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Claim No. CR-2022-000983

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

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Thursday, 10th October 2024

Before:

MR. JUSTICE RICHARD SMITH

**IN THE MATTER OF VTB CAPITAL PLC
(IN ADMINISTRATION)**

AND IN THE MATTER OF THE COMPANIES ACT 2006

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

MR. ADAM AL-ATTAR KC and MR. RYAN PERKINS (instructed by Weil, Gotshal & Manges (London) LLP) appeared for VTB Capital (Plc) and the Administrators.

Approved Judgment

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR. JUSTICE RICHARD SMITH :

1. This morning, I was due to consider four applications by VTB Capital Plc (**VTB**) and its administrators, Messrs Stephen Browne and David Soden (**Administrators**), for (i) the sanction of a proposed scheme of arrangement (ii) permission to distribute (iii) an extension of the period of administration by five years and (iv) the regularisation of the means by which progress reports are provided to creditors to direct that these be sent in accordance with the Insolvency Rules 2016, rather than the 2004 Credit Institutions Reorganisation and Winding Up Regulations (**CIRWR**).
2. For reasons explained in the fourth witness statement of Mr Browne, it is no longer possible for the application relating to the proposed scheme of arrangement to be determined today and the court is asked to re-list that for hearing early next year. Nor, in light of the adjournment of the related scheme meeting, do the Administrators seek permission to distribute at this time. For today's purposes, the court is only asked to deal with the third and fourth applications I have mentioned.
3. The background to this matter is set out in the convening judgment for the proposed scheme of arrangement given by Sir Anthony Mann on 1 July 2024, [2024] EWHC 1777 (Ch). I therefore need only refer to the essential elements here. As to those, VTB was incorporated in England and Wales as a limited company on 18 October 1919 and has traded in the UK since that time. It was re-registered as a public limited company on 23 October 2006. VTB is ultimately owned by PJSC VTB Bank (**VTB Bank**) which, together with its subsidiaries, direct and indirect, constitutes what is described as the 'VTB Group'. VTB Bank is registered in St. Petersburg and is regulated by the Central Bank of Russia. As at April 2022, the Russian Federation, acting through its Federal Property Agency, owned just shy of 61% of VTB Bank.
4. Subject to licences to the contrary, the effect of the UK sanctions regime is to render it unlawful for any UK person, including VTB, to (i) deal in funds or economic resources owned, held or controlled by VTB (ii) make funds available directly or indirectly to VTB (iii) make funds or economic resources available to any person for the benefit of VTB or (iv) directly or indirectly make economic resources available to VTB.
5. As a result of the UK sanctions regime, VTB became unable to pay its debts. This was a combination of the effect of the sanctions themselves as well as the impact of the closure of its correspondent bank account with HSBC. The Administrators were appointed in principle by Fancourt J on 6 April 2022 and, finally, by Sir Anthony Mann on 6 December of the same year.
6. The primary purpose of the administration is to achieve a better result for VTB's creditors as a whole than would be likely if VTB were to be wound up without first being in administration. As explained in Mr Browne's third witness statement, certain licences have been granted by the UK and, indeed, US authorities, permitting certain actions in connection with the administration of VTB, albeit with limitations including, on the US side, on dealing with what is known as 'US blocked property'.
7. The Administrators' proposals were approved on 14 March last year, Mr Brown's third witness statement also explaining the Administrators' strategy for achieving the purpose of the administration, namely (i) the realisation of all eligible and

unencumbered VTB assets in accordance with the relevant licence conditions and the operation or winding down of VTB's business (ii) returning deposits as soon as reasonably practicable (iii) adjudicating on all claims against VTB and seeking court approval to distribute to unsecured creditors as soon as practicable and (iv) engaging in a timely manner with market infrastructure bodies to ensure that VTB can close out open trade positions and complete the winding-down of all trading activity.

