Neutral Citation Number: **[2023] EWHC 3076 (Ch)**

Case No: **CR-2023-005640**

IN THE HIGH COURT OF JUSTICE
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: **17 November 2023**

Before :

Mr. Justice Miles

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In Re :

In the matters of Atento UK Limited and Atento Luxco 1 **Claimant**
- and -
In the matter of the Companies Act 2006

- -
- -

Daniel Bayfield KC and Matthew Abraham (instructed by **Sidley Austin LLP**) for the **Claimant**
David Allison KC (instructed by **Hogan Lovells International LLP**) for an ad hoc group of supporting Plan Creditors

Hearing date: **17th November 2023**

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JUDGMENT
APPROVED

MR JUSTICE MILES:

1. This is the application of two companies, Atento UK Limited (**Atento UK**) and Atento Luxco 1 (**the Issuer** and together with Atento UK, **the Plan Companies**), for an order pursuant to section 901F of the Companies Act 2006 sanctioning two proposed restructuring plans.

2. The Plan Companies are part of a group of companies in the Atento group (**the Group**). They fall under Atento SA (**Holdco**), a public limited liability company. The Group operates a customer relations, management and business process outsourcing service in 17 countries. The Group has been facing financial difficulties since 2021, and is currently facing a liquidity shortfall by the week ending 1 December 2023.

3. The plans are part of a wider restructuring. This will involve the injection of US$76 million (**the Exit Financing**) through the injection of US$58 million from Plan Creditors (as that term is defined in paragraph 4 below) and a further US$18 million from an affiliate of an existing Class D Creditor.

4. The Plan Creditors have proposed the plans to address the English law governed liabilities owed by them to the following four classes of creditors (**the Plan Creditors**): (a) the holders of the existing 2025 notes (**the Class A Creditors**); (b) the holders of the new money 2025 notes (**the Class B Creditors**); (c) the holders of new junior lien notes (**the Class C Creditors**) and; (d) the swap providers and the holders of the 2026 notes (**the Class D Creditors**).

5. In broad terms, the plans will affect the Plan Creditors as follows: (a) Class A Creditors, the existing 2025 notes will be amended and restated to include, among other things, a three-month extension and amendments to the existing collateral package; (b) Class B Creditors, the new money 2025 notes will be amended and restated to include, among other things, a six-month maturity extension and amendments to the existing collateral package to cover all available assets; Class B Creditors will be offered the right to subscribe for US$28 million of the Exit Financing by subscribing to class A redeemable preferred shares in the Issuer; (c), Class C Creditors, the new junior lien notes, will be extinguished and Class C Creditors will be allocated ordinary shares representing 0.3% in aggregate of the fully diluted ordinary share capital of the Issuer (the Ordinary Shares) pro rata to their claims at the restructuring effective date, that is a date in November 2023, and; (d) Class D Creditors, the swaps agreements and the 2026 notes will be extinguished and Class D Creditors will be allocated 2% of the Ordinary Shares pro rata and offered the right to provide US$30 million of the Exit Financing by subscribing for class A preferred shares in the Issuer.

6. The boards of directors of each of the Plan Companies have concluded that the proposed restructuring and plans are in the best interests of the Plan Creditors and the Group. They consider that each class of Plan Creditor would be better off, and, in any event, no worse off, under the proposed plans than in the relevant alternative, which they say would be a Group-wide liquidation.

7. The convening hearing took place on 20 October 2023, when I made an order giving each of the Plan Companies liberty to convene four meetings of their Plan Creditors, corresponding to the classes of Plan Creditors I have already mentioned (the Plan Meetings), to consider and, if thought fit, approve the plans. I also gave a judgment giving my reasons for that order: see [2023] EWHC 2754 (Ch).

8. The factual background is given in my convening judgment at paragraphs 8 to 44. Those paragraphs are to be treated as if they had been read into this judgment and I shall not repeat them here.

