Petrofac in “urgent” discussions to save lock up agreement

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Oil and gas group Petrofac has said that the “deliverability” of a restructuring envisaged under a lock up agreement it was gearing up to announce with opposing creditors Saipem, Samsung and its supporting bondholders had been impacted by a “change in circumstances”.

On 21 October, Petrofac **revealed on the London Stock Exchange** (LSE) that the change relating to certain stakeholders had altered “the timing and/or deliverability” of the restructuring envisaged under a lock up agreement it had been “working towards” announcing.

“Urgent discussions are taking place in relation to this change in circumstance and the Company will provide further details when it is able to,” the company said.

The revelation comes after Petrofac **confirmed on 17 October** via the LSE that the restructuring being contemplated would result in no residual value for existing shareholders.

Petrofac's 17 October notice continued that it "remains focused" on completing the restructuring by the end of November and that it "expects to shortly conclude a Lock Up Agreement in respect of the identified implementation route, which will support the Group's operational capability and ongoing delivery."

It reached an **agreement in principle last month** with Italian energy company Saipem and Korea's Samsung relating to a potential US$4 billion liability bill coming to all three of them in relation to a failed clean fuel joint venture for Thai state-owned oil and gas company Thai Oil.

The agreement was going to pave the way for Petrofac to implement a restructuring that would eliminate US$722 million in debt via a debt-for-equity swap, largely allocated to secured creditors, which it had hoped to **complete through a now failed Part 26A process**. The deal would also have introduced US$75 million of new money financing from New York investor Nut Tree and a further US$218 million from its senior secured creditors.

While Petrofac did **obtain sanction** of two Part 26A plans in May, they were subsequently overturned by the Court of Appeal following an application from Saipem and Samsung claiming that the plans were unfair.

Under the plans, Petrofac was going to erase its liability under the Thai Oil joint venture, leaving Saipem and Samsung to split any potential damages claims between themselves, while providing the two energy companies with a 110% payment of their expected returns in a liquidation scenario.

Throughout its court appearances in the Part 26A process, Petrofac has claimed that its financial position rested precariously on "valuable" contracts it had won and new money from Nut Tree and the senior secured bondholders.

During its **convening** and **sanction hearings**, Petrofac presented written and oral evidence to the court that European power grid operator, TenneT, would cancel its contracts if it did not obtain court approval of its plans.

"In that event, the Plan Companies would no longer have any business that is capable of being rescued," Petrofac submitted in its **sanction hearing skeleton argument**. TenneT's contracts represent 80% of Petrofac's engineering and construction division's revenue, the group said in its written arguments.

It added that if TenneT did terminate its contracts, "one of the main pillars underpinning the business plan (pursuant to which the new money investment has been committed)" would fall away, leading to Petrofac's inevitable collapse into insolvency.

A TenneT spokesperson said that the operator was unable to comment on whether it was the stakeholder referred to in Petrofac's latest announcement, or if it had further pushed back a deadline for Petrofac to fulfil performance guarantees.

Petrofac, its counsel Linklaters, Nut Tree and counsel to the supporting bondholders Weil did not respond to requests for comment, nor did Saipem, Samsung and their counsel Mayer Brown.

The **Court of Appeal set aside the sanction of Petrofac's plans** in July, after finding that the group had failed to justify a projected 211% return for new money providers while unsecured creditors were offered equity warrants representing 1.5% of the company's post-restructuring equity and cash.

The appellate judges pointed out that the company's post-restructuring value was largely being generated through extinguishing an estimated US$3 billion in unsecured debt. They said the cross-class cram down power in Part 26A was not designed to allow an assenting class to allocate itself an "inequitable share" of the post-restructuring benefits.

Petrofac had lodged an application to the Supreme Court to challenge the Court of Appeal's ruling but was **turned down last week** in light of the deal it reached with Saipem and Samsung in September.

Meanwhile, the apex court said that it would hear Scottish energy company Waldorf Production's challenge to a **high court decision declining to sanction its Part 26A plan** on the basis that it was treating out of the money creditors unfairly.

The Supreme Court's **website detailed** that, as the point of general public importance in Petrofac's appeal – namely, what approach the courts should take when assessing fairness in cramming down out-of-the-money creditors – will be considered in Waldorf's appeal, the court did not want to risk wasting costs and resources.

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