Re The Good Box Co Labs Limited [2023] EWHC 274 (Ch)

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Synopsis

The High Court in Leeds has approved a Part 26A restructuring plan which would allow The Good Box Co Labs Limited ('Good Box') to exit administration and continue to operate as a going concern. The decision was notable for the fact that the restructuring plan was proposed by an individual creditor (as opposed to the company itself) and that the High Court approved the restructuring plan notwithstanding opposition from the appointed administrators of the company. This development could be seen as paving the way for 'in the money' creditors to increasingly take charge of the recovery process by not just opposing a company-led solution but by proposing their own alternative restructuring plan. The decision also provided useful guidance on how practical obstacles such as creditor access to company information might be overcome in any creditor-led proposal.

Facts

Goodbox is a provider of contactless payment services for charities and fundraisers through the supply of bespoke payment terminals and online payment solutions.

The company entered administration in June 2022 and the two joint administrators sought to effect a pre-packed administration sale of Good Box's business and assets which was supported by the directors.

This was opposed by NGI Systems Limited ('NGI') which was a minority shareholder (0.02%) and a creditor that had initially applied to put Good Box in administration. NGI held £1,389,000 of debt owing by Good Box, which arose both before and during administration.

The pre-pack administration sale

Davis-White KC (sitting as a judge of the Chancery Division) considered that an administration sale as proposed by the joint administrators would likely return proceeds of around £375,000. This would be insufficient to meet the secured administration debt claim of NGI and consequently leave no other creditor or shareholder with any return.

Notably, the court excluded the sale of any software and related intellectual property from the estimated recoveries as the administrators had failed to provide an estimate of the value of these assets and did not have any prospective buyer lined up for a sale.

NGI's proposed restructuring plan

In contrast, NGI's proposed restructuring plan (the 'NGI Restructuring Plan') would provide immediate rescue funding of £800,000 from a consortium of investors (including NGI) for repayment of the administration debt owing to NGI together with any other administration expenses of the company. Any remaining balance would be deposited as cash on the company's balance sheet.

In addition, a £1,100,000 secured syndicated three-year term loan facility would be made available by the rescue financiers (with others) after the restructuring plan became effective.

In exchange, the rescue financiers (including NGI) would be allotted with new shares representing 85% of the equity in Good Box, with the distribution of such allotment as among the rescue financiers being directed by NGI.

Convertible loan holders (the 'Convertible Loan Holders') would receive 14% of the issued share capital and the historical shareholders would be diluted to 1%.

Held

Whether the company's consent to enter into a restructuring plan is required

Davis-White KC paused to consider the novel issue of whether the company itself must consent to and agree to enter into a Part 26A restructuring plan.

The company's consent has been accepted to be a requirement for the implementation of schemes of arrangements following the seminal case of *Re Savoy Hotel Limited* [1981] 1 Ch 351. The joint administrators indicated they were not prepared to give consent on behalf of the company to enter into the proposed NGI Restructuring Plan without a court order.

The Court found that there was nothing in the legislation or case law to suggest that the consent of the company to join in any restructuring plan had been overridden as a requirement for any Part 26A restructuring plan.

Having established this and subsequently that a cross-class cram down should be sanctioned, the Court subsequently gave direction for the joint administrators to provide Good Box's consent to the proposed NGI Restructuring Plan. In doing so, emphasis was placed on the fact that the concerns raised by the joint administrators were not material enough to prevent the sanctioning of the restructuring plan, the interests of the shareholders and creditors of the company would be protected under such plan and the administrators had sought to remain neutral throughout the judicial process (instead of being actively opposed to the order sought by NGI).

Whether a cross-class cram down should be sanctioned

Arguably the most attractive feature of a Part 26A restructuring plan is the ability to bind a dissenting class to the terms of the plan by way of a cross-class cram down. In order to do so, Davis-White KC reiterated that three conditions would need to be proven to its satisfaction (from *Re Virgin Active Holdings Ltd and other companies* [2021] EWHC 1246 (Ch)):

The 75% approval condition was easily satisfied on the facts as all classes of creditors other than the Convertible Loan Holders had more than 75% in value in favour of the restructuring plan.

In respect of the second condition, the Court found that the 'relevant alternative' for the convertible loan holders would be the pre-packed administration sale which would likely end with NGI having part (but not all) of its administration debt repaid but would leave all other creditors (including the convertible loan holders) and shareholders with no recoveries.

The Court contrasted this with the NGI Restructuring Plan under which Good Box would continue trading as a going concern, all administration expenses and debt would be repaid and Convertible Loan Holders and existing shareholders would have a prospect of recovering value through their shareholdings if the company continues to trade successfully. As such, the Court was satisfied that the convertible loan holders would be no worse off in respect of their prospects for recovery, and such prospects would arguably be greater, if the restructuring plan was implemented when compared to the relevant alternative.

Finally, in respect of the third condition, the Court was satisfied that it should exercise its discretion to sanction the restructuring plan. Broadly, the court considered the following three questions derived from *Re Amicus Finance* [2021] EWHC 3036 (Ch) ('*Re Amicus Finance*') and reached the conclusions shown in Table 1 below.

