

Neutral Citation Number: [2023] EWHC 2193 (Ch)

Case No: CR-2023-001437

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

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

Date: 25 August 2023

Before :

Mr Justice Trower

IN THE MATTER OF CIMOLAI SPA
AND IN THE MATTER OF LUIGI CIMOLAIU HOLDING SPA
AND IN THE MATTER OF THE COMPANIES ACT 2006

Adam Al-Attar and Lottie Pyper (instructed by Kirkland & Ellis International LLP) for
CIMOLAI

Hearing date: 25th August 2023

APPROVED JUDGMENT

Mr Justice Trower
(11:37 am)

Friday, 25 August 2023

Judgment by **MR JUSTICE TROWER**

1. This is an application by two Italian companies, Cimolai SpA and Luigi Cimolai Holdings Company ("LCH") (together "the Plan Companies") for orders sanctioning a restructuring plan pursuant to Part 26A of the Companies Act 2006.
2. The creditors' meetings for which the convening order made provision were held in London on 16 August 2023. I shall summarise the outcome of those meetings a little later in this judgment.
3. The Plan Companies are the principal operating company and the holding company of the Cimolai Group. The Group is wholly owned by a member of the Cimolai family and carries on a substantial global business as the designer and manufacturer of complex steel structures. It operates in 58 countries around the world. The businesses of the Group are based in and managed from Italy, with headquarters in Porcia.
4. In the judgment I delivered at the conclusion of the convening hearing held on 14 July 2023 (see [2023] EWHC 1819 (Ch)), I explained in outline the background to the Group's financial difficulties. In circumstances in which (a) the creditor support for the restructuring plans has been very substantial, (b) the explanatory statement gave detailed descriptions of what occurred and (c) no creditor attends to oppose the grant of the relief sought by the Plan Companies, it is not necessary for me to repeat that explanation in this judgment.
5. It suffices to say that the principal cause of the Group's difficulties is the Plan Companies' exposure under a number of foreign exchange derivative contracts, the majority of which are governed by English law and many of which are the subject of legal proceedings in England. It is the Plan Companies' case that they and the many hundreds of transactions under them were entered into without authority by two former employees.
6. On 24 October 2022, the Court of Trieste commenced Concordato proceedings against both Plan Companies, appointed a judicial commissioner and granted a stay preventing creditors from

commencing or continuing enforcement action against their assets. On 29 December 2022, Fancourt J sitting in this court made an interim order under the Cross-Border Insolvency Regulations (“CBIR”) recognising the Concordato proceedings in England, relief which was made final by an order of Rajah J dated 19 April 2023.

7. For a period there was, but no longer is, a CBIR stay of English proceedings. The grant of the final relief by Rajah J does not of itself operate as a stay and on the present state of the law, it is improbable that one would be granted as a means of circumventing the rule in *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux* [1890] 25 QBD 399.
8. The purpose of the restructuring plans is to implement the same arrangement under English law as is proposed by the Concordato proposals under Italian law. It does so in circumstances in which many of the creditors who have claims under the English law derivative contracts have declined to submit to the jurisdiction of the Court of Trieste or otherwise to participate in the Concordato proceedings in Italy.
9. The current state of play in the Concordato proceedings is that the proposals have been approved by 88.829% of creditors whose claims have been admitted to vote, with a total value of just in excess of €470 million. There is a hearing in the Court of Trieste scheduled for 12 September 2023 at which it is anticipated that the Concordato proposals will be approved, although nothing, of course, is certain. Although one class of creditor in those proceedings voted to reject the proposals, the evidence is that the Italian court has jurisdiction to sanction the proposals notwithstanding that rejection, and I am satisfied that there is a real prospect that that will happen.
10. The consequence of the fact that many of the derivative contracts are governed by English law and the refusal of the Plan Companies' counterparties under them to submit to the jurisdiction of the Court of Trieste, is that their rights may not be effectively compromised simply by the Concordato proceedings. In the convening judgment, I expressed the view that the desirability

of rendering the restructuring as a whole effective in as many jurisdictions as practicable provided rational grounds for the Plan Companies to conclude that a parallel English restructuring plan is an appropriate process to be undertaken in conjunction with the Concordato proposals. A parallel structure of this type was alluded to and discussed in the decision of the Court of Appeal in *Re OJSC International Bank of Azerbaijan v Sberbank of Russia* [2018] EWCA Civ 2802 at [88] per Henderson LJ. I remain of that view.

