Neutral Citation Number: [2020] EWHC 1370 (Ch)

Case No: CR-2017-009508

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (Ch D)
In The Matter Of ASA RESOURCE GROUP PLC (In Administration) (No. 02167843)
And In The Matter Of THE INSOLVENCY ACT 1986

Royal Courts of Justice
Strand, London, WC2A 2LL
Skype Business Remote hearing

Date: 29/05/2020

Before :

I.C.C. JUDGE JONES

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Between :

IAN BARRY DEARING	**Applicant**
- and -	
(1) MARK SKELTON	
(2) RICHARD FLEMING	
(Joint Administrators of ASA Resource Group plc)	**Respondents**

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The Applicant, Mr Dearing, appeared in person
Mr Stephen Robins (instructed by **Shoosmiths LLP**) for the **Respondents**

Hearing dates:

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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I.C.C. JUDGE JONES

I.C.C. Judge Jones:

A) The Application

1. The application of Mr Dearing as a stated member and creditor of ASA Resource Group Plc ("the Company") may on its face appear reasonably straight forward. The administration of the Company will soon end, successfully. The Respondents ("the Administrators") anticipate paying all creditors in full before returning the management of the Company, its business, property and assets to its appointed director. The Company's articles as amended require four directors and Mr Dearing is the remaining one. He wants to prepare the Company for hand over by first appointing another three and then, as possible steps, opening a bank account, rectifying the share register and managing the Company's assets to the extent that the administrators are not able or willing to do so. This may include the appointment of new directors for the Company's subsidiaries and taking steps to recover debts in the region of £5 million. There is no dispute before me that the Company's Articles confer power on a remaining director(s) to appoint others to fill vacancies or summon a General Meeting.

2. In those circumstances he applies under ***paragraph 74(1) of Schedule B1 to the Insolvency Act 1986*** for a direction that the Administrators should agree to the proposed appointment of directors, should not remove them without further order of the Court and should use their reasonable endeavours to agree a protocol with the directors for the Company to carry out its and its subsidiaries' proper activities whilst the administration remains in force. He does so on the basis (in summary) that the Administrators have breached their duties by refusing to permit the steps he proposes. ***Paragraph 74*** requires him to establish on the balance of probability that the administrators have acted unfairly to harm his interests as a creditor or member (whether alone or in common with others) and to satisfy the Court that relief ought to be granted.

3. The application is far from straight forward: First, there is the question whether directors should be allowed to exercise powers whilst the administrators are appointed. Although maintaining a neutral approach at the hearing before me, the Administrators have not been prepared to consent to the steps Mr Dearing requires, because: (i) those steps do not seem to the Administrators to be necessary to achieve the purpose of administration; (ii) they are concerned that taking those steps would be likely to involve expenditure or give rise to liabilities which could prejudice shareholders and, potentially, creditors; (iii) the precise steps proposed are not adequately particularised; (iv) insofar as those steps are identified, they appear to fall outside the Administrators' remit; and (v) there is no urgency when the Administrators are on the cusp of final distribution and their appointment ceasing to have effect.

4. Second, there is the fact that there are disputes as to who owns the Company's issued share capital. Rich Pro Investments Limited by letter dated 13 May 2020 has informed the administrators that as majority shareholder it wants different directors to those proposed by Mr Dearing. It also wants the actions of the new, interim board to be limited to convening a members' meeting immediately after the Company exits from administration at which the interim board will resign.

5. Third, there is the distinction of legal personality between the Company and its subsidiaries to be borne in mind. Fourth, this adjourned hearing remains in the urgent applications list to be determined without the evidence being tested.

B) The Context

6. Those questions arise in the following, summarised context. The Company is a holding company incorporated in 1987. It also provided treasury and management functions for its group, which was principally concerned with the exploration and mining of minerals in Zimbabwe and the Democratic Republic of Congo. Its shares were listed on the Alternative Investment Market. Administrators were originally appointed by the directors on 1 August 2017 on the basis that the Company was unable to pay its debts as they fall due.

