Neutral Citation Number: [2024] EWHC 1777 (Ch)

Claim No: CR-2024-003723

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, 1st July 2024

Before:

SIR ANTHONY MANN
(Sitting as a Judge of the High Court)

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Between:

IN THE MATTER OF VTB CAPITAL PLC (IN ADMINISTRATION)
AND IN THE MATTER OF THE COMPANIES ACT 2006
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

(1) STEPHEN ROLAND BROWNE **(2) DAVID PHILIP SODEN** **(JOINT ADMINISTRATORS OF VTB CAPITAL PLC (IN ADMINISTRATION))**	**Claimants / Applicants**

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DANIEL BAYFIELD KC, ADAM AL-ATTAR KC and **RYAN PERKINS** (instructed by **Weil, Gotshal & Manges (London) LLP**) appeared for **VTBC and the Administrators**

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APPROVED JUDGMENT

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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

SIR ANTHONY MANN :

1. This is an application for a convening order under Part 26 of the Companies Act 2006. It is made in respect of VTB Capital plc (the Company) which was placed into administration on 6th December 2003. It is an English subsidiary of a Russian bank, VTB Bank, and was unable to pay its debts when sanctions were imposed on the invasion by Russia of Ukraine. It was in those circumstances and once certain licences had been obtained from UK and US authorities that it was placed into administration; the licences were necessary to make the administration practical.

2. Having considered the position and obtained such assets as can currently be obtained, the administrators have proposed a Scheme of Arrangement as bringing about a state of affairs which will produce a quicker and better return for creditors than further pursuit of the administration or liquidation. The precise amount of the difference that will be made will depend on what elections are made by various creditors under the terms proposed under the Scheme but the estimated outcome statement which is propounded and which it is proposed to send to creditors shows there is potentially a very significant increase in the amounts available for distribution, ranging from an increase of 17p in the pound over a base figure to almost 100p in the pound overall recovery on the most favourable outcomes.

3. The Scheme is intended to overcome certain difficulties that have arisen as a result of the sanctions regime and related difficulties. Those difficulties fall under two heads: first, distributions cannot be made to certain creditors because they are sanctioned individuals or disqualified individuals or companies; second, certain assets cannot currently be realised because they are "trapped" in Russia or because realisation involves the acquisition of licences from foreign jurisdictions mainly, but not

exclusively, US and those licences have not yet been obtained. The Scheme is designed to accelerate and improve distributions by overcoming those difficulties in various ways. The Scheme is also designed to avoid the difficulties that delays would impose in relation to the payment of statutory interest in the event of there being a surplus.

4. The central techniques which have been adopted to overcome those difficulties involve the creation of a trust into which realisations otherwise payable to Disqualified Persons will be paid by way of satisfaction of the obligations arising out of distributions. The relevant persons will not be able to obtain the actual amount of distributions from the trusts until licenced or until the disappearance of the sanctions regime, but their entitlements will be preserved in the trust. The trust will also take on ownership of various blocked assets, so far as that might be necessary. That again removes a difficulty which would otherwise hold up the finalisation of an administration or liquidation for potentially some considerable time. There is obviously a lot more detail in the Scheme than that but that is a sufficient outline for present purposes.

5. One additional feature of the Scheme which falls to be considered, particularly in the context of classes, is a proposal for dealing with smaller claims. There are something like 360 creditors overall as far as the administrators know and about 200 have claims which are £50,000 or less. One of the features of the Scheme is that the first £50,000 of any claim (which will obviously be the whole of the claim if any creditor with a claim of that amount or less) will be paid in full. The principal objective of that is to stop the accrual of statutory interest on that amount and on those debts and to remove from future costs the costs of dealing with a large number of small-ish claims.

6. Another important feature of the Scheme is a hotchpot arrangement under which any creditor who seeks to enforce a claim outside the Scheme particularly, but not exclusively, by enforcing against property will be deemed for the purposes of a distribution to have made a claim in the full amount of the claim and to have had a distribution in that amount and will not be entitled to participate in any distributions save in so far as distributions would reflect a greater claim. That is particularly aimed at the company's parent which has already taken such steps in Russia, but there are other potential targets.

