[2023] EWHC 2987 (Ch)

Case No: CR-2023-005266

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

7 Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 3 November 2023

Before:

MR JUSTICE MILES

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IN THE MATTER OF CB&I UK LTD

AND IN THE MATTER OF THE COMPANIES ACT 2006

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ANDREAS GLEDHILL KC and **EDOARDO LUPI** (instructed by **Akin Gump LLP**) for the **First Applicant**
MATTHEW ABRAHAM and **JAMIL MUSTAFA** (instructed by **King & Spalding International LLP**) for the **Second Applicant**
RYAN PERKINS and **STEFANIE WILKINS** (instructed by **Kirkland & Ellis International LLP**) for the **Respondent**

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APPROVED JUDGMENT

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Mr Justice Miles:

1. This judgment addresses two matters. The first is an application which has been brought by a group of creditors and/or participants under letter of credit facilities known as the LC Ad Hoc Group (the "LC AHG"). It is in relation to restructuring proceedings brought under Part 26A of the Companies Act 2006 in relation to a company called CB&I UK Ltd (the "Plan Company"). The application in its original form sought specific disclosure against the Plan Company under CPR 31.12 in respect of three categories of documents listed in Schedule 1. In the alternative, it seeks an order requiring the Plan Company to produce a document recording the information corresponding to those requests pursuant to CPR 35.9.

2. The claim form for the restructuring proceedings was issued on 24 September 2023. There are opposing creditors, which include the LC AHG and also a company called Refineria de Cartagena SA ("Reficar") and two parties referred to as "the Wood Parties". They all appeared at a convening hearing before me on 28 September 2023. At that hearing, I ordered that meetings be convened for the purposes of the proposed plan, and I also ordered a sanction hearing to be listed on an expedited basis for four days plus one day of pre-reading in the week commencing 27 November 2023. I also set out a procedural timetable which requires the opposing parties to file and serve responsive evidence to the Plan Company's evidence by 6 November 2023. There was some discussion before me at the hearing of 28 September about the possibility of requests for documents and information not being met and the need for disclosure applications. As I said on that occasion, if there were any disputes about disclosure, the relevant parties should make applications and the court would deal with them on an expedited basis. That has happened in relation to the present application.

3. There have been recent developments in relation to the application which have led to the disputed categories being narrowed, and the application is now pursued only in respect of paragraph 1 of Schedule 1, and that paragraph is only pursued in respect of what are called "the Top 25 Contracts".

4. Paragraph 1 seeks the most recent analysis relied on by management to review past and expected future performance and the current financial position in respect of each of the group's projects (which underpins the project-level analyses presented in various parts of a valuation report prepared by Grant Thornton (who are the experts instructed by the Plan Company dated 24 September 2023). The paragraph then goes on to list a number of subparagraphs from (a) to (m). The way the request is framed is that the document which is sought (namely the most recent analysis relied on by management) is one which is said to include those subparagraphs. The application, as I say, is restricted now to that request, and I will not set out the whole request here. It is to be taken as incorporated into this ruling by reference.

5. The LC AHG relies on evidence which it says shows that it has made a number of requests going right back to the beginning of October. The group instructed Messrs Houlihan Lokey ("HL") on 3 October 2023, and almost immediately, or I think shortly before that, asked for all the information that had been provided to Grant Thornton and suggested they open a data room. On 12 October, the Plan Company opened a data room and, shortly thereafter, all of the documentary information that had been provided to Grant Thornton was placed in the data room. The data room has been made available to the advisors for the group and for Reficar, and I was told that some 120 advisors of those creditors have had access to the data room.

6. The group then sought essentially the information which is contained in Schedule 1 to the application in notices provided by HL in October. I was shown the second of

these on 20 October, which included the relevant requests at paragraph 4. There was some correspondence after that letter which did not satisfy the group, and the application was then issued last Saturday.