7. On 30 November 2017, in the context of legal proceedings brought by Rich Pro Investments Limited, the Court ordered that appointment to cease and this administration to begin. The Administrators' proposals were approved by the creditors on 6 February 2018 with three purposes: to rescue the Company as a going concern; to achieve a better result for the Company's creditors as a whole than would be likely if the Company were to be wound up; and to realise property in order to make a distribution to one or more secured or preferential creditors. In briefest summary, the intention was principally to achieve the first or second options through the sale of subsidiaries' shares. The options to exit included the return of control of the Company to the directors.

8. The Administrators believe they have realised sufficient assets, in excess of £23.1 million, to pay the Company's creditors in full with statutory interest. Subject to receiving and determining proofs, they therefore believe they have rescued the Company as a going concern.

9. On 20 March 2020, I.C.C. Judge Mullen permitted them to make a distribution to creditors. He directed that the administration of the Company will cease with effect from the filing of the Order with the Registrar of Companies in accordance with ***paragraph 86(2) of Schedule B1***. The Administrators will be discharged from all liability arising from any action or omission as administrators of the Company, with effect from the same date.

10. On 3 April 2020, the Administrators gave notice in the Gazette of their intention to declare a dividend to creditors of the Company. Creditors are required to submit final proofs of debt by 13 May 2020. The Administrators must admit or reject all claims by 27 May 2020. Following that date, subject to any appeal against any admission or rejection of any proof of debt, the Administrators will make a final distribution. They anticipate the process will be completed within two months from 13 May 2020. At the termination of the Company's administration, the Company's creditors will have been paid in full (with statutory interest). As matters stand, the Company will be restored to the control of Mr Dearing, as the sole director.

11. The Administrators are concerned that the relief sought by Mr Dearing will impact upon the surplus which they anticipate will be available to the Company upon the

cessation of their appointment. Their evidence refers in particular to the request for an open-ended indemnity. Article 145 of the Company's Articles of Association, relied upon by Mr Dearing, requires the Company to indemnify the directors in respect of all costs, charges, losses and expenses incurred ("the Indemnity"). Their concern means they do not consider it appropriate to permit directors to cause the Company whilst in administration to obtain indemnity insurance, open a bank account, obtain legal advice in relation to the duties and functions of the directors or to take steps to recover money due to the Company or its subsidiaries.

12. They are also prudently concerned that no criticism or liability should fall upon themselves on account of the appointment of new directors and/or their subsequent management. By letter dated 22 January 2020 they explained to the members of the Company that (in summary and amongst other matters) they did not intend any further realisations. They would ensure the Company would be in a position to make a distribution to creditors but otherwise would take no further action in relation to the Company's and/or subsidiaries' business and/or assets.

13. The letter also included an "asset summary" which essentially provided a snap-shot of the key matters relevant to each remaining subsidiary. For example, in the case of "Zani Kodo (Mizako Sarl)" they explained that neither they nor the Company would be appealing a relevant Presidential Order and any shareholder wishing to mount an appeal should seek their own advice. In the case of "Maligreen JV (Mali Green Mining Company (Private) Ltd)" the summary stated that the Group owned 50% of its mining operations but it apparently owes c$785k under a joint venture agreement in respect of expenses incurred by the project between 2013 and 2019.

14. In addition, the Administrators referred to the Company being owed a £4.9m deposit *"from a previous bidder"*, guaranteed by the Reserve Bank of Zimbabwe. The Administrators explained that they were *"not in a position to incur costs recovering this deposit and will not be taking any action in that regard"*. Its recovery will be the responsibility of the directors and shareholders once their appointment ceased. They emphasised generally that their duties did not *"permit them to spend the creditors' monies for the benefit of the Company's shareholders or permit [them] to take any further action in relation to the Company's subsidiaries' business or assets"*.

