IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT
OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
[2022] EWHC 1667 (Ch)

No. CR-2022-000953

Rolls Building
Fetter Lane
London, EC4A 1NL

Monday, 4 April 2022

IN THE MATTTER OF THE COMPANIES ACT 2006

AND IN THE MATTER OF A COMPANY

Before:

THE HONOURABLE MR JUSTICE MARCUS SMITH

PETROSERV MARINE INC. — Applicant

MR D. BAYFIELD QC and MR PERKINS appeared on behalf of the Scheme Company.

MR GRIFFITHS appeared on behalf of Labrador Marine Corporation.

A P P R O V E D R U L I N G

MR JUSTICE MARCUS SMITH:

1 I have before me an application for a convening hearing in respect of a Scheme of Arrangement proposed by Petroserv Marine (the "Company") pursuant to Part 26 of the Companies Act 2006. I am not going to read into the record very much of the extremely helpful written submissions that I received from the Company. They can stand as read. I am going to deal with four matters which I think it is appropriate, at this convening hearing, briefly to address.

2 The first of these is the question of the non-participation in the Scheme of Labrador Marine Corporation. I simply raise that to put on the record that I have probed in some depth – I hope appropriately – the Company's stance in relation to Labrador Marine Corporation. I have done so in the spirit of identifying and, if possible, smoothing out, potential roadblocks for the future in relation to the Scheme, whose approval will in due course be sought, if the appropriate majorities are obtained.

3 I have also before me, in addition to counsel for the Company, counsel for Labrador Marine Corporation, Mr Griffiths, who has listened to the exchanges between myself and counsel for the Company. I think that one can take it that the issues regarding Labrador Marine have been fully aired. It is not a matter for today – emphatically it is not – and I simply wish to have the fact that this point has been fully aired before me today put on the record. I say nothing more about that.

4 The second topic I am briefly going to cover is the extent of notice that has been given of the convening hearing. I am not going to say anything about what the default period should or should not be. It seems to me that that is a matter which is acutely subject-matter and fact dependent.

5 In this case 20 days' notice has been given, which I consider to be, in the circumstances of this case, entirely appropriate. It is certainly well above the minimum that one would require. What is more, there is a degree of urgency in ensuring that this issue is resolved. This is not a case where a relaxed approach can be taken to either convening the meeting or to sanctioning the Scheme. There is an urgent need for the Company's business to be restructured and, unless the restructuring takes place quickly, then all of the benefits of it will be lost.

6 What is more, in addition to the urgency, this is not a complicated scheme to understand. True it is that the variations to the various documents in place are considerable – there is a lot of red lining – but at the end of the day this is simply the insertion of a top-tier level of lending over and above the existing tranches in order to enable the Company and its group companies to continue in business.

7 The persons involved are – in addition to the four classes to which I am going to come – Labrador Marine Corporation. They are all well able to understand the implications of the proposed scheme and have had, as I say, ample time in which to consider it. It seems to me that this is certainly a case where sufficient notice has been given.

8 I turn then to the third of the four topics that I am going to briefly address in this ruling: that is the question of jurisdiction and I can deal with that extremely briefly.

9 There are two matters on which I need to be satisfied. The first is this: I need to be satisfied that the Company is a company as defined within Part 26 of the Companies Act 2006. As to

this, I am satisfied that that is the case. In this case, the Company is clearly a company liable to be wound up under the Insolvency Act 1986. It is not a company incorporated in England. It is a company incorporated in the BVI and, as such, is liable to be wound up under the Insolvency Act 1986 in the circumstances set out in Mr Bayfield's written submissions. There may be a question as to whether there is a sufficient connection with this jurisdiction. That is not a jurisdictional question. It is a matter for discretion and so I am not going to address that point any further.

10 The second question going to jurisdiction is whether the Scheme is a compromise or arrangement between the Company and the lenders. Having been taken through the terms of the proposed scheme, there is no doubt in my mind that that jurisdiction requirement is satisfied in this case.

11 I am, therefore, entirely satisfied that I have jurisdiction to make the convening order that I am being invited to make.

12 I turn then to the question of class composition, which is the fourth and final matter that i address. I have already articulated the issue regarding Labrador Marine Corporation. Labrador Marine Corporation is not part of any of the classes that are being proposed. Four classes are being proposed which, essentially, track the seniority of the tranches of lender or borrowing that exists in this case. Those four tranches are, for convenience, labelled Tranches A through D. Given that the rights of the lenders in each of the four tranches are going to be the same, what is the natural composition of the classes in this case? It would be unusual to have either a single class comprising all four classes or a multitude of classes going beyond the four tranches. Mr Bayfield did, however, take me through, entirely rightly, the options. It is quite clear that a single class is a non-starter. That is because the interests of the lenders differ according to whether there is a scheme approved or a liquidation. The fact is that their recoveries, entirely unsurprisingly, are different, according to all the circumstances. That, therefore, seems to me to preclude any designation of a class comprising a single class.

13 I can see absolutely no justification – and several major disadvantages – in fragmenting the classes beyond the four classes of lenders that exist. Their rights are essentially the same. Their interests may – I am not sure they are, in fact – may be different, but that is not a matter that should go to the informing of the class composition. It, therefore, seems to me that the classes that are proposed to me, namely, four classes, allocated according to lender and tranche, is the right way to go and that is the broad form of order that I am minded to make on this occasion. I will now consider the detail of that order with Mr Bayfield.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.