Neutral citation number: [2023] EWHC 2745 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST
COMPANIES COURT (ChD)
IN THE MATTER OF THE COMPANIES ACT 2006

Claim No. CR-2023-005728
Wednesday 1 November 2023
Rolls Building
Fetter Lane, London
EC4A 1NL

Before Sir Alastair Norris

(Sitting as a High Court Judge)

B E T W E E N:

In the Matter of Praesidiad Limited Applicant

- -

Mr David Allison KC and Miss Imogen Beltrami (Instructed by Linklaters LLP) appeared on behalf of the company.

MR ZALUVAKO (Head of the Legal Department of Bank GPB International SA represented (with the permission of the Judge pursuant to CPR 39.6 and all other enabling powers) Bank GPB International SA (a creditor)

Hearing date: 17 October 2023

- -

SIR ALASTAIR NORRIS:

1. This is the application of Praesidiad Ltd ("the Company") for an order convening a single meeting of some of its creditors for the purpose of seeking their approval to a scheme of arrangement under Part 26 of the Companies Act 2006. At the conclusion of the hearing I decided that I would make such an order (with small amendments discussed with Leading Counsel) for reasons to be given in writing. These are those reasons.
2. The Company is an intermediate holding company in a group of companies ("the Group") whose business is the provision of perimeter and physical security solutions for defence and critical infrastructure installations and for commercial and residential premises. It operates in some 100 countries under three brand names. The Group is in the ultimate ownership of an investment fund ("the Sponsor").
3. The relevant creditors are the lenders under a Senior Facilities Agreement ("the SFA") under a which the following facilities are available to the Company and the Group. First, a term loan of some €290 million maturing on 4 October 2024. In respect of this facility the Company has a direct liability of some €259.1 million and liability as guarantor of some €31 million. In respect of its liability as guarantor, in order that the scheme can be promulgated by a single entity, the Company has entered into a Deed of Contribution under which it has assumed a primary obligation in respect of all its guarantee liabilities. Secondly there is a term loan of some US$35.267 million also maturing on 4 October 2024. The borrower under this facility is another Group company: but the Company has a guarantee liability for the whole of that amount. Third, there is a revolving credit facility of some €80 million due for repayment on 4 September 2024 under which the Company has a direct liability for the €76 million which has been drawn. These loans are governed by Intercreditor Agreements and rank pari passu.
4. The business of the Group has suffered post-COVID from a rise in the price of raw materials and a rise in production costs which have affected its revenue and its current liquidity. Given the prospective repayment dates in October 2024 the Group initially attempted to negotiate an amended and restated SFA. Those negotiations continued until March 2023 but without success. Attention then turned to a broader restructuring of the affairs of the Group and negotiations resumed with an Ad Hoc group of lenders, which had three outcomes in August 2023. First, a comprehensive restructuring plan (including an "equity swap") was agreed in principle, with the aim of its being implemented in May 2024. Secondly, a Lock-up Agreement effective from 8 September 2023 was circulated by the facilities agent to all SFA lenders. 95.58% of the SFA lenders have either subscribed to the Lock-up Agreement or (if their constitutional or governance arrangements did not permit such subscription) have either undertaken to support or not to oppose the scheme. The lender holding the balance of the SFA debt and who has not entered into such arrangements is Bank GPB International SA ("Bank GPB"). This is the Luxembourg subsidiary of a Russian bank which (it is common ground) is subject to the "asset freeze" regime imposed by Regulation 11 of The Russia (Sanctions) (EU Exit) Regulations 2019 as amended ("the Sanctions Regulations").

