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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST



No. CR-2008-000024

[2023] EWHC 3084 (Ch)

7 Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday, 16 November 2023

IN THE MATTER OF LEHMAN BROTHERS (PTG) LTD (in Administration)

A N D

IN THE MATTER OF THE INSOLVENCY ACT 1986

Before:

THE HONOURABLE MR JUSTICE HILDYARD

B E T W E E N :

(1) GILLIAN ELEANOR BRUCE
(2) DAVID JAMES KELLY
(3) EDWARD JOHN MACNAMARA
(Joint Administrators of Lehman Brothers (PTG) Ltd (In Administration))

Applicants

MR O HYAMS (instructed by Linklaters LLP) appeared on behalf of the Applicants.

J U D G M E N T

MR JUSTICE HILDYARD:

- 1 This is an application in respect of a company within the Lehman Group called Lehman Brothers (PTG) Limited (“PTG”) which is in administration. The application is for an extension of the administration period for a further two years.
- 2 PTG has been in administration since the end of 2008. That was when the Lehman problems arose, and generated an earthquake which shook the entire financial world. As is implicit in that timescale, PTG’s administration has been extended multiple times. The last occasion on which it was so extended was at the end of 29 October 2021. The extension now proposed is for a further period of two years extending until 30 November 2025.
- 3 This sort of chronology is highly exceptional. The statutory assumption is that an administration will be concluded within a year. However, the administrations of the companies within Lehman Group are themselves highly exceptional, both in terms of their complexity and in terms of their considerable success in making recoveries. Whilst it is important that when the court exercises its discretion to extend administrations, it should be satisfied on the evidence that it is appropriate to do so: but the length of an administration and of further extensions sought are more a matter to encourage careful review than a reason in themselves to deny the relief sought.
- 4 The statutory jurisdiction to grant extensions of administration is to be found in Schedule B1 para.76(2)(a) of the Insolvency Act 1986 (“the 1986 Act”). It is pursuant to that jurisdiction that each of the extensions to which I have referred were given. The discretion of the court is at large, although, of course, it is to be exercised judicially.
- 5 The administration of PTG is and has been for some time in distribution mode. It has been in that mode, pursuant to Schedule B1 para. 65 of the 1986 Act, since 24 June 2013: that is to say, for more than 10 years. That is a relevant consideration in the exercise of the discretion. Its relevance has already been addressed in at least four (unfortunately, unreported) decisions of my own in the context of other Lehman companies including this company (see [2016] EWHC 3379 (Ch), [2017] EWHC 3299 (Ch), [2020] EWHC 3449 (Ch) and [2022] EWHC 2995 (Ch), and in a reported decision of Snowden J (as he then was) in the *Nortel* administrations, *Re Nortel Networks UK Ltd & Ors* [2017] EWHC 3299 (Ch). I can, therefore, be brief: as explained in those decisions, the effect of the consideration is that in the case of a company in administration which is in distribution mode, the alternative of the liquidation which would otherwise be a potential result if no extension is granted, may offer no advantage at all and present disadvantage in the shape of a change of form and personnel; and it may also entail the loss of other advantages, including group relief and other fiscal advantages which continue whilst the company is in administration but would cease upon liquidation.
- 6 Accordingly, in the context of a company in administration that is in distribution mode, the questions posed by HHJ Hodge QC in *Re TPS Investment (UK) Ltd (In Administration)* [2020] BCC 437 (which was not in distribution mode, it not being at all clear that there would be any funds available to distribute) must be read subject to that gloss. Nevertheless, with that gloss, the questions identified by HHJ Hodge QC at para. 8 of his judgment remain relevant. The questions posed were (i) why has the administration not yet been completed; (ii) is there any alternative insolvency regime more suitable; (iii) is the extension thought likely to achieve the purpose of administration; and (iv) if an extension is appropriate, for how long should it be granted?
- 7 With the gloss which I have identified, I propose to address the questions in turn.

