English judge sanctions McDermott restructuring plan, but "horrified" with professional fees

Freya Gilbert
27 February 2024

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A High Court judge has sanctioned oil and gas group McDermott International's English restructuring plan, finding that dissenting creditor Reficar's conduct in negotiations "undermined" its proposed relevant alternative that the parties could strike a new deal – but he also stated he was "horrified" with US$150 million spent by the plan company on professional fees.

After presiding over the UK's longest restructuring plan sanction hearing to date, **Mr Justice Michael Green** on 27 February agreed to cram down Colombian oil refinery Reficar and approve McDermott's restructuring plan.

He noted that a "bizarre twist" and "unfortunate and frustrating" live negotiations before the court had undermined Reficar's position that, in the relevant alternative, the parties would enter into a new restructuring plan, rather than McDermott's proposition of a worldwide formal insolvency.

Mr Justice Green also noted that McDermott spent US$150 million on professional fees since December 2022 to negotiate with secured creditors, with the group principally using US$250 million of new money raised throughout plan negotiations to fund its advisers.

He agreed with a comment made by a member of the ad hoc group of creditors that supported the plan during the hearing, Baupost partner Richard Carona, that "there seems to be something wrong with the restructuring industry, particularly in the US, where the costs appear to be out of control."

The judge concluded that "costs of that magnitude" could be a barrier to the very restructurings Part 26A was meant to encourage.

At the outset of his decision, Mr Justice Green said he had "a lot of sympathy for Reficar" when it seemed that a "huge international" group had negotiated with its secured creditors "without reference" to the Colombian refinery.

However, Mr Justice Green found that in light of an "unfortunate and frustrating" situation where Reficar had not confirmed whether it accepted a "fair" equity offer from McDermott, he did not need to "indulge" the refinery by dealing with every point of its opposition.

He added that his decision was "much shorter and less detailed" than he had expected it to be, but it was "difficult to justify" a long and detailed decision where the outcome "became obvious by the events at the end of the trial".

McDermott's restructuring plan will discharge US$2 billion worth of debt held by Reficar and Colombian state regulator Contraloría General de la República, and extend the maturities of five secured credit facilities.

The group has also commenced a Dutch WHOA, which is designed to ensure creditors are bound by the terms of the English plan submitted by plan company CB&I UK, which is owned by Dutch group company McDermott International Holdings (DIH). McDermott will then seek Chapter 15 recognition of the two plans as the secured facilities are governed by US law.

At the hearing, McDermott argued it needed to restructure to avoid an impending insolvency filing, as it was required to post US$2.2 billion in cash collateral by 27 March under an agreement reached with secured creditors in its 2020 **Chapter 11 proceedings**.

In the event of an insolvency filing, it said, bar its oil storage facility business, it would be sold in a "piecemeal" fashion where secured creditors would be paid in full but unsecured ones were unlikely to receive anything.

The judge said he found evidence from McDermott's expert witness – executive board director in construction Mark Morris – to be "credible" when he told the court that if the plan failed, the group's position had "all the hallmarkings of a Carillion".

Reficar maintained until closing submissions that the plan's failure would actually result in further negotiations where the refinery would be granted equity under a new restructuring plan. It also submitted that McDermott's offer to pay just 0.0006% of Reficar's debt did not constitute sufficient "give" under the Court of Appeal's guidance in ***Adler*** that a plan must be a "compromise or arrangement" with some element of "give and take" between the company and the plan creditors.

On 10 February – which fell during the weekend between hearing days – McDermott offered Reficar up to 19.9% of the preferred shares in McDermott's ultimate Bermudan parent company, after it received a proposal recommending the equity allocation from the restructuring expert in the WHOA process, Freshfields Bruckhaus Deringer partner **Michael Broeders.**

In his judgment, Mr Justice Green said: "The offer was essentially what Reficar had been asking and negotiating for."

However, on the final day of the hearing in a "bizarre twist that completely derailed Reficar's position", the refinery's counsel, King & Spalding, sent a letter to the court saying that due to Reficar's public law duties to Colombia, it needed to conduct more due diligence before it could accept the offer.

The court subsequently received a letter from Broeders stating he intended to formally recommend a settlement in the WHOA plan that would ensure Reficar would receive up to 19.9% in the parent group if it voted for, or abstained from voting on the plan, or 10.9% if it voted against.