7. The application was supported by evidence, including from Mr Hardie of HL. He explains in broad terms his expertise, and I have no doubt that he does have expertise. He went on to explain that he regards the various categories of information as being necessary in order to carry out the work which he and his firm need to undertake. He does so in broad terms, and does not descend into much detail. (I will come back to that point in a moment.)

8. Since the application was launched, there has been further correspondence. On 1 November 2023, solicitors for the Plan Company in a third letter went through the subcategories of Request 1. They explained that there was no over-arching analysis that exists beyond the information with which the group had already been provided, and that to create the analysis sought would be extremely time intensive. They then went through the information which had been provided in the data room which they said was existing information that had been given to Grant Thornton and which, as they understood it, might be responsive to the Schedule 1 requests. The letter did not do it subparagraph by subparagraph as per the request but, in some 15 subparagraphs, pointed to information which had been provided. Amongst these documents which were specified was a document setting out the work in progress ("WIP") and deferred revenue per project as at March 2023.

9. The solicitors for the group responded to that letter and made a number of observations about the deficiencies in the information that had been identified in the letter and, amongst other things, pointed out that the information referred to in subparagraph (2) of paragraph 4 of the letter of 1 November was stale in that it related to the position as of March 2023.

10. There was a further letter from the solicitors of the Plan Company dated 2 November which again addressed Request 1 in the schedule to the application. It again said that there was no single document which contained the information which had been sought. Paragraph 4 said this:

> "As to your narrowed request in this regard, we are not aware of any specific documents that meet your revised description. The reality is that you are asking for information, not documents. The information you request, to the extent it exists, is highly unlikely to be in up-to-date and future-looking form that you are seeking. In any event, there is no centralised repository for this type of information and it is likely to be spread widely across the different business units within the Plan Company, within the knowledge of many different people responsible for different projects and contracts. As such, to compile information responsive to Request 1 would be exceedingly onerous and would certainly not be possible in the timeframe you require."

At paragraph 5, the letter said:

> "The further documents recently prepared and provided by our client and made available in the data room are the full extent of what our client can reasonably provide in response to Request 1. Those documents provide a considerable level of up-to-date and future-looking information, which information was not available to Grant Thornton at the time of its analysis, and ought to be sufficient for your clients reasonably to undertake their analysis of the restructuring plan."

Paragraph 6 contended that the information sought by Request 1 was of no real relevance to the issues in the case and was not proportionate.

11. Since that letter, there has been further discussion between the parties, but it has not been possible for them to agree in relation to Request 1 in Schedule 1, and therefore the group seeks an order in its favour.

12. Counsel for the group submitted in outline that the information which is already in the data room is either insufficient or stale, and that HL needs to understand the information comprised in the request at a granular level. It needs to be able to do so properly to assess the financial condition of the group and to give its opinion as to what is most likely to happen in the circumstance where the plan and wider restructuring did not take place.

13. Counsel submits that the Grant Thornton valuation report which he took me to shows that Grant Thornton has certain information relating to such matters as accounts receivable, the WIP balance, the percentage of the project completed, and some information about the likely date of any rolling off of letter of credit requirements. He submitted that, in those circumstances, his clients did not accept that all of the relevant information has indeed been provided, and he submitted that such information as was identified in the letter of 1 November was, in some respects at least, out of date. He also submitted that HL had explained that they needed the information in order properly to carry out their functions, and that it should be possible for the Plan Company and the wider group to combine the information in relatively short order. He also pointed out that in the light of the history of the requests, it is not open to the Plan Company now to say that the information could not be provided in short time because it has been sought now for at least several weeks.

14. He submitted that if the court was not persuaded that there were relevant documents, nonetheless the court should exercise its discretion under CPR 35.9 and require the Plan Company to produce a document containing the relevant information. He also submitted that it was relevant to the exercise of the court's jurisdiction that his clients had certain contractual rights to information from the companies within the seven groups of the planned company under legal law; and though this court was not being invited to rule on those contractual rights, it was nonetheless a matter properly to be taken into account in the exercise of the court's case management powers under the CPR.