- 8 As to the first, the reason why notwithstanding the length of time the administration of PTG, in common with the administrations of many other Lehman companies, is continuing is the exceptional complexity of the flow of funds within the Lehman Group, which is subject to contingencies and legal issues which have occupied the courts repeatedly throughout the period.
- 9 In the case of PTG itself, a number of potential sources of substantial funds remain subject to contingencies or delays in payment. In the case of PTG there are essentially three anticipated sources. None has been quantified with any precision, but all are presented as substantial. The three sources are the expectation of recoveries in the liquidation in Italy of an Italian corporate called Initium SRL; another is the prospect of recoveries from another Lehman entity called Eldon Street Holdings Ltd; the third is indirectly via payment through, as I understand it, Eldon Street Holdings of statutory interest entitlements. I am satisfied that there are good reasons why the administration has not yet been completed and that continuing the administration will hold the prospect of recovery of further funds.
- 10 More difficult is the question of whether the quantum of such funds will justify the extension yet again of what inevitably is an expensive process. This was a matter which I identified as perhaps the critical issue and which Mr Hyams took a little time to seek instructions about during the course of the hearing. Having taken those instructions, he referred me to para.48(c) of a witness statement, the first in fact, of Gillian Eleanor Bruce (dated 30 October 2023) where she stated, in answer to my principal concerns as to balance between the prospects of recovery and the certainty of continuing administration costs, that this was a matter which the administrators had particularly considered, and that having done so they had concluded that it was worth continuing with the administration. In fact, as she put it:
- “In circumstances where LB PTG’s administrative claim gets Eldon Street Holdings ... paid in a sufficiently substantial amount, that there is no realistic prospect of ... fully being satisfied, the administrators respectfully suggest that the LB PTG should remain in administration for as long as ESH continues to make recoveries and onward distributions to the LB PTG, subject to the administrators remaining satisfied that there will be sufficient further recoveries within the administration to justify the cost of the LB PTG remaining in administration.”
- 11 I note from the statement that the time costs are presently estimated at £700,000 until the conclusion.
- 12 Mr Hyams also referred me to another paragraph in the same witness statement where the court is assured that the administrators would continue to keep this under review and if, in due course, it became apparent that the most appropriate and effective exit route was dissolution pursuant to para.84 of Schedule B1 to the 1986 Act, they would refer the matter back or achieve an immediate dissolution.
- 13 I have, in making those points, in part addressed the second question which is whether any other alternative insolvency regime is more suitable. I have indicated previously that in a case like this where the administration is in distribution mode, the alternative of liquidation is usually not to be preferred. I have also already dealt with the only other alternative of dissolution, which would involve the loss of unquantified but substantial benefits.
- 14 So I move to the third question, which is whether the extension sought is likely to achieve

the purpose of the administration. That question too is affected by the fact of PTG being in distribution mode. It seems to me that that does affect also the purposes of the administration, being to collect in funds and to distribute them. In common with other Lehman administrations, this administration has been successful to a degree which could not reasonably have been hoped for back in 2008. I am satisfied that there is a reasonable prospect of further recoveries if the administration is extended, and that the answer to question (iii) is that the extension sought is likely to achieve the purpose of administration.

- 15 The last question is for how long should an extension be granted. The administrators would probably accept that their previous estimates of the time required have not been especially accurate. That is not because they asked for too much time, but because they severely under-estimated the time that would be necessary. The length of time now sought (again) is arresting: having been on a previous occasion assured that two (whilst a minimum) should be sufficient, it is, at first blush at least, surprising to be asked for a further two years. However, I am satisfied by reference to two principal factors that it is required; the two factors being that obtaining payment of the funds and resolution of the various remaining contingencies could well have taken that time, especially in respect of the Italian insolvency; and, second, that it will then be possible to link the time of the other relevant administration which is of Eldon Street Holdings, which will expire on the same day and is the major likely source of funds for the distributions which have been anticipated.
- 16 I am further reassured by the fact that, as always, notice has been given to creditors and the intention to make this application has also been on the administration internet platform, and (as expressly confirmed at the hearing by Mr Hyams) no objection has been received.
- 17 Accordingly, I am, in the circumstances, satisfied that I should exercise my discretion to extend the administration to 30 November 2025.
- 18 There is one point, however, which I do wish to emphasise. Notwithstanding a distribution mode and the assumption that continuation of administration is likely to be preferable and more advantageous to creditors than liquidation, it is important to understand and observe the limitations on the assumption. In particular that assumption does not mean that the balance between continuing cost and expected recovery may not be so assiduously addressed. It is always necessary to address that balance. In this case, I was concerned that the quantification was somewhat sketchy, and I would recommend that in future if it is possible a range of outcomes should be presented to the court and the court should be advised as to the costs on a continuing basis, and therefore of the net advantage which may be secured. I would not want it thought that my observations in the matter *Lehman Brothers* [2016] EWHC 3379 Ch., and other Lehman cases after referred to above, or the observations of Snowden J in the *Nortel* case, release the administrators from that task.
- 19 All that said, I am content, in addition to my own assessment above, to place credence on the good judgment of the administrators as professional people but also as officers of the court, as well as their express assurance that they have undertaken the balance, and that the result is in favour of there being an advantage in continuing with the administration.

