme and is likely to be restructured consensually. There is an Intercreditor Agreement between the Senior Notes and the SSFA creditors which provides for a shared security package and *pari passu* ranking save in respect of an enforcement scenario where the SSFA ranks senior to the Senior Notes.
- 10 Because of the deteriorating financial situation of the Group, there have been negotiations since July 2023 with stakeholders, some of whom have formed a working group. A common form lock-up agreement has been entered into between the Company and the working group and other Noteholders. Signatories are required to support the refinancing and the Scheme and they are entitled to consent fees, being an early bird fee if signed up by 27 October and a general consent fee if signed up by 17 November 2023. Each fee is modest, at 0.5% of the principal value of the Senior Noteholding. Very substantial numbers of the Noteholders have already signed up and that virtually guarantees that the Scheme will be approved at the meeting.
- 11 As I have already said, the Scheme will release the existing Senior Notes, and the Noteholders will receive the New SSNs which have an extended maturity date of September 2028 and the cash interest that I referred to. They will also have the opportunity of entering into a New Money Facility that is crucial to the success of the refinancing. That is in an aggregate amount of €90 million and it has effectively been underwritten by a group of the Parent’s shareholders, some of whom are affiliates with entities that are Senior Noteholders. Because of the pre-emption provisions in the Articles, it is necessary for the New Money Facility to be offered to shareholders first and, if there is not a full take-up by the shareholders, it will be offered to all the Noteholders who can participate *pro rata*. The New Money Facility matures in March 2028. It entitles holders to interest of EURIBOR plus 8% and will rank senior to the New SSNs but junior to the SSFA.
- 12 With that, I turn to the limited issues before me. I start with the main one, class composition.
- 13 The principles are well known. The basic one is that:
- “A class must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult with a view to their common interest.”
- (*Sovereign Live Assurance v Dodd* [1892] 2 QB 573). It is clear to me that, first, all Scheme Creditors have materially the same existing rights against the Company absent the Scheme. As I have said, they share the same security package and they rank *pari passu*.
- 14 Second, as to the rights of the Scheme Creditors conferred under the Scheme, those rights are also materially the same in circumstances where the Scheme Creditors will receive the same commercial deal. Each Scheme Creditor will be entitled to receive the same package of consideration *pro rata* to their existing claims comprising a release of the Senior Notes and allocation of the New SSNs and interest.

- 15 The only difference, it seems to me, is the different interest rates between the two types of Notes but such differences do not lead to any need for separate classes, particularly where the relevant alternative is an insolvency process where the interest rate is irrelevant to recovery. That was held in, amongst other cases, at the convening hearing in the previous restructuring of *Lecta Paper* by Zacaroli J.
- 16 Quite properly, Mr Smith drew my attention to other matters that may be thought relevant to class composition.
- 17 First, the consent fees on the lock-up agreement. The benefit of such an agreement is obvious and the fees have been set at a modest level. This sort of arrangement is extremely common and has been held in many other cases not to fracture the class.
- 18 In this case
- (1) all Scheme Creditors were (a) given an equal opportunity to accede to the lock-up agreement and become entitled to receive each of the fees available; and (b) were given notice of the availability of the consent fees under the lock-up agreement if they signed up by the relevant deadlines.
 - (2) In any event, it is unlikely that the modest consent fees would exert a material influence on the Scheme Creditors' voting decisions. The difference between the outcome under the Scheme, which is anticipated to be 100p in the pound, and the outcome in the relevant alternative, which is estimated between 34p and 71p in the pound, is far greater than the consent fees that are obtainable, taken individually or cumulatively.
- 19 The second issue is the ability to subscribe under the New Money Facility. Again, everyone has the same right and, in fact, they can do so even after the Scheme Meeting as it will remain on offer until the day after that meeting takes place. This too does not, it seems to me, fracture the class.
- 20 The third issue is the right of the shareholders to exercise their pre-emptive rights under the Articles and subscribe under the respective tranches of the New Money Facility. As I have said, those shareholders or some of them are affiliated with some of the Noteholders but the pre-emption rights are provided for under the Articles of Association and this is a necessary step for providing essential funding to the Group. It is not conditional on the Scheme being approved and, in relation to tranche 1 of the New Money Facility, that is being done anyway irrespective of the Scheme and the new money will be available by 10 November 2023.
- 21 Falk J, as she then was, dealt with a similar situation in *Re Codere Finance 2 (UK) Ltd* [2021] 2 BCLC 396. She concluded that a similar arrangement did not fracture the class and that it was essential to move the restructuring forward. Critically, it requires new money to be put into the Company and cannot really be said to be a form of disguised consideration which some Noteholders might be receiving out of the Scheme. The shareholders are subscribing in their capacity as shareholders, not as creditors, and, at most, they could be said to have a difference of interests *vis-à-vis* the Company rather than different rights. Furthermore, the terms of this New Money Facility have been confirmed by the Group's advisors as being commercial and at a market rate comparable to other similar funding instruments in Europe.
- 22 Accordingly, in my view, this aspect does not fracture the class.

- 23 Finally, there is an issue potentially about the backstop fees for those who have agreed to underwrite the New Money Facility. These have also been found by my colleagues not to fracture the class and there is no element of bounty involved by reference to the size of the fees, which have been carefully set by reference to other Europe restructurings.
- 24 In all the circumstances, there is more to unite than divide the Scheme Creditors so as to make any further classes unnecessary and inappropriate and I will direct a single class meeting.
- 25 As to jurisdiction, I am satisfied that the court has jurisdiction. The Company is clearly a company as defined in Part 26 of the Companies Act 2006. There may be an issue as to enforcement across Europe and the Company has taken the precaution of obtaining reports from foreign law experts in this respect and this will, if necessary, be considered at the sanction hearing, but not now.
- 26 Mr Smith also raised a point about the amendments to the existing Senior Notes so as to confirm jurisdiction on the English Court. There is nothing objectionable to that course having been taken, it seems to me.
- 27 Finally, the Scheme is clearly a compromise or arrangement within the meaning of Part 26 of the Companies Act 2006.
- 28 In relation to notice, I am satisfied that adequate notice of this hearing has been given to the Scheme Creditors. Mr Smith showed me some minor amendments that they propose making to the Explanatory Statement which all appear to be satisfactory.
- 29 In all the circumstances, I will direct a single class meeting of creditors to take place and make the directions that have been set out in the draft order that has been provided.
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CERTIFICATE

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This transcript has been approved by the Judge.