



Neutral Citation Number: [2019] EWHC 3515 (Ch)

No. 536 of 2009 / CR-2016-006154
No. 537 of 2009 / CR-2009-000040
No. 539 of 2009 / CR-2009-000048
No. 541 of 2009 / CR-2009-000047
No. 542 of 2009 / CR-2009-000033
No. 551 of 2009 / CR-2009-000044
No. 552 of 2009 / CR-2009-000035
No. 553 of 2009 / CR-2009-000036
No. 554 of 2009 / CR-2009-000037

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

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL
17 December 2019

Before :

MR JUSTICE SNOWDEN

IN THE MATTERS OF:

NORTEL NETWORKS UK LIMITED ("NNUK")
NORTEL NETWORKS (AUSTRIA) GMBH ("NORTEL AUSTRIA")
NORTEL NETWORKS S.A. ("NNSA")
NORTEL NETWORKS (IRELAND) LIMITED ("NORTEL IRELAND")
NORTEL GMBH ("NORTEL GERMANY")
NORTEL SLOVENSKO S.R.O. ("NORTEL SLOVAKIA")
NORTEL NETWORKS S.P.A. ("NORTEL ITALY")
NORTEL NETWORKS BV ("NORTEL NETHERLANDS")
NORTEL NETWORKS POLSKA SP. Z.O.O. ("NORTEL POLAND")

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Alex Riddiford (instructed by **Herbert Smith Freehills LLP**) for the **Applicants**
Hearing date: 17 December 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN :

1. The joint administrators (the “Administrators”) of nine Nortel Group entities (together, the “Companies”) have issued applications seeking relief under paragraph 76(2)(a) of Schedule B1 to the Insolvency Act 1986 (the “Act”) that their terms of office be extended for a further year.

Background

2. The background to the administrations of the Companies is well known and has been summarised in a number of my earlier judgments: see e.g. Nortel Networks UK Limited and others [2017] EWHC 3299 (Ch) at [2]-[13]. The Administrators have been pursuing the statutory purpose of seeking to achieve a better result for the creditors of each of the Companies than would be likely if that Company were wound up.
3. There have been a number of extensions of the Administrators’ terms of office, the most recent of which was granted on 17 December 2018 and is due to expire on 13 January 2020: see Nortel Networks UK Limited and others [2018] EWHC 3569 (Ch). The Administrators seek a further 12-month extension of each of the administrations to 12.01 pm on 13 January 2021.
4. The applications are supported by the seventeenth witness statement of Mr. Stephen John Harris, who is one of the Administrators of each of the Companies save for Nortel Ireland. The Application made in respect of Nortel Ireland is supported by the third witness statement of Mr. David Martin Hughes who is one of the Administrators of Nortel Ireland, and who confirms the accuracy of Mr. Harris’s statement insofar as it relates to Nortel Ireland.
5. The current position in relation to the administration of each of the Companies is as follows.

NNUK

6. Permission to make distributions to creditors of NNUK was granted by an order which I made on 23 July 2015: see Nortel Networks UK Limited and others [2015] EWHC 2506 (Ch). Various dividends have now been declared and paid to unsecured creditors by the NNUK Administrators, totalling some 45p/£ to date.
7. A relatively small number of unsecured creditor claims remain to be determined by the Administrators. The Administrators anticipate being able to adjudicate these claims in early 2020.
8. On 4 December 2019 NNUK received a distribution of 100% of its intragroup claims known as the “CCAA Subordinated Debts” from Nortel Poland; and it is envisaged that it will also receive a distribution of part of its CCAA Subordinated Debts from Nortel Germany later this week.
9. NNUK owns Nortel Networks International & Finance BV (“NNIF”) and stands to make further recoveries from the surplus in NNIF’s (now solvent) estate. The timing of such further recoveries depends on NNIF’s receiving distributions from some of its own subsidiaries. In particular, distributions are expected to NNIF of some £2.4

million in cash from Nortel Sweden and £2.5 million from Nortel Switzerland. Both receipts are currently anticipated to occur in the first quarter of 2020, but it will then inevitably take some time for NNIF to make final distributions to NNUK. There may also be further, smaller, distributions to NNUK from its various other subsidiaries apart from NNIF, and on account of debts owed to it by Nortel Ireland.

10. The Administrators of NNUK are uncertain as to the quantum and timing of any further recoveries they may also make in respect of certain pre-appointment claims against Nortel Networks Limited (“Nortel Canada”) and other companies in the worldwide Nortel Group. In consequence, the Administrators have initiated a sales process to realise value for these claims without further undue delay by assigning these claims to a third-party purchaser.
11. Resolution of these matters will enable a final distribution to be made to creditors. Thereafter, the Administrators also need to finish winding down certain other affairs of NNUK – including the dismantling of NNUK’s information technology systems infrastructure. Moreover, tax (and other) advice needs to be taken by the NNUK Administrators to assist them in deciding whether NNUK should move directly to dissolution or should be dissolved only once it has moved first into liquidation.
12. The Administrators’ current view is that notwithstanding these outstanding tasks, the objective of the NNUK administration is likely to be achieved in the course of the next 12 months.