11. I gave details of the key features of the restructuring plan in the convening judgment. The core point is that the Group will continue to trade with a sustainable restructured debt profile. The secured creditors will be repaid the secured portion of their claims in full, while Cimolai will be responsible for paying a portion of its cashflow to satisfy the remaining liabilities to Plan Creditors at percentage rates which vary between classes. There is a shareholder commitment to increase the Group's capital and make an additional contribution of in excess of €5 million. Each creditor will also receive an equity instrument called the upside SFP which entitles them to a further 15% on their claims from future cashflow.
12. Creditors are excluded from the plans if and to the extent that they are excluded from the Concordato proposals. It seems to me that there are good commercial reasons based on the need for consistency between the English and the Italian proceedings for these exclusions to be adopted. The test to be applied on the issue of exclusion in accordance with the decision of the Court of Appeal in *Re Garuda* is therefore satisfied.
13. As I explained in the convening judgment, the mechanism for giving effect to the restructuring plans is to give effect to the Concordato proposals as from the time of their sanction by the Court of Trieste. They also provide for powers of attorney to execute the necessary documents for the release of claims and for a stay of proceedings.
14. The evidence establishes that if the restructuring plans and the Concordato proposals are sanctioned so that the restructuring as a whole can proceed, unsecured creditors will receive

greater amounts than they would receive in an Italian liquidation. In the case of Cimolai, the difference is highly material because the comparison would be a nil return as against up to 30 cents in the euro. In the case of LCH, it is a differential increase of approximately 3.5 cents in the euro in the event that the restructuring proceeds.

15. In *Re Noble Group Ltd* [2018] EWHC 3092 (Ch) at [17], Snowden J summarised the correct approach to an application to sanction a scheme under Part 26 of the Companies Act 2006, an approach which is said by Zacaroli J in *Re Houst Ltd* [2022] BCC 1143 at [24] to be applicable, albeit for some refinements to which I shall come, to an application to sanction a restructuring plan under Part 26A.
16. The relevant principles were then reiterated by Snowden J in *Re KCA Deutag UK Finance PLC* [2020] EWHC 2977 (Ch) at [16] as follows:

"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."

17. As to compliance with the terms of the statute, the first issue is whether the company concerned is a company within the meaning of section 901A(4). For that purpose, it must be a company liable to be wound up under the Insolvency Act 1986.

18. In my convening judgment, I explained why I was satisfied that both of the Plan Companies fell within that definition. I also explained why I was satisfied on the evidence then available that they both have a sufficient connection to England and Wales so as to satisfy the criteria discussed by Lawrence Collins J in *Re Drax Holdings Ltd* [2004] 1 WLR 1049 at [22f], by David Richards J in *Re Magyar Telecom BV* [2015] 1 BCLC 418 at [15], and by Snowden LJ in *Re Smile Telecoms* [2022] BCC 808 at [61].
19. Having regard in particular to the fact that the restructuring plans are designed to reorganise English law debt and are facilitating the effectiveness of a restructuring, the focus of which is in Italy, the provisional conclusion I then expressed is one which I maintain.
20. The next question is whether conditions A and B in section 901A are met in relation to the Plan Companies. These are the two threshold conditions without which Part 26 does not apply at all. In broad terms, I am satisfied that the evidence is the same as it was at the convening hearing.
21. Both Plan Companies have encountered financial difficulties that are affecting their ability to carry on business as going concerns. The evidence is that their exposure to the derivative contracts have already caused the Plan Companies serious cashflow difficulties and that if they were required to pay the amounts claimed in full, both would enter formal liquidation proceedings in Italy. Even in circumstances in which the Concordato proposals are approved, the difficulties continue to subsist until such time as the English law claims are compromised in an effective manner. Until then, their size and substance is such that their enforceability in an uncompromised form will continue to cause them financial difficulties which threaten their ability to continue as a going concern.
22. In reaching that conclusion, I bear in mind the evidence that on 15 August 2023, which was the day before the Plan meetings were held, JB Drax had agreed that it does not have any claims against either of the Plan Companies, an agreement which was in the process of being approved by the Court of Trieste. This is a significant development because JB Drax had claimed to be a

creditor of both Plan Companies with claims under English law derivative contracts in respect of which it had been placed in its own class for voting purposes on both restructuring plans. It was also to be treated differently from the other derivative contract creditors in respects I shall mention a little later. I am satisfied based on the evidence and the submissions that have been made at the hearing today that even though JB Drax no longer pursues its claims, the Plan Companies continue to have financial difficulties which affect their ability to carry on businesses as a going concern.