15. The Administrators' evidence describes their continuing approach towards the subsidiaries as follows:

> *"Although the Company is a holding company and historically performed a treasury function of the Group, it is the intention of the … Administrators, as set out in the Proposals … that the subsidiary companies … will continue to operate normally in the usual way during … the … administration. Where [they] have been required to take action … to preserve the value of the Company's shares … and/or such action taken towards the [administration's] Objective [they] have taken such necessary steps to achieve the same."*

16. Mr Dearing, who states that he purchased his shares in about 2012, is a qualified and practising solicitor. He refers in his evidence to a hiatus for the Company during 2015-16 which resulted (in briefest summary) in changes to the board and his appointment as an executive director in May 2016 and company secretary in October 2016. Further problems occurred in 2017 resulting in further changes in the board. He

also refers to a hostile take-over attempt by Rich Pro International Limited in 2017. These matters are also referred to within the Administrators' proposals to creditors. Mr Dearing does not challenge the Administrators' continuing appointment and acknowledges their statutory powers and duties. However, he considers that his attempts to ensure the Company is ready to continue its normal business activities with a lawfully appointed board of directors are being unfairly prevented by the decisions of the administrators summarised above. He has written on many occasions seeking their consent or assistance and has been rebuffed. He considers this damaging.

17. Mr Dearing's case is that this is unfairly harmful to his interests as a member of the Company in the context of the following (summarised) information provided within his evidence. Namely, that: (i) "Zani-Kodo" is a *"gold asset … worth significantly more than US$10m"*; (ii) "Parc Selemba" *"appears to have a net value of US$3 million"*; (iii) "Sibeka" is *"worth over US$5 million"*; (iv) The Company is owed deferred consideration for the sale of another subsidiary of about £478,000; and (v) there is £4.9m guaranteed debt (as mentioned above). He asserts that delay in management acting in the ordinary course of business in respect of all or some of those assets will be or will be potentially prejudicial to the Company. He *"believes that the directors of the Company and the subsidiaries should take proper steps to recover [over £5m due to them] without further delay"*. He considers the actions he proposes are in the interests of shareholders and he refers in his evidence to approaches he had had from several of them. He reminds the Court that *"there are connected with the Company persons who are not afraid to engage in litigation"* and names three persons.

18. As to the Company's share register, Mr Dearing's evidence is that it does not reflect acceptances by Rich Pro International Limited during 2017 of unconditional offers applicable to over 50% of the Company's shares. He also refers to the need for rectification to address various invalid allotments made during a rights issue in 2015. He states that rectification is required before a meeting of members can be convened and the burden of this should be completed in time for the end of the administration. He also observes that it now takes time to open a bank account because of the many required checks and that this process should be begun in order that the Company has an account to operate and in which to receive surplus administration funds when the administration ceases. Equally he considers it appropriate in all the circumstances that the directors should obtain legal advice. Further, he should not be left in the position of acting as a director without an indemnity policy in place in accordance with the Indemnity.

C) Arguments/Submissions and the Need for Caution

19. I need not separately set out the arguments of Mr Dearing or the submissions of Mr Robins during the hearing. I will address the points they made within the substance of this judgment insofar as it is necessary to do so. However, I should make four points. The first is to thank Mr Robins for his helpful skeleton argument reflecting his specialist knowledge of insolvency law. The second is that the Court must exercise caution when determination is sought upon an application heard in the urgent list with no other shareholder being joined or attending but with a significant shareholder

objecting in writing to the relief sought. The fact that it is in the urgent list means there has been limited time for argument and submissions. In addition, the decision is required to be made on paper without the evidence having been tested in any manner. That is not to suggest there are concerns over veracity but to emphasise that facts and matters are being relied upon to found opinions and arguments without them having been subject to forensic examination.

