Case No: CR-2022-001333
Neutral Citation Number: [2022] EWHC 2732 (Ch)

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

IN THE MATTER OF: HAYA HOLDCO 2 PLC
AND IN THE MATTER OF THE COMPANIES ACT 2006

Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Thursday, 9 June 2022

BEFORE:

MR JUSTICE FANCOURT

PARTIES:

HAYA HOLDCO 2 PLC

Company

MR DANIEL BAYFIELD QC with MR RYAN PERKINS (instructed by Linklaters LLP) appeared on behalf of the Company

Hearing date: 9 June 2022

JUDGMENT
(Approved)

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MR JUSTICE FANCOURT:

1. This is the restored hearing of a claim for the sanction of a scheme of arrangement under section 899 of the Companies Act 2006. The company in question ("the Scheme Company") is Haya Holdco 2 plc.

2. The Scheme proposed is a creditors' scheme and the only creditors involved are the holders of two series of senior secured loan notes. The effect of the Scheme is to exchange those existing notes, which are due for repayment in November 2022, for cash, some new loan notes issued by the Scheme Company, and an equity share in the immediate parent company of the Scheme Company, Haya Holdco 1 Limited ("Holdco").

3. The Scheme proposed is a little unusual, although not unique, in that the Scheme Company recently acceded as co-obligor to the existing loan notes which had been issued by its Spanish subsidiary, a company called Haya Real Estate SAU ("HRE") in April 2022 . That accession was given effect following a consent solicitation in order to change the applicable law governing the existing notes and confer jurisdiction in relation to them on the Courts of England and Wales. Those changes, to which the creditors agreed, were valid under the then applicable law of New York.

4. The Scheme Company and its parent company were incorporated in March 2022 for the purpose of the larger restructuring of the group and the indebtedness of HRE. The Scheme proposes the release of both co-obligors under the existing senior secured notes in return for a partial cash redemption, the cancellation of the outstanding notes, the issue of new senior secured notes by the Scheme Company equal in amount to the unredeemed debt and interest, and the equity stake in Holdco.

5. The matter came before Marcus Smith J on 9 May 2022 for a convening hearing. The judge there dealt in the usual way with issues of jurisdiction and class composition. He made an order giving permission to convene a single meeting of the Scheme Creditors and gave directions as to service of the Scheme, the explanatory statement, notice of the meeting and the means of voting to the noteholders or their representatives.

6. The judge on that occasion gave a detailed reserved judgment in which he explained the background to the restructuring and he dealt with the issues of jurisdiction and class composition. In view of the detailed summary of the facts in his judgment, it is unnecessary for me to repeat it now and my judgment should be read together with the judgment of Marcus Smith J as necessary for that purpose.

7. No creditor appears at this hearing to oppose the Scheme. It is therefore unnecessary and inappropriate for me to re-visit the issues of jurisdiction and class composition that had been decided provisionally by Marcus Smith J, with whose conclusions on those matters in any event I respectfully agree.

8. The court meeting was held by the Scheme Company and the creditors on 31 May 2022. There was very close to unanimous support by the beneficial holders of the notes for the proposed restructuring. In those circumstances the Scheme Company now seeks the sanction of the scheme.

9. The steps to be taken following the court's sanction, if granted, are complex and numerous and there is a longstop date of 30 June 2022. There is a significant list of recapitalisation conditions that have to be satisfied before that date in order for the recapitalisation to take effect. Those steps include a requirement to have an agreed Spanish Framework Restructuring Agreement and form of application to the Spanish court under a pre-insolvency process known as *homologación judicial*, which application will be made after the recapitalisation effective date. The purpose of that application is to confer protection on what might otherwise be the consequences for the creditors of Spanish insolvency law. It might be thought that the Scheme Company is up against it to satisfy all the recapitalisation conditions by the longstop date, but there are no conditions precedent to the full effectiveness of the Scheme that the court is invited to sanction. There is no blot on the Scheme itself and no precondition on the Scheme taking effect, only various preconditions to the greater recapitalisation of the Scheme Company and HRE taking effect in due course.

10. I am satisfied on the evidence that has been put before me in an expert report of Professor Pedro De Miguel Asensio of the Faculty of Law in the Universidad Complutense de Madrid dated 2 May 2022 that the Scheme as sanctioned by this court, which will involve a release of the liability of HRE under the existing notes, is likely to be recognised in Spain, even though the Brussels Recast Regulation will not apply and neither will the Hague Convention on Choice of Court Agreements. Dr Asensio expresses some reservation as to whether the general law of Spain as to the recognition of foreign judgments will give that recognition in view of the fact that the liabilities of a Spanish company are affected by the Scheme, but he says that a Spanish court would apply the Rome I regulation from which the restructuring by means of the Scheme of Arrangement is not excluded and so would recognise the Scheme as a variation of a contract between the Scheme Company and HRE and the noteholders governed by English Law. At the very least, there is a real prospect of such recognition of the effect of the Scheme being given and so I am satisfied that this court is not acting in vain in sanctioning the Scheme.