9. As I explained in the convening judgment, I was satisfied on the evidence of a number of things:

    a. The Group was projected to have only sufficient liquidity to continue operations until 1 December 2023, and that the Group was likely to face another imminent cash shortfall should the terms of the plans and the wider restructuring not be implemented.

    b. If the plans were not sanctioned, the Exit Financing would not be provided; and if that did not happen, the Plan Companies would be unable to comply with their financial obligations to the Plan Creditors. In consequence, the Plan Companies would be most likely to enter into liquidation due to having insufficient liquidity to operate as a going concern or upon enforcement by the Plan Creditors.

    c. The estimated recoveries in the relevant alternative are, in summary, as follows: (a) existing 2025 notes, 42.7% to 86.2%; (b) new money 2025 note-holders, 9.5% to 19.5%; (c) new junior lien note-holders, 0%; (d) swap providers, 0%; and (e) 2026 note-holders, 0%. On this basis, the Class C Creditors and the Class D Creditors are out of the money, as they would receive 0% in the relevant alternative.

    d. On the basis of the expert financial advice provided to the Plan Companies, the likely returns to each of the Plan Creditors if the plans were to be implemented is estimated to be: (a) existing 2025 note-holders, 100%; (b) new money 2025 note-holders, 100%; (c) new junior lien note-holders, 0.5% to 1%; (d) swap providers, 0.4-% to 0.8% and; (e) 2026 note-holders, 0.4% to 0.8%.

10. I gave directions for Plan Meetings to be held. These were held on 13 November 2023. The plans were approved by very considerably more than 75% in value of each class of Plan Creditor present and voting at each of those meetings. For classes A, B and C, 100% of the creditors present and voting were in favour, and for class D, 99.55% by value of such creditors voted in favour.

11. The application for sanction has been supported by an ad hoc group of creditors who have substantial holdings by value of the relevant debt across the four classes.

12. The notice of this application has been given to all Plan Creditors on a number of occasions, including most recently by a notice of 13 November 2023. No Plan Creditors have appeared at this hearing to oppose and no notice of opposition has been given.

13. At a sanction hearing where the requisite majorities have approved the plan at each of the Plan Meetings, so that there is no issue of cross-class cram down, the court follows the conventional approach to the exercise of a discretion which applies in Part 26 schemes. For such schemes, it is well-established that the relevant questions at the sanction stage are as follows (adapted for plans rather than schemes): (a) whether there has been compliance with the statutory requirements; (b) whether the class or classes were fairly represented and the majority acted in a bona fide manner; (c) whether the plan is one which a plan creditor acting in respect of its own interests could reasonably approve and; (d) whether there is some blot or defect in the plan.

14. In cases with an international dimension, there are also questions whether there is a sufficient connection with the jurisdiction and whether the plans will have had substantial effect.

15. I am satisfied, first, that there has been compliance with the statute. In the first place, the statutory majorities were obtained at each of the Plan Meetings. Secondly, there has been compliance with the terms of the convening order for those meetings. Thirdly, the question of class composition was addressed in detail in the convening judgment at paragraphs 54 to 70. In accordance with the usual practice of the court, there is no good reason here to revisit that determination.

16. The second issue is whether each class was fairly represented and the majority acted in a bona fide manner. In the present case, the turnout at the Plan Meetings was high. I have seen nothing to suggest that the voting did not fairly represent the relevant classes or that Plan Creditors acted other than in a bona fide manner.

17. One point that was properly raised before me was that in respect of consent fees. I noted at paragraph 66 of the convening judgment that this may be a factor that might influence the court's view at the sanction hearing. I am satisfied that though the consent fee was relatively high in comparison to the value of the plan consideration for Class D Creditors, the existence of the consent fee does not give rise to any concern that the statutory majority were acting other than representatively and in a bona fide manner.

18. All Class D Creditors had the option to obtain a fee at the time of the meeting of Class D Creditors, and the alternative to voting in favour of the plans was a zero return in the relevant alternative for that class.

19. Although the turnout for Class D Creditors was lower than for the other classes, being about 60% of the outstanding principal amount, the turnout was nonetheless still high, and it involved some 227 Class D Creditors voting at the relevant meetings for each Plan Company.

