La Perla: A tale of two towns

Andrea Angelo Terraneo and Andrew Watling report on the recent trailblazing case in post-Brexit cross-border insolvency

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> ***EU Regulation 2015/848 on Insolvency Proceedings no longer applies to UK insolvency procedures***

La Perla is one of the most famous brands in the luxury lingerie sector and is among the brands that are at the centre of the "Made in Italy" culture with a 70 year history - deeply rooted in the city of Bologna.

Founded by Ada Masotti in 1954, La Perla established its reputation on the high quality of the raw materials used and, especially, on the human capital represented by its embroiderers, and represented one of the examples of female entrepreneurship in Italy. The solid brand reputation and market, however, has been marred since the first half of the 2000's by a series of managerial and financial downturns which led to a first insolvency procedure in 2013. It is at this time that La Perla started its London tale with La Perla Global Management (UK) Limited ("**LPGMUK**").

Facts

LPGMUK is a company incorporated and registered in England and Wales, which was the sub-holding company of the wider La Perla Group. LPGMUK was placed in *compulsory liquidation* by the High Court of Justice of London, following from an application filed by HM Revenue & Customs and supported by some English creditors, on 1 November 2023. The Group spanned several jurisdictions with around 30 subsidiaries, the most important of which was La Perla Manufacturing S.r.l. ("**LPM**"), now under Italian Extraordinary Administration opened by the Court of Bologna and the Ministry of Industry and Made in Italy ("**MIMiT**"). LPM owns the main manufacturing plant of the Group and employs all embroiderers in Italy. LPGMUK also kept an establishment in Italy ("**LPGMUKITA**"), which continued to operate from the head office in Bologna until its Italian Judicial Liquidation, opened on 26 January 2024.

A company with two COMIs

As readers are aware, the EU Regulation 2015/848 on Insolvency Proceedings ("**EUCBIR**") no longer applies to UK insolvency procedures. Therefore, they no longer enjoy the benefit of the automatic recognition on the Continent. Against this background, the Italian employees and unions argued strongly that the actual COMI of LPGMUK was not in England but, because of evidence proffered, and the fact that third parties were accustomed to deal with the Italian establishment rather than with the London office, it remained in Bologna. Additionally, in accordance with Article 7 of the Italian International Private Law Act N. 218/1995 ("**IIPLA**"), the Italian judge may disregard the principle of *international lis pendens* in the event he considers that the foreign measure may not have effect under Italian law. This led to our first "*first*", because, on 23-26 January 2024, the Court of Bologna opened the first parallel primary (COMI) procedure on a foreign incorporated company in the Italian jurisdiction.

Issues

The English Joint Liquidators were therefore facing a concurrent series of issues left unanswered by the withdrawal of the United Kingdom from the European Union. Article 21 of the EUCBIR is no longer applicable. Therefore, the Joint Liquidators could not automatically deal with assets and contracts within the EU. Additionally, ascertaining whether a set of office holders would have had priority over the other proved to be contentious and problematic, along with ascertaining whether the assets of LPGMUK (the La Perla IPR) were vested in the English *compulsory liquidation* or in the Italian *judicial liquidation* or in both.

At the same time, the Joint Liquidators were also receiving concurrent requests from the Extraordinary Administrators of LPM, and political pressure from the MIMiT, to keep in due consideration the expectation of the Bolognese human capital of the group. The main assets of LPGMUK (the La Perla IPR) were also under the threat of depreciation because of its disappearance from the market because of the Extraordinary Administration of LPM, the temporary cessation of the production of La Perla branded garments, and the closure of the shops around the world.

The international remit of the Group also meant that the Joint Liquidators had to take action to affect an orderly winding down of some of the local subsidiaries, such as in Spain. The Joint Liquidators also faced two other issues: on the one hand the language barrier between all parties involved; on the

other the lack of a legal framework for cross-border insolvency in Italy, as Italy did not implement the UNCITRAL Model Law of Cross-Border Insolvency ("Model Law") and does not have any internal legislation on this matter.

From crisis to solution – Stretching the instruments of cross-border cooperation in Insolvency to their limits

To resolve several of the issues above, and to find a solution that would have allowed an orderly realisation of the assets of the Group, the Joint Liquidators therefore deployed several instruments of cross-border cooperation, most of which found their application for the first time in Italy:

- Appointment of an agent ("*coadiutore*"): Para 12 of the Schedule 4 of the Insolvency Act 1986, authorises the liquidator to appoint "*an agent to do any business which the liquidator is unable to do himself*". Due to the contentious nature of the case, the appointment was deemed necessary to abridge the language and cultural barrier between all office holders.
- Appointment of local advisors: to facilitate the navigation of issues posed by foreign legislation, the Joint Liquidators appointed foreign advisors in Italy, and for instance in Spain, where the Joint Liquidators filed an application to wind-up the local subsidiaries as shareholder.
- Recognition: the Joint Liquidators immediately applied for the recognition of the *compulsory liquidation* in Italy. However, the IIPLA does not contain specific reliefs thought to be of support to foreign insolvency practitioners notwithstanding the recognition of the foreign insolvency procedures, nor does the IIPLA contain any specific disposition regarding foreign insolvency practitioners' powers.
- Coordination hearings: on the request of the agent of the Joint Liquidators, the Delegated Judge of the judicial liquidation of LPGMUKITA convened a coordination hearing in February 2024. The Judge, also based on their powers under Para 43 and Preamble 49 of the EUCBIR, took an active stance in urging all parties to cooperate and find an agreed solution to this matter. This is also the first coordination hearing between Italian and English insolvency procedures after Brexit.
- Negotiations/Agreements: Preamble 48 and 49 of the EUCBIR prescribes that the insolvency practitioners should coordinate between themselves to achieve an "*efficient administration of the debtor's insolvency estate or […] the effective realisation of the total assets*" and that "*insolvency practitioners should be able to enter into agreements and protocols for the purpose of facilitating cross-border coordination*". In the light of this, and of the entrenched Italian position, the Joint Liquidators commenced extensive negotiations -that lasted nearly one year- to achieve an orderly realisation of the assets. Such agreements are the first post-Brexit agreements that involved Italian and English insolvency procedures.

Conclusions

La Perla can therefore be considered a trailblazer case (if not as the canary in the mine of cross-border insolvency) in the post-Brexit environment, however it also showed the limits of the instruments currently available.

The limited adoption of the Model Law in the European Union, where only Greece, Slovenia, Poland, and Romania, adopted such instrument, leaves foreign (and more specifically UK) insolvency practitioners with very limited assistance in the management of their insolvency procedures. They will need to rely on the legislation available in the EU-Country where they need to operate. However, such legislation, for instance in Italy, may very well offer insufficient reliefs or assistance to foreign insolvency practitioners, even if they seek the recognition of their insolvency procedure locally. The lack of automatic recognition of foreign insolvency procedures, can therefore lead to parallel primary (universal) insolvency procedures opened on UK and EU companies, or, in the event COMI is contested, to the attraction to the EU jurisdiction. Local insolvency practitioners may also not have knowledge of the instruments that the international insolvency law provides to assist in cases like La Perla, therefore foreign and English insolvency practitioners need to be aware that part of the time of the case will be devoted in educating their EU counterparties.

Finally, we expect that the landmark La Perla case will be taken as an example of cross-border insolvency cooperation after Brexit and will become the template to follow in other similar cases because of the success obtained in the negotiations between the office holders. This is especially true with regards to Italy, where the instruments available to foreign insolvency practitioners are limited in scope and numbers. ■

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