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CR-2022-004034
CR-2022-004035

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF ACL ASTUTE 2022 LIMITED (IN ADMINISTRATION)

AND IN THE MATTER OF ACL ASTUTE 2006 LIMITED (IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date:04/12/2024

Before :

MR JUSTICE MELLOR

- -

Between :

1) RAJNESH MITTAL
2) JONATHAN DUNN

Applicants and Joint Administrators

- and -

EDOUARD BERTHIER and 16 other Bondholders

Respondents

- -
- -

Charlotte Cooke (instructed by **Burges Salmon LLP)** for the **Applicants and Joint Administrators**

Edouard Berthier in person (by remote link)

Hearing date: 12 November 2024

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APPROVED JUDGMENT

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on the National Archives and other websites. The date and time for hand-down is deemed to be 10.30am on Wednesday 4 December 2024.

THE HON MR JUSTICE MELLOR

MR JUSTICE MELLOR:

A. Introduction

1. At the hearing before me on 12 November 2024, there were two applications before the Court, both made by Rajnesh Mittal and Jonathan Dunn in their capacity as joint administrators (the "**Administrators**") of ACL Astute 2022 Limited ("**ACL22**") and ACL Astute 2006 Limited ("**ACL06**") (together, the "**Companies**"). The Administrators sought orders pursuant to paragraph 98 of Schedule B1 to the Insolvency Act 1986 ("**Schedule B1**") (the "**Act**") discharging them from their liability as administrators of the Companies once they have filed notices pursuant to paragraph 84 of Schedule B1 with effect that the Companies will be dissolved (the "**Applications**").

2. I heard submissions from Counsel for the Administrators and from Mr Berthier in person at that hearing. At the conclusion of the argument I announced my decision, namely that I would grant both applications for discharge, albeit that ACL22 was not to be dissolved but should go into liquidation. Due to other applications waiting to be heard in the Interim Applications Court, I indicated I would give my reasons later. Unfortunately a patent trial intervened before I could complete this judgment which contains those reasons.

3. The decision to grant both applications for discharge was straightforward. The only unusual aspect of the applications concerned the fate of ACL22 – whether I should make an order following discharge that ACL22 should be dissolved or whether it should go into liquidation.

B. Background

4. The Companies belong to a group (the "**CBS Group**") that was concerned with the operation of the Coventry Building Society Arena (the "**CBS Arena**"). ACL06 held the headlease for the CBS Arena, subletting to ACL22. The principal activity of ACL22 was the letting and operating of conference and exhibition centres and sports facilities.

5. On 17 November 2022 administration orders were made in respect of each of the Companies, with Rajnesh Mittal and Andrew Sheridan appointed administrators (the "**Original Administrators**"). On or around 23 April 2024, an order was made transferring Andrew Sheridan's appointments to Jonathan Dunn.

6. The purpose of each of the administrations was to realise property in order to make a distribution to one or more secured or preferential creditors pursuant to paragraph 3(1)(c) of Schedule B1.

7. A summary of the work undertaken by the Original Administrators / the Administrators was provided in the evidence filed in support of the applications. The following matters in particular were drawn to my attention:
   (1) On the date the administration orders were made, the business and certain assets of the Companies were sold to companies connected to Frasers Group Plc. The sale realised £8,314,997 for ACL22 and £6,894,007 for ACL06;
   (2) Substantial book debts, interest and various refunds have also been collected in;
   (3) Specifically as regards ACL22:
      (a) Its employees were transferred to SDI (Retail Co 10) Limited pursuant to the Transfer of Undertakings (Protection of Employment) Regulations. Outstanding

pension contributions have been met and therefore ACL22 has no primary preferential creditors;

(b) HMRC, being a secondary preferential creditor, submitted a claim in ACL22's administration for £851,725;

(c) Two distributions (of £7.3m and £300,000) have been made to the first ranking secured creditor of ACL22. A final distribution is anticipated, but there will be a shortfall such that there will be no distribution to ACL22's second ranking secured creditor;

(d) Unsecured creditors' claims for ACL2022 as at the date of the last progress report (11 June 2024) were £4,553,293. The Administrators do not anticipate there being sufficient funds for them to receive a distribution.

