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

Federal Court of Australia Proceeding NSD 464 of 2020

Submissions by L M Lazarides (creditor)

1. At the hearing on 31/7/2020 The Plaintiffs objected to the Additional Order I sought on the ground of confidentiality. This was their only objection. Their objection was resolved when His Honour helpfully pointed out, and I agreed, that only information about a particular creditor and their position should be available, not information about everybody else. There is no intention "to trawl" information about everybody else. The parties were to come up with wording to give effect to this.

2. Order 6A proposed by the Plaintiffs refers to a "creditors debt or claim" so only applies once ie after a claimant has been accepted as a creditor.

3. I propose Order 6B below to deal with the stage prior to that –

> If an entity claiming to be a creditor notifies the Administrators that the entity disputes a decision, notice or adjudication by the Administrators about the entity's claim, the Administrators must promptly provide that entity with all material and information used or relied upon by the Administrators in making their decision, notification or adjudication not already provided to or by the entity.

4. As to the points made in para 5 of the Plaintiffs submissions - the Firstly point is based on a misunderstanding of what is sought. The Secondly point that the provision "may" involve confidential information is theoretical and may never occur. It assumes too that all the books and records need to be made available when they don't. For example, if the Administrators reject a claim because of something in the books or records, they will have identified the info relevant to that particular claim or creditor and would therefore be able to easily distil it out and provide it, or a summary of it, without providing all the books and records. The Thirdly point about the Administrators being required "to determine with respect to thousands of persons claiming to be creditors even where the Administrators simply intend to admit the person's claim in full " does not arise in the limited circumstances prescribed in Order 6B. Order 6B thus provides for a commonsense and practical approach and requires the Administrators to do only a little beyond what they are going to be doing anyway, which is justified in balancing the interests of creditors.

Outstanding Requests for Information

Shortly after the hearing on 30/7 Deloittes emailed me saying they were working to respond to Information Requests from me no later than Friday 31 July. Except for a few minor matters, that did not happen. Subsequently, Deloittes emailed me saying it is the Administrators intent to address "the majority" of my Requests in their Report to Creditors and that I should " wait" until the Report is released and then "let us know what further info you might need beyond what is provided."

I have no objection to the answers to my Requests being contained in the Report to Creditors as the information requested is relevant to assess and vote on the DOCA and other resolutions at the second creditors meeting.

However, the suggestion that only a "majority" of my requests will be answered is of concern as a majority could be only 51%. Also, the notion that I should wait and see what further information I might need is unsettling because I have already considered and decided what I need and requested it. There is very limited time between provision of the Report (due to be sent on 19 August) and the second meeting (proposed to be 4 September) and therefore very little opportunity to seek further information in a timely manner, let alone properly consider it before the meeting. That approach also means other creditors would not benefit from it as it would not be in the Report to Creditors.

I therefore request an order that the Administrators are to answer my outstanding Requests for Information in their Report to Creditors and a further Order that if the Administrators intend to object to any of my Requests or not answer them, they are to notify me within 2 days and provide reasons.

Application to Extend Date for Second Creditors Meeting

In relation to the Administrators Application for a rescheduled second creditors meeting date, I refer to the following facts and circumstances –

The restructuring proposal from bondholders;

His Honour's comment in early July that the administrators "preference for one proposal does not justify the exclusion of all other proposals from consideration by the creditors";

The matters in my 19/7 letter to the Administrators, copy attached;

Remarks attributed to Deloittes in the weekend press (Weekend Australian) that " given the binding nature of the agreements with Bain Capital no further offers can be considered…This includes the bondholder group's proposal……it cannot be considered by the administrators, or recommended to creditors, given the binding agreement already in place,"

And I make the following submissions –

The administrators position in regard to the bondholders proposal seems to be in defiance of His Honour's earlier comments;

The fact that the Bain deal is binding upon the Administrators does not explain or of itself justify the Administrators refusal to consider other proposals;

In his 17 July letter to creditors Mr Strawbridge said the binding documents with Bain prevented the Administrators from accepting "any alternate offer for sale". The bondholders proposal is a restructuring proposal, not a sale.

While the administrators have power to sell Virgin assets, it is not clear they can sell the business , or sell it on a basis that prevents consideration of restructuring proposals, including ones that may give creditors a superior return;

The “binding” nature of the Bain deal and the Sale Process that led to it are entirely due to decisions and actions of the administrators. For the reasons set out in my correspondence of 19/7, putting all the creditors eggs in one basket is not in creditors interests;

A DOCA is a special and unique facility in that, if approved by creditors, it is a once only, legally binding recalibration/ write off of Virgin debts and liabilities, and is thus a powerful and valuable right exercised exclusively by creditors, but only through the administration process;

The Administrators refusal to exercise their powers with respect to the bondholders proposal and presenting creditors with only the Bain deal denies creditors the opportunity to exercise their DOCA rights in a way that optimises return;

The Administrators are not saying the Bain deal is superior to the bondholders proposal. Nor can they when they are refusing to even consider it. According to public reports, the bondholders proposal and Bain’s have features in common including guaranteeing employee entitlements in full, continuing employment for approx. two thirds of Virgin staff, retention of existing management team, fewer aircraft and an homogenised aircraft fleet, reduced international routes, and new funding. It is reported that the bondholders proposal will yield between 38-47 and 50-67 cents in the dollar depending on a creditors level of participation. The return to creditors from the Bain deal is reportedly only 10 cents in the dollar or less.

The Bain deal resolved the interim funding problem facing the Virgin business and passed to Bain from 1 July the economic risk in running Virgin’s business. Deloittes inform me this means that Bain bears any trading loss of the business. This means there is no immediate or pressing financial or time pressure.

For the above reasons, I am supportive of orders that enable the bondholders proposal to be properly articulated and presented to creditors along with the Bain deal, and also a postponement of the second creditors meeting for a reasonable period to allow this to happen. As mentioned above and confirmed in Mr Strawbridge’s 7/8/20 affidavit (para 31) there is no financial or time pressure need to rush that meeting.

L M Lazarides
10/8/20