23. As to threshold condition B, I am also satisfied that it continues to be the case that the purpose of the restructuring plans is to at least mitigate the effect of the financial difficulties with which threshold condition A is concerned. As I explained in the convening judgment, the restructuring plans will have the effect of binding the parties to the English law contracts to a compromise that is itself governed by English law.
24. The next question on the issue of whether the requirements of the statute are satisfied is class composition. I dealt with the applicable principles and the class issues which arise in the present case in [37]-[58] of the convening judgment. Having done so, I directed eight class meetings for the Cimolai restructuring plan and two class meetings for the LCH plan. These are different from but compatible with the classes fixed by Italian law for the purposes of voting on the Concordato proposals.
25. The classes in the Cimolai plan were secured creditors, demoted unsecured creditors, ordinary unsecured creditors, four different classes of derivative contract creditors, depending on the law which governed the parties' relationship and the terms offered to the relevant creditors by way of compromise of their claims and finally the claims of a joint venture entity (the Al Bayt joint venture) in which Cimolai was a joint venturer. The classes for the LCH Plan meetings were unsecured creditors and its single derivative contract creditor, namely JB Drax.
26. In *Global Garden Products Italy SpA* [2017] BCC 637 (Ch) at [43], Snowden J said:

"I accept the point made by Mr Dicker that if a judge has heard full argument at the convening hearing and has decided on the appropriate constitution of classes, it is not ordinarily appropriate for a different judge at the sanction hearing to take a different view of his own motion in the absence of any creditor appearing to contend that the classes were not correctly constituted."

27. I agree that this is the correct approach, whether or not it is the same judge who conducts both the convening and the sanction hearings. Details of the matters I took into account when giving directions on the class meetings are contained in the convening judgment. As no creditor appears to argue that my approach or conclusions were flawed, it is right to confirm that the court is satisfied that the class meetings were correctly constituted.
28. The next issue is whether the terms of the convening order were complied with. I am satisfied that they were. The procedural requirements for convening the meetings themselves were complied with and they were held on 16 August with no irregularities in their conduct.
29. I now turn to the critical question of whether the votes cast at each plan meeting means that the courts' jurisdiction to make an order sanctioning each plan under section 901F is engaged. Section 901F provides that if a number representing 75% in value of the creditors or class of creditors, present and voting either in person or by proxy at the meeting summoned under section 901C agree a compromise or arrangement, the court may, on an application under the section, sanction the compromise or arrangement. Subsection (2) provides that subsection (1) is subject to section 901G.
30. Section 901G empowers the court to exercise its jurisdiction to sanction a plan under section 901F, notwithstanding that the plan has not been approved by the requisite majority at each meeting. It provides that, if the compromise or arrangement is not agreed by a number representing at least 75% in value of a class of creditors (called the "dissenting class") at the meeting summoned under section 901C, the fact that the dissenting class has not agreed the

compromise or arrangement does not prevent the court from sanctioning it under section 901F, so long as conditions A and B are met.

31. In the present case, five of the Cimolai plan class meetings, including two comprising derivative contract creditors, approved the Cimolai plan, with majorities in favour of 100%, 99.42%, 96.22%, 89.3% and 93.5% respectively. Three of the class meetings, all of which were single creditor classes, did not. The reason they did not was because none of the creditors concerned (Global Reach Markets, JB Drax and the Al Bayt joint venture) voted at the meeting at which it was the sole creditor. One of the two LCH Plan meetings approved the plan unanimously; the other one was another single creditor meeting, with JB Drax as a sole member of the class, which did not approve the plan. But, again, the reason it did not do so was not because JB Drax voted against the plan. It did not vote at all, either in favour or against it.
32. It follows from the fact that there were no votes at all in three of the Cimolai creditor meetings and one of the LCH creditors' meetings that the agreement of 75% of the creditors at each class meeting required by section 901F(1) was not achieved. (I pause to explain, consistently with the decision in *Re Listrac Midco* [2023] EWHC 460 (Ch) at [33ff], that where a meeting is not attended by any member of the relevant class at all, it will inevitably not have agreed the restructuring plan.) The jurisdiction to sanction the plans is therefore only engaged if the requirements of section 901G are met.
33. The requirements of section 901G contain two conditions: condition A and condition B. Condition A is that the court is satisfied that, if the compromise or arrangement were to be sanctioned under section 901F, none of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative (see section 901G(4)). Condition B is that the compromise or arrangement has been agreed by a number representing 75% in value of a class of creditors, or, as the case may be, of members, present and voting either in

person or by proxy at the meeting summoned under section 901C who would receive a payment or have a genuine economic interest in the company in the event of the relevant alternative.