CERTIFICATE

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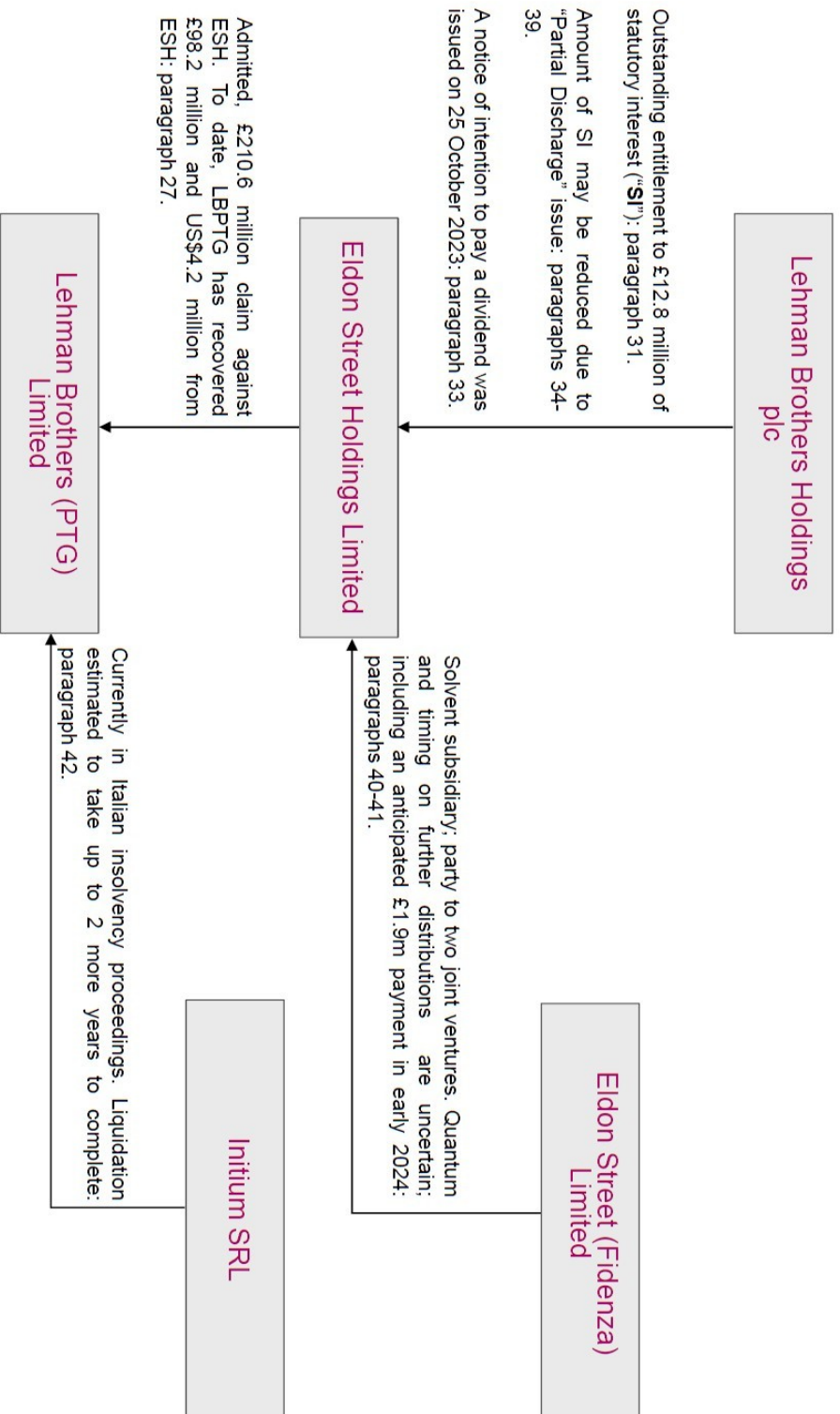
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This transcript has been approved by the Judge.

Appendix A: Summary of distributions to Lehman Brothers (PTG) Limited

Summary of distributions to Lehman Brothers (PTG) Limited (in administration)



Note: all paragraph references are to those in the Witness Statement of Gillian Eleanor Bruce dated 30 October 2023.