Neutral Citation Number: [2025] EWHC 366 (Ch)

Case No: CR-2024-007655

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

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Date of hearing: 23 January 2025

Before:

THE HONOURABLE MR JUSTICE THOMPSELL

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IN THE MATTER OF SPRINT BIDCO BV

IN THE MATTER OF THE COMPANIES ACT 2006

- -
- -

MR DAVID ALLISON KC and **MR RYAN PERKINS** (instructed by **Kirkland & Ellis (International) LLP**) for **THE COMPANY**

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APPROVED JUDGMENT

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MR JUSTICE THOMPSELL:

1. I have heard today the application of Sprint Bidco BV for the grant of sanction for it scheme of arrangement ("the Scheme"). For the reasons set out below, I have decided to grant sanction of the Scheme and will make an order accordingly. The background to the Scheme is set out in paragraphs 1 to 8 of the judgment which I delivered following the convening hearing on 19 December 2024, the neutral citation for which is [2024] EWHC 3455 (Ch). There is no need for me to repeat this. In this judgment I will adopt the definitions used in the convening judgment.

2. The relevant statutory provision is section 899 of the Companies Act 2006, the relevant provisions of which are as follows:

> "(1) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 896, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.
>
> (2) An application under this section may be made by –
>
> (a) the company
>
> …
>
> (3) A compromise or arrangement sanctioned by the court is binding on –
>
> (a) all creditors or the class of creditors or on the members or class of members (as the case may be), and
>
> (b) the company …"

3. The role of the court at the sanction hearing is well settled and frequently summarised. There is no need for me to add any further summary in this judgment. Instead I am content to adopt the summary provided by Snowden J, as he then was, in *Re KCA Deutag UK Finance PLC* [2020] EWHC 2977 (Ch) at paragraphs 17 to 18 which sets out the issues to be addressed. This in turn is based on the well-known statement of principles by David Richards J, as he then was, in *Re Telewest Communications PLC No. 2* [2005] 1 BCLC 772 at paragraphs 20 to 22.

4. I therefore turn to those issues.

1. Have the statutory requirements been met?

5. The first of these issues is whether there has been compliance with the statutory requirements. I find on the evidence both that the statutory requirements were satisfied and that the terms of the order that I made following the convening meeting (the "Convening Order") were complied with in relation to the Scheme. At the convening hearing on 19 December 2024 I accepted the Company's submissions that (1) the scheme creditors should vote in a single class; (2) there was no apparent jurisdictional road block to the scheme and (3) the scheme creditors had been given sufficient notice of the convening hearing. Whilst there is more to be said on the issue of jurisdictional road blocks, I have heard nothing since that creates any doubt about the correctness of those decisions.

6. In circumstances where the court has already considered the issue of class competition, there is usually no need to revisit these points. As Snowden J said in *Re Global Garden Products Italy SpA* [2017] BCC 637 (Ch) at paragraph 43:

> "As regards the correct constitution of classes, I accept the point made by Mr Dicker that if a judge has heard full argument at the Convening Hearing and has decided on the appropriate constitution of classes, it is not ordinarily appropriate for a different judge at the sanction hearing to take a different view of his own motion in the absence of any creditor appearing to contend that the classes were not correctly constituted".

7. A meeting of scheme creditors took place and the requisite statutory majorities, both in number and value, were obtained at the scheme meeting. The scheme meeting was attended by a total of 109 scheme creditors in person or by proxy, representing a turnout of 97.72% in value. Of those in attendance, 104 voted in favour of the scheme, representing a majority of 80.72% in value and 95.41% in number. Whilst no scheme creditors have come to court to object to the scheme, five scheme creditors representing 17% by value of the scheme creditors voted against and these include two scheme creditors representing 11.95% of the value of the scheme creditors who have raised some concerns in a letter to the company's solicitor which they asked to be placed before the court. This is a most unsatisfactory way of raising an objection, as noted by the comments of Michael Green J in *Re Chaptre Finance PLC* [2023] EWHC 2276 (Ch) and in particular at paragraph 34.