8. In terms of progress to date and realisations, the Administrators have realised significant cash held in what are known as nostro accounts. They also continue to progress the recovery of other assets, including net amounts owed under unsettled trades, insurance receivables and sums due under derivative contracts, their efforts meeting with some success to date.
9. Other significant assets, the recovery of which is pursued include (i) US blocked assets (ii) amounts due to VTB from non-US persons the payment of which, those persons say, is prohibited by US sanctions (iii) assets located in Russia that the Administrators are unable to collect (iv) assets in respect of which other sanctions licences are needed and (v) assets which, for other reasons, have presented challenges in their recovery.
10. In addition, VTB have a litigation claim against the Republic of Mozambique for significant sums under two loans. Pursuant to the terms of a settlement agreement, the Republic was to make three payments to VTB and I understand that the final instalment of the settlement has now been instructed to be paid.
11. As for VTB's creditors and its liabilities, there are no secured creditors. First preferential debts are understood to comprise £213,000, representing deposits potentially eligible for FSCS protection up to £85,000. It is said that those claims are likely to be paid in full. A secondary preferential claim of approximately £437,000 in favour of HMRC is also anticipated to be paid in full. Likewise, secondary preferential claims of approximately £2.3 million in favour of depositors above the FSCS threshold are anticipated to be paid in full.
12. There are substantial ordinary unsecured liabilities, with around £814.5 million claimed, including by VTB Bank and other creditors subject to sanctions. VTB Bank, it is said, is likely has a very significant claim with a net value broadly similar to the value of VTB's 'trapped' assets, as they have been described.
13. There is also a tertiary non-preferential debt in the form of VTB's AT1 regulatory capital.
14. Finally, I should say that VTB is the subject of a substantial claim in what is described as the Red October litigation, explained in Mr. Browne's third witness statement, albeit the Administrators have reached agreement to cap the claim as against VTB for dividend provision purposes.
15. Although a bank, not being in special administration, the distribution regime applicable to VTB is that under the Insolvency Act 1986 (**1986 Act**) and the Insolvency Rules 2016. Subject to a limited number of applicable provisions of CIRWR (and I will return to one aspect later), the unmodified administration regime in Schedule B1 to the 1986 Act is engaged here.

16. As to the distribution of VTB's assets, there are said to be three principal obstacles: (i) the inability to distribute Russian trapped assets (ii) the inability to pay what is described as disqualified persons, but the requirement to make provision for the claims of those persons nonetheless and (iii) the impact of delay in paying disqualified persons pending the lifting of sanctions, in turn delaying the payment of statutory interest to all creditors and likely reducing the amount of statutory interest to be paid to non-disqualified persons.
17. Since it does not fall for consideration today, and given Sir Anthony Mann's convening judgment, I do not go into detail here about the scheme proposed by the Administrators, save to note the intention to facilitate a quicker and more efficient distribution to VTB's creditors. That is sought to be achieved by modifying the distribution scheme that would otherwise apply with a view to resolving the issues identified affecting the administration of the estate of VTB on terms respecting the applicable sanctions regimes, those terms having been developed in conjunction with the relevant sanctions authorities.
18. In very brief outline, that is sought to be achieved in a number of ways, including the deemed distribution of trapped assets *in specie* to those scheme creditors who elect to receive such distributions, so discharging the relevant scheme claims, freeing up UK assets to be allocated to other scheme claims, a 'hotchpotch' provision in respect of threatened or actual enforcement actions, an option to defer scheme claims, the payment of distributions in respect of disqualified persons into a holding period trust in discharge of the relevant scheme claim, in combination with other provisions for the simplification of the process for the calculation and distribution of statutory interest, and deemed default elections in respect of VTB Bank.
19. The Administrators estimate that, but for the scheme, returns to the scheme creditors would be significantly less than the returns estimated upon its successful implementation. By contrast, if it does not proceed, it is anticipated that there will be greater delay in payment and a reduced chance of full compensation for such delay through statutory interest.
20. As for the present state of play with the scheme, a scheme meeting was scheduled to take place on 5 September this year but two of VTB's largest scheme creditors, with sufficient voting power to vote down the scheme, had returned voting forms casting votes against it. Despite this, one of the scheme creditors has indicated support for it in principle. The other has objected predominantly on the basis of disagreement as to the interpretation of applicable sanctions, rather than by reference to the operation of the scheme itself.
21. The scheme meeting was therefore adjourned to allow discussion with the relevant creditors to take place and to allow them the opportunity to reconsider their voting position. The scheme meeting was most recently adjourned, I was told this morning, to 30 January of next year.
22. That is the background to the matter before me.
23. Turning to the remaining 'live' applications, on 16 October last year, VTB creditors approved a one year extension of the administration to 5 December, 2024. Schedule B1 to the 1986 Act and, in particular, paragraphs 76(2)(b) and 78(4)(a), restrict the

consensual extension of an administrator's term of office to one such extension of up to one year, meaning that the Administrators must apply to the court for a further extension, as to which they now seek an extension to 5 December, 2029.

24. As to my discretion in the matter, I was directed, both in the skeleton argument and, indeed, in oral submission this morning, to two relatively recent authorities. In *In re Lehman Brothers International Europe (in administration)* [2016] EWHC, 3379 (Ch), the court extended the administrations of certain Lehman group companies for between a further four and six years (following earlier extensions of some eight years), the court explaining (at [9] to [11]):-

“Once the matters have moved to the distribution mode, and whilst the administrators have things to do to complete their mandate and effect the final distribution, the working assumption, at least, should be that **unless good cause is shown for some specific advantage of the liquidation route over the administration distribution route**, the implication of the courts granting the distribution status is that **the administration should be maintained for as long as is reasonably necessary to complete the process of distribution** and that, therefore, if an extension is necessary to enable the Administrators' functions to be thus completed, prima facie it should be granted.

