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Case No: CR-2020-003752

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

The Rolls Building
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Fetter Lane
London EC4A 1NL

Wednesday, 23 September 2020

BEFORE:

MR JUSTICE MILES

IN THE MATTER OF:

NEW LOOK FINANCING PLC

Applicant

Ms Felicity Toube QC and Mr Adam Al-Attar (instructed by Latham & Watkins) for **the Applicant**

JUDGMENT

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(Official Shorthand Writers to the Court)

Mr Justice Miles:

Introduction

1. This is an application by New Look Financing plc ("the Company") for an order convening a single meeting of the Scheme Creditors to consider and, if thought fit, approve a Scheme of Arrangement ("the Scheme") proposed by the Company pursuant to section 896 of the Companies Act 2006. The application was made by a Part 8 claim form dated 18 September 2020.

2. The Company is the issuer pursuant to a New York law governed indenture dated 3 May 2019 ("the Indenture") of (i) £400,131,636 12 per cent Senior Secured Notes due 3 May 2024, and (ii) €45,209,687 12 per cent Senior Secured Notes due 3 May 2024 (together "the SSNs").

3. The Company is part of a group of companies which operate in the retail, clothing, footwear, and accessories business. The Company, which has the function of a finance company within the Group, is an indirect subsidiary of New Look Retail Holdings Limited ("the Parent"). The principal operating company in the Group is New Look Retailers Limited ("NLRH"), a company incorporated in England and Wales. A number of companies in the Group, including NLRL, are guarantors of the SSNs.

4. The holders of the SSNs and the beneficial holders of those notes entitled to the issue of definitive notes are the Scheme Creditors under the terms of the Scheme. As is customary in schemes involving such notes, only the beneficial holders shall vote on the Scheme. The other holders of the legal right to the notes, including GLAS Trustees Limited as trustee, have confirmed in writing that they will not vote on the Scheme.

5. In broad outline the purpose of the Scheme is to equitize the debt owed to Scheme Creditors under the Indenture as part of a wider financial restructuring ("the Financial Restructuring") which is intended to recapitalise the Company and the Group to enable the Group to continue as a going concern. The Financial Restructuring is linked to an operational restructuring to be implemented by a company voluntary arrangement proposed by NLRL that was approved by a meeting of creditors on 15 September 2020

("the CVA"). The Company considers that the operational restructuring is not, however, without more, sufficient to avoid an insolvent liquidation of the Company and the Group. The Financial Restructuring is seen by the directors as a necessary step towards a successful restructuring of the Company and the Group as a whole irrespective of the approval of the CVA and the lapse of the challenge period in respect of the CVA. Under its terms, the CVA is liable to be terminated by its supervisors if the Financial Restructuring is not completed.

6. The Company is incorporated in England and Wales, has its COMI in the UK and at least one of the Scheme Creditors is understood to be domiciled in the UK.

Factual background

7. I should say something more about the factual background to the application. The Group operates as a clothing, footwear and accessories retailer in the UK and Republic of Ireland. It principally sources and retails clothing, footwear, and accessories. The Group employs approximately 11,260 people. NLRL is, as I have said, the main operating company for the Group and for the business in the UK it is the main employer and is the primary leaseholder of the New Look branded stores in the United Kingdom.

8. The Group's debt structure is in summary as follows:

(1) Pursuant to the Indenture, the Company is the issuer of the SSNs.

(2) NLRL is the borrower of (a) a £100 million revolving credit facility ("the RCF") which is fully drawn pursuant to a senior facilities agreement dated 25 June 2015 ("the RCF Agreement") (the maturity of the RCF is 25 June 2021), and (b) up to £65 million of operating facilities ("the Operating Facilities") incurred under a trade finance facilities agreement dated 16 March 2018 (as amended and/or restated from time to time) (“the TFFA”).

9. The SSNs, RCF and the Operating Facilities are secured by a common security package with amounts owed by the Group secured by an English law governed debenture dated 3 May 2019, which includes the shares and assets of the Company and NLRL.

