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Case No: CR-2022-001644

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

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

Tuesday 14 June 2022

BEFORE:

MR JUSTICE ADAM JOHNSON

IN THE MATTER OF HOUST LIMITED

Marcus Haywood for the Applicant Company

JUDGMENT
(APPROVED)

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(Official Shorthand Writers to the Court)

1. MR JUSTICE ADAM JOHNSON: This is the hearing of an application by Houst Limited (the *"Company*") for an order pursuant to section 901C of the Companies Act 2006 convening five meetings of creditors and one meeting of members for the purposes of considering (and, if thought fit, approving) a proposed restructuring plan in respect of the Company (the "*Restructuring Plan*").

2. The application is supported by two witness statements of Mr James Jenkins-Yates, who is a director of the Company and its founder.

3. The business of the Company is the provision of property management services in respect of short-term holiday lets. The Company's business focuses on using technology to streamline services to its customers. Property owners (referred to as "*Hosts*") who wish to let their property to guests on a short-term basis sign up to the Company's online platform. The Company then lists the Hosts' properties on various websites which advertise mainly short-term lets. The Company manages the guests' bookings and logistics, ensuring that the stay progresses with little or no need for direct Host involvement. The Company earns revenue from a share of the booking value.

4. As in many other areas, the Company's business has been severely affected by the coronavirus pandemic and the impact of the pandemic on the travel and hospitality industries more generally. The Company is now cashflow insolvent. The objective of the Restructuring Plan is to allow the Company to be returned to solvency and for its creditors and members to receive more than they would if the Company were placed into administration, which the Company says is the relevant alternative.

5. The members and creditors affected by the Restructuring Plan were provided with details of the Restructuring Plan by way of a Practice Statement Letter sent on 31 March 2022. An update to the Practice Statement Letter was later sent on 19 May 2022, providing details of the present hearing. Drafts of the Explanatory Statement and the Restructuring Plan were uploaded to a dedicated plan website on 6 June 2022 (and members and creditors affected by the Restructuring Plan were informed of the same by letter).

6. There has been ongoing dialogue with the Company's major creditor, Clydesdale Bank Plc (the "*Bank*"). No objections in relation to the Restructuring Plan as such have been raised to date, although recently it has come to light that, at least as presently advised, one other principal creditor, namely HMRC, is minded to vote against the Restructuring Plan. That, however, is subject to further efforts to engage with HMRC, which I understand will now continue before the proposed Restructuring Plan meetings, which I will come on to.

7. As to the present financial position of the Company, it has total current liabilities of approximately £5,200,000 and non-current liabilities of £3,754,000.

8. These liabilities include: (i) an overdraft of approximately £400,000 provided by the Bank to the Company;(ii) a term loan of approximately £2,365,000 provided by the Bank to the Company; and (iii) liabilities to HMRC in the sum of £1,775,238.

9. The Bank has the benefit of a Debenture dated 28 January 2020 granted by the Company.

10. The Company is unable to service the current loan obligations owed to the Bank. The Bank has deferred a capital payment of £140,000 due on the term loan at the end of January 2022 to March 2022, which has not been repaid.

11. I understand from the evidence that three creditors have recently either threatened winding-up petitions against the Company and/or served statutory demands. They are: (i) HMRC in respect of the sums owed to it; (ii) Almaviva Services SRL ("*Almaviva*"), a call centre provider, which is owed sums in the region of £385,000; and (iii) Citiclient (CPF) Nominees No 2 Limited ("*CPF*") , the Company's former landlords, who are owed a sum in the region of £112,000.

12. The Company does not have sufficient cash to enable it to meet these demands. The evidence of Mr Jenkins-Yates is that the only reason that these creditors appear to have held off presenting winding-up petitions thus far is because of the proposed Restructuring Plan.

13. Given its financial position, if the Restructuring Plan is not implemented, the directors consider they will have no alternative but to commence an accelerated marketing process to facilitate a sale of the Company's business and assets within an administration of the Company (ie a pre-pack administration).

14. Moving on to the terms of the Restructuring Plan, in outline, these will involve:

(vi) A minimum of £500,000 of new capital being advanced by certain members to the Company in exchange for the issue of new preference shares by the Company (the sum may be increased to £750,000).

(ii) A reduction in the sum outstanding to the Bank (referred to in the Restructuring Plan as the "*Secured Creditor*") with a total of £750,000 to be repaid over three years.

(iii) The Company making what are called "*Monthly Contributions*", to be used to make payments to the "*Plan Creditors*" (excluding the Secured Creditor, i.e. the Bank), in amounts expected to be higher than if the Company were to go into administration.

15. For the purposes of the Restructuring, the Plan Creditors comprise the following:

(vi) The Bank (i.e. the Secured Creditor).

(ii) HMRC (referred to in the Restructuring Plan as the "*Secondary Preferential Creditor*").

(iii) The trade creditors listed in schedule 4 to the Restructuring Plan (the "*Trade Creditors*"), who include Almaviva and CPF.

