



Neutral Citation Number: [2023] EWHC 3006 (Ch)

Case No: CR-2023-004145

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

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Monday, 31st July 2023

Before:

MR. JUSTICE LEECH

IN THE MATTER OF CINEWORLD GROUP PLC

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

MR. MARK ARNOLD KC and MR. EDOARDO LUPI (instructed by **Slaughter and May LLP**) for the **Company's Directors**
THE RESPONDENTS did not appear and were not represented

Approved Judgment

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR. JUSTICE LEECH:

1. By Application Notice dated 27th July 2023, the directors of Cineworld Group plc (which I will call the “**Company**”) applied to the court for an administration order and to appoint Simon Jonathan Appell, Ian Partridge and Catherine Mary Williamson of AlixPartners UK LLP (whom I will call the “**Proposed Administrators**”) as its administrators. They also asked the Court to dispense with notification of the application and service of the evidence upon Barclays Bank Plc and the Proposed Administrators and to abridge time for filing evidence in support of the application. Mr Mark Arnold KC and Mr Edoardo Lupi appeared for the Company instructed by Slaughter and May LLP. The application was unopposed.
2. The background to the application can be briefly stated. In their Skeleton Argument and in his oral submissions counsel explained how the steep decline in ticket sales due to the pandemic and loss of revenue resulted in the reduction in the liquidity of the Company and the Cineworld group (the “**Group**”) and although its creditors were prepared to support the Company for a period of time after the pandemic, it reached a point at which they wished to see the group restructured. On 7th September 2022 the Company and other companies in the Cineworld groups in the US, UK and Europe filed voluntary petitions for relief under Chapter 11 of the US Bankruptcy Code in the US Bankruptcy Court for the Southern District of Texas. Negotiations between the parties followed and they resulted in a Reorganisation Plan (which I will call the “**Plan**”), which was confirmed by the US Bankruptcy Court on 28th June 2023. The Plan is conditional upon the Company entering into administration in England. If that condition is not satisfied, the automatic worldwide stay imposed by the US court under Chapter 11 will be discharged and the Company will be liable for total debts of US\$3.376 billion or will become liable for those total debts on 7th September 2023.
3. The relevant facilities are described in full in paragraphs 30-32 of the witness statement dated 27 July 2023 of Mr Israel Greidinger, who is a director and the Deputy Chief Executive of the Company. They are also described in the Skeleton Argument and Mr Arnold took me through those facilities in opening the applications. They include what he described as the Debtor in Possession (“**DIP**”) facility under which the DIP lenders made available US \$1.931 billion to the Group during the Chapter 11 proceedings to refinance existing indebtedness and provide working capital. The DIP lenders are not bound by the automatic stay. The Group’s indebtedness also includes CAD \$1.24 billion payable under a judgment which Mr Arnold described as the “**Cineplex Judgment**” which the Company disputes and which is currently subject to appeal (although appeal is stayed). Finally, the Company has also granted security over its shares in Crown UK HoldCo (which I will call “**Crown UK**”) to secure legacy borrowings of US \$3.939 billion.
4. Mr. Greidinger has given evidence about the effect of the pandemic on the Company and the reasons for commencing proceedings under Chapter 11 and the unsuccessful attempts to market the Group's business which I need not set out. On 2 April 2023 the Company entered into a Restructuring Support Agreement and what is described as a “**Backstop Commitment Agreement**” with an ad hoc group of creditors (the “**AHG Creditors**”) who represented approximately 83% of the legacy creditors and 69% of the DIP creditors. Those agreements set out the agreed terms of the reorganisations

which are fully explained in both the Skeleton Argument of Mr Arnold and Mr Lupi and the witness statement of Mr Greidinger. For present purposes, it is sufficient to note that they involve a debt-for-equity swap of over approximately US \$4.253 billion of debt and the injection of new money of US \$800 million by shareholders in a “NewCo” or (as I will explain) a “NewCo 2” which will ultimately own the Group’s business and enter into two new debt facilities of US\$1.46 billion which comes into effect after the Company and other relevant debtors leave Chapter 11 and US\$250 million respectively.

5. On 11 April 2023 the Company and the other Chapter 11 debtors filed the first version of the Plan together with a disclosure statement which fulfils the function, as Mr Arnold explained, of an explanatory statement under comparable proceedings in an English Court. On 28 June 2023 the US court made a confirmation order. A number of creditors originally opposed the confirmation of the Plan and between the two dates the Restructuring Support Agreement, the Backstop Commitment Agreement and the disclosure statement all went through various amendments before the Plan finally received the support of 100% of the legacy creditors, 99.04% of the Company’s general unsecured creditors and 89.5% of the general secured creditors of the other Chapter 11 debtors. It is clear therefore that the terms were very carefully scrutinised by both the creditors and the US Court and that the Plan now has the overwhelming support of the Company’s creditors.
6. The Plan originally provided that if the administration order was made by this Court, Proposed Administrators (if appointed) would enter into an “**Implementation Framework Agreement**” under which the Company’s assets would be hived down to Crown UK, Crown UK would issue shares to NewCo, and Crown UK would buy back and cancel the Company shares leaving NewCo as the sole owner of Crown UK. In a witness statement dated 27 July 2023 Mr Appell, one of the Proposed Administrators, set out the detailed steps required to implement the Plan. In particular he explained that NewCo would contribute money in cash to acquire shares in Crown NewCo and that the legacy of lenders would contribute their debt claims to Crown UK in exchange for shares in NewCo.
7. This morning Mr Arnold and Mr Lupi filed a second skeleton argument, accompanied by two further witness statements from Mr Greidinger and Mr Appell. They addressed an issue which had arisen over the weekend as a result of Mr James Mesterham of AlixPartners US accepting appointment as the sole director in chief restructuring of NewCo. It was therefore resolved to substitute a different company, NewCo 2, into the implementation structure to acquire the assets of Crown UK. Mr Arnold submits (and I accept) that this did not have any effect on the substance of the transaction or their compliance with the 2021 Regulations (below).
8. I turn next to jurisdiction and I deal first with standing. Paragraph 12(1)(b) of Schedule B to the Insolvency Act 1986 as amended provides that a director of a company may apply for an administration order. Mr Arnold and Mr Lupi referred me to the board resolution dated 27 July 2023 in which the Board of Directors of the Company resolved to make the application. Standing is therefore satisfied. Paragraph 11 of Schedule B provides as follows:

