Case No: CR-2019-004868

Neutral Citation Number: [2020] EWHC 320 (Ch)

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

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Wednesday, 15 January 2020

Before:

MR JUSTICE ZACAROLI

IN THE MATTER OF COBHAM PLC
AND IN THE MATTER OF THE COMPANIES ACT 2006

Andrew Thornton instructed by Allen & Overy LLP for the Applicant/Company
Mr Christopher Sills appeared **in person** as a Share Holder of the Company

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APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

MR JUSTICE ZACAROLI:

1. I have to consider whether to sanction a Scheme of Arrangement in respect of the company, Cobham plc. I need not describe the background in any great detail.

2. The questions for me on an application like this are most conveniently set out by Morgan J in *Re TDG plc* [2009] 1BCLC 445. There are four matters for me to consider. The first is whether the provisions of the statute have been complied with in relation to the Scheme; that includes, for example, the directions for the holding of the meeting and other statutory matters. I have no doubt that this requirement is satisfied in relation to this scheme. The directions for the convening of the meeting have been complied with. There is no issue raised as to the composition of the classes of members: a single class meeting was convened, which was entirely proper in the circumstances of this case.

3. The second question is whether the members were fairly represented by those who attended the meeting and whether the statutory majority were acting *bona fides* and not seeking to coerce the minority in order to promote interests adverse to those of the rest of the class. In this case the numbers were as follows: 1,222 Scheme shareholders participated in the meeting; of those 775 voted in favour and 447 voted against. The majority required by the statute is more than 50 per cent by number and 75 per cent by value. In this case the scheme was approved by a majority of 64.48 per cent by number, and 93.22 per cent by value. I am content that this fairly represented the class overall. The turnout was 29.06 per cent in terms of number of shareholders. That is, in fact, relatively high for members' schemes of this nature, given that in many cases a significant proportion of members with relatively small shareholdings do not get involved, but more importantly it represents 78.52 per cent in value. There is no reason to think that this majority was acting otherwise than in the interests of the class as a whole.

4. The third issue is whether I am satisfied that an intelligent and honest person, a member of the class concerned and acting in respect of his or her own interest, might reasonably approve the Scheme. Aside from an issue raised by Mr Sills (who appears today to object to the Scheme), which I will address in a moment, I am satisfied that this requirement is met.

5. The fourth matter is that there must be no "blot" on the Scheme. Essentially I must be satisfied there is no technical flaw in the Scheme, for example because if it involved reduction of capital and no special resolution was proposed to approve that reduction. There is, in my judgement, nothing in this case which amounts to a technical flaw in the scheme.

6. Mr Sills is a shareholder holding 175 shares. His wife holds the same number. He offers four possible alternative outcomes to approval of the Scheme. One is that the Scheme should be rejected. The second is that the court should require a confirmatory vote to be obtained. The third is that because of the way the document was drafted, there was no indication of what would happen in relation to a general election. I think that probably falls into his second point because it feeds into the need for a

confirmatory vote. The fourth possible outcome was to adjourn this matter for 24 hours to give two particular institutional shareholders the opportunity to come before the court and say what they would have done if they were asked to vote now.

7. In support of those possible outcomes, Mr Sills raises essentially two points. The first is that the Scheme documentation was not clear enough in identifying the fact that, although the headline price for the offer was 165 pence per share, that would be reduced in the event that the company paid a dividend to shareholders. An interim dividend of 0.4 pence per share was paid on 8 November and that the price of the offer for the shares, therefore, has been reduced to 164.6 pence per share.

8. In my judgement the Scheme documentation is entirely clear in this respect. The point is mentioned in at least three places. Most importantly, it is mentioned in paragraph 2 of the letter from the Chairman, which is the first document any shareholder opening the pack would see. Paragraph 2 first identifies the headline price of 165p per share, but in the next main paragraph goes on to refer explicitly to an already announced dividend of 0.4 pence per share, payable on 8 November 2019, which would be deducted from the price. It also went on to say that if there were any other dividends, those also would be deducted. (In the event, there has been no other dividend and no further deduction). I am satisfied that the point was clearly flagged to any shareholder who chose to read the document.

9. I take into account the fact that many of the shareholders may well be elderly with less facility to take on board what is, on any view, a vast amount of information in the pack provided to them. I am nevertheless satisfied that the reduction of the price was clearly enough stated to be fairly brought to the attention of shareholders.

10. The second, more substantial, point is one of timing. The Scheme was promulgated in August 2019, the meeting took place in September 2019, but the sanction hearing is only occurring today (15 January 2020). In the interim there has been a period of political and economic uncertainty, including the calling of a General Election and a period of what Mr Sills described as "purdah". That is of importance here because, given the industry in which the Scheme company operates, its takeover required various approvals, including from the Ministry of Defence. That simply could not happen once the General Election had been called, until a new Minister of Defence was in place. Mr Sill's complaint is that given the events that have occurred since the Scheme meeting, if the meeting was held again the outcome may be very different.

11. This ties in with the third requirement which I am required to consider: could an intelligent and honest person, a member of the class concerned, acting in their own interest, reasonably approve the Scheme? That is the question the court has been required to answer in respect of schemes of this nature for well over 100 years. In my judgement, it is a question which needs to be answered by reference to the time at which the Scheme meeting was held. At that time, to the extent that there was any uncertainty as to the future (and I accept that, even though the General Election had not in fact been called at the time of the Scheme meeting, even in September last year there was a period of considerable economic and political uncertainty) the shareholders were in a position to take into account (when voting on the scheme) whether it would be better to vote against the Scheme on the basis that if and when the uncertainty was

resolved, the share price (and thus the likely offer on the table) might improve. I do not think that the fact (even if this could be established) that the change in political and economic outlook means that shareholders probably would vote differently now is a reason to invalidate the vote which took place in September. It would not indicate, in my judgment, that an intelligent and honest member of the class concerned acting in respect of his own interests at the time of the vote could not reasonably have approved the Scheme.

12. For that reason, with great respect to Mr Sills for his clearly expressed submissions, I do not accept his objection to the Scheme. I will accordingly sanction the Scheme.

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