5. The third outcome was the provision of interim finance. In the course of the restructuring negotiations with the Ad Hoc group it became apparent that the pressure on cash flow was critical. The cash requirement for the normal operation of the Group's activities was €10 million: but there was a severe risk that by September 2023 the Group would have less than half of that available, with default on interest payments then due almost inevitable. So, on 16 August 2023 the Company entered into an Interim Facilities Agreement ("the IFA") providing for €25 million to sustain the Group whilst it attempted its restructuring. The IFA was divided into two tranches. Tranche A consisted of €15 million that was provided by the Ad Hoc group rateably according to their existing lending under the SFA and was drawn immediately. Tranche B (the remaining €10 million) is available to be drawn down and is open to participation by all existing SFA lenders (other than Bank GPB) pro-rata according to their debt until 7 pm on the date of the intended scheme meeting. The IFA ranks pari passu with the SFA: but by a Turnover Deed each of the subscribers to the Lock-up Agreement (or equivalent arrangement) has agreed to turn over recoveries under the SFA so as to ensure that the IFA is repaid as soon as possible.
6. Under the proposed scheme both the SFA and the IFA are to be the subject of compromise and arrangement.
7. I can deal with the scheme for the purposes of the convening hearing in outline form, simply providing context for a consideration of the issues which need addressing at this stage. In essence, the Sponsor will transfer ownership of the Group to the scheme creditors for £1, each of the SFA lenders obtaining a shareholding in a new Topco proportionate to their share of the SFA indebtedness. This is consistent with the Sponsor's belief (shared by others) that the value of the Group falls within the SFA lenders' security package. It will enable those who are funding the restructuring to benefit from any upside resulting from the continued trading of the Group. Any SFA Lender who, for constitutional reasons or because of the Sanctions Regulations, cannot receive such shares will have them held by a trustee upon a bare trust.
8. The SFA and IFA indebtedness will then be reorganised into a number of new facilities. The US dollar element of the SFA will be re-denominated in euros. The funding provided at present by the IFA will be converted into a Super Senior Term Loan advanced to the Company and maturing in June 2026. The funds required to sustain the Group's general operational requirements will be provided by a new term loan borrowed by the Company maturing in September 2027, the amount of the loan being determined by the last 12 months adjusted EBITDA of the Group disclosed by the management accounts for the year ending 31 December 2023. The balance of the SFA will be converted into a term loan borrowed by the Company's new holding company and maturing in December 2027. The ranking and priority of these facilities will be determined by an amended and restated inter-creditor agreement; and releases between each member of the Group and the lenders under the SFA and IFA will be effected. Parties who are not scheme creditors but whose participation is necessary if the scheme is to be effective will enter into any necessary Deed of Undertaking to be so bound.

9. Because the restructuring involves a change in the control of the Group it will be necessary to obtain certain foreign direct investment regulatory approvals together with a sanctions licence from the Office of Financial Sanctions Implementation ("OFSI"). This means that there will be a gap between when the Court might sanction the scheme and when the restructuring could become effective. There is thus to be a "Scheme Effective Date" and a "Restructuring Effective Date". Between two (a) all interest payable under the SFA will not be payable in cash but will be capitalised (save in respect of Bank GPB) (b) there will be a standstill agreement in effect restricting any scheme creditor from taking enforcement action and (c) there will be a waiver in respect of any breach of the financial covenant under the SFA.

10. This being the convening hearing it is not the occasion to examine the merits of this scheme. For the present, the issues are (a) whether appropriate notice has been given of this hearing sufficient to enable participation by those scheme creditors who wish so to do; (b) whether certain fundamental jurisdictional requirements are satisfied (leaving for the sanction hearing the question of whether that jurisdiction should be exercised); (c) whether arrangements are in place such that the wishes of the affected creditors can be properly ascertained: and (d) whether it is apparent, even now, that the scheme cannot be effective so that there is no point in convening a scheme meeting. For the most part these matters traverse familiar ground and I will deal with them as shortly as circumstances permit.

11. The Practice Statement issued by the Chancellor on 30 June 2022 requires that a Practice Statement Letter should be distributed in sufficient time to enable affected parties to consider what is proposed, to take appropriate advice, and, if so advised, to attend the convening hearing. Such a letter was circulated to the scheme creditors on 25 September 2023. It related to a proposal that had been under negotiation since March 2023, the final form of which had been notified to scheme creditors (who are sophisticated financial institutions) when the Lock-up Agreement was circulated on 21 August 2023. I am satisfied that having regard to the complexity of the scheme, the degree of consultation with creditors prior to the formal launch of the scheme, the urgency of the scheme having regard to the financial distress of the company, and the sophistication of the scheme creditors that sufficient notice has been given.

12. The Company is incorporated in England and Wales. The scheme involves the giving up of certain rights under the SFA (and the IFA) in return for the grant by the Sponsor and the Company of other rights to the existing lenders. I am satisfied that for the purposes of section 895 of the Companies Act 2006 the Company is a "company" and that the scheme is a "compromise" or "arrangement" between the Company and some of its creditors.