10. As of 22 August 2020 the Group's outstanding debt pursuant to the above instruments and agreements came to a total of c. £295 million.

11. The Group's trading performance has been severely hit by the COVID-19 pandemic and resulting lockdown imposed in the UK.

    a. During March 2020 the Group experienced a significant decline in footfall within its stores, with like-for-like sales declining 32 per cent in UK retail stores compared to the prior year. On 20 March 2020 the Group's management took the voluntary decision to close all stores. By 21 March 2020, all stores in the UK were also closed in response to reduced demand from customers, and the reduced footfall in the preceding weeks.

    b. Following this and the official lockdown being introduced by the Government on 23 March 2020 and in the Republic of Ireland on 24 March 2020, the Group's revenue from its stores fell to nil. Throughout the period of closure of the Group's stores, the Group was only able to trade through its ecommerce channels which historically accounted for about 22 per cent of the Group's revenue. Phased store re-openings began in June 2020. On a like-for-like basis, sales performance is 33 per cent down from that in the prior year.

12. The Group expects the pandemic to have a permanent impact on its business. It has forecasted that, as a result of a permanent structural shifting in consumer spend and habits from in-store shopping to online shopping, in-store footfall and sales will significantly reduce, which will result in many stores probably becoming unprofitable without securing significant changes to the economics of the Group's liabilities, including financial and lease liabilities. As a result, the directors of the Group consider that it needs to make permanent adjustments to its operating model. This has led to the CVA for NLRL and the Financial Restructuring of the financial liabilities.

The CVA

13. On 26 August 2020 the directors of NLRL proposed the CVA with the overall objective of restoring the Group's viability through a combination of compromising rent arrears

and changing the terms of leases to a turnover-based rent model and compromising certain non-critical liabilities. The CVA was approved by more than 80 per cent of creditors on 15 September 2020. Under its terms, the CVA is terminable if the Financial Restructuring (to be implemented in part via the Scheme) is not implemented by 31 January 2021. The Financial Restructuring is therefore a necessary component of the overall rescue of the Company and the Group.

The Financial Restructuring

14. On 13 August 2020 the Parent, the Company and other Group companies entered into a lockup agreement with certain financial creditors of the Group ("the Lock-up Agreement"). The parties to that agreement include all of the Group's lenders under the RCF and the Operating Facilities and now some 92 per cent of Scheme Creditors. The parties to the agreement have agreed to support, implement, and consummate the Financial Restructuring on the terms set out in a steps plan and term sheets contained within it.

15. The Financial Restructuring involves the following.

(1) A newly established Jersey company ("New Midco") will be incorporated as a direct subsidiary of the Parent and will be a holding company for the other members of the Group.

(2) There will be an equitization of the SSNs. The SSNs will be written down and cancelled pursuant to a supplemental indenture in exchange for:

(a) the incurrence by New Midco of a £40 million nine-year subordinated shareholder loan on a cashless basis, and

(b) the issuance by the Parent of B-ordinary shares (which shall be non-voting shares) representing 20 per cent of the post-financial restructuring share capital of the Parent on a fully diluted basis, subject to the allocation of shares under a management incentive (to which I shall turn in a moment),

in each case to the Scheme Creditors rateably in proportion to the amount of SSNs held by each Scheme Creditor as of the date defined as the Voting Record Time, ie the date for votes to be recorded for the Scheme.

(3) A seven-year new money term loan will be granted which will be cash-funded in an amount equal to £40 million ("the PIK Loan") which shall be borrowed by New Midco and provided by (a) those Scheme Creditors who agreed to participate in the PIK Loan as contemplated by the Lock-up Agreement on or prior to the end of a subscription period ending on 14 September 2020, and (b) to the extent that the PIK Loan is not fully subscribed by Scheme Creditors, certain backstop parties who have agreed to participate pursuant to a backstop letter dated 13 August 2020.

(4) The Parent shall issue A-ordinary shares (which shall be voting shares representing 80 per cent of the post-Financial Restructuring share capital of the Parent on the fully diluted basis subject to the allocation of shares under the management incentive plan) to the new moneylenders (who are the providers of the PIK Loan) rateably in proportion to their commitment under the PIK Loan.