15. Counsel for the Plan Company submitted in summary that a very large amount of documentation has been provided to the opposing creditors, including every document that had been provided to Grant Thornton, and that very large teams of advisors for the opposing creditors have access to the data room.

16. Counsel submitted that the Plan Company had pointed out in the letter of 1 November 2023 that there was no general document of the kind sought in Schedule 1 and that, in relation to the various subparagraphs, the Plan Company had specified the documents which it understood might be within the subparagraphs.

17. He also confirmed in relation to the letter of 2 November (which stated that there were no further documents that were answerable to the subcategories as they were understood at least by the Plan Company) that that statement was made after enquiries had been made of the group companies, albeit he accepted that there had been no search of the kind that would be necessarily in the case of extended disclosure under Part 7 of the claim. He observed that the information that is being

sought is likely to be in the possession of a wide range of individuals within the group.

18. Counsel submitted that insofar as the request may be understood, it appears to be seeking a spreadsheet for each of the Top 25 Contracts setting out the information in the subcategories. He went through the subcategories, and submitted that they were in a number of cases unclear and in many cases involved an assessment of expected or anticipated events in the future which would involve an element of evaluation or judgment.

19. Counsel also submitted that it had not been explained in a satisfactory or adequate way precisely why the information which was being sought was likely to be of any real material relevance to the questions which the court will have to decide at the sanction hearing. The background, he submitted, was that there is an obligation on the group to post cash collateral of some US $2 billion in March 2024, and there is no evidence of the group having anything like the liquidity to be able to meet that obligation. It is possible, he submits, that the information that has been sought is in broad terms of relevance to the financial condition of the group, but it has not been explained with any degree of detail how that is likely to be of real materiality to the matters in issue at the sanction hearing.

20. He submitted that it would not be right for the court now to require the Plan Company to compile further information of the kind sought in the subparagraphs. It would be an onerous task and, at most, may well be of tangential relevance.

21. He also made a general submission that it is for the Plan Company to persuade the court at the sanction hearing that it is fair and proper to sanction the Plan. It carries the burden at the hearing, and it has to take the risk that the court will conclude that there is material which should have been produced and has not been produced which means that the court is unable to be satisfied to the necessary standard that it is a proper case for the plan to be sanctioned or indeed that it is a case in which the jurisdictional requirements of the Act have been met.

22. He emphasised that the Plan Company was not saying that it would cease to answer requests for information or would cease to put into the data room new information of relevance, but he said that this was not a properly justified or articulated application.

23. On one specific point in relation to the WIP balances, he explained that it appeared that some further documents had been placed into the data room which bore on that and which related to periods after March 2023 but that, without further analysis, it was not entirely clear whether that related to each of the Top 25 projects.

24. In assessing the application there are some general points of context which should be borne in mind. These are restructuring proceedings which take place under Part 8 of the CPR. There is in this case, as I found in the convening hearing, a degree of urgency; and it is clear from the provisions of the statute which are contained in Part 26A of the Companies Act that this is a procedure designed to enable companies in financial distress or dire straits to propose to the court a restructuring plan. There is a statutory procedure for convening meetings and for a sanction hearing, but it appears to me to be part of the policy around the statute that such proceedings are available to companies in such financial distress.

25. Secondly, however, it is of course important that such proceedings are fair to all parties. This means that where there is an information imbalance (as there generally is in such cases), it is important that the Plan Company provides access to reasonable

amounts of information in order that opposing creditors are able properly to present their case. Such information must also be provided in good time.

26. Thirdly, in such proceedings, the court will approach them with a high degree of pragmatism. The rules about disclosure which relate to Part 7 claims obviously do not apply; and in deciding whether to give specific disclosure for the purposes of Part 8, the court will take into account a large number of factors including: the amount of information that has been provided, the likely materiality of the information to the real points that are likely to be in issue at the sanction hearing, the other sources of information that are available, and also questions of urgency and the availability of resources to deal with all aspects of the litigation.

