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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
[2022] EWHC 3316 (Ch)

No. CR-2022-004108

Rolls Building
Fetter Lane
London, EC4A 1NL

Wednesday, 16 November 2022

IN THE MATTER OF CARGOLOGICAIR LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Before:

MR JUSTICE MICHAEL GREEN

B E T W E E N :

KONSTANTIN VEKSHIN
(in his capacity as the sole director of CargoLogicAir Limited) Applicant

MR A AL-ATTAR (instructed by DLA Piper UK LLP) appeared on behalf of the Applicant.

J U D G M E N T

MR JUSTICE MICHAEL GREEN:

- 1 This is an application by the sole director of CargoLogicAir Limited (“the Company”) to put the company into administration. There is also a subsidiary or ancillary application to permit the proposed administrators to use the Insolvency Services Account to carry out their functions as has been approved on certain similar applications where there are Russian sanctions affecting the operation of a company’s bank account. I have had the benefit of submissions both in writing and orally on behalf of the applicant from Mr Adam Al-Attar.
- 2 As I said, the company has been seriously affected by the sanctions imposed on the ultimate majority shareholder who is Mr Alexey Isaykin. He owns the majority of the shares in Cargo Logic Holding Limited, an English registered company. It owns all the shares in the Company which is also registered in England. Its business is as a cargo airline owning two 747s, or used to own two aircraft, with maindeck freighters, which means that they have carrying capacity in both the main deck and the belly of the aircraft.
- 3 Both the Company and its parent are now subject to the full asset freezing sanctions imposed by the UK government. Those sanctions were imposed under the Russia (Sanctions) (EU Exit) Regulations 2019 which was part of the UK government’s response to Russia’s war in Ukraine. Those sanctions have made it necessary for the Company, it says, to apply to be put into administration.
- 4 As I said, Mr Isaykin is directly sanctioned. He was a director of the Company until 17 June 2022 but because he remains the majority shareholder, Regulations 7 and 11(7) of the UK Regulations require the Company and the parent to be treated as assets owned, held, or controlled by a sanctioned person. Therefore, both the Company and its parent are subject to the full force of UK asset-freezing sanctions.
- 5 Citibank is the Company’s bankers and it has said that it will close the company’s only bank account on 30 November 2022, despite the fact that the Office of Financial Sanctions Implementations (“OFSI”) has granted the Company a Basic Needs Licence that presently lasts until 1 January 2023. The closure of the bank account will not lead to funds being divested from the account but it will lead to a cessation of activity on the account because Citibank will cease to administer it. Indeed, Mr Al-Attar showed me the closure notice from Citibank and it appears to want to transfer the monies sitting in that account, which is some US\$13 or 14 million, but there is presently no account to which those funds can be transferred.
- 6 Because the Company is sanctioned, it is highly unlikely that any commercial bank will be willing to do business with the Company, at least whilst it is not in administration. So that means that the Company will immediately be unable to pay its debts as they fall due, including to its employees, of which there are some one hundred and are all being made subject to some sort of redundancy programme, and also its suppliers and other creditors who are owed substantial amounts of money. Therefore, as Mr Al-Attar submitted, an administration order is the only way in which the Company can avoid a disorderly wind-down and to realise value for its creditors.
- 7 The proposed joint administrators of the Company are Mr David Buchler and Ms Joanne Milner, of Buchler Phillips Limited. In addition to the Basic Needs Licence that is already in place that I have referred to, those administrators have already applied to OFSI for a further licence that will authorise them to deal with the Company’s funds if they are appointed as administrators, to make payments, and to operate the Insolvency Services Account or the funds that might be placed in that Account following any order that I make.

