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Case No: CR-2024-000876

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

Rolls Building
7 Rolls Building
Fetter Lane
London EC4A 1NL

Monday, 18 March 2024

BEFORE:

MR JUSTICE ADAM JOHNSON

IN THE MATTER OF

ARVOS BIDCO S.A.R.L

Applicant

REPRESENTATION Tom Smith KC and Oliver Hyams instructed by Kirkland & Ellis International LLP represented the Company, Arvos BidCo S.à.r.l.

APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

1. MR JUSTICE ADAM JOHNSON: This is an application by Arvos BidCo S.à.r.l ("*the Company*") for an Order sanctioning a scheme of arrangement under Part 26 of the Companies Act 2006.

2. The Company is incorporated in Luxembourg. It forms part of a group of companies, ("*the Group*") involved in the marketing of heat exchanging solutions. The Group benefits from certain loan facilities under a Credit Agreement dated 29 August 2014 (as later varied). The Lenders under the Credit Agreement are the present Scheme Creditors. The Credit Agreement is governed by English law and contains a jurisdiction agreement conferring exclusive jurisdiction on the English Courts.

3. The relevant facilities are (1) a revolving credit facility ("*the RCF*"); (2) the letter of credit facility ("*the LC Facility*") and associated ancillary facilities ("*the Ancillary Facilities*"); and (3) term loan B facilities due for repayment on 29 August 2024 ("*the TLB Facilities*"). The overall indebtedness under the various Facilities is presently €532 million.

4. The Scheme with which I am concerned is part of a wider intended restructuring of the Group.

5. The essential features of the Scheme for present purposes involve the Group's owner and its affiliates introducing €40 million of new capital into the Group. As regards the Scheme Creditors, the commitments under the RCF and the LC Facility/Ancillary Facilities will be amended and restated but without any reduction in existing commitments (though with extended maturity dates). The Lenders under the TLB Facilities are more materially affected. They will waive approximately €179 million of debt. That will leave approximately €235 million outstanding under the TLB Facilities. Of that amount, €30 million will be hived up to become debt of a new holding company and the remaining €205 million will be restated on amended terms. Of that €205 million, €30 million will be repaid immediately and the maturity date of the remainder will be restated as 29 August 2027. Meanwhile the Lenders under the TLB Facilities will acquire equity, namely Class B Ordinary Shares representing 45 per cent of the Ordinary Shares in the new holding company.

6. If the Scheme and the wider restructuring are not implemented, the Group considers it will be unable fully to repay or refinance its liabilities under the various Facilities by their current maturity dates. In that event, the prediction is an accelerated sale of the Group which is estimated to be at a substantial discount of 30 to 60 per cent of the going concern valuation with significant knock on consequences for the returns to the Scheme Creditors.

7. At a convening hearing, Meade J accepted the submission that given their differing positions there should be two creditor classes, namely (1) creditors under the RCF and the Ancillary Facilities; and (2) the creditors under the TLB Facilities. That seems to me to have been an entirely correct assessment and I see no reason to question it at this stage.

8. I now turn to the present sanction application and address the usual issues.

9. First, the question arises whether the statutory requirements have been complied with. I am satisfied that they have. Meetings have been duly convened and held in accordance with the terms of the convening Order made by Meade J, including his directions as to class composition, which I have already endorsed. I am satisfied that the relevant statutory majorities were achieved, and indeed they were met comfortably. Taking the two relevant classes in turn, 100 per cent of the creditors under the RCF/Ancillary Facilities were present via proxy and 100 per cent in value voted in favour of the Scheme. As to the TLB Facilities, the turnout was again in effect 100 per cent via proxy, with 89.15 per cent voting in favour and the remainder abstaining for constitutional reasons which inhibited their ability positively to vote in favour of the Scheme.

10. The second question is whether each of the classes was fairly represented and whether the majorities acted in a bona fide manner. It follows from what I have said already that there was full representation in effect of each class at the Scheme meetings and there is nothing to suggest that the majorities were acting otherwise than in a bona fide and rational manner.

11. The third question is whether, in respect of each class, the Scheme is one that an intelligent and honest man acting in respect of his own interests might reasonably approve of. I think the answer is plainly yes because the terms of the Scheme make good commercial sense. So far as the creditors under the RCF and Ancillary Facilities are concerned, their positions are largely unaffected. Turning to the creditors under the TLB Facilities, their position is materially affected but they have obviously made an informed and rational commercial assessment that the outcome is an improvement on the outcome they would anticipate in the event of a default and an accelerated sale of the Group. There is no good reason for the Court to look behind the strong evidence of rationality, implicit in the voting patterns at both Scheme meetings.

12. The fourth and final question is whether there is any blot or other defect in the Scheme. I think not. The fact that the various liabilities sought to be compromised are governed by English law justifies the English Court exercising its jurisdiction in the international sense. Universally recognised principles of private international law should result in the compromise being recognised and given effect internationally. In any event, the Company has obtained opinions on that point from lawyers in those jurisdictions likely to be relevant, namely Germany, Luxembourg, Japan and the United States.

13. My overall conclusion, therefore, is that the Scheme should be sanctioned and I will make the Order sought by the Company accordingly.

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 judgment has been approved by the judge)