8. Nevertheless, I will try to address the points made. Essentially their complaints are:

(1) The scheme is unfair as it allows shareholders to retain equity whilst the scheme creditors suffer a substantial write down.

(2) There has been information asymmetry in that they have been denied information about the company and the terms of new lending.

(3) A general unhappiness about the way the financial difficulties of the company have been managed.

9. As regards the question of unfairness of the scheme, it is relevant, as I explain in more detail below, that here a very substantial majority of the scheme creditors have considered the scheme to be in their interests. I am informed that none of the scheme creditors who voted had any interest or relationship with the shareholder or the ultimate beneficial owner of the company such that there is doubt whether their vote was procured for some ulterior motive other than their own assessment of merits of the scheme for their class.

10. As regards the information asymmetry point, this seems to be misplaced. I understand that whilst these creditors may have considered that they lacked information earlier, they were given access to a data room with all the relevant financial information from a date in August and certainly in time for them to make their minds up whether they wanted to provide new money, the deadline for which was 1 November 2024 with the benefits afforded to those providing new money under the scheme. Neither has there been any suggestion that the explanatory statement made in respect of the Scheme was lacking in any way.

11. The figures showed that the scheme achieved the requisite statutory majority under section 899 of the Companies Act 2006 at the scheme meeting by a very large margin and there was a high turnout such that there can be no doubt that the scheme creditors had proper notice of the meeting. As I mentioned, there is no suggestion of any deficiency in the information provided within the explanatory statement such that the scheme creditors were not fully informed on the issues for decision. I have taken note that there were some late amendments to the scheme documentation, but these involved minor tidying up of wording and I am satisfied that none of them would affect the way the scheme operates or affect the decision of those voting.

2. Was the class fairly represented?

12. The next question is whether the class was fairly represented and did the majority act in a *bona fide* manner and for purposes when voting at the class meeting. As I have already noted, there is nothing to suggest that the class was not fairly represented or that the majority within the class did not act *bona fide* in the interests, as they saw it, of the scheme creditors.

3. Could the scheme creditors reasonably approve the scheme?

13. The court needs to be satisfied that the scheme is one that an intelligent and honest man acting in respect of his interests might reasonably approve. It does not mean that the court is required to form a view of whether the scheme is in some general sense or even in the court's own opinion the fairest or the best scheme. The starting point is that since the requisite statutory majority voted in favour of the Scheme, there is a strong presumption that the scheme is fair. In *Re AGPS Bondco PLC* [2024] BUS LR 745 at 122 to 128 Snowden LJ explained that it is "almost invariably" appropriate for a Part 26 scheme to be sanctioned where the requisite statutory majority is achieved. This point was similarly made by Lindley LJ in *Re English Scottish and Australian Chartered Bank* [1893] 3 Ch 385 at paragraph 409. However, as noted by David Richards J, as he then was, in *Re Telewest Communications PLC & another No 2* [2004] EWHC 1466 (Ch), [2005] BCC 36, at paragraph 21, referring to the principles which guide the court in considering whether to sanction a scheme set out by

Plowman in *Re National Bank* [1966] 1 WLR 819 and there again by reference to a passage in the then current edition of **Buckley on the Companies Act**:

> "The court does not sit merely to see that the majority are acting *bona fide* and thereupon to register the decision of the meeting; but at the same time the court will be slow to differ from the meeting, unless either the class has not been properly consulted, or the meeting has not considered the matter with a view to the interests of the class which it is empowered to blind, or some blot is found in the scheme".

14. At paragraph 124 in *Re AGPS Bondco* Snowden LJ identified various matters that might lead the court to depart from the majority vote; for example, if the classes were not properly constituted or the majority creditors were not properly representative of the class or if the explanatory statement was inadequate. None of these difficulties arise in the present case. There is no reason to consider that those voting in favour were not representative of the class.