(iv) Certain Convertible Loan Holders and Loan Note Holders, being those persons identified in schedule 3 of the Restructuring Plan (the "*Loan Holders*").

(v) A connected company, Homesorted Limited (referred to in the Restructuring Plan as the "*Connected Party Creditor*").

16. The Restructuring Plan is not intended to compromise, release or affect any claim other than a claim by a plan creditor.

17. Specifically excluded from the plan are the following:

(vi) Liabilities owed to customers.

(ii) Liabilities owed to certain critical suppliers.

(iii) Liabilities to employees.

18. Under the terms of the Restructuring Plan, all present claims of the Plan Creditors will be irrevocably and unconditionally compromised, released and discharged. Instead, the Plan Creditors will be treated as follows:

(1) As already mentioned, the Bank will receive a total of £750,000, £250,000 to be paid straightaway and a further £500,000 to be paid over three years.

(2) The Company will make monthly contributions in specified amounts to two funds, the first fund to be used to make payments to HMRC and the second fund to be used to make payments to the Trade Creditors. The first fund is referred to as the "*Secondary Preferential Creditor Payment Fund*" and the second as the "*Unsecured Creditor Payment Fund*".

(3) The Loan Holders are effectively given the option of swapping their existing debt for equity in the Company by various methods. If they choose to retain their debt, they are to be paid out of the same fund as the Trade Creditors.

(4) Homesorted (the Connected Party Creditor) has agreed that it will receive nothing under the Restructuring Plan.

19. That summarises the position of the Plan Creditors, but the Restructuring Plan also contains provisions which will affect the members. The purpose of these provisions is to allow new shares to be allotted and issued by the Company in return for a further capital injection.

20. It had been hoped that it would be possible to pass the relevant shareholder resolutions and obtain the necessary consents to effect the proposed changes in advance of the present hearing, but that has not been possible because a large number of shares are held by Seedrs Nominees Limited as nominee for around 2,000 individual retail investors. Seedrs is not yet in a position to provide any relevant consent. It is hoped that it will be, but it may not. If not, then the Restructuring Plan makes provision for bringing about the necessary changes.

21. Broadly, what is proposed is that the present members will authorise the Company as their agent to execute or enter into various documents, including new articles of association. The broad effect will be:

(vi) The conversion of the existing Series A preference shares into ordinary shares.

(ii) The dilution of the interests of the existing Series A preference shareholders.

The dilution will come about because what is also proposed is an allotment of new preference shares to those members who choose to subscribe for those shares.

22. Finally, I should say it is proposed that Kirstie Provan and Mark Fry of Begbies Traynor (London) LLP will be appointed as Plan Administrators.

23. Those, then, are the broad terms of the Restructuring Plan.

24. As to what will happen if the Restructuring Plan is not implemented, as I have already mentioned, the view of the directors is that the relevant alternative is a pre-pack administration.

25. The Plan Administrators have prepared an estimated outcome report, which shows that, under the relevant alternative, all stakeholders would be significantly worse off than under the Restructuring Plan. For example, the Bank (the Secured Creditor) is projected to receive only 8p in the £ in the relevant alternative and some 27p in the £ under the Restructuring Plan. The Trade Creditors are expected to receive nil in the relevant alternative but 5p in the £ under the Restructuring Plan. As to the members, existing members, whether ordinary or preference shareholders, are expected to receive a nil dividend in the relevant alternative but they will retain an interest, albeit a diluted interest, under the Restructuring Plan.

26. Moving on to the legal principles in play, I turn to the statute. Section 901A of the Companies Act applies where two conditions are satisfied as follows:

> "*The provisions of this Part apply where conditions A and B are met in relation to a company.*
>
> *(1) Condition A is that the company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.*
>
> *(2) Condition B is that—*
>
> *(a) a compromise or arrangement is proposed between the company and—*
>
> *(i) its creditors, or any class of them, or*
>
> *(ii) its members, or any class of them, and*
>
> *(b) the purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the financial difficulties mentioned in subsection (2).*"

27. By section 901A(4), "*company*" is defined to mean "*any company liable to be wound up under the Insolvency Act 1986*".

28. Where the requirements of section 901A are met, then the Court is empowered, under section 901C(1), to order a meeting or meetings of creditors and/or members. An application under section 901C(1) may be made (as here) by the company.

29. Section 901F(1) provides that if a number representing 75% in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 901C, agree a compromise or arrangement, the Court may, on an application under that section, sanction the compromise or arrangement.

30. Moreover and importantly, even if a restructuring plan is not approved by one or more classes of creditors or members, the plan can still be sanctioned by the court under section 901G if certain other conditions are satisfied. That is the so-called "*cross-class cram down*".

31. The Practice Statement makes it the responsibility of the applicant to draw to the attention of the Court at a convening hearing a number of matters, including as a general point any issues not going to the merit or fairness of the scheme but which might lead the Court to refuse to sanction the scheme in due course.

32. Against that background, I have to consider a number of matters. I will take them in turn.

33. The first is whether the jurisdictional requirements are satisfied. I am content that they are. The Company was incorporated in England and Wales. It is therefore liable to be wound up under the Insolvency Act 1986 and the provisions of part 26A of the Companies Act apply.