13. The key question here is whether the classes of creditor are correctly constituted so as to give the Court jurisdiction to sanction the scheme. The rules as to class

composition are too well known to require extensive citation in this judgment. It is sufficient to restate the basic principle that a class must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest: Sovereign Life Assurance v Dodd [1892] 2 QB of 573 at 583 per Bowen LJ. It is worth drawing attention to and developing two aspects of that statement of principle; (a) its reference to "rights"; and (b) its reference to the "impossibility" of consulting together (and hence its application of the test of "necessity" to fracture what would otherwise be a single class).

14. A consideration of the rights of the members of the proposed class involves an analysis of the rights as against the scheme company which are to be released or varied under the scheme, and of the new rights which the scheme gives by way of compromise or arrangement to those whose rights are to be released or varied: Re Hawk [2001] 2 BCLC 480 at [30]. The focus is upon "rights" not "commercial interests". The consideration requires those rights to be analysed not as a matter of theory but in context, an exercise which generally requires an analysis of what those rights would be if the scheme did not proceed. In the evidence is a lengthy report by FTI Consulting prepared in accordance with CPR Part 35 as to what that comparator might be. It expresses the view that the alternative to the proposed scheme would probably be an accelerated sales process leading to a "pre-pack" sale within an administration. It proceeds on the assumption that the SFA lenders (in order to preserve realisable value) would not wish immediately to proceed to an insolvency process but would forbear enforcement and would advance such funds as were necessary to sustain the Group whilst a marketing exercise and sale negotiation could proceed. For the purpose of the convening hearing, I accept this evidence.

15. The FTI Consulting report expresses an opinion as to the likely alternative outcomes. If the scheme proceeds the likelihood is that the SFA lenders will be repaid 100%. If an accelerated pro sales process was undertaken the likely return within the administration would lie within the range of 36.4% and 52.6%. The existence of the Turnover Deed (to which lenders other than Bank GPB acceded) leads to a small adjustment in this headline rate. For lenders other than Bank GPB the return would lie in the range of 35.4% to 48.2%; and for Bank GPB itself it would lie in the range of 36.4% and 52.6%. Having read the FTI Consulting report I accept this evidence. (Again, I emphasise that I do so, not for the purpose of addressing the merits scheme, but for the purpose of identifying class issues).

16. Since the SFA lenders are in general (in the treatment of their rights as against the Company in the context of an accelerated sale and in the receipt of rights under the scheme) treated the same, the starting point would be the constitution of a single class. But a number of detailed issues fall for consideration to see whether that single class is fractured. These issues are very commonly encountered and the subject of many decisions. I propose to deal with them shortly, noting the general position and enquiring whether there is something in this scheme which represents a departure from the norm. In each case I am asking the question whether the matter calls for a

fracturing of the class. The question of whether the votes of a class so constituted produces a fair outcome is a separate matter for consideration at the sanction hearing.

17. *The IFA*

At present not all SFA lenders have participated in the IFA. If the scheme is approved the IFA will be elevated to a super senior status. Participation in the IFA will be available until 7 PM on the date of the scheme meeting. In principle this does not fracture the class: Re Chaptre Finance plc [2023] EWHC 1665 and Re Hilding Anders International AB [2023] EWHC 2291. There is nothing out of the ordinary about the instant case.

18. In order to secure that the IFA raises sufficient to achieve its objective a "backstop fee" is payable to members of the Ad Hoc group at a rate of 4% of total commitments under the IFA. It is paid for a commercial service. In principle this does not fracture the class: Re Codere Finance 2 (UK) Ltd [2020] EWHC 2441. It is paid at a rate in line with market terms and is not material in the context of the overall scheme consideration. There is nothing out of the ordinary about the instant case.

19. *The Turnover Deed*

Scheme creditors other than Bank GPB have entered into a Turnover Deed under which sums received by the facilities agent shall (save in the case of Bank GPB) be applied first towards amounts due under the IFA rather than rateably with amounts due under the SFA. Such an arrangement affects the rights of creditors *inter se* and does not affect rights as between creditors and the Company. In principle this does not fracture the class: Re APCOA Parking Holdings GmbH [2015] Bus LR 374. There is nothing out of the ordinary about the instant case.

20. *Lock-up consent fee*

A consent fee of 3% of the principal amount due to a lender under the SFA was payable to every lender who entered into the Lock-up Agreement or a similar arrangement. It was available to all SFA lenders and is payable at a rate and at a time that is unlikely to exert a material influence upon any voting decision. Bank GPB was unable to participate because of the Sanctions Regulations. In principle this does not fracture the class: Re Primacom Holdings GmbH [2013] BCC 201. There is nothing out of the ordinary about the instant case.

