Neutral Citation Number: **[2023] EWHC 2192 (Ch)**

Case No: **CR-2023-004084**

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

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

Date: **29 August 2023**

Before :

Mr Justice Trower

- -

Between :

IN THE MATTER OF HAYA HOLDCO 2 PLC
- and -
IN THE MATTER OF THE COMPANIES ACT 2006

- -
- -

David Allison KC and Ryan Perkins (instructed by **Milbank LLP**) for the **Claimant**

Hearing date: **29 August 2023**

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APPROVED RULING

Mr Justice Trower **Tuesday, 29 August 2023**
(**10:56** am)

Ruling by **MR JUSTICE TROWER**

1. This is an application to sanction a scheme of arrangement proposed by Haya Holdco 2 Plc under Part 26 of the Companies Act 2006.
2. The scheme company is incorporated in England and is an intermediate company in the Haya group. The business of the entities of the Group of which the scheme company forms part are largely based in Spain and comprise management services in relation to distressed assets. The evidence is that the Group suffered severely from the COVID-19 pandemic and the loss of substantial bank clients, leading to a drop in its revenue from some €294 million to some €180 million between 2019 and 2022.
3. These difficulties led to an earlier scheme of arrangement which was sanctioned by this court in June 2022 pursuant to which the company agreed to commence a process of selling its assets. That has now resulted in an offer from a third party, which I shall call Intrum, to purchase the shares in the group's principal operating subsidiary, Haya Real Estate SAU, for cash consideration. The purpose of this scheme is to introduce a mechanism for distributing the sale proceeds amongst the noteholders whose notes would fall due for payment in November 2025. These notes were issued under the terms of the 2022 scheme in exchange for the notes then existing.
4. The scheme creditors are therefore the holders of the notes issued as a result of the 2022 scheme. Those noteholders are the only secured creditors of the Group. The amount now outstanding is somewhere in the region of €349 million.
5. The sale process commenced a few months after the 2022 scheme had been sanctioned. It was run by Deutsche Bank and culminated in an offer from Intrum under which, after some negotiation, will acquire the shares in HRE for €136 million. This includes an element of deferred consideration which will become payable depending on the resolution of certain

contingencies. The outcome of this process is consistent with the continuing difficulties with which the Group is faced and the fact that the existing notes have ratings of CC and Ca from S&P and Moody's respectively and are trading at a significant discount to their face value.

6. Once it had become apparent to the company's directors that the sale proceeds would not be sufficient to pay off the 2022 notes in full, the Group's advisors, Deutsche Bank and PJT Partners, began the process of communicating with noteholders, which led to a lockup agreement. This made provision for the acceding noteholders to support a restructuring of their notes on the terms now proposed by the current scheme. At the outset, 86.36% of the noteholders acceded to the lockup agreement. Thereafter, by the time of the convening hearing, that figure had increased to just short of 95%.
7. Shortly thereafter, the governing law of the 2022 notes was changed from New York law to English law in accordance with their terms. The scheme company has adduced expert evidence from Mr Daniel Glosband which has satisfied me that the change of law was effective under New York law.
8. The terms of the scheme are relatively straightforward. They provide for a partial redemption amount and a deferred consideration to be distributed to scheme creditors on completion of the sale. The distribution of the deferred consideration will be effected by the issue of deferred consideration instruments. In return, the scheme creditors' claims under the 2022 notes will be released, as will any claims against third parties, including the ad hoc group and various advisors.
9. I have been shown the terms of the releases during the course of this hearing by Mr David Allison KC, who appears for the company. I am satisfied that there is a proper basis for including such releases, the juridical basis of which was explained by Marcus Smith J in the convening judgment he handed down in relation to the 2022 scheme.

10. The convening order was made by Richard Smith J on 28 July 2023 and the meeting in respect of which he gave directions was held on 22 August 2023. The result of the voting at the meeting was overwhelmingly in favour of approving the scheme. It was attended by some 115 scheme creditors in person or by proxy, representing 98.16% of the outstanding notes. 113 of those creditors voted in favour of the scheme, one abstained and one voted against, a majority in favour of 99.89% by value and 99.12% by number.

