In the Matters of Virgin Australia Holdings Ltd (Administrators Appointed)

Federal Court of Australia Proceeding NSD 464 of 2020

Supplementary Submissions by L M Lazarides (Creditor)

At the hearing on 11 August Dr Higgins said the Administrators did not agree that a rival DOCA could be put to the second meeting of creditors and " the administrators have exercised their power of sale so only one DOCA is allowed" or words to that effect.

An Update to Creditors dated last Friday 14/8/20 signed by Mr Strawbridge contains the following –

> "The Administrators are cognisant of creditors desire for further clarity regarding the Administrators binding agreement to sell Virgin Australia business to Bain Capital…as a going concern…
>
> Bain Capital adopted trading/operating risk (of losses) and provided funding from 1 July 2020…
>
> We are currently working with Bain Capital and the Virgin Group to complete the terms of sale… the Administrators continue to operate the business from 1 July 2020 to completion….we remain in control of the Virgin Group and its trading…
>
> The sale will be completed via an Asset Sale Agreement (ASA) or alternatively by way of Deeds of Company Arrangements ..to be proposed by Bain Capital. Bain Capital's DOCA proposals will be considered and voted upon by creditors at the second meeting…
>
> The merits of the DOCAs to be proposed by Bain Capital and an assessment of the two completion routes will be set out in our Second Report…however, we consider that the completion of the Sale to BC by way of DOCAs has some key advantages over an ASA….Advantages of completing the Sale ..by way of DOCA includes…it removes the need to transfer/re-obtain key operating assets including the Airline Operating Certificates (AOCs) and employment agreements"

Plain from last Friday's Update is that-

1. the Administrators have not yet disposed of the Virgin business assets;
2. the administrators say the sale to Bain may happen by either an ASA or DOCAs;
3. the administrators are recommending it occur by DOCA.

Therefore the administrators have not yet exercised their power of sale. Nor will they have if the sale occurs by DOCA.

Clear from the opening words of section 437A ("While a company is under administration, the administrator: ….(c) may..dispose of all or part of that business…") is that the administrators power to sell the Virgin business assets ceases when Virgin is no longer under administration.

The administration ceases after the second meeting because only three options are available to creditors at that meeting– one is to approve a DOCA; another is to end the administration and return the company to the directors; and the third is to appoint a liquidator.

I am informed that in his affidavit dated 14/8/20 Mr Strawbridge has disclosed an agreement between he and Bain ("the adjournment agreement") whereby Mr Strawbridge has agreed to exercise his powers as chair of the second meeting to adjourn that meeting if the Bain DOCA is not approved. Such an adjournment would extend the administration.

Extending the administration will increase the costs of the administrators. It will increase the costs of selling to Bain because of the need with an ASA to transfer/ re-obtain Virgin's AOCs and employment agreements. It will as well postpone any return to creditors. It will also deny creditors the right to vote on and the benefits of the financially superior Broad Peak/Tor proposal. In short, an adjournment is of no benefit to creditors, and is actually adverse to their interests.

The recent disclosure of the adjournment agreement puts the administrators earlier reasons for refusing to progress the Broad Peak/ Tor proposal in a far less favourable light.

Genuine concerns the administrators have about the Broad Peak/Tor proposal can be explained in their report to creditors.

In my submission, the adjournment agreement reinforces the case for the Orders sought by Broad Peak and Tor and as well justifies an additional Order that Mr Strawbridge and anyone else bound by the adjournment agreement not be allowed to chair the second creditors meeting. Such Orders are necessary under section 447B to protect creditors interests during the administration.

L M Lazarides

17/8/20