“The court may make an administration order in relation to a company only if satisfied — (a) that the company is or is likely to become unable to pay its debts, and (b) that the administration order is reasonably likely to achieve the purpose of administration.”

9. Mr Arnold submits that the paragraph imposes three jurisdictional requirements. First, the Court may only make an order in respect of a “company” and for this purpose company is defined by paragraph 111(1A)(a) as “a company registered under the Companies Act 2006”. As he observes it is not a jurisdictional requirement that the Company's COMI be England and Wales. Secondly, the Court must be satisfied that the Company is or is likely to become unable to pay its debts. Mr Arnold helpfully drew my attention to *Re AA Mutual International Insurance Co Ltd* [2005] 2 BCLC 8 in which Lewison J (as he then was) held that the Court must be satisfied that it is more probable than not that the Company is or will become unable to pay its debts. Thirdly, the court must be satisfied that the order is reasonably and likely to achieve the purposes of administration. I will return to requirement three shortly.
10. In the present case I am satisfied that requirements one and two are met. The Company is registered under the Companies Act 2006 and even though it is not necessary for the Company to establish that its COMI is in England, I accept Mr. Greidinger's evidence that it is. I am also satisfied that it is more probable than not that the Company is or will become unable to pay its debts either immediately or on 7 September 2023 when the DIP facility matures (assuming that no administration order is made). This was the view expressed by the Board of Directors on 27 July 2023 and their view is confirmed by both Mr Greidinger and Mr Appell in evidence. It is clear from that evidence that the Company's balance sheet is insolvent and I am also satisfied that it is or will become in the very near future unable to pay its debts as they fall due. In particular, it is Mr Greidinger's evidence that the Company has a cash balance of approximately £676,000 and, in the absence of new money, this would not be sufficient to repay the debt facility, calls on the guarantees which it has given in relation to the Cineplex Judgment and will be triggered if the Company is unsuccessful on appeal.
11. Finally, I deal with the “Purpose of the administration”. Schedule B, paragraph 3, provides as follows:

“(1) The administrator of a company must perform his functions with the objective of — (a) rescuing the Company as a going concern, or (b) 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), or (c) realising property in order to make a distribution to one or more secured or preferential creditors.”
12. As Mr. Arnold submitted, paragraph 3 provides that the purposes of the administration must be able to achieve one of these three objectives which have a prescribed order of priority. It is the evidence of both Mr. Greidinger and Mr. Appell that it is not possible to achieve objective (a) in the present case or at least not without the restructuring of

the Company in accordance with the Plan. They therefore rely on objective (b). I am satisfied that there is a real prospect that the Administrators will achieve objective (b). The Board of Directors have formed this view and it is supported by both Mr Greidinger and Mr Appell in evidence. Moreover, AlixPartners US has carried out a liquidation analysis for the US Court which shows that all classes of creditors would be worse off if the Company went into an insolvency process. Finally, Mr. Appell has given evidence that the proposed Administrators have carried out their own analysis and have reached the conclusion that there would be no distribution to unsecured creditors or even HMRC and that the cost of the liquidation would absorb the Company's free cash. I accept that evidence.

13. Finally, the Court has discretion whether to make an administration order. I am satisfied that I should exercise that discretion to make the order, for the six reasons given by Mr Arnold and Mr Lupi in paragraph 42 of their Skeleton Argument. I attach weight to the views of the Directors and Proposed Administrators but I also attach significant weight to the fact that the Plan (which includes the proposed administration order) has the overwhelming support of the Company's creditors and that it has been very carefully scrutinised in the US Court. In particular, I note the remarks of the Honourable Marvin Isgur, the Judge in the US Court at the very end of the transcript of the hearing before him. If anything, those remarks show how carefully the Court had scrutinised it and considered that the views of the various creditors.
14. Before concluding this judgment, I deal very, very briefly with some additional points. Mr Arnold took me to the draft SIP 16 Report, which the Administrators will distribute to creditors if and when the administration order is approved. I am satisfied that this gives appropriate information to the creditors for a slightly different purpose, namely, for satisfying themselves that the purpose of the administration is a proper one and that the Administrators have carefully considered how best to realise the assets of the Group (and, in particular, how to market and value the assets of the Company).
15. Mr Arnold also took me to The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021. He submitted that they are not engaged in this case, but even if they are, now that NewCo 2 has been inserted into the structure, the Regulations do not apply. I am satisfied that the Regulations do not apply in the present case and, even if they did, the insertion of NewCo 2 into the structure as it was presented to me in the recently filed witness statements meets the concern which was raised by the parties over the weekend and it is unnecessary for the Company to go through the further safeguards required in the Regulations.
16. Finally, I am satisfied I should abridge time in accordance with the application and that all the necessary consents and formalities required for making the administration order are satisfied. I will therefore make the administration order in the form of the draft put before the court subject to any further observations which Mr Arnold may have.