27. Turning more specifically to this application, it appears to me to be of real importance that all of the information that has been provided to Grant Thornton has been placed in the data room and indeed, as the correspondence which I have referred to shows, a good deal of further information has also been placed in the data room. This is not, therefore, a case where one side's experts have been provided with documentary information which the others have been deprived of.

28. It also seems to me to be of some importance that the burden rests on the Plan Company to persuade the court at the sanction hearing that it has fulfilled the jurisdictional requirements of the Act and also that it is therefore appropriate to sanction the hearing. To some extent, it is a matter for the Plan Company to furnish the expert evidence that it relies upon and explain the information which has been provided to that expert. And if the court is not satisfied that proper information has been provided to the expert, that is something which may well affect its conclusions as to the appropriateness of sanctioning the scheme and whether the jurisdictional threshold has been met.

29. It also seems to me important that these kinds of proceedings are dealt with sensibly and proportionately, and that there is not excessive demand for more and more information. There is no doubt, in an ideal world, very little limit to the kinds of information that could be required in relation to the business of Plan Companies. But this is not a due diligence exercise in relation to the acquisition of a company or something of that kind. It is a set of proceedings directed towards particular issues which will have to be decided, and where the court and the parties are having to deal with it in a relatively truncated way, and where it is essential that they focus their attention on the real points which are likely to be material at the final hearing.

30. The next point is that I was not persuaded by counsel for the applicant that there was really a clear case as to how the information set out in Schedule 1 was material in that sense to the issues which are likely to be live at the sanction hearing.

31. I accept that Mr Hardie of HL has said that he would wish to have this information, and indeed he has confirmed himself that it is information that he requires. But it cannot be the case that where an expert says that he requires information, the court's hand is, as it were, tied. The court needs to be persuaded with real evidence that the information is not only of some relevance but, in a case of this kind, is really material. And there was no real attempt to explain, to my mind, why the information set out in paragraph 1 of Schedule 1 met that test of materiality. It may well be relevant in the general sense to a proper understanding of the financial position of the Plan Company. But in the end, the questions are going to be whether in this respect the Plan Company has made out its case about the relevant alternative. And as I say, that has to be seen in the context of the broader cash constraints and liquidity crunches which the Plan Company and the group are operating under.

32. It also seems to me that this is no longer really an application for disclosure of documents, in the light of the various assurances which have been given by the solicitors for the Plan Company. It is, in reality, an application for the production of further documents which contain the information which the group is seeking.

33. There was no real suggestion that the court did not have jurisdiction under the CPR to order the production of such information or such a document pursuant to rule 35.9. However, the Plan Company submitted - and I accept - that such an order is an unusual one.

34. It seems to me it is likely that it would be an onerous task to produce the information which is sought. It also appears to me that much of the information which is sought concerns forward-looking anticipated or expected matters which themselves would involve an element of judgment or evaluation, and that that is not likely to be readily available in the hands of the group companies.

35. It appears to me, in the circumstances of this case, that what is being sought goes beyond what is likely to be appropriate under rule 35.9. Moreover, the rule again is only likely to be exercised in circumstances where the court is satisfied that there is a significant imbalance of information between the parties. I have already explained that all of the information which has been provided by the Plan Company to its expert witnesses has been made available to the experts for the objecting or opposing creditors, and more. It does not appear to me that this is the kind of case of serious information imbalance where it is appropriate to make an order under rule 35.9.

36. For these reasons, I shall not make an order of the kind sought by the group.

37. The second application is made on behalf of Reficar to extend the timetable for the hearing of the sanction hearing. At the moment, the court has made available one day of pre-reading plus four days of hearing time to commence on 27 November 2023. The application is to extend that to two days pre-reading plus six days of hearing time. The court does not have any further time at all available in the November slot, but would at least be able to accommodate it in early February 2024.

38. I heard argument about the timing of the sanction hearing at the convening hearing, and I also heard argument about the length of the sanction hearing. In my judgment at the convening hearing, I concluded that the matter was one of urgency and needed to be addressed urgently, and I also concluded at that stage that a hearing of one day plus three days would be sufficient, albeit it emerged that same day that in fact an extra day was available. In particular, I dealt with these matters from paragraphs 70 to 75 of the convening judgment.