7. There are turnover provisions which require any creditor who actually recovers assets belonging to the company to turn those assets over to the company. There are other provisions of this complex Scheme which I do not need to go into in this judgment.

8. I am satisfied that looking at the Scheme as a whole it presents a plausible Scheme worthy of consideration by creditors as potentially fulfilling the objectives of producing an earlier and greater distribution than applying normal administration distribution rules or a liquidation. It is not of course for me on this hearing to be satisfied as to the merits of the Scheme; that will be a matter for creditors in due course if I order a meeting to be convened.

9. Against that background I turn to the various factors drawn to my attention by Mr. Bayfield KC who has appeared for the company on this application. He has presented the matter with conspicuous clarity and fairness and drawn to my attention all matters which I believe I need to take into account in deciding whether to make an order convening a meeting in this case.

10. First, jurisdiction. The company is a UK incorporated company in respect of which an administration order has already been made. ;t could plainly be wound up by the

English courts and is therefore at that level a company over which the court has jurisdiction when it comes to ordering a Part 26 scheme. The arrangement proposed is also an "arrangement" within the statute, the contrary cannot seriously be argued.

11. However, one particular jurisdictional point which Mr. Bayfield drew to my attention is whether or not the nature of the Scheme and the technique adopted is such that the court has jurisdiction to approve it;. That arises out of the technique used for creating the Scheme. The Scheme operates by starting within the Insolvency Rules and treating those as a base provision which will operate for the purposes of the scheme of distribution but subject to amendment. Paragraph 6 of the Scheme itself starts by making it clear that each Scheme claim will be evaluated and determined and distributions made in accordance with the Insolvency Act 1986 and the Insolvency Rules, subject to the other terms of the Scheme. That treats the Insolvency Rules as being the essential base which governs the Scheme and some of the rules will apply as normal. Others are applied in an amended form: for example, rules 14.33 and 14.31 which apply so as to give rise to deemed proving of all debts and not just small debts. On to those provisions are grafted some further provisions of the Scheme by way of addition; they are not simply amendments of the rules. The revision mentioned above about the £50,000 claims is an example of that.

12. Mr. Bayfield drew to my attention the potential point that the court might not have jurisdiction to order a scheme which contractually alters the effect of rules while seeking to apply the rules. I am satisfied there is no such jurisdictional bar. There are a number of authorities in which it is implicit that that technique can be adopted. It is implicit in the decision of the Privy Council in Kempe Ambassador Insurance Co

[1998] 1 BCLC 234, where the Privy Council did not perceive there to be any difficulty in that technique being adopted, although they did not address the point.

13. Also in Re Lehman Brothers International (Europe) (In Administration) [2019] Bus.L.R. 1012, Hildyard J was asked to sanction a Scheme of Arrangement. It would seem, although it is not expressly stated, that the Scheme was operated by way of amendment of, and grafts upon, the Insolvency Act and Insolvency Rules. In that context, there was to be a bar date in relation to proofs (paragraphs 30-32). The statutory rules were therefore being operated as amended. It does not seem to have occurred to the judge or to any of the considerable cast of experienced lawyers involved in the case that that was something that the court had no jurisdiction to sanction.

14. Finally, in the matter of Re People's Energy (Supply) Limited in administration [2024] EWHC 1367 (Ch), the point was expressly raised by counsel (Mr. Bayfield as it happens) before Hildyard J - see paragraph 52. In paragraph 53, Norris J acknowledged that the Kempe case implicitly recognised that a scheme could vary the normal Insolvency Rules. The judge drew support from the fact that section 896(2) of the 2006 Act expressly authorises administrators to propose a Scheme of Arrangement. Hildyard J did not go on so as to hold specifically that that gave rise to no jurisdictional problem, but he obviously thought that there was not. I would respectfully agree with him and find that there is no jurisdictional bar to the court considering and ultimately sanctioning a Scheme of Arrangement which adopts the technique of applying the Insolvency Rules in a modified form and with additions.

15. Next is the question of classes. In that context, my attention was drawn to what one might call some of the usual authorities, that is to say, Sovereign Life Assurance v

Dodd [1892] 2 QB 573, 583; Re Hawk Insurance Co Ltd [2001] 2 BCLC 480, 30-33; and Re UDL Holdings Ltd [2002] 1 HKC 172, 179. I will not lengthen this judgment by setting out the now familiar passages in those judgments. I am satisfied that it will be appropriate to have one class of creditors in this case.

16. Three particular instances of potential fracturing of the class were considered before me. First, whether Disqualified Persons (creditors who cannot actually take a distribution because of the sanctions regime) should form a separate class was considered by Mr. Bayfield. I agree with Mr. Bayfield that they should not be considered as a separate class. They have the same interests as all other creditors. It is their personal qualities that make them different, but that is not sufficient to fracture the class.

17. Second, there is the position of the parent company (VTB Bank) which is deemed to make certain elections as to taking distributions in specie. It is not bound to make that election and can, as it were, unelect. I would again agree with Mr. Bayfield that that does not constitute the parent as a separate class. Its rights are, or can be made to be, the same as those with other creditors because it can unelect in relation to taking distributions in specie.

18. The third category is, or was, potentially a little more troubling. I wondered whether the provision for the payment of the first £50,000 of any claim created two separate classes, those with claims up to and including £50,000, on the one hand, and those with claims greater than that on the other. The reason for considering this is that the dividend payable in respect of the excess over £50,000 to those with larger claims would be reduced by the payment in full of some creditors. As a matter of mathematics, that is undoubtedly true. However, Mr. Bayfield submitted that that

should make no difference. All creditors have the same rights. It is just that some of them were impacted differently. Alternatively, he submitted that if they had different rights which would cause one to wonder whether they should be in a separate class or not, they would nonetheless, on the facts of this case, be able to consult together with the £50,000 and less creditors, applying one of the usual tests for class fracturing, because the actual difference that will be made when one looks at the actual figures is very small. I will not set out the rather complex figures underlying the latter submission, but I agree that the difference is very small, if not minimal, for these purposes.

19. In the circumstances, I agree with Mr. Bayfield's second way of dealing with the matter. I am not so satisfied about the first, but that does not matter since I consider he is right on the second. In the circumstances, there is no need to fracture the class and a meeting of one class of creditors can be called.

20. Turning to more technical matters, I am satisfied that all creditors have had sufficient notice of this hearing. They have had 27 days since the Practice Statement letter and a number of them have been the object of consultations with the Administrators over a considerable period of time. All creditors have been contacted directly by e-mail where possible or by post and there has been advertisement in the London Gazette, the Financial Times and Kommersant. I am satisfied that all that is entirely proper.

21. I have, as invited, considered the proposed explanatory statement which will require some amendment, not least because one asset (the claim against the Mozambique government) has been got in sooner and more effectively than was originally anticipated because there has been a settlement of the relevant litigation. I am satisfied that the terms of the statement are appropriate.

22. So far as the mechanics for summoning the meeting are concerned, the meeting is to take place at 2 p.m. on Thursday, 5th September, 2024. I am satisfied that that gives enough time for all creditors to consider the Scheme appropriately and to take appropriate action and I am also satisfied that the other proposed mechanics for the meeting are appropriate.

23. Last is the question of potential "roadblocks". One obvious difficulty that needs to be considered is the operation of sanctions. However, the office responsible for administering sanctions in this jurisdiction and providing licences (the OFSI) has indicated that it is content with the Scheme and has indicated that existing licences, or amendments to licenses which have been effected, have been or will be made. In fact, I understand that all necessary amendments and licences are in place. The Administrators themselves are satisfied that they have sufficient licences to enable the scheme to be implemented.

24. The regulators (PRA and FCA) have been kept informed and have not raised any objection. The PRA have expressly said that they have no objection. The FCA has not yet adopted a position, but at least it has not indicated any difficulties.

25. Finally, I should mention that the implementation of the Scheme will be dependent on this court granting an order under the Insolvency Act allowing the Administrators, as opposed to liquidators, to effect distributions. I am not invited to make such an order today. The court hearing the sanctions question will be invited to make such an order. That is no doubt a sensible way of going about the matter.

26. In all the circumstances, I will therefore make the order sought.

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