21. *Loan terms*

There are certain differences in terms between the various elements of the SFA e.g., as to maturity. These are not so significant as to make it impossible for the SFA lenders to consult together upon the key matters for decision in relation to the proposed scheme (particularly since maturity dates would be irrelevant in the context of an accelerated sale within an administration). In principle these differences do not fracture a class: KCA Deutag UK Finance plc [2020] EWHC 2779. There is nothing out of the ordinary about the instant case.

22. *Adviser Fees*

The Company has agreed to pay the fees of the legal and financial advisers of the Ad Hoc group whatever the outcome of the application for approval of the proposed scheme. In principle this does not fracture the class: Re Codere Finance 2 (UK) Ltd (*supra*). There is nothing out of the ordinary about the instant case.

23. *Nomination rights*

    The scheme gives the major shareholders in the new Topco certain board nomination rights. It does so by reference not to rights attaching to their shares but by the reference to the size of their shareholding. Those having the nomination rights may thus vary from time to time, the nomination rights being simply a function of the quantum of debt held by a scheme creditor. The nominated director will in any event have a fiduciary duty to act in the best interests of the Company and its stakeholders as a whole. In principle this does not fracture the class: Re PizzaExpress Financing 2 Ltd [2020] EWHC 2873. There is nothing out of the ordinary about the instant case.

24. Thus, upon the application of ordinary principles the Company's proposal that there should be a single meeting of the creditors whose rights are to be varied would seem to be correct. But such a direction is opposed by Bank GPB (which holds 4.5% of the SFA) (a) because it submits that it is treated so differently under the scheme that it ought to form a separate class of its own and (b) because the present proposal is that Bank GPB should not be entitled to vote at any single meeting and it submits that it cannot lawfully be deprived of its vote.

25. I gave permission for these points to be argued by Mr Zaluvako (the Head of the Legal Department of Bank GPB International SA). He told me (and I accepted without further enquiry) that the imminent expiry of Bank GBP's current OFSI licence for the incurring of legal expenses meant that it was not possible to instruct solicitors and Counsel and that he had the authority of the bank to represent it at the hearing. After outlining the relevant parts of the Sanctions Regulations I will deal with the arguments in turn.

26. The Sanctions Regulations were made for the purpose of encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity sovereignty or independence of the Ukraine and for the purpose of promoting the payment of compensation by Russia the damage loss or injury suffered by Ukraine as a result of Russia's invasion (see Regulation 4). They are to be interpreted with that broad purpose in mind. One means of achieving that purpose is by the imposition of an "asset freeze".

27. A person must not deal with "funds or economic resources" owned, held or controlled by a designated person if they know or have reasonable cause to suspect that they are dealing with such funds or economic resources: Regulation 11(1). (There is an exception if OFSI grants a licence). It is common ground that Bank GPB's participation in the SFA constitutes such "funds or economic resources" by virtue of Bank GPB being a wholly-owned subsidiary of a designated person: Regulation 11(7) and section 60 of the Sanctions and Anti-Money Laundering Act 2018.

28. Pursuant to Regulation 11(4) a person "deals with" such a funds if that person

"(a) uses, alters, moves, transfers or allows access to the funds;

(b) deals with the funds in any other way that would result in a change in volume, amount, location, ownership, possession, character or destination; or

(c) makes any other change, including portfolio management, that would enable use of the funds".

29. Bank GPB submits that its actual treatment under the scheme is different in a number of material respects from the treatment of other scheme creditors such that it ought to constitute a separate class. It has been unable to participate in the Lock-up Agreement and thereby is unable to earn the consent fee. It has been unable to participate in the IFA and therefore cannot increase its participation, achieve super senior status for any part of its debt or earn the backstop fee. It is unable to receive the scheme consideration, which will be held for it in trust.

30. In my judgment whilst these matters *may* raise "fairness" issues at the sanction hearing (I give no indication that they do) they cannot fracture the class and they do not justify constituting a single member class with the power to veto the scheme.