39. It is right to say however that I indicated in that judgment that the opposing creditors involving Reficar had had relatively little time to consider the large amount of information they had been provided with very shortly before the hearing.

40. I said in paragraph 51 that it seemed to me that the relevant parties had not had a great deal of time to digest the information, and they had certainly not had any opportunity to respond to it with evidence of their own. I also explained in paragraph 50 that there was a large body of evidence - including the Grant Thornton reports - that had been served only three days before the hearing, and that the material was extensive and complex. It was on that basis that I directed that essentially all matters would be open for argument at the sanction hearing, including questions of class constitution, but also other issues.

41. Counsel for Reficar says that this is a somewhat unusual restructuring plan in that there are various classes of creditor who are not going to be affected by it, including not only trade creditors but intercompany creditors, but also that the equity in the group which is largely owned by the senior creditors is not going to be affected. He says that the result is that if the restructuring goes through, his client (which is a creditor under an arbitration award for in the order of US $1 billion) will get virtually nothing and will get no share of the equity or other interest or stake in the group.

42. Counsel for Reficar submitted that this was a case in which the court could revisit the direction it gave as to the timing of the sanction hearing and, in particular, the timetable for that hearing. His clients were not actually pushing for the hearing to be adjourned as such, but were seeking more time for the hearing. But of course, in the light of the court's position, in fact, increasing the hearing timetable in the way suggested would have that consequence. But it was not a case where his client was actually pushing for an adjournment.

43. He submitted that the court had the power to revise the convening order, and that this arose under rule 3.1(7) of the CPR under the power to vary existing orders. (I will come back to that in a moment.)

44. He also submitted that the rules of natural justice apply to restructuring plans, a point which was touched on briefly by Snowden J in *Re Virgin Active Holdings Ltd (No 1)* [2021] EWHC 814 (Ch) when he said that there were requirements of procedural fairness in such cases.

45. He submitted that the court had to strike a balance between the urgency of the situation and fairness to members of the creditors who oppose the scheme or plan, as the case may be.

46. He submitted that the senior creditors had been in negotiation since December 2022 and that, if there was any urgency about the matter now, it was in part at least as a result of the timetable between then and the plan being launched in September 2023.

47. As to the change of circumstances, counsel for Reficar relied on a number of points: first, that it appeared that the group had been able to enter into new contracts since the convening hearing which he said called into question some of the evidence before the court at that hearing; second, that the supposed difficulties with the possibility of a run on the letters of credit issued by the group had been overstated because it turned out that most of the letters of credit were performance-based and depended on showing a breach of the underlying contract rather than on demand letters of credit; and thirdly, relied on some evidence that it seemed quite possible that the Dutch proceedings which are co-conditional with the current proceedings might well not be completed by the end of this year.

48. Counsel submitted that a real crunch point relied on by the Plan Company was the requirement of a cash collateralization of the letters of credit, which was only required to take place on 27 March 2024, and that there was no real urgency in the sense of some risk of imminent demise of the group before then.

49. Counsel also relied, in relation to the jurisdiction to vary the order made at the convening hearing, on the fact that he and his clients had had a much fuller opportunity to consider the evidence that had been granted then and to think about what were likely to be the issues in the case.

50. Counsel then went on to make submissions about the likely hearing timetable, and produced a draft timetable. This covered only submissions and the time taken to cross-examine the witnesses for the Plan Company, and did not include any time for cross-examination by other parties or for submissions to be made by the other opposing creditors.

51. Carrying out that exercise, counsel submitted that two-and-a-half days were required simply for the cross-examination of the Plan Company's witnesses, and that with shorter openings and a day of closing submissions, the full time had already been used up without any time for those other things which I have just mentioned. Moreover, counsel contended that the court, in a case of this kind, required two days pre-reading rather than one. If one then added in time for the cross-examination of Reficar's witnesses by the Plan Company's representatives and the time required for any cross-examination of any other witnesses relied on by the other parties and time for other parties to make submissions, it was likely that six days would be required for the hearing, and so, he submitted, even that would remain a fairly tight timetable.