20. The vote in each case in favour was more than 99%.

21. In circumstances where the evidence is that such creditors would get nothing in the relevant alternative, where such creditors did vote in favour, they can be considered to be voting in favour of an outcome which gives them something. Although the consent fee leads to those who voted in favour getting more, there is no reason to think that a vote in

favour of a plan which gives something rather than nothing is anything other than representative and bona fide.

22. The third question is whether a creditor acting in its own interests could reasonably approve the plan. I am satisfied here that the plans are ones that intelligent and honest Plan Creditors acting in respect of their own interests might reasonably approve. The plans represent an alternative to a liquidation of the Group. The plans were approved by very substantial majorities in relation to each class. They were recommended by the directors as giving a better outcome. The directors relied on advice from well-known financial advisers.

23. It is well-established that the court will be slow to differ from the outcome of meetings unless there is reason to conclude that those voting were not acting in the interests of the class or that there is some other defect in or impediment to the plan. Generally, plan creditors are the best judges of what is in their commercial interests. I see no reason here for departing from the conclusions reached at the Plan Meetings.

24. The fourth issue is whether there is a blot on the plan. I am satisfied that there is no such blot in this case.

25. I turn to the international dimension. In Re ColourOz Investment 2 LLC [2020] EWHC 2464 (Ch), Mr Justice Snowden held that in deciding whether to exercise its discretion to sanction a scheme, and the same must apply to restructuring plans, the court has to address, among other things, two questions: (a) does the company have a sufficient connection with England to justify the court exercising its jurisdiction; and (b) will the scheme or plan have, or is it likely to have, substantial effect in other jurisdictions in which those of the group companies which are liable for the debt which is the subject of the scheme or plan are incorporated or have operations and substantial assets, such that the court will not be acting in vain in sanctioning the scheme or plan. These are, generally, closely related questions although analytically they are separate.

26. The question of sufficient connection is only relevant here to the Issuer, as Atento UK is incorporated in this jurisdiction. In the case of a foreign company, a sufficient connection with England will be established if the liabilities varied or released by the restructuring plan are governed by English law (see, e.g., Re Vietnam Shipbuilding Industry Groups [2014] BCC 433). Here, all the plan liabilities are governed by English law and I am satisfied for this reason alone that there is a sufficient connection with England.

27. As for international effectiveness, there are several reasons for concluding that the plans, if sanctioned, are likely to have substantial effect in the other relevant jurisdictions, i.e., where the Issuer is incorporated and where Group obligors has operations and substantial assets.

28. First, I note that there is no requirement for a scheme or plan to be effective in every jurisdiction worldwide provided that it is likely to be effective in the key jurisdictions in which the company operates or has assets (see Re ColourOz at paragraph 25).

29. Secondly, given that the plan liabilities are governed by English law, the plans are likely to be effective internationally to vary those liabilities (see Re Magyar Telecom BV [2014] BCC 448 at paragraph 15).

30. Thirdly, the English court will generally regard a scheme or plan as likely to be substantially effective abroad if it has the very solid support of scheme or plan creditors (see Re DTEK Energy BV [2022] 1 BCLC 260 at paragraph 32).

31. This is likely to be particularly so if, as here, there is a lock-up agreement affecting substantial proportions of creditors as they will have undertaken contractually to support the plans.

32. Fourthly, in any event in this case the Plan Companies have obtained expert evidence in respect of the legal position in each of the key jurisdictions. The reports conclude that the plans are likely to be given substantial effect in those jurisdictions. There has been no contrary suggestion from any Plan Creditor.

33. In the present case, it may be necessary for the Plan Companies, via their "foreign representative", to apply to relevant local courts for relief to give full force and effect to the plans. In this regard, on 13 and 14 November 2023, the board of each Plan Company resolved to appoint Mr Nelson-Smith to act as its foreign representative, to assist Mr Nelson-Smith to make an application for recognition or take other relevant steps in the local jurisdiction. In relation to the Issuer, I am satisfied by the evidence of Luxembourg law which was provided to the court that the board resolution appointing Mr Nelson-Smith is valid. I shall declare and record that Mr Nelson-Smith has been validly appointed as a foreign representative of each of the Plan Companies.

34. In the circumstances I shall sanction the plans.