It should be said, also, when considering the length of the extensions sought that the administrators, being professional insolvency practitioners, always have the obligation to consider, on a continuing basis, whether their functions are either at an end or might more effectively be brought to an end in favour of some other insolvency process. I have every reason to suppose that continuous review will be maintained in the context of the Lehman entities.

Furthermore, of course, individual creditors have the entitlement to apply to the court if they consider the administrations are continuing too long or for no sufficient purpose, or if there are factors which suggest, contrary to the best estimate of the joint administrators and the court at the time, the extension is excessive”.

(Emphasis **supplied**.)

25. I was also referred to *In re Nortel* [2017] EWHC 3299 (Ch), in which the court held at [22]:-
- “The Court's discretion under paragraph 76(2)(a) is not circumscribed in any express way, but it is readily apparent that it should be exercised in the interests of the creditors of the company as a whole, and that the Court should have regard to all the circumstances, including (i) whether the purpose of the administration remains reasonably likely to be achieved, (ii)

whether any prejudice would be caused to creditors by the extension, and (iii) any views expressed by the creditors. In that regard **where a company is making distributions to its unsecured creditors within the administration process, it is likely to be appropriate that the administrator's term of office should be extended to allow the distributions to be made, rather than to require the company to go into liquidation**, which might well increase the costs or delay the distribution process with no countervailing benefit.”

(Emphasis **supplied**.)

26. Based on those authorities, the Administrators say that, if distributions can be made in administration and VTB can move from administration to dissolution, placing it into liquidation is unlikely to be necessary and, in those circumstances, the general approach should be to continue the administration order unless the court considers that there is no reasonable likelihood of the statutory purpose being achieved or that the continuation of the administration will cause prejudice to creditors.
27. Considering those authorities in the context of the circumstances I have described at some length today, I am satisfied that it would be appropriate to extend the administration and to do so for a period of five years to the date requested by the Administrators. I come to that view for a number of reasons.
28. First, I am satisfied that the VTB administration is effectively “in distribution mode”. The Administrators are promoting the scheme to that end and, if it turns out that the scheme itself is ultimately not approved, they are also actively considering possible alternatives. Although permission to distribute has not yet been sought, it will be if the scheme is approved or another strategy pursued.
29. Second, given the possibility of a surplus in the administration, I agree that it would be disadvantageous, at the moment at least, to initiate liquidation to make a distribution to creditors. On the present state of the law, that course could also potentially result in creditors receiving less statutory interest since that accrued for the period of the administration would not be paid in liquidation.
30. Third, I also accept that either a distribution in administration or through the scheme will produce a better result for creditors than a liquidation.
31. As for the period of the proposed extension, it is evident that the scheme has been delayed and, even if approved, further time will be required to implement it. Alternatively, the Administrators will need to consider and implement alternative distribution proposals, also to account for the complexities I have described this morning. Either way, I accept that the distribution of VTB's assets will take a significant period of time, even if a first interim distribution can be made in the relatively near future. I also accept that the present administration is a highly complex and a high value one and that there are a considerable number of moving parts to it, albeit the speed of the movement of a number of those cannot be dictated by the Administrators.

32. In these circumstances, I further accept that the extension sought would be in the best interests of the creditors as a whole and that, against a background of a concrete strategy to realise the purpose of the administration, further short extensions, or shorter extensions on a piecemeal basis, are only likely to increase cost and uncertainty.
33. In coming to the view I have, I also recognise that the Administrators are experienced officeholders, and navigating the sanctions position in compliance with various regimes to achieve the best possible distribution is unlikely to be a short-term undertaking. I therefore grant the extensions sought.
34. As for the other application, I can deal more briefly with the CIRWR aspect which arises because, being an investment firm and credit institution, VTB's administration is subject to those Regulations and not the EU insolvency Regulation in its modified UK form.
35. The application arises in relation to the Administrators' reporting of progress to creditors. In that regard, they have followed Schedule B1 to the 1986 Act and the related 2016 Insolvency Rules rather than the CIRWR. It is readily accepted by the Administrators that this was in error. I accept that this was an error but, as it turns out, it is one that has favoured the creditors, the 2016 rules providing for more frequent reporting and more efficient means of communication than provided for under the CIRWR.
36. In these circumstances, I am content to regularise the past and future conduct of the Administrators by making an order under CIRWR, Regulation 16(3), directing that progress reports be made pursuant to the provision of the 2016 Rules. As the Administrators say, no-one has been prejudiced by the prior divergence from the CIRWR and, if anything, the creditors have benefited from it and will now continue to do so.
37. Subject to the slight tweak to reflect the applicable sub-paragraph of the relevant Regulation, as was properly brought to my attention earlier this morning, I therefore make the order sought in that regard as well.