(5) The RCF will be converted into a term loan and the termination date shall be extended from 25 June 2021 to 30 June 2024, together with certain other amendments.

(6) The Operating Facilities shall be extended to 30 June 2023 and the aggregate commitment shall be increased to £70 million with certain other amendments.

(7) The existing management incentive plan shall be replaced with a new management incentive plan whereby certain of the management of the Group will be entitled to a proportion of the shares of the Parent. This plan is specifically disclosed in the explanatory statement as required by section 897 of the Act.

16. Only the second part of this restructuring (the equitization) is to be given effect by the Scheme. However, the Company submits that the court should also at least consider the third and fourth parts (the participation in the new money and the issue of A-ordinary shares) as part of the compromise or arrangement to be given effect to by the Scheme when considering class issues. I shall return to this point in a moment.

17. There are two reasons for the steps involving new money not being proposed as part of the Scheme. First it was necessary to determine which Scheme Creditors were willing to invest new money as early as possible given the liquidity needs of the Company and the Group and because of various regulatory filings and antitrust filings that are required to be made before closing. Those matters meant that the new money subscribers had to be identified by 14 September 2020. Second, there is a potential legal issue about the extent to which a scheme of arrangement may impose new obligations on scheme creditors. The course adopted by the Company means that this issue does not arise.

18. The amendments to the RCF and the Operating Facilities have nothing to do with the Scheme Creditors and were capable of being delt with bilaterally with the relevant facility lenders.

19. As to the structuring of the PIK Loan and the issue of the A-shares, these occur outside the Scheme, albeit they are linked to the Scheme in the sense that they are part of the Financial Restructuring and the Scheme is itself an integral part of the Financial Restructuring. All Scheme Creditors have an equal entitlement to lock-up in support of the Scheme under the terms of the Lock-up Agreement and all Scheme Creditors who have done so have an equal entitlement to elect to participate pro rata in the PIK Loan. That opportunity remained open until 14 September 2020.

The comparator

20. I turn to what would happen were the Scheme not to be sanctioned and become effective. I am satisfied on the evidence that the likely alternative to the Scheme is a formal insolvency of the Company and of the other Group companies either in administration or in liquidation in which the business of the Company ceases and the assets are realised on a breakup basis rather than a going concern basis. As to this, I note the following.

(1) The Group's 13-week cash flow forecast indicates that available cash falls below the critical operating level of £30 million during the week commencing 26 October 2020.

(2) The Company and the Group have put considerable effort and time to agree the Financial Restructuring with the Group's key stakeholders. They have also explored,

with the assistance of advisers, other alternatives including trade sales or other financial restructurings. These efforts have not been fruitful. If the Financial Restructuring does not take place, the Company considers that it is unlikely that another alternative refinancing would be feasible in the time in which it would be required. The directors consider that the Company would need to commence a formal insolvency process by reason of the Group's deteriorating liquidity position.

(3) If the Financial Restructuring is not implemented by the longstop date as defined in the Lock-up Agreement (and currently being 30 October 2020) the Lock-up Agreement will automatically terminate, which would lead to an automatic acceleration of the SSN liabilities owed to Scheme Creditors by the Company and of the liabilities of certain members of the Group that guarantee those obligations. The Operating Facilities liabilities would also then become due and payable.

(4) If the Financial Restructuring is not completed on or before 31 January 2021 the supervisors of the CVA will be entitled to terminate the CVA, thereby abrogating the compromise achieved by it in relation to the operational restructuring.

21. In these circumstances, in the absence of the Scheme, the directors consider that they would probably have no choice other than to initiate formal insolvency proceedings. I am satisfied that that is probable. The directors of the Company consider that in that event the outcome for Scheme Creditors and indeed for all creditors of the Group would be materially worse than the outcome offered by the Scheme and the Financial Restructuring.