31. The lock-up agreement and the opportunity to provide new money were both open to all SFA lenders. Bank GPB could not accept the offered benefits because it could not "alter" the funds or deal with the funds in any other way that would "result in a change in volume, amount ..[or] character". As Meade J pointed out in a Re Nostrum Oil and Gas plc [2022] EWHC 1646 at [40] :-

> "… [T]here is a fundamental distinction between a scheme conferring different rights on different groups of creditors [and] a scheme conferring the same rights of all creditors.. but [where] some creditors are unable to enjoy those rights by virtue of some personal characteristic that they possess".

(See also Re Noble Group Ltd [2019] BCC 349 at [105] *per* Snowden J (as he then was)).

32. This analysis also explains why the fact that Bank GPB cannot directly receive its entitlement to shares in Topco, but must have them held in a holding trust structure, does not fracture the class, as has been frequently held: see Re Nostrum Oil and Gas (*supra*); Re Petropavlovsk plc (In Administration) [2022] EWHC 3448; Re CFLD (Cayman) Investment [2022] EWHC 3496.

33. In my judgment the proposal to have a single class meeting is fully in accord with the position established in the authorities. There is nothing in the instant case to take it out of the ordinary run of cases.

34. If there is to be a single class meeting the proposal is that Bank GPB shall not be entitled to vote at it. Bank GPB says that this is an infringement of its rights and is not warranted by the Sanctions Regulations. In a run of recent cases it has been accepted that a creditor subject to the Sanctions Regulations cannot vote at a scheme meeting: Re Nostrum Oil and Gas (*supra*); Re CFLD (Cayman) Investment Ltd [2022] EWHC 3496 (convening); Re VEON BV [2022] EWHC 3473 (convening); Re SGB-Smit GmbH [2023] EWHC 1067 (convening). These are all cases where the

Sanctions Regulation was drawn to the attention of the Court by the applicant company but was not the subject of contrary argument. That said, the applicant company was in each case represented by experienced specialist Counsel well aware of their duty to the Court. In particular, the decision in VEON was that of a very experienced judge before whom Mr Allison KC appeared, and he tells me that the issues were fully explained to the judge in the context of a contest over class composition (advanced by Mr Bayfield KC). Although not bound by these decisions, I would nonetheless be inclined not to depart from them, not least because in schemes such as these it is important for there to be consistency at first instance, so that companies and their creditors know where they stand and can conduct their negotiations and formulate their schemes accordingly.

35. But in the instant case Bank GPB has argued that there should be a different outcome, submitting that it should be entitled to vote at the scheme meeting in order to oppose the scheme (unless allowed to participate in the Lock-up arrangements). The Bank relies upon the decision of a strong Court of Appeal in Cayman (Sir Jack Beatson JA, Sir Richard Field JA and the Hon Dennis Morrison JA) upholding the decision of Justice Segal (an experienced judge of the Grand Court): Re Palladyne International Asset Management BV (CICA Appeal No5 of 2019) ("Palladyne"). The case did not concern the Sanctions Regulations but materially similar regulations concerning Libya. The votes attaching to the shares in Palladyne companies (which were frozen assets) were used to dismiss and appoint directors and to change the names of companies. In broad terms the question was whether the making of such resolutions and appointing and removing directors was either (a) to "deal with" frozen "funds" or "economic resources", that is to "use" or to "deal with" the frozen shares by the exercise of voting right, or (b) to "allow access to" the frozen assets of the company or to make a change that "would enable use" of those assets. The Court of Appeal upheld the view of the Grand Court that they did not.

36. Focusing upon the words of the relevant sanctions provision, the Court of Appeal held (a) (at [71]) that "dealing with" funds meant using them "as a financial asset or instrument" so that not all exercises of the rights attaching to funds fell within the scope of the sanction; (b) (at [73]) that the term "use" was affected by the character of a share as a tradable financial asset and must be construed in the light of that characteristic; and (c) (at [81]) "use" was to be interpreted to include activity which touches or concerns monetary value or generates financial return but to exclude activity which does not. The voting to change the name of the company or to appoint or remove directors did not affect the characteristic of a share as a tradable financial asset. The Court further held (at [76]) that the relevant "use" must have an effect on the "volume, amount, location, ownership, possession, character or [the] destination of the shares". Since the removal or appointment of directors or a change in the company's name did not have any such effect the use of votes to achieve those objectives was not a relevant "use" of frozen assets. Because they had to consider all possible breaches of the sanctions provision the Court of Appeal also considered whether the passing of the resolutions constituted "access to" the frozen funds or made changes that would "enable use" of the funds. The Court held (at [98] and [105]) that they did not because the sanctions provision did not prohibit "preparatory

steps" but only a change to the funds whose use would be enabled as a result of that change.