34. The relevant alternative is defined by section 901G(4) as follows:

"For the purposes of this section 'the relevant alternative' is whatever the court considers would be most likely to occur in relation to the company if the compromise or arrangement were not sanctioned under section 901F."

35. This power is commonly called cross-class cramdown and arises for consideration whenever one or more class meetings does not approve the relevant plan by the statutory majority. The effect of section 901G is that when it does arise, the court is required to ask itself the three questions identified by Snowden J in *Re Virgin Active Holdings Limited* [2021] EWHC 1246 (Ch) at [104]. The first is that, if the restructuring plan is sanctioned, would any members of the dissenting or non-consenting class be any worse off than they would be in the event of the relevant alternative? The second question is: has the plan been approved by 75% of those voting in any class that would receive a payment or have a genuine economic interest in the company in the event of the relevant alternative? The third is: in all the circumstances, should the court exercise its discretion to sanction the restructuring plan?

36. In *Re Virgin Active Holdings Limited* at [106], Snowden J said that condition A can be satisfied in the following circumstances:

"The 'no worse off' test can be approached, first, by identifying what would be most likely to occur in relation to the Plan Companies if the Plans were not sanctioned; second, determining what would be the outcome or consequences of that for the members of the dissenting classes (primarily, but not exclusively in terms of their anticipated returns on their claims); and third, comparing that outcome and those consequences with the outcome and consequences for the members of the dissenting classes if the Plans are sanctioned."

37. He then went on to say at [107]:

"It is important to appreciate that under the first stage of this approach, the Court is not required to satisfy itself that a particular alternative would definitely occur. Nor is the Court required to conclude that it is more likely than not that a particular alternative outcome would occur. The critical words in the section are what is 'most likely' to occur. Thus, if there were three possible alternatives, the court is required only to select the one that is more likely to occur than the other two."

38. The authorities, of which there are now a significant number, have also identified several other principles to be applied in carrying out this exercise. This is not a case in which a detailed analysis of them is appropriate, but they include: the directors of the company are normally in the best position to identify what will happen if a scheme or plan fails; the outcome for the non-consenting creditors is to be assessed primarily by reference to the anticipated returns on their claims, but not exclusively so; matters such as timing of distribution and the security of any covenant to pay are examples of other incidents of the liability to the creditor concerned, of which account may need to be taken when deciding whether the creditor is no worse off under the plan; and, finally, while an analysis of the estimated outcome for the members of the dissenting class is a familiar exercise, it is inherently uncertain.
39. The relevant alternative is, therefore, the most probable situation which the Plan Companies' creditors would have to deal with if the plan were not to be sanctioned. In its essence, ascertaining the relevant alternative is a very similar exercise, although not identical to, ascertaining the appropriate comparison for class purposes.
40. In the present case, the evidence establishes that the Concordato proposals are likely to be approved even if the restructuring plans are not sanctioned. It follows that the relevant alternative, like the current comparator for class purposes, is one in which the Concordato proposals are approved and sanctioned, but the restructuring plans are not. The legal effect of that situation would be that creditors with English law claims would not have their claim

compromised as a matter of English law. Would the creditors in each of the dissenting classes then be worse off in the event of the plans coming into effect than they would be if their rights were compromised by the plans? On this question, there has been some development in the analysis since the convening hearing, although in the result it does not affect the conclusions I then reached either on the relevant alternative or class issues.

41. To the extent that their claims are governed by English law, it might be thought that the dissenting creditors would be worse off in the event of the plans coming into effect than they would be if their rights were compromised by the plans, because those creditors would remain free to enforce their uncompromised claims in any jurisdiction (including England) which did not recognise the Italian Concordato as having varied their contractual rights.
42. I do not think that is correct, for at least one reason. In the event that any creditor which is a member of a dissenting class, whether or not they were to have a claim under an English law contract, were to be successful in enforcing their uncompromised English law claim in a manner that was inconsistent with the restructuring sanctioned in the Italian Concordato proceedings, they would be excluded from receiving any dividend under those proposals. This is because they would only receive a dividend amounting to up to 30 cents in the euro if they submitted to the Court of Trieste. Having done so, they would then be required to disgorge any sums received through their own independent enforcement efforts elsewhere.
43. On the evidence submitted about the Plan Companies, the value of their assets outside Italy are insufficiently substantial to make it worthwhile for any creditor to take that course. In short, it is unlikely that any dissenting creditor would receive a better return through not submitting to the Italian Concordato proceedings than it would by doing so. It follows that it is right to characterise as speculative any return that a creditor might seek to obtain outside and in addition to the return it received under the Concordato proposals.