34. The second point is whether Conditions A and B, as specified in section 901A, are fulfilled. Again, I am satisfied that they are. As to Condition A, the Company is cashflow insolvent. If the Restructuring Plan is not approved, the directors consider that they will have no alternative but to place the Company into administration. It is therefore clear that the Company has encountered, or is likely to encounter, financial

difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.

35. As regards Condition B, this has two limbs. To begin with, I am satisfied that the Company is proposing a compromise or arrangement in the relevant sense. That is obviously so as regards the Plan Creditors, who are being invited to relinquish their existing rights in return for new ones. It is also, I think, the case as far as the members are concerned. The proposal is that they will remain members but on changed conditions, which are expected in fact to be more favourable to them than in the case of an administration.

36. Moving on, as to the second part of Condition B, this relates to the purpose of the compromise or arrangement. On the facts here, for the reasons which will be obvious from the description already given, I am satisfied that the purpose of the Restructuring Plan is to allow the Company to be returned to solvency and for all creditors and members to receive more than they would if the Company were placed into administration.

37. That deals with Conditions A and B.

38. The third point is class composition. As to this, it is proposed that there should be six separate classes and therefore six meetings. The Company's proposed classes are as follows:

(vi) the Secured Creditor (i.e. the Bank);

(ii) the Secondary Preferential Creditor (i.e. HMRC);

(iii) the Trade Creditors;

(iv) the Loan Holders;

(v) the Connected Party Creditor (i.e. Homesorted Limited); and

(vi) the members.

39. In short, I see no good reason to disagree with the Company's proposals in this regard. The members obviously fall into their own separate class. As to the relevant Plan Creditors, there are obvious differences between them in terms of their rights. The Bank, as Secured Creditor, has the benefit of security and the other Plan Creditors do not. The Secondary Preferential Creditor, HMRC, also stands in a special position ahead of the other Plan Creditors, although it has no security and thus is in a different position to the Bank. There are material differences between the Trade Creditors and the Loan Holders, not least in terms of their intended rights if the Restructuring Plan is implemented. The Connected Party Creditor, Homesorted Limited, naturally falls into a category of its own given that it will receive nothing under the Restructuring Plan.

40. To return for a moment to the members, there is a separate question whether there should be a division between the existing ordinary and preference shareholders and consequently a question whether there should be not six but seven different classes and therefore seven separate meetings.

41. Having considered this point, I am persuaded that there is no need for any fragmentation of the overall presently single class of members. Although the rights of the existing Series A preferential shareholders and ordinary shareholders are not the same, the ultimate question is whether the rights as between them are so dissimilar as to make it impossible for them to consult together with a view to their common interest such that they should not vote in a single class.

42. Given that the rights of the members arise, whether ordinary shareholders or preference shareholders, in their capacity as shareholders of the Company and given that, under the Restructuring Plan, all members are treated in a similar way, it seems to me that there is no good reason to think that they cannot consult together with a view to their common interest.

43. As has been stated on a number of occasions, a degree of pragmatism is required in addressing the issue of class composition. Applying such an approach here, it seems to me that the differences such as they are between the ordinary shareholders and preference shareholders are not such as to make it impossible for them to consult together. I am therefore not persuaded there should be any further division and I am

therefore content to adopt the Company's proposal in relation to the treatment of the members. That therefore deals with the question of class composition.

44. The fourth point is whether there are any other issues, not going to merits or fairness, which might in due course cause the Court to refuse to sanction the Restructuring Plan. The Company has not identified any matters under this head and neither have I identified any.

45. The fifth and final question is whether the relevant practicalities have been satisfactorily dealt with. As to this, the Practice Statement Letter was originally sent in hard copy to all members and creditors affected by the Restructuring Plan on 31 March (i.e. 75 days before this hearing). Additionally, the Practice Statement Letter directed the creditors and members to the so-called "*Plan Website*". The Practice Statement Letter update was sent to members and creditors in hard copy on 19 May and made available on the Plan Website on the same date. The Practice Statement Letter Update informed the creditors and members of the date of the present hearing. In the circumstances, I consider that adequate notice has been given to those affected by the Restructuring Plan.

46. I have considered the Explanatory Statement. In my judgment, it communicates all relevant material matters in a way that would be readily comprehensible to its intended addressees. In saying that, I bear in mind that the members are principally venture capital interests who can be expected to be sophisticated and to have advice available to them if needed.

47. The proposal is that the various meetings contemplated by the Restructuring Plan will be convened for 28 June, such meetings to be held virtually. That seems to me sufficient notice in light of the information which has already been circulated to those affected, which includes, as I have mentioned, a draft of the Explanatory Statement uploaded to the Plan Website on 6 June. The proposal for a virtual meeting seems to me unobjectionable in light of the practice which has developed following the COVID-19 pandemic.

48. I therefore propose to make an order convening the proposed meetings and will hear further now from counsel for the Company on the precise form of order.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge