

In the matter of Virgin Holdings Ltd (Administrators Appointed) NSD 464 of 2020

Hearing on 30 July 2020 in the Federal Court of Australia

SUBMISSIONS by a Creditor of Virgin in relation to Orders sought by the Administrators

Order 1

It is one thing to use the Halo Platform to facilitate voting by creditors, however, it is quite another to use the Halo Platform to prevent creditors from voting which is the effect of Order 1.

With the possible exception of para 32, there is nothing in the materials justifying this outcome.

Para 32 actually confirms that the “conventional basis”, as Mr Orr describes it, of managing the proof of debt and voting process can be done, albeit at a cost.

The claimed cost saving from using Halo is apparently the justification being relied upon.

However, Mr Orr does not disclose how the cost estimates he refers to were formulated, such as the hours and hourly rates, so it is not possible to assess whether the estimates are accurate or reliable or reasonable estimates.

What Mr Orr makes clear though is that his cost estimates are on an “either/or “ scenario. He has not costed a scenario where Halo is used in tandem with, as an adjunct or checking mechanism, to the conventional basis. It can be fairly and confidently concluded that the extra cost of that scenario would be less than the \$3.1m he refers to. Used in conjunction with the conventional basis, the extra costs could in fact be quite small. As a checking mechanism to assist/ improve the conventional basis, these extra costs would be justifiable, indeed even a desirable and necessary expense.

Any cost saving estimate needs to be put into context. This administration involves not millions of dollars, but hundreds of millions, indeed several billions of dollars, and the savings identified by Mr Orr are negligible in the scheme of things.

My submission is that the above matters do not justify the prejudice to creditors from being prevented from voting in the way Order 1, if not amended, would operate.

My suggested amendments to Order 1 still enable Halo to be used to facilitate the voting process.

Orders 2 & 3

The best way to express my misgivings about these Orders is as follows –

I am definitely a creditor of Virgin but I have no idea whether Virgin’s debt to me is recorded in Virgins books and records. If my debt is recorded in Halo, it is there because I lodged a Proof of Debt, not because I registered on Halo. I didn’t register, someone else did that, presumably based on the Proof of Debt I lodged.

My creditor status and right to vote should not be dependant on someone putting my details on Halo.

The time honoured Proof of Debt mechanism for establishing creditor status and voting rights has been shown able to work in conjunction with Halo, but there is no justification for abandoning it in favour of Halo.

My suggested amendments preserve the Proof of Debt mechanism and at the same time give the Administrators the imprimatur to use Halo to assist them with discharging their functions and duties.

Additional Submission re Orders 1-3

As Mr Orr explains in paras 8 – 12, the Halo Platform software is property of Deloittes who have 100% ownership and control of how it is used. Deloittes is not a party to the proceedings. These facts reinforces and supports the reasons for the submissions above in relation to Orders 1-3.

Additional Order Sought

It is in the interests of transparency and fairness to creditors that they be given the same access to Halo, and the documents and material behind what is on it, that Deloittes as owner and controller of Halo, has.

L M Lazarides

30/7/2020