22. Their assessment is supported by two further matters: (i) the Group, assisted by its advisors, has already initiated a process to solicit potential interest in the Group by way of a sale or an alternative recapitalisation transaction (as I have already indicated, no better offers than the consideration offered under the Scheme have been made in response to those solicitations); and (ii) the Group has instructed KPMG to undertake an independent valuation of the Group's business as at 30 June 2020 and the directors have then undertake a consequential indicative analysis as to how this might translate into recoveries for Scheme Creditors if the Financial Restructuring were not to succeed.

23. KPMG's analysis is summarised in the explanatory statement. They give an estimated market value of the Group's business ranging from £117 million to £378 million on a going concern basis, assuming the Group have no issues regarding liquidity. On a high-level liquidation valuation based on an orderly wind-down scenario, KPMG has given estimates for the market value of the Group's business ranging from £93.4 million to £175.9 million.

24. The directors have produced an illustrative application of estimated values in an orderly liquidation scenario using the security proceeds waterfall set out in the intercreditor agreement under which the RCF and Operating Facilities rank super-senior to and would recover ahead of the SSNs. This results in prospective estimated recoveries for Scheme Creditors on a low case of 0p in the pound and on a high case of 2.59p in the pound. There is no guarantee that any liquidation would be orderly, and therefore the returns may be lower than those estimated in the high case.

25. The directors also consider that the high end of the brand recovery analysis used in the KPMG valuation may be over-optimistic compared to brand valuations on comparable transactions. In the light of these factors, when set against the potential recoveries in the likely comparator of liquidation or administration, KPMG have opined that the value to be received by Scheme Creditors pursuant to the Scheme is fair from a financial point of view, taking into account all the circumstances, and appears likely to be greater than the value to be realised through an administration or liquidation. I should mention that KPMG have undertaken a duty of care to the Company in preparing these estimates but not to the Scheme Creditors, and this is reflected in the explanatory statement.

26. It is ultimately for Scheme Creditors to make their own assessment of the benefits they may or may not derive under the Scheme. The potential return via the equitization of the SSNs is not free from risk and is in a form different from the debt obligations presently owned. However, it appears to be a potential return that is capable of being attractive to Scheme Creditors, particularly when compared to the write-off of the SSNs as a failed investment if the Scheme were not to be approved. This is supported by the fact that over 92 per cent of the Scheme Creditors have entered into or acceded to the Lock-Up Agreement.

The Scheme

27. The Scheme is set out in the Scheme Document and summarised in the explanatory statement. I have already explained its commercial essence. The Scheme Document confers authority on the Company and others to execute the implementation documents. The Scheme also gives effect to releases to third parties, including the directors involved in the formulation and promotion of the Scheme and to guarantors of the debt owed to Scheme Creditors. The detailed implementation steps are provided for in a restructuring implementation deed. This is a technical document that deals with the sequencing of the execution of documents to implement the Scheme. The explanatory statement includes an explanation of the steps contained in the restructuring implementation deed, together with copies of all of the documents to be executed pursuant to the authority conferred by the Scheme and in order to give definitive effect to its releases.

The convening application

28. The application before me today is made under section 896(1) of the Companies Act 2006. The Practice Statement dated 26 June 2020 in relation to schemes of arrangement makes provision for the procedure to be followed where applications are made to convene meetings of creditors for the purpose of considering proposals for a scheme of arrangement.

29. The Practice Statement indicates that: (i) the applicant should draw to the attention of the court as soon as possible any issues concerning the jurisdiction to sanction the scheme and the composition of classes; (ii) for this purpose, unless there are good reasons for not doing so, the applicant should take all steps reasonably open to it to notify any person affected by the scheme that is being promoted, the purpose which the scheme is designed to achieve, the meetings of creditors which the applicant considers will be appropriate and their composition, any matters affecting the jurisdiction to sanction the scheme or other matter save in relation to the merits of the scheme which might lead the court not to do so (see paragraphs 6 and 7); and (iii) in deciding whether or not to order meetings of creditors, the court will consider whether more than one meeting of creditors is required, and, if so, the appropriate composition of those meetings (see paragraph 11).