20. The third point in part flows from that absence of testing but is also a point in its own right. The evidence and opinions of the administrators must be approached from the basis that they are acting as officers of the Court and in accordance with their appointment carry out the duties and exercise the powers conferred upon them by statute. Of course, that does not mean that their evidence must be accepted. However, Parliament has placed them in a trusted position which confers upon them a detailed knowledge of the Company and its group which the Court does not have. The Court must also respect that Parliament has entrusted the Administrators to make decisions in accordance with their powers and the Courts are not there to supersede their statutory role.

21. The fourth point is that the Mr Dearing draws attention to a fundamental difference in approach as he perceives it. Namely, as he puts it in his evidence in reply, that the Administrators' *"approach is incorrect in law and nonsensical in fact as it leaves the Company in default now and its subsidiaries in an impossible position, in many cases without directors, to the detriment of me and all other shareholders"*.

D) The Role of Management during an Administration

22. This application must be addressed in the context of the statutory scheme and provisions for administrations. Administrations are in effect two stage processes. The period from appointment to when creditors decide whether to approve proposals and, if approved, the period of implementation to cessation. Whilst administrations exist in the context of actual or likely insolvency, they can, as here, be concerned with companies unable to pay their debts as they fall due but balance sheet solvent. When they cease, they may leave a solvent company. Therefore, whilst there will be administrators where the only interested party will be the creditors, for others the interests of the company and, therefore, indirectly the members will be relevant. The purpose(s) of the administration will be construed and the proposals to be approved by creditors drafted and implemented accordingly subject to the terms of the administrators' statutory powers, functions and duties.

23. Subject to ***paragraphs 3(3) and 3(4) of Schedule B1***, during the first period administrators must act to achieve one or more of the purposes prescribed by ***paragraph 3(1)***. ***Paragraph 111(1) of schedule B1*** defines *"the purpose of the administration"* as meaning an objective within ***paragraph 3***. This also applies during the second stage when the administrators must manage the company's affairs, business and property in accordance with the approved proposals, subject to permitted revision and to any court directions (***paragraph 68***). The Court's power to give those directions is restricted by ***paragraph 68(3)***. However, the administrators may seek directions in connection with their functions under ***paragraph 63*** and the Court has wide inherent powers and may fill in gaps left by the legislation.

24. During both stages when performing the object of the administration's purpose, the administrators must act in the interests of all the creditors (***paragraph 3(2)***). They shall take custody or control of all the company's property (***paragraph 67***) and may do anything necessary or expedient for the management of the affairs, business and property of the company (***paragraph 59***). In addition to that general power to be applied to the performance of the objective, they are given very wide, express powers within Schedule 1 of the Act (***paragraph 59***) including power to carry on business.

25. Directors remain in office but no officer of the company may exercise a management power, meaning *"a power which could be exercised so as to interfere with the exercise of the administrator's powers"*, without the consent of the administrator (***paragraph 64***). Not only do the administrators have that power of consent to further the objective of the administration but they can also remove and appoint an officer and call a meeting of members to seek a decision on any matter from the company's creditors (***paragraphs 61-62***).

26. Therefore, the statutory scheme is plain. The administrators are responsible for the management of the company, whilst the directors remain in office. They shall manage the company for the purposes of the administration and, at stage two, in accordance with the approved proposals. No distinction is drawn by statute between different parts of the company or its assets on the basis that some may be subject to the administration and some may not. The administration is concerned with the company as a whole and, therefore, administrators must address the company as a whole when seeking to achieve the objective of the administration. Their proposals should address the company as a whole. Mr Dearing's application and his proposition that the Administrators' approach is wrong in law (see paragraph 21 above) must be considered in this context.

