

## CASE UPDATE – INSOLVENCY & ADJUDICATIONS

Recent court decisions have acknowledged that the regimes of adjudication (a formal judgement on a disputed matter) and insolvency are incompatible. Their incompatibility comes into sharp focus when the adjudication decisions are made before a company enters a Company Voluntary Arrangement (“CVA”).

In May 2019 the conclusions from the case of Indigo Projects London Ltd and Raizin and Another [2019] EWHC 1205 TCC left us asking **to what extent is adjudication a useful tool where one of the parties falls into insolvency?**

### Summary of Background

- The defendants had engaged Indigo Projects London as main contractor on one of its projects.
- Disputes arose between the parties concerning the standard of the work, delays in completion and liquidated damages.
- Indigo issued an interim payment application, which the defendants did not agree with it. Crucially the defendants failed to issue appropriate paperwork (known as a “pay less notice”).
- The defendants did not pay the invoice sum to Indigo but instead paid a reduced amount of £30,000.
- Indigo referred the dispute to adjudication and was awarded £177,662.72 (being the full sum with interest, less the £30,000 paid on account).
- Interestingly, **the award was on the basis that appropriate notices were not served** - it did not consider the merits of the defendant’s cross-claims.

### Summary of Background

- Indigo successfully applied to the Courts to enforce the adjudication award but then entered into a company voluntary arrangement (CVA).
- The defendants refused to pay the full amounts to Indigo - they argued that if it was subsequently decided that the disputed amounts were not in fact due, Indigo may not be able to repay the sums due to the CVA position.
- Indigo argued that the full amount should be paid to them because the adjudication award pre-dated the CVA.

## Summary of Background

- The Indigo case follows on from a similar case in January (Bresco Electrical Services v Michael J Lonsdale and Cannon Corporate v Primus Build [2019] EWCA Civ 27) but the outcome is somewhat different.

This leaves us asking where the law stands in similar cases and what it means for companies on the brink of a CVA? **We will need further decisions to clarify whether an adjudicator's award will or will not be enforceable.**

**We have become aware of potential 'spoof' emails whereby emails are apparently being sent from a 'spoof' Parkin S Booth email address to some of our contacts. We are confident that there is no breach of personal data but please be vigilant if you do receive suspicious emails using our name.**

Please note that should your clients require any confidential advice regarding insolvency matters they are welcome to contact one of our partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedures please do not hesitate to contact us.

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