44. There is also a second reason. If, for whatever reason, the restructuring plan is not sanctioned, the Plan Companies' evidence, which I accept, is that they would have considerable difficulty in raising the €250 million which, as explained in the explanatory statement, they expect and require as an injection of new money to avoid liquidation in Italy. If that were to occur, the relevant alternative may well be properly to be treated as the Italian liquidation, which, on the evidence, may well eventually ensue, rather than the approval of the Concordato proposal without the parallel restructuring plan.
45. Looking at the evidence in the round, I think that Mr Al-Attar is correct to say that, if the plans are not sanctioned in England, there is at least a real prospect that both Plan Companies will go into liquidation in Italy, but I doubt that it would be right to put it any higher than that. If that were to occur, there is no doubt that the creditors of both Plan Companies would be worse off than if the plans were to be sanctioned. In short summary, value would break in the demoted unsecured creditor class in Cimolai with nothing for the ordinary unsecureds and would break in the unsecured creditor class in LCH. This is to be contrasted with the plans under which the unsecured creditors would each receive a material dividend in Cimolai and a materially larger dividend in LCH.
46. If the plans were not to be sanctioned but the Concordato proposals were to be sanctioned, and the Plan Companies did not then go straight into liquidation, the position is more nuanced. However, I am satisfied on the evidence that the destabilising effect of creditor rights being varied in an enforceable manner in Italy but not England can only have an adverse impact on the ability of the Plan Companies to continue to trade. In the absence of significant assets outside Italy against which enforcement steps could theoretically be taken, I am satisfied that the dissenting classes would at least be no worse off under the plans than they would be if the plans were not to be approved.

47. It follows that, notwithstanding what may prove to be an important distinction between these two outcomes, it does not matter which is to be treated as the relevant alternative. In either instance, the "no worse off" test is satisfied.
48. Condition B can be taken more shortly. The evidence provides a detailed breakdown of the anticipated returns both from a liquidation and from the sanctioned Concordato proposals. There is no doubt that in each of the restructuring plans there is at least one assenting class that would receive a payment or have a genuine economic interest in the relevant Plan Company in the event of the relevant alternative, whether that were to be an Italian liquidation or the approval of the Concordato proposals without the sanction of a parallel restructuring plan. For this reason, I am satisfied that condition B is met.
49. As to discretion, the traditional question of whether the meetings which voted to approve the restructuring plan fairly represented their class and whether the majority acted in a bona fide manner and for proper purposes do not have the same significance as they do in a Part 26 scheme, because the very nature of the cramdown power contemplates that the statutory result of at least one class meeting is not to be given effect. They do, however, have some relevance, more particularly within the class meetings at which the statutory majorities were achieved. It suffices to say in the present case that the turnout levels were very substantial and there is nothing to indicate any absence of fair representative conduct or bona fides.
50. I can take the second question of whether the scheme was one that an intelligent and honest man acting in respect of his own interests might reasonably approve equally briefly. The level of creditor support based on the detailed information given supports the conclusion that this part of the test is satisfied. It is bolstered by the fact that it is clear from the evidence that the directors have given full and proper consideration to what the Plan Companies can afford to pay, together with the relevant commercial factors that need to be taken into account when making that assessment.

51. The decisions as to the proper return that could be offered in light of the Group's position going forward have, on the evidence, been given full and proper consideration. Furthermore, the very fact that the "no worse off" test is satisfied for all classes, and more particularly for the dissenting classes, supports the conclusion that these are restructuring plans which an intelligent and honest man acting in respect of his interests might reasonably approve. Likewise, I have been unable to identify any other matter which in a Part 26 scheme context might be characterised as a blot or other defect in the arrangements.
52. So far as wider discretionary considerations are concerned, the authorities have identified a great many matters which the court may need to take into account. They are described in Mr Al-Attar and Ms Piper's full and helpful skeleton argument. They include the fact that little or no weight is to be paid to the views of creditors who would receive no payment or have no economic interest in the company in the event of the relevant alternative; secondly, the fairness of the distribution of the benefits of the restructuring, including the extent to which compromises to be borne by creditors whose rights are altered under the plan might be said to contribute to the value that it creates; thirdly, the level of overall support for the plan; and, fourthly, whether the plan provides for differential treatment of creditors inter se, and, if so, whether any such differences are justified, having regard in particular to the treatment of creditors in the relevant alternative, but recognising that a departure from rights of priority in that context is not in itself fatal to the success of a plan.
53. These considerations are all very fact-specific, and it is difficult for the court to reach concluded views on all of these points in the absence of reasoned opposition to the sanctioning of the plans. It is sufficient to say that I have borne all of them in mind when considering whether, in all of the circumstances, I should sanction these plans. In broad terms, I am satisfied that the provisions of the plans are fair; they respect the statutory priorities which would be applicable in Italian insolvency proceedings; and, having regard to the nature of the returns that are likely to