- 8 The sanctions have led to the following problems for the Company. First, as I have said, Citibank is intending to close the Company's only operational bank account on 30 November 2022. From that day on, the Company will have no operational bank account and it will be unable to make any payments to its creditors to meet its obligations as they fall due. There are approximately £2 million presently in overdue debts owed to creditors whose payments have not been processed by Citibank.
- 9 Secondly, the Company has already become unable to make crucial payments given the delays of Citibank in processing payments for the Company. Citibank appear to have got slower and slower in making payments despite the Basic Needs Licence such that there is over £2 million owed to the Company's creditors and employees because of its refusal to approve payments as of 7 November. The company has over £13 million in its account and Citibank's reluctance to approve payments is compounded by the fact that the Company's relationship manager is based in Russia and Citibank has announced the closure of all its Russian operations. This has made it very difficult to discuss the sanctions and payments to the company in order to obtain faster approval of payments.
- 10 Third, the sanctions have deprived the Company of both of its cargo aircraft. This means that the Company cannot trade. Until recently, the Company operated two Boeing 747s. One, the Aircastle Aircraft, was leased from Wells Fargo Bank Northwest as trustee under the Aircastle Lease. Another, the Fortress Aircraft, was leased from AerCap Ireland Capital Limited under the Fortress Lease. The introduction of UK/EU restrictions on Russian carriers led to an operating ban being placed on the Fortress Aircraft while it was in Frankfurt-Hahn Airport. As a result, on 4 April 2022 the Fortress lessor terminated the Fortress lease. On 21 July 2022, the Aircastle lessor terminated the Aircastle lease, citing the Company's default on its liabilities under that lease. Both the Fortress Aircraft and Aircastle Aircraft have been repossessed by their Lessors and the Fortress Aircraft has been sold to a third party, as has the Aircastle Aircraft.
- 11 Fourth, the sanctions have created a real risk that the UK Civil Aviation Authority ("the CAA") will revoke the Company's Air Operator Certificate, as well as other licences that are required to operate cargo flights. The Company currently holds a valid Air Operator's Certificate ("AOC") which was issued by the CAA under Art.101(1) of the Air Navigation Order 2016. It also holds a Route Licence, which entitles it to operate cargo flights to airports outside of the UK, and an Operating Licence. Any business which operates international cargo flights needs these and other licences. Article 9(1) of the Operation of Air Services Regulations allows the CAA to suspend or revoke the operating licence of a carrier which, in its view, cannot meet its actual and potential obligations for a twelve month period and under Art.253 of the Air Navigation Order 2016, suspension may be final or provisional.
- 12 The Company has been in regular contact with the CAA but because the Company no longer has access to any aircraft and is unable to negotiate new leases, there is a real risk that the CAA will suspend or revoke the Company's AOC without further notice. The CAA is also likely to revoke the Company's AOC if it is wound up by the court. That will cause the Company's other licences to be revoked in quick succession, causing some sort of domino effect. For example, the Company's Operating Licence must be revoked upon the revocation of an AOC and that, in turn, is likely to lead to the Company's Route Licence being revoked. On the other hand, it appears that if the Company enters administration, there is a real possibility that the CAA will suspend rather than revoke the Company's AOC and that is one of the reasons why administration is preferred.