Creditors are entitled to appear at the convening hearing and raise objections to the proposed class composition.

30. No creditors have appeared at this hearing to raise any objections to the proposed class composition.

31. The function of the court at the convening stage is emphatically not to consider the merits or fairness of the proposed Scheme which will arise for consideration at the future sanction hearing if the Scheme is approved by the statutory majority of creditors. However, the court should consider whether there is any jurisdictional roadblock that would unquestionably lead the court to refuse to sanction the Scheme and, as the Practice Statement shows, the court will also consider whether more than one meeting of creditors is required.

32. Dealing first with notification to the Scheme Creditors, paragraph 8 of the Practice Statement requires that persons affected by the Scheme be notified in sufficient time before the convening hearing. In this case a Practice Statement letter dated 2 September 2020 was transmitted to Scheme Creditors on that date. I consider that the period of notification of three weeks is appropriate, particularly in the light of the related CVA timetable and the Company's and Group's anticipated critical liquidity issues during the week commencing 26 October 2020 if a concluded restructuring has not occurred by that time.

33. As I have already said, no Scheme Creditor has raised any creditor issues in relation to the Scheme which require resolution at this stage.

34. It is well established that beneficial owners of notes held through a clearance system are capable of voting on a scheme of arrangement. It is sufficient if a beneficial holder of notes is a contingent creditor of the issue provided that the security documentation contains a mechanism by which he can upon request or on default become a direct creditor of the issuer (here, the Company). I am satisfied that this applies to the SSNs in the present case. As I have already indicated, the other potential Scheme Creditors, such as the trustee under the Indenture, have indicated in writing that they will not vote, so there is no risk of double counting.

35. I turn now to the question of the composition of the class or classes of Scheme Creditors. Whether Scheme Creditors fall into the same class or different classes depends on the question of whether their rights in relation to the relevant Scheme Company are so dissimilar that it is impossible for them to consult together with a view to their common interest: see *Re Hawk Insurance Co Ltd* [2001] 2 BCLC 480 at [30]-[33]. The answer to this question depends on an analysis of (a) the rights against the relevant Scheme Company which are to be released or varied under the Scheme, and (b) the new rights which the Scheme gives to the Scheme Creditors by way of compromise or arrangement. This two-stage test is applied broadly so as not to create an unwarranted veto in the hands of the minority: see *Hawk* at [33]. Where, in the absence of the Scheme, it is likely that the Company would enter into a formal insolvency process, the existing rights of creditors are the rights they would have in such insolvency process. In applying the two-stage test, the court is concerned with the rights as between the Company and the Scheme Creditors and not the interests of those creditors: see *Re Primacom Holding GmbH* [2013] BCC 201 at [44]-[45].

36. The Company here considers that the Scheme Creditors fall into a simple class. I agree for the following reasons.

37. First, all Scheme Creditors have the same antecedent rights against the Company under the Indenture and are being treated in the same way under the Scheme in terms of the rights that the Scheme releases and confers, in particular:

   a. all Scheme Creditors have the same rights under the Indenture save as to the currency in which the debt is denominated (here the relevant comparator is a formal insolvency and in a formal insolvency process there is a mandatory currency conversion to sterling at the official rate and thus there is no relevant difference in rights assessed in the context of that comparator), and

   b. all Scheme Creditors are subject to the same releases by the Scheme and receive the same scheme consideration under the Scheme, specifically their pro rata entitlement to an allocation of the shareholder loan and the non-voting B-shares issued by the Parent. Each had the same entitlement to elect to participate in

the PIK Loan and by reason of that participation to receive a pro rata allocation of ordinary A-shares issued by the Parent.

38. Second, the fact that some 92 per cent of Scheme Creditors have agreed to the Lock-up Agreement does not of itself affect this conclusion. No consent fee has been paid or is payable under or in connection with the Lock-up Agreement. A lock-up agreement which binds signatories to support a scheme does not of itself fracture the putative single class between those who have and those who have not locked up: see *Re Telewest Communications plc (No 1)* [2005] 1 BCLC 752 at [53].