Having reached these conclusions, the Court pointed to some further factors weighing in favour of its decision to cram down on the dissenting convertible loan holder class.

These included the fact that the payment in full of trade creditors under the NGI restructuring plan was essential to the continued trading of the company and the sum of such debt was relatively small. Additionally, while NGI's trade debt would be paid in full, NGI was providing significant funding, converting its administration debt into equity and agreeing to significantly discounted terms of business with Good Box to enable it to continue trading.

While the equity stake that NGI would receive would be significantly more than that received by the Convertible Loan Holders, the value of the assets and business of Good Box meant that such equity would be worth little more than the value that would have been achieved in the pre-pack administration sale proposed by the joint administrators. The fact that no formal objections as to the equity allocation were raised during the proceedings was also persuasive.

Comment

The decision marked the first time the courts have considered a creditor-led restructuring plan that was opposed by the administrators (acting on behalf of the company). In the face of rising interest rates and strong macroeconomic headwinds, lenders who are 'in the money' may now be encouraged to consider opportunities to take the lead on the restructuring process of debtor companies by not only challenging restructuring plans but by proposing alternatives.

Given a natural limitation of a creditor-led restructuring is the lack of access to company information, the Court also provided helpful clarity on the level of detail required in any creditor-led restructuring plan. The finding that factors such as the urgency of the application, the size and the nature of the company's business and the state of information readily available to a creditor at that time had to be considered in the overall context was instructive.

In this regard, it does appear that the courts would be willing to accept a lower level of detail in any explanatory statement prepared by a creditor provided that the main risks and concerns associated with the restructuring plan were presented to the voting classes and it was clear to such voting classes how far the information provided in the explanatory statement was limited.

Following on from the decision in *Re Houst Ltd* [2022] EWHC 1941 (Ch) ('*Houst*'), the Good Box decision highlighted once again the importance of valuation evidence. The fact that no valuation evidence was presented by the joint administrators in respect of the

Table 1.

No.	Question	Conclusion on the facts
1	Were the meetings fairly representative of the class of dissenting creditors?	Yes. The classes were composed by the court at an earlier hearing to convene the meetings and the joint administrators did not raise any issues.
2	Can the court safely rely on the outcome of the meetings?	Yes, notwithstanding that the joint administrators' objections that the explanatory statement prepared by NGI for the class meetings was lacking in detailed financial projections. The Court pointed out that such lack of detail is a likely product of a creditor not being directly involved in the company and not having access to company information. However, it is for the members of the relevant classes to decide if they have sufficient information to vote in favour at the relevant meetings. The Court also restated the principle from *Re Amicus Finance* that the level of detail of information that should be expected in an explanatory statement must be judged in context, including the urgency and the size and the nature of the company's business and the state of information readily available at that time, and the Court placed weight on the fact that NGI did not have full access to all company information when preparing the statement. On the facts, the Court held that NGI's explanatory statement had sufficiently identified the main risks and concerns associated with the restructuring plan. The Court was also satisfied that it was clear to the voting classes how far the information provided in the explanatory statement was limited.
3	Is the restructuring plan one that might reasonably be entered into by an intelligent and honest class member addressing the issues for decision from the standpoint of his or her ordinary class interests?	Yes. The Court placed weight on its earlier findings that in the relevant alternative, the returns would not be sufficient to cover the secured administration debt of NGI in full and would not provide any returns to other creditors or shareholders. In contrast, there would be a prospect of recovery for all creditors and existing shareholders under NGI's restructuring plan. The Court also stated that the failure by the joint administrators to obtain valuations of Good Box's intellectual property rights meant that any additional recoveries in respect of those assets in an administration sale were speculative at best.

intellectual property was decisive in the value of such intellectual property being almost entirely disregarded by the Court in the calculation of the potential recoveries from the proposed pre-pack administration sale. This was a material factor in the Court finding that convertible loan holders would be 'no worse off' under NGI's restructuring plan versus the 'relevant alternative'. Any prospective proponent (or opponent) of a restructuring plan should therefore ensure that appropriate and satisfactory valuation evidence is prepared ahead of time.

The Good Box decision also follows *Houst* in showcasing the potential advantages of the Part 26A restructuring plan for small and medium-sized enterprises ('SMEs'). Given its status as a relatively new tool in the market, a usual objection against going down the route of a restructuring plan is the likely higher costs involved as compared to alternatives such as a creditor voluntary arrangement or administration. However, the guidance provided by the Court in this decision (and any future decisions on Part 26A restructuring plans) will hopefully lead to greater efficiencies and lower costs in such applications. The appeal of being able to cram down a dissenting class of creditors in order to achieve a desirable result for the company and creditors as a whole is also likely to be a material factor in any discussion of restructuring options by SMEs and their respective stakeholders.

From a practical perspective, the Good Box decision also represented the first time a Part 26A restructuring plan has been implemented outside of London. This underlines the growing appeal of the restructuring plan as a restructuring tool throughout the jurisdiction. With the Court now having provided helpful guidance on key issues in a creditor-led restructuring plan and the implications this may have on future creditor-led restructurings, it appears likely that we will start to see increasing instances of this tool being adopted by interested stakeholders going forward.