



Votes under Personal Guarantees in IVAs

Historically when receiving a vote for or against a proposal for a Voluntary Arrangement and the Chairman either disputes or is uncertain of the value of the supporting debt, the Chairman ordinarily admits the disputed or uncertain element for £1.

However in the case of *AB Agri Ltd v Curtis and others* [2016] All ER (D) 121 (Jul), the court heard a case concerning a Chairman who, at a meeting regarding a debtor's proposals for an Individual Voluntary Arrangement ("IVA"), exercised their discretion when dealing with the claim of a creditor for monies owed under a personal guarantee.

The creditor in question had presented a Bankruptcy petition against the debtor and, following the proposals made by the Debtor for an IVA, submitted a claim for the sum of £479,835.77 and a proxy form with instructions to vote against the IVA proposal.

The issue arose as the debtor disputed the validity of the personal guarantee that they had given. As such, the Chairman of the meeting treated the claim as an unliquidated debt and admitted it for £1 for voting purposes. As a result, at the meeting the debtor's proposal for an IVA was accepted by the requisite majority of creditors, which would not have been the case had the creditor's claim been admitted in full.

The creditor applied to court to challenge the validity of the decision reached on the grounds that the actions of the Chairman in dealing with the claim constituted a material irregularity under section 262 of the Insolvency Act 1986 ("the Act") and sought an order that the approval given at the meeting be revoked. Furthermore, the creditor claimed that the incorrect procedure, as found in Rules 5.21 and 5.22 of the Insolvency Rules 1986 ("the Rules"), had been followed by the chairman, who did not have the discretion to value what was a liquidated claim at £1 for voting purposes and should have instead either admitted the claim, rejected it in whole or part or marked it as objected to and allowed a vote.

The Insolvency Practitioner acting as Chairman disputed this on the basis that they had not erred in the use of their powers under Rules 5.21 and 5.22 as, having reviewed the relevant documentation and formed the opinion that the petition debt was disputed on substantial grounds and therefore that the petition was likely to fail, they were entitled to reject the claim altogether, but as a practical measure to keep the creditor up to date with the IVA had valued it at £1.

On hearing the matter, the court found that this was the wrong approach as, if the guarantee was valid, then all of the funds under the guarantee were owed and as such this was not an unliquidated claim. Rule 5.22(2) of the Rules allowed for the claim to be either admitted or rejected, whilst and Rule 5.22(4) set out the process on how to deal with the claim if the chairman doubted it. The process is for the vote to be allowed but marked as objected to, subject to the vote later being declared as invalid.

As such, the actions of the chairman in not following this process and admitting the claim for only £1 constituted a material irregularity under section 262(1) of the Act. Therefore the decision reached at the meeting was open to challenge and the court could revoke or suspend the decision reached at the meeting or give directions in relation to the summoning of a further meeting. The court in this case revoked the decision as, had the creditors vote been admitted in full, the proposal would have been defeated.

Reply to: Speedwell Mill | Old Coach Road | Tansley | Matlock | DE4 5FY

Head Office Speedwell Mill | Old Coach Road | Tansley | Matlock | DE4 5FY | T: 01629 761700 | F: 01629 761701

Oxford Office The Old Tannery | Hensington Road | Woodstock | Oxford | OX20 1JL | T: 01993 811180

W: www.seneca-ip.co.uk | E: enquiries@seneca-ip.co.uk



In addition to the above, the Insolvency Practitioner chairing the meeting was ordered to pay half of the costs incurred as a result of their failure to follow the Insolvency Rules appropriately.

The above demonstrates the need to ensure adequately that the correct procedures given in insolvency legislation are following when chairing meetings, particularly in voluntary arrangement meetings which are often contentious and the treatment of votes can be critical to the acceptance or rejection of proposals by creditors.

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