27. It is a context which gives rise to a myriad of possible scenarios. However, examples are worth considering in order to test Mr Dearing's argument of law and approach. An obvious one is when the company is being rescued as a going concern and the administrators need to manage all the company's assets and business. None are ignored when seeking to achieve the administration's purpose and when fulfilling the approved proposals. There may be cases, however, where the administrators decide to "abandon" or "mothball" assets or part of the business if this is required to fulfil the approved proposals and achieve the purpose of the administration. They may do so, but it is reasonable to expect, for example, that they would normally ensure a building insurance policy premium is paid for an unrequired building. That is because the object of the administration has resulted in the building being "mothballed" and the insurance is required to ensure that no uninsured claim arises which may be a cost and expense. If the cost of the premium will adversely affect the purpose of the administration or implementation of the proposal (however unlikely), perhaps the building will have to be realised. In contrast, administrators would not normally use realised funds to provide working capital to keep a part of the business running at the expense of the future distribution to creditors. That is because it will not normally fulfil the approved proposals or further the statutory purpose.

28. It follows, that when, as here, administrators can act in accordance with the approved proposals by only dealing with proof of debts and distributing assets, they still cannot ignore the rest of a company's assets and business. If a relevant scenario arises, they will have to decide whether active steps need to be taken. However, that does not

mean active steps must be taken. During stage two there is a positive obligation to manage the affairs, business and property of the company in accordance with the proposals approved by the creditors. They must decide whether to act and, if so, what to do in accordance with that obligation in the context of the administration's purpose(s). It follows that when assessing whether administrators have acted unfairly and whether to grant relief under ***paragraph 74 of Schedule B1***, the Court will need to take into consideration those positive statutory requirements governing the functions of administrators subject to any directions of the Court permitted by ***paragraph 68(3)***.

29. As Mr Justice Hildyard explained in ***Re Lehman Brothers Europe Ltd (in administration)*** [2017] EWHC 2031 (Ch), [2018] 2 All ER 368, ***Schedule B1*** does not *"permit an administrator to perform any of his functions so long as doing so does not conflict with the statutory purpose of the administration. If it had been Parliament's intention to so provide, it could easily have done so. Rather, the statute is clear that any performance of an administrator's function must be performed for, and only for, the administration's purpose"*. Each decision will turn on its own facts and Parliament has entrusted the administrators with the decision-making powers.

30. Administrators may decide at any stage to involve a director(s) and permit that director to exercise management powers. There is also a myriad of possible circumstances when administrators may do so. At one end of the spectrum are cases where to best achieve the purpose of the administration, directors will be empowered to manage the day to day running of the business subject to the administrators' supervision. This may be because of their expertise and reliability and/or because it reduces the cost and expenses of the administration which may be unnecessary and/or may be detrimental to the purpose. It is this approach that has been mooted as a potential route for companies suffering the financial consequences of the Coronavirus (Covid-19). The extent of the supervision will depend upon the circumstances and the administrators' assessment of the need for supervision.

31. At the other end of the spectrum are cases where part of the business remains operational but is not needed for the purpose of the administration. This is the scenario Mr Dearing presents for his application. The administrators may wish to leave that part of the business to the management of the directors subject to supervision provided it does not adversely affect the purposes of the administration or fail to be in accordance with the proposals. Each administration will turn on its own facts.

32. However, as stated above, the position of a director in the absence of consent is that they may not exercise a management power so as to interfere with the exercise of the administrator's powers. Bearing in mind the fact that the management of the company as a whole lies in the power of the administrators, that is an extremely wide prohibition. Although the statutory and common law duties of directors continue (see Re ***System Building group Limited (In Liquidation)***[2020] EWHC 54 (Ch), [2020] 1 B.C.L.C. 205), the application of those duties will be restricted in practice by the statutory prohibition to the extent that there is compliance.

33. In ***Closegate Development (Durham) Ltd and another v Mclean and others*** [2013] EWHC 3237 (Ch), [2014] Bus LR 405 Mr Richard Snowden Q.C. sitting as a deputy High Court Judge, as he then was, decided that *"the restriction on the exercise of*

management powers in paragraph 64 of Schedule B1 to the Insolvency Act 1986 was primarily directed at powers which if exercised would impede the exercise of similar powers by the administrators". He decided that directors had power to cause the company to challenge the validity of an administrator's appointment. Mr Justice Hildyard in ***Re Lehman Brothers Europe Ltd*** (above at [65]) explained that this was a power *"inherent in the status of the company as a company in administration"* not a power needed to be used to manage in accordance with the approved proposals or to give effect to the purposes of the administration.

34. In this case the Administrators have realised assets to enable them to make a final distribution to creditors and will hand back control of the Company to its director. The questions this application raises, therefore, are: (i) whether the powers Mr Dearing proposes to exercise either on his own or with a board of newly appointed directors are prohibited without the administrators' consent under ***paragraph 64(1)***; and (ii) If so, whether the administrators by refusing their consent have acted unfairly and harmed his interests (whether alone or in common with some or all other members or creditors).

E) The Decision

35. Based upon the above-mentioned context, law and need for caution my decision is:

(1) The Administrators are required to consider the requests for the appointment of new directors and for consent to manage as asked. The requests cannot be rejected solely on the basis that the proposals now only require the proof of debt and distributed process to be completed and, therefore, the steps proposed by Mr Dearing are unnecessary to achieve the purpose of administration (see paragraphs 26-28 above).

(2) However, the Administrators have not adopted that "simplistic" approach. Their correspondence and evidence establishes that they have considered Mr Dearing's request in the context of their responsibility for the management of the Company (see paragraphs 11-15 above).

(3) For the purposes of such consideration it can be legitimately asserted by Mr Dearing that it is reasonable for the Company to be placed into a position from which directors can resume control of management when the administration ceases. After all, the purpose of the administration which is being implemented is its rescue as a going concern. However, the Administrators' decision whether to grant consent to manage in the meantime must depend upon whether consent will be in accordance with the approved proposals and the purposes of the administration. In reaching that decision they must bear in mind their duty to act in the interests of all the creditors (see paragraphs 23-24 and 28-31 above).

(4) The Administrators' decision is that it is not. For that decision to be challenged under ***paragraph 74 of Schedule B1*** it is necessary to establish they are acting or have acted *"so as unfairly to harm the interests"* of Mr Dearing whether alone or in common with other members or creditors. Further, to obtain relief

it must also be established that the steps required will be in accordance with the approved proposals and the purposes of the administration and, therefore, will not adversely affect the administration (see paragraphs 2 and 28-29 and 31 above).

(5) There appears from the evidence before me to be a need for the Company to have new directors appointed and for them to take preparatory steps to enable control of the Company to be returned in the context of the Company being rescued as a going concern. Mr Dearing's evidence also suggests that there might be steps required to be taken to protect the Company's interests and value, whether directly or indirectly through its subsidiaries. (see paragraphs 16-18 above).

(6) However, it is only "might". The evidence does not establish on the balance of probability that steps are required to be taken to protect the Company's interests and value. There is simply insufficient detail. There is no evidence which can lead the Court to the conclusion that the Administrators have not addressed this issue and have acted unfairly (see paragraphs 11-15 above). In particular:

a) The Administrators have stated they have taken action to preserve the value of the Company's shares when required in accordance with the proposals and statutory purposes.

b) It cannot be concluded there is current risk to "Zani-Kodo", "Parc Selemba" or "Sibeka". It is also far from clear that the proper distinction of legal personality between the Company and its subsidiaries has been made by Mr Dearing's case.

c) There is no evidence that steps need to be taken now (as opposed to at the end of the short period remaining for this administration) to recover the deferred consideration for the sale of another subsidiary of about £478,000 or the guaranteed sum of £4.9m.

d) The evidence and opinions of the administrators must be approached from the basis that they are acting as officers of the Court and in accordance with their appointment to carry out the duties and exercise the powers conferred by statute (see paragraph 20 above).

(7) Even if the Court took Mr Dearing's statements in evidence at face value, there would still be the questions of precisely what steps new directors would take, what cost and risk may be involved and what the effect might be upon the purposes of the administration and the fulfilment of the approved proposals. No conclusion on such matters can be reached by the Court on the information/evidence before it. As an illustration, taking perhaps the example most likely to be favourable to Mr Dearing's application, whilst reference to a bank's guarantee suggests recovery may be straight forward, that will depend upon the bank's position and all matters relevant to the factual matrix. The Administrators' decision is fully understandable based upon their stated concerns (see paragraphs 11-12 above). It cannot be described as "unfair".

(8) It is of concern that the share register may need rectification. However, the greater concern for this application is that this may be a matter of significant dispute (see paragraphs 16 and 18 above). If not, it can be rectified after cessation of the administration with relative ease. If so, the approach of the Administrators in the context of their obligation to act in accordance with the approved proposals and fulfil the statutory purposes cannot be described as "unfair". In the context of the Administrators' concerns over cost, however, Mr Dearing's warning of litigious connected parties is hardly encouraging (paragraph 17 above). There is also the issue of the views of Rich Pro Investments Limited to add to the mix (see paragraph 4 above). There is no "unfairness".

(9) The preparatory steps proposed to be taken by the directors concerning the opening of a bank account, purchasing indemnity insurance and obtaining legal advice all appear potentially sensible (see paragraph 18 above). However, it is the cost ramifications, including with regard to the Indemnity, and the absence of detail that is the legitimate cause for the Administrators' concern and refusal of consent (see paragraphs 11 above). There is no" unfairness".

(10) Insofar as the consent of the Administrators is required and sought for the appointment of new directors it is sought to enable one or more of the steps proposed to be carried out. Therefore, whilst appointment itself may not be contrary to the fulfilment of the approved proposals or the statutory purposes, the decision of the Administrators cannot be found to be "unfair" when appointment is inextricably entwined with the intention to take steps which ought not to be taken absent consent. It is sustained by their decision not to consent to those steps and justified because they do not want those steps to be taken.

(11) Mr Dearing argues that consent is not required to appoint other directors. I have not heard any legal argument but it seems to me that it is not a power which would in itself interfere with the exercise of the Administrators' powers. It is the consequences of appointment that are the problem (see paragraph 35(10) above). There is also a need for caution because of the contrary wishes of the majority shareholder, Rich Pro Investments Limited (see paragraph 4 above).

36. I am without doubt that relief should not be granted on this application before me. However, I consider it right to draw attention to three matters. First, there is a need to ensure (to the extent possible) that the exit can take place with the result that control will be returned effectively to the directors. Second, that this will be in accordance with the approved proposals. The options for the end of the administration expressly include return of control. That must be read as referring to an effective handing over subject to available resources to achieve that situation. Third, such exit will be in accordance with the purposes of the administration. Rescuing a company as a going concern does not simply mean the payment of its creditors. It must include leaving the company in a rescued, going concern position. There is much to be said for the case that the Company without four directors (whether appointed by an existing director or through a general meeting), without a bank account and with an uncertain membership will not fulfil that object.

37. That being so, it will be necessary for the Administrators to review the position. It will be for them to decide when to do so but Mr Robins's suggestion that the correct time will be when proofs have been determined subject to appeal and the financial position is clear(er) appears sensible. Plainly constructive dialogue needs to be entered into with at least Mr Dearing and (potentially) the majority shareholder but this is not the right time for the Court to give directions. That is not only because of the nature of the application (see point 2 at paragraph 19 above) but also because of the role Parliament has chosen for and entrusted to the Administrators (see point 3 at paragraph 20 above). Such matters are to be left with the Administrators, who may seek the directions of the Court pursuant to ***paragraph 63 of Schedule B1*** if required.

Order Accordingly