39. Third, a series of recent cases has emphasised the need for the court to look beyond the four corners of the Scheme Document when assessing class composition: see, for instance, *Re Stemcor plc* [2016] BCC 194, *Re Global Garden SPA* [2016] EWHC 1884 (Ch) and *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441. Where the steps to be taken under the scheme are part and parcel of a wider restructuring, it may be necessary to consider other aspects of the restructuring. Some creditors may obtain forms of hidden consideration or other benefits under the restructuring which are unavailable to others, and this may affect their ability to consult together with a view to their common interest. The Company submits in the present case that it is appropriate to consider the right to participate in the PIK Loan and the A-shares as part of the overall arrangement to be given effect to in connection with, but not under, the Scheme.

40. The Company submits and I agree that even taking that wider view, no separate class issues arise: under the terms of the Lock-up Agreement all Scheme Creditors had the same right to elect to participate in the PIK Facility Loan by agreeing to do so before the cut-off date of 14 September 2020. In order to participate they had to agree to advance new monies, which involved them in taking on additional risk. 14 September 2020 was (as I have said) the latest date on which that opportunity could remain open because of a need for those who would hold the A ordinary shares to make necessary regulatory and antitrust filings in order for Scheme Creditors to receive equity in time for the Financial Restructuring to be concluded during the week commencing 26 October 2020. There is no reason to think it was an arbitrary or unrealistic deadline. It follows that any difference in rights between Scheme Creditors as at the date of the Scheme meeting arising from the entitlement to take part in the PIK Loan arises out of the choice to

participate (and assume fresh risk) that was open to all Scheme Creditors equally. Though not all made that choice, all Scheme Creditors at the Scheme meeting will, in my view, be united in their consideration of whether the Scheme consideration offered is fair consideration in exchange for the release of their rights as Scheme Creditors. Equally, to my mind no material difference in rights arises from the fact that, as a result of the election described above, the Scheme Creditors participating in the PIK Loan will be allotted voting A-shares in the Parent or from the fact that the most substantial holders of such A-shares will have certain special rights, for example, in relation to the appointment of board members arising from the level of their holding of A-shares. The first of these differences arises from the decision whether or not to participate in the PIK Loan (a choice that was open to all Scheme Creditors equally) and the second is merely a function of the number of shares held as a result of that choice, not any difference in rights as between the A-ordinary shareholders: cf. *In Re Hibu Group Ltd* [2016] EWHC 1921 (Ch).

41. The next point to note is that there is a backstop commitment in connection with the PIK Loan. There is however no backstop fee or other backstop consideration provided to the backstop providers. This point therefore does not disturb my prima facie conclusion about classes.

42. For these reasons I agree with the Company's assessment that they should be a single class of Scheme Creditors.

43. Though it is a matter going to sanction rather than calling of meetings, I note that the Scheme contains various releases. It is customary for such releases to given as part of a scheme: see *Lecta Paper UK Ltd* [2020] EWHC 382 and *Re Matalan Finance plc* [2020] EWHC 2345 (Ch). I do not consider that the inclusion of such releases operates as a roadblock or is relevant to the composition of the Scheme meeting.

44. I turn now to the question of whether there are any jurisdictional roadblocks that would prevent the Scheme going forward to a meeting. The first point is that the court has jurisdiction to sanction a scheme in relation to a "company" being "any company being liable to be wound up under the Insolvency Act 1986": see section 895(2) of the

Companies Act 2006. The Company is such a company, being formed and incorporated in England and Wales.

45. The next question relevant to jurisdiction is whether the fact that certain of the Scheme Creditors may be incorporated in UK member states other than the UK has any impact on the jurisdiction of the court to sanction the Scheme. It has become customary for the English court to assume (without deciding) that the recast Judgments Regulation applies to schemes of arrangement then to determine on that assumption whether the court would have jurisdiction. The Company submits that, on that assumption, article 8 of the Regulation is satisfied on the basis that at least one Scheme Creditor is domiciled here. It relies on a series of cases including *Re Nef Telecom BV* 2[104] BCC 417, *Re Magyar Telecom BV* [2015] 1 BCLC 418, *Re Zlomrex International Finance SA* [2015] 1 PCLC 369 and *Re Metinvest BV* [2016] EWCH 79 (Ch).