- 13 Fifth, the Sanctions have prevented the Company from removing ownership and control from the parent majority shareholder in order to preserve its business. On 8 July 2022, the Company applied to OFSI for a licence that would allow the Company to transfer ownership to a UK-based, UK-registered, and employee-owned trust. OFSI refused this application on 1 September 2022. Therefore, unless OFSI reverses that decision, the business of the Company cannot be rescued as a going concern without the use of an insolvency process.
- 14 Sixth, the Company's auditors have not signed off on the parent company's accounts. So Companies House has commenced mandatory strike off action against the parent company by a notice dated 27 September 2022.
- 15 Mr Al-Attar took me to the requirements that have to be satisfied in order to make an administration order. First of all, all the preliminary criteria, including that this is a company that can be placed in administration in this jurisdiction, and there being no bars to the appointment of administrators such as the Company being in administrative receivership, or that there are pending insolvency proceedings against the Company, do not apply.
- 16 There are then the two main substantive conditions, the first of which is that the Company is or is likely to become unable to pay its debts, and the second is that it is reasonably likely to achieve one of the three prescribed objectives of the administration.
- 17 As to being unable to pay its debts, even though the Company may well be balance sheet solvent as a result of its assets, it is perfectly clear that it presently is unable to pay its debts and is therefore cash flow insolvent. It will become impossible for it to pay anything when Citibank actually closes the account on 30 November. At present, over £2 million is due to creditors and this cannot be paid. When the account is closed, there is no possibility of the Company outside of an administration process obtaining other commercial banking services. Furthermore, it is unlikely that OFSI will extend its licence beyond 1 January 2023 whilst the applicant remains in control of the Company. Then, obviously, it would be impossible to pay any debts at all.
- 18 As to the statutory purposes, there are three that are prescribed in the Act:
- (a) Rescuing the Company as a going concern;
 - (b) Achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in administration); or
 - (c) Realising property in order to make a distribution to one or more secured or preferential creditors.
- 19 The court must be satisfied that the administrators are reasonably likely to achieve one of the three purposes before it can make the order. The applicant needs only to show that there is a real prospect that the administration order will achieve its purpose and need not show a greater than 50 per cent chance that the purpose will be accomplished. Mr Al-Attar in his skeleton argument referred to the cases of *Re AA Mutual International Insurance Co Ltd* [2005] 2 BCLC 8 and *Re European Directories BV* [2010] EWHC 3472 (Ch).
- 20 At this stage, the court is only concerned with assessing if there is a realistic chance of one of the objectives being achieved. The Company has no secured creditors but HMRC and the Company's employees are potentially preferential creditors. The Company is not trading and cannot trade as long as it is sanctioned. It cannot lease new aircraft or carry on its business line leasing freight equipment, and as I have already explained, the company

cannot pay its debts as they fall due. This creates a risk that it would enter a disorderly winddown after or even before Citibank closes its account. The only way for the Company's business to be freed from the sanctions is if the Company's ownership is re-structured or its business was sold as a going concern. It is clear that OFSI will not allow this whilst the company remains under the applicant's control. The Company applied for the EOT Licence, which would have allowed this, but that was refused.

- 21 On the other hand, it is reasonably likely, as Mr Al-Attar submitted, that the proposed administrators will be able to achieve at least one of the statutory objectives. For a start, the administrators are likely to be able to run the Company's business. They have made a further licence application to OFSI dated 7 November 2022. If granted, that licence would enable the proposed administrators to deal with the Company's funds, transfer Citibank funds to the Insolvency Services Account, or another commercial bank, and make payments in discharge of their duties. That licence expressly requests authorisation to transfer funds from the Citibank account to the Insolvency Services Account and, in the meantime, the administrators can use the Basic Needs Licence, which is still in force, to carry out their functions.
- 22 It is reasonably likely that OFSI will grant the new licence within a reasonable time as OFSI has granted similar licences to administrators of sanctioned companies in the past. The administrators would then be able to run the company with a view to rescuing it. That is something that liquidators could not do. A liquidator can carry on business only as necessary for a beneficial winding up (see Schedule 4, para.5 of the 1986 Insolvency Act). An administrator, on the other hand, has much broader general powers to manage the affairs of the Company's business and assets. The appointment of administrators may make it possible to obtain commercial banking services from banks other than Citibank through accounts in the proposed administrators' names and as has been indicated and applied for at this stage, the administrators will be able to utilise the Insolvency Services Account.
- 23 So the administrators are reasonably likely to be able to achieve one of their statutory objectives by selling the Company's business or parts of it to potential purchasers. They have set out their proposals in a letter and what they have said is that they hope to persuade the CAA to suspend rather than to revoke the Company's licences as they have done in other administrations and which is something that they would not do if the Company was put into liquidation. Those licences are potentially very valuable assets that could command a premium from a purchaser, which is a significant advantage of an administration.
- 24 Furthermore, OFSI is likely to have far more confidence that the proposed administrators, as opposed to the applicant, would comply with the sanctions. It is therefore reasonably likely that it will grant a further license enabling the sale of the Company to a third party on suitable terms that would prevent the parent majority shareholder from accessing the consideration for the sale.
- 25 Even if OFSI does not grant a licence for an outright sale, the value in the Company's licences and assets could be realised through a sale in some other sanctions-compliant way, such as a hive down. Pending such a sale, the broader powers of the administrators would enable them to preserve the Company's flight infrastructure. The Company's flight infrastructure is itself valuable to potential purchasers and should not be allowed to decay. The preservation of infrastructure is also required in order to preserve the Company's licences and administrators are much more likely than liquidators to be willing to retain expert staff, hire new staff, and enter new supplier contracts which are necessary in order to preserve the Company's flight infrastructure. Conversely, the terminal nature of a winding up order might trigger the automatic termination of contracts.