(4) Specifically as regards ACL06:

(1) ACL06 had no employees so has no primary preferential creditors;

(2) No claim has been received from HMRC as secondary preferential creditor;

(3) Two distributions (of £6.5m and £180,000) have been made to ACL06's first ranking secured creditor. A final distribution is anticipated, but there will be a shortfall such that there will be no distribution to ACL06's second ranking secured creditor;

(4) At the date of the Administrators' last report on 11 June 2024, only one unsecured creditor claim (for £5,257) had been received.

8. The Companies' administrations were extended by Court orders dated 26 September 2023. The administrations were due to expire shortly after the hearing on 17 November 2024.

9. Following the making of the final distributions, the Administrators intended to end the Companies' administrations by sending notices pursuant to paragraph 84 of Schedule B1. Three months after the sending of the notices the plan was that both Companies would be deemed dissolved. The Administrators intended to file such a notice before the administration was otherwise due to end on 17 November 2024.

C. Events leading up to these Applications

10. Creditors were notified of the Administrators' intention to make the Applications in progress reports dated 11 June 2024. Then by letter dated 21 August 2024 the Companies' creditors were asked to raise any objections before 11 September 2024. No objections were received and the Applications were therefore issued.

11. Shortly before the first hearing of the Applications, on 29 October 2024, a skeleton argument was filed by Mr Edouard Berthier. Mr Berthier appeared to oppose the application in relation to ACL22 only and further maintained that the Administrators should not file notices pursuant to paragraph 84 of Schedule B1 as ACL22 should instead be put into liquidation so that further investigations could be carried out.

12. The second witness statement of Mr Mittal was filed in response and he explained why the Administrators considered their proposed course to be appropriate.

13. The first hearing of the Applications took place on 31 October 2024 before ICC Judge Barber who gave the directions for Mr Berthier to file evidence by 6 November 2024, for the Administrators to file evidence in reply by 8 November 2024 and for a further hearing

of the Applications to be listed as early as possible in the w/c 11 November 2024. In fact, the Applications were ready for the hearing before me on 12 November and a decision was required urgently in view of the fact that the administrations of each of the Companies were due to expire on 17 November 2024.

14. In his witness statement filed on 6 November 2024, Mr Berthier maintained that ACL22 should be put into liquidation rather than the Administrators filing a notice pursuant to paragraph 84 with a view to the Companies being dissolved. He confirmed that he had no objection to the Administrators being granted their discharge from liability pursuant to paragraph 98 of Schedule B1 provided ACL22 was put into liquidation.

15. Counsel for the Administrators made a very fair and balanced presentation of the situation. She drew my attention to:
    a. the relevant provisions of the Act;
    b. Re Lehman Brothers Holdings UK Limited (in administration) [2016] EWHC 1669 (Ch) at [10] as regards the proposed timing of the discharge - 28 days after the cessation of the administrators' appointment; and
    c. Some points from Re Hellas Telecommunications (Luxembourg) II SCA [2013] 1 BCLC 426 where:
        i. The Court granted administrators their discharge in circumstances where a company was put into liquidation - see [96]-[98].
        ii. The Court noted that the discharge of administrators does not prevent the exercise of the Court's powers under paragraph 75(6) of Schedule B1.
        iii. In contrast to the present situation, that in that case there was before the Court an application by the administrators seeking directions as to how the administration should be brought to an end (with certain creditors asserting that liquidation was the appropriate course);
        iv. At [90] the Judge explained that "*The court will not order a winding-up after an investigation by administrators if to do so would serve no useful purpose: the court will not act* in vain."

16. As to the facts, Counsel pointed out that:
    a. First, Mr Berthier had not issued any application seeking any relief.
    b. Second, the Administrators' clear position was that, having conducted the appropriate investigations and formed a view as to the prospects of success of claims against the former directors, the appropriate course was, as they had proposed, for them to file the notice pursuant to paragraph 84 and for the Companies to be dissolved in due course.