NNSA

13. In my earlier orders I granted permission for the Administrators of NNSA to promulgate a CVA in respect of the Company; for there to be a merger under French law of NNSA and its wholly owned subsidiary, Nortel Networks France; and for there to be a bar date process in relation to administration expense claims. Following such steps, an initial distribution of 59c/€ was made to the NNSA CVA Creditors on 13 December 2019.
14. The French secondary liquidator of NNSA has sought to agree with the French Tax Authority a “long period” tax refund in respect of the period of liquidation of NNSA. If and when this is recovered, it has the potential to increase materially the level of the final dividend to creditors under the NNSA CVA. The timing of the potential tax refund requires the completion of certain accounts and the conclusion of certain other matters with the French Tax Authority.
15. The NNSA Administrators may also need to make applications to the Court for directions in relation to the status of certain alleged expense claims, most of which are from former employees of NNSA.
16. Subject to these matters, the Administrators currently hope that a final distribution should be capable of being made towards the end of 2020. Further time will then be required for the termination of the NNSA CVA and the administration, and implementation of the final dissolution of NNSA under French law.

Nortel Germany

17. Nortel Germany has paid a number of distributions to non-subordinated unsecured creditors, the most recent of which was on 5 December 2019. This resulted in such unsecured claims being paid in full together with commercial interest. In the course of the next week, Nortel Germany also intends to pay an element of NNUK's CCAA Subordinated Debts.
18. The final assets of Nortel Germany were entitlements to distributions from two other German insolvency procedures. The Administrators have recently completed the sale of one of the receivables to a third party and the other, smaller, claim will shortly be sold intra-group to NNUK. There may also be a small tax refund due. Subject to resolution of that matter, the Administrators envisage seeking an order terminating the administration of Nortel Germany in the first quarter of 2020.

Nortel Poland

19. All unsecured non-subordinated creditors of Nortel Poland have been paid in full together with commercial interest. Further, and as noted above, on 4 December 2019 Nortel Poland made a distribution to NNUK of 100% of its CCAA Subordinated Debts. The Administrators expect to finalise the arrangements for Nortel Poland to go into solvent liquidation (including finalising its tax affairs) in the first quarter of 2020. They will then make an application for an order terminating the administration.

Nortel Slovakia

20. Nortel Slovakia has paid its unsecured and non-subordinated claims in full, and the Supervisors of the Nortel Slovakia CVA terminated the CVA with effect from 15 November 2019. NNUK agreed to convert its CCAA Subordinated Debt into equity to facilitate a speedy and relatively inexpensive solvent liquidation of Nortel Slovakia, and the Administrators are now taking steps to identify an appropriate candidate with the necessary experience to act as the local liquidator of the Company. Once they have made such arrangements, the Administrators intend to make an application for an order terminating the administration in the first quarter of 2020.

Nortel Austria

21. Nortel Austria has, with the assistance of a "top-up" from NNUK under the terms of the Nortel Group Global Settlement, paid its unsecured claims in full. It has not, however, paid any interest or its CCAA Subordinated Debts. The Supervisors of the Nortel Austria CVA terminated the CVA with effect from 15 November 2019. The Administrators need to resolve certain tax issues, whereupon they expect to make an application in the first quarter of 2020 for the termination of the administration and for the Company to be dissolved pursuant to a fast-track process in Austria.

Nortel Netherlands

22. Nortel Netherlands has paid its unsecured non-subordinated creditors in full together with commercial interest. It has also paid NNUK its CCAA Subordinated Debts in full together with 80% of NNUK's entitlement to commercial interest. Nortel Netherlands has also assigned certain book debts to NNUK in respect of its remaining

claim for unpaid commercial interest. The Supervisors of the Nortel Netherlands CVA terminated the CVA with effect from 8 November 2019.

23. The Administrators of Nortel Netherlands have been planning the Company's ultimate winding-up under Dutch law, which has required a considerable level of assistance from their Dutch tax advisers. Their intention is to apply in the first quarter of 2020 for an order terminating the administration.

Nortel Ireland

24. Nortel Ireland has made distributions to unsecured creditors through its CVA amounting to the entirety of their claims together with 16.6% of commercial interest on such claims. The Administrators anticipate receiving a refund from the Irish Revenue Commissioners in the next 3 months or so. Once this refund is received it is anticipated that there will be sufficient assets available for a final distribution to be made through the Nortel Ireland CVA in respect of a further element of the unpaid commercial interest.
25. Following the making of this distribution, the CVA will be terminated. The Administrators then envisage applying for an order terminating the administration in mid-2020 and for the Company to be liquidated or dissolved thereafter.

Nortel Italy

26. Creditors of Nortel Italy with local priority claims have been paid in full, and other unsecured creditors have been paid 95% of the principal of their claims. The Administrators have been working towards making a recovery of a tax refund in Italy which ought to enable the remaining 5% of unsecured creditors' claims to be paid.
27. The Administrators are also engaged in a sales process in respect of Nortel Italy's claims against Nortel Canada, the outcome of which remains uncertain in terms of quantum and timing. In addition, the Administrators are attempting to devise a strategy to deal, ideally in a consensual way, with a telecommunications mast which might be owned by the Company and which has been the subject of litigation in Italy with a local property owner.
28. Once these matters have been dealt with it is anticipated that a final distribution will be made to creditors, following which the Administrators intend, in mid to late 2020, to apply for an order terminating the administration.

Notice of the application to creditors

29. The Administrators have written to the members of the creditors' committees of NNUK and Nortel Italy on 22 November 2019, and to the members of the NNSA creditors' committee on 26 November 2019. On 22 November 2019, the Administrators wrote to the former members of the creditors' committees of Nortel Austria, Nortel Slovakia, Nortel Germany, Nortel Ireland and Nortel Poland (such committees having become inquorate following payment of the creditors in full). No creditors' committee was ever formed in relation to Nortel Netherlands.
30. On 22 November 2019 the Administrators also posted an update on the EMEA Nortel website advising any interested person that the Administrators had applied to the

Court to extend the administrations of the Companies. A copy of the main text of Mr. Harris's witness statement in support of the applications was subsequently posted on the Nortel EMEA website on 3 December 2019.

31. The Administrators have received no response to these notifications or any other objection to the grant of the relief that they seek.

The Law

32. Paragraph 76(1) of Schedule B1 to the Act provides as follows:

“The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.”

33. Paragraph 76(2)(a) of Schedule B1 provides as follows:

“...on the application of an administrator the court may by order extend his term of office for a specified period...”

34. In the earlier extension application relating to the Companies, Re Nortel Networks UK Ltd and others [2017] EWHC 3299 (Ch), I observed, at [22],

“The Court's discretion under paragraph 76(2)(a) is not circumscribed in any express way, but it is readily apparent that it should be exercised in the interests of the creditors of the company as a whole, and that the Court should have regard to all the circumstances, including (i) whether the purpose of the administration remains reasonably likely to be achieved, (ii) whether any prejudice would be caused to creditors by the extension, and (iii) any views expressed by the creditors. In that regard, where a company is making distributions to its unsecured creditors within the administration process, it is likely to be appropriate that the administrator's term of office should be extended to allow the distributions to be made, rather than to require the company to go into liquidation, which might well increase the costs or delay the distribution process with no countervailing benefit.”

Analysis

35. Applying this approach, Mr. Riddiford submitted that there are compelling reasons why each of the Companies should be permitted by the Court to remain in administration for some further length of time, rather than being placed into liquidation at this stage.
36. In summary, the administration of each of the Companies is in “*distribution mode*”, whether by means of a CVA or (in the case of NNUK) pursuant to the Court's permission for the Administrators themselves to make distributions to unsecured creditors. The Administrators consider, and I accept, that: (i) there would be no

obvious benefits to any creditors (or, where relevant, members) if any of the Companies were to be placed into liquidation at this stage, rather than continuing in administration; and (ii) moving the Companies into liquidation now would likely occasion considerable amounts of disruption and wasted costs.

37. In these circumstances, I accept that it is entirely sensible and in the interests of those interested, directly or indirectly, in the distribution of the remaining assets of the Companies, that the Court should permit each administration to continue for as long as is reasonably necessary for the distribution process to be concluded.
38. I am also reinforced in that view by the experience of the administrations of other Nortel Group companies having been brought to a successful conclusion by the same mechanism over the last year.
39. The length of extension sought in respect of each of the Companies is 12 months. The Administrators submit that this is the appropriate length of extension to be granted in respect of each Company's administration, notwithstanding that it is currently expected that at least some of the administrations should be capable of being brought to an end sooner than January 2021. The Administrators submit that the granting of an extension of any less than 6 months in any of the cases is likely to require them to take the precaution of preparing for a further extension application, just in case an unforeseen complication should arise in the next few months. This, they suggest, would be a false economy.
40. I accept those submissions. In doing so, I have in mind that the Administrators have brought applications for termination of the administrations of other Nortel Group companies in a timely fashion notwithstanding that they had been granted a longer extension. I also note that the Administrators have expressly acknowledged that they have an obligation to perform their functions as quickly and efficiently as reasonably possible, and that they are specifically obliged to consider, on a continuing basis, whether their functions are either at an end or might more efficiently be brought to an end in favour of some other insolvency process. Accordingly, I do not think that a longer extension is likely to be regarded by the Administrators as an invitation to keep an administration open for the full period of the extension if it can properly be brought to an end sooner.
41. For completeness I should add that I am, together with the Administrators, mindful of the possible effects of Brexit on continuing the administrations of the Companies beyond 31 December 2020. That is the date which is currently envisaged as the expiry of the transitional period after the UK is scheduled to leave the EU on 31 January 2020.
42. The Administrators have acknowledged that if at any point prior to that date it becomes apparent that seeking some form of recognition or other action is required in one of the EU Member States where these Companies (other than NNUK) were incorporated, then the Administrators will take such action as is necessary. This may include applying to this Court for directions or for the earlier termination of the administration.

43. In that regard, and in any event, I would add that I expect any application for a further extension of the administrations of any of the Companies to be made prior to the end of December 2020.

Conclusion

44. I shall therefore grant the extensions sought by the Administrators.