- 26 A winding up order is also perceived by most market participants as terminal and potential purchasers of either the Company's business or its assets would therefore pay much less if the Company is in a winding up rather than an administration. As I understand it, the Company has already held discussions with potential purchasers and the proposed administrators would be likely to be able to continue such discussions on a more favourable footing.
- 27 Even if the proposed administrators are unable to pursue a sale, they are reasonably likely to be able to achieve objective (b) after recovering and distributing assets of the Company. The Company has £13 million-odd in its Citibank account. It is also seeking the return of a US\$2 million security deposit from the Fortress lessor, a £1 million commitment fee from the Aircastle lessor, and US\$3.85 million in surplus engine reserves from the Aircastle lessor. So it is likely that the proposed administrators would be able to negotiate or issue proceedings for the return of these deposits. Neither lessor has given any reason to support their retention of the deposits and the Company considered the leases to have been frustrated by the war in Ukraine and the sanctions.
- 28 Finally, the administrators are also likely to be able to achieve the statutory purposes of the administration even if the parent company is struck off on 27 November due to its overdue accounts. It is probable that only the administrators would be able to avoid this happening by making an application to suspend any such revocation but, in any event, even if the parent is struck off, it does not affect the Company's assets which will still be under the control of the administrators.
- 29 So based on all of this material, I am satisfied that the administrators are reasonably likely to achieve one or more of the statutory purposes.
- 30 Mr Al-Attar also addressed me shortly on the exercise of discretion. He kindly referred to something that I said in *Re Sberbank CIB (UK) Ltd* [2022] EWHC 1059 (Ch) that there is a positive reason for putting companies such as these into administration, namely that independent, experienced insolvency practitioners will take control of the Company and ensure an orderly winddown of the business while respecting the sanctions and not making any distribution to the Company's shareholders directly or otherwise. I have no doubt that that applies in this case and that I should exercise my discretion in favour of putting the Company into administration and appointing the proposed administrators.
- 31 I refer to the ancillary order that is sought in relation to the Insolvency Services Account. The form of wording that has been put into the draft order, Mr Al-Attar explained to me, was wording that has been approved by the Insolvency Service itself. It seems to me to be the most sensible thing to do and will still be under the control of the Insolvency Service, as I understand it, but it is a necessary option for the administrators should they have difficulty in securing a commercial bank account.
- 32 There is one further matter to deal with, an apparent divergence on the authorities that Mr Al-Attar took me to as to the timing of sealing of the order that I am going to make. In *Sberbank*, I directed that the order should be sealed immediately on the basis that OFSI was very likely to grant the licence to the administrators. In another Russian bank case, *Re VTB Capital plc* [2022] EWHC 1106 (Ch), Fancourt J directed that administrators would, in principle, be appointed but the order was effectively suspended whilst steps were taken to obtain a necessary licence from the US office equivalent of OFSI, which is the US Office of Foreign Assets Control, and the order was, as I said, not sealed until those licences had been obtained. In this case, only a licence from OFSI will be required and the administrators already have in place the Basic Needs Licence. There is also a further difference, as Mr Al-

Attar pointed out to me, that the bank account in question in the *VTB Capital* case was a correspondent bank account allied to a US dollar account in the United States and that is a significant difference between that case and this.

- 33 In my view, it is important that the administrators take immediate control of the Company. I will follow the route that I took in *Sberbank* and direct that the order be sealed immediately. So, in all those circumstances, I will make the order in the terms that were put before me by Mr Al-Attar.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.