15. The fairness of the scheme is underlined not only by the support of the scheme creditors but also by the expert reports produced by PWC and an associated comparator report. This shows that the scheme will bring about a far better outcome than the scheme creditors would achieve in the relevant comparator which would involve a disorderly liquidation of the company. In particular, I note that these reports show that the scheme also provides a far better outcome relative to the expected returns in the comparator for any scheme creditors who have not elected to participate in providing new money and I also note that all scheme creditors were given a fair chance to participate in providing new money and so receiving an elevation of their existing claims. This of itself militates against any fracturing of the class or of any inherent unfairness in this feature of the scheme provided that the new money is, as I find that it is, justified by good commercial reasons and on reasonable terms. For that point see *Re ED&F Man Holdings Ltd* [2022] EWHC 687 (Ch) at paragraph 61 to 64. There is no reason to doubt the judgment of the majority of the scheme creditors who in voting for this must be considered as considering the scheme to be fair.

4. Is there any blot on the scheme and will the scheme be recognised and given effect in other jurisdictions?

15. I can, therefore, turn to the final matter for consideration: Is there a blot on the scheme such that there is no point in granting sanction. A potential issue is raised here on the basis that the Company is registered in the Netherlands and a substantial element of its assets are held in Germany. I addressed this point on a provisional basis in my convening judgment, but now is the point at which I am required to give fuller consideration to the point. I note, first, that there is sufficient connection with England. This is because the liabilities compromised by the Scheme are governed by English law and this is enough. See *Re Vietman Shipbuilding Industry Group* [2014] BCC 433 at paragraph 6 to 9 per David Richards J.

16. Secondly, I note that this point means that the scheme is inherently likely to be effective internationally. See *Re Magyar Telecom BV* [2014] BCC 448 at paragraph 15, again per David Richards J. Indeed, following the ruling in *Antony Gibbs & Sons v La Societe Industrielle et Commerciale de Metaux* [1890] 25 QBD 399, England is the only forum in which the senior facilities can be compromised and the Scheme is binding and effective as a matter of English law. Thirdly, the Company has obtained independent expert evidence concerning international recognition from legal experts in Netherlands and in Germany. Whilst the opinion relating to German law was, in my view, less tentative than that relating to the law of the Netherlands, both opinions show that there is a reasonable prospect of recognition such that the court will not act in vain by sanctioning the scheme.

17. The principles for the court to apply in such a case were summarised by Sir Alistair Norris in *Re DTEK Energy BV* [2021] EWHC 1551 (Ch) at paragraph 27. He outlined the requirement of the court to be satisfied that the Scheme will achieve a substantial purpose in the key jurisdictions in which the scheme company has liabilities or assets. It is clear here that rather more than a reasonable prospect of the scheme will have effect. Both legal experts, albeit with different degrees of confidence, find this to be likely in their respective jurisdictions, but in any case about 80% in value of the scheme creditors have acceded to the RSA. This provides further comfort that the scheme is likely to be effective internationally since RSA signatories are contractually bound to act in accordance with the scheme. The circumstances are similar to those found by Snowden J in *Re KCA Deutag* when he said at paragraph 33:

> "It is very difficult to see how such creditors who contractually agreed to support the Scheme and/or who voted in favour could possibly be allowed to take any action contrary to the Scheme in any foreign jurisdiction, and the number and financial interests of those who did not vote in favour is comparatively very small indeed. That alone is sufficient to demonstrate to me that the Scheme is likely to have a substantial international effect and that I would not be acting in vain if I were to sanction it."

Conclusion

18. To summarise, all the requirements for the court to approve the scheme have been met. I see no reason not to approve the scheme and many reasons why I should, as the scheme creditors have overwhelmingly voted that they see the Scheme to be in their interests and this seems an entirely reasonable point for them to make.

19. For those reasons, I am granting sanction of the scheme.

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