52. Counsel submitted that carrying out the balancing exercise, fairness to his clients required a rather longer timetable than the existing one, that the real urgency was the collateralization deadline of 27 March 2024, and that there was no other evidence which justified pushing the parties into what would be an unfairly truncated timetable before that date.

53. Counsel for the Plan Company made some general submissions that there had been many restructuring cases and that none had a timetable of the kind now suggested being used or required by the court, and in such cases the court takes a pragmatic approach, balancing urgency against fairness. He submitted that if a longer timetable was imposed here, it would amount to the death warrant of Part 26A cases.

54. He submitted that there had been no relevant change of circumstances since the convening hearing, that the relevancy of the cash collateral in March 2024 had been before the court, the possibility of a "run on the bank" scenario had been before the court, the impact of the plan on business had been before the court, and the absence of new money had been before the court. There had been no material change since then.

55. As to the position concerning the letters of credit, he said that although it was right that they were not perhaps properly described as "on demand", nonetheless the clauses concerning breach in the underlying contracts were very broadly drawn to include such things as insolvency and material adverse change as default events, and that it was likely that holders of that credit group would only be able to rely on such events.

56. He also argued that the evidence showing that there had been new contracts since the date of the convening hearing could be explained on the basis that the Plan Company and the wider group were on a path to a restructuring, and that customer behaviour could be explained against that context.

57. As to the position in the Dutch courts, his client's Dutch lawyers had said that, as it stands, it was in their reasonable view still likely that the Dutch proceedings would be concluded before the end of this year.

58. He said that this was not a case where a gun had been held to the court's head, and that the Plan had been launched a number of months away from the ultimate payment default in March 2024.

59. He then said that the suggested timetable advanced by counsel for Reficar was unnecessarily exaggerated and that, in fact, the real questions in the case were likely to be more limited than was suggested. What was really going to matter as between his clients and Reficar was the identification of the relevant alternative, and that would depend on relatively short cross-examination both of the factual witnesses and the experts. The question of valuation evidence was likely to be relatively immaterial and brief, and evidence about the recognition of any plan under US law or in arbitration was again likely, in the light of authorities, to be comparatively brief. He contended that it was unlikely that the case would require more than four days. Indeed, he asserted it would not.

60. As to the question of urgency, he said that the company was continuing to labour under the shadow of insolvency; and in any case, leaving things until February of next year might run up against the problem of an appeal, as the ultimate counter-crunch would come at the end of March.

61. He submitted that it would not be necessary in practice for there to be prolonged cross-examination in relation to the various experts who Reficar was proposing to call. He submitted that the court in these kinds of cases should seek to avoid over-elaborate trials as the statute provided for a streamlined and workable restructuring process, and that to allow a longer trial would undermine that statutory policy. He said that there was no justification for moving the trial, that to do so would be a momentous change and that, on the facts, it was not justified.

62. I turn to my conclusions. The court does need to seek to strike a balance in cases of this kind. It should avoid unnecessarily elaborate trials, and must be astute to the possible tactic of opposing creditors turning cases of this kind into an over-elaborate procedure under which it would effectively become unworkable. The court is, of course, aware that often the background to these cases is a form of negotiation between groups of creditors of distressed businesses.