be achieved under the plans, there is nothing in them which indicates that they should not be sanctioned. In particular, I should say that I accept that for commercial reasons it was reasonable for the creditors to agree that it was appropriate for equity in the restructured group to be retained by its existing owner to enable him to continue to be involved in its business.

54. I should, however, briefly deal with a few more general points, both because they were either referred to in the convening judgment or have been raised in correspondence, albeit in some respects subsequently withdrawn. The first is that it is a term of the restructuring plans that the Plan Companies have offered to waive the right to commence taking or continuing proceedings in respect of any disputed unsecured creditor which votes in favour of the Concordato proposals and the restructuring plan and submits to the jurisdiction of the Court of Trieste in respect of the Concordato. However, this right was not given to JB Drax. I considered the significance of this issue in the convening judgment and expressed the view that it might have given rise to fairness issues because those creditors who had been offered the waiver have an incentive to vote for the restructuring which is not available to those who have not received the offer. However, in light of the fact that JB Drax has withdrawn its claims and does not oppose the sanctioning of the restructuring plans, this difference in the terms of the offer does not render them unfair and nor does it have any impact on the cramdown jurisdiction which the court is required to exercise in order to sanction the plans.

55. In the convening judgment, I also considered issues relating to the date which has been chosen by the Plan Companies as the assessment date on which the claims of the plan creditors against each company is to be assessed. This is the same as the date used for the purposes of the Concordato proposals, being the date on which the Plan Companies sought relief from the Italian courts (ie October 2022). Nothing that has since occurred affects my conclusion that there are good commercial reasons for this approach to have been taken.

56. Next, there is no evidence that the form of the explanatory statement has been criticised by any creditor, and I am satisfied that it provides them with such information as is reasonably necessary to enable them to make an informed decision as to whether or not the plans are in their interests.
57. Finally, Mr Al-Attar and Ms Piper included a lengthy passage in their skeleton argument dealing with the release provisions in the plans. They made submissions relating to the question of whether there was jurisdiction for the LCH plan to release JB Drax's claim against Cimolai, and jurisdiction for the Cimolai plan to release JB Drax's claim against LCH. These provisions were included to deal with points which might have arisen if JB Drax had not withdrawn its claim. However, in the light of the withdrawal, the point now has no commercial relevance, but because the relevant clauses remain in the approved plans I should reconsider what I said about this point at the end of the convening judgment.
58. In the absence of contrary argument, and in the light of the fact the point is now essentially academic, I do not propose to give elaborate reasons. I shall simply say that the analysis of Michael Green J in the recent decision of *Re Fitness First Clubs Ltd* [2023] EWHC 1699 (Ch) at [116], which was not referred to at the convening hearing as it was decided at about the same time, seems to me to be consistent with the review of the law by Zacaroli J in *Re Gategroup Guarantee Ltd (No. 1)* [2022] 1 BCLC 98 at [163]. I found the approach adopted by both judges in those cases to be compelling. As Zacaroli J explained, where the alteration of creditors' rights against third parties is both ancillary to the arrangement between the company and creditors and necessary to ensure the effectiveness of that arrangement, then they will be permitted.
59. In the present case, I agree with the Plan Companies' submission that the release of JB Drax's claim against LCH by the terms of the Cimolai restructuring plan is ancillary to that plan because of the need to ensure that LCH was cleansed of JB Drax's claim. That claim would have had a potentially destabilising effect if the LCH plan were to have been refused sanction.

In the light of my decision, that will not now happen, but that is no reason for the term not to continue to be included in the plan.

60. So for all those reasons, I am satisfied that these restructuring plans are arrangements which the court can and should sanction, and I will make an order accordingly.