11. The court's function at the sanction hearing has been discussed on numerous occasions and was summarised by Snowden J in *Re KCA Deutag UK Finance PLC* [2020] EWHC 2977 (Ch) at [16]. He said:

> "The relevant questions for the court at the sanction hearing can therefore be summarised as follows:
>
> i) Has there been compliance with the statutory requirements?
>
> ii) Was the class fairly represented and did the majority act in a bona fide manner and for proper purposes when voting at the class meeting?
>
> iii) Is the scheme one that an intelligent and honest man, acting in respect of his interests, might reasonably approve?
>
> iv) Is there some other 'blot' or defect in the scheme?
>
> In the case of a scheme with international elements there is also the question of whether the court will be acting in vain if it sanctions the scheme. This requires some consideration of whether the scheme will be recognised and given effect in other relevant jurisdictions."

12. As to (i), compliance with the statutory requirements, the company is incorporated in England, which means that no further connection to this jurisdiction is required.

13. The statutory majorities were obviously achieved and the evidence shows that scheme meetings were held in accordance with the terms of the order. There were some very minor amendments made to the scheme between the time of the convening hearing and the time of the scheme

meetings. I am satisfied that those amendments were, in the light of their nature, adequately drawn to the attention of scheme creditors prior to the meeting.

14. As to classes, their constitution was considered at the convening hearing by Richard Smith J and he directed a single meeting after considering the matter in some detail. In light of the approach reflected in the decision of Snowden J in *Re Global Garden Products Italy SpA* [2017] BCC 637 (Ch) at [43], and in the absence of any opposition, I shall not reconsider that matter at this hearing.

15. As to fair representation and bona fides, the turnout (both of creditors who were and creditors who were not members of the ad hoc group), was very high. There were no other indications that any creditors acted other than bona fide. I am satisfied that this element of the statutory test has been met.

16. As to whether the scheme creditors could reasonably approve the scheme, it is well established that the creditors are better judges of what is to their commercial advantage than the court can be. There is nothing in the present case which points against that principle being applied. The support was overwhelming, and the evidence justifies a conclusion that the creditors will receive significantly more than they would if the scheme is not approved. If it is not approved, the sale to Intrum will not complete anyway on present terms and the likelihood is that the company will go into liquidation, in which context a much smaller dividend would be paid.

17. Two further points were drawn to my attention by Mr Allison KC and Mr Perkins, both of which were considered by Richard Smith J in considering class constitution. The first relates to the payment of an early bird fee of 1% and a consent fee of 0.5% to creditors acceding to the lockup agreement. Both fees were designed in slightly different ways to secure early support for the scheme. Richard Smith J accepted that these payments did not give rise to class issues. I agree with the submission that these payments are neither unusual nor unfair.

18. The second is the payment of €450,000 to each of the two members of the ad hoc group of creditors. This payment was made as a risk fee, compensating them for the consequences of restricting their ability to trade notes in the light of any insider information they would or might receive as members of the committee. I agree that there is nothing unfair about this fee. Like the early bird fee and the consent fee, they were paid for a specific purpose relating to the preparation of the scheme and were properly disclosed to scheme creditors. In my view, they are unlikely to have had any material influence on the decision of the receiving creditors to vote in favour of the scheme. They do not have any adverse impact on its fairness.
19. Finally, I am satisfied that there is no reason to consider that the scheme will not be effective. The evidence supports the fact that the change in governing law of the 2022 notes was effective under New York law, the law by which they were originally governed. The consequence is that the release of the noteholders' claims given effect by the scheme will be recognised by New York law. There is also evidence which I have seen and read which satisfies me as to the probable effectiveness of the scheme in accordance with Spanish law.
20. There is no reason to consider that this scheme will not be effective in accordance with its terms. I do not think that there is any blot on the scheme, and, in those circumstances, I will make the order sought.