

Neutral Citation Number [2024] EWHC 563 (Ch)

Case No: CR-2023-006021

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
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: 7 March 2024

Before :

Mr Justice Richards

IN THE MATTER OF
PROJECT LIETZENBURGER STRAÙE HOLDCO S.À.R.L.

- and -

IN THE MATTER OF THE COMPANIES ACT 2006

Tom Smith KC, Ryan Perkins and Edoardo Lupi (instructed by DLA Piper UK LLP) for
Project Lietzenburger Straße Holdco S.À.R.L.

Charlotte Cooke and Madeleine Jones (instructed by Macfarlanes LLP) for Bank J. Safra
Sarasin

Daniel Bayfield KC and Georgina Peters (instructed by Sullivan & Cromwell LLP and
Greenberg Traurig, LLP) for Nofe Investment S.À.R.L and AXA Real Estate Investment
Managers SGP

Hearing date: 7th March 2024

APPROVED JUDGMENT

Mr Justice Richards
(10:35am)

Thursday, 7 March 2024

Judgment by **MR JUSTICE RICHARDS**

1. This short judgment follows on from the judgment I handed down on 4 March 2024 (the “Judgment”). I use the same defined terms as were used in the Judgment.
2. The Amended Plan has now been voted on by Senior Creditors at the further plan meeting I ordered to be convened following the Judgment (the “New Plan Meeting”). Following my order under s901C(4) of the CA 2006, Subordinated Creditors have not been represented at the New Plan Meeting. Senior Creditors have voted in favour of the Amended Plan and the question is whether I should exercise discretion to sanction it. No-one has made submissions suggesting I should decline to sanction the Amended Plan.
3. Much of the relevant analysis is contained in the Judgment. I can therefore deal with this briefly. I have a broad discretion. I will consider the exercise of that discretion by reference to the four relevant questions that Snowden J identified in relation to Part 26 schemes in *Re KCA Deutag UK Finance Plc* [2020] EWHC 2977 namely:
 - 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?
4. Those principles are equally applicable to Part 26A plans that, like the Amended Plan, involve no cross-class cramdown. In grouping my decision under those headings, I will not allow the consideration of exercise of my discretion to become compartmentalised.
5. In the Judgment, I concluded that the statutory requirements were met. Obviously the statute has not changed since then. There has been a new convening order and I am satisfied it has been complied with from the witness evidence that I have received. That witness evidence also satisfies

me that 97.3% of the Senior Creditors approved the Amended Plan at the New Plan Meeting at which 100% of Senior Creditors were represented.

6. There was a 100% turnout of Senior Creditors at the New Plan Meeting of whom 97.3% by value voted in favour. I explained in the Judgment why I was satisfied that there was fair representation at the previous meeting and why Senior Creditors were not voting for some private interest separate from their rights as members of the single class. I also explained why I was satisfied there was no coercion so as to produce a majority at that meeting. I remain satisfied on those issues in the context of the Amended Plan and the New Plan Meeting.
7. I am satisfied that an intelligent and honest Senior Creditor could reasonably approve the Amended Plan and nothing has changed since the Judgment in which I expressed views to similar effect in relation to the Plan.
8. There were no blots on the Plan for reasons that I gave in the Judgment. I am satisfied that there are no blots on the Amended Plan which differs from the Plan only as regards the €200,000 to be paid to Subordinated Creditors. In the Judgment, I considered in detail the question of forum shopping and “sufficient connection” with the UK. I see no reason to depart from the conclusions that I expressed in the Judgment in the context of the Amended Plan.
9. For all of those reasons, I will sanction the Amended Plan under s901F of the Companies Act. That section is applicable because only the Senior Creditors were summoned to the New Plan Meeting as a consequence of my order under s901C(4) and they have now approved the Plan. Section 901G of the Companies Act is not applicable to the Amended Plan and no-one has sought to persuade me otherwise.
10. I note that all of the Plan Company, Safra, the Senior Creditors’ Committee and Chapelgate have made applications for their costs. However, I have been informed that they have been able to agree costs between themselves with the result that none of those applications need to be determined.