Mr Justice Green said the restructuring expert's letter "pulled the rug" from under Reficar's counsel, South Square's **Felicity Toube KC**,who accepted she could not argue 19.9% was not a fair distribution from the restructuring surplus. McDermott's equity offer also meant she had to abandon Reficar's argument that the relevant alternative would be further negotiations and an equity offer.

Looking at Reficar's original relevant alternative, the sanction judgment outlines that McDermott submitted there would be no appetite to negotiate with Reficar from key stakeholders, particularly if it caused the plan to fail. The debtor group also argued there would not be enough time to negotiate a new agreement.

"The Plan Company's fears have been entirely borne out by the behaviour of Reficar during the course of the trial and its failure to agree a deal that gave it everything it had been asking for," the judge said:

At the end of his decision, the judge added a postscript outlining that he had circulated a draft version of his findings to the parties on 23 February. He said he had received a letter from King & Spalding letter three days later stating Reficar had accepted the equity offer in the WHOA and elected to abstain from the vote.

While King & Spalding's letter said Reficar found the judge's criticisms "unfair", Mr Justice Green said he stood by what he said in his judgment about the course of negotiations.

London-based McDermott Will & Emery partner **Sunay Radia,** who was not instructed on the case, says that the decision demonstrates the English court's willingness to sanction plans that pose "a fair outcome for creditors as a whole and an intolerance for opposing creditors who are simply seeking to extract hold out value without putting forward viable alternative plans."

He said that while the original restructuring plan "was slated to provide guidance on the limits of the exercise of the cramdown mechanism in English restructuring plans" from the English courts, Reficar's conduct in the hearing "fatally undermined" its opposition.

GRR understands that McDermott's WHOA plan received unanimous approval from creditors who voted on the plan on Sunday, while the group's Chapter 15 recognition hearing is due to take place on 22 March.

In the England and Wales High court

- **Mr Justice Michael Green**

Counsel to CB&I UK

- **David Allison KC**, **Ryan Perkins, Clara Johnson** and **Stefanie Wilkins** (of South Square)

- Kirkland & Ellis

Partners **Hannah Crawford, Kon Asimacopoulos, Stuart Doxford** and **Richard Boynton**, with associates **Adam Watterson, Patrick Campbell** and **Wesley Zhang** in London and partners **Chris Greco** in New York and **John Luze** in Chicago

- NautaDutilh

Partner **Teun Struycken,** counsel **Catrien Rozeman** and associate **Arthur Boitelle** in Amsterdam

Counsel to the ad hoc group of lenders and equity holders

- **Daniel Bayfield** and **Jon Colclough** (of South Square)
- Davis Polk & Wardwell

Partners **Natasha Tsiouris** and **Damian Schaible** in New York

- Weil Gotshal & Manges

Partners **Matt Benson** and **Neil Devaney** in London

- Loyens & Loeff

Partners **Vincent Vroom** and **Marcel Buur**, senior associates **Kim de Bruijn, Ingrid Hijdra** and **Sharita Willigenberg,** associates **Marjolein van der Staaij, Laurien Knorringa, Stan van der Vleuten** and **Wouter Pierik** in Amsterdam

Counsel to Crédit Agricole Corporate and Investment Bank

- **Charlotte Cooke** (of South Square)

Counsel to the steering committee of bank lenders

- Linklaters

Partner **Paul Kuipers,** counsel **Bart Fleuren,** managing associates **Marc Noldus** and **Frans Lambert,** associate **Yenny Mak** and junior associate **Esther van der Meulen** in the Netherlands

- Bracewell

Partners **Jeris Brunette, William Ebert** and **Robin Miles**, associates **Jeonghoon Ha, Young June Jhe** and **Katie Jones** in New York.

Partners **Andrew Bueso**, **Thomas Tomlinson** and **Manuel Vera,** associates **Emily Banse, Shruthi Prabhu, Kenni Wilkinson** and **Derek Reusche** in Houston, with associate **Christie Latimer** in Dallas.

Partner **Olivia Caddy,** senior counsel **Bagyasree Nambron** and associate **Sameer Ahuja** in London.

Counsel to Refinería de Cartagena

- **Felicity Toube KC, Matthew Abraham** and **Jamil Mustafa** (of South Square)
- King & Spalding

Partners **Mike Stenglein** in Austin **Sarah Walker** and **Patrick Schuman** in London

- RESOR

Partners **Ilan Spinath** and **Sebastiaan van den Berg** and associates **Sits Schreurs** and **Sophie Streng** in Amsterdam

Documents

CB&I UK restructuring plan sanction judgment

Freya Gilbert

News Reporter

freya.gilbert@lbresearch.com

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