11. The questions for the court are therefore the usual ones required to be considered as summarised by Snowden J in *Re KCA Deutag UK Finance plc* [2020] EWHC 2977 at [16] as follows:

> "i) Has there been compliance with the statutory requirements?
>
> ii) Was the class fairly represented and did the majority act in a *bona fide* manner and for proper purposes when voting at the class meeting?

> iii) Is the scheme one that an intelligent and honest man, acting in respect of his interests, might reasonably approve?
>
> iv) Is there some other 'blot' or defect in the scheme?"

12. The evidence in the form of the first witness statement of Benjamin James William Cross dated 7 June 2022 and the second witness statement of Paul Kamminga dated 6 June 2022, establishes without doubt that there has been compliance with the terms of the order of Marcus Smith J and that the statutory majorities required by section 899 of the Act were easily achieved. Indeed, this is a case where more than 99 per cent of the Scheme Creditors who were voting voted in favour of the Scheme.

13. As to the question whether the class was fairly represented and acted in a **bona fide** manner, the answer is self-evidently yes, where on the facts, as I have said, more than 99 per cent of the class by value voted in favour of the Scheme. There was a very substantially and unusually high turnout at this court meeting.

14. The answer to the question whether the Scheme was such that an intelligent and honest person might in their own interests vote in favour of it, is also answered by the fact that over 99 per cent by value of the noteholders did act in favour of it. Given the evidence of the alternative and the likely return in the absence of a scheme of arrangement, this was self-evidently a scheme that an intelligent and honest man might reasonably approve in their own interests. I have already said that there is no blot on the Scheme and that the Scheme is likely to be given recognition and effect in the only foreign country which will be concerned with the matter, namely Spain.

15. The final issue that I have to address relates to various amendments and modifications to the terms of the Scheme that are put before the court. There is at first appearance an unusually large number of these contained in the amended scheme document and the underlying documents that will give effect to the recapitalisation. However, as explained by Mr Cross in his witness statement, all of these matters are really technical points and changes that are needed to give best effect to the recapitalisation to which the creditors have agreed.

16. The Scheme document in its original form for which the creditors voted contained the following clause:

> "The Scheme Company may at any hearing of the court to sanction this Scheme and to the extent practicable after consultation with the Ad Hoc Group's advisers, consent on behalf of all Scheme Creditors to any modification of or addition to this Scheme or to any terms or conditions that the court may think fit to approve or impose and which are otherwise necessary for the purpose of implementing the recapitalisation and which could not reasonably be expected directly or indirectly to have a material adverse effect on the interests of any Scheme

> Creditor under this Scheme. However, if such modifications could reasonably be expected directly or indirectly to have a material adverse effect on the interests of a Scheme Creditor, then the Scheme Company may not give such consent without the prior written consent of that Scheme Creditor."

17. There are therefore the following requirements under the terms of that clause for modifications to the Scheme to be approved by the Scheme Company and sanctioned by the court. First, prior consultation with the advisers of the Ad Hoc Group promoting the Scheme to the extent practicable; second, that the changes are necessary for the purpose of implementing the recapitalisation; and third, that none of the changes could reasonably be expected to have a material adverse impact on the interests of any Scheme creditor.

18. Mr Cross says in his witness statement that the modifications to the Scheme were made having consulted with the Ad Hoc Group's advisers and, indeed, it is pointed out to me that some of the modifications that were made were indeed requested by the Ad Hoc Group's advisers. That has a greater significance in this sense, that the Ad Hoc Group represents more than two-thirds of the Scheme Creditors and therefore the majority of the creditors can be taken to have approved the modifications to the proposed Scheme in advance.

19. As to whether the changes are necessary for the purpose of implementing the recapitalisation, it seems to me that, on the proper interpretation of clause 8.14 which I have just rehearsed, the word "necessary" cannot have been intended to mean "absolutely necessary", that is to say without which the Scheme could not have effect at all, but must mean changes that are "reasonably necessary" for the purpose of most efficiently implementing the recapitalisation for which the Scheme Creditors have voted.

20. Having read carefully paragraph 44 of Mr Cross's witness statement and looked at the changes that are proposed to the Scheme documents, I am satisfied that the modifications, although numerous, are ones that can be said to be necessary within that interpretation of clause 8.14. I am also satisfied that by their nature, they are not changes that could directly or indirectly have a material adverse impact on the interests of any Scheme Creditor. They are, by their nature, fine tuning, as was put by Mr Bayfield QC on behalf of the Scheme Company, and are technical and mechanical changes designed to give better effect to the Scheme which, as I have explained, have been approved by the majority of the creditors.

21. In those circumstances and for the reasons that I have given, the court will sanction the modified scheme in the form in which it was put before me.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge