Case No: CR-2019-007449
Neutral Citation Number: [2019] EWHC 3391 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
COMPANIES LIST (Ch D)

Royal Courts of Justice
Rolls Building
Fetter Lane
London
EC4A 1NL

BEFORE:

MR JUSTICE MORGAN

BETWEEN:

SEVEN ENERGY INTERNATIONAL LIMITED **CLAIMANT**

Legal Representation
Mr Mark Arnold QC and Mr Adam Goodison on behalf of the Claimant

Other Parties Present and their status
None known

Judgment

Judgment date: 13 November 2019
Transcribed from 12:11:12 until 12:29:36

Reporting Restrictions Applied: No

Number of folios in transcript 30
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Mr Justice Morgan:

1. This is an administration application in relation to a company, Seven Energy International Limited. The application is made by the directors of the company under paragraph 12(1)(b) of schedule B1 to the Insolvency Act 1986. The application is supported by two witness statements from a Mr Thomas, who is a director of the company, and his first witness statement refers to a substantial exhibit.

2. At this hearing, the directors as applicants have been represented by Mr Arnold QC and Mr Goodison. They have prepared a detailed skeleton argument and I have been taken in detail and with care through the various issues to which this application gives rise.

3. I am satisfied that the application has been served in accordance with the rules. I am also satisfied that the centre of main interests of the company is in England and Wales. That matter is dealt with in some detail, referring to the relevant supporting evidence between paragraphs 96 and 108 of the first witness statement of Mr Thomas.

4. The next matter is that I must be satisfied that the company is, or is likely to become, unable to pay its debts in accordance with paragraph 11(a) of schedule B1. The financial position of the company is dealt with in detail between paragraphs 12 and 37 of the witness statement of Mr Thomas.

5. The financial position is a relatively complex and detailed one, but the overall assessment of the position is not complicated. It is dealt with at paragraphs 38 to 42 of that witness statement, the conclusion supported by the evidence, and my finding, is that the company is cash flow and balance sheet insolvent.

6. The next matter I need to consider, under paragraph 11(b) of schedule B1, is whether an administration order is reasonably likely to achieve the purpose of an administration. That takes one to paragraph 3 of schedule B1 and the purpose on which the focus of the argument has centred is the purpose of achieving a better result for the company's creditors as a whole than would be likely if the company were wound up without first being in administration. That matter is dealt with, again, in very considerable detail, in paragraphs 80 to 89 of the first witness statement of Mr Thomas and I am satisfied that, if the proposed restructuring goes through, then the result for the company's creditors as a whole will be better than the alternatives and certainly it is likely it would be better than if the company were wound up without first being in administration.

7. So far, everything points to my making an administration order. However, there are two features of the facts of this case to which I need to refer. The first is that this company, being incorporated in Mauritius, is, as I understand it, subject to the Mauritian Companies Act 2001, in particular section 130. That section provides that a company may not enter into a major transaction without the approval of a certain majority of shareholders. If this company is placed in administration, it will, through its administrator, intend to enter into a transaction within section 130 and it may be it will not obtain the requisite majority of shareholders. Does that mean that making an administration order will not achieve the desired object because the company will simply not be able to implement the proposed restructuring by reason of section 130 of the Mauritian statute?

8. The company has had advice on that matter from a Mauritian lawyer and I have a letter of advice from the lawyer dated October 2019. The lawyer points out, and it is clear, that there is not an exception to section 130, dealing with a case where a company is insolvent and, as in the present case, the shareholders will not receive any return, whether on an administration or a liquidation or in any other foreseeable circumstances.

9. The letter of advice does not say in terms that section 130 will not be a barrier to the proposed restructuring. Instead, it says there are arguments that section 130 would not apply in the circumstances of the present case. I am happy to accept the advice that there would be arguments but I am not being told that, under Mauritian law, the position is clear.

10. Therefore, I have to consider what might happen. It is not for me to decide what is the effect of the Mauritian statute. I have to decide, really, a different question, the statutory question posed by paragraph 11(b) of schedule B1 to the Insolvency Act 1986, namely is it reasonably likely that an administration order will achieve the purpose of administration, and one can translate that, on the facts of this case, into a question, is it reasonably likely that the administrator will be able to implement the restructuring and will not be stopped in his tracks by an application to the Mauritian court, relying on section 130 of the Mauritian statute.

11. I am guided by the decision in *Re Harris Simons Construction Ltd* [1989] 1 WLR 368 to interpret the statutory provision I am applying as asking whether there is a reasonable prospect that the administrator will be able to implement the restructuring.

12. Section 130 of the Mauritian statute will only be a problem if a shareholder goes to the Mauritian court and seeks to rely upon it to prevent the restructuring going ahead. As it happens, I have some information about the likely attitude and the likely conduct of the shareholders in the company. In the past, they have not been prepared to agree to the restructuring. They have threatened legal proceedings but they have not brought legal proceedings. They are aware of the terms of the proposed restructuring. As I understand it, they have been fully informed as to what is involved.

13. They have been notified of this hearing, even if it is the case they did not have to be formally served. They have been given the evidence which is before me. They are represented by solicitors, they have not attended the hearing, they have not raised this point about section 130 of the Mauritian statute, even though they can see from the evidence that the company and its directors have raised the point.

14. There does not appear to be any real advantage to the shareholders of blocking the restructuring any further. They will not, as I have explained, benefit in any likely sequence of events. They would have to, therefore, use whatever rights they arguably have under section 130 to go to the Mauritian court to obtain an injunction, which injunction would give them a bargaining position which might, they would hope, lead to some form of improvement by agreement in their position.

15. Given that the question before me is whether I am satisfied that there is a real prospect that the restructuring can be implemented, I am so satisfied. It is very far from clear that the shareholders will take action in reliance on section 130 and it is very far from clear that they would succeed if they were to take that action, so notwithstanding the existence of section 130 and the scope for argument as to how it applies, I am not

deterred from reaching the conclusion that I have expressed about the real prospect of the restructuring going ahead.

16. Very similar points arise in relation to another suggested restriction on the future conduct of the company. I have been shown an agreement which is described as the amended and restated consolidated securityholders' agreement. Clause 7 of that agreement imposes certain restrictions on the company.

17. Clause 7.1(a)(ii) refers to part 2 of schedule 5; the restriction operates unless otherwise agreed in writing by a qualified securityholders' majority. I will assume, for the sake of argument, that that agreement in writing by the requisite majority will not be forthcoming so I go to part 2 of schedule 5 and to the restrictions.

18. There are two relevant restrictions, they are in paragraph 1.2. Taking them in reverse order the first is in paragraph K and the second is in paragraph H. Paragraph K is a restriction on the company without a requisite consent entering into a certain agreement. As I understand it, and I will proceed on this basis, the restructuring will involve the company entering into an agreement within paragraph K, so that is something the company has agreed it will not do and the general restructuring depends upon it doing it.

19. Again, I have to consider the reality of any prospect or threat that the qualifying security holders will seek to enforce their rights under paragraph K and, if they were to seek to enforce their rights, whether they would obtain an injunction to prevent the restructuring going ahead. This contract is governed by English law and I can therefore ask myself what an English court would do if such an injunction were sought.

20. On the material before me, the securityholders would not be able to show that they had any interest which required protection by an injunction restraining the entry into an agreement. I will consider the possibility of the securityholders seeking a final injunction rather than an interim injunction. They may not seek an interim injunction because of the requisite undertaking in damages that would be the typical price for such relief, but putting that on one side and dealing only with the prospect of a final injunction, I consider that a court may very well take the view that it would not be prepared to grant an injunction which does not protect any pre-existing legitimate interest but is being sought in order to obtain a bargaining position which would not otherwise exist. As regards the remedy of damages, on the material before me, the damages would be nominal.

21. Having reached those conclusions, I can deal with paragraph H rather more shortly. There was extensive exploration at the hearing as to whether this application for the making of an administration order would place the company in breach of paragraph H. I will assume, for the sake of the argument, that it would place the company in breach of paragraph H but the same points that I have already identified as to the non-availability of a remedy to the securityholders would apply in such a case.

22. I can now return to the question which I must answer: is there a real prospect of the restructuring being implemented. I conclude that there is a real prospect of that happening. That means that I am satisfied as to the matter in paragraph 11(b) of schedule B1. I then have a discretion, under paragraph 13 of schedule B1 as to what I should do.

23. I consider that the arguments as to discretion are all one way and that the right order for the Court to make is an administration order as sought. Accordingly, I have made such an order which will take effect from 12 noon today.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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