D. The respective positions in more detail

17. Mr Berthier objected to the Administrators' decision to file notices pursuant to paragraph 84 of Schedule B1 in relation to ACL22. As Counsel for the Administrators pointed out, his position is premised on an assertion that there are further investigations to be carried out in relation to the conduct of ACL22's directors. In particular (although he states there may be various causes of action available – wrongful trading, misfeasance and/or breach of duty) his primary position appears to be that there may be actions to be brought for wrongful trading in circumstances where he says ACL22 (or companies in the wider

group) were reliant on funding from shareholders and the directors should have put it into an insolvency process as early as 30 June 2017 (see para. 56 of his witness statement). Counsel submitted that it is very difficult to see how such an argument can be maintained when ACL22 only went into administration in November 2022. Mr Mittal also considered that the figures used in Mr Berthier's analysis were, in certain instances, too theoretical to form the basis of a claim.

18. Mr Berthier explained the difficulties involved in identifying other bondholders who might join forces with him to investigate the potential for claims against the former directors of ACL22, which was part of the reason why he said his objection was only registered at a late stage. It was also clear that his analysis of the situation was also at a relatively early stage.

19. The Administrators' position was simple:
    a. They have conducted comprehensive investigations as to potential claims against ACL22's directors and that it was appropriate to file the paragraph 84 notices: see Mittal 2 at [8]-[13] and Mittal 3 at [22]-[25];
    b. They also expect that any future liquidator would face significant difficulties in funding any investigations or claims: see Mittal 3 at [21].

20. Accordingly, the Administrators considered their proposed course to be the best option for the Company's creditors as a whole as it would allow a final distribution to be made (and no further costs to be incurred). Counsel for the Administrators submitted this view appeared to be shared by the Security Trustee (in respect of the bonds held by, amongst others, Mr Berthier) who has not objected to the dissolution of the Company and (along with a number of individual bondholders) has instead requested an update from the Administrators regarding the timing of the payment of the final dividend: see Mittal 3 at [20].

21. Finally, I noted that on 10 November 2024 a number of witness statements were received from other bondholders, essentially echoing the position advanced by Mr Berthier. The Administrators' position was that receipt of those additional witness statements did not change the appropriate way forward.

E. Analysis

22. My decision between dissolution or liquidation for ACL22 was based on an analysis of the respective interests involved. Counsel for the Administrators confirmed that their duty was to act in the interests of the Company's creditors as a whole. Likewise, for a liquidator of ACL22 (if one be appointed). By contrast, Mr Berthier sought to protect his own interests as a bondholder. To the extent that he manages to attract a group of bondholders to join forces with him, I can assume that they will have a common interest.

23. It is likely that a liquidator will take the same view as the Administrators of the prospects of pursuing any claims against the former directors of ACL22 and is unlikely to consider it is appropriate to expend any of the funds remaining in the liquidation on pursuing such claims. If so, the liquidator is likely to make the same final distribution as was contemplated by the Administrators. The advantage of a liquidation, so far as Mr Berthier

and other bondholders are concerned, is that it will provide them with the opportunity further to investigate the viability of claims against the former directors of ACL22, albeit they will have to move swiftly. It is likely to be the case that if they conclude there are viable claims to be brought, they will have to establish a fund to pay for the pursuit of those claims, although nothing I have said in this judgment binds the liquidator who must form his or her own view. It also seemed to me likely that no other creditors, and particularly the two which were the subject of the final distribution proposed by the Administrators, would lose out to any material extent by ACL22 going into liquidation.

24. By contrast, the dissolution of ACL22 would extinguish any opportunity for Mr Berthier and any fellow bondholders to raise funds, to investigate or to pursue any claims against the former directors of ACL22.

25. Against this backdrop and notwithstanding (a) that Mr Berthier's objection was raised almost at the last stage of the process and (b) the views held by the Administrators, I concluded it would be unsatisfactory to shut Mr Berthier and his fellow bondholders out, which is what a dissolution of ACL22 would involve. It was for these reasons that I made the Order on 12 November to wind up ACL22, along with associated directions.