63. On the other hand, it seems to me that these kinds of cases are somewhat different in nature from traditional schemes of arrangement involving creditors where there is no cross-class cramdown power. The cramdown power introduced by section 26A represents a sea-change in restructurings, as it brings a sharper focus to the valuation of distressed businesses and the relevant alternative to the restructuring. It also brings firmly into play the question of how any restructuring surplus ought to be divided. That, no doubt, does not generally arise where the creditor is shown clearly to be out of the money; but it may well be relevant to the court deciding what is likely to happen in the relevant alternative. Here, one possibility suggested by counsel for Reficar was, as a relevant alternative, the equity holders would be unlikely to allow the companies to go into insolvent liquidation and thereby lose the entirety of their equity stake. It seems to me that these cases do represent a shift from plain vanilla Part 26 cases where the jurisdiction to sanction depends on all classes voting in favour of the scheme, and it also seems to me that the courts are having to recognise that cases of this kind may require longer hearings in order that the court can safely reach a conclusion.

64. On the facts of this case, the Plan Company is seeking effectively to write off the debt that is owed to Reficar, and it does seem to me that Reficar is entitled to put its case and to explore the case of the Plan Company fairly and fully.

65. The basis on which the court may consider now whether to increase the timetable for the sanction hearing is that it has significantly more information than it had at the convening hearing stage. There may well be cases where at the convening hearing the parties have been given sufficient advance notice of the material that they will be

taken to be in a position to make fully-informed submissions about the likely evidence that they are going to call and the issues which are likely to be live. In such cases, it seems to me that the court will be unsympathetic to the kind of application which has been made in this case. However, as I indicated earlier, it seems to me that the information and evidence was provided to Reficar only very shortly before the convening hearing, and I have sympathy with their position that they were not then in a fully-informed position to be able to make the kind of detailed submissions they now have about the trial timetable.

66. I also think, secondly, that there is some force in the point that they made about the letters of credit not all or even mainly being on demand instruments. That was certainly the impression that was given by the evidence, whereas now it appears the position is more nuanced.

67. I also think there is some force in the point made about the business being able to carry on attracting new contracts, whereas the court was given the impression at the convening hearing that that was very unlikely and, indeed, I was taken to a recent case where a contract had gone away because of uncertainty about the facilities.

68. However, as stated, the main basis on which the court is entitled to revisit the timetable here is the fact that the parties are now in a much better position to assess the length needed for the hearing. Generally, as a matter of case management, the court is able to reassess the length of a hearing. If it concludes that the available time for the hearing is too short, it can extend it, even if that does mean a shift in the hearing date. As I said, it is important that there is a procedural fairness in these cases, and fairness is obviously runs two-ways between the Plan Company (which naturally wants to proceed as soon as possible) and the opposing creditors (who will be affected by what is proposed).

69. It seems to me that the first consideration is whether there is a strong case of urgency. Although it seems to me that there is some urgency, the real point does appear to me to be the ultimate date for cash collateralization of 27 March 2024.

70. The second principal consideration is whether the current time estimate is sufficient. I have already noted the danger of opposing creditors exaggerating how much time is required for these cases, and I certainly would not want to signal that in most cases a longer time than four plus one days is required.

71. However, having very carefully considered the submissions of the parties, I am persuaded that this is a case where the court does need two days' pre-reading time. It does seem to me that it potentially raises some difficult issues which have not yet been explored in the cases. Some of these are issues of law which should not really arise so much between Reficar and the Plan Company, but will arise between the other parties. There are also, it seems to me, likely to be difficult questions on the factual and valuation and other expert evidence. It does seem to me that the existing timetable is rather too short fairly to deal with all of the matters. It does not seem to me that a day for all of the factual evidence and a day-and-a-half for all of the expert evidence is going to be sufficient.

72. I was taken to some comments made in the Court of Appeal in the *Adler* case. I do not pay too much attention to them, because they were comments in the course of argument. But I do note that in the judgment at first instance in that case, Leech J did draw attention to the difficulties of the court being asked to resolve valuation and other issues on expert evidence without a proper opportunity for those issues to be fully explored or for submissions fully to be made on them.

73. For these reasons, I have concluded that I should accede to the application to increase the timetable for the sanction hearing. I do so somewhat reluctantly, as it involves a shift to February. But it seems to me that this is a case where the balance between urgency on the one hand and procedural fairness on the other requires that to take place.

(This Judgment has been approved by Mr Justice Miles.)

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