37. The decision of the Cayman Court of Appeal is not, of course, binding upon me but is entitled to proper respect. I do not intend to undertake an analysis of it or to decide the extent to which it correctly states the law of England and Wales (not least because of its very late introduction into the instant case). I shall confine myself to addressing the arguments which Bank GPB advance based upon it.

38. Those arguments were (a) the exercise of a vote is not a "dealing with" or "use of" an economic interest: (b) the vote was simply a "preparatory act" which did not itself affect "the volume, amount, location, ownership, possession, character or destination" of the frozen economic interest or its characteristic as a tradable financial asset.

39. I do not accept argument (a). Palladyne was about the use of the votes attaching to an economic interest to affect a matter of internal governance. Votes cast at a scheme meeting do not relate to the internal governance of Bank GPB but to the rights which Bank GBP and other creditors have and will have against the Company. The object of the resolutions put to the scheme meeting affects the loan participation in the SFA as a tradable financial asset and are designed to change the amount and character of that asset (by converting part to equity, by altering its ranking, by changing its amount and by changing its maturity). Those are all matters which could not be achieved by ordinary negotiation between the Company and Bank GPB and the other SFA creditors without multiple breaches of the Sanctions Regulations; and it makes no difference that the changes are to be brought about by following a statutory process.

40. I do not accept argument (b). It is correct that the actual legal changes to the economic interest of Bank GPB will not occur until the implementation of the scheme following its sanction by the Court. But I do not think that it is permissible to "salami slice" the single statutory process and to say that a vote cast for or against the scheme is merely "a preparatory act". The existence of a proposal for a scheme and its likely level of support affects the market value of the debt throughout the process (not merely at its conclusion). Nor do I think it right that a sanctioned lender's ability to vote at a scheme meeting should be dependent upon how it intends to vote i.e. that the lender should permitted to vote if it intends to vote against the scheme and to preserve its economic interest in its existing form, but not if it intends to vote in favour of the scheme and to support changes to that economic interest. What is needed is a clear rule which is capable of straightforward application by the chairman of the meeting and which gives the voting power to those who, in the real world, are actually able to "deal with" and "use" their funds as seems to them best in their commercial interests. Whether cast for or against the scheme the votes of Bank GPB form part of the corpus of votes that determine the characteristics of the SFA as a tradable financial asset.

41. Thus, I am not persuaded that I should depart from the views of my brother and sister judges: I agree with the proposed direction that Bank GPB (and any other sanctioned lender) may not vote at the scheme meeting.

42. That concludes my consideration of class composition. There remain three matters which may be disposed of shortly.

43. It is not my function at the convening hearing to approve the proposed Explanatory Statement. But I have read it and have seen nothing which requires amendment. Subject to what might be said at the sanction hearing it seems to me to articulate the key matters bearing upon the decision to be made, and to do so in language appropriate to the constituency to whom it is addressed. Participants in the scheme meeting will be properly informed.

44. I have also considered the arrangements for the convening and conduct of the scheme meeting. They follow appropriate good practice and are such that it likely that the wishes of the affected creditors can be properly ascertained.

45. Finally, as Snowden J (as he then was) observed in Re Noble Group [2019] BCC 349 at [76], at a convening hearing the Court may indicate that it is obvious that it has no jurisdiction to sanction the scheme or that there are some other factors which will unquestionably lead to the court ultimately refusing to exercise its discretion to sanction scheme. I have already addressed the first alternative. I am satisfied that the second alternative does not apply. I advert only to two matters.

46. First, the scheme will be implemented by means of a power of attorney conferred upon the Company by the scheme documents. But this is an entirely conventional arrangement, approved in Re ColourOz Investment 2 LLC [2020] BCC 926 at [74-75] and employed in many subsequent cases. It is not a "blot" on the scheme.

47. Second, the effectiveness of the scheme ultimately depends upon obtaining the requisite regulatory approvals and the sanction of OFSI. I am satisfied that these technical requirements relating to elements of the plan do not raise the "conditionality" issues which were addressed by Trower J in Re Smile Telecom Holdings Limited [2021] EWHC 3685 (Ch).

48. I therefore saw nothing in the way of making the proposed order, and (with minor amendment) did so.