46. In another series of cases the court has indicated that a sufficient number of creditors must be domiciled within the UK: see, eg, *Re Van Gansewinkel Groep BV* [2016] 2 BCLC 138. Under those cases it is suggested that, while a majority of UK-domiciled creditors is not a requirement, there needs to be a sufficient number to support the conclusion that a hearing in the UK would be expedient. In *Re Lecta Paper UK Ltd* [2020] EWHC 382 (Ch) at [48], Trower J said that he preferred the first line of cases, and I agree. The requirement of at least one defendant domiciled within the contracting state under article 8 is separate from the requirement that it be expedient for the proceedings to take place in that state.

47. In the present case the Company believes that at least one of the Scheme Creditors is domiciled in this jurisdiction. It also contends (with force) that it is expedient for the claim to be brought before the English courts on the footing that the Company is incorporated here, has its COMI here and because the business and assets of the Company and Group are predominantly based in the UK. It is not necessary for the court to reach a final decision on this point, and it may be that, after the meeting of creditors, it becomes clearer what proportion and number of the creditors are domiciled in the UK.

48. As to the effectiveness of the Scheme, the Company intends to adduce and rely on expert evidence at the sanction hearing to establish that the Scheme will be effective in practice

to bind opposing Scheme Creditors. The Indenture is governed by New York law and for this reason the Company proposes that it will provide evidence of New York law at the sanction hearing. At this stage it suffices to say that in a large number of schemes recognition has been given under Chapter 15 of the US Bankruptcy Code and there is no reason to suppose that that will not happen in the current case.

49. For these reasons I do not think that there is any roadblock to the effectiveness of the Scheme at this stage.

50. I turn to the question of notice, timing, and conduct of the Scheme meetings. The Company seeks directions that it be entitled to conduct the Scheme meeting via webinar and the order contains details of how it is to be carried out. The means by which an effective remote hearing may be held so as to conform with the requirements of the Act were set out by Trower J in *In Re Castle Trust Direct plc* [2020] EWHC 969 (Ch) at [36]-[44]. I consider that the course proposed by the Company in the present case complies with that guidance. One point specifically to mention is that provision should be made for a virtual breakup facility to enable the Scheme Creditors to confer amongst themselves if required at any point in the meeting. It will, of course, be a matter for the court hearing the sanction application to decide whether the meeting conducted in accordance with the order of the court was effective and fair and constituted a meeting for the purposes of the Companies Act. It will do so in the light of the report from the meeting chair. I am satisfied that the detailed proposals for notification and conduct of the meeting set out in the draft order are appropriate.

51. The Company seeks a special order in respect of the court file. CPR 5.4C(4) permits the court to restrict access to non-parties. The court is asked that access is restricted in respect of certain confidential and commercially sensitive documents save with the permission of the court, which permission is to be applied for on three days' written notice to the Company. There is, however, no intention to preclude access by Scheme Creditors or their representatives. The reason for this order being sought is that the specified documents are confidential and commercially sensitive and unrestrained inspection may prejudice the Company by, for example, advantaging a competitor of the Company which would thereby require knowledge of details about its debt and maturity dates, its costs of funds, and covenants. Orders of this kind have been made in other

schemes: see, eg, *Re Stripes US Holdings Inc* [2018] EWHC 2912 (Ch). I consider that it is appropriate to make such an order, restricting it to specified identified documents rather than the whole of the evidence filed in support of this application.

52. Finally, I am asked to make a declaration that Mr Collier is the appointed foreign representative, to act as such in any Chapter 15 proceedings in the US Bankruptcy Court in respect of the Scheme Company and that he is authorised to take all necessary and appropriate steps for that purpose. I am prepared to make that order.

53. I have been taken through the draft order by counsel for the Company and, with some amendments which have been discussed during the hearing